

**STATE OF MICHIGAN
COUNTY OF WASHTENAW
CHARTER TOWNSHIP OF PITTSFIELD**

**DEVELOPMENT AGREEMENT
FOR KIRCO W STATE STREET LLC**

**FOR
WACKER INNOVATION CENTER AND REGIONAL HEADQUARTERS (WACKER)**

THIS DEVELOPMENT AGREEMENT is by and between **KIRCO W STATE STREET LLC**, a Michigan limited liability company, whose address is 101 W. Big Beaver Road, Suite 200, Troy, MI 48084, and the **CHARTER TOWNSHIP OF PITTSFIELD**, a Michigan municipal corporation whose address is 6201 West Michigan Avenue, Ann Arbor, Michigan 48108 (the “Township”).

Recitals

- A. Kirco W State Street LLC is the developer of the Wacker Innovation Center and Regional Headquarters to be located on property described in the attached and incorporated Property Description Exhibit 1 (the “Property”), located in Pittsfield Charter Township, Washtenaw County, Michigan.
- B. As part of both the application and approval process, Kirco W State Street LLC has offered and agreed to make the on-site and off-site improvements depicted on the Wacker Site Plan received July 10, 2020 as approved on August 6, 2020 and in the records of the Township, which the Parties agree are necessary and roughly proportional to the burden imposed in order to (i) ensure that public services and facilities affected by the Development will be capable of accommodating increased service and facility loads caused by the Development, (ii) protect the natural environment and conserve natural resources, (iii) ensure compatibility with adjacent uses of land, (iv) promote use of the Property in a socially and economically desirable manner, and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3301 *et seq.*
- C. For the purpose of confirming the rights and obligations in connection with the improvements, development, and other obligations to be undertaken on the Property, Kirco, W State Street LLC and the Township enter into this Development Agreement, effective on the date of this Agreement.

Agreement

NOW, THEREFORE, as part of approval of the site plan, and for other good and valuable consideration but no monetary consideration, the receipt and sufficiency of which are hereby acknowledged, **IT IS AGREED as follows:**

1. **Definitions.** As used in this Agreement, the following terms shall have the meanings set forth below.
 - (A) **“Commencement Date”** means the date that building permits are first issued for any phase of the Project.
 - (B) **“Developer”** means Kirco W State Street LLC, its successors, and assigns.
 - (C) **“Development”** means all components of the Wacker site as shown on the Final Site Plan, including the infrastructure and all required construction.
 - (D) **“Final Site Plan”** means the site plan and all associated plans that have been reviewed and approved by the Pittsfield Township Planning Commission.
2. **Compliance with Applicable Laws.** All development, use, and improvement of the Property shall be subject to and in accordance with all applicable Township ordinances and county, state and federal laws, and shall also be subject to and in accordance with this Agreement, the Final Site Plan and all other approvals and permits required under applicable Township ordinances and county, state and federal laws. All references in this Agreement to Township zoning ordinances shall be deemed to refer to the zoning ordinances in effect as of the date of this Agreement. The Development shall not be subject to any additional zoning requirements contained in any amendment or additions to the zoning ordinances that conflict with the provisions of this Agreement and the Final Site Plan, provided that all construction and development is completed in compliance with this Agreement and the Final Site Plan.
3. **Compliance with Conditions of Approval.** All development, use, and improvement of the Property shall be in conformance with any and all conditions of approval of the Planning Commission pertaining to the Development as reflected in the official resolutions and/or minutes of such approvals. It is specifically agreed that final site plan approval is contingent upon the execution of and compliance with this Agreement.
4. **Permitted Development.** The Property shall be used, developed, and improved only in accordance with the following:
 - (A) The Wacker Site Plan, developed under Article 4.0, BD, Business District, of the Zoning Ordinance of Pittsfield Charter Township.
 - (B) The Wacker Site Plan includes a 136,384 square feet innovation center and regional headquarter that will include research and development, office, and collaboration space. There will be no manufacturing/production at this facility, but Developer and occupants

may conduct Basic Research, Design, and Pilot or Experimental Product Development in accordance with Section 4.21 of the Pittsfield Township Zoning Ordinance. The Wacker Site Plan was approved by the Township Planning Commission on August 6, 2020 and shall be maintained on file in the offices of the Township.

