

**THE GLEN MIXED USE DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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 Catherine Ann Development Company LLC, a Michigan limited liability company, with principal address at 6960 Orchard Lake Road, Suite 300A, West Bloomfield, Michigan 48322, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below ("Property") and site planned as The Glen Mixed Use Development PUD Site Plan, and

WHEREAS, the DEVELOPER has had the Property surveyed, mapped and site planned as The Glen Mixed Use Development PUD Site Plan, and desires planned unit development site plan and development agreement approval thereof, and

WHEREAS, on \_\_\_\_\_, City Council approved The Glen Mixed Use Development PUD Site Plan ("Site Plan") and this agreement ("Agreement") pursuant to a resolution adopted on that date, 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 private storm water management systems, public water mains, 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 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 the time 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 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 grant an easement to the CITY for sidewalk right-of-way as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easement prior to the request for and issuance of building permits, and the easement shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easement may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) To install all water mains 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) 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 Site Plan.

(P-7) 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-8) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$14,880 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for improvements to Riverside Park, Broadway Park, Fuller Park, or the Farmers Market.

(P-9) 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-10) 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 the time 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-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 upon request.

(P-12) That traffic mitigation measures in the Glen Avenue and East Ann Street and Glen Avenue and Catherine Street intersections will be beneficial to the DEVELOPER'S Property and, therefore, to pay the CITY \$43,540 for its share of the cost for traffic mitigation measures, which may include, but are not limited to one or more of the following:

- a) Installation of Gridsmart systems at each intersection with network connection to the CITY traffic signal system.
- b) Other less traditional measures, which will similarly mitigate excess traffic, flow at the intersection with similar benefit to the DEVELOPER'S Property by facilitating decreased use of automobiles and increased use of alternate modes of transportation. These measures may include, but are not limited to, park and ride lots, bicycle and pedestrian facilities, and transit improvements.

The DEVELOPER will pay to the CITY, within 90 days of written notice of commencement of engineering design leading to construction or purchase order for materials, its share of the cost of the improvements.

The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. However, the CITY agrees that it will not charge the DEVELOPER for more than \$43,540 as set forth above, of the traffic mitigation measures the CITY finds necessary to address the impact of the DEVELOPER'S development.

(P-13) The DEVELOPER will pay to the City, in addition to the \$43,540 amount required by P-12 above, an amount of \$17,340 to support the cost of further traffic analysis to determine the feasibility of two way traffic on Ann Street, from Glen Avenue to the approximate location of the proposed curb cut for the Site Plan, and corresponding design considerations for implementation. The DEVELOPER will pay this amount to the CITY within 30 days of written notice of commencement of the study.

The DEVELOPER also agrees to pay all costs for identified improvements in the study, as additional traffic mitigation costs, up to \$250,000. If the estimated cost of required improvements exceed \$250,000, the DEVELOPER agrees to pay a reasonable share of the costs of improvements for all costs over \$250,000 to be negotiated with the City. The

DEVELOPER will pay the CITY for the costs of the improvements, within 90 days of written notice of commencement of engineering design leading to construction or purchase order for materials.

The City may decide to have the DEVELOPER proceed with identified improvements in its sole discretion, and if no additional improvements are made, no additional payments will be required by DEVELOPER.

(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, 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-15) 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. Changes to the retail storefronts may be approved by the Historic District Commission. Nonmaterial changes to the approved building elevations, aesthetics, or materials may be approved by the Planning and Development Services Manager or designee, and may require Historic District Commission approval.

(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) 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 LEED Silver certification under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) 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). Included as part of the documentation shall be predicted model results of the energy savings (in percent reduced) for the project compared with a basic code-compliant baseline provided to demonstrate how the project shows demonstrable energy efficiency gains over basic code-compliant construction.

