

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the “**Agreement**”) is entered into this _____ day of _____, 2018 by and between **MAPLE MULTI-FAMILY LAND SE, L.P.**, a Delaware limited liability company (“**Maple**”) and the **CITY OF AVONDALE ESTATES, GEORGIA**, a Georgia Municipal Corporation (hereinafter referred to as the “**City**”). Maple and the City may hereinafter be referred to collectively as the “**Parties**” and individually as a “**Party**.”

WITNESSETH

WHEREAS, Maple either owns or has contracted to acquire certain real property comprised of 3.935 acres located in Land Lot 248 of the 15th District of DeKalb County, the City of Avondale Estates, Georgia and as more particularly described by **Exhibit “A”** attached hereto and incorporated herein and by this reference made a part hereof (the “**Overall Property**”); and

WHEREAS, in keeping with that certain Downtown Master Plan for the City of Avondale Estates updated March 20, 2014, and adopted by the City as a planning document (the “**Downtown Master Plan**”), Maple intends to re-develop the Overall Property as a mixed use development in conformance with the terms of this Agreement and in material conformance with **Exhibits “B” through “M”** attached hereto (collectively, the “**Project Plans**”), such Exhibits “B” through “M” being incorporated herein and by this reference made a part hereof; and

WHEREAS, Maple intends to develop and maintain a publicly accessible roadway with a pedestrian streetscape (the “**Road**”) along the northern portion of the Overall Property, as more particularly described on **Exhibit “N”** attached hereto and incorporated herewith (the “**Road Plans**”); and

WHEREAS, the improvements to be constructed on the Overall Property shall be referred to herein as the “**Project**”; and

WHEREAS, Maple may desire to sell or convey a portion of the Overall Property to a third party and the Parties agree that, unless this Agreement is terminated or amended in accordance with the terms hereof, any subsequent owner of any portion of the Overall Property will be bound by the terms hereof; and

WHEREAS, the City has identified certain property owned by the City located in the same vicinity as the Overall Property, as more particularly described on **Exhibit “O”** attached hereto and incorporated herewith (the “**Park Property**”), which the City desires to own and operate as a public park; and

WHEREAS, Maple has agreed to improve the Park Property by removing asphalt from approximately 2.5 acres, grading the area and planting grass thereupon in accordance

with the plans attached hereto as Exhibit “P” (the “**Park Plans**”) such that the Park Property may be owned and operated by the City as a public park (the “**Public Park**”); and

WHEREAS, the City has adopted that certain Ordinance Number 0605 (the “**Zoning Ordinance**”) which establishes certain zoning requirements with respect to the City’s Central Business District (as defined in the Zoning Ordinance); and

WHEREAS, the Overall Property lies within the City’s Central Business District; and

WHEREAS, the Parties desire to agree on certain site-specific development controls that will apply to the Project and those agreements are set forth herein.

NOW, THEREFORE, in consideration of ten dollars in hand paid, other valuable consideration, and the mutual promises and agreements herein set forth, the parties hereto agree as follows:

1. **Recitals.** The above stated recitals are hereby incorporated into and made a part of this Agreement.
2. **Exemption of Project from Certain City Zoning Ordinance Provisions.**

The Project Plans include certain improvements that may not strictly comply with those certain articles and sections of the Zoning Ordinance identified below in Part B of this Section 2 (collectively, the “**Exempt Zoning Requirements**”). The Parties agree that, subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, attached hereto as Exhibits “B” through “M” and listed below in Part A of this Section 2, the Overall Property and the Project are exempt from and are not required to comply with the Exempt Zoning Requirements. The City represents and warrants to Maple that it has full power and authority to enter into this Agreement and enforce all the terms and provisions set forth herein. Furthermore, the City represents and warrants to Maple that it has complied with all public processes, public hearings, and other applicable laws, regulations, and requirements necessary to authorize the City to enter into this Agreement, exempt the Overall Property and the Project from the Exempt Zoning Requirements, and enforce all the terms and provisions set forth herein.

