

***MMG Plymouth Mixed Use* DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 A2 Hospitality Property, LLC, a Michigan limited liability company, with principal address at 251 East Merrill Street, Suite 205, Birmingham, Michigan 48009, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as *MMG Plymouth Mixed Use*, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as *MMG Plymouth Mixed Use*, and desires site plan approval with planned project modifications 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):**

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(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 mains, private storm water management systems*, ("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. Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(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) Prior to the issuance of building permits, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-7) To install all water mains, storm sewers, sanitary sewers and public streets, through the first course of asphalt, 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. (The language may be *"any occupancy permits" depending on site conditions, for example, it is an existing project that is being upgraded/remodeled; check w/SESC*) (If necessary, insert: "Building permits may be issued for the construction of *insert quantity* model homes prior to the first course of asphalt, provided that the road meets Fire Department requirements. The final course of asphalt paving shall be completed prior to the issuance of *insert appropriate trigger point as necessary* on the site.

(P-9) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to *insert name(s) of road, drive, avenue, etc.*, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along *insert name(s) of road, drive, avenue, etc.*, frontage when such Improvements are determined by the CITY to be necessary. (A provision shall be included in the master deed for the project stating that if the CITY undertakes to establish a special assessment district to improve *insert name(s) of road, drive, avenue, etc.*, each unit shall be assessed its pro rata share of the cost of Improvements allocable to the Property.)

(P-11) 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-12) 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.

#### *Natural Features Protection*

(P-13) Existing landmark 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 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-22) 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-27) 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-28) 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-##) To provide partial solar power for the Project by installing solar panels on the roofs of the Project, as shown on the Site Plan, and subsequent construction drawings. The solar panels shall cover a minimum of 5,500 square feet, being 45%, of the Project's hotel roof, and a minimum of 1,000

square feet, being 25%, of the Project's restaurant roof. The solar PV equipment description, as shown on the Site Plan shall be Jinko Solar JKM400M-72HL-V (2019) or at least equivalent. The Project's hotel shall have a solar PV system rating of 108,800 W-DC, providing an expected 12% of annual energy use. The Project's restaurant shall have a solar PV system rating of 24,400 W-DC, providing an expected 9% of the annual energy use.

(P-29) 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.

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(P-35) 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-36) 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-37) 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-38) 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 *MMG Plymouth Mixed Use*.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) 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:

A parcel of land being a part of the Southeast 1/4 of Section 14, T.2N., R.6E., City of Ann Arbor, Washtenaw County, State of Michigan, being more particularly described as follows:

COMMENCING at the South 1/4 corner of Section 14, T.2N., R.6E., City of Ann Arbor, Washtenaw County, State of Michigan: thence N00°05'50"E, 810.08 feet along the north and south quarter line of said Section 14 to the centerline of Plymouth Road (width varies); thence N70°54'30"E, 349.47 feet along said centerline; thence N00°05'30"E, 347.77 feet to the POINT-OF-BEGINNING; thence N00°05'30"E, 299.23 feet; thence N70°54'30"E, 641.13 feet to the west line of US-23; thence the following three (3) courses and distances along said west line of US-23: 1) S41°20'20"W, 258.60 feet; 2) S19°06'20"E, 295.01 feet; and 3) S25°53'40"W, 266.44 feet to the centerline of said Plymouth Road; thence S70°54'30"W, 30.12 feet along said centerline; thence N19°05'30"W, 243.00 feet; thence 160.12 feet along a non-tangential curve to the left, having a radius of 108.00 feet, a central angle of 84°56'44", and chord bearing N61°31'58"W, 145.85 feet; thence 200.28 feet along a non-tangential curve to the left, having a radius of 500.00 feet, a central angle of 22°57'00", and chord bearing S64°30'30"W, 198.94 feet to the POINT-OF-BEGINNING. Containing 4.514 acres of land, more or less.

(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.

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:

\_\_\_\_\_  
Tom Crawford, Interim City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

ENTITY NAME

By: \_\_\_\_\_  
*Name, Title*

STATE OF MICHIGAN )  
 ) ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_  
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 \_\_\_\_\_, 2020 by  
Doraid Markus, it's Manager \_\_\_\_\_ of \_\_\_\_\_-, a  
\_\_\_\_\_, on behalf of the A2 Hospitality Property, LLC

\_\_\_\_\_  
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