

721 SOUTH FOREST DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this [--] day of [Month], [Year], by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and Verve Ann Arbor Forest LLC, a Delaware Foreign Limited Liability Company, with principal address at 30000 Locust Street. St Louis, MO 63103, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 721 South Forest , and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 721 South Forest, and desires Zoning and Site Pan and development agreement approval thereof, and

WHEREAS, the DEVELOPER desires to build or use certain Improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to ensure that all of the Improvements required by pertinent CITY ordinances and regulations be properly made, and that the DEVELOPER will install these Improvements prior to any permits being issued.

THE DEVELOPER(S) HEREBY AGREE(S):

- (P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water main, private storm water management system, public sidewalk, and private sidewalk, ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.
- (P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER, if the DEVELOPER does not complete the work within the time set forth in the notice.
- (P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public Improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the DEVELOPER'S engineer inspects.

- (P-4) To grant an easement to the CITY for onsite water main as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits, and the easements shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easements may be accepted at a later time as determined by the CITY Public Services Area.
- (P-5) To grant an easement to the CITY for offsite water main as shown on the Site Plan. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits, and the easements shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. Easement must be executed, accepted by City Council and recorded prior to issuance of any Building permits
- (P-6) To grant an onsite private access easement to the adjacent property (715 Church) to be reviewed and approved by City Attorney prior to issuance of any CO.
- (P-7) To install all water mains, storm sewers and sanitary sewers pursuant to CITY approved plans and specifications, necessary to connect the site with existing CITY systems adjacent to the site prior to the issuance of any Building permits on the site.
- (P-8) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to Forest Avenue, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Forest Avenue frontage when such Improvements are determined by the CITY to be necessary.
- (P-9) To indemnify, defend and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the DEVELOPER, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.
- (P-10) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the Improvements.
- (P-11) Existing landmark tree and street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of Certificate of Occupancy. Existing landmark trees and street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years

after acceptance of the public Improvements or granting of Certificate of Occupancy, shall be replaced by the DEVELOPER as provided by Chapter 55 of the Ann Arbor City Code.

- (P-12) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the DEVELOPER to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the DEVELOPER one year after the date of acceptance by the CITY.
- (P-13) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER if the DEVELOPER does not complete the work within the time set forth in the notice.
- (P-14) After construction of the private on-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.
- (P-15) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.
- (P-16) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.
- (P-17) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development Improvements, and within one month after completion or abandonment of construction.
- (P-18) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve a minimum of LEED Silver v4.0 under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this

agreement. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent).

- (P-19) To install a permanent electric vehicle charging station or stations in the parking area as required by the PUD Ordinance.
- (P-20) To provide partial solar power for the Project by installing solar panels on the roof of the Project, as shown on the Site Plan, and subsequent construction drawings. The solar panels shall produce a minimum rated capacity of 100 kWh per year, and shall be operational prior to the request or issuance of any certificate of occupancy..
- (P-21) Developer shall utilize a Sto (or equal) exterior insulation and finish system which will improve the thermal performance of the building reducing energy usage for heating and cooling.
- (P-22) Prior to the issuance of the first certificate of occupancy, to pay to the CITY an affordable housing contribution of \$4,700,000 to be deposited in the City of Ann Arbor Affordable Housing Fund in compliance with the applicable PUD Ordinance Standards of July 2019 and the approved Supplemental Regulations for this Property, unless prior to the issuance of such certificate of occupancy the CITY and DEVELOPER have agreed-upon a plan for DEVELOPER constructing at least 15% of total Project Units as Affordable Housing for Low Income Households as defined in the Code and in compliance with the PUD Zoning and Site Plan. .
- (P-23) Developer shall dedicate two percent (2%) of the Project's apartments as "ANSI Type A" units designed to meet accessibility. The remaining units will be "ANSI Type B," following Fair Housing Accessibility Guidelines and ANSI.
- (P-24) Developer shall make a contribution of Fifty Thousand Dollars (\$50,000.00) to the Ann Arbor Housing Development Corporation 501c(3) to be used for sustainability upgrades to existing or proposed AAHDC properties located in the Central Area, prior to the request or issuance of any certificate of occupancy.
- (P-25) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$142,500 to the CITY Parks and Recreation Services Unit prior to the issuance of any certificates of occupancy for improvements to Central Area parks.
- (P-26) DEVELOPER is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of DEVELOPER has (have) legal authority and capacity to enter into this Agreement for DEVELOPER.
- (P-27) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved Agreement's terms and conditions shall constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or Agreement.