A. Project Plans for the Project:

Exhibit B – Presentation Cover Sheet, (ARC-01), Sheet Index (AR-02)

Exhibit C- Demolition Plan

Exhibit D- Zoning Site Plan

Exhibit E – Landscape Rendering (L1.0)

- Exhibit F**– Hardscape Plan (L1.1), Hardscape Details (L1.2)
- Exhibit G** – Tree Plan (L2.0)
- Exhibit H** – Landscape Plan (L3.0), Landscape Details (L3.1)
- Exhibit I**- Elevations (AR-03, AR-04)
- Exhibit J**- Perspectives (AR-08, AR-09, AR-10, AR-11, AR-12, AR-13)
- Exhibit K**- Parking Deck Diagrams (AR-07)
- Exhibit L**– Fenestration Calculations (AR-05, AR-06)
- Exhibit M**- Material Board (AR-02)

B. Exempt Zoning Requirements:

- i. **Article 7** (“General Provisions”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 7 of the Zoning Ordinance in its entirety.
- ii. **Article 11** (“District Development Standards”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with Article 11 of the Zoning Ordinance, except the following Sections of Article 11, which shall apply to the Project:
 - a. Article 11, Section 1113.05(I)(B)(1 and 2) regarding Open Space implementation and maintenance,
 - b. Article 11, Section 1113.06(I)(E) regarding placing utilities underground,
 - c. Article 11, Section 1113.08(II) regarding loading and screening,
 - d. Article 11, Section 1113.09(I)(C)(12) regarding parking facility illumination, and
 - e. Article 11, Section 1113.10(B and C) regarding storefront illumination and lighting;
- iii. **Article 12** (“Development Standards”). Subject to Section 9(g) below, so long as the Project is developed in material conformance with the Project Plans, the Project is exempt from and is not required to comply with

Article 12 of the Zoning Ordinance except the following Sections of Article 12, which shall apply to the Project:

- a. Article 12, Section 1201(VIII) regarding fire safety,
- b. Article 12, Section 1201(IX) regarding outdoor storage, and
- c. Article 12, Section 1204 (I and II) regarding parking areas.

3. Applicability of City Ordinances to the Project.

The Parties expressly agree that, except as otherwise expressly provided herein, all applicable City ordinances shall remain in full force and effect and the Project and Overall Property shall be governed by all such applicable City ordinances. Notwithstanding anything set forth in this Agreement or in any ordinance that is applicable to the Overall Property to the contrary, so long as the Project is developed materially in accordance with the terms of this Agreement, the zoning conformance status of the Project shall be deemed to be legally conforming in all respects.

4. Casualty or Condemnation.

In the event that all or any portion of the improvements to the Overall Property are substantially damaged by fire or other casualty or condemned, the owner of the Overall Property shall have the right to rebuild a new development on the Overall Property, and the improvements to be re-built (the “**New Project**”) shall be exempt from the Exempt Zoning Requirements and shall be deemed to be legally conforming in all respects so long as (a) the number of units in the New Project is the same or fewer than the number of units set forth in the Project Plans, (b) the building height of the New Project is the same or lower than the building height set forth in the Project Plans, and (c) the unit size of the New Project is the same or similar to the unit size set forth in the Project Plans. Provided however, that the plans and specifications related to the exterior design aesthetic of the New Project must be submitted to the City’s Architectural Review Board and approved before building permits for the New Project will be issued. For purposes of this Section 4, the improvements to the Overall Property shall be deemed to be substantially damaged by fire or other casualty or condemned if (i) the portion of the Overall Property that is damaged or destroyed has a cost of repair that is in excess of ten percent (10%) of the cost to construct the Project, as reasonably determined by Maple, or (ii) the portion of the Overall Property that is condemned has a value in excess of ten percent (10%) of the cost to construct the Project, as reasonably determined by Maple or such condemnation proceeding results in a violation of laws and/or applicable regulations.

5. Special Provisions.

In consideration of the mutual promises and covenants set forth herein, subject to Section 9(g) below, Maple agrees to develop the Project in material conformance with the following special conditions, which the Parties recognize are not generally applicable to other developments within the City:

With a copy to: Robert E. Wilson
 City Attorney, City of Avondale Estates
 Wilson, Morton & Downs, LLC
 125 Clairemont Avenue, Suite 420
 Decatur, Georgia 30030

8. Reserved.

9. Miscellaneous Provisions.

a. The Parties hereby mutually represent that all necessary approvals for such Parties to enter into this Agreement have been detailed and that by virtue of the signatures herein below, the Parties acknowledge that they are authorized to execute this Agreement.

