

1140 BROADWAY 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 Morningside Lower Town, LLC, a Michigan limited liability company, with principal address at 223 W. Erie, Third Floor, Chicago, IL 60654, 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 1140 Broadway, and

WHEREAS, the DEVELOPER has had the Property surveyed, mapped and site planned as 1140 Broadway, and desires planned project site plan approval and development agreement approval thereof, and

WHEREAS, on _____, City Council approved the 1140 Planned Project Site Plan ("Site Plan") and 1140 Broadway 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 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 construction of public water 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 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 listed 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 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 the Developer or to each condominium unit shall be a lien on the Property or individual condominium unit, respectfully, 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 DEVELOPER'S engineer inspects.

(P-4) To grant easements to the CITY for the three water mains as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits, and the easements shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) To grant an easement to the CITY for road and sidewalk right-of-way along Maiden Lane as shown on the Site Plan and the sidewalk right-of-way along Broadway, 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-6) To grant a public access easement to the CITY for the non-motorized pathway next to Traver Creek through the north side of the Property as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit a legal description and survey drawing 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 install all on-site public water mains and on-site private storm water managements systems, 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 above grade vertical building permits. All required fire hydrants on the Property or servicing the Property shall be installed prior to the commencement of any construction that uses combustible materials.

(P-8) To maintain the reconstructed portion of Broadway Street, including snow and ice removal, if certificates of occupancy are issued before the public street Improvements have been accepted for maintenance by the CITY.

(P-9) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Broadway Street and Maiden Lane, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Broadway Street and Maiden Lane street frontage when such improvements are determined by the CITY to be necessary. A provision shall be included in the master deed for the project stating that if the CITY undertakes to establish a special assessment district to improve Broadway or Maiden Lane, each condominium unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.

(P-10) 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-11) To maintain General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and to name the CITY as an additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public Improvements in the development prior to final written acceptance of the public 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 public Improvements 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 DEVELOPER in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of the certificate of occupancy for the last dwelling unit. Existing landmark, 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 the certificate of occupancy for the last dwelling unit, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(P-13) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$364,000 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to Riverside Park, the Farmers Market, Argo Canoe Livery, Broadway Dog Park, or other facilities that would improve recreational opportunities for the residents.

(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 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-15) To create an association composed of all owners of the 1140 Broadway condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for 1140 Broadway. The Association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, seating

structures, plazas, driveways, the on-site storm water management system, and all other common elements. DEVELOPER shall not be required to create an Association if the PROPERTY remains under single ownership, and in such case all obligations of the Association under this Agreement shall remain the obligation of the DEVELOPER. Any future division of the Property shall be subject to compliance with Ann Arbor City Code, as well as the execution of a reciprocal easement agreement by the owner of each part of the Property to insure perpetual maintenance and ownership of the landscape materials, exterior lighting, seating structures, plazas, driveways, and the on-site storm water management system.

(P-16) 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. If, after such notice the CITY completes the work, and the costs remain unpaid by the DEVELOPER for 60 days after mailing notice, the CITY may bill the DEVELOPER for the total cost, or assess the Property as provided in Chapter 13 of Ann Arbor City Code.

(P-17) 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 maintain the on-site 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 at the address listed above, or Association, at the Association's registered address, 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 DEVELOPER or Association for 60 days after mailing notice, 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 on-site 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-18) 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 upon request.

(P-19) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee, prior to issuance of building permits.

(P-20) Prior to the issuance of any grading or building permits under the Site Plan, for the benefit of the Property and in order to comply with Ann Arbor City Code requirements for the traffic impacts of the development on nearby roads, to enter into an agreement with the CITY identifying specific public improvements ("Traffic Mitigation Improvements") to be made in order

to mitigate traffic impacts of the development. The Traffic Mitigation Improvements shall include: the addition of a turning lane turning northeast onto Plymouth Road from Maiden Lane, a turning lane turning southeast onto Maiden Lane from Broadway Street; an urban compact roundabout on Broadway Street adjacent to the Broadway Street egress to the Property shown on the Site Plan, and street narrowing and the addition of parallel parking spaces along Broadway Street. Traffic Mitigation Improvements shall also include: widening the Maiden Lane sidewalk to eight feet in width, installation of a sidewalk connection between Plymouth Parkway Park and the Plymouth Road and Maiden Lane intersection, and installation of a rectangular rapid flashing beacon at the intersection of Maiden Lane and Nielsen Court. The sidewalk connection between Plymouth Parkway Park and the Plymouth Road and Maiden Lane intersection shall be subject to the CITY acquiring necessary right-of-way for the sidewalk from adjacent property. All Traffic Mitigation Improvements shall be constructed consistent with all applicable laws and standards, and shall include associated traffic signals and any other work necessary to restore impacted intersections and sidewalks. All Traffic Mitigation Improvements shall be completed and paid for by the DEVELOPER prior to the request for and issuance of any final certificate of occupancy, although Traffic Mitigation Improvements may be accepted at a later time as determined by the City Public Services Area.

(P-21) 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-22) 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, 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, aesthetics, materials and site plan approved by City Council.

(P-23) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development, and within one month after completion or abandonment of construction.

(P-24) 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 persons signing below on behalf of DEVELOPER has legal authority and capacity to enter into this agreement for DEVELOPER.

(P-25) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this 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 this 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 the Agreement.

(P-26) 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 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, 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-27) 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 1140 Broadway Planned Project Site Plan.

(C-2) To use the park contribution described above for improvements to Riverside Park, the Farmers Market, Argo Canoe Livery, Broadway Dog Park, or other facilities that would improve recreational opportunities for the residents.

(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 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

Beginning at the Westerly corner of Lot 78 of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records; thence Northeasterly along the Southerly right-of-way line of Broadway Street (variable width) in the following four (4) courses: (1) N 57°48'00" E 564.63 feet, (2) N 01°45'27" E 20.50 feet, (3) N 57°48'00" E 25.88 feet and (4) N 58°18'42" E 33.55 feet (recorded as N 58°18'00" E); thence along the centerline of Traver's Creek in the following four (4) courses: (1) S 22°41'48" E 13.78 feet (recorded as S 22°42'30" E), (2) S 52°07'48" E 51.77 feet (recorded as S 52°08'30" E), (3) S 65°43'18" E 29.31 feet (recorded as S 65°44'00" E) and (4) S 73°04'18" E 50.81 feet (recorded as S 73°06'00" E);

thence N 37°31'42" E 25.40 feet (recorded as N 37°31'00" E);

thence S 79°25'00" E 177.53 feet along the Northeasterly line of Lot 25 of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records;

thence S 31°16'00" W 410.58 feet along the Northwesterly line of Ross Maiden Lane Apartments;

thence S 58°44'00" E 74.99 feet;

thence S 31°16'00" W 255.50 feet along the West right-of-way line of Nielsen Court;

thence N 58°44'00" W 653.70 feet along the Northerly right-of-way line of Maiden Lane to the Point of Beginning. Being Lots 25 through 30 ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records and Lots 72 through 82, inclusive, Lots 83 through 87, inclusive and a vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records.

Parcel ID No.: _____

(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.

(T-7) This agreement supersedes any prior development agreement for the Property.