- (C) Any revisions or adjustments otherwise required for the approval and permitting of the construction plans.
- (D) All applicable Township ordinances and design standards, except for those deviations which have been approved as part of the Wacker Site Plan approval.
- (E) Any and all conditions of approval of the Township Board and Planning Commission pertaining to the Development as reflected in the official minutes of such approvals and in this Agreement.

5. **Effect of Site Plan Development Approval.** The Final Site Plan for Wacker has been approved in accordance with the authority granted to and vested in the Township pursuant to the Michigan Zoning Enabling Act, Act 110 of 2006. Approval of the Wacker Final Site Plan constitutes the land use authorization for the Property, and all use and improvement of the Property shall be in conformity with such Wacker Final Site Plan, the Conditions of Approval, and this Agreement.

6. **Phasing.** The Property shall be developed in one phase, as shown the approved Wacker Site Plan.

7. **Density, Land Use Area, Setbacks, Building Height, and other Regulations.**

Within the Development, all buildings and site amenities shall be laid-out, situated, and designed in accordance with Section 4.0, BD, Business District and as shown on the approved Wacker Site Plan.

8. **Avis Drive and State Road Traffic Signal Improvement**

Kirco W State Street LLC shall, in cooperation with the Washtenaw County Road Commission, upgrade the Avis Drive and State Road Traffic Signal from wire span mounted to mast arm mounted.

9. **Water and Sanitary Sewer Systems.**

- (A) Kirco W State Street LLC shall, at its sole expense, construct and install on-site and off-site improvements to and connections tying into the municipal water and sewage systems in accordance with and as set forth in detail with the Wacker Final Site Plan.

- (B) Kirco W State Street LLC shall dedicate easements and conveyances for, and shall post financial security relating to, the completion of construction and dedication of, all such water and sewer system improvements in accordance with and as set forth in this Agreement.

10. Storm Water Drainage.

- (A) Kirco W State Street LLC, at its sole expense, shall construct and maintain an on-site storm water drainage system, in accordance with the Kirco Final Site Plan, and all applicable ordinances, laws, codes, standards, and regulations, as well as the approved site plan for each phase and sub-phase.
- (B) Kirco W State Street LLC shall maintain the on-site storm water management system in accordance with the standard form of Storm Water Management and Maintenance Agreement and Plan (“Storm Water Agreement”), which is attached to and made part of this Agreement.
- (C) No certificates of occupancy shall be issued for any building in the Development prior to completion and approval of the primary on-site storm water drainage and detention system for the Development in accordance with the Storm Water Agreement.
- (D) Kirco W State Street LLC shall acquire any necessary easements over adjoining properties to accommodate storm water management prior to construction of any Components.
- (E) Notwithstanding any of the provisions of this Section 10 to the contrary, in the event that Kirco W State Street LLC enters into a so-called 433 Agreement for the Development with the Washtenaw County Water Resources Commissioner pursuant to Section 433 of Act No. 40 of the Public Acts of 1956, Kirco W State Street LLC (i) shall not be required to enter into the Storm Water Agreement, (ii) shall construct the drainage facilities in accordance with such 433 Agreement and the Water Resources Commissioner’s applicable standards and specifications, (iii) once the drainage facilities for the Development are accepted by the County Water Resources Commissioner, Kirco W State Street LLC shall no longer have any maintenance responsibilities for such facilities, and (iv) no building permits shall be issued for any building in the Development prior to completion of the on-site storm water drainage system for such phase of such Component in accordance with the 433 Agreement.

11. Landscaping. Internal landscaping and landscaping amenities on the Property shall be completed and maintained as shown and described in the landscape plans, details, and information that are part of the approved Wacker Final Site Plan. Landscaping specific to sub-phases may be installed with that sub-phase.

12. Lighting and Signs:

- (A) Lighting on the Property shall be completed and maintained as shown and described in the lighting and photometrics plans that are part of the approved Wacker Final Site Plan, or as amended and approved by Township Staff.
- (B) Any future lighting shall comply with all applicable Township ordinances. All lighting components, including Kelvin ratings, require Township approval prior to installation. This provision may be enforced by the Township at any time.
- (C) Any future signage, including wall signs for each individual commercial tenant, shall comply with all applicable Township ordinances and shall require Township approval prior to installation.

