

413 EAST HURON STREET DEVELOPMENT AGREEMENT

THIS AGREEMENT ("Agreement"), made this ____ day of _____, 2013, 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 Ann Arbor Green Property Owner, LLC, a Delaware Limited Liability Corporation, with principal address at c/o Greenfield Partners, LLC, 50 North Water Street, South Norwalk, CT 06854, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as 413 East Huron Street, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 413 East Huron Street, 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, and

WHEREAS, on _____, 2013, City Council approved the Site Plan ("Site Plan") for 413 East Huron pursuant to a resolution adopted on that date.

THE PROPRIETOR(S) HEREBY AGREE(S):

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for sanitary sewer mains, public and private storm water management systems, sidewalks and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the Improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the 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.

(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 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 for the construction and maintenance of public utilities. 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 install all water mains, storm sewers, sanitary sewers and public streets, 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-6) Subject to rights to object as available under applicable law, PROPRIETOR shall be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to East Huron Street and/or North Division Street such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along those street frontages when such improvements are determined by the CITY to be necessary.

(P-7) To contribute the Proprietor's proportionate share of the cost of subsequent signal modifications at the Huron Street/Fifth Avenue intersection based on volume of traffic generated by the project when invoiced by the City and/or the Michigan Department of Transportation. In addition, if CITY elects to obtain a comprehensive study at City's expense, PROPRIETOR agrees to provide traffic and trip information it has in its possession.

(P-8) 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 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 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 landmark and street 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 landmark and street trees shown on the site plan as trees to be saved 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 \$129,000 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to parks within a reasonable walking distance of the site, such as Farmers Market, Sculpture Plaza, Liberty Square and Wheeler 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 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-15) To include elevation drawings and color perspective drawings as part of the Site Plan, and to construct all buildings consistent with said drawings, including but not limited to using the specific materials, colors, aesthetics, designs and setbacks specified in the drawings. Materials shall include, but are not limited to: glazed dark gray iron spot brick, light gray iron spot brick, dark gray iron spot brick, light gray brick, light tan brick, wood paneling, and wood frame storefront systems as designated in the drawings and consistent with the colors shown on the perspective drawings. Notwithstanding these requirements, the Planning Manager may approve any minor, non-substantive revisions to the approved building elevations, materials, colors, aesthetics, designs and setbacks, as a result of revisions necessary for the completion of final construction drawings submitted pursuant to the Site Plan. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, materials, colors, aesthetics, designs and setbacks and site plan approved by City Council.

(P-16) 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-17) Prior to application for and issuance of certificates of occupancy, to disconnect 59 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 Guidelines for Completion of Footing Drain Disconnections, Table A, and adopted by City Council, August 18, 2003 and revised November 30, 2005 (the "Guidelines"). In the event the actual intensity of uses

contemplated by the Site Plan are either increased or decreased, City and PROPRIETOR agree to adjust the number of footing drains to be disconnected in accordance with the Guidelines. 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.

(P-18) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies that the building design achieves a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, the most recent version in effect at the date of this Agreement, using an industry standard software energy modeling tool (EQUEST or equivalent). Further documentation or verification from an independent, qualified professional that the building achieves the two points shall be provided by the PROPRIETOR prior to any request for or issuance of a first certificate of occupancy.

(P-19) 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-20) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this 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 Site Plan and/or the terms and conditions of this 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 Site Plan and/or this Agreement.

(P-21) 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 this 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-22) 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 413 East Huron Street Site Plan.

(C-2) To use the park contribution described above for improvements to parkland within a reasonable walking distance of the site.

(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 and shall be granted within seven business days of the request.

