

**WHITE STATE HENRY APARTMENTS DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 2015, 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 Ann Arbor Housing Commission, a Michigan public body corporate, with principal address at 727 Miller Avenue, Ann Arbor, MI 48103, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described in Paragraph T-4 below and site planned as White State Henry Apartments, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as White State Henry Apartments, and desires site plan and development agreement approval thereof, 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 construction of public water and sanitary sewer mains, public and private storm water management systems, public streets, 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 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 and P-2 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) Prior to the issuance of building permits, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities and public streets. The escrow Agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-5) To install all water mains, storm sewers, sanitary sewers and public streets, through the first course of asphalt, 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, except the timing of such work may be revised to be completed at a later time at the discretion of the CITY Public Services Area. The final course of asphalt paving shall be completed prior to the issuance of the first Certificate of Occupancy for the site.

(P-6) All residential dwelling units shall be affordable to lower income households, as defined in Chapter 55 of Ann Arbor City Code, at or below 60 percent of the City of Ann Arbor Area Median Income, as defined by the United States Department of Housing and Urban Development (HUD). The affordable units shall remain available to individuals and families with income at or below 60 percent of the Area Median Income in perpetuity.

(P-7) 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 approved site plan.

(P-8) 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 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-9) Existing landmark and street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a minimum of three years after acceptance of the public improvements by the CITY or granting of Certificate of Occupancy. Existing landmark and street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public improvements or granting of Certificate of, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(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) 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-13) To submit signed and sealed drawings to the CITY reflecting the building elevations, setbacks, 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, setbacks, aesthetics, or materials, that those changes be submitted to the Design Review Board for approval.

(P-14) 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-15) Prior to application for and issuance of certificates of occupancy, to disconnect ONE footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the City of Ann Arbor Developer Offset Mitigation Program as revised by City Council on June 5, 2015 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal, in accordance with the Guidelines, or to provide mitigation to offset the increased sanitary flow as required by any City Council-approved amendments or replacements to the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and DEVELOPER agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. DEVELOPER may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis at the Discretion of the CITY Public Services Area.

(P-16) 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 person(s) signing below on behalf of DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-17) Failure to construct, repair and/or maintain the site pursuant to the approved 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 approved 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 approved site plan and/or this Agreement.

(P-18) 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-19) 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 White State Henry Apartments PUD Site Plan.

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

(C-3) 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 approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

LOTS 5 & 6 N 7.48 FT LOT 7 ALL LOTS 14 15 16 & N 7.48 LOT 17 ALSO E ½ VACATED ALLEY ADJ LOT 14 ON W & ALL OF VACATED ALLEY BET LOTS 5, 6, 15,16, & N 7.84 FT OF LOTS 7 & 17 BLK 3 HAMILTON ROSE & SHEEHAN ADDN

(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 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 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

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:

\_\_\_\_\_  
Steven D. Powers, City Administrator

Approved as to Form:

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

Ann Arbor Housing Commission

By: \_\_\_\_\_  
Jennifer Hall, Executive Director

STATE OF MICHIGAN )  
 ) ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 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: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss:  
County of \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2015 by Jennifer Hall, Executive Director of the Ann Arbor Housing Commission, a Michigan public body corporate, on behalf of the \_\_\_\_\_.

\_\_\_\_\_  
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: Planning Manager  
Post Office Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6265