13. Traffic and Pedestrian Circulation.

- (A) Kirco W State Street LLC shall design, situate, construct, maintain, and repair all roads, entranceways, drives, safety paths, walkways, and traffic circulation signage within and for the Wacker Development, at its sole expense, in accordance with and as set forth in detail in the Permit Conditions and Final Site Plan.
- (B) Kirco W State Street LLC shall post financial security relating to the construction of drives, and parking lots within and for the Wacker Development in accordance with and as set forth in detail in the Permit Conditions and this Agreement.

14. Construction Debris.

Kirco W State Street LLC shall timely remove all discarded building-materials and rubbish as necessary during installation and construction of site improvements on said site.

15. Completion of Improvements; Financial Assurances.

- (A) All on-site and off-site improvements of the Development, including without limitation, all roads, drives, entranceways, parking lots, sanitary sewer service system, water service system, storm water drainage system, detention and retention facilities, gas and electric utilities, lighting, signage, landscaping, landscaping amenities, public safety path, internal private pedestrian walkways with related amenities and improvements, barrier or screening walls, sidewalks, retaining walls, soil erosion and sedimentation controls, and any other improvements within or for the Development shall be completely constructed and provided to all buildings and facilities within the Development as required and as set forth in the Site Plan Documents, the approved Final Site Plan, any other approvals or permits granted by the Township, and all applicable ordinances, laws, standards, and regulations.

- (B) During the construction of the Development, Kirco W State Street LLC shall be obligated to maintain the above improvements and amenities, and as required by the Township's Performance Guarantees ordinance, W State Street shall provide financial assurances satisfactory to the Township for completion, preservation, and maintenance of such improvements on a phase-by-phase basis such that, upon completion, each sub-phase will be capable of standing on its own in terms of the presence of services, facilities, and open space, and shall contain the necessary components to ensure the protection of natural resources and the health, safety, and welfare of the users of the Wacker Development and the residents of the surrounding area.
- (C) Such financial assurances shall be in the form as set forth in Section 3.09, Performance Guarantees, of the Zoning Ordinance, together with an agreement with the Township, approved by the Township Attorney, authorizing the Township, at its option, to complete and maintain such improvements using the funds from the security posted by the W State Street if W State Street has failed to complete and/or maintain the improvements within the time specified therein. If W State Street proceeds with any sub-phase within the development of the Property, W State Street shall be obligated to design and completely construct all of the improvements and amenities required for said sub-phase.
- (D) Upon completion of each sub-phase of construction and the corresponding successful inspections, the Township shall issue a Certificate of Occupancy for a building(s) located in that sub-phase. The Developer may request and receive a Certificate of Occupancy for a building or buildings within a sub-phase prior to completion of that sub-phase if 1) a majority of the work, especially that work essential for ensuring the health, safety and welfare of the residents within that sub-phase is completed, and the remaining sub-phase work is minor and incidental to the occupancy of that sub-phase, and 2) site conditions at that time preclude completion of the work in a timely manner (e.g. installing landscaping in the winter) and 3) if financial sureties of a sufficient amount to complete the uncompleted work are provided or remain in place with the Township.
- (E) Upon issuance of a Certificate of Occupancy for a sub-phase, and also upon completion and dedication of primary utility lines (storm, water, sanitary), the appropriate bond(s) or monies held in escrow by the Township shall be released to the developer or issuing entity.
- (F) It is anticipated that construction will begin with the mass grading, storm sewer and detention system, water main and sanitary sewer, and wetland mitigation areas.