(T-4) The obligations and conditions on the PROPRIETOR, as set forth above in this Agreement and in the Site Plan, shall be binding on any successors and assigns in ownership of the following described parcel:

PARCEL 1: (AS SURVEYED)
BEGINNING AT THE INTERSECTION OF THE NORTH LINE OF HURON STREET AND THE EAST LINE OF DIVISION STREET AND RUNNING THENCE NORTH 04 DEGREES 10 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF DIVISION STREET, 124 FEET; THENCE SOUTH 85 DEGREES 47 MINUTES 20 SECONDS EAST 68 FEET; THENCE SOUTH 04 DEGREES 10 MINUTES 40 SECONDS WEST 28 FEET; THENCE NORTH 85 DEGREES 47 MINUTES 20 SECONDS WEST 4 FEET; THENCE SOUTH 04 DEGREES 10 MINUTES 40 SECONDS WEST 96 FEET TO THE NORTH LINE OF HURON STREET; THENCE NORTH 85 DEGREES 47 MINUTES 20 SECONDS WEST 64 FEET TO THE PLACE OF BEGINNING, BEING PART OF ASSESSOR'S PLAT No. 8 IN THE CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN. EXCEPTING THE FOLLOWING DESCRIBED PROPERTY: COMMENCING AT A POINT WHERE THE EAST LINE OF DIVISION STREET INTERSECTS THE NORTH LINE OF HURON STREET; RUNNING THENCE NORTH 04 DEGREES 10 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF DIVISION STREET, 88.5 FEET; THENCE SOUTH 85 DEGREES 47 MINUTES 20 SECONDS EAST PARALLEL TO THE NORTH LINE OF HURON STREET, 64 FEET; THENCE SOUTH 04 DEGREES 10 MINUTES 40 SECONDS WEST PARALLEL TO THE EAST LINE OF DIVISION STREET, 88.5 FEET; THENCE NORTH 85 DEGREES 47 MINUTES 20

SECONDS WEST 64 FEET ON THE NORTH LINE OF HURON STREET TO THE POINT OF BEGINNING.

PARCEL 2: (AS SURVEYED)

COMMENCING AT A POINT WHERE THE EAST LINE OF DIVISION STREET INTERSECTS WITH THE NORTH LINE OF HURON STREET; THENCE RUNNING NORTH 04 DEGREES 10 MINUTES 40 SECONDS EAST ALONG THE EAST LINE OF DIVISION STREET 78.5 FEET; THENCE EAST 85 DEGREES 47 MINUTES 20 SECONDS EAST PARALLEL TO THE NORTH LINE OF HURON STREET 64 FEET; THENCE SOUTH 04 DEGREES 10 MINUTES 40 SECONDS WEST PARALLEL TO THE EAST LINE OF DIVISION STREET 78.5 FEET; THENCE NORTH 85 DEGREES 47 MINUTES 20 WEST ON THE NORTH LINE OF HURON STREET 64 FEET TO THE PLACE OF BEGINNING. ALSO A NON-EXCLUSIVE RIGHT OF WAY OVER A STRIP OF LAND 10 FEET IN WIDTH ADJOINING AND CONTIGUOUS TO THE ABOVE DESCRIBED PARCEL ON THE NORTH TO BE USED AS A COMMON DRIVEWAY, BEING A PART OF LOT 23 OF ASSESSOR'S PLAT No. 8 IN THE CITY OF ANN ARBOR, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN LIBER 4 OF PLATS, PAGE 38, WASHTENAW COUNTY RECORDS.

PARCEL 3: (AS SURVEYED)

