

**PLANNING AND DEVELOPMENT SERVICES STAFF REPORT**

**For Planning Commission Meeting of May, 2008**

**SUBJECT: 42 North Site Plan (1430 South Maple Road)  
File No. 8361C19.5a**

**PROPOSED CITY PLANNING COMMISSION MOTION**

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the 42 North Site Plan and Development Agreement, subject to the approval of the land division and approval of the alternative wetland mitigation request.

**PROPOSED CITY PLANNING COMMISSION MOTION**

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the 42 North Wetland Use Permit, to remove up to 57,107 square feet of wetland area, and mitigation plan, including construction of at least 94,624 square feet, restoration and monitoring of the remaining wetland area and cash in lieu contribution for alternative mitigation.

**STAFF RECOMMENDATION**

Staff recommends that the site plan petition be **approved** because it would comply with all applicable local, state and federal laws, ordinances, standards and regulations; the development would limit the disturbance of natural features to the minimum necessary to allow a reasonable use of the land; would not cause a public or private nuisance; and would not have a detrimental effect on public health, safety or welfare.

Staff recommends **approval** of the wetland use permit because issuance of the permit is in the public interest, the permit is necessary to realize the benefits from the development, and the activity is otherwise lawful.

**LOCATION**

This site is located on the west side of Maple Road, which runs parallel to I-94, and is in the Allen Creek watershed (West Area).

**DESCRIPTION OF PETITION**

The subject site is 15.32 acres in size and is currently zoned R4B (Multiple-Family Dwelling District). The parcel will be divided from the existing Grace Bible Church site prior to City Council action. There are currently two existing houses on the site that will be removed. I-94

*8d*

runs along the west side of the site, causing the site to have two front lot lines. Grace Bible Church abuts the site on the north and Surrey Park Apartments abut the property on the south.

A very similar proposal for this site was recommended for approval by the Planning Commission in November 2007. That plan was subsequently denied by City Council in January 2008. The layout of the buildings and site amenities is exactly the same as the previous proposal. However, that plan was a planned project site plan to allow 49-foot building heights (19 feet taller than the maximum allowed). The current plan eliminates the planned project request by removing 40 units and lowering the maximum height of the buildings within the 30-foot limit required by City Code. There are also 146 fewer vehicle parking spaces and, as a result, less impervious surface. The usable open space has also increased from 57.1% to 63.3%.

The petitioner now proposes to construct 120 four-bedroom student dwelling units in five buildings, along with 494 parking spaces, a clubhouse, central recreation area and maintenance/pump house. Each building will contain 24 four-bedroom dwelling units and will have three stories. The total height of each residential building is 30 feet (average to mid-point of roof). Buildings have two entrances in the front and two entrances in the rear leading to interior stairways and landings. The clubhouse will contain student amenities such as an indoor basketball court, game room and study hall. There is also a proposed AATA bus stop in front of the clubhouse for direct service to the U of M Central Campus.

Natural features on the site include 12 small wooded wetlands located throughout the site and two landmark trees. The two landmark trees will be removed and replacement will be provided by planting four additional trees on site as required by City Code. The wetlands range in size from 0.003 acre (130 square feet) to 0.337 acre (14,680 square feet). Staff has evaluated the existing wetland areas to be of medium to low quality, some of which were created by historical dumping and filling on the site by previous owners. The largest wetland on the site is regulated by the Michigan Department of Environmental Quality (MDEQ) and will be preserved by the petitioner. This wetland is approximately 14,680 square feet in area and is protected by a 25-foot natural features open space buffer as required by City Code. The remaining wetlands are not regulated by the MDEQ, but are subject to the City of Ann Arbor Guidelines for the Protection and Mitigation of Natural Features. All wetlands, except for the largest one, will be removed and mitigated as required by City Code. Numerous invasive species are found in and around the wetland and will be removed by the petitioner.

The mitigation area has changed since the previous submittal and approval of the Grace Bible Church plan by the Planning Commission in November 2007. The MDEQ is requiring more mitigation than on the previously approved plan. 94,624 square feet of the wetland mitigation will be designed on the adjacent Grace Bible Church site, the remaining 11,094 square feet of wetland mitigation will be done through an alternative mitigation process which allows a cash in lieu contribution to the Parks and Recreation Department. The alternative mitigation and revised mitigation area are subject to approval of the Planning Commission in a separate petition for the revision to the Approved Natural Features Protection Plan for Grace Bible Church. The petitioner is finalizing changes to this plan based on revisions requested by the MDEQ. The revised plan will be back before Planning Commission at a separate date. If the 42 North plan is recommended for approval, this action should be contingent on approval of the wetland mitigation and revised site plan for the Grace Bible Church site.

Currently, one curb cut serves the existing two houses on the site. This curb cut will be removed and one new curb cut is proposed on Maple Road to provide access to the development. A total of 494 off-street parking spaces are planned. Of the 494 total parking

spaces, 30 parking spaces will be located in garages. The petitioner also is proposing 240 bicycle parking spaces; 40 Class A and 200 Class C bicycle spaces. An 18-foot wide pedestrian and emergency vehicle connection to the Grace Bible Church site is proposed for the northwestern corner of the parking lot.