(P-18) To remove all environmental contamination on the Property to the depth and within the footprint of the building foundation. As proof of satisfaction of this requirement, DEVELOPER shall provide documentation from an independent, qualified professional that verifies that said contaminated soil has been removed, and that all soils excavated have been properly characterized and managed in accordance with applicable environmental laws. DEVELOPER shall provide to the CITY 1) the specific volume of material removed from the Property and disposal location with manifests; 2) analytical results of representative samples of all soils removed from the Property; and 3) analytical results of the base and side walls of the excavation demonstrating remaining concentrations on the Property, if any, along with documentation that any contamination remaining on the Property is consistent with the intended use of the Property considering relevant exposure pathways as provided under Part 201 of the Natural Resources and Environmental Protection Act. The DEVELOPER will notify the city 48

hours prior to the time and date of any sampling and permit the CITY to obtain split samples for CITY analysis if desired by the CITY.

(P-19) For the benefit of the residents of the City of Ann Arbor, the DEVELOPER shall make a contribution of \$500,000 to the Ann Arbor Affordable Housing Fund prior to the issuance of building permits.

(P-20) 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-21) Failure to construct, repair and/or maintain the site pursuant to the 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 DEVELOPER complies with the Site Plan and/or the terms and conditions of the 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 Site Plan and/or this Agreement.

(P-22) 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-23) 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 The Glen Mixed Use Development.

(C-2) To use the park contribution described above for improvements to Riverside Park, Broadway Park, Fuller Park, or the Farmers Market.

(C-3) To use the \$ 42,540 contribution for traffic mitigation measures at the Glen Avenue and East Ann Street and Glen Avenue and Catherine Street intersections.

(C-4) To use the affordable housing contribution described above for the provision of affordable housing within the CITY.

(C-5) To provide timely and reasonable CITY inspections as may be required during construction.

(C-6) 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 Site Plan, shall be binding on any successors and assigns in ownership of the following described parcel:

Commencing at the monumented intersection of the centerline of Glen Avenue and the centerline of Ann Street of Block 2 North, Range 13 East, Eastern Addition to the Village (now City) of Ann Arbor, according to the Plat thereof, recorded in Liber 'P' of Deeds, Page 4, Washtenaw County Records, thence N 89°56'09" W 33.00 feet along the center line of said Ann Street (66.00' wide); thence N 00°03'59" W 33.00 feet parallel with and 33.00 feet West of the center line of Glen Avenue (66.00' wide) to the SE corner of Lot 8 of said Plat; thence N 89°56'09" W 111.95 feet along the South line of said Lot 8; thence N 00°03'59" W 132.00 feet parallel with the West line of Glen Avenue; thence S 89°56'09" E 45.95 feet parallel with the North line of Ann Street; thence N 00°03'59" W 133.09 feet parallel with West line of Glen Avenue; thence S 89°54'28" E 66.00 feet along the South right-of-way line of Catherine Street(66.00' wide); thence S 00°03'59" E 265.06 feet along the West right-of-way line of said Glen Avenue to the POINT OF BEGINNING. Being a part of Lots 5, 6, 7, & 8 of Block 2 North, Range 13 East, Eastern Addition to the Village (now City) of Ann Arbor, according to the Plat thereof, as recorded in Liber 'P' of Deeds, Page 4, Washtenaw County Records, containing 0.54 acres of land, more or less, being 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 DEVELOPER, 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 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.

(T-7) This Agreement supersedes and replaces any prior development agreement for the Property.

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:

\_\_\_\_\_  
Howard S. Lazarus, City Administrator

Approved as to Form:

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

Catherine Ann Development Company LLC

By: \_\_\_\_\_  
*Name, Title*

STATE OF MICHIGAN    )  
  ) ss:  
County of Washtenaw    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 in Washtenaw County by Christopher Taylor, 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 \_\_\_\_\_ )  
  ) ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017 in \_\_\_\_\_ County by \_\_\_\_\_, \_\_\_\_\_ of Catherine Ann Development Company LLC, a Michigan limited liability company, on behalf of the company.

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

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