# AFFORDABLE HOUSING FUNDING AGREEMENT
# (350 S. FIFTH AVE.)

This Affordable Housing Funding Agreement (the "Agreement") is made between the City of Ann Arbor, a Michigan municipal corporation, whose principal business address is 301 E. Huron Street, Ann Arbor, Michigan 48104 (the "City"), and the Ann Arbor Housing Commission, a component unit of the City, whose principal business address is 2000 S. Industrial, Ann Arbor, Michigan 48104 (the "Housing Commission", together with the City, the "Parties").

## RECITALS

WHEREAS, the Housing Commission has indicated its desire, for the health, safety, and welfare of the public, to assist in the construction, furnishing and equipping of an affordable housing development, to include three hundred twenty nine (329) to three hundred thirty (330) residential units, located at 350 S. Fifth Ave., including site improvements, appurtenances and attachments thereto (the "Project"); and

WHEREAS, the facilitation by the City to finance such construction represents the most practical means to that end at the lowest cost to the Housing Commission; and

WHEREAS, Section 8.25 of the City Charter provides for an annual levy of taxes for the purpose of, in pertinent part, building, maintaining, and acquiring new affordable housing units; and

WHEREAS, the total cost of the Project is estimated to be approximately Two Hundred Fifteen Million Dollars ($215,000,000.00), of which an amount not to exceed Thirty-Five Million Dollars ($35,000,000) will be financed by the City through the issuance of capital improvement bonds pursuant to Act 34, Public Acts of Michigan, 2001, as amended ("Act 34"), and the remaining costs of which will be paid for with funds on hand of the Housing Commission and funding from a variety of public and private sources; and

WHEREAS, as a prerequisite to the City providing bond proceeds to the Housing Commission to fund part of the Project, it is necessary for the parties hereto to enter into this Agreement to set forth the terms of the transfer of bond proceeds, use of bond proceeds, accounting matters, and covenants of both Parties; and

WHEREAS, the City, in consideration for the Housing Commission covenanting to complete the Project, will issue bonds, the proceeds of which will be delivered to the Title Company selected by the Housing Commission, to be held and disbursed on behalf of the Housing Commission, to finance part of the cost of the Project, and the Housing Commission, in consideration for receipt of the proceeds of bonds issued by the City, agrees to use said proceeds solely for the Project; and

WHEREAS, the Housing Commission shall covenant and agree that the Project shall at all times meet the requirements of new affordable housing units prescribed by Section 8.25 of the City Charter; and

WHEREAS, pursuant to this Agreement, the City shall covenant and agree to pay all debt service coming due on the bonds, all costs of issuance of the bonds, and all administrative costs

related to the bonds, all from revenues of the affordable housing millage levied pursuant to Section 8.25 of the City Charter; and

WHEREAS, this Agreement has been authorized by the City Council of the City and by the Board of Commissioners of the Housing Commission pursuant to the authority of the laws of the State of Michigan.

IT IS, THEREFORE, AGREED BY AND BETWEEN THE PARTIES HERETO, for and in consideration of the agreement and covenants of each as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby incorporated into this Agreement as if fully set forth herein.

2. City's Reliance on Housing Commission. The Housing Commission hereby understands and agrees that bonds in an amount not to exceed Thirty-Five Million Dollars ($35,000,000) will be issued by the City (the "Bonds") in reliance and full anticipation of the completion of the Project such that it conforms to the requirements of new affordable housing prescribed by Section 8.25 of the City Charter.

3. Issuance of Bonds; Repayment of Debt Service, Fees and Costs.

    a. The City agrees to use its best efforts to issue, sell, and deliver the Bonds pursuant to a competitive public sale, or if advised by its registered municipal advisor that a negotiated sale is recommended due to market conditions, then a negotiated sale. The Bonds shall mature or be subject to mandatory redemption on May 1 in the years 2027 to 2042, inclusive, in the principal amounts determined at the time of sale thereof. Interest shall be payable semi-annually on May 1 and November 1, commencing November 1, 2026, or such later date as determined at the time of sale of the Bonds. The maximum interest rate on the Bonds shall not exceed six and one-half percent (6.50%) per annum.

    b. The City shall pay debt service on the Bonds and administrative costs related to the Project from proceeds of the levy of the affordable housing millage.