The site is the highest elevation point in the City of Ann Arbor. As such, inadequate water pressure currently exists to serve the site. The petitioner is proposing a private pump station on site to supply adequate water pressure for fire protection and general water usage. All water mains on the site will be private and installed and maintained privately. The water mains will be constructed to City standards so that if future upgrades to the City water systems provide sufficient water pressure to the site, the private pump station can be closed and all water mains on site will be dedicated to the public. In addition to the private pump station for water mains, water pumps are required in each building to provide adequate pressure for domestic and fire service for the upper stories of each building. The individual pumps for domestic and fire service within buildings will remain in perpetuity, even if the main pump station is removed.

Storm water detention is being provided in surface detention basins in the western part of the side adjacent to the parking lot. The site will also provide required storm water detention in a shared detention basin on the adjacent Grace Bible Church site. The storm water detention plan has received preliminary approval from the Washtenaw County Drain Commissioner.

### COMPARISON CHART FOR SITE PLAN

|                  |       | EXISTING                                      | PROPOSED  | REQUIRED   |
|------------------|-------|---|---|--|
| Zoning           |       | R4B   | R4B   | R4B  |
| Gross Lot Area   |       | 7,200 sq ft MIN                               | 351,094 sq ft   | 14,000 sq ft MIN   |
| Lot Are Per Unit |       | 7,200 sq ft MIN                               | 5,445 sq ft   | 2,900 sq ft MIN  |
| Setbacks         | Front | 125 ft (Maple Rd)<br>900 ft approx<br>(US-23) | Club House – 216 ft (Maple Road)<br>Bldg 3 – 194 ft (I-94)<br><i>(setbacks to closest building)</i> | Club House – 41 ft 9 in (Maple Road) *<br>Bldg 3 – 46 ft 9 in (I-94) *<br><i>(setbacks to closest front)</i> |
|                  | Side  | 18 ft   | 150 ft to north side<br>150 ft to south side  | 33.4 ft MIN to north side<br>31.4 ft MIN to south side   |
|                  | Rear  | Site has no rear                              | Site has no rear  | Site has no rear   |
| Height           |       | 2 stories                                     | 30 ft   | 30 ft MAX  |
| Open Space       |       | Not Applicable                                | 61.3%   | 55% MIN  |
| Vehicle Parking  |       | N/A   | 494 spaces including 14 visitors<br>and 30 within garages   | 180 spaces MIN   |
| Bicycle Parking  |       | None  | 240 spaces – 40 Class A<br>and 200 Class C  | 24 spaces – 50% Class A<br>And 50% Class C   |

\* Add 1.5 inches per foot of length over 50 feet.

### SURROUNDING LAND USES AND ZONING

|       | LAND USE                    | ZONING                                  |
|-------|-----------------------------|---|
| NORTH | Church – Grace Bible Church | R4B (Multiple-Family Dwelling District) |
| EAST  | Single-Family Residential   | R1C (Single-Family Dwelling District)   |
| SOUTH | Multiple-Family Residential | R3 (Townhouse Dwelling District)        |
| WEST  | Federal Highway (I-94)      | TWP (Township District)                 |

### HISTORY

This site is part of the existing Grace Bible Church site. The existing Grace Bible church building was built in 1971 and in February 2007 a 28,297-square foot addition to the existing church was approved. In 1975-76, the church built two houses on the southern end of the property. In March 2007, a land division for the southern 15 acres of the Grace Bible site was submitted. At the petitioner's request, the land division will not be completed until the 42 North plan is approved. Planning Commission recommended approval of a similar proposal, which was a Planned Project, on November 20, 2007. The City Council denied that proposal on January 22, 2008. The petitioner has had two neighborhood meetings since the submission of this project.

### PLANNING BACKGROUND

The site is located in the West Area. The West Area Plan, adopted in 1995, recommends higher density housing for this site to diversify housing options in the area.

### SERVICE UNIT COMMENTS

Parks and Recreation – A parks contribution of \$29,800 is being requested. Parks has agreed to the alternative mitigation contribution of \$19,101 to be used for the preservation and enhancement of the adjacent Hansen Park. The alternative mitigation will need to be approved by Planning Commission with the site plan for Grace Bible Church.

Systems Planning – The sanitary sewer mitigation calculations were reviewed and approved: 38 footing drain disconnections must be completed. As this area is in an identified sewer problem area (Dartmoor); these disconnections must all occur upstream of the problem area.

The project needs to include a fully private, pressurized water distribution system (all water mains, hydrants, etc.) with the anticipation that when certain system improvements are completed, the on-site pressurization of the distribution system may no longer be needed and the water mains could be placed onto system pressure and converted to public (City) water mains. Booster pumps for building domestic water and fire service will be required in perpetuity.