LOT 22 AND PART OF LOTS 21 AND 23, ASSESSOR'S PLAT No. 8, AS RECORDED IN LIBER 4 OF PLATS, PAGE 38, WASHTENAW COUNTY RECORDS, WHICH IS DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT ON THE NORTH LINE OF HURON STREET, SOUTH 85°47'20" EAST 64.00 FEET EAST OF INTERSECTION OF SAID NORTH LINE OF HURON STREET WITH EAST LINE OF DIVISION STREET; THENCE RUNNING SOUTH 85°47'20" EAST ALONG THE NORTH LINE OF HURON STREET, 185.50 FEET, AND TO SOUTHWEST CORNER OF LAND NOW OWNED BY SLOAN PLAZA CONDO (AND ONCE OWNED BY BAPTIST CONVENTION OF THE STATE OF MICHIGAN); THENCE NORTH 04°10'40" EAST ALONG WEST LINE OF LAND OF SAID SLOAN PLAZA CONDO, 200.83 FEET; THENCE SOUTH 85°47'20" EAST PARALLEL WITH NORTH LINE OF HURON STREET, 84.40 FEET; THENCE SOUTH 04°10'40" WEST PARALLEL WITH WEST LINE OF DIVISION STREET, 50.00 FEET; THENCE SOUTH 85°47'20" EAST PARALLEL WITH THE NORTH LINE OF HURON STREET, 32.00 FEET; THENCE NORTH 04°10'40" EAST PARALLEL WITH THE WEST LINE OF DIVISION STREET, 74.20 FEET; THENCE NORTH 85°47'20" WEST PARALLEL WITH NORTH LINE OF HURON STREET, 152.03 FEET; THENCE SOUTH 04°10'40" WEST ALONG EAST LINE OF LAND NOW OWNED BY TYLER NORMAN TRUST (ONCE OWNED BY WAHR), 24.20 FEET AND TO SOUTHEAST CORNER OF SAID TYLER NORMAN TRUST'S LAND; THENCE NORTH 85°47'20" WEST ALONG SOUTH LINE OF TYLER NORMAN TRUST'S LAND, 59.48 FEET; THENCE SOUTH 04°10'40" WEST PARALLEL WITH THE WEST LINE OF DIVISION STREET, 40.00 FEET; THENCE NORTH 85°47'20" WEST PARALLEL WITH THE NORTH LINE OF HURON STREET, 22.39 FEET; THENCE SOUTH 04°10'40" WEST PARALLEL WITH THE WEST LINE OF DIVISION STREET, 36.83 FEET; THENCE NORTH 85°47'20" WEST PARALLEL WITH THE NORTH LINE OF HURON STREET, 64.00 FEET;

THENCE SOUTH 04°10'40" WEST PARALLEL WITH THE WEST LINE OF DIVISION STREET, 28.00 FEET; THENCE NORTH 85°47'20" WEST PARALLEL WITH THE NORTH LINE OF HURON STREET, 4.00 FEET; THENCE SOUTH 04°10'40" WEST 96.00 FEET TO THE PLACE OF BEGINNING, BEING A PART OF THE NORTHEAST QUARTER OF SECTION 29, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN, EXCEPTING THEREFROM LAND CONVEYED TO ERVIN ACCEPTANCE COMPANY, A MICHIGAN, CORPORATION, RECORDED IN LIBER 392, PAGE 444, WASHTENAW COUNTY RECORDS.

PARCEL 4: (AS SURVEYED)
THE NORTH 10 FEET IN WIDTH, NORTH AND SOUTH OF THE FOLLOWING PARCEL OF LAND, TO WIT: COMMENCING AT A POINT WHERE THE EAST LINE OF DIVISION STREET INTERSECTS THE NORTH LINE OF HURON STREET; THENCE RUNNING NORTH 04°10'40" EAST ALONG THE EAST LINE OF DIVISION STREET 88.50 FEET; THENCE SOUTH 85°47'20" EAST PARALLEL TO THE NORTH LINE OF HURON STREET, 64.00 FEET; THENCE SOUTH 04°10'40" WEST PARALLEL TO THE EAST LINE OF DIVISION STREET, 88.50 FEET; THENCE NORTH 85°47'20" WEST ON THE NORTH LINE OF HURON STREET, 64.00 FEET TO THE PLACE OF BEGINNING, BEING THE NORTH 10 FEET OF THE SOUTH 88.5 FEET OF LOT 23, ASSESSOR'S PLAT NO. 8, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN.

Parcel ID#s: _____

(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 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. By executing this Agreement, the PROPRIETOR and the CITY submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising under this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience.

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

Witnesses:

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

Witness:

ANN ARBOR GREEN PROPERTY OWNER, LLC

By: _____
Barry P. Marcus
Senior Vice President

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 20__, 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: _____

