**9/4/18**
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# 151 E. HOOVER DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 20__, 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 REDICO, LLC, a Michigan limited liability company, with principal address at One Towne Square, Suite 1600, Southfield Michigan, 48076 hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 151 E. Hoover, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 151 E. Hoover, and desires site plan and development agreement approval thereof, and

WHEREAS, on _____, City Council approved the 151 E. Hoover Site Plan ("Site Plan") and 151 E. Hoover 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 insure 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 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, private storm water management systems, public sidewalks, public streets, 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 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 grant an easement to the CITY for public utilities 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-5) To install all water mains, storm sewers, sanitary sewers, 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 for each phase of the development as shown on the Site Plan or at a later time as determined by the CITY Public Services Area.

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to E. Hoover and E. Davis Avenues and Brown and Green Streets such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along E. Hoover and E. Davis Avenues and Brown and Green Streets frontage when such improvements are determined by the CITY to be necessary.

(P-7) 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-8) 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-9) Existing street 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 for the final unit. Existing 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

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Improvements or granting of Certificate of Occupancy for the final unit, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(P-10) For the benefit of the residents of the DEVELOPER 'S development, to make a park contribution of $50,000 to the CITY Parks and Recreation Services Unit, prior to the issuance of the certificate of occupancy, for Improvements to nearby parks.

(P-11) 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-12) To construct, repair and/or adequately maintain 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-13) 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-14) That traffic mitigation measures for the project will be beneficial to the DEVELOPER'S property and, therefore, to install pedestrian safety measures as described in the traffic impact study prior to the request for and issuance of any certificate of occupancy.

(P-15) To install rooftop solar panels that provide an energy offset of approximate 15% as shown on the Site Plan. The DEVELOPER will provide written verification by an independent solar energy consultant that the rooftop solar panels provide an energy offset of approximately 15% and are functioning properly prior to the request for or issuance of any certificate of occupancy.

(P-16) 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-17) 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 approved by City Council.

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(P-18) To construct a 12 inch water main in E. Hoover Street from S. State Street to Brown Street or construct a 12 inch water main in Greene Street from E. Hoover Street to Hill Street prior to the request for or issuance of vertical building permits.

(P-19) 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-20) 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 legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-21) 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 approved 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-22) 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(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-23) 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 151 E. Hoover Site Plan.

(C-2) To provide timely and reasonable CITY inspections as may be required during construction.

(C-3) To record this Agreement with the Washtenaw County Register of Deeds.

**GENERAL TERMS**

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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, Michigan

A parcel of land located in the Northeast 1/4 of Section 32, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, being all of lots 14 through 21 of Brown and Bach's Addition to the City of Ann Arbor, as recorded in Liber 48 of Deeds, page 360, Washtenaw County Records, Washtenaw County, Michigan further described as follows:

BEGINNING at the southeast corner of said Lot 18; thence S87°32'00"W 254.23 feet along the South line of said Lots 17 & 18; thence N01°44'43"W 279.89 feet along the West line of said Lots 14, 15, 16 & 17; thence N87°18'43"E 252.43 feet along the North line of said Lots 14 & 21; thence S02°06'55"E 280.85 feet along the East line of lots 18, 19, 20 and 21 to the point of beginning. Containing 1.63 acres of land, more or less. Being subject to any easements and/or restrictions of record, if any.

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.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street

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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

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REDICO, LLC

By:_____
Paul Stodulski, CFO

STATE OF MICHIGAN )
) ss:
County of Washtenaw )

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by Christopher Taylor, Mayor and Jacqueline Beaudry, City Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

_____

NOTARY PUBLIC
County of Washtenaw, State of Michigan
My Commission Expires: _____
Acting in the County of Washtenaw

STATE OF MICHIGAN )
) ss:
County of Washtenaw )

The foregoing instrument was acknowledged before me this _____ day of _____, 2018 by _____ of REDICO Holdings, LLC, a Michigan limited liability company, on behalf of the company.

_____

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
ATTN: Brett Lenart
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265

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