Planning and Development Services (Land Development and Natural Areas Preservation) – Staff has approved the layout and design of the wetland mitigation areas proposed. However, the mitigation area has changed since the previous submittal and approval of the Grace Bible Church plan by the Planning Commission in November 2007. The MDEQ is requiring more mitigation than approved on the previous plan. The petitioner is accommodating most of the required mitigation on the site and is proposing a cash contribution for the remaining mitigation

area. As such, the Grace Bible Church site plan is required to be approved by Planning Commission for the revised mitigation area and the proposal for alternative mitigation through a cash in lieu contribution. This should be addressed before the plan proceeds to City Council. The mitigation area also needs final approval from the MDEQ.

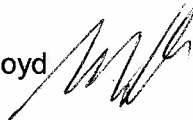
Planning and Development Services (Planning) – Staff supports the project as proposed. Many of the features proposed to justify the previous Planned Project request have been retained, such as: the increased open space, increased transit access, additional landscaping and rainwater cisterns for on-site irrigation. As proposed, the development would significantly contribute to the supply of high quality student housing in the City. To minimize the amount of vehicular traffic from the site, the petitioner has worked extensively with the AATA to provide frequent on-site bus shuttle service. Staff has received communication from the AATA documenting conversations with the petitioners to provide a linkage with Central Campus. Discussions have included on-site pick up of students and possible subsidies of the bus route. The petitioner is committed to providing this shuttle service for residents of the project and has provided this at similar developments in other locations.

Staff has attached a memorandum, dated 11-8-2007, from Cresson Slotten, Senior Project Manager of Systems Planning, addressing concerns raised during the review of the previous project site plan. The proposed utility systems improvements have remained the same from the previous proposal, except the number of units being serviced has been reduced.

A development agreement will be prepared to address issues including the private pump station, wetland mitigation, and any other off-site issue that may arise.

Washtenaw County Drain Commissioner – The plan has been preliminarily approved. However, a mutually binding agreement will be needed between the proposed development and Grace Bible Church for the operation and maintenance of the shared detention basin. An easement for the entire basin shall be granted by Grace Bible Church to the 42 North project.

Prepared by Matthew Kowalski  
Reviewed by Connie Pulcifer and Mark Lloyd  
jsj/5/13/08



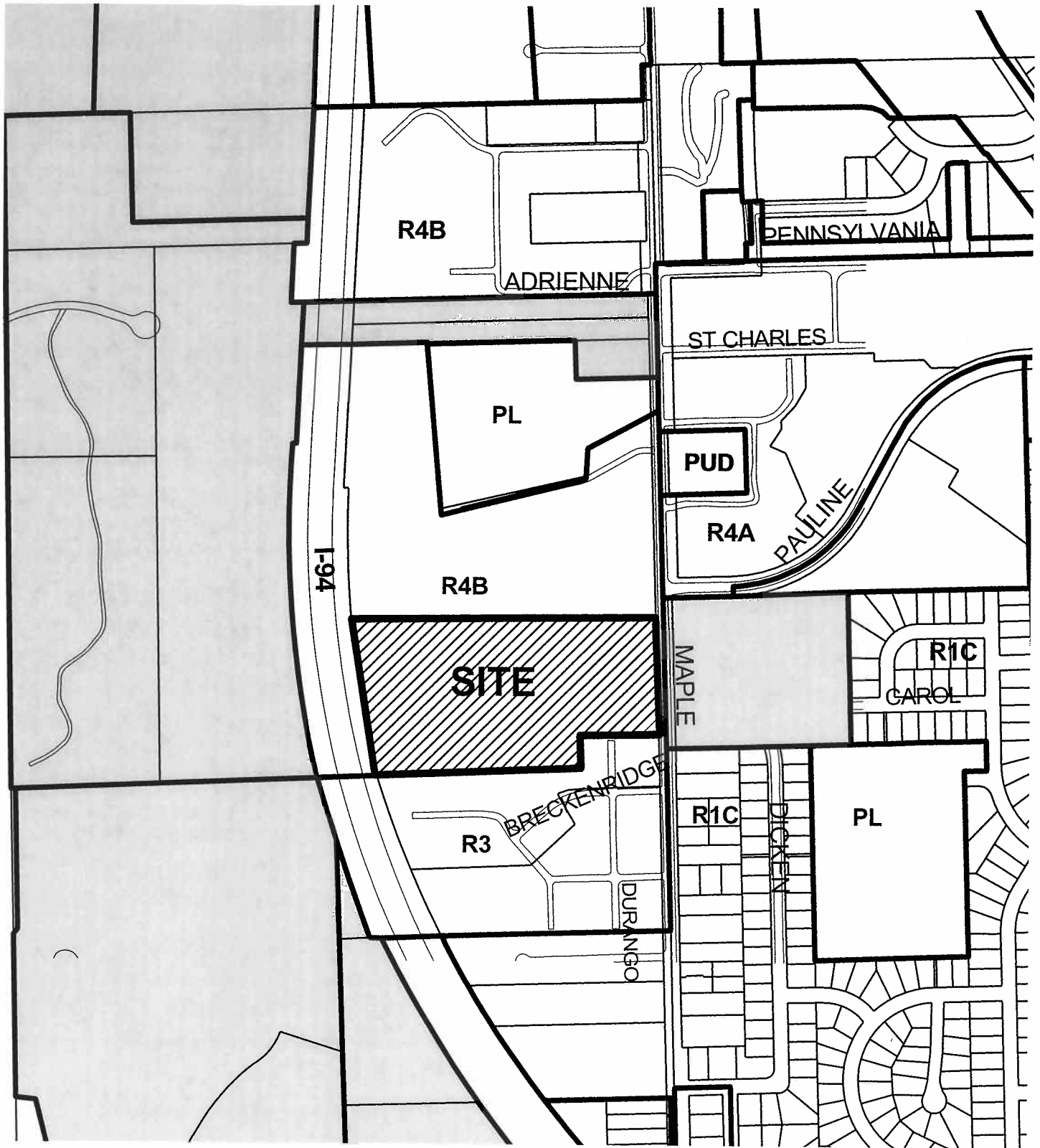
Attachments: Parcel and Zoning Map  
Aerial Photo  
11/8/07 Memorandum from Systems Planning  
Letter regarding Neighborhood Meeting  
Proposed Site Plan  
Elevations  
5/13/08 Development Agreement

