

CITY OF ANN ARBOR AMENDED AFFORDABLE HOUSING AGREEMENT FOR 1140 BROADWAY

This Affordable Housing Agreement ("Agreement") is effective as of _____, by and between Morningside Broadway, LLC, a Michigan limited liability company, Morningside Maiden Lane, LLC, a Michigan limited liability company, and Morningside Nine99, LLC, a Michigan limited liability company, each with a principal address at 223 W. Erie, Third Floor, Chicago, Illinois 60654 (collectively, the "Developer"), and the City of Ann Arbor, a Michigan municipal corporation, whose address is 301 East Huron Street, Ann Arbor MI 48107 ("City").

This Agreement applies to Phases 1, 2, and 3 of the real property commonly known as 1140 Broadway, in the City of Ann Arbor, Washtenaw County, State of Michigan (the "Property"), more particularly described in Exhibit A. This Affordable Housing Agreement supersedes all previous versions of the Affordable Housing Agreement between the City and Developer for the Property.

RECITALS

WHEREAS, the City Council approved Resolution R-17-449 which accepted the 1140 Broadway Brownfield Plan ("Brownfield Plan"), and recommended that the Washtenaw County Brownfield Authority approve the Brownfield Plan;

WHEREAS, the 1140 Broadway Conditional Zoning and Planned Project Site Plan was approved by City Council on December 4, 2017, and the Conditional Zoning was amended on September 4, 2018;

WHEREAS, the Brownfield Plan was approved by the Washtenaw County Brownfield Authority on December 6, 2017;

WHEREAS, in the Brownfield Plan, Morningside Lower Town, LLC agreed to provide 15 dwelling units in the proposed development on Phases 1 and 3 of the Property as affordable housing in consideration of Brownfield Tax Increment Financing support for the project (\$5,204,760 reimbursement for the Michigan Strategic Fund eligible, non-environmental activity);

WHEREAS, the provision of affordable housing on Phases 1 and 3 of the Property by Morningside Lower Town, LLC was a material inducement for City approval of the 1140 Broadway Planned Project Site Plan and City recommendation and County approval of the Brownfield Plan, and is consistent with the City's programs and goals of increasing the supply of affordable housing throughout the City;

WHEREAS, Morningside Lower Town, LLC, which is the predecessor in interest to the Developer, and the Washtenaw County Brownfield Authority, entered into the Washtenaw County

Brownfield Redevelopment Authority Reimbursement Agreement, dated May 11, 2018, which provided certain minimum requirements for the affordable housing, and required that the Developer and City enter into an agreement incorporating these requirements;

WHEREAS, City Council approved the 999 Maiden Lane Site Plan, 1140 Broadway/Beekman on Broadway Rezoning, and Amended Offer of Conditional Zoning on or about July 17, 2023;

WHEREAS, the provision of affordable housing on Phase 2 of the Property by Morningside Lower Town, LLC was a material inducement for City approval of the 999 Maiden Lane Site Plan and is consistent with the City's programs and goals of increasing the supply of affordable housing throughout the City;

WHEREAS, six Affordable Dwelling Units will be included in Phase 2 on the terms and conditions contained herein; and

WHEREAS, City Council approved this Agreement on _____, 2025.

AGREEMENT

In consideration of the benefits received by the parties, the sufficiency of which is hereby acknowledged, the City and Developer agree as follows:

1. Definitions

As used in this Agreement, the following capitalized terms shall have the following meanings, and shall include the plural as well as the singular:

- A. "Affordable Dwelling Unit" means a rental apartment that shall be leased to a Qualified Tenant.
- B. "Ann Arbor Affordable Housing Waitlist" means the list of potential renters of Affordable Dwelling Units maintained by the City of Ann Arbor.
- C. "Annual Household Income" means the aggregate annual income of a Household as determined by using the standards set forth in 24 CFR 92.203(b)(1), (which refers to the HUD Section 8 definition in 24 CFR 5.609), or 24 CFR 92.203(b)(3), (which uses adjusted gross income as defined for purposes of reporting under Internal Revenue Service (IRS) Form 1040 series for individual federal annual income tax purposes), as amended. In the event that the IRS 1040 form is eliminated or the definition of income under 24 CFR 92.203 is substantially modified, then Income shall mean the anticipated total taxable income for the next twelve (12) month period received from all sources by the Household
- D. "Area Median Income" or "AMI" means the Area Median Income reported annually for single persons and households of various sizes by HUD for the metropolitan statistical area that includes the City of Ann Arbor, Michigan.
- E. "Business Day" means any day other than Saturday, Sunday or any day that the administrative offices of the City are closed.

