

STATE OF MICHIGAN WASHTENAW COUNTY TRIAL COURT	<b>NOTICE OF MOTION HEARING AND PROOF OF SERVICE</b> <input type="checkbox"/> Re-Notice (check this box to re-schedule previous Notice of Motion Hearing filed with the Court)	Case No:
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101 E Huron St., P.O. Box 8645, Ann Arbor, Michigan 48107 (734)222-3001

Plaintiff Name: <b>Anne Bannister, and Sumi Kailasapathy</b>	v	Defendant Name: <b>City of Ann Arbor, Christopher Taylor, and Jaqueline Beaudry</b>
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\*\*\* FAILURE TO FILL IN ALL BLANKS ON THIS NOTICE OF MOTION HEARING FORM  
MAY RESULT IN THE COURT DECIDING NOT TO HEAR YOUR MOTION.\*\*\*

**Show Cause**

1. Motion Title(s): \_\_\_\_\_

2. Moving Party: Plaintiffs

Attorney for Moving Party: Eric B. Lipson (P 32939)

Phone Number of Attorney/Moving Party: (734) 417-3604

3. Responding Attorneys/Parties (include Bar No.(s))

\_\_\_\_\_ (P \_\_\_\_\_) \_\_\_\_\_ (P \_\_\_\_\_)

\_\_\_\_\_ (P \_\_\_\_\_) \_\_\_\_\_ (P \_\_\_\_\_)

4.  I have contacted opposing attorney/party and have been informed that this motion will / will not (CIRCLE ONE) be contested.

I have not contacted opposing attorney/party for the following reason: This motion accompanies a <sup>Complaint</sup> ~~Com~~ and Order to Show Cause so no Attorney has filed an Appearance for Defendants

5. **NOTICE OF HEARING:** The above motion(s) will be heard as follows:

Judge	Date	Time

\_\_\_\_\_  
Signature of moving attorney or party \_\_\_\_\_  
Date

**6. PROOF OF SERVICE:** If the hearing is regarding a Personal Protection Order, the other party must be served with all documents according to MCR 3.705(B)(2).

I certify that I served a copy of this document and the motion(s) referred to in this notice and \_\_\_\_\_

\_\_\_\_\_:

by regular mail at least 9 days before this hearing (14 days if default hearing), or

personally at least 7 days before this hearing (14 days if default hearing)

to the attorneys or parties (CIRCLE ONE OR BOTH) of record to their last known addresses as defined by MCR 2.107.

I declare that the statements above are true to the best of my information, knowledge, and belief.

\_\_\_\_\_  
Signature of person serving document \_\_\_\_\_  
Date

Approved, SCAO

<b>STATE OF MICHIGAN</b> JUDICIAL DISTRICT WASHTENAW JUDICIAL CIRCUIT COUNTY PROBATE	<b>APPEARANCE</b>	<b>CASE NO.</b>
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Court address \_\_\_\_\_ Court telephone no. \_\_\_\_\_

Plaintiff(s)/Petitioner(s) ANNE BANNISTER, and SUMI KAILASAPATHY	<b>v</b>	Defendant(s)/Respondent(s) CITY OF ANN ARBOR, CHRISTOPHER TAYLOR, and JAQUELINE BEAUDRY
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Probate In the matter of \_\_\_\_\_

Juvenile In the matter of \_\_\_\_\_

TO: Clerk of the court/Register, all attorneys of record, and unrepresented parties: Specify names and addresses.

Stephen Postema, City Attorney  
City of Ann Arbor, MI  
301 E. Huron St.  
Ann Arbor, MI 48107

I appear on behalf of Plaintiffs \_\_\_\_\_ as

attorney  guardian ad litem and request copies of all papers filed in this case.

Court appointed  Retained by Plaintiffs \_\_\_\_\_

I certify that I represent no other interest whatsoever of any party to this cause, except as follows:

6/18/2018  
Date

  
Signature

Eric B. Lipson P32939  
Name (type or print) Bar no.

1318 Rosewood St.  
Address  
Ann Arbor, MI 48104 734-417-3604

\_\_\_\_\_  
Firm name

\_\_\_\_\_  
City, state, zip Telephone no.



Note to Plaintiff: The summons is invalid unless served on or before its expiration date.

**SUMMONS AND COMPLAINT**

Case No. \_\_\_\_\_

**PROOF OF SERVICE**

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

**CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE**

<input type="checkbox"/> <b>OFFICER CERTIFICATE</b> I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)	OR	<input type="checkbox"/> <b>AFFIDAVIT OF PROCESS SERVER</b> Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)
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I served personally a copy of the summons and complaint.

I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with \_\_\_\_\_  
 List all documents served with the Summons and Complaint

\_\_\_\_\_ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Compleat address(es) of service	Day, date, time

I declare that the statements above are true to the best of my information, knowledge, and belief.

Service fee	Miles traveled	Fee		Signature
\$		\$		_____
Incorrect address fee	Miles traveled	Fee	<b>TOTAL FEE</b>	Name (type or print)
\$		\$	\$	_____
				Title
				_____

Subscribed and sworn to before me on \_\_\_\_\_, \_\_\_\_\_ County, Michigan.  
 Date

My commission expires: \_\_\_\_\_ Date Signature: \_\_\_\_\_  
 Deputy court clerk/Notary public

Notary public, State of Michigan, County of \_\_\_\_\_

**ACKNOWLEDGMENT OF SERVICE**

I acknowledge that I have received service of the summons and complaint, together with \_\_\_\_\_ Attachments

\_\_\_\_\_ on \_\_\_\_\_  
 Day, date, time

\_\_\_\_\_ on behalf of \_\_\_\_\_

Signature

STATE OF MICHIGAN  
WASHTENAW COUNTY TRIAL COURT

Anne Bannister, and Sumi  
Kailasapathy

Plaintiffs,

V

Case No.  
Hon.

City of Ann Arbor, Christopher Taylor  
and Jacqueline Beaudry

Defendants.

There is no other pending or resolved civil action arising out of the transaction or occurrence alleged in the complaint.

