

2050 COMMERCE DRIVE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2018 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 2050 Commerce, LLC, an Illinois limited liability corporation, with principal address at 853 North Elston, Chicago, IL 60642, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below ("Property") and site planned as 2050 Commerce Drive, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 2050 Commerce Drive, and desires site plan for City Council and development agreement approval thereof, and

WHEREAS, on _____, City Council approved the 2050 Commerce Site Plan ("Site Plan") and 2050 Commerce Drive Development Agreement ("Agreement") pursuant to a resolution adopted on that date, 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 and sanitary sewer mains, private storm water management systems, and public sidewalks, ("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 install all water mains, storm sewers, and sanitary sewers, 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 final course of asphalt paving shall be completed prior to the issuance of building permits on the site.

(P-5) The DEVELOPER shall be responsible for and perform all of the on-going maintenance, including snow removal, of the proposed loading zone in Commerce Boulevard.

(P-6) To grant an easement to the CITY for the water main and sanitary sewer main in Pennsylvania Avenue (vacated) as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easement prior to the request for and issuance of building permits, and the easement shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easement may be accepted at a later time as determined by the CITY Public Services Area.

(P-7) To grant an easement to the City for access to the Ann Arbor Housing Commission site west of the Property over the southwest corner of the Property in Pennsylvania Avenue (vacated) as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easement prior to the request for and issuance of building permits, and the easement shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easement may be accepted at a later time as determined by the CITY Public Services Area.

(P-8) DEVELOPER shall assist the CITY in acquiring easements for utilities through the properties at 2105 Stadium Boulevard and 2040 Federal Boulevard as shown on Site Plan. DEVELOPER shall submit evidence that the owners of 2105 Stadium Boulevard and 2040 Federal Boulevard have the authority to grant the easements and shall cooperate and grant the easements as shown on the Site Plan in accordance with the terms of this Agreement. The evidence must be determined to be satisfactory to the City Attorney prior to the request for and issuance of grading and building permits for the development. DEVELOPER shall submit legal descriptions and survey drawings for these easements prior to the request for and issuance of grading or building permits and the easements shall be granted by the owners of 2105 Stadium Boulevard and 2040 Federal Boulevard to the CITY in a form acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for or issuance of any certificate of occupancy. DEVELOPER may request alternative means for the water main to be looped into the existing CITY water system, and the CITY Public Services Area may approve this alternative means in its sole discretion. If alternative means are provided, any necessary easements must be granted to the City consistent with the procedure and timing detailed in this paragraph.

(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 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 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 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 Ann Arbor City Code.

(P-12) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$166,875 to the CITY Parks and Recreation Services Unit prior to the request for or issuance of certificates of occupancy for improvements to South Maple Park, Dolph Nature Area or Veterans Memorial Park.

(P-13) 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-14) To construct, repair and/or adequately maintain the 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-15) 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-16) That traffic mitigation measures in the Pennsylvania Avenue and South Maple Road intersection will be beneficial to the DEVELOPER'S property and, therefore, prior to request for or issuance of any certificate of occupancy, to pay the CITY \$22,500 for its share of the cost for traffic mitigation measures, which may include, but are not limited to one or more of the following:

- a) The installation of a pedestrian activated warning system at this location as recommended in the TIS.
- b) Other less traditional measures, which will similarly mitigate excess traffic flow at the intersection with similar benefit to the DEVELOPER'S property by facilitating decreased use of automobiles and increased use of alternate modes of transportation. These measures may include, but are not limited to, park and ride lots, bicycle and pedestrian facilities, and transit Improvements.

If requested prior to request for or issuance of any certificate of occupancy, the DEVELOPER(S) will pay to the CITY, within 90 days of written notice and reasonable documentation evidencing the cost of such traffic mitigation measures being sent by the CITY to the DEVELOPER at the address listed above.

The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement.

(P-17) 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-18) To include the elevation drawings, as submitted to City Council, as part of the 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.

(P-19) 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-20) Failure to construct, repair and/or maintain the site pursuant to the 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 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 Site Plan and/or Agreement.

(P-21) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make 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-22) 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 2050 Commerce Drive Site Plan.

(C-2) To use the park contribution described above for Improvements to the South Maple Park, Dolph Nature Area, or Veterans Memorial Park.

(C-3) To use the contribution for traffic mitigation measures at the Pennsylvania Avenue and South Maple Road intersection.

(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.

(C-6) 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 Site Plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, State of Michigan

Lots 6, 7, 8, 9, 10, 11, 16, 17, 18, and 19, Bedford-Buttner Commercial Subdivision, as recorded in Liber 16 of Plats, Pages 8 and 9, Washtenaw County Records, together with vacated Pennsylvania Ave., as recorded in Liber 3933, Page 752, and the Southerly 1/2 portion of vacated Federal Boulevard as recorded in Liber 3920, Page 887, Washtenaw County Records.

Parcel ID No.: 09-09-31-209-026

(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 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:

Howard S. Lazarus, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

2050 Commerce, LLC