- F. "City" means the City of Ann Arbor or its designee for administrative functions related to affordable housing. The City retains the right to conduct its activities described under this Agreement through a contract with another entity. (The City's affordable housing programs are currently administered by the Washtenaw County Office of Community and Economic Development.)
- G. "Certification of Income" means a certification made by the City that verifies that the Annual Household Income of a Qualified Tenant is less than or equal to 60% of AMI.
- H. "Certification of Residency" means a certification made by a tenant of an Affordable Dwelling Unit that states that the tenant occupies the Affordable Dwelling Unit as its primary residence, on such form as the City approves.
- I. "Household" means the lessee and all persons who occupy the Affordable Dwelling Unit, subject to the rules and regulations applicable to the Property.
- J. "HUD" means the United States Department of Housing and Urban Development, or a superseding or subsequent agency or division of the United States Government responsible for supporting homeownership for underserved populations and for providing affordable housing.
- K. "Market-Rate Dwelling Unit" means a rental apartment that is not an Affordable Dwelling Unit.
- L. "Qualified Tenant" means a Household that (i) has an Annual Household Income, as certified by the City, less than or equal to 60% of the AMI at the time of leasing and subsequent lease renewals, (ii) shall occupy the Affordable Dwelling Unit as its principal residence during its lease of such Affordable Dwelling Unit, (iii) shall not permit exclusive occupancy of the Affordable Dwelling Unit by any other person, (iv) shall use and occupy the Affordable Dwelling Unit as an Affordable Dwelling Unit subject to the Affordability Requirement and this Agreement.

2. Term

The term of this Agreement for Phase 1 of the Property shall be for ninety-nine (99) years from the date of issuance of the first residential certificate of occupancy for that Phase. The term of this Agreement for Phase 3 of the Property shall be for ninety-nine (99) years from the date of issuance of the first residential certificate of occupancy for that Phase. The term of this Agreement for Phase 2 of the Property shall be for ninety-nine (99) years from the date of issuance of the first residential certificate of occupancy for that Phase.

3. Compliance with Laws

The Developer agrees to comply with all federal, state and local laws applicable to the Affordable Dwelling Units and the services required by this Agreement, including but not limited to the City's Housing Code (Ann Arbor City Code, Chapter 105) and the City's Non-Discrimination Ordinance (Ann Arbor City Code, Chapter 112), as amended or replaced from time to time.

4. Affordability Requirement

Developer shall construct, reserve, maintain and lease twenty-one Affordable Dwelling Units to Qualified Tenants on the Property in accordance with this Agreement at a rental rate at or below the Maximum Monthly Rent as defined in Section 8 of this Agreement.

5. Affordable Dwelling Unit Standards and Locations

- A. Unit Type. The 15 Affordable Dwelling Units in Phases 1 and 3 shall include 10 efficiencies, (consisting of 5 micros and 5 studios,) and 5 1-bedrooms (each a "Unit Type"). The 6 Affordable Dwelling Units in Phase 2 shall contain 3 efficiencies and three 1-bedrooms.
- B. Unit Size. The Affordable Dwelling Units of each Unit Type shall be of a size comparable to that of the Market-Rate Dwelling Units in each category.
- C. Unit Locations. Affordable Dwelling Units shall be located exclusively in 1140 Broadway Phases 1, 2, and 3. Phase 1 shall contain eight Affordable Dwelling Units, Phase 2 shall contain six Affordable Dwelling Units, and Phase 3 shall contain seven Affordable Dwelling Units. The Affordable Dwelling Units shall not be concentrated entirely on any one floor, wing, or section of a building within each Phase.
- D. Finishes. Upon initial occupancy, all interior and exterior finishes and components of Affordable Dwelling Units shall be the same in size, appearance, finish and durability to Market-Rate Dwelling Units, including but not limited to fixtures, appliances, flooring and cabinetry.
- E. Alteration. The Developer shall maintain, upkeep, repair and replace interior and exterior finishes and components (including, but not limited to fixtures, appliances, flooring and cabinetry) of the Affordable Dwelling Units with equivalent interior and exterior finishes and components used to replace items in Market-Rate Dwelling Units. The Developer shall not remove components installed in an Affordable Dwelling Unit other than for maintenance, repair and replacement and shall maintain, repair and replace the unit using the same standards and procedures as Market-Rate Dwelling Units.
- F. Use. Except as provided herein, all Households shall have the same and equal use and enjoyment of all of the amenities of the Property and services provided at the Property as the tenants of the Market-Rate Dwelling Units. No restrictions, requirements or rules shall be imposed on Households that are not imposed equally on the tenants of the Market-Rate Dwelling Units. If amenities, services, upgrades, or other facilities are offered as an option at an additional upfront and or recurring cost or fee to the comparable Market-Rate Dwelling Units, such amenities, services, upgrades, or other facilities shall be offered to the tenants of the Affordable Dwelling Units at the same upfront and or recurring cost or fee. If there is no cost or fee charged to the tenants of Market-Rate Units for such amenities, services, upgrades, or other facilities, there shall not be a cost or fee charged to the Households.
- G. Unit Designation. Developer hereby designates the following dwelling units on the Property as Affordable Dwelling Units:

<u>Building</u>	<u>Address</u>	<u>Unit #</u>	<u>Unit Type</u>	<u>Unit Size (sq. ft.)</u>
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1	1200 Broadway	142	Efficiency (Micro)	435
		143	Efficiency (Micro)	435
		245	Efficiency (Micro)	435
		214	Efficiency (Studio)	547
		215	Efficiency (Studio)	547
		217	Efficiency (Studio)	521
		202	1-bedroom	633
		302	1-bedroom	633
2	999 Maiden Lane	TBD	Efficiency	TBD
		TBD	Efficiency	TBD
		TBD	Efficiency	TBD
		TBD	1-bedroom	TBD
		TBD	1-bedroom	TBD
		TBD	1-bedroom	TBD
3	1100 Broadway	242	Efficiency (Micro)	434
		342	Efficiency (Micro)	434
		113	Efficiency (Studio)	546
		115	Efficiency (Studio)	546
		225	1-bedroom	631
		325	1-bedroom	631
		425	1-bedroom	631

Developer shall not amend or modify the list of Affordable Dwelling Units without the City's prior written approval, which shall not be unreasonably delayed or withheld, except to the extent permitted under Section 10E. The Phase 2 Affordable Dwelling Unit locations and square footage must be approved by the City Planning Manager prior to issuance of any certificate of occupancy for Phase 2.

6. Condition for Phase 2 Units

Notwithstanding anything herein to the contrary, this Agreement shall apply to Phase 2 only in the event that Phase 2 is constructed pursuant to the approved 999 Maiden Lane Site Plan SP23-0003 (as may subsequently be amended). In the event the 999 Maiden Lane Site Plan is terminated or expires or a new 999 Maiden Lane Site Plan is submitted to the City, the provisions of this Agreement shall have no force or effect as to Phase 2.

7. Rental Process and Determination of Tenant Eligibility

- A. Marketing of Affordable Dwelling Units. Developer shall assist the City in promoting the Affordable Dwelling Units by directing interested individuals and prospective tenants of Affordable Dwelling Units to the Ann Arbor Affordable Housing Waitlist.
- B. Consideration of Applicants. The Developer shall consider the rental applications of prospective tenants from the Ann Arbor Affordable Housing Waitlist in the order of the Waitlist as determined by the City for each Unit Type prior to seeking qualified candidates

from other sources. If the Ann Arbor Affordable Housing Waitlist does not have prospective tenants for a Unit Type, the Developer may seek tenants on its own, or obtain referrals of prospective tenants for the Affordable Dwelling Units from federal, state, or local government agencies or nonprofits, provided such referrals comply with the requirements of this Agreement. Rental applications received that are not from the Ann Arbor Affordable Housing Waitlist shall be considered by the Developer in the order in which the application is received. In all cases, before a prospective tenant leases an Affordable Dwelling Unit, they must be certified as a Qualified Tenant by the City.

- C. Determination of Eligibility. Each Household occupying an Affordable Dwelling Unit shall be certified as a Qualified Tenant by the City prior to leasing the Affordable Dwelling Unit. The City shall promptly review and approve or deny a prospective Household's Certification of Income and Certification of Residency.

If the Ann Arbor Housing Waitlist does not have prospective tenants for a Unit Type, and the Developer provides a prospective tenant to the City to certify as a Qualified Tenant, the City shall make such a determination within seven (7) Business Days from the receipt of the required information needed to verify eligibility. Failure to timely respond to a request to certify a prospective tenant as eligible shall constitute a certification by the City that the prospective tenant is a Qualified Tenant.