---

Eric B. Lipson, (P32939)  
1318 Rosewood Street  
Ann Arbor, MI  
Attorney for Plaintiffs  
(734) 417-3604

**VERIFIED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF**

Plaintiffs, by their attorney, complain regarding defendants as follows:

PARTIES

1. Anne Bannister is an Ann Arbor resident, taxpayer and member of the Ann Arbor City Council.
2. Sumi Kailasapathy is an Ann Arbor resident, taxpayer, and member of the Ann Arbor City Council.
3. The City of Ann Arbor is a Michigan municipal corporation having its offices in the City of Ann Arbor.
4. Christopher Taylor is the Mayor of the City of Ann Arbor.

5. Jacqueline Beaudry is the Ann Arbor City Clerk.

#### FACTS

6. Section 14.1 of the Ann Arbor City charter states:

(a) The authority to authorize the making of contracts on behalf of the City is vested in the Council and, except as otherwise provided by this charter, shall be exercised in accordance with the provisions of law and this chapter.

(b) All contracts, except as otherwise provided in this charter or by ordinance of the Council in accordance with the provisions of Section 14.2 of this charter, shall be approved by the Council and shall be signed on behalf of the City by the Mayor and the Clerk.

7. Subsection 14.3(a) of the Ann Arbor City Charter states:

The City shall not purchase, sell, or lease any real estate or any interest therein except by resolution concurred in by at least eight members of the Council.

8. On or about April 17, 2017 the Ann Arbor City Council approved a resolution containing a proposal for selling the air rights over the City parking structure on Fifth Avenue adjacent to the District Library building. A copy of the resolution is attached Exhibit A.

9. No contract was presented to or approved by the Ann Arbor City Council in connection with the resolution.

10. The resolution stated:

RESOLVED, That the Mayor, Clerk and City Administrator be authorized to execute necessary documentation, after approval as to form and substance by the City Attorney, to complete the sale of the above ground development rights of 319 S. Fifth Ave.

11. However, the City Council has no authority to delegate its power to approve contracts.

12. On May 31, 2018, Defendants Taylor and Beaudry signed what purported to be a contract for the sale of air rights to 319 S. Fifth Avenue, Ann Arbor to Core Spaces.

13. The document signed by Defendants Taylor and Beaudry was not presented to or approved by the Ann Arbor City Council.

14. Plaintiff Bannister avers that she first saw the purported contract when it was emailed to her

on June 6, 2018, and has had no opportunity to exercise her authority to approve or disapprove it. As the document emailed to her was 168 pages long, she has not had a chance to fully review it.

15. Plaintiff Bannister avers that she justly fears that unauthorized execution of the purported contract will subject the City to substantial liability that will require payment with tax funds.
16. Plaintiff Kailasapathy avers that she first saw the purported contract when it was emailed to her on June 6, 2018, and has had no opportunity to exercise her authority to approve or disapprove it. As the document emailed to her was 168 pages long, she has not had a chance to fully review it.
17. Plaintiff Kailasapathy avers that she justly fears that unauthorized execution of the purported contract will subject the City to substantial liability that will require payment with tax funds.
18. Plaintiffs aver that they are being denied their rights as members of city council to vote on contracts pursuant to City Charter Chapter 14 and that their constituents are being denied their rights to representation.
19. A preliminary injunction is necessary to prevent irreparable harms and to preserve the status quo until a determination can be made on the merits.

#### RELIEF REQUESTED

Plaintiffs request the Court to provide the following relief.

- A. A declaration that the purported contract signed on May 31, 2018 is invalid for any purpose.
- B. An injunction prohibiting any action by Defendants in furtherance of the purported contract unless approved by an 8-vote majority of the City Council.
- C. A preliminary injunction forbidding Defendants from taking any action in furtherance of the

purported contract until further order of the Court.

Eric B. Lipson Dated: June 13, 2018

Eric B. Lipson, (P32939)  
1318 Rosewood Street,  
Ann Arbor, MI 48104  
(734) 417-3604  
Attorney for Plaintiffs

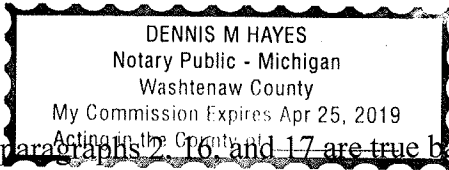
VERIFICATIONS

Anne Bannister states that the allegations of paragraphs 1, 14 and 15 are true based on her personal knowledge.

Anne Bannister  
Anne Bannister

Subscribed and sworn to before me by the above-signed Plaintiff on June 13, 2018

Notary Public, Dennis M Hayes  
My commission expires on \_\_\_\_\_  
Acting in: Washtenaw County

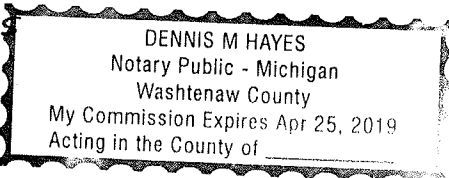


Sumi Kailasapathy states that the allegations of paragraphs 2, 16, and 17 are true based on her personal knowledge.

Sumi Kailasapathy  
Sumi Kailasapathy

Subscribed and sworn to before me by the above-signed Plaintiff on June 13, 2018.

Dennis M Hayes  
Notary Public,  
Acting in: Washtenaw  
My commission expires on \_\_\_\_\_







# City of Ann Arbor

301 E. Huron St.  
Ann Arbor, MI 48104  
<http://a2gov.legistar.com/Calendar.aspx>

## Legislation Details (With Text)

**File #:** 16-1560      **Version:** 2      **Name:** 4/17/2017 Resolution to Authorize the Sale of Development Rights 319 S. Fifth to Core Spaces

**Type:** Resolution      **Status:** Passed

**File created:** 4/17/2017      **In control:** City Council

**On agenda:** 4/17/2017      **Final action:** 4/17/2017

**Enactment date:** 4/17/2017      **Enactment #:** R-17-121

**Title:** Resolution to Authorize the Sale of Development Rights above the City's Underground Parking Structure Located at 319 S. Fifth Ave. to Core Spaces and Appropriate Funds for Outside Legal Services (8 Votes Required)

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Core Spaces Memorandum 3.9.17.pdf, 2. Core Summary.pdf, 3. Council Work Session - updated.pdf