16. **Township Enforcement.** In the event there is a failure to timely perform any obligation or undertaking required under or in accordance with the Site Plan Documents, the Township may serve written notice upon Developer and/or the

owner of the portion of the Property with respect to which the obligation or undertaking is required (the “violating party”) setting forth such deficiencies and a demand that the deficiencies be cured within a stated reasonable time period, and if not cured, the date, time, and place for a hearing before the Township Board, or such other board, body, or official delegated by the Township Board, for the purpose of allowing the violating party an opportunity to be heard as to why the Township should not proceed with the correction of the deficiency or obligation which has not been undertaken or properly fulfilled. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain at the discretion of the Township Board. The foregoing notice and hearing requirements shall not be necessary in the event the Township determines in its discretion that an emergency situation exists requiring immediate action. If, following the hearing described above, the Township Board, or such other board, body, or official designated to conduct the hearing, shall determine that the obligation has not been fulfilled or failure corrected within the time specified in the notice, or if an emergency circumstance exists as determined by the Township in its discretion, the Township shall thereupon have the power and authority, but not the obligation, to take any or all of the following actions, in addition to any actions authorized under Township ordinances and/or State laws:

- (A) Enter upon the Property, or cause its agents or contractors to enter the Property, and perform such obligation or take such corrective measures as reasonably found by the Township to be appropriate. The cost and expense of making and financing such actions by the Township, including notices by the Township and legal fees incurred by the Township, plus an administrative fee in an amount equivalent to twenty-five percent (25%) of the total of all such costs and expenses incurred, shall be paid by the violating party within thirty (30) days of a billing to the violating party. The payment obligation under this paragraph shall be secured by a lien against the phase or phases of the Property within which the deficiency exists, which lien shall be deemed effective as of the date of the initial written notice of deficiency provided to the violating party pursuant to this paragraph, or in emergency circumstances, the date at which the Township incurred its first cost or expense in taking corrective action. Such security shall be realized by placing a billing which has been unpaid by the violating party for more than thirty (30) days on the delinquent tax rolls of the Township relative to such portion of the Property, to accumulate interest and penalties, and to be deemed and collected, as and in the same manner as made and provided for collection of delinquent real property taxes. In the discretion of the Township, such costs and expenses may be collected by suit initiated against the violating party, and, in such event, the violating party shall pay all court costs and attorney fees incurred by the Township in connection with such suit if the Township prevails in collecting funds thereby. This provision does not preclude the Township from exercising its rights under other sections of this Agreement.

- (B) Initiate legal action for the enforcement of any of the provisions, requirements, or obligations set forth in the Site Plan Documents. Except in emergency circumstances, the violating party shall be provided notice of the deficiencies from the Township and shall be afforded an opportunity to timely correct. In the event the Township obtains any relief as a result of such litigation, the violating party shall pay all court costs and attorney fees incurred by the Township in connection with such suit.
 - (C) The Township may issue a stop work order as to any or all aspects of the Development, may deny the issuance of any requested building permit or certificate of occupancy within any part or all of the Development regardless of whether the violating party is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Development.
- 17. **Delay in Enforcement; Severability.** Any failure or delay by the Township to enforce any provision herein contained shall in no event be deemed, construed, or relied upon as a waiver or estoppel of the right to eventually do so thereafter. Each provision and obligation contained herein shall be considered to be an independent and separate covenant and agreement, and in the event one or more of the provisions and/or obligations shall for any reason be held to be invalid or unenforceable by a court of competent jurisdiction, all remaining provisions and/or obligations shall nevertheless remain in full force and effect.
- 18. **Access to Property.** In all instances in which the Township utilizes the proceeds of a financial assurance given to ensure completion or maintenance of improvements, and at any time throughout the period of development and construction of any part of the Development, the Township and its contractors, representatives, consultants, and agents shall be permitted and are hereby granted authority to enter upon all or any portion of the Property for the purpose of inspecting and/or completing the respective improvements and for the purposes of inspecting for compliance with and enforcing the Site Plan Documents.
- 19. **Agreement Jointly Drafted.**
 - (A) The Parties have negotiated the terms of the Site Plan, and such documentation represents the product of the joint efforts and mutual agreements of the Parties. Kirco W State Street LLC fully accepts and agrees to the final terms, conditions, requirements, and obligations of the Site Plan Documents, and they shall not be permitted in the future to claim that the effect of the Site Plan Documents results in an unreasonable limitation upon uses of all or a portion of the Property, or claim that enforcement of the Site Plan Documents causes an inverse condemnation, other condemnation or taking of all or any portion of the Property.
 - (B) Furthermore, it is agreed that the improvements and undertakings described in the Site Plan Documents are necessary and roughly proportional to the

burden imposed and are necessary in order to: (i) ensure that public services and facilities necessary for and affected by the Development will be capable of accommodating the development on the Property and the increased service and facility loads caused by the Development; (ii) protect the natural environment and conserve natural resources; (iii) ensure compatibility with adjacent uses of land; (iv) promote use of the Property in a socially, environmentally, and economically desirable manner; and (v) achieve other legitimate objectives authorized under the Michigan Zoning Enabling Act, MCL 125.3301 *et seq.*