- D. Rejection of Applicants. In connection with the leasing of an Affordable Dwelling Unit, Developer may reject any applicant if, after diligent review of such applicant's application, the Developer determines in good faith that the applicant or those persons that will reside with the applicant do not meet the Developer's criteria to lease or occupy an Affordable Dwelling Unit, provided such criteria does not violate applicable local, state and federal laws, and is the same criteria used by the Developer to lease or occupy the Market-Rate Dwelling Units. Developer shall notify the City within seven (7) Business Days of any decision to reject an applicant that is a Qualified Tenant, and to provide the rationale for why the applicant was not approved, along with supporting documentation. In the event any rejected applicant raises an objection or challenges Developer's rejection of such applicant, the Developer shall be solely responsible for ensuring that its rejection of such applicant is not in violation of local, state or federal law. The City acknowledges that review of criminal history and credit scores, and rejection for negative information in these categories is permitted as allowed by law.

8. Initial Lease Year / Income Determination

- A. Lease Term. The initial term of any Affordable Dwelling Unit lease agreement shall be for a period of one year.
- B. Income Determinations. In order to be eligible for an Affordable Dwelling Unit, the Annual Household Income of a Household shall be less than or equal to 60% of AMI. If a prospective tenant is not income eligible at the time of application, they shall be denied and will not be allowed to revise their work status or Annual Household income in order to qualify for an Affordable Housing Unit for a period of six months, with the exception that an involuntary change in income would not disqualify the prospective tenant from becoming income eligible.

9. Establishment of Maximum Monthly Rent

The maximum allowable monthly rent ("Maximum Monthly Rent") for each Affordable Dwelling Unit shall be the current Fair Market Rent for each specific bedroom size as reported annually by HUD for the metropolitan statistical area, which includes the City of Ann Arbor, Michigan. In the event the United States Government ceases to publish the aforementioned, the Maximum Monthly Rent shall then become a comparable replacement as mutually agreed to by the City and Developer based on comparable replacements for Fair Market Rent used to establish rent levels for state and federal programs including rent in public housing, the Housing Choice Voucher program, the HOME Investment Partnership Program, or similar programs setting maximum rent for affordable housing. Fair Market Rents include the cost of all utilities paid by the tenant, except telephone, cable/satellite television or internet. Accordingly, the Maximum Monthly Rent shall include the following utilities: water, sewer, waste disposal, electricity and heating. If the Developer does not include heat in the rent charged and the tenant must pay directly for heat, or if the Developer does not provide electricity in the rent charged and the tenant must pay directly for electricity, then the Developer shall reduce the Maximum Monthly Rent by 5%. If both the heat and electricity are not included in the rent, then the Developer shall reduce the Maximum Monthly Rent by 10%. At the request of the Developer, the City Administrator in his or her sole discretion, may reduce the amount that Maximum Monthly Rents are adjusted for utilities. (An example of Maximum Monthly Rent using Fair Market Rents for 2020 is attached in Exhibit B.)

10. Subsequent Lease Years

- A. Rent Calculation. The Developer shall use the Maximum Monthly Rent to determine the rental amount for Affordable Dwelling Units in each lease year.
- B. Renewal by Household. For each Household that intends to renew its lease, no more than ninety days and no less than thirty days before each anniversary of the first day of a residential lease, Developer shall use its best efforts to obtain the following: (i) a Certification of Residency from each Household; and (ii) a Certification of Income for each Household completed by the City. Developer shall not permit a renewal of an Affordable Dwelling Unit lease unless the Developer has received these documents for the Affordable Dwelling Unit prior to the end of the lease term.
- C. Annual Recertification of Tenants. Upon receipt of a Household's renewal documents at annual recertification, the Developer shall determine if the Household is still a Qualified Tenant and shall notify the Household of the same within fifteen days prior to the expiration of the then-current lease term. Any Household whose Annual Household Income remains less than or equal to the 60% of the AMI will be eligible to remain in the Affordable Dwelling Unit and to renew the lease at the then-current lease rate for the particular Affordable Dwelling Unit.
- D. Annual Recertification of Over-Income Tenants. Upon annual recertification, if a Household's Annual Household Income is determined to exceed the 60% of the AMI (such tenant, an "Over-Income Tenant"), then Developer shall have the right to elect not to renew the lease consistent with the terms of the lease. At the discretion of Landlord, the Over-Income Tenant may remain in the rental unit and pay the market rate rent for that rental unit, whereupon Developer shall designate a Market-Rate Dwelling Unit as an Affordable Dwelling Unit pursuant to Section 10.E below.
- E. Changes to Unit Location. Developer may change the designation of an Affordable Dwelling Unit to a Market-Rate Unit as necessary to allow an Over-Income Tenant to remain in the unit. Following any change in designation of an Affordable Dwelling Unit, the

Developer shall designate the next available and reasonably comparable like-sized Market-Rate Dwelling Unit in the Property as an Affordable Dwelling Unit to bring the Property into conformity with the Affordability Requirement of this Agreement. Developer shall notify the City of any such change in designation within thirty (30) days of such a designation.