Date	Ver.	Action By	Action	Result
4/17/2017	1	City Council		
4/17/2017	2	City Council	Amended	Pass
4/17/2017	2	City Council	Postponed	Fail
4/17/2017	2	City Council	Approved as Amended	Pass

Resolution to Authorize the Sale of Development Rights above the City's Underground Parking Structure Located at 319 S. Fifth Ave. to Core Spaces and Appropriate Funds for Outside Legal Services **(8 Votes Required)**

On January 19, 2016, City Council passed a resolution (R-16-021) directing City staff to negotiate a Sales Agreement for 319 S. Fifth Ave (also known as the "Library Lot") with Core Spaces. Council directed the terms of the sale to include the terms in the Core Spaces' response to the City's Offering Memorandum and requested that the following additional community benefits be included in a negotiated sale agreement, if such terms could be reached with Core:

- The inclusion of 10% of all housing units as workforce housing (affordable housing for lower income households, as defined by Ann Arbor City Code, rented at 60% to 80% of AMLI), with possible funding to offset lower rental revenue to be provided by the Ann Arbor Downtown Development Authority and the City of Ann Arbor;
- A higher level of LEED certification than the proposed LEED silver designation (with preference of LEED platinum), or proof of the inclusion of additional resource and energy efficient construction and building performance standards equivalent to such higher level of LEED certification;
- Building and site design that provides improved pedestrian connectivity from Fifth Avenue to Liberty Plaza Park, as well as from Blake Transit Center to the site.

Council discussion at the time Resolution R-16-021 was adopted also reflected interest in the following:

- Sufficiency of parking for the facility (estimated to at the time be approx. 200 spaces)
- The building design should adhere to the City of Ann Arbor Downtown Design Guidelines
- The Public Plaza should be operated and maintained by Core Spaces but with public use of the site consistent with a City park.

The City has completed negotiations and in response, Core Spaces has provided a written supplement to their proposal, attached hereto, that addresses these items.

The Administration recommends that Council authorize the sale of the development rights to Core Spaces consistent with Core Spaces' response to the City's Offering Memorandum and the attached negotiated terms. The Administration further recommends that Council direct staff to prepare documents for the sale of the development rights that incorporate the requirement that 12% of the housing units be workforce housing units at 150% of Fair Market Rent available to households with incomes between 60% and 100% of AMI (equivalent to \$1,023.00/mo for a studio, \$1,153.00 for an efficiency, & \$1,276.00 for a one bedroom at the FY2016 HUD rates.)

Staff also recommends that the City request that the DDA consider funding all or a portion of an additional 2.5% of workforce housing units at 150% of Fair Market Rent for up to \$1,475,000.00 from its Housing Fund.

Authorizing the sale of the development rights to Core Spaces will complete the award process for the sale. It will not alter the City's site plan process. Core Spaces will still be required to follow the City site plan review process including design review, Planning Commission recommendation, and site plan approval by City Council. Likewise, Council authorization of this resolution will not alter the requirement for Council approval of other agreements related to, but not incorporated into, the sale agreement. Closing will be scheduled in accordance with the terms of the sales agreement and the conclusion of all necessary due diligence by the parties.

The City Attorney's Office will complete all transaction documents with the assistance of outside counsel. We anticipate an initial contract to complete the sale agreement and to assess and begin drafting other transaction documents of \$25,000.00. An appropriation transferring funds from the General Fund fund balance to the FY17 Finance Administration budget for this purpose is included in this authorization.

Prepared by: Tom Crawford, CFO/Finance and Administrative Services Area Administrator  
Reviewed by: Kevin McDonald, Senior Assistant City Attorney and Mary Joan Fales, Senior Assistant City Attorney

Approved by: Howard S. Lazarus, City Administrator

Whereas, The City Council directed staff on January 19, 2016 to enter into exclusive negotiation with Core Spaces in anticipation of a recommended sale of the above ground development rights to 319 South Fifth (i.e., excluding the underground public parking structure) with the request to incorporate a number of desired terms (R-16-021);

Whereas, The City Administration and the City Attorney's Office engaged Core Spaces based on the terms identified by Council in Resolution R-16-021 and Core Spaces has responded in the attached supplemental letter describing the additional provisions of the proposed agreement;

Whereas, Core Spaces has provided the option of 12% of the housing units as workforce housing being incorporated at 150% or 120% of Fair Market Rent;

Whereas, Core Spaces has offered an additional 2.5% of the units (9 units) at 150% of Fair Market Rent upon receipt of \$1,475,000.00; and

Whereas, Staff believes the sale of the property under the proposed terms represents a public benefit to the City;

RESOLVED, That City Council authorize the sale of the above ground development rights of 319 S. Fifth Ave. to Core Spaces with the terms stated in Core Spaces' response to the City's Offering Memorandum, Core Spaces' Supplemental Letter and the additional terms stated in this Resolution, contingent on receipt of a public advice memorandum from outside bond counsel that the proposed Core Spaces project and the use of the bond financing for infrastructure does not threaten the tax advantaged status of the Build America Bonds used to finance the underground parking structure and related infrastructure;

RESOLVED, That City Council waives any attorney-client privilege necessary to allow outside bond counsel to prepare the above advice memorandum in a form that is suitable for public distribution;

RESOLVED, That the terms of the agreement shall incorporate 12% of the units to be workforce housing at 150% of Fair Market Rent for household incomes ranging from 60% to 80% AMI;

RESOLVED, That the terms of the agreement shall also incorporate the optional additional 2.5% of units of workforce housing at 120% of Fair Market Rent for household incomes ranging from 50% to 80% of AMI in exchange for the payment of \$1,475,000.00 and that Council requests that the DDA consider this purchase from its Housing Fund;

RESOLVED, That City Council approve an appropriation of \$25,000.00 from the General Fund fund balance to the FY17 Finance Administration budget and increase the FY17 Finance Administration budgeted expenditures for legal services for the sale of the 319 S. Fifth Development Rights, with the funds to be available for expenditure without regard to fiscal year; and

RESOLVED, That the Mayor, Clerk and City Administrator be authorized to execute necessary documentation, after approval as to form and substance by the City Attorney, to complete the sale of the above ground development rights of 319 S. Fifth Ave.

