

## 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 Foreign Limited Liability Corporation, with principal address at 853 North Elston, Chicago, IL 60642, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as 2050 Commerce Drive, and

WHEREAS, the PROPRIETOR 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, the PROPRIETOR 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 PROPRIETOR will install these improvements prior to any permits being issued.

### THE PROPRIETOR(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, public and private storm water management systems, public streets, sidewalks and streetlights* ("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 PROPRIETOR fails to construct the improvements, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR, if the PROPRIETOR 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 PROPRIETOR'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 and public streets. 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-5) To provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public. *At the request of the PROPRIETOR, the CITY will provide and install all street name signs and invoice the PROPRIETOR for actual cost of installation.*

(P-6) 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 final course of asphalt paving shall be completed prior to the issuance of building permits on the site.

(P-7) To maintain the streets, including snow and ice removal, if certificates of occupancy are finalized before the street improvements have been accepted for maintenance by the CITY.

(P-8) The developer will be responsible for the on-going maintenance, including snow removal, of the proposed loading zone in Commerce Boulevard.

(P-9) To convey to the CITY, prior to the issuance of any permits and subject to acceptance by the Ann Arbor City Council, new 40-foot wide utility easements will need to be dedicated to clarify the permanent easement locations. The easement in the vacated Ohio Avenue shall line up with and abut the easement in the vacated Federal Boulevard.

An easement across the Arbor Ace Properties, LLC., located at 2105 W. Stadium, will also need to be obtained for this project to access water main located on that property. The proposed 12-inch water mains shall be centered within these 40-foot wide utility easements.

The petitioner acknowledges that utility easements within the vacated Ohio Avenue and Arbor Ace Properties, LLC. (2105 W. Stadium) will need to be obtained in coordination with the City and adjacent property owners. All off-site easements will need to be executed prior to the issuance of any permits.

The Pennsylvania Avenue Street Vacation, recorded on 03/09/2000 (Liber-3933, Page-752), indicates "the City hereby reserves easement rights for public and private utilities in, on and over the vacated Pennsylvania Avenue." In addition, it was contingent upon the granting of a public access easement over the portion of Pennsylvania Avenue, immediately north of Commerce Drive, to provide access to the Housing Commission property. The petitioner has indicated that this will be completed with a new easement and dedication. A draft of this easement shall be submitted for review prior to execution.

The City reserved easement rights for public utilities in, on and over the entire vacated Pennsylvania Avenue right-of-way, as referenced in the street vacation resolution recorded in Liber 3933, Page 752.

The petitioner desires to occupy some of the existing easement area with elements not permitted within utility easements. The City is agreeable to this approach so long as the required easement widths are maintained for each public utility located in this area.

(P-10) To indemnify 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 PROPRIETOR, 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-11) 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 named 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-12) Existing landmark trees shown on the site plan as trees to be saved shall be maintained by the PROPRIETOR in good condition for a minimum of three years after acceptance of the public improvements by the CITY or granting of Certificate of Occupancy *or final approval of the lot or unit*. 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 *or final approval of the lot or unit*, shall be replaced by the PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-13) For the benefit of the residents of the PROPRIETOR'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-14) 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 PROPRIETOR 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 PROPRIETOR one year after the date of acceptance by the CITY.

(P-15) To construct, repair and/or adequately maintain on-site storm water management system. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-16) After construction of the private on-site storm water management system, 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 PROPRIETOR or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, 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 PROPRIETOR or Association if the PROPRIETOR 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 PROPRIETOR in the master deed.

(P-17) 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-18) Prior to building permits being issued, to restrict, but not prohibit, by covenants and restrictions recorded with the Washtenaw County Register of Deeds, the use of lawn care chemicals and fertilizers in order to minimize the impacts on Allen Creek Watershed.

(P-19) That traffic mitigation measures in the Pennsylvania Avenue and South Maple Road intersection will be beneficial to the PROPRIETOR'S property and, therefore, prior to request for or issuance of any certificate of occupancy, 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 PROPRIETOR'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.

The PROPRIETOR(S) will pay to the CITY, within 90 days of written notice and reasonable documentation evidencing the cost of such traffic mitigation measures sent by the CITY to the PROPRIETOR at the address listed above.

(P-20) 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, PROPRIETOR 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-21) 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 PROPRIETOR 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 PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-22) To submit signed and sealed drawings to the CITY reflecting the building elevations, setbacks, aesthetics, and materials approved by City Council and to construct all buildings consistent with said elevation drawings. If the PROPRIETOR proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be submitted to the Planning Department for review and determination if City Council approval is needed for approval.

(P-23) 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-24) No lot in 2050 Commerce Drive may be divided such that an additional building parcel is created.

(P-25) PROPRIETOR 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 PROPRIETOR has (have) legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-26) 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 development 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 PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR 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 development agreement.

(P-27) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR 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. *(or against that portion of the cost of the work)*

(P-28) 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.

(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 PROPRIETOR 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 PROPRIETOR, 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:

*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.*

(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 PROPRIETOR, 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 PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR 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:

\_\_\_\_\_  
Howard Lazarus, City Administrator

Approved as to Form:

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

Witness:

\_\_\_\_\_

By: \_\_\_\_\_  
*Robert Weill, 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 \_\_\_\_\_, 2018, before me personally appeared Robert Weill, 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