b. The Parties intend for this Agreement to be severable, and if any provisions shall be construed to be illegal or invalid for any reason, such illegal or invalid part of this Agreement shall not affect the legality or validity of the other provisions set forth herein, provided that the Project remains practicable in the absence of such invalid or illegal provision.

c. The Parties represent and acknowledge that in executing this Agreement they do not rely upon, and have not relied upon, any representation or statement made by any other Party by any other Party's agents, representatives, or attorneys with regard to the subject matter, basis or effect of this Agreement except as specifically provided herein.

d. This Agreement shall be binding upon each of the Parties hereto and their heirs, administrators, representatives, executors, successors and assigns, and upon any corporations, partnerships, or business entities owned or operated by any of the Parties. This Agreement and the duties, covenants, and obligations hereby imposed constitute covenants running with the land, and are binding upon and shall inure to the benefit of the City and the owner of the Overall Property, and their respective heirs, successors, and assigns and their successors in title.

e. This Agreement may be executed in multiple counterparts, and all such counterparts shall be taken together so that they may constitute a completely executed Agreement between the Parties.

f. This Agreement may not be assigned by Maple to any other party except to a firm, corporation, limited liability company, or other entity (i) that is controlled by or under common control with Maple or (ii) that is under the day-to-day management of Maple or an affiliate of Maple. Maple shall provide the City 10 days advance written notice of such assignment, except as otherwise expressly stated herein. Additionally, upon completion of development of the Project and issuance of all required certificates of occupancy, Maple may assign this Agreement to any individual or entity, in connection with a sale of the Project and the Overall Property to such individual or entity.

g. This writing represents the entire Agreement between the Parties. No amendment to this Agreement shall be effective unless consented to in writing by all Parties hereto. Notwithstanding anything in this Agreement to the contrary, minor modifications to the Project Plans may be approved by the City Manager on behalf of the City without the specific approval of the governing body, the City or any other party and without an amendment to this Agreement.

h. Upon completion of development of the Project, so long as the Project has been developed in material accordance with this Agreement (subject to Section 9(g)), if requested by Maple, the City shall deliver to Maple an estoppel certificate confirming that the Project is in compliance with all terms of this Agreement and that Maple is in compliance with all terms of this Agreement.

i. The parties recognize that O.C.G.A. § 13-10-90, et seq., regarding illegal immigrants, and related state regulations may apply to the performance of certain work required for the Project whether performed by Maple, or their agents, employees, contractors, subcontractors or assigns.

j. To the extent compliance with O.C.G.A. § 13-10-90, et seq. is required, Maple agrees that it will be solely responsible for ensuring such compliance and agrees to indemnify, defend and hold harmless the City, its elected officials, administrators, other employees, and agents, for any fine or other penalty incurred by the City for a violation by Maple of such act.

10. Development of Road and Public Park

In consideration of the mutual promises and covenants set forth herein, Maple agrees (i) to develop the Road in accordance with the Road Plans and execute a declaration to be recorded in the land records of DeKalb County, Georgia to allow the public to utilize the Road for pedestrian and vehicular purposes and require Maple to maintain the Road, and (ii) to construct the improvements upon the Park Property in accordance with the Park Plans (the “**Public Park Development**”), all as more particularly set forth in this Section 10 below. The Parties specifically agree as follows:

- A. Development of the Road. Maple shall, at its sole expense, develop the Road in material conformance with the Road Plans, provided, however, the improvements in the Road shall be subject to review and approval by the fire marshal and CSX Railroad and the Road Plans may be revised to the extent required by the fire marshal or CSX Railroad. In the event the fire marshal or CSX Railroad requires adjustments to the Road Plans, Maple and the City Manager shall collaborate in good faith to revise the Road Plans in a manner mutually acceptable to the parties, which such approval not be unreasonably withheld, conditioned or delayed. The City Manager shall have the authority to approve the revised Road Plans on behalf of the City. In the event of a required revision of the Road Plans, the parties shall endeavor to maintain as many of the

features of the original Road Plans as possible. The Project shall provide for a minimum width of 50 feet between the northern property line of the Overall Property and the proposed building to develop the Road.

(i.) Maple shall notify the City when it believes that construction of the Road is complete so that the City can inspect the Road for compliance the Road Plans. If the City determines that the Road does not comply with the Road Plans, it shall promptly give detailed notice of any deficiency to Maple. When the Road is completed in conformity with the Road Plans, the City shall promptly give notice of approval of the Road to Maple.