**As Amended and Approved by Ann Arbor City Council on April 17, 2017**



## MEMORANDUM

DATE: March 9, 2017

TO: City of Ann Arbor  
C/o Tom Crawford and Kevin McDonald

RE: 5<sup>th</sup> and Library Purchase Contract Deal Points

The Core Spaces team remains extremely excited about this development and is greatly appreciative for the opportunity to be in exclusive negotiations on a Purchase Agreement with the City for the acquisition of the subject property. To further our commitments stated within our proposal, we have worked with the City on identifying additional deal points that will become commitments and obligations of both parties upon adding them to a Purchase Agreement. The purpose of this memorandum is to outline the major deal points and provide more detail on how we propose to structure these into an Agreement. The specific details on several points remain open to further negotiation and discussion. Below is the outline of the proposed deal points:

### **Workforce Housing:**

To meet the goal established in the Amendment to the Resolution to provide 10% workforce housing, we offer the following:

- Core Spaces will commit to leasing up to 12% (43 units) of the currently anticipated 354 apartment units at rental rates based on 150% of Fair Market Rents (FMRs) at the time the units are leased. See attached memo delineating the current rents and related calculations method. (FMRs include the amount of all tenant-paid water, sewer, electric and gas expenses.)
- Instead of 12% of the units at 150% FMR, Core Spaces will commit to leasing up to 9% (32 units) of the currently anticipated 354 units at 120% of FMR at the time the units are leased.
- Additionally, Core Spaces will commit to increasing the percentage of units offered at 150% FMR from 12% to 14.5% (an additional nine units) with a contribution from the City to make up the loss in value as a result of a decrease in net operating income. The contribution from the City would be \$1,475,000.
- The workforce units offered will be limited to a mix of efficiencies, studios, and one bedroom units.



each calendar year. The number of leased parking permits shall never exceed the totals above, but during the first three years the total number of leased permits can fluctuate upward and downward by a maximum number of 50 permits. After the first three years, Core Spaces shall be allowed to permanently reduce the overall number of parking permits to the minimum amount of parking required by Ann Arbor City Code.

- Core Spaces may elect, at its sole discretion, and with 90 days prior notice to the Downtown Development Authority, to release a portion of the 196 parking permits at the Library Lane Structure so that these permits may be used to accommodate other needs unrelated to the development. In that event, and subject to availability as determined by the Downtown Development Authority, the number of parking permits released shall still be provided in the Fourth and William Structure.
- Core Spaces shall be permitted to sublease parking permits to its residential tenants, hotel operator (including guest parking) and other entities that operate within the property including, but not limited to, office tenants and retail tenants, including employees of above, as well as for visitor and customer use. Core Spaces will have complete and sole discretion as to the rate it charges its sub-lessee (rental rate charged to sublessee can be more than or less than the rate that Core Spaces pays to the Downtown Development Authority).
- Core Spaces shall not allow its lessees to sublease parking permits and shall include language prohibiting subleasing in all of its leases associated with the proposed development. Unauthorized subletting of parking permits shall make those permits subject to cancellation.
- Core Spaces shall be allowed to permanently reduce at any time the overall number of parking permits to the minimum amount of parking required by Ann Arbor City Code.
- The agreement will be for a 20-year term with two 15-year renewal terms, which will be similar to the terms offered in other Downtown Development Authority parking contracts.

#### **Design:**

The design developed for the Library Lane project shall adhere to the City of Ann Arbor Downtown Design Guidelines with additional consideration for the Design Element Priorities outlined within the Ann Arbor Downtown Street Design Manual. This high-quality development commits to enhancing the street-level pedestrian experience, and to contributing to the vitality of downtown and identity of the Midtown Character District.

- Core Spaces shall be obligated to follow the Downtown Design Guidelines. As part of that obligation, the project will be presented to the Ann Arbor Design Review Board. The project shall be reviewed by the City's Design Review Board consistent with the requirements of Ann Arbor City Code. In addition to this required review, CORE shall present the Project to the Design Review Board a second time in order to provide an additional opportunity for review and comment by the Board.
- The approach to design for context and site planning shall include reinforcing the positive characteristics of adjacent sites and enriching the pedestrian experience through the use of



### **Building Design:**

- The lower floors shall be differentiated architecturally from the remainder of the building.
- Construction will be of high-quality materials including stone, brick, glass, metal panels, steel, and glass mullion system. No vinyl, EIFS, composite materials such as fiber cement paneling or siding will be utilized.
- The height of the street level floor, from finished floor level to ceiling shall be between 15-20 feet.
- Glazing on the upper level of the building on all facades shall utilize vision glazing to the maximum extent permitted by the current energy code. The current energy code limits the use of vision glass to a maximum of 40% within residential portions of the building. To the extent possible, CORE will attempt to maximize glazing on the south, east and west facades. Use of any reflective or high tinted glass shall not count toward this goal.
- A minimum Floor Area Ratio of 500% shall be achieved on the site.
- Primary building entrances shall be highlighted with lighting, signage, materials, and detailing. Primary entrances shall be recessed off the sidewalk to limit high-pedestrian entry conflicts.
- Provide pedestrian-oriented uses on Fifth and Library Lane facades. No more than 25% of these facades shall be occupied by uses which have no need for or discourage walk-in traffic.
- A minimum of 70% of the pedestrian level facing the Public Plaza shall be transparent windows and doors. These transparent windows shall remain free of curtains, decals, window displays, or other visual obstructions by tenants or occupants, with the exception of retail business signs and retail business displays.

### **Streetscape/Pedestrian:**

- There will be a pedestrian pathway around the building of at least 10 feet in width except on the east side of the building. On the east side of the building, the pedestrian path will be approximately 6 feet in width due to the existing north-south driveway access.
- A minimum of 60% of the street floor level shall be transparent windows and doors along the 5th Ave and Library Lane facing facades.
- Overhead cover shall be provided that offers adequate pedestrian protection from rain and snow, along the Fifth and Library Lane facades.