- F. Rent from Subsidies. Nothing herein shall prevent or require the Developer from collecting rent from a subsidy or rent subsidy provider, such as a HUD rent voucher. (The City encourages the Developer to accept any available subsidies.)
- G. Additional Income During Lease Term. An increase of Annual Household Income greater than the 60% of the AMI at some point in time after a lease is signed for an Affordable Dwelling Unit, shall not be a basis for the City to require the Developer to immediately rent the Affordable Dwelling Unit to a Qualified Tenant.

11. No Subleasing of Affordable Dwelling Units

An Affordable Dwelling Unit tenant may not sublease any portion of its Affordable Dwelling Unit or assign its lease to any other person without the City's and Developer's prior written consent, in the City's and Developer's sole and absolute discretion. Leases for Affordable Dwelling Units shall include this restriction.

12. Representations of Affordable Dwelling Unit Tenant

By execution of a lease for an Affordable Dwelling Unit, each Affordable Dwelling Unit tenant shall be deemed to represent and warrant to the City and Developer, each of whom may rely thereon, that the Affordable Dwelling Unit tenant meets, and will continue to meet, all eligibility requirements contained in this Agreement for the rental of an Affordable Dwelling Unit.

13. Representations of Developer

By execution of a lease for an Affordable Dwelling Unit, the Developer shall be deemed to represent and warrant to the City, which may rely on the following, that: (i) based solely upon tenant and City supplied information, the Household is a Qualified Tenant, and (ii) the Developer is not charging the Affordable Dwelling Unit tenant more than the Maximum Allowable Rent.

14. Annual Reporting Requirements

Beginning with the first occupancy of any Affordable Dwelling Unit, the Developer shall provide an annual report ("Annual Report") to the City regarding the status of the Affordable Dwelling Units during the previous calendar year, which shall be submitted on March 1 of each year, or other date as agreed to by the City Administrator or designee and the Developer. The Annual Report shall include the following:

- A. The unit number and bedroom count of each Affordable Dwelling Unit that is occupied;
- B. For each Affordable Dwelling Unit that is vacant or that was vacant for a portion of the reporting period, the manner in which the Affordable Dwelling Unit became vacant (e.g. eviction or voluntary departure) and the progress of having the unit re-occupied;
- C. For each occupied Affordable Dwelling Unit, the names and ages of all persons in the Household, date of initial occupancy, Annual Household Income as of the date of the most recent Certification of Income, and the monthly rental rate of the lease;

- D. A copy of all forms, policies, procedures, leases, and other documents reasonably requested by the City related to the Affordable Dwelling Units.

The Annual Reports shall be retained by the Developer for a minimum of five years after submission and shall be available, upon reasonable notice, for inspection by the City. Notwithstanding anything contained herein to the contrary, in the event that the Developer is providing a report with content substantially similar to the content of the Annual Reports described in this section, subject to the City Administrator's prior written approval, then the reporting requirements under this section shall be satisfied upon Developer's delivery of such report to the City. Developer shall also maintain copies of all initial and renewal leases for Affordable Dwelling Units for three years from the date of execution. Within fifteen (15) days after receiving notice of any error in the amount of rent being charged for an Affordable Dwelling Unit, Developer shall either: correct the error, in which event, corrections shall be retroactive to the date of the error within the annual lease period; or provide written notice to the City that Developer disputes the error, in which event, the City and Developer shall work cooperatively to reconcile the error over the next fifteen (15) days.

15. Confidentiality

Except as may be required by applicable law, including, without limitation and applicable only to the City, the *Michigan Freedom of Information Act (MCL 15.231 et. seq.)*, the Developer and the City shall not disclose to third parties the personal information of the Households, including the identity of the Households, submitted as a part of the Annual Report. Notwithstanding in this Section 15, Developer shall be permitted to disclose its lease files for the Property in the ordinary course of business, including, but without limitation, to the management company for the Property, to any lender that may or does provide financing to the Developer with regards to the Property and to any prospective buyer of all or a portion of the Property.