- (C) It is further agreed and acknowledged hereby that all such improvements, both on-site and off-site, are clearly and substantially related to the burdens to be created by the development of the Property, and all such improvements without exception are clearly and substantially related to the Township's legitimate interests in protecting the public health, safety, and general welfare.
- (D) The Parties acknowledge and agree that such improvements, both on-site and off-site, have been found to be necessary and constitute a recognizable and material benefit to the ultimate users of the Development and to the community, which benefit would otherwise be unlikely to be achieved without the Development and is an important component of the Development upon which the Township relied in its consideration and approval of the Wacker Development.

20. **Ambiguities and Inconsistencies.** Where there is a question with regard to applicable regulations for a particular aspect of the Development, or with regard to clarification, interpretation, or definition of terms or regulations, and there are no apparent express provisions of the Site Plan Documents which apply, the Township, in the reasonable exercise of its discretion, shall determine whether the regulations of the Township's Zoning Ordinance, as that Ordinance may have been amended, or other Township Ordinances shall be applicable provided such determination is not inconsistent with the nature and intent of the Site Plan Documents. Whenever possible under the laws of the State and ordinances of the Township, the approval of the site plan shall be determined to be a reasonable and minor waiver or modification to the applicable Township regulation or Ordinance, so that the particular aspect of the Development that is in question shall be deemed acceptable. In the event of a conflict or inconsistency between two or more provisions of the Site Plan Documents, or between the Site Plan Documents and applicable Township ordinances, the more restrictive provision, as determined in the reasonable discretion of the Township, shall apply, provided that applying the more restrictive provision does not result in loss of Development density, impair the operations of the Development, or otherwise negate the general intent of the Developer and the acceptance of the Planning Commission demonstrated by their approval of the Site Plan.

21. **Warranty of Ownership.** Kirco W State Street LLC hereby warrants that there is a binding Purchase Agreement between the property owner and an affiliate of Kirco W State Street and that prior to the commencement of site construction Kirco W State Street LLC have all requisite authority to develop the Property described on the attached Property Description (Exhibit 1) without any further consents of any other third-parties.
22. **Running with the Land; Governing Law.** This Development Agreement shall run with the land constituting the Property and shall be binding upon and inure to the benefit of the Parties and all of their respective heirs, successors, assigns, and transferees. This Agreement shall be recorded by any of the Parties following the execution of this Agreement. This Development Agreement shall be interpreted and construed in accordance with Michigan law and shall be subject to enforcement only in Michigan courts. The parties understand and agree that this Development Agreement is consistent with the intent and provisions of the Michigan and U.S. Constitutions and all applicable law.
23. **Assignment.** Developer may not assign its rights under this Development Agreement without the prior written approval of the Township, which shall not be unreasonably withheld. No assignment shall be effective unless the applicable financial assurances required of assignee are in effect and have been approved by the Township. Notwithstanding the foregoing, provided that any assignee of Developer is: (1) an affiliate, subsidiary, or other related entity to Kirco W State Street or (2) such assignee has agreed to be fully bound to each and every term hereof including but not limited to, the financial assurances required by Paragraph 15 of this Agreement and Section 3.09 of the Pittsfield Charter Township Zoning Ordinance, Developer may assign its rights under this Agreement upon notice to The Township. In the event Wells Fargo Trust Company, National Association, as Trustee (the “Lender”), pursuant to the terms and conditions of that certain Note Purchase Agreement dated as of even date herewith between Developer and Lender (“Note Agreement”), becomes the owner of the Property, with notice to the Township, Developer may also assign its rights and obligations under this agreement, provided Lender agrees to be fully bound to each and every term hereof including but not limited to, the financial assurances required by Paragraph 15 of this Agreement and Section 3.09 of the Pittsfield Charter Township Zoning Ordinance,
24. **Recording.** This Agreement may be recorded with the Washtenaw County Register of Deeds only after advance written notice to Developer. If this Agreement is not recorded in its entirety, then the Township may record an affidavit or other document referencing this agreement and providing information to the public where a complete copy of the agreement may be obtained. The Township will maintain a copy of this Agreement in accordance with its policies. Upon the completion of all Developer obligations, the Township shall deliver to Developer a recordable acknowledgement that Developer obligations have been met, except for ongoing obligations such as those set forth in Paragraphs 12 and 13(A) of this Agreement.

