

MAINTENANCE AGREEMENT

FOR PUBLIC FACILITIES IN PUBLIC ROW AT 1100 BROADWAY

This agreement is made on _____, 2025 between the **City of Ann Arbor ("City")**, a Michigan municipal corporation, at 301 E. Huron Street, Ann Arbor, Michigan 48104, and **Morningside Maiden Lane, LLC ("Owner")**, a Michigan limited liability company, with its principal address at 223 W. Erie Street, 3rd Floor, Chicago, IL 60654.

The City and Owner agree as follows:

Background

1. Owner is the owner of certain property located in the City of Ann Arbor, Washtenaw County, Michigan, commonly known as 1100 Broadway ("1100 Broadway"), and more particularly described as:

BEGINNING AT THE WESTERLY CORNER OF LOT 78 OF ASSESSOR'S PLAT NO. 33, AS RECORDED IN LIBER 9, PAGE 46 OF PLATS, WASHTENAW COUNTY RECORDS; THENCE NORTHEASTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF BROADWAY STREET (VARIABLE WIDTH) N 57°48'00" E 327.33 FEET; THENCE S 42°14'33" E 93.87 FEET; THENCE S 58°44'00" E 148.80 FEET; THENCE S 31°16'03" W 250.98 FEET; THENCE N 58°44'00" W 379.03 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF MAIDEN LANE TO THE POINT OF BEGINNING. BEING PART OF LOTS 75, 83, 82 AND 85, AND LOTS 76 THROUGH 81, INCLUSIVE, AND A VACATED ALLEY OF ASSESSOR'S PLAT NO. 33, AS RECORDED IN LIBER 9, PAGE 46 OF PLATS, WASHTENAW COUNTY RECORDS AND CONTAINING 1.87 ACRES OF LAND, MORE OR LESS. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

Per Ann Arbor City Assessor; Tax Parcel No. 09-09-21-302-119;

2. As part of the development of 1100 Broadway, Owner has elected to construct the Improvements in City public right-of-way adjacent to 1100 Broadway.

3. The parties desire to define maintenance obligations with respect to the Improvements.

1. Terminology

- A. "1100 Broadway" means property located in the City of Ann Arbor, Washtenaw County, Michigan, commonly known as 1100 Broadway, more particularly described as:

BEGINNING AT THE WESTERLY CORNER OF LOT 78 OF ASSESSOR'S PLAT NO. 33, AS RECORDED IN LIBER 9, PAGE 46 OF PLATS, WASHTENAW COUNTY RECORDS; THENCE NORTHEASTERLY ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF BROADWAY STREET (VARIABLE WIDTH) N 57°48'00" E 327.33 FEET; THENCE S 42°14'33" E 93.87 FEET; THENCE S 58°44'00" E 148.80 FEET; THENCE S 31°16'03" W 250.98 FEET; THENCE N 58°44'00" W 379.03 FEET ALONG THE NORTHERLY RIGHT-OF-WAY LINE OF MAIDEN LANE TO THE POINT OF BEGINNING. BEING PART OF LOTS 75, 83, 82 AND 85, AND LOTS 76 THROUGH 81, INCLUSIVE, AND A VACATED ALLEY OF ASSESSOR'S PLAT NO. 33, AS RECORDED IN LIBER 9, PAGE 46 OF PLATS, WASHTENAW COUNTY RECORDS AND CONTAINING 1.87 ACRES OF LAND, MORE OR LESS. SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD, IF ANY.

Per Ann Arbor City Assessor; Tax Parcel No. 09-09-21-302-119;

- B. "Improvements" means public improvements constructed by Owner in the City public right-of-way adjacent to 1100 Broadway as part of the development of 1100 Broadway, being the bollards, benches, and plantings (excluding the trees) depicted and described on Exhibit A.
- C. "Maintenance Area" means the area in which the Improvements are located, illustrated on Exhibit A.

