

**DAHLMANN COVENANTS / DEED RESTRICTIONS AND
HABITAT'S REQUESTED ACTIONS**

(350 S. Fifth Avenue, Ann Arbor)

In connection with the sale of the above-referenced property to Dennis Dahlmann, the City of Ann Arbor added a "Rider" to its Commercial Purchase Agreement to encourage the eventual development of the site by Mr. Dahlmann. At closing, this Rider was incorporated into a set of "Deed Restrictions" which currently encumber the property.

The Habitat Company LLC ("Habitat") has entered into a Purchase Agreement with Mr. Dahlmann to acquire the property, with the goal of developing the property into a spectacular market rate apartment building with commercial premises on the first floor and a substantial landscaped open space, including a plaza and fountain, in accordance with the Ann Arbor's expressed development goals for the site.

However, in order for Habitat, and its development team partners CA Ventures and Hughes Properties, to proceed with this acquisition, Habitat will need the City Council to amend the existing Covenants/Deed Restrictions. You will note that the majority of the items contained within the Covenants/Deed Restrictions are acceptable to us without modification. The only items for which we request a modification are those required to remove certain impediments to the design, development, financing and construction of the proposed building on this core unique downtown property. What is required is an amendment that would incorporate all of the items set forth below. We recognize that it would be impractical for the City's amendment to the existing Covenants/Deed Restrictions to take effect until the Habitat/CA/Hughes ("HCH") development team has acquired the property. Therefore, it is respectfully requested that the City approve this amendment in the very near future with the stipulation that the approved amendment would be held in escrow pending the HCH acquisition of the property from Mr. Dahlmann, at which point the amendment would be delivered by the City into the HCH closing escrow and recorded contemporaneously with the recording of the deed to the property.

<u>SECTION OF RIDER/DEED</u>	<u>COVENANT/ DEED RESTRICTION</u>	<u>REQUESTED ACTION</u>
1(i)	Construct a building with a minimum of 400% Maximum Usable Floor Area in Percentage of Lot Area (FAR)	Acceptable
1(ii)	Construct a building that includes retail/restaurant on first floor, large plate office space on second floor and residential apartments on remaining upper floors (with no residential apartment to exceed 3 bedrooms)	The 1 st floor will be a mixture of retail, restaurant or office usage. Our present intent is to have a grocery/convenience store as part of that tenant mix. No less than 14,000 SF (gross) of large plate office space on the 4 th floor. In lieu of subterranean parking, parking

		<p>will be on the 2nd and 3rd level. Office will be on the 4th Floor, with residential units located on the remaining upper floors (with no residential apartment exceeding 3 bedrooms).</p> <p>Placement of the office and residential units above the 3rd floor will minimize the impact on the tenants from the noise and fumes associated with the adjacent transportation center.</p>
1(iii)	Construct a substantial landscaped open space that has minimum of 10% of total square footage of property, including grand fountain.	Acceptable.
1(iv)	Construct a building and site plan that will adopt and be bound by the recommendations of the City's Design Review Board.	<p>Acceptable with modification.</p> <p>It is our intent to work closely with the Design Review Board to address any concerns that they may present during the review process. In order to achieve a mutually acceptable design, we will endeavor to incorporate the Board's requested modifications to our plans. We would however, have the right to appeal to the Planning Commission any decision of the Design Review Board which, in our professional opinion, would jeopardize the financial feasibility of the project.</p> <p>We will agree to present to the Design Review Board the site plan, elevations and other drawings as required which collectively delineate the sign design, building design, façade design and materials to be used, with sufficient information to understand the character and quality of the proposed project. We will agree to build the building and site improvements in substantial conformity to the intent presented in these drawings as submitted, and we will provide any supplemental information that the Design Review Board may reasonably request.</p>

1(v)	Construct parking on-site, in accordance with City ordinance requirements, with access to such parking affected via an <i>existing unobstructed City below-grade interconnection</i> with the City's Library Lane Parking Structure.	We will construct on-site parking to meet, at a minimum, the requirements of City ordinance. Hence, no contractual agreement for off-site parking from the City will be required. However, our plan does not include an interconnection to the Library Lane Parking Structure.
I(vi)	Construct building and site plan based on best available standards for energy efficiency as defined by Ann Arbor City Code.	Acceptable with clarification. We would agree to be bound by the energy efficient standards as defined by the Ann Arbor City Code Section 5.65(2)(c), in place at time of submittal, for the level of green building premiums, if any, requested as part of the Site Plan approval process.
2 / 1 st para. City's Right of Reversion	Title to property reverts to City if Owner fails to obtain a final C of O by 4/2/2018 , as extended. City's payment to Owner at time of reversion is the lesser of \$4.2M or appraised value of property at time of reversion.	We would request removal of this provision upon the last to occur of: a) receipt of a building permit for any portion of the project; b) construction commencement no later than 12/31/18; and c) closing on a construction loan. If requested by our construction lender, the City would agree to assign its Right of Reversion to such lender upon the closing of the construction loan.
3 / 3 rd para. City's Right of First Refusal on Sale of Property	City has the Right of First Refusal to acquire property for the lesser of sale, assignment or transfer price offered by 3 rd party, which right shall expire upon issuance of a final Certificate of Occupancy.	Requesting removal of this provision upon the last to occur of: a) receipt of a building permit for any portion of the project; b) construction commencement no later than 12/31/18; and c) closing on a construction loan. If requested by our construction lender, the City would agree to assign its Right of First Refusal to such lender upon the closing of the construction loan.
4 / 2	Engage in discussions with AAATA to determine whether Purchaser can help facilitate	Acceptable.

	AAATA's goal of limiting on-street bus transit and/or storage on Fifth and Williams within the immediate area of the Blake Transit Center	
5 / 3	Allow City to use a portion of roof of building to mount an antennae for wireless voice and data access, which antennae may not interfere with building's operations or with other vendor agreements in place at time of City's request.	<p>Acceptable, with modification, in that the Development Agreement shall include reasonable language clarifying that:</p> <ul style="list-style-type: none"> a) the City shall be responsible, at its sole cost, for the installation, maintenance and compliance with all governmental regulations associated with such antennae. b) prior written approval of Habitat shall be required to ensure that the antennae does not damage the structure of the building or roof. c) the City and all third party providers shall provide insurance naming Habitat and other reasonable parties as additional insureds, for an amount to be mutually agreed upon at the time of such installation. d) the City shall hold harmless Habitat and other reasonable parties from any liability associated with such antennae. e) Any contractor or third party provider that performs any work on such antennae (whether on behalf of the City or the third party provider) shall defend, indemnify and hold harmless Habitat for any property damage or personal injury arising from the installation, maintenance or operation of such antennae. f) Habitat would agree to allow the City to use a portion of the roof for such antennae, without payment of any rental fee.

All other terms and conditions of the Covenants/Deed Restrictions shall remain in full force and effect.