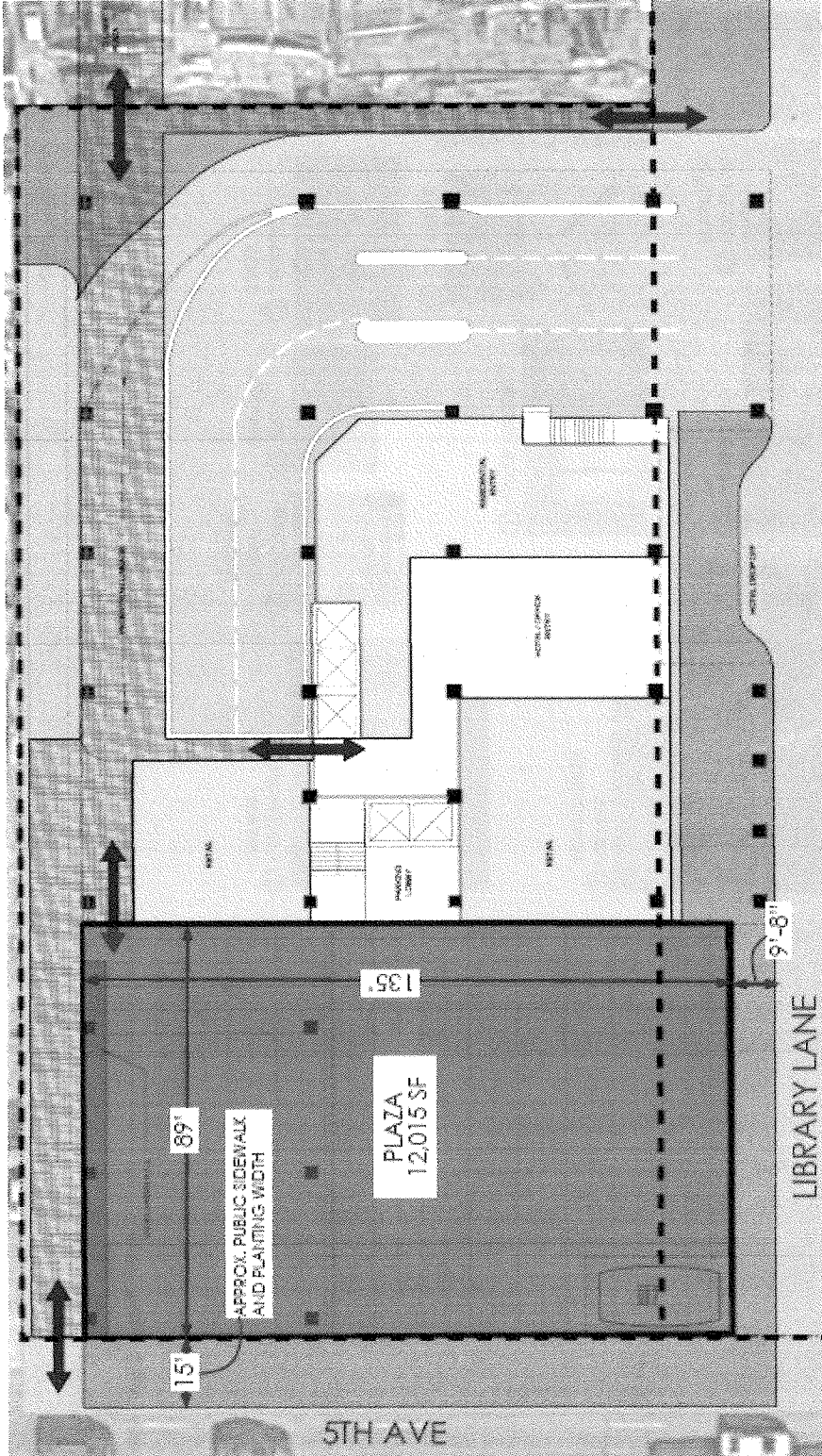


We look forward to finalizing the Purchase Agreement and taking the next step towards a magnificent development which will further enhance the City of Ann Arbor.

Sincerely,

Tom Harrington, Jr.  
Core Spaces, LLC

Cc: Eric Grimm  
Marc Lifshin  
Brian Neiswender



03.17.2016

PLAZA AREA PLAN  
SCALE 1" = 20'



COLLECTIVE ON 5TH





**SENT VIA EMAIL**

From: Mitch Dalton  
 2234 W North Ave  
 Chicago, IL 60647

**RE: MI - Ann Arbor - Library Lane  
 FY2016 Fair Market Rent (FMR) Geography Summary for Ann Arbor, MI MSA**

The Office of Management and Budget release new Core Based Statistical Area definitions in February 2013. The Census American Community Survey incorporated these definitions in the ACS2013 release, which are the basis for FY2016 Fair Market Rents. HUD has elected to continue use of the pre-2013 definitions except where the post-2013 definitions result in a smaller FMR area. This is consistent with HUD's objective to maximize tenant choice by allowing FMRs to vary locally.

HUD determines the Fair Market Rent by doing a rental market study and uses the 40th percentile of rental rates by unit size from the previous 2 years (not including new units and subsidized units).