25. **Amendments and Modifications.** The provisions of this instrument may be amended or modified, but only with the prior written consent of the Township and the Development's Owner(s). Any amendment or modification to this agreement shall be recorded in the Washtenaw County Records. Any portion of this instrument not otherwise amended or modified, shall remain in full effect.

THIS DEVELOPMENT AGREEMENT was executed by the respective Parties on the date specified with the notarization of their signatures and shall be considered to be dated on _____ and shall take effect immediately.

Kirco W State Street LLC,
a Michigan limited liability company

By: _____

Its: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

Subscribed and sworn to before me this _____ day of _____, _____ by _____ of Kirco W State Street LLC, a Michigan limited liability company, on behalf of said company.

Notary Public
_____County, Michigan
My Commission Expires: _____

[Intentionally blank. Signatures continued on next page.]

Date: _____, 2020

CHARTER TOWNSHIP OF PITTSFIELD,
a Michigan municipal corporation

By: _____
Mandy Grewal, Supervisor

By: _____
Michelle L. Anzaldi, Clerk

STATE OF MICHIGAN)
) ss.
COUNTY OF WASHTENAW)

Subscribed and sworn to before me this _____ day of _____, _____ by Mandy Grewal, Supervisor, and Michelle L. Anzaldi, Clerk of the Charter Township of Pittsfield, a Michigan municipal corporation.

Notary Public
_____ County, Michigan
My Commission Expires: _____

Drafted by and when recorded return to:
James A. Fink (P40386)
320 N. Main St., Ste. 420
Ann Arbor, MI 48104
734-994-1077

Parcel ID:

Recording Fee:

EXHIBIT 1
Legal Description

LEGAL DESCRIPTION

(PER MIDWESTERN CONSULTING DATED 09/20/2019)

(from Absolute Title Inc., File No.: 81373 Rev. 1, Effective Date: June 28, 2019)

15 acres off the South side of the Southwest 1/4 of the Southwest 1/4 of Section 16, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan; excepting a small triangular piece of land in the Southwest corner thereof heretofore conveyed to William East and Thomas East by Warranty Deed dated March 23, 1909, recorded April 21, 1909, in Liber 176 of Deeds, Page 443, Washtenaw County Records; also excepting from the parcel above described that certain parcel conveyed to Ceibert W. Hughes and wife by Warranty Deed dated August 26, 1965, and recorded September 2, 1965, in Liber 1128, Page 210, Washtenaw County Records.

Being more particularly described as the following:

Commencing at the SW corner of Section 16, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan, thence N01°45'38"W 24.75 feet along the West line of said Section 16 to the POINT OF BEGINNING;

thence N01°45'38"W 472.04 feet along the West line of said Section 16;

thence N88°01'09"E 1024.58 feet along the North line of the South 15.00 acres of the W 1/2 of the SW 1/4 of said Section 16;

thence S01°43'00"E 149.22 feet;

thence N88°02'00"E 290.90 feet;

thence S01°43'00"E 347.50 feet along the East line of the W 1/2 of the SW 1/4 of said Section 16 and the centerline of State Road (as monumented);

thence S88°01'09"W 1295.10 feet along the South line of said Section 16;

thence N40°47'19"W 31.76 feet to the POINT OF BEGINNING, being a part of the SW 1/4 of said Section 16, T3S, R6E, Pittsfield Township, Washtenaw County, Michigan, and containing 14.00 acres of land, more or less. Subject to easements or restrictions of record, if any.