

Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this _____ day of _____, 2019, by and between the City of Ann Arbor (“City”), a Michigan municipal corporation, with offices located at 100 N. Fifth Avenue, Ann Arbor, Michigan 48107, and _____ (“Developer”), a _____ corporation, with principal address at _____.

Recitals

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning when the city is zoning property in accordance with MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, that certain conditions could be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On May 21, 2018, Developer applied for an amendment to the zoning map for certain land in the City of Ann Arbor site planned as Brightdawn Village as more fully described on the attached **Exhibit A** (the “Property”).
- D. Included with the rezoning petition, the Developer voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On February 21, 2019 the Planning Commission, after public hearing, recommended denial of zoning of the Property to R4D with Conditions

(Multiple-Family Dwelling District). The Developer also submitted a Site Plan showing the specific proposed use and site design of the property.

- F. On _____, the City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this property, the City has decided to accept the Developer's offer of conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City granted conditional zoning of this Property.

NOW, THEREFORE, Developer and City agree:

1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached Exhibit A. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
2. Site Plan. The conditional zoning was granted by the City based, in part, by the Developer's stated proposed use of the Property as a residential, multi-family development, as shown in the proposed Site Plan attached as **Exhibit B**.
3. List of Conditions. The conditional zoning was granted to the Developer based on conditions that were voluntarily offered by the Developer. The City and Developer agree that restrictions on the use and development of the land are necessary for consistency and conformance to the Master Plan – Future Land Use Element with regard to new development in the Central planning area. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
 - i. The maximum height for any building on the site shall be 50 feet as measured from the average grade at the building up to the highest point of the main flat roof, including parapet walls except that mechanical units (and/or their enclosures), elevator overrides, stair towers, and similar roof appurtenances along with the limited occupiable penthouse areas (not to exceed 10% of the overall footprint of the building) may project above the 50-foot limit so long as the projecting elements are set back from the building perimeter at least as much as the projection above the 50-foot dimension. Limited portions of the building parapet may project up to 2.5 feet above the 50-foot limit as decorative building elements – such

portions of the building parapet shall not occur for more than 50% of the perimeter of each building.

- ii. The maximum number of dwelling units to be permitted in the project shall be 160. Twenty of these dwelling units shall be Affordable Housing for Lower Income Households as defined in Ann Arbor City Code, and twenty of these dwellings shall be Affordable Housing for Lower Income Households as defined in Ann Arbor City Code, but for households at or below 60% AMI. The affordable units shall remain available to households at or below the respective AMI levels for a term of 99 years.
 - iii. The minimum amount of open space shall be 55%.
 - iv. The Developer shall construct infrastructure improvements to Burton Road including water main, sanitary sewer main, storm conveyance, curb and gutter and lighting as shown on the site plan dated 2/4/19.
4. Applicable Time Period / Rezoning. If all of the conditions are not satisfied by July 1, 2029, then in accordance with MCL 125.3405(2) the Property shall revert to its former zoning classification, which is R4B (Multiple-Family Dwelling District).
 5. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.
 6. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the owner of the Property or has been authorized by the owner to conditionally zone this Property. Furthermore, the signatory for Developer acknowledges that he or she is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
 7. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as

well as the surrounding land uses and other characteristics regarding this property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.

8. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of the Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of the Ann Arbor City Code.
9. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
10. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.
11. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer to request a rezoning of the Property at any time, or to continue an existing nonconforming use as allowed by law if the Property is rezoned by the City.

IN WITNESS WHEREOF, the parties have caused this Conditional Zoning Statement of Conditions to be executed on the day and year recited above.

WITNESSES:

CITY OF ANN ARBOR
a Michigan municipal corporation

By: _____

By: _____

WITNESSES:

DEVELOPER

By: _____

Exhibit A

Legal description of the site

LOTS 14,15,16,17,18,19,20,21,22 & S 4FT OF LOT 23
SUPERVISORS PLAT NO 1 Split on 02/06/2008 from 09-12-
02-409-006, 09-12-02-409-007, 09-12-02-409-008, 09-12-
02-409-009, 09-12-02-409-016, 09-12-02-409-017, 09-12-
02-409-020, 09-12-02-409-022;

Exhibit B

Site Plan as approved by City Council