**Final FY 2016 FMRs By Unit Bedrooms**

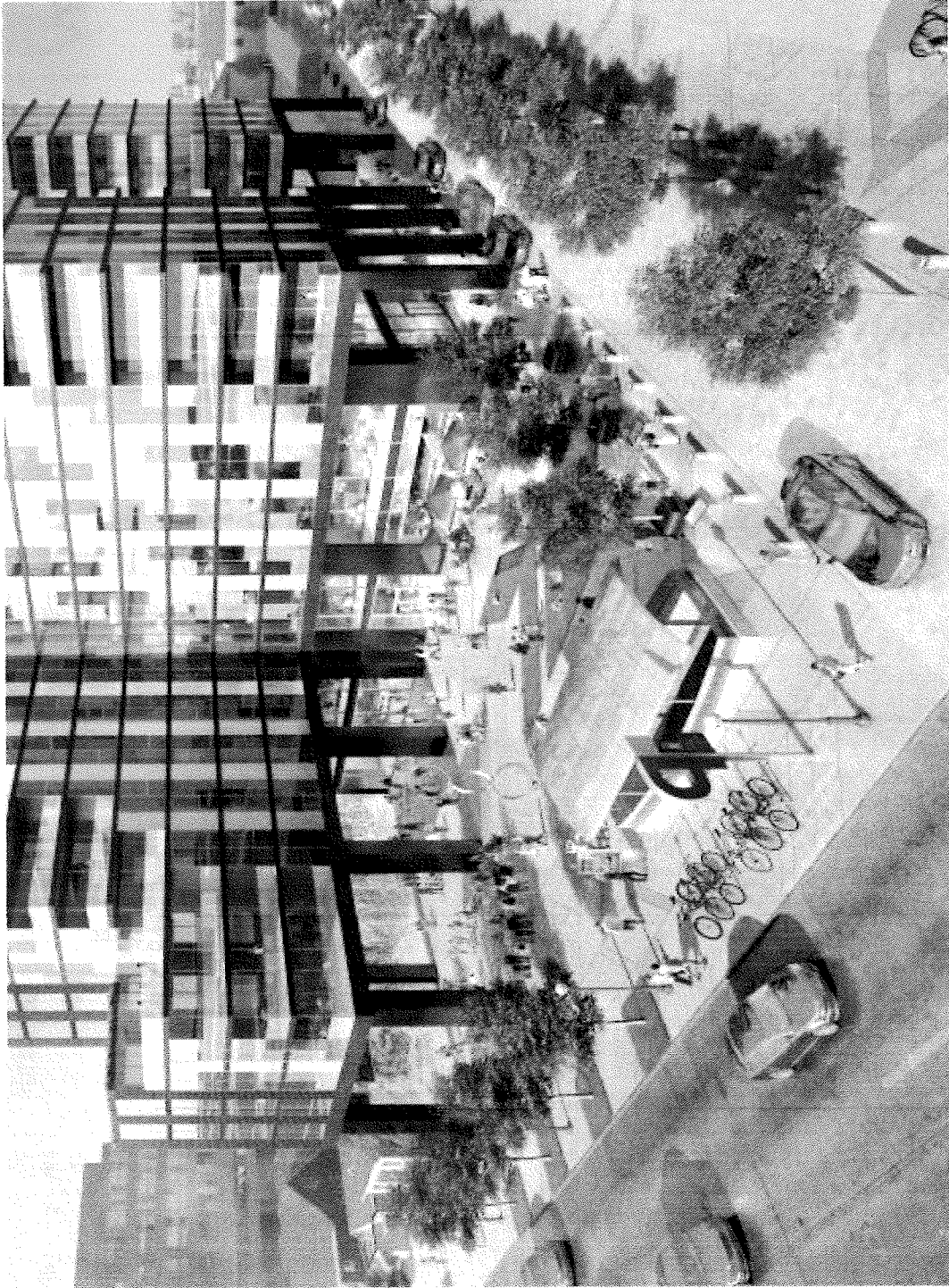
	<b>Efficiency</b>	<b>1 Bedroom</b>	<b>2 Bedrooms</b>	<b>3 Bedrooms</b>	<b>4 Bedrooms</b>
<b>Per Unit</b>	\$769.00	\$851.00	\$1,019.00	\$1,396.00	\$1,779.00
<b>Per Bed</b>	\$769.00	\$851.00	\$509.50	\$465.33	\$444.75
<b>120%</b>	\$922.80	\$1,021.20	\$611.40	\$558.40	\$533.70
<b>150%</b>	\$1,153.50	\$1,276.50	\$764.25	\$698.00	\$667.13

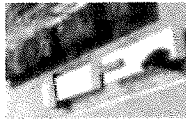
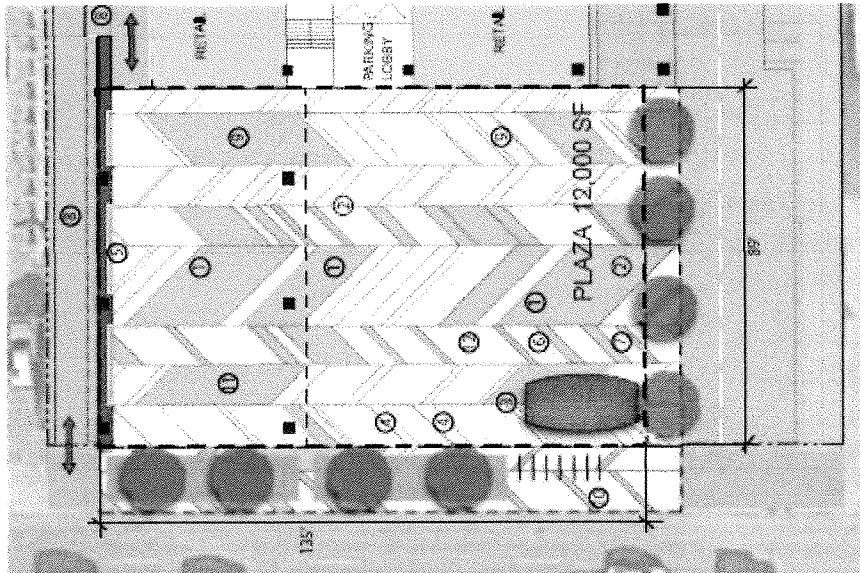
	<b>2015 FMR - 150%</b>	<b>Proforma - 150% FMR</b>	<b>2016 FMR - 150%</b>
<b>Efficiency</b>	-	\$1,023	\$1,153.50
<b>Studio</b>	-	\$1,023	\$1,153.50
<b>1 Bedroom</b>	1204.5	\$1,095	\$1,276.50
<b>2 Bedrooms</b>	1426.5	\$647	\$764.25

**Fair Market Rent Calculation Methodology**

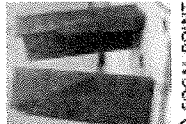
Fair Market Rents for metropolitan areas and non-metropolitan FMR areas are developed as follows:

1. 2009-2013 5-year American Community Survey (ACS) estimates of 2-bedroom adjusted standard quality gross rents calculated for each FMR area are used as the new basis for





④ SEATING PLATFORM



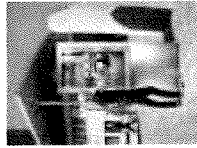
③ FOCAL POINT SCULPTURE



② GARDEN PLAZA



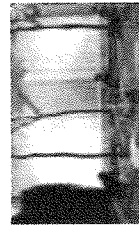
① FLEXIBLE ACTIVITY AREA



⑦ INFORMATION SPOT



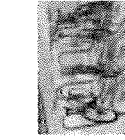
⑥ CHILDREN'S AREA



⑤ WATER FEATURE



⑧ PEDESTRIAN LINKAGE



⑪ BIKE PARKING



⑨ OUTDOOR DINING TERRACE



⑩ REMOVABLE STAGE



⑫ PLAZA FOUNTAIN

STATE OF MICHIGAN  
WASHTENAW COUNTY TRIAL COURT

Anne Bannister, and Sumi  
Kailasapathy

Plaintiffs,

V

Case No.  
Hon.