16. Inspection Rights

Upon reasonable advance notice to the Developer, and subject to a tenant's privacy rights, the City shall have the right to inspect the Affordable Dwelling Units during normal business hours. If the Developer receives such notice, the Developer shall, in turn, give reasonable advance notice of the inspection to the tenant occupying an Affordable Dwelling Unit. The City shall have the right to inspect a random sampling of the Affordable Dwelling Units to confirm that the units are in compliance with applicable statutory and regulatory housing requirements and as otherwise permitted under this Agreement. The City shall have the right to conduct audits of a random sampling of the Affordable Dwelling Units and associated files and documentation to confirm compliance with the requirements of this Agreement.

17. Default

The Developer, and each subsequent owner, hereby grants and assigns to the City the right to review and enforce compliance with this Agreement. Compliance may be enforced by the City at its discretion by any lawful means, including without limitation: (a) requiring that Developer meet any unmet obligations to provide an Affordable Dwelling Unit in a subsequent year after notice and opportunity to cure as provided in this Section 17, (b) seeking specific performance of the Developer's obligations under this Agreement, (c) requesting the option to lease as provided in this section, and (d) seeking money damages. The prevailing party in any litigation between Developer and City with regard to this Agreement shall be entitled to recover its costs, fees and expenses (including actual attorney fees) incurred as a result of the litigation.

Money damages caused by a lack of compliance with this Agreement by Developer would be impossible or somewhat difficult to accurately estimate given the City's previous support of Brownfield Tax Increment Financing for the Property, as well as the City's loss of the opportunity to provide Affordable Housing Units to members of the public. Developer and City agree that Developer shall pay City the difference between the monthly rental amount for a Market-Rate Dwelling Unit of the same Unit Type and of comparable size to the Affordable Dwelling Unit and the Maximum Monthly Rent of the Affordable Dwelling Unit (along with an additional 50% of this amount) per month that Developer is in default for each Affordable Housing Unit not being provided consistent with the terms of this Agreement ("Liquidated Damages"). City and Developer agree that the Liquidated Damages are a reasonable estimate of the anticipated or actual harm that might arise from Developer's breach of this Agreement, and these Liquidated Damages have been calculated to place the City in a position to acquire and administer similar affordable housing elsewhere for public availability. Developer and City agree and intend that the Liquidated Damages shall constitute compensation and not a penalty, and that the Liquidated Damages shall be the entire financial obligation of the Developer for monetary damages paid to the City under this Agreement, with the exception of enforcement costs including attorney's fees.

The Developer hereby agrees that if the Developer is not providing Affordable Dwelling Units in compliance with the terms of this Agreement, that the City has the option to lease up to 21 units at the Property. This option to lease shall be reduced by the number of rental units that are currently in compliance with this Agreement, and the units shall be leased by the City from Developer at a rent equal to the Maximum Monthly Rent for each unit, and with further terms consistent with the terms in Developer's other leases on the Property for Market-Rate Dwelling Units, except no such term shall conflict with the terms of this Agreement. The City shall have the right to market the Affordable Dwelling Units, and release or sublet them to Qualified Tenants. After notice and opportunity to cure as provided in this Section 17, City may exercise this option by providing fifteen (15) days written notice to Developer and Developer agrees to act in good faith, and cooperate in completing any such lease, and shall do so within thirty (30) days of receiving notice. Developer and City may subsequently agree to transfer the leasing of the Affordable Dwelling Units back to the Developer.

If a default occurs under this Agreement, the City shall provide the Developer with written notice setting forth with particularity the alleged violation and shall provide a minimum of forty-five (45) days to cure the alleged violation, prior to exercising its remedies. The City Administrator may extend the cure period in his or her sole discretion, which shall not be unreasonably withheld, if a cure cannot be reasonably obtained or achieved by the Developer within forty-five (45) days of the written notice of default.

18. Indemnification

To the fullest extent permitted by law, Developer shall indemnify, defend, and hold the City, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by Developer or its employees and agents occurring in the performance of or breach in this Agreement, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the City's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement. To the fullest extent permitted by law, City shall indemnify, defend, and hold the Developer, its officers, employees and agents harmless from all suits, claims, judgments and expenses, including attorney's fees, resulting or alleged to result, from any acts or omissions by City or its employees and agents with regard to the Ann Arbor Affordable Housing Waitlist and the determination of whether a tenant is a Qualified Tenant for

an Affordable Dwelling Units, except to the extent that any suit, claim, judgment or expense are finally judicially determined to have resulted from the Developer's negligence or willful misconduct or its failure to comply with any of its material obligations set forth in this Agreement. This provision is not intended, and shall not be construed, to waive or limit any immunity defense which the City may have including but not limited to governmental immunity.

