

121 KINGSLEY WEST DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2014, 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 Huron Kingsley, LLC, a Michigan limited liability company, with principal address at 408 N. First Street, Ann Arbor, MI 48103, hereinafter called the PROPRIETOR, and consented to by the Berg Family L.L.C., a Michigan limited liability company, with principal address at 3656 W. Huron River Drive, Ann Arbor, Michigan 48103 witnesses that:

WHEREAS, the Berg Family L.L.C. currently owns certain land in the City of Ann Arbor, described below and site planned as 121 Kingsley West, and has consented to PROPRIETOR entering into this Agreement, pursuant to the Consent to 121 Kingsley West Development Agreement ("Consent") recorded on _____, 2014, in Liber ____, Page _____, Washtenaw County Records.

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 121 Kingsley West, 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 public water mains, public and private storm water management systems and public 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 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) 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 approved site plan.

(P-5) 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 an 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-6) For the benefit of the residents of the PROPRIETOR'S development, to make a park contribution of \$13,640.00 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to the Farmer's Market, North Main Park, or Kingsley Park.

(P-7) To deposit, prior to any vertical 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 PROPRIETOR 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 PROPRIETOR one year after the date of acceptance by the CITY.

(P-8) To create an association composed of all owners of 121 Kingsley West condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for 121 Kingsley West. The association shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, driveways, on-site storm water management system, and all other common elements.

(P-9) 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-10) After construction of the private on-site storm water management system, to maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the PROPRIETOR or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, or Association, at the address listed above, requiring it to commence and complete the maintenance 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 or Association if the PROPRIETOR or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the PROPRIETOR in the master deed.

(P-11) 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-12) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee of \$3,500.00, prior to issuance of vertical building permits. The Master Deed shall be consistent with the approved site plan and shall incorporate relevant terms of this Agreement.

(P-13) 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-14) 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 substantive 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-15) 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-16) Prior to application for and issuance of certificates of occupancy, to disconnect six 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"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with 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, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. PROPRIETOR 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-17) As part of the application for the first vertical 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-18) Except as set forth in the Consent of the Berg Family, LLC, 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 the person signing below on behalf of PROPRIETOR has legal authority and capacity to enter into this Agreement for PROPRIETOR.

(P-19) 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 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 approved site plan and/or this Agreement.

(P-20) To enter into a licensing agreement with the CITY for the encroachment of the existing building on the West Kingsley Street and public alley rights-of-way prior to the request for or issuance of any certificate of occupancy, and to submit a complete application for the license, including supporting documents, to the City prior to the issuance of any permits.

(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 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-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 121 Kingsley West Site Plan.

(C-2) To use the park contribution described above for improvements to the Farmer's Market, North Main Park, or Kingsley Park.

(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 supersedes the Kingsley Lane PUD Development Agreement recorded on April 18, 2007 in Liber 4620, Page 245, Washtenaw County Records, and the City of Ann Arbor Affordable Housing Covenant for Kingsley Lane recorded on April 18, 2007 in Liber 4620, Page 247, Washtenaw County Records.

(T-2) This Agreement is not intended to create a contractual right for third parties.

(T-3) 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-4) 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-5) 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 in the City of Ann Arbor:

Lots 7 and 8,Block 3 North of Huron Street, Range 3 East, Original Plat of the Village (now City) of Ann Arbor, as recorded in Transcripts, Pages 152 and 153, Washtenaw County Records.

Parcel ID#: 09-09-29-139-098

(T-6) 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-7) 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, a Michigan municipal corporation

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

HURON-KINGSLEY, LLC, a Michigan limited liability company

By:

Thomas R. Fitzsimmons
Manager

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by John Hieftje, Mayor and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this ____ day of _____, 2014 by Thomas R. Fitzsimmons, Manager of Huron-Kingsley, LLC, a limited liability company on behalf of the company.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Ann Arbor Planning & Development Services
Attn: Wendy Rampson
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265