(ii.) Upon notice to Maple of approval of the Road by the City, Maple shall execute a declaration in a form approved by the City attorney and customary for this type of grant (the “**Road Property Declaration**”). Maple shall execute and record the Road Property Declaration as a precondition to issuance of any certificate of occupancy for the Project.

B. Development of Public Park. Maple shall, at its sole expense, complete the Public Park Development in material conformance with the Park Plans.

(i.) The City represents and warrants that the Park Plans have been approved by the City and all applicable governmental entities. The City shall issue any and all permits and other approvals necessary for Maple to complete the Public Park Development, at no cost to Maple and within ten (10) business days following submittal of the request by Maple.

(ii.) Maple shall complete construction of the Public Park Development, including planting and establishing grass as indicated on the Park Plans, by April 1, 2019. Maple may elect to plant seed or install sod. In any event, Maple shall be responsible for watering and maintaining the grass until Public Park Completion. For every day beyond April 1, 2019, that Maple does not achieve Public Park Completion, Maple shall pay to the City a penalty of Five Hundred Dollars (\$500).

(iii.) Maple shall notify the City when it believes that the Public Park Development is complete so that the City can inspect the Public Park for compliance with the Park Plans, including the presence of established green grass. If the City determines that the Public Park does not comply with the Park Plans, it shall promptly give detailed notice of any deficiency to Maple. When the Public Park is completed in conformity with the Park Plans, the City shall give notice of acceptance of the Public Park Development to Maple.

(iv.) Upon Public Park Completion, the City shall deliver to Maple a certificate confirming that the Public Park is complete and has been constructed in accordance with the Park Plans, and that Maple’s obligation to construct the Public Park has been satisfied in full. For the avoidance of doubt, upon Public

Park Completion, Maple shall have no further obligations or liabilities with respect to the Public Park. For purposes of this Agreement, the term “**Public Park Completion**” means the date on which (i) Maple has completed construction of the Public Park Development substantially in accordance with the Park Plans and the Public Park Development has been accepted by the City, (ii) Maple has paid in full all contractors and subcontractors who performed work on the Public Park, and (iii) Maple has delivered to the City a final, unconditional lien waiver from Maple’s general contractor for the Public Park Development.

(v.) A certificate of occupancy for the Project will not be issued prior to Public Park Completion and payment of any penalty due for late completion pursuant to this Section.

(vi.) Maple shall at all times maintain, at its sole expense, comprehensive general liability insurance with a single limit amount of not less than \$1,000,000.00 and an aggregate of \$2,000,000.00 against claims for personal injury and damage to property. Maple shall indemnify and hold harmless the City, including its agents and employees, from any claim in the nature of personal injury (including death) or damage to property arising out of Maple’s performance of the work associated with the Public Park Development.

- C. Access and Construction Easement in favor of Maple. Contemporaneously with the execution of this Agreement, the City shall grant and convey to Maple a non-exclusive easement over, upon, and across the Park Property for purposes of completing the Public Park Development, which easement shall be in a form approved by the City attorney and customary for this type of grant (the “**Access and Construction Easement**”).

11. Lot Combination Plat

Upon completion of the Project in all respects, and prior to the issuance of a certificate of occupancy for the Project, Maple shall record a lot combination plat on the DeKalb County property records that will designate the entire Overall Property as a single parcel.

12. Building Permit Fees

Maple shall pay the full amount due for building permit fees for the Project (excluding the Public Park) based on the value of the improvements in accordance with City Code Section 5-79.

[EXECUTION APPEARS ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have signed this Agreement under seal the day and year first above written.

Attest:

City of Avondale Estates, Georgia
a Georgia Municipal Corporation

Gina Hill, City Clerk

Mayor Jonathan Elmore

[Municipal Seal]

Date: _____

Approved as to form:

Robert E. Wilson, City Attorney

Signed, sealed and delivered
in the presence of:

Witness

Notary Public
My commission expires:
[NOTARY SEAL]

[EXECUTION CONTINUES ON THE FOLLOWING PAGE]

MAPLE MULTI-FAMILY LAND SE, L.P.,
a Delaware limited liability company

By: Maple Multi-Family Development, L.L.C.,
a Texas limited liability company, its general
partner

By: _____
Name: _____
Title: _____

Signed, sealed and delivered
in the presence of:

Witness

Notary Public
My commission expires:
[NOTARY SEAL]