4. Disbursement of Bond Funds; Taxation of Interest on Bonds.

    a. Subsequent to delivery of the Bonds, and no more frequently than bi-weekly, the City will periodically transfer proceeds of the bonds except for those proceeds necessary to pay costs of issuance, to Absolute Title Inc., which the Housing Commission has selected to serve as title company for the Project (the "Title Company").

    b. Prior to initiating the first transfer, the Title Company or the Housing Commission shall provide wire instructions to be used in the execution of each transfer. The Title Company and Housing Commission agree to verbally confirm the validity of these instructions prior to requesting the first transfer. Any changes to the wire

instructions during the course of this Agreement will be submitted in writing and shall be verbally confirmed by City staff prior to usage.

c. To initiate each transfer, the Title Company or the Housing Commission shall submit a written request in form prescribed by or suitable to the City requesting an allocation of Bond proceeds to pay Project costs. With each draw request, the Housing Commission or Title Company shall provide the following documentation: all relevant invoices, receipts, financial statements, and a report showing a breakdown of expenditures by category. The City endeavors to process such requests within three (3) business days.

d. As a condition precedent to such transfers, the Housing Commission shall provide the City with evidence that its Executive Director has secured fidelity insurance coverage for its Executive Director reasonably suitable to the City. The Housing Commission shall use Bond proceeds solely to pay costs of the Project consistent with Section 8.25 of the City Charter, including reimbursement of costs incurred and preliminary expenditures (i.e. engineering, architectural, surveying, legal and consulting, etc.).

e. Nothing in this Agreement shall prevent the Housing Commission from using proceeds of the Bonds to provide a sponsor loan to Fifth Avenue MI Limited Dividend Housing Association LLC, a Michigan limited liability company (the "Developer") for the purpose of facilitating the development of the Project. The terms of any such sponsor loan shall be negotiated and documented in a separate agreement between the Housing Commission and the Developer, provided that said agreement shall be subject to review and approval by the City.

f. The City shall be under no obligation to allocate Bond proceeds to the Housing Commission nor shall the Housing Commission expend Bond proceeds during such time as the Housing Commission is in breach of this Agreement.

g. If the Bonds are issued on a tax-exempt basis, then the Housing Commission hereby covenants to take all actions within its control, to the extent permitted by law, necessary to maintain the exclusion of the interest on the Bonds from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended.

5. <u>Accounting and Reporting Requirements.</u>

a. The Housing Commission acknowledges and agrees that all proceeds from Bonds issued by the City, including any interest earned thereon, shall be deposited into a separate account with the Title Company designated solely for the purpose of paying costs of the Project (the "Project Fund"). The Project Fund shall contain only proceeds of the bonds issued by the City and interest earned thereon and shall

not include any other funds from other sources to be used for the purpose of paying costs of the Project.

b. Any interest earned on the proceeds deposited in the Project Fund shall be used solely for the purpose of paying costs of the Project in a manner consistent with Section 8.25 of the City Charter and in accordance with applicable laws and regulations.

c. The Housing Commission hereby agrees that it is the Housing Commission's sole responsibility to ensure the Title Company maintains accurate and detailed records of all expenditures made from the Project Fund. These records shall include, but are not limited to, invoices, receipts and financial statements and shall be made available for inspection by authorized representatives of the City upon request. The Housing Commission further agrees to provide periodic reports to the City detailing its use of bond proceeds, including a breakdown of expenditures by category, on a quarterly basis, beginning with the first quarterly report due within thirty (30) days after the end of the fiscal year quarter following issuance of the Bonds. Subsequent reports shall be due within thirty (30) days of the end of each subsequent fiscal year quarter, until a final quarterly report evidencing expenditure of all Bond proceeds is filed with the City.