2. Owner's Rights and Duties

- A. Owner shall be responsible for the maintenance, repair, and replacement of all Improvements within the Maintenance Area. All of Owner's work under this agreement shall be performed (i) in accordance with good engineering practices, (ii) in accordance with all applicable laws, regulations and ordinances, (iii) in a good and workmanlike manner, and (iv) in compliance with the requirements of "Miss Dig," as set forth in MCL 460.721 through MCL 460.733 as amended, and all rules, regulations and restrictions the City establishes regarding the Maintenance Area.
- B. Owner's maintenance, repair, and replacement of Improvements shall, at a minimum, be consistent with the City's schedule for routine maintenance, repair, and replacement of similar public facilities and meet City Code and Public Services Area standards and requirements. Owner shall maintain the Improvements in good repair and safe for the use of the public. Owner shall replace deteriorated or damaged Improvements that cannot be repaired to like-new condition.

- C. Owner shall be responsible to comply with the requirements of City Code pertaining to snow and ice removal, including Chapter 49, Section 4:60
- D. Owner shall maintain, repair, and replace the Improvements in the manner, locations, and according to the notes in Exhibit A. All deviations from Exhibit A must receive prior approval in writing from the City.
- E. Owner shall perform routine mowing, trimming, and other maintenance of the plantings (excluding trees) in the Maintenance Area. Owner shall comply with the direction of the City with respect to vegetation maintenance, including use or non-use of chemicals, pesticides, and herbicides. If any vegetation is to be replaced, including because of death or disease, Owner shall comply with City direction regarding replacement planting species and varieties and shall have the same maintenance responsibilities with respect to the replacement vegetation as with the original vegetation.
- F. Owner is responsible for supervising the activities of its officials, officers, employees, servants, contractors, agents, guests and invitees, and others with whom it contracts to work in the Maintenance Area or it permits to be present in the Maintenance Area and for their compliance with the terms of this agreement. Owner shall take precautions that are adequate to protect the public and the safety of any persons working within the Maintenance Area.
- G. In the event of damage to the Maintenance Area or other property of the City resulting from Owner's activities under this agreement, Owner shall notify the City promptly of the damage and Owner shall be responsible for making the repairs in a manner acceptable to the City.
- H. Owner shall comply with all applicable federal, state, and local environmental laws and regulations in all activities in the Maintenance Area. Owner is solely responsible for the prompt, lawful, and proper disposal of all waste materials and contamination within the Maintenance Area generated by the activities of Owner and Owner's employees, agents, and assigns. In the event of a spill or release of any contaminant or hazardous substance in the Maintenance Area, Owner shall immediately notify the City and take all necessary steps to clean up the contamination and to prevent its spread into storm drains or waterways.

3. Banners

- A. Owner may propose designs for decorative banners to be hung from public street lights or poles in the public right-of-way adjacent to both the 1100 Broadway and 1200 Broadway buildings. The designs must be accepted in writing in advance by the City. These designs will be artistic and not contain advertising or political statements. If the City accepts the designs, Owner may produce and install the banners in accordance with City direction and to City specifications after acquiring all necessary permits and approvals at Owner's sole cost. Upon installation, the banners shall become the property of the City and the City shall retain the right to alter, remove, relocate, or replace any of the banners in its sole discretion. Owner shall be responsible for maintaining or replacing installed banners and supporting hardware such that they remain in good condition and safe for the public.

- B. The street lights and poles on which banners are hung shall not be deemed a public forum and shall remain exclusively for City purposes. The City retains the right to accept or reject Owner's proposed banners in whole or in part and to direct their installation, maintenance, or removal in any manner the City deems appropriate in the City's sole discretion. Owner shall not be deemed to have any exclusive right or privilege to propose or install banners on public street lights or poles adjacent to both the 1100 Broadway and 1200 Broadway buildings, and the City retains the right to use said street lights and poles in any manner it deems appropriate.

4. Permits

- A. Owner must obtain, at Owner's own cost, all required permits and approvals necessary to carry out the work to fulfill its obligations under this agreement, including right-of-way permits.
- B. If Owner wishes to use the Maintenance Area for a private purpose, Owner must follow normal City procedures for such requests and apply to the City for appropriate permits and approvals.