c: Petitioner: Earl Ophoff  
Midwestern Consulting  
3815 Plaza Drive  
Ann Arbor, MI 48108


Attorney  
Systems Planning  
File No. 8361C19.5a

# 42 North Site Plan

## Parcel and Zoning Map



 Township Zoning

250 0 250 Feet  




# 42 North Site Plan

## Aerial Photo



250 0 250 Feet



2002 Aerial Photo



## MEMORANDUM

**DATE:** November 8, 2007

**TO:** Matt Kowalski  
Planning and Development Services

**FROM:** Cresson S. Sloten, P.E., Senior Project Manager  
Public Services Area – Systems Planning

**RE:** 42 North Planned Project Site Plan  
File No. 8361C19  
Questions from 10/16/07 City Planning Commission Meeting

Below are our responses to questions from the above-mentioned meeting regarding the 42 North Planned Project Site Plan petition that you have requested us to respond to:

- Q: Provide summary of the private/public study conducted on water pressure in the area.
- R: The study was performed by CDM, a consultant who had recently updated the city's water distribution hydraulic model. The petitioner commissioned the work by CDM. The study examined how a typical extension of the city water distribution system through the site would be anticipated to function during various fire flow scenarios. The study concluded that such a system would meet the required minimum fire flow and pressure requirements for most conditions. However, it noted that under some extreme conditions, such as if the Liberty Road pump station was not available during a maximum day demand situation, then adequate fire flow could not be provided at the minimum required pressure by a typical on-site extension of the city water distribution system. The study used water system pressures at ground level to analyze service criteria and multi-level structures would need boosted water pressures to meet service pressure expectations.

In response to this result, the petitioner is proposing to construct a private, on-site water distribution system that includes a water booster station. Provisions are included so that in the event that the city's water distribution system is modified such that the need for the booster station is eliminated (although this is unlikely due to the high cost of modifying additional water system infrastructure to meet this criteria), then the city could potentially incorporate the on-site water distribution system into the city's system. Though not preferred, this proposal is allowed as the site will remain under single ownership.

- Q: How will this project affect water pressure and sanitary capacity?
- R: The private, on-site booster station for the water distribution system will increase the water pressure on the site. But because this will be a "closed" system, it will not affect the water pressure in the city water distribution system outside of the site.

With regards to affect on sanitary capacity, because this site will be generating new, additional flow into the sanitary sewer system the development must offset this flow by removing 120% of the amount of flow being added to the system. In addition, because this site flows into a known problem area (Industrial Park Sanitary District) downstream of the site, this required mitigation must take place within the upper reaches of the Industrial Park Sanitary District.



Q: Is there adequate water supply in the area?

R: There is a 20" water main in Maple Road providing the main water supply to the site, which is more than adequate supply for the site.

Q: Will this increase the possibility of sewer backups in the area?

R: As mentioned earlier, sanitary flow offset mitigation directed in the upper reaches of the Industrial Park Sanitary District will actually reduce the likelihood of sewer backups.

Q: Research more details on the history of private pump stations in the City. What other stations exist in the City and what are the problems, if any?

R: There are other sites in the city with private, isolated water distribution systems including the Pfizer sites and the VA Hospital site. The only sites that also include a private pump station is the Pinelake Village Cooperative site on South Maple Road and the Edwards Brothers commercial parcel on South State Street. Because these are private systems, the city does not perform any maintenance activities on them. As a result, unless we are notified by the owner(s) we are unaware as to what, if any, problems occur related to these systems. The only "problem" that we have been notified of is that the Edwards Brothers system has leaks; however the facility is still operating under these conditions.

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C: Craig Hupy, Systems Planning Manager  
Alison Heatley, Senior Project Engineer  
Troy Baughman, P.E., Senior Project Engineer  
Pete Perala, P.E., Utilities Engineer

**Neighborhood Meeting**  
**Grace Bible Church**  
**April 17, 2008**

Started 6:10 PM with 35 people present

Jack Glupker opened the meeting. He clarified the intent of the meeting; to inform, a forum to listen to questions about specific issues, not a public hearing, our goal is to allow for greater understanding, Grace Bible Church is a concerned neighbor.