(P-28) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-29) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds, and to pay for the cost of recording all documents granting easements to the CITY.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve the 721 South Forest Avenue.

(C-2) To use the park contribution described above for Improvements to the parks in the Central Area.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) To record this Agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the DEVELOPER and the CITY agree as follows:

(T-1) This Agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the DEVELOPER, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

LAND IN THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MI, DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF FOREST AVENUE, 16.53 INCHES NORTH OF THE SOUTHWEST CORNER OF LOT 10 OF BLOCK 5 OF R.S. SMITH'S SECOND ADDITION TO THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN; THENCE EAST 138 FEET; THENCE SOUTH 16.53 INCHES TO SAID SOUTH LINE OF LOT 10; THENCE EAST TO THE SOUTHEAST CORNER OF SAID LOT 10; THENCE NORTH 8 RODS (132 FEET) AND 16.53 INCHES TO THE NORTHEAST CORNER OF LOT 9 IN SAID SUBDIVISION; THENCE WEST ALONG THE NORTH LINE OF LOT 9 TO THE NORTHWEST CORNER THEREOF; THENCE SOUTH 8 RODS (132 FEET) TO THE PLACE OF BEGINNING, BEING LOT 9 AND PART OF LOT 10 IN BLOCK 5 OF R.S. SMITH'S SECOND ADDITION TO THE CITY OF ANN ARBOR, AS RECORDED IN LIBER 48 OF DEEDS, PAGE 40, WASHTENAW COUNTY RECORDS.

BEING MORE PARTICULARLY DESCRIBED AS:

COMMENCING AT THE SOUTH 1/4 CORNER OF SECTION 28, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, ANN ARBOR TOWNSHIP, WASHTENAW COUNTY, MICHIGAN; THENCE SOUTH 87 DEGREES 50 SECONDS 59 MINUTES WEST 594.98 FEET ALONG THE CENTERLINE OF HILL STREET, AS MONUMENTED; THENCE NORTH 00 DEGREES 00 SECONDS 00 MINUTES EAST 352.15 FEET ALONG THE CENTERLINE OF SOUTH FOREST AVENUE, AS MONUMENTED; THENCE NORTH 90 DEGREES 00 SECONDS 00 MINUTES EAST 33.00 FEET TO THE NORTH WEST CORNER OF LOT 9, BLOCK 5, OF R.S. SMITH'S SECOND ADDITION TO THE CITY OF ANN ARBOR, AS RECORDED IN LIBER 48 OF DEEDS, PAGE 40, WASHTENAW COUNTY, MICHIGAN AND POINT OF BEGINNING; THENCE NORTH 89 DEGREES 44 MINUTES 09 SECONDS EAST 395.87 FEET ALONG THE NORTH LINE OF SAID LOT 9; THENCE SOUTH 00 DEGREES 08 MINUTES 29 SECONDS EAST 132.94 FEET ALONG THE EAST LINE OF LOTS 9 & 10 OF SAID BLOCK 5; THENCE SOUTH 89 DEGREES 41 MINUTES 03 SECONDS WEST 258.19 FEET ALONG THE SOUTH LINE OF LOT 10 OF SAID BLOCK 5; THENCE NORTH 00 DEGREES 18 MINUTES 57 SECONDS WEST 1.38 FEET; THENCE SOUTH 89 DEGREES 41 MINUTES 03 SECONDS WEST 138.00 FEET TO A POINT WHICH IS 1.38 FEET NORTH OF THE SOUTHWEST CORNER OF SAID LOT 10; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS EAST 131.92 FEET ALONG THE EAST RIGHT-OF-WAY LINE OF SAID SOUTH FOREST AVENUE TO THE POINT OF BEGINNING.

Commonly known as: 721 South Forest Avenue, Ann Arbor, Michigan 48104
Tax Parcel Id. No.: 09-09-28-309-007

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the DEVELOPER, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER has failed to perform.

(T-6) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Milton Dohoney Jr., City Administrator

Approved as to Form:

Atleen Kaur, City Attorney

ENTITY NAME

By: _____
[Name, Title]

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw

STATE OF _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by _____, _____ of _____, a _____, on behalf of the _____.

NOTARY PUBLIC
County of _____, State of _____
My Commission Expires: _____
Acting in the County of _____

DRAFTED BY AND AFTER RECORDING RETURN TO:
Ann Arbor Planning & Development Services
ATTN: Brett Lenart
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265