

830 HENRY DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2019, 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 Prentice Partners Ann Arbor, LLC, a Wyoming limited liability company, with principal address at 4420 Jackson Road, Suite 102, Ann Arbor, MI 48103, 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 830 Henry Street, and

WHEREAS, the DEVELOPER has had the Property surveyed, mapped and site planned as 830 Henry Street, and desires site plan and development agreement approval thereof, and

WHEREAS, on _____, City Council approved the 830 Henry Site Plan ("Site Plan") and 830 Henry Development 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 ensure 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 the 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.

(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 install all water mains, storm sewers, and sanitary sewers, 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-5) 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-6) 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 Improvements in the development prior to final written acceptance of the public Improvements 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 Improvements and until notice of acceptance by the CITY of the Improvements.

(P-7) For the benefit of the residents of the DEVELOPER'S development, to make a park contribution of \$6,875 to the CITY Parks and Recreation Services Unit prior to the issuance of certificates of occupancy for Improvements to Frisinger or Rose White Parks.

(P-8) To construct, repair and/or adequately maintain the 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-9) 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-10) 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-11) 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-12) 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 Agreement.

(P-14) 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-15) 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 830 Henry Street Site Plan.

(C-2) To use the park contribution described above for improvements to Rose White and/or Frisinger Park.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) 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:

THE LAND SITUATED IN THE CITY OF ANN ARBOR, COUNTY OF WASHTENAW, STATE OF MICHIGAN IS DESCRIBED AS FOLLOWS:

THE EAST 15.95 FEET OF LOT 5 AND ALL OF LOTS 6, 7 AND 8, BLOCK 9, HAMILTON ROSE AND SHEEHAN'S ADDITION, ACCORDING TO THE RECORDED PLAT THEREOF, AS RECORDED IN LIBER 1 OF PLAT(S), PAGE 24, WASHTENAW COUNTY RECORDS.

Parcel ID Nos.:09-09-33-316-007
09-09-33-316-008
09-09-33-316-009
09-09-33-316-010

(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. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

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

By: _____
Christopher Taylor, Mayor

The foregoing instrument was acknowledged before me this _____ day of _____, 201__
by Heidi Mitchell, _____ of Prentice Partners of Ann Arbor, LLC, a Wyoming limited
liability company, on behalf of the company.

NOTARY PUBLIC

County of _____, State of Michigan

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