Matt Marshall from Wood Partners explained the differences between Plan 1 and 2

Plan 2 – R4B zoning

- no variances in building heights
- 3 storey buildings – 30 feet tall
- 120 apartments – 25% reduction
- 480 potential residents – 25% reduction
- 494 parking spaces – 23% reduction
- eliminated all balconies – now the space will be enclosed sunrooms (parties will be controlled)

Zip car – will be contacted to be available to the complex

We met with Dr. Leon Howsen from the U of M concerning altering the complex to an affluent senior housing facility and he reported that these developments are not successful.

Views from Maple Road have been greatly reduced from Maple Road.

Security will be hired as needed. Generally there will be an evening based service.

There will be one resident per bedroom. Each room will be inspected on a monthly basis. The safety issues will be strictly monitored.

What happens to this facility if it is unsuccessful as a student housing facility?

They will be remarketed and converted into three bedroom, three bathroom units with dens.

There will be no-discrimination.

6:20 PM Earl

A second pedestrian access will be added on Maple Road.

The drainage distribution has been changed. The land drains three ways now. The total volume is increased. There is no storm water retention on the sight. The maximum flows have been reduced. There will be no impact on the water pressure to the neighbors.

Sewer system capacity – the sanitary sewer drains SE, disconnect 38 footing drains, costs the development \$400, 000.00.

What will be the effect on the wetlands? There will be no wetlands north of the site other than what already exists. City mandated. The water discharges west under the freeway.

Jack Glupker took questions according to specific issues.

1. How do you get the water into the wetland? There will be no bulldozing or removal of trees. The water will be redirected by surface flow. The water will be directed to a detention basin. The majority of water will flow to a mitigation area. The water from the apartments will flow to a detention pond, under the freeway or out to Maple Road. The church has to bring their water system up to the current code.
2. Who keeps track that the drainage is consistent? The owners, church and apartments. The city and state are responsible to monitor and assess the wetland mitigation for 5 years.
3. What is the % of success with redirecting the wetlands? The state has a poor success rate. The wetlands fail because they are not properly designed and/or maintained. There is a difference of opinion between the state and city agencies. There will be the moving of some earth to fill the soccer field from the apartment building area.
4. What changes have been made for the surface water? The new plan states where the water will go. We are working with new state agencies. There are no conceptual differences. There will be more runoff when the apartments are up but the rate of runoff will be slower, and the rate of flow will be reduced.
5. Will you be participating in Section 8? Absolutely not.
6. Why do you want to put the project here? Many students do not live on campus, they live in the suburbs. There are two choices for real estate development in Ann Arbor. Modern housing is directed towards student personnel. This complex would take the burden away from single family neighborhoods. We will charge \$600 - \$650 per month per student, all utilities included, furnished.
7. Is there any way the apartments can share parking with the church? No we cannot accommodate during the holiday times. Several issues here (Sundays, major events, snow removal, etc.).
8. How are you going to control parties? There will be on site employees, community assistants in each building who are comparable to RA's on campus. People can call on the apartment security or the AA police.
9. How has this worked in other college towns? Wood Partners has 4 operating campus communities right now. Our property in Florida had 48 calls to the police in a year, Mississippi had 27, and Illinois had 350 calls. Many of these last calls (Illinois facility) were unnecessary calls that went to the police rather than calling someone on site first. Also, there were many 18 year old community college students. Our facility will not have freshman since they are required to live on campus.
10. How do detention basins work? Water flows out until the basin is dry dependent upon how many holes there are in the basin, the size of the holes, and the elevation of the basin. The water needs to infiltrate down. The water table changes throughout the property.

11. How often do you dig up/clean detention ponds? You replace the stones every 5 years or the sediment will plug the system.
12. Who is responsible for the maintenance? Grace Bible Church and the apartment owners.
13. What are the implications for water in the basements of nearby residents? This project will improve the sewage flow. Flooding should not be affected by the project. If your basement floods now, it likely would in the future.
14. Is the head water for Allen Creek behind Dicken School? No
15. Are you going to have a clause in your lease prohibiting drugs? Yes
16. Can the residents have pets? No
17. What is the size of other similar developments in other locations? This is a much smaller facility.
18. How far are the units from campus? 3 miles
19. Are you aware that Ann Arbor is quite unique from all other areas? Ann Arbor rental health is high. It is very difficult to develop in Ann Arbor.
20. Why would students want to live in this kind of a situation with so much security? The courtyard project isn't doing well at all.  
  
The new downtown courtyard project has been delayed. Students are restricted from signing up because of delays, not because there isn't interest. Ann Arbor has many restrictions and there is no parking at this project. Our project will accommodate the parking situation.
21. Are you willing to put this project on hold to research a senior housing project? No, we are focused on this project now.
22. Is this prime property in Ann Arbor? Yes
23. Have there been arrangements been made with the Ann Arbor Transit Association? Yes. We have a letter from the AATA dependent upon the project moving ahead.
24. What will the apartment include? Each unit will have 4 bedrooms (single occupancy), 4 bath rooms, one kitchen, one eating area, one common area, washer and dryer, TV, and be fully furnished. This will lessen the need for moving vans (high traffic during move in and move out times).