5. City's Rights and Duties

- A. Owner hereby conveys the Improvements to the City and the City shall be the sole owner of all current and future Improvements, including all repaired, altered, and replacement Improvements. The City may elect to alter, remove, relocate, or replace any of the Improvements in its sole discretion. Unless agreed to by Owner or otherwise provided in this agreement, Owner shall have no obligation under this agreement with respect to an Improvement that is altered, replaced, or removed by the City. If an Improvement is relocated within the Maintenance Area, such relocation shall be at the City's expense, however Owner shall remain responsible for the maintenance, repair, and replacement of the relocated Improvement after relocation.
- B. The City has the right to inspect all work done by Owner with respect to the Improvements and may require Owner to make changes or complete additional work to comply with City standards and requirements, the cost of which shall be Owner's responsibility.
- C. If Owner does not comply with its obligations under this agreement, the City may, after notice to Owner and 14 days after such notice to cure, perform the obligation and charge the cost to Owner, and if Owner fails to pay the charged costs within 60 days, the City may assess the costs to Owner as a special assessment. In the event of an emergency or threat to public health or safety, the City may perform the obligation without notice or an opportunity to cure, and may charge the cost to Owner in the same manner stated above.

6. Duration

- A. This agreement shall last for the life of the Improvements or until all the Improvements are removed, altered, or replaced by the City such that Owner is no longer responsible for any of them as provided in this agreement, whichever comes first.

7. Reimbursement/Indemnification/Insurance

- A. Owner must at all times maintain appropriate levels and types of insurance commercially prudent for the types of activities Owner is undertaking and the responsibilities Owner is assuming under this agreement. Owner shall promptly provide evidence of such insurance upon the written request of the City.
- B. Owner shall defend, hold harmless, and indemnify the City, its officers, employees, and agents from all liabilities, penalties, fines, forfeitures, demands, damages, losses, claims, causes of action, suits, judgments, and expenses (including attorneys' fees, consultants' fees, experts' fees), which the City may be subjected to, suffer, incur, be responsible for, or disburse by reason or on account of Owner's activities under this agreement, including: (1) any governmental action order, directive, administrative proceeding or ruling; (2) personal or bodily injuries (including death) or damage (including loss of use) to any property, public or private; (3) cleanup, remediation, investigation, monitoring of any pollution or contamination of, or adverse effects upon, human health or the environment; (4) any violation or alleged violation of laws, statutes, ordinances, orders, rules or regulations of any governmental entity or agency directly or indirectly caused by or arising out of any environmental hazards caused by the activities of Owner.

8. Warranties

- A. Owner warrants that it is the owner of 1100 Broadway.
- B. The signatories below warrant that they have the authority to enter into this agreement on behalf of their respective parties.

9. Notice

- A. All notices required under this agreement shall be delivered to the respective party to the address stated below or such other address as either party may designate by prior written notice to the other. Notices given under this Agreement shall be in writing and shall be personally delivered, sent by next day express delivery service, certified mail, or first class U.S. mail postage prepaid, and addressed to the person listed below. Notice will be deemed given on the date when one of the following first occur: (1) the date of actual receipt; (2) the next business day when notice is sent next day express delivery service or personal delivery; or (3) three days after mailing first class or certified U.S. mail.

If notice is sent to Owner:

Morningside Maiden Lane, LLC
223 W.Erie Street, 3rd Floor
Chicago, IL 60654

If notice is sent to the City:

City of Ann Arbor
ATTN: Engineering Dept.
301 East Huron St.
Ann Arbor, Michigan 48104

With a copy to:

City of Ann Arbor
ATTN: Office of the City Attorney
301 East Huron St.
Ann Arbor, Michigan 48104

