

DRAFT
9/3/15

THE MADISON ON MAIN DEVELOPMENT AGREEMENT

THIS AGREEMENT ("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 Urban 600 Development LLC, a Michigan limited liability corporation, with principal address at 225 South Ashley Street, Ann Arbor, MI 48104, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as The Madison on Main Planned Project Site Plan and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as The Madison on Main, and desires Planned Project Site Plan 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 insure 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 HEREBY AGREES:

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for the construction of public sidewalks and streetscape improvements consistent with the South Main Streetscape Improvements Plan submitted with the 618 South Main Street Civil Construction Plans ("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) DEVELOPER and the CITY contemplate that 618 South Main, LLC, with partial funding by a grant from the Ann Arbor Downtown Development Authority, will construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved 618 South Main Street Civil Construction 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 618 South Main. LLC fails to construct the Improvements on the land being developed as The Madison on Main, the CITY may send notice via first class mail to the DEVELOPER at the address listed above requiring the DEVELOPER to commence and complete those 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 any 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. DEVELOPER shall not apply for and CITY shall not issue any Final Certificate of Occupancy for The Madison on Main until the Improvements are completed.

(P-3) To furnish or to cause 618 South Main, LLC to furnish, within 30 days of completion, an engineer's certificate that the construction of the 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 engineer inspects.

(P-4) To be responsible for removing all snow and ice from the West Madison Street loading zone constructed as part of the project.

(P-5) 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-6) 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 Improvements in the development prior to final written acceptance of the Improvements 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 Improvements and until notice of acceptance by the CITY of the Improvements.

(P-7) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$16,120.00 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to Wurster and/or Allmendinger Parks.

(P-8) 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-9) If in the future the building is converted to condominiums, to create an association composed of all owners of the Madison on Main condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for the Madison on Main condominium. The association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, driveways, on-site storm water management system, and all other common elements.

(P-10) If in the future the building is converted to condominiums, 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-11) After construction of the private on-site storm water management system, if in the future the building is converted to condominiums, to maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the DEVELOPER or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, or Association, at the address listed above, requiring it to commence and complete the maintenance 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 or Association if the DEVELOPER or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the DEVELOPER in the master deed.

(P-12) After construction of the private on-site storm water management system, if requested by the CITY, to commission periodic inspections 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-13) 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-14) 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-15) 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-16) Prior to application for and issuance of certificates of occupancy, to disconnect six footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the City of Ann Arbor Developer Offset Mitigation Program as revised by City Council on June 15, 2015 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with the Guidelines, or to provide mitigation to offset the increased sanitary flow as required by any City Council-approved amendments or replacements to the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and DEVELOPER agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. DEVELOPER may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis at the Discretion of the CITY Public Services Area.

(P-17) 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 two points 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-18) DEVELOPER is the lessee under a long-term GROUND LEASE with 600 South Main, L.L.C. of the land described below, 600 South Main, L.L.C. is the sole title holder in fee simple of that land except for any mortgage, easements and deed restrictions of record, DEVELOPER is authorized under that GROUND LEASE to enter into this Agreement with the CITY for the development of that land and the person signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-19) 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 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 Agreement.

(P-20) 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-21) 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 Madison on Main Planned Project Site Plan.

(C-2) To use the park contribution described above for improvements to Wurster Park and/or Allmendinger Park.

(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.

(C-5) Other items as needed.

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:

DESCRIPTION

Commencing at the Southeast corner of Lot 17, Block 6 South, Range 2 East, "WILLIAM S. MAYNARD'S SECOND ADDITION TO THE CITY OF ANN ARBOR", T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan as recorded in Liber 43 of Deeds, Page 626, Washtenaw County Records; thence N15°20'00"E 315.07 feet along the Westerly right-of-way line of South Main Street to the POINT OF BEGINNING; thence N89°17'20"W 90.72 feet; thence N01°30'12"E 92.44 feet along a line parallel to the Easterly right-of-way line of South Ashley Street to a point that bears S89°17'25"E 100.00 feet along the Southerly right-of-way line of West Madison Street from the Easterly right-of-way line of South Ashley Street; thence S89°17'25"E 113.56 feet along the Southerly right-of-way line of West Madison Street to the Northeast corner of Lot 12 of said "WILLIAM S. MAYNARD'S SECOND ADDITION TO THE CITY OF ANN ARBOR"; thence S15°20'00"W 95.54 feet along the Westerly right-of-way line of South Main Street to the Point of Beginning. Being a part of Lots 12 and 13, Block 6 South, Range 2 East, "WILLIAM S. MAYNARD'S SECOND ADDITION TO THE CITY OF ANN ARBOR", T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan as recorded in Liber 43 of Deeds, Page 626, Washtenaw County Records and containing 9,441 square feet of land, more or less. Being subject to easements and restrictions of record, if any.

(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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

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:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

URBAN 600 DEVELOPMENT, LLC
c/o Daniel W. Ketelaar
Urban Group Development Company
225 South Ashley Street
Ann Arbor, MI 48104

Witness:

By: _____
Daniel W. Ketelaar, Manager

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 20__, before me personally appeared Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

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

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 20__, before me personally appeared Daniel W. Ketelaar, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

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

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