Assorted comments –


I am concerned that there will be more potential for problems stretching the AA police force if this project is built.

Students have no vested interest in Ann Arbor.

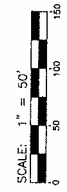
This proposal seems to be incompatible with the neighborhood. The density seems to be unfair to the current residents.

We are open to having another meeting if necessary.

Meeting concluded at 8:15 pm



SCALE: 1" = 50'



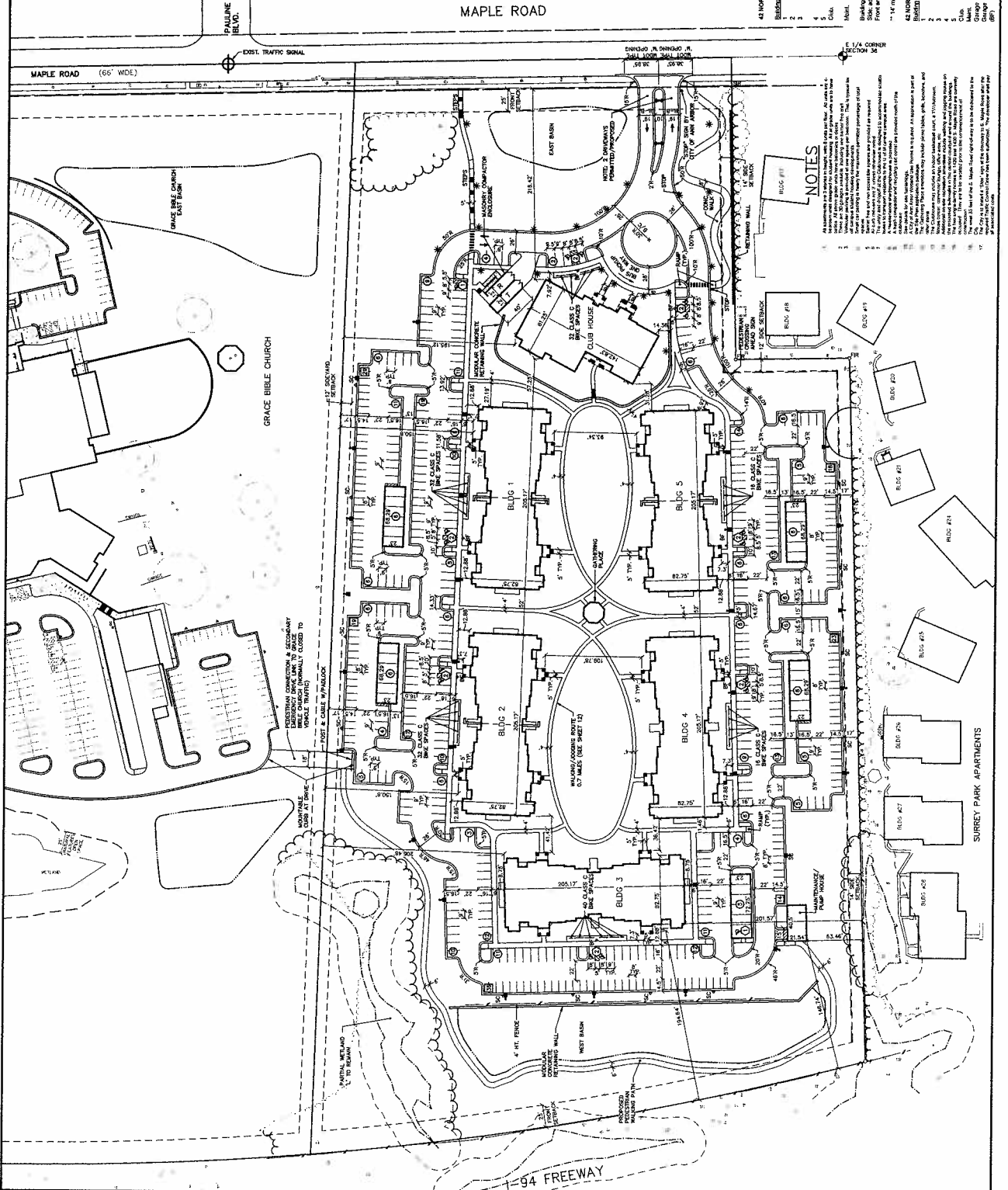
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**LEGEND**

- ⊙ REGULAR PARKING SPACES
- ⊠ SMALL CAR PARKING SPACES
- ⊡ BARRIER FREE PARKING SPACES
- ⊢ BARRIER FREE PARKING SIGN
- \*B\* VAN ACCESSIBLE BARRIER FREE
- \*B\*V\* PARKING SIGN
- \*S\* STOP SIGN
- \*SC\* SMALL CAR PARKING SIGN
- BIKE HOOPS (4 SPACES)
- BIKE LOCKER (8 SPACES)
- DETENTION BASIN HIGH WATER LINE
- MODULAR CONCRETE RETAINING WALL
- SINGLE LIGHTS, 12' HT.
- DOUBLE LIGHTS, 12' HEIGHT
- SINGLE LIGHTS, 25' HEIGHT
- TRASH COMPACTOR
- RECYCLE CART CORRAL
- BARRIER FREE SIDEWALK RAMP

