

603 EAST HURON STREET DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2016, 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 Core Ann Arbor LLC, a Delaware limited liability company, with principal address at 540 W. Madison Street, Suite 2500, Chicago, Illinois 60661, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 603 East Huron Street, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 603 East Huron Street, and desires site plan and development agreement approval thereof, 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 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 main, private storm water management systems, and sidewalks ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee in accordance with City standards, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct the 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 a reasonable time as 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 co-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 each condominium unit shall be a lien on that Property 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 install all water mains and storm 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, except as allowed by the CITY Public Services Area in accordance with City Ordinance and Public Service Department Standard Specifications.

(P-5) 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-6) 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-7) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$76,800 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to the Farmers Market.

(P-8) 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-9) 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 a reasonable time as 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-10) 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 by the CITY.

(P-11) 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-12) To submit signed and sealed drawings to the CITY reflecting the building elevations, aesthetics, and materials approved by City Council 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 submitted to the City Council for approval. Nonmaterial changes to the approved building elevations, aesthetics, or materials may be approved by the Planning and Development Services Manager or designee.

(P-13) 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-14) Prior to application for and issuance of certificates of occupancy, to disconnect 30 footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the City of Ann Arbor Developer Offset Mitigation Program, as revised by City Council on June 15, 2015 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with the Guidelines, or to provide mitigation to offset the increased sanitary flow as required by any City Council-approved amendments to or replacement of the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, CITY and DEVELOPER agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. DEVELOPER may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis at the discretion of the CITY Public Services Area.

(P-15) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this agreement. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent).

(P-16) 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-17) Failure to construct, repair and/or maintain the site pursuant to the approved 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 approved 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 approved site plan and/or Agreement.

(P-18) 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-19) 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 603 East Huron Street Site Plan.

(C-2) To use the park contribution described above for improvements to the Farmers Market.

(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.

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 approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

Commencing at the intersection of the West line of North State Street and the North line of East Huron Street, Assessor's Plat No. 8, City of Ann Arbor, Washtenaw County, Michigan, according to the Plat thereof as recorded in Liber 9 of Plats at Page 17, Washtenaw County Records; thence Westerly along the North line of East Huron Street 203.12 feet for a Place of Beginning; thence continuing Westerly along the North line of East Huron Street 136.03 feet; thence Northerly deflecting 90 degrees 01 minutes to the right 150.0 feet; thence Easterly deflecting 89 degrees 59 minutes to the right 72.14 feet; thence Northerly deflecting 89 degrees 53 minutes 30 seconds to the left 80.20 feet; thence Easterly deflecting 90 degrees 26 minutes 30 seconds to the right 66.97 feet; thence Southerly deflecting 89 degrees 34 minutes 40 seconds to the right 79.53 feet; thence Southerly deflecting 0 degrees 09 minutes to the left 15.0 feet; thence Westerly deflecting 90 degrees 01 minutes 20 seconds to the right 3.06 feet; thence Southerly deflecting 90 degrees to the left 135.0 feet to the Place of Beginning, being a part of Lot 17 and part of Lot 18 of said Assessor's Plat No. 8.

Less and except that portion of Lot 17 being described as follows:

Commencing at the Southeast corner of Lot 14 "ASSESSOR'S PLAT NO. 8", City of Ann Arbor, Washtenaw County, Michigan as recorded in Liber 4 of Plats, Page 38, Washtenaw County Records; thence North 85 degrees 47 minutes 20 seconds West 199.91 feet along the Northerly right-of-way line of Huron Street to the Southeasterly corner of Lot 17 of said "ASSESSOR'S PLAT NO. 8", said point being the POINT OF BEGINNING; thence continuing along said right-of-way line North 85 degrees 47 minutes 20 seconds West 3.12 feet; thence North 04 degrees 11 minutes 36 seconds East 135.00 feet; thence South 85 degrees 47 minutes 18 seconds East 3.06 feet; thence South 04 degrees 10 minutes 04 seconds West 135.00 feet along the Easterly line of said Lot 17 to the Point of Beginning. Being a part of Lot 17 of said ASSESSOR'S PLAT NO. 8" and containing 417 square feet of land, more or less.

The above described land is the same as that shown and described as follows on that certain ALTA/ACSM Land Title Survey prepared by Thomas L. Sutherland, P.S. Michigan No. 24620, dated January 8, 2015 and designated as Job No. 31792, 31980 and last revised September 10, 2015:

Commencing at the Southeast corner of Lot 14 "ASSESSOR'S PLAT NO. 8", City of Ann Arbor, Washtenaw County, Michigan as recorded in Liber 4 of Plats, Page 38, Washtenaw County Records; thence North 85 degrees 47 minutes 20 seconds West

203.03 feet along the Northerly right-of-way line of Huron Street to the POINT OF BEGINNING; thence continuing along said right-of-way line North 85 degrees 47 minutes 20 seconds West 135.90 feet to a point that bears South 85 degrees 47 minutes 20 seconds East 394.00 feet from the Southwest corner of Lot 23 of said "ASSESSOR'S PLAT NO. 8"; thence North 04 degrees 12 minutes 40 seconds East 150.00 feet; thence South 85 degrees 47 minutes 20 seconds East 72.44 feet along the Southerly line of Lots 6 and 7 of said "ASSESSOR'S PLAT NO. 8"; thence North 04 degrees 08 minutes 55 seconds East 81.41 feet along the Westerly line of Lot 17 of said ASSESSOR'S PLAT NO. 8; thence South 85 degrees 34 minutes 53 seconds East 66.50 feet along the Northerly line of said Lot 17; thence South 04 degrees 10 minutes 04 seconds West 96.17 feet along the Easterly line of said Lot 17; thence North 85 degrees 47 minutes 18 seconds West 3.06 feet; thence South 04 degrees 11 minutes 36 seconds West 135.00 feet to the Point of Beginning. Being Lot 18 and a part of Lot 17 of said ASSESSOR'S PLAT NO. 8".

Parcel Number:

(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 approved 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
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Tom Crawford, Interim City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