19. Insurance

Developer shall secure and maintain insurance policies, including those stated below, as will protect the Developer, any of its subcontractors and, unless otherwise specified, the City from all claims for bodily injuries, death or property damage which may arise under this Agreement; whether the actions are made by the Developer or by any subcontractor or anyone employed by them directly or indirectly. The following insurance policies are required:

- A. Worker's Compensation Insurance under the provisions of the Michigan Worker's Compensation Act and all applicable state and federal statutes.
- B. General Liability Insurance in an amount not less than \$1,000,000 for each occurrence as respect to bodily injury liability, property damage liability, or both combined. The City of Ann Arbor shall be named as an additional insured for General Liability Insurance.
- C. Property Insurance for the Property and improvements on the Property

Insurance certificates shall be provided to the City upon request.

20. Miscellaneous

- A. Recital clauses listed above constitute an integral part of this Agreement and are incorporated by reference.
- B. Each Affordable Dwelling Unit is held and hereafter shall be held, conveyed, hypothecated, encumbered, leased, rented, and occupied subject to the terms, conditions, restrictions and limitations of this Agreement. All of the stated terms, conditions, restrictions and limitations of this Agreement are intended to run with the land and shall be binding upon the successors and assigns of the Property, including mortgagees and purchasers at foreclosure sale.
- C. Any buyer or transferee of the Property, or of any portion of or interest in the Property, by acceptance of a deed thereto, shall be deemed to have consented to and accepted the terms, conditions, restrictions and limitations set forth in this Agreement and the grantor of such deed shall be released from its obligations under the Agreement.
- D. Notices to the Developer shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the Developer at the address set forth below, or such other address designated by the Developer by like notice:

Morningside Broadway, LLC
c/o Morningside Equities Group, Inc.
223 W. Erie, 3rd Floor
Chicago, IL 60654
ATTN: Ronald S. Mucha

With a copy to:

Conlin, McKenney & Philbrick, P.C.
ATTN: W. Daniel Troyka, Esq.
350 S. Main Street, Suite 400
Ann Arbor, MI 48104-2131

- E. Notices to the City shall be given in writing and delivered in person or mailed, by certified or registered mail, return receipt requested, to the City at the address set forth below, or such other address designated by the City by like notice:

Office of the City Attorney
City of Ann Arbor
301 East Huron
P.O. Box 8647
Ann Arbor, MI 48107-8647

With a copy to:

Washtenaw County Office of Community and Economic Development
415 W. Washington Avenue
Ypsilanti, MI 48197

- F. If any provision of this Agreement shall be held by a court of proper jurisdiction to be invalid, illegal or unenforceable, the remaining provisions shall survive and their validity, legality or enforceability shall not in any way be affected or impaired thereby.
- G. No waiver of any term of this Agreement shall be deemed a further or continuing waiver of such term or any other term, and the either party's failure to assert any right or provision of this Agreement shall not be deemed a waiver of such right or provision.
- H. Relief from any of the terms and conditions of the Agreement may be granted upon a written request to the City and approval of the City Administrator. Approval shall be in the City's sole and reasonable discretion.
- I. If the Property is subdivided for the purpose of the sale of individual dwelling units that are classified as Affordable Dwelling Units, such sales shall be subject to this Agreement.
- J. This Agreement shall be governed and controlled in all respects by the laws of the State of Michigan, including interpretation, enforceability, validity and construction. The parties submit to the jurisdiction and venue of the Circuit Court for Washtenaw County, State of Michigan, or, if original jurisdiction can be established, the United States District Court for the Eastern District of Michigan, Southern Division, with respect to any action arising, directly or indirectly, out of this Agreement or the performance or breach of this Agreement. The parties stipulate that the venues referenced in this Agreement are convenient and waive any claim of non-convenience. Notwithstanding anything to the contrary in this Agreement, nothing herein shall be interpreted so as to require the City to contravene applicable law including making a loan of credit.

