

202 SOUTH DIVISION STREET DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2007, 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 First ADT, LLC, a Michigan limited liability corporation, with principal address at 9700 West Higgins Road, Suite 810, Rosemont, Illinois 60018, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns or has an agreement to purchase certain land in the City of Ann Arbor, described below and site planned as 202 South Division 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 202 South Division Street, and desires planned unit development 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 ensure that all of the improvements required by CITY ordinances and regulations be properly completed.

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 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 departments 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) 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-5) To cause to be maintained Public Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as named-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) To construct, repair and/or maintain an 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. 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 fails to maintain any portion of the 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 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 if the PROPRIETOR does not complete the work, as appropriate, within the time set forth in the notice.

(P-7) 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-8) Prior to application for and issuance of any permits, to enter into an agreement with the CITY to design and construct, at PROPRIETOR'S expense, all necessary off-site sanitary sewer system improvements to ensure adequate utility capacity for the development to the satisfaction of the Public Services Area. ~~These improvements shall include the upsizing and/or construction of relief sanitary sewers downstream of this site in East Washington Street between South Main Street and South Fourth Avenue.~~ The construction plans for this these downtown sanitary sewer improvement ~~st analysis~~ must be completed before the issuance of any permits for the development. ~~T, and~~ the installation of the sanitary sewer improvements must be completed and ~~the sanitary sewer main(s)~~ placed into service prior to the issuance of the first certificate of occupancy. ~~The design and construction of these off-site utility system improvements necessary to accommodate the increase in service demand for this site development shall be the sole financial responsibility of the PROPRIETOR.~~ The CITY may

choose to financially participate in the necessary improvements, or elect to increase the size of the improvements at the CITY'S expense, at its own discretion.

(P-9) Prior to application for and issuance of certificates of occupancy, to disconnect 11 footing drains from the same sanitary sewer sub-basin as the project in accordance with the *Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor - Development Offset-Mitigation Program* (November 2005 edition, as amended). 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-10) Prior to the issuance of any certificates of occupancy for the planned unit development project, the PROPRIETOR shall provide no less than 70 off-street parking spaces, either in a public parking lot or structure, with a written agreement with the CITY and/or other public body. Alternately, the parking spaces may be provided privately off-site, if shown on an approved site plan. The parking spaces shall be provided until such time as City Council determines that the 70 spaces or any portion thereof are no longer required due to a material change in the use or size of the building.

(P-11) To perform periodic settlement surveys of adjacent historic buildings subject to permission of those owners, including prior to excavation or any other construction on or relative to this site. If no response or permission is given by adjacent property owners within 15 days after written notification by the PROPRIETOR, no surveys are required.

(P-12) To provide written notification to properties within 300 feet prior to construction offering the opportunity for the PROPRIETOR to perform video or other form of documentation of the foundation or other visible structural elements of these properties, and to offer this documentation at the cost of the PROPRIETOR. If no response or permission is given by each property owner within 300 feet within 15 days after written notification by the PROPRIETOR, no documentation is required.

(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 changes to the approved exterior 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) PROPRIETOR has a purchase agreement for the land described below, and prior to commencement of construction shall be 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-17) To pay for the cost of recording this Agreement with the Washtenaw County Register of Deeds.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve the 202 South Division Planned Unit Development Site Plan.

(C-2) To provide timely and reasonable CITY inspections as may be required during construction.

(C-3) To indemnify and hold the PROPRIETOR harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the PROPRIETOR based upon or resulting from any acts or omissions of the CITY, its employees, agents, subcontractors, invitees or licensees in the maintenance or repair of any of the City's Improvements required under this Agreement and the approved site plan.

(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 or delayed, and further provided that no prior consent or approval shall be required to an assignment to lenders providing financing for the construction of either or both of the project and Improvements.

(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:

The North 80 feet of Lot 8 and the North 80 feet of the East ½ of Lot 7, Block 2 South, Range 6 East, Original Plat of the City of Ann Arbor, as recorded in Transcript, Pages 152 and 153, Washtenaw County Records, EXCEPTING that part of Lot 8, included in Division Street; and

The South 41 feet of Lot 8 and the South 41 feet of the East ½ of Lot 7; also the South 11 feet of the North 91 feet of Lot 8 and the South 11 feet of the North 91 feet of the East

½ of Lot 7, Block 2 South, Range 6 East, Original Plat of the City of Ann Arbor, as recorded in Transcript, Pages 152 and 153, Washtenaw County Records, EXCEPTING AND RESERVING THEREFROM a right of driveway over a strip of land six feet in width across the South end of said above described lands, and also EXCEPTING that part of Lot 8 included in Division Street.

Parcel Identification Nos.: 09-09-29-112-004 and 09-09-29-112-003

(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

First ADT, LLC
9700 W. Higgins Road, Suite 810
Rosemont, Illinois 60018

Witness:

By: _____
~~Ira Urv~~ Stephen L. Schwartz

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2007, 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 _____, 2007, before me personally appeared Ira Urv, FHI, INC., 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