6. Terms Exclusive to the Housing Commission. The parties acknowledge and agree that the terms and conditions of this Agreement are only applicable to the Housing Commission and shall not apply, and may not be construed to apply, to any other entity, public body corporate or municipal corporation now or in the future.

7. Housing Commission Employees; No Authority Created.

a. The parties acknowledge and agree that the financing contemplated by this Agreement shall in no way be construed to create a new employment relationship between any Housing Commission officials or employees not currently considered employees of the City.

b. The parties acknowledge and agree that the joint endeavor contemplated by this Agreement shall in no way create any authority, organization or similar entity.

8. Refinancing of the Bonds for Debt Service Savings. The City may on its own initiative issue refunding bonds to refinance all or part of the then outstanding Bonds for the purpose of achieving a savings in debt service on the Bonds. In the event the City issues refunding bonds, the defined term Bonds as used in this Agreement shall be read to include such refunding bonds.

9. Assignment Prohibited/Binding Effect. Neither party may assign this Agreement, or its rights, privileges, duties or obligations, without the other party's prior written consent. This Agreement shall be binding upon the parties to this Agreement as well as their successors and permitted assigns.

10. Notices. Any notice required to be given under this Agreement shall be deemed effectively given when personally delivered or mailed by prepaid certified mail, return receipt requested, to

the addresses first written above, or delivered personally to the City Clerk, with copy to the City Attorney, and to the Executive Director of the Housing Commission.

11. Governing Law and Remedies. This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan. To the extent not prohibited by law, the parties agree that the sole jurisdiction and venue for any action brought pursuant to or to enforce this Agreement shall be in the state courts in Washtenaw County, Michigan.

12. Breach; Waiver of Breach.

a. Each of the following events shall be construed as a breach under this Agreement:

i. The Housing Commission fails to secure, maintain, or allows a lapse in, the fidelity insurance required under Section 4(d).

ii. Either party shall fail to observe and perform any representation, term or condition contained in this Agreement.

iii. Any representation or warranty made by either party herein or any statement in any report, certificate, financial statement or other instrument furnished in connection with this Agreement shall at any time prove to have been false or misleading in any material respect when made or given.

b. The Parties agree that if there if a breach as described above occurs, or if there is any claimed breach of the terms and conditions of this Agreement, notice of such claimed breach shall be provided in writing to the claimed breaching party. The claimed breaching party shall be given three (3) business days to rectify the claimed breach prior to the party claiming a breach initiating litigation or an alternative dispute resolution process. The Parties may, by written agreement, agree to extend the time to cure such breach.

c. Neither party's waiver of a breach of any provision of this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or another provision.

13. Paragraph headings. The headings in this Agreement are only for reference purposes and shall not affect the meaning or interpretation of this Agreement. The recitals, however, are intended to be an integral part of this Agreement.

14. Entire Agreement. This Agreement supersedes all previous agreements between the parties relating to its subject matter. No other oral statements or prior written material not specifically

incorporated in this Agreement shall have any effect and no changes or additions to this Agreement shall be effective unless made in writing and signed by the parties.

15. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

[Remainder of Page Intentionally Blank]

16. Counterparts. This Agreement may be signed in counterparts, which counterparts shall be considered as one and the same instrument. This Agreement may be delivered by the exchange of signed signature pages by facsimile transmission or by e-mail with a PDF copy or other replicating image attached, and any printed or copied version of any signature page so delivered will have the same force and effect as an originally signed version of such signature page.

The parties have signed this Agreement as of the day and year indicated below.

**FOR THE CITY OF ANN ARBOR**

By _____
Christopher Taylor, Mayor

By _____
Jacqueline Beaudry, City Clerk

This ___ day of _____, 2026

**Approved as to substance:**

By _____
Milton Dohoney Jr., City Administrator

By _____
Marti Praschan, Chief Financial Officer

**Approved as to form and content:**

By _____
Atleen Kaur, City Attorney

**FOR THE ANN ARBOR HOUSING COMMISSION**

By _____
Jennifer Hall, Executive Director