City of Ann Arbor, Christopher Taylor  
and Jacqueline Beaudry

Defendants.

---

Eric B. Lipson, (P32939)  
1318 Rosewood Street  
Ann Arbor, MI  
Attorney for Plaintiffs  
(734) 417-3604

**PLAINTIFFS' BRIEF IN SUPPORT OF PRELIMINARY INJUNCTION**

FACTS

Defendant City of Ann Arbor is the owner of a parcel of land adjacent to the District Library building on Fifth Avenue where it has built a parking structure. On April 17, 2017, the Ann Arbor City Council passed a resolution approving a proposal to sell the air rights over the parking structure for ten million dollars. No contract for the sale was presented to or approved by the City Council. However, the resolution stated.

RESOLVED, That the Mayor, Clerk and City Administrator be authorized to execute necessary documentation, after approval as to form and substance by the City Attorney, to complete the sale of the above ground development rights of 319 S. Fifth Ave.

Without further approval of the City Council, on May 31, 2018 the Mayor and City Clerk signed what purported to be a contract to convey the aforementioned air rights. Plaintiffs

Kailasapathy and Bannister are members of the City Council. They were given no opportunity to see or vote on the approval of the purported contract before it was signed.

The City of Ann Arbor is organized under a charter adopted pursuant to the Home Rule Cities Act, MCL § 117.1 et seq. Under the charter, contract authority of the City is provided in Chapter 14. Section 14.1, 14.2 and 14.3 as follows:

SECTION 14.1.

(a) The authority to authorize the making of contracts on behalf of the City is vested in the Council and, except as otherwise provided by this charter, shall be exercised in accordance with the provisions of law and this chapter.

(b) All contracts, except as otherwise provided in this charter or by ordinance of the Council in accordance with the provisions of Section 14.2 of this charter, shall be approved by the Council and shall be signed on behalf of the City by the Mayor and the Clerk.

SECTION 14.2.

The Council shall by ordinance establish the procedures for contracts for all services and for the purchase and sale of personal property under the direction of the City Administrator. The ordinance shall provide the dollar limit within which purchases of personal property may be made without the necessity of securing competitive bids, and the dollar limit within which purchases may be made and contracts for services entered into without the necessity of council approval. Such dollar limits shall, in no case, exceed twenty-five thousand dollars (\$25,000.00). No purchase shall be made or service contract entered into unless a sufficient appropriation is available.

SECTION 14.3.

(a) The City shall not purchase, sell, or lease any real estate or any interest therein except by resolution concurred in by at least eight members of the Council.

(b) The City shall not sell without the approval, by a majority vote of the electors of the City voting on the question at a regular or special election, any City park, or land in the City acquired for park, cemetery, or any part thereof.

Nowhere in the Charter is there any delegation of the City Council's contract authority other than in the limited delegation for purchases provided in Section 14.2.

Plaintiffs Kailasapathy and Bannister have filed a verified complaint with this court asserting that the execution of the contract without City Council approval violates their rights as City

Council members and taxpayers. The purported contract calls for the execution of a deed conveying the City's air rights over the parking structure. The contract purports to authorize the deeding of the property at any time. Accordingly, the complaint requests that the Defendants be enjoined from executing the deed. It also requests that this Court enter a judgment declaring the contract document to be void of legal effect.

## DISCUSSION

### **Preliminary Injunction Standards**

MCR 3.310 authorizes the Court to issue preliminary injunctions. The standards for issuing a preliminary injunction were described in *Michigan State AFL-CIO v Secretary of State*, 230 Mich App 1, 583 NW.2d 701 (1998):

In determining whether to issue a preliminary injunction, a court must consider four factors: (1) harm to the public interest if the injunction issues; (2) whether harm to the applicant in the absence of temporary relief outweighs the harm to the opposing party if relief is granted; (3) the likelihood that the applicant will prevail on the merits; and (4) a demonstration that the applicant will suffer irreparable injury if the relief is not granted. Other considerations surrounding the issuance of a preliminary injunction are whether it will preserve the status quo so that a final hearing can be held without either party having been injured and whether it will grant one of the parties final relief prior to a hearing on the merits. The trial court's decision must not be arbitrary and must be based on the facts of the particular case.

Applying these standards to the present situation, we see that temporarily enjoining the sale creates no harm to the public interest. It would promote it. It would not harm the Defendants' interest. It may well help them. Allowing the Defendants to try to convey away its interest in public land may create a mess beyond the ability of a court to repair. Deeding away an interest in city-owned real estate could create a cloud on the title that would take years to clear up. There is also the potential for liability of the individual defendants for executing sale documents without authority. See the discussion of warranty of authority in *Kaminskas v.*

*Litnianski*, 51 MichApp 40, 214 NW2d 331 (1973)

The above basis of personal liability has been categorized as a breach of implied warranty of authority and has been adopted in Michigan:

'It is well settled that where an agent undertakes to contract on behalf of another, and contracts in a manner which is not binding on his principal, he will be personally responsible, as he is presumed to know the exact extent of his authority.' *Newberry v. Slafter*, 98 Mich. 468, 471, 57 N.W. 574, 575 (1894).

In view of the lack of authority to convey City land without approval of the City Council, it is hard to believe a title insurance policy can be issued for the transaction. However, if one is issued and Defendant Mayor and Clerk sign a deed, It is likely to greatly diminish the value of the land involved and cause significant losses to taxpayers including Plaintiffs. It certainly would deprive Plaintiffs of their voting rights as Council Members.