**NOTES:**

- GRADE BUILT TO MATCH EXISTING GRADE UNLESS OTHERWISE NOTED. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.
- ALL UTILITIES TO BE LOCATED TO THE RIGHT OF MAPLE ROAD RIGHT-OF-WAY TO BE INDICATED TO THE RIGHT OF THIS PLAN.
- ALL UTILITIES TO BE LOCATED TO THE RIGHT OF THIS PLAN.
- ALL UTILITIES TO BE LOCATED TO THE RIGHT OF THIS PLAN.



**42 NORTH APARTMENTS BUILDING SETBACKS**

| BLDG | BLDG # | Length | Width | Setback | Front | Side  | Rear  | Corner |
|------|--------|--------|-------|---------|-------|-------|-------|--------|
| 1    | 202.17 | 100.00 | 30.00 | 10.00   | 10.00 | 10.00 | 10.00 | 10.00  |
| 2    | 202.17 | 100.00 | 30.00 | 10.00   | 10.00 | 10.00 | 10.00 | 10.00  |
| 3    | 202.17 | 100.00 | 30.00 | 10.00   | 10.00 | 10.00 | 10.00 | 10.00  |
| 4    | 202.17 | 100.00 | 30.00 | 10.00   | 10.00 | 10.00 | 10.00 | 10.00  |
| 5    | 202.17 | 100.00 | 30.00 | 10.00   | 10.00 | 10.00 | 10.00 | 10.00  |

**42 NORTH APARTMENTS BUILDING PLAN DIMENSIONS**

| BLDG # | Length | Width | Area    |
|--------|--------|-------|---------|
| 1      | 100.00 | 30.00 | 3000.00 |
| 2      | 100.00 | 30.00 | 3000.00 |
| 3      | 100.00 | 30.00 | 3000.00 |
| 4      | 100.00 | 30.00 | 3000.00 |
| 5      | 100.00 | 30.00 | 3000.00 |

**NOTES:**

- All dimensions are to face unless otherwise noted.
- Setbacks are to be maintained as shown on this plan.
- Corner setbacks are to be maintained as shown on this plan.
- Setbacks are to be maintained as shown on this plan.
- Setbacks are to be maintained as shown on this plan.







## 42 NORTH DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Ann Arbor, a Michigan Municipal Corporation, with principal address at 100 North Fifth Avenue, Ann Arbor, Michigan 48107, hereinafter called the CITY; and WP East Acquisitions, LLC, a Georgia limited liability company, with principal address at 1001 Morehead Square Drive, Suite 250, Charlotte, North Carolina 28203, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as 42 North; and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 42 North, and desires site plan and development agreement approval thereof; and

WHEREAS, the PROPRIETOR 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 PROPRIETOR will install these improvements prior to any permits being issued.

### THE PROPRIETOR 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 private water and sanitary sewer mains, 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, 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 PROPRIETOR fails to construct the improvements, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR, if the PROPRIETOR 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 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 private 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 PROPRIETOR'S engineer inspects.

(P-4) Prior to the issuance of building permits, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements with delayed effectiveness for the maintenance of utilities if they are dedicated to the public at a later date. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-5) To provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-6) To install all water mains, storm sewers, sanitary sewers and drives through the first course of asphalt, 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.

(P-7) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to South Maple Road, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South Maple Road frontage when such improvements are determined by the CITY to be necessary.

(P-8) To indemnify 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 PROPRIETOR, 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-9) 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 named 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-10) Existing trees shown on the site plan as trees to be saved shall be maintained by the PROPRIETOR in good condition for a minimum of three years after acceptance of the public improvements by the CITY or granting of Certificate of Occupancy. Existing 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 Certificate of Occupancy, shall be replaced by the PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-11) For the benefit of the residents of the PROPRIETOR'S development, to make a park contribution of \$29,800.00 to the CITY Parks and Recreation Services Unit prior to the issuance of building permits for improvements to west area parks.

(P-12) To construct, repair and/or adequately maintain on-site storm water management system. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR if the PROPRIETOR 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.

(P-14) To enter into a maintenance agreement with the CITY detailing the operation and maintenance of the private water mains including, but not limited to, hydrants, valves, curb boxes and main repairs, and the responsibilities for, and documentation of, these activities. This agreement shall be in place prior to the activation of the private, pressurized water distribution system.