10. Miscellaneous

- A. Runs with the Land. This agreement and its obligations shall run with the land and shall be binding on and inure to the benefit of Owner, the City, and their respective successors and assigns.
- B. Termination. This agreement may be terminated by the City at any time upon 30 days' notice to Owner and recording of a notice of termination in the Washtenaw County Register of Deeds.
- C. Governing Law. This agreement and the rights and obligations of the parties hereunder shall be construed, governed and enforced in accordance with the laws of the State of Michigan.
- D. Severability. If any term, obligation or condition of this agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable to any extent by a final judgment or award which shall not be subject to change by appeal, then the remainder of this agreement or the application of such term or condition to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each term, covenant and condition of this agreement shall be valid and be enforced to the fullest extent permitted by law. Furthermore, each agreement, obligation or other provision of this agreement is and shall be deemed and construed as a separate and independent obligation of the party bound by, undertaking or making the same, and not dependent on any other provision of this agreement unless expressly so provided.
- E. Waiver. The waiver by the non-breaching party of any breach of any term, covenant, obligation or condition here contained by the breaching party shall not be deemed to be a waiver of any subsequent breach of the same or a waiver of any other term, covenant, obligation or condition herein contained. Neither party shall be deemed in breach of this agreement unless the non-breaching party gives the breaching party notice specifying what would otherwise be the breach and the breaching party does not effect a cure within 30 days.
- F. Independent Contractor. All times and for all purposes under the terms of this agreement each party's relationship to any other party shall be that of an independent contractor. Each party is solely responsible for the acts of its own employees, agents, and servants. No liability, right, or benefit arising out of any employer-employee relationship, either express or implied, shall arise or accrue to any party as a result of this Agreement. Owner does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf.

- G. Third Party Beneficiary. Nothing contained in this agreement shall be construed as to confer upon any other party the rights of a third party beneficiary. No other persons or entities may enforce it for their benefit nor shall they have any claim or remedy for its breach.
- H. Advice of Counsel. Each party represents and warrants that it enters this agreement having had the advice of counsel, and that it enter this agreement freely and voluntarily and not as a result of any duress or undue influence.
- I. Negotiated Agreement. This agreement has been completely negotiated between the City and AAPS, and shall not be construed more strictly, or otherwise, against either party.
- J. Owner's Agent. Owner shall expressly and in writing designate an agent who has authority to serve as a point of communication for the City with respect to this agreement.
- K. No Waiver of Immunity. Nothing in this agreement shall constitute any waiver of the City's governmental immunity or any other immunity defense.
- L. City's Remedies. Remedies available to the City under this agreement are, to the fullest extent lawful, cumulative, in addition to any given by law or equity, and may be enforced successively or concurrently.
- M. Entire Agreement. The entire agreement between the City and Owner with respect to Owner's use of the Maintenance Area is set forth in this agreement and there are no understandings, agreements, or representations of any kind between the parties, verbal or otherwise, with respect to Owner's use of the Maintenance Area other than as set forth herein. No change or modification of any of the terms, obligations or provisions of this agreement shall be valid unless in writing and signed by the parties.
- N. Execution and Effective Date. This agreement may be executed in counterparts. Signatures may be affixed or delivered electronically or by facsimile. This agreement will become effective when all parties have signed.

(Signatures on following pages.)

Morningside Maiden Lane, LLC

Date _____ By: _____
Ronald S. Mucha
Its: Authorized Signatory

Signed on: _____, 2025 in the:
State of Michigan
County of _____

Acknowledged before me on _____, 2025 by Ronald S. Mucha,
Authorized Signatory of Morningside Maiden Lane, LLC, a Michigan limited liability company.

_____, Notary Public
County of _____, Michigan
Acting in County of _____
My Commission Expires: _____

(Signatures continue on following page)

CITY OF ANN ARBOR

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

STATE OF MICHIGAN
COUNTY OF WASHTENAW

Acknowledged before me on _____, 2025, by Christopher Taylor, Mayor
and Jacqueline Beaudry, City Clerk, of the City of Ann Arbor, Michigan.

, Notary Public

County, Michigan
Acting in Washtenaw County, Michigan
My commission expires:

DRAFT

Approved as to substance:

Milton Dohoney Jr., City Administrator

Jordan Roberts, Public Services Area Administrator

Approved as to form:

Atleen Kaur, City Attorney

Prepared by and when recorded return to:

Christopher Frost (P70380)
Senior Assistant City Attorney
Office of the City Attorney
City of Ann Arbor
301 E. Huron St.
Ann Arbor, MI 48104

Tax Parcel 09-09-21-302-119