#### **The Plain Language of the Charter Demonstrates Plaintiffs Will Prevail on the Merits**

In *McCormick v Carrier*, 487 Mich. 180, 192, 795 NW2d 517 (2010), The Michigan Supreme described the plain language rule of construction as follows:

The primary goal of statutory construction is to give effect to the Legislature's intent. *Briggs Tax Serv., L.L.C. v. Detroit Pub. Sch.*, 485 Mich. 69, 76, 780 N.W.2d 753 (2010). This Court begins by reviewing the language of the statute, and, if the language is clear and unambiguous, it is presumed that the Legislature intended the meaning expressed in the statute. *Id.* Judicial construction of an unambiguous statute is neither required nor permitted.

The Charter's language concerning the City Council's authority to approve contracts could not be clearer. Furthermore, all room for interpretation is eliminated by the delegation of purchase contract authority in section 14.3. That brings up the interpretation rule with language that is not so clear because it is in Latin, *expressio unius est exclusio alterius*. Put simply: "The doctrine characterizes the general practice that when people say one thing they do not mean something else." *Detroit City Council v Mayor of Detroit*, 283 MichApp 442, 770

NW2d 117 (2009). The City Charter's delegation of authority for purchases under \$25,000 leaves no room for interpretation that the Charter was intended to permit other delegations of contract authority.

Where a city charter clearly spells out the authority of the legislative body, a delegation of that authority cannot be implied. In *Scovill v City of Ypsilanti*, 207 Mich 288, 174 NW 139 (1919) there was a claim that the City Council's authority to approve road improvements had been delegated to the electors. The court noted:

The authority to order and direct paving and other improvements of the city's highways, and the power of taxation to raise funds for that and other municipal purposes, rests in the city council. The council cannot, by resort to a 'special election' under the statute referred to, shirk that duty, delegate its authority.

Had the Ann Arbor City Council given the administration authority to negotiate a contract for final approval by the City Council there would not have been a problem. In *Morrison v City of East Lansing*, 255 MichApp 505, 523, 660 N.W.2d 395, (2003), the court stated:

Where the delegating entity retains the ultimate decision-making authority, the delegation is lawful. *Federated Publications, Inc. v. Michigan State Univ. Bd. of Trustees*, 221 Mich.App. 103, 120, 561 N.W.2d 433 (1997), rev'd on other grounds 460 Mich. 75, 594 N.W.2d 491 (1999); see also *Attorney Gen. v. Guy*, 334 Mich. 694, 705, 55 N.W.2d 210 (1952) (a city council did not unlawfully delegate its authority when it sought a recommendation, but retained the authority to decide whether to act on the recommendation); cf. *Herald*, supra at 132 & n. 15, 614 N.W.2d 873.

Here, plaintiffs do not dispute that the city council retained the final decision-making authority, but continue to challenge the HBC's conduct, including its acts and omissions in arriving at its recommendation. Because the city council did not delegate the final decision-making authority, the delegation was proper.

In the present case, there was no retention of the final decision-making authority. The mayor and city clerk signed a contract of sale without even presenting the contract to the City Council. See attached Exhibit A. Plaintiffs were not even provided a copy of the contract until

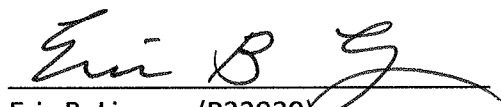


after it was signed.

The resolution approving the proposed sale was also improper because it had the effect of restricting the authority of Plaintiffs to vote on approval of the actual sale contract. In *City of Hazel Park v. Potter*, 169 Mich.App.714, 720, 426 N.W.2d 789 (1988), an outgoing city council tried to protect the city manager by entering a contract which would prevent the incoming council from exercising its authority under the charter to remove the city manager. The court found that attempt to restrict authority under the charter rendered the employment contract invalid. To the extent that the resolution of the City to approve the sale proposal prevented Plaintiffs from exercising their authority to approve the contract it was illegal and must be so declared by this Court.

RELIEF

Plaintiffs request that the Court preserve the status quo by entering a preliminary injunction forbidding Defendants from executing a deed to the property until further order of the Court.



18 June 2018

Eric B. Lipson, (P32939)  
1318 Rosewood Street  
Ann Arbor, MI  
Attorney for Plaintiffs  
(734) 417-3604

This Agreement is executed as of the date first set forth above.

SELLER: CITY OF ANN ARBOR, a Michigan municipal corporation

By: Christopher M. Taylor  
Name: Christopher M. Taylor  
Title: Mayor  
Dated: May 31, 2018

By: Jacqueline Beaudry  
Name: Jacqueline Beaudry  
Title: Clerk  
Dated: May 31, 2018

Approved as to Substance:

By: Howard S. Lazarus  
Name: Howard S. Lazarus  
Title: City Administrator  
Dated: May 31, 2018

Approved as to Form:

By: Stephen K. Postema  
Name: Stephen K. Postema  
Title: City Attorney  
Dated: May 31, 2018

[Additional signature page follows.]

STATE OF MICHIGAN  
WASHTENAW COUNTY TRIAL COURT

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Eric B. Lipson, (P32939)  
1318 Rosewood Street,  
Ann Arbor, MI 48104  
(734) 417-3604  
Attorney for Plaintiffs

**ORDER TO SHOW CAUSE**

At a session of the Court held in the  
Washtenaw County Courthouse  
in the City of Ann Arbor, State of Michigan  
on June \_\_\_, 2018

Present: Hon. \_\_\_\_\_ Circuit Court Judge

Plaintiffs have filed a verified complaint requesting a preliminary injunction and the Court being advised of the premises,

IT IS ORDERED that Defendants appear before this Court at \_\_\_\_\_ 2018 for a hearing on whether a preliminary injunction should be entered.

\_\_\_\_\_  
Circuit Court Judge

ORDER PREPARED BY  
Eric B. Lipson, (P32939)  
1318 Rosewood Street,  
Ann Arbor, MI 48104  
(734) 417-3604  
Attorney for Plaintiffs