

Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this _____ day of _____, 2020, 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 PEFT, LLC c/o Peritus Ventures, LLC, (“Developer”), a Michigan limited liability company, with principal address at 1175 W Long Lake Road Suite 202, Troy, MI 48009.

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 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 22, 2019, Developer applied for an amendment to the zoning map for certain land in the City of Ann Arbor site planned as Valhalla Ann Arbor 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 July 21, 2020, the Planning Commission, after public hearing, recommended approval of zoning of the Property to R4E with Conditions

(Multiple-Family Residential). 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. 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. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
 1. Notwithstanding the R4E zoning which may permit up to 75 dwelling units per acre, the Property shall be developed with a maximum density not to exceed 50 dwelling units per acre.
 2. Building Height limits shall not exceed 74 feet from the grade adjacent to the building up to the main roof surface (not to include elevator over-rides, solar collectors, mechanical equipment, etc.) with average building heights to adhere to charts on the site plan submission.
 3. The Project shall include fifteen (15) affordable dwelling units to be made available to those individuals or families making a wage equal to sixty (60%) percent of the area median income (AMI). The rents to be charged for the affordable dwelling units shall be based on Washtenaw County's MSHDA (Michigan State Housing Development Authority) published rent limits by dwelling unit size or dwelling unit bedroom count.

4. The entire Project shall be all electric and not serviced or connected to natural gas services. This condition shall not prohibit the use of back-up generators powered by natural gas or other fuel for emergency use in the event of power outages. The Project shall install, connect, and operate a solar energy system rated at a minimum of 500,000 kilowatt hours per year on the Property.
 5. The median opening of South Main Street will be closed to all movements except the northbound left in conjunction with the Project. Modification to the median opening and centerline hardening for the approach to the Scio Church Road intersection is required for opening of the proposed development.
 - a. The design process for this project will require engagement with the public regarding the design elements and materials for described modifications to the median opening.
 - b. Preliminary design of this modification shall be included on any approved site plans.
 - c. The process for public engagement shall follow the City's Public Engagement Toolkit and be designed to an International Association for Public Participation level of "Consult".
 - d. The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. DEVELOPER will be solely financially responsible for the traffic mitigation measures the CITY finds necessary to address the impact of the DEVELOPER'S development.
4. 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.
 5. 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 is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.

- 6. City Approval. The Statement of Conditions and the City’s approval of these conditions are 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.
- 7. 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.
- 8. 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.
- 9. 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 Unified Development Code 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.
- 10. 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: _____

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me by Christopher Taylor and Jacqueline Beaudry, the Mayor and City Clerk respectively of the City of Ann Arbor on the _____ day of _____, 2021.

_____, Notary Public

My Commission Expires: _____

ACKNOWLEDGMENT

STATE OF MICHIGAN)
) ss
COUNTY OF WASHTENAW)

The foregoing Agreement was acknowledged before me by _____, of _____, on the _____ day of _____, 2021.

_____, Notary Public

My Commission Expires: _____

Exhibit A**LEGAL DESCRIPTION OF PARCELS OF LAND LOCATED IN THE N 1/2 OF SECTION 5, T2S, R6E, PITTSFIELD TOWNSHIP AND THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN**

The overall parcel being more particularly described as the following:

Commencing at the true N 1/4 corner of Section 5, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence N89°56'00"E 591.30 feet along the north line of said Section 5; thence S02°07'30"W 66.05 feet to the POINT OF BEGINNING; thence continuing S02°07'30"W 568.50 feet; thence N89°57'00"W 750.26 feet; thence N03°25'00"W 281.06 feet along the centerline of South Main Street Road (66' wide); thence along the centerline of Ann Arbor-Saline Road (Variable Width) in the following two (2) courses: 94.89 feet along a non-tangential curve to the left, radius 287.92 feet, central angle 26°19'02", and a long chord of N17°39'32"E 131.09 feet N04°30'00"E 161.80 feet; thence N90°00'00"E 146.83 feet; thence N89°56'00"E 588.80 feet to the POINT OF BEGINNING. Being part of the N 1/2 of Section 5, T2S, R6E, Pittsfield Township and the City of Ann Arbor, Washtenaw County, Michigan, and containing 9.83 acres of land, more or less. Being subject to the rights of the public of the Westerly 33 feet thereof as occupied by said South Main Street Road, and that westerly portion thereof as occupied by said Ann Arbor-Saline Road, also being subject to easements and restrictions of record, if any.