(P-15) To provide a fully private, pressurized water distribution system (all water mains, hydrants, etc.) and to provide booster pumps for building domestic water and fire service in perpetuity as required by applicable building code(s). The following items will be included as part of this private pressurized water distribution:

- a. Meet all CITY requirements for booster station design, with CITY review of design and plans being required with all applicable fees to be paid by the PROPRIETOR.
- b. The booster station shall include an off-line main booster pump with master metering and back-up power.
- c. Double checks shall be located at each of the three connections to the CITY's water distribution system.
- d. Full inspection of all system components shall be performed by the Public Services Area and as-built of construction drawings with all applicable fees to be paid by the PROPRIETOR.
- e. Easements shall be dedicated during construction of the on-site utilities, with delayed effectiveness for the private pressurized water mains in the event that if future improvements to the public water distribution system are completed by the CITY such that the on-site pressurization of the distribution system is no longer needed, allowing the water mains to be placed onto system pressure and converted to public (CITY) water mains.
- f. Individual boosters for domestic and fire service shall be provided in each building as required by applicable building codes, or a single, private booster station for building services shall be provided separate from the private distribution system booster station.
- g. Each building shall be plumbed for individual metering. If the private water distribution booster station is decommissioned and the master meter removed, the PROPRIETOR shall install individual building meters as required by the CITY, including the payment of all applicable fees.

(P-16) To obtain Energy Star ratings for all residential buildings on site through the use of Energy Star appliances and materials.

(P-17) Prior to building permits being issued, to restrict, but not prohibit, by covenants and restrictions recorded with the Washtenaw County Register of Deeds, the use of lawn care chemicals and fertilizers in order to minimize the impacts on Allen Creek.

(P-18) Prior to the issuance of any permits, to submit to the CITY Land Development Coordinator for review and approval a 5-year Wetland Monitoring Plan, to implement the plan concurrently with construction of the site improvements, to submit an Invasive Species Control Plan to be implemented during the 5-year wetland monitoring period, and to submit an annual report regarding implementation of

the Wetland Monitoring Plan recommendations to the CITY following issuance of certificates of occupancy.

(P-19) To provide alternative wetland mitigation funds of \$19,101.24 to be used for the management and restoration of natural features in Hansen Park.

(P-20) 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, PROPRIETOR 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-21) 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 PROPRIETOR proposes any changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-22) 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-23) Prior to application for and issuance of certificates of occupancy, to disconnect 38 footing drains from the sanitary sewer system in accordance with the *Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor - Development Offset-Mitigation Program* (November 2005 edition, as amended). The PROPRIETOR, however, 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. CITY agrees to provide PROPRIETOR with a certificate of completion upon PROPRIETOR'S submittal of approved and final closed-out permits to the CITY Public Services Area.

(P-24) PROPRIETOR 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 PROPRIETOR has (have) legal authority and capacity to enter into this agreement for PROPRIETOR.

(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 approved development 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 PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR 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 development agreement.

(P-26) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR 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-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 42 North Site Plan.
- (C-2) To use the park contribution described above for improvements to parks in the west area of the CITY.
- (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 PROPRIETOR 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 PROPRIETOR, 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:

Commencing at the East 1/4 corner of Section 36, T2S, R5E, City of Ann Arbor, Washtenaw County, Michigan; thence N 01°19'00" W 126.81 feet along the East line of said Section 36 and the centerline of Maple Road (66 feet wide) to the POINT OF BEGINNING; thence S 88°41'00" W 343.00 feet; thence S 01°19'00" E 129.64 feet (recorded) 129.40 feet (measured); thence S 88°13'00" W 797.99 feet (recorded) S 88°15'01" W 798.16 (measured) along the East-West 1/4 line of said Section 36; thence Northerly 641.80 feet in the arc of a curve to the right, radius 3674.83 feet, central angle 10°00'24", and chord N 09°56'53" W 640.98 feet along the East right-of-way line of the I-94 Expressway; thence S 88°05'08" E 1239.30 feet; thence S 01°19'00" E 428.44 feet along the East line of said Section 36 and the centerline of said Maple Road to the POINT OF BEGINNING, being a part of the NE 1/4 of Section 36, T2S, R5E, City of Ann Arbor, Washtenaw County, Michigan, and containing 15.32 acres of land, more or less, subject to the rights of the public over the East 33 feet as occupied by Maple Road and subject to easements and restrictions of record, if any.

(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 PROPRIETOR, 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

PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

\_\_\_\_\_

\_\_\_\_\_

CITY OF ANN ARBOR, MICHIGAN  
100 North Fifth Avenue  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
John Hieftje, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to Substance:

\_\_\_\_\_  
Roger W. Fraser, City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

Witness:

\_\_\_\_\_

WP East Acquisitions, LLC  
a Georgia limited liability company  
1001 Morehead Square Drive, Suite 250  
Charlotte, North Carolina 28203

By: \_\_\_\_\_  
Bernard Felder, Director

STATE OF MICHIGAN    )  
                                  ) ss:  
County of Washtenaw    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me personally appeared John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

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

STATE OF                    )  
                                  ) ss:  
County of                    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, before me personally appeared Bernard Felder, Director, WP East Acquisitions, LLC, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

\_\_\_\_\_  
NOTARY PUBLIC  
County of \_\_\_\_\_, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Mark Lloyd, Manager  
Ann Arbor Planning & Development Services  
Post Office Box 8647  
Ann Arbor, Michigan 48107  
(734) 994-2800