- K. Neither party to this Agreement will be liable to the other party for failure to perform any of its obligations under this Agreement to the extent such performance is hindered, delayed or prevented by Force Majeure (except for failure to make payments hereunder). If a party to this Agreement is unable, in whole or in part, to carry out its obligations under this Agreement due to Force Majeure must provide notice to the other party. Initial notice may be given orally; however, written notification with reasonably full particulars of the event or occurrence is required as soon as reasonably possible. A party under this Agreement claiming Force Majeure will diligently use all reasonable efforts to remove the cause, condition, event or circumstance of such Force Majeure, will promptly give written notice to the other party of the termination of such Force Majeure, and will resume performance of any suspended obligation as soon as reasonably possible after termination of such Force Majeure. For purposes of this Agreement, "Force Majeure" will mean causes, conditions, events or circumstances which are beyond the reasonable control of the party claiming Force Majeure. Such causes, conditions, events and circumstances will include acts of God, strikes, lockouts or other industrial disturbances, acts of the public enemy, wars, blockades, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, arrests and restraints of rulers and people, arrests and restraints of the Government, either federal or state, inability of any party hereto to obtain necessary materials or supplies at market costs or permits due to existing or future rules, orders and laws of governmental authorities (both federal and state), interruptions by government or court orders, present and future orders of any regulatory body having proper jurisdiction, civil disturbances, explosions, sabotage, partial or entire loss of market.
- L. If any time period for giving notice or taking action hereunder expires on a day that is not a Business Day, then time period for giving notice or taking action hereunder shall automatically be extended to the next Business Day.

[Remainder of page intentionally blank.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first stated above.

**For Morningside Broadway, LLC,
a Michigan limited liability company**

223 W. Erie, Third Floor
Chicago, Illinois 60654

By: Morningside Lower Town Holdings, LLC
a Michigan limited liability company

By: _____
Ronald S. Mucha
Its: Member

**For Morningside Maiden Lane, LLC
a Michigan limited liability company**

223 W. Erie, Third Floor
Chicago, Illinois 60654

By: Morningside Lower Town Holdings, LLC
a Michigan limited liability company

By: _____
Ronald S. Mucha
Its: Member

**For Morningside Nine99, LLC
a Michigan limited liability company**

223 W. Erie, Third Floor
Chicago, Illinois 60654

By: Morningside Lower Town Holdings, LLC
a Michigan limited liability company

By: _____
Ronald S. Mucha
Its: Member

**For the City of Ann Arbor
a Michigan Municipal Corporation**

301 E. Huron St.
Ann Arbor, Michigan 48107

By: _____
Christopher Taylor
Its: Mayor

By: _____
Jacqueline Beaudry
Its: City Clerk

Approved as to Content:

By: _____
Milton Dohoney Jr.
Its: City Administrator

Approved as to Form

By: _____
Atleen Kaur
Its: City Attorney

[Notarizations to Follow on Next Page]

STATE OF _____)
COUNTY OF _____)SS

The foregoing Agreement was acknowledged before me this ____ day of _____, 2024 by Ronald Mucha, authorized signatory of Morningside Lower Town Holdings, LLC, a Michigan limited liability company, the Manager of Morningside Broadway, LLC, a Michigan limited liability company, on behalf of the company.

NOTARY PUBLIC

County of _____, State of _____

Acting in the County of _____

My Commission Expires:

STATE OF _____)
COUNTY OF _____)SS

The foregoing Agreement was acknowledged before me this _ day of _____, 2024 by Ronald Mucha, authorized signatory of Morningside Lower Town Holdings, LLC, a Michigan limited liability company, the Manager of Morningside Maiden Lane, LLC, a Michigan liability company, on behalf of the limited liability company.

NOTARY PUBLIC

County of _____, State of _____

Acting in the County of _____

My Commission Expires: _____

STATE OF _____)
)SS
COUNTY OF _____)

The foregoing Agreement was acknowledged before me this day of , 2024 by Ronald Mucha, authorized signatory of Morningside Lower Town Holdings, LLC, a Michigan limited liability company, the Manager of Morningside Nine99, LLC, a Michigan liability company, on behalf of the limited liability company.

NOTARY PUBLIC

County of _____, State of _____

Acting in the County of _____

My Commission Expires: _____

STATE OF _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 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 _____, State of _____

My Commission Expires: _____

Acting in the County of _____

Drafted by and after recording return to:

Nicole Vargas
Assistant City Attorney (P-85580)
Office of the City Attorney
City of Ann Arbor
301 East Huron Street
PO Box 8647
Ann Arbor, MI 48107-8647

EXHIBIT A

PHASE 1

LEGAL DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHWEST ¼ OF SECTION 21, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN: **(PHASE 1 of 1140 Broadway)**

COMMENCING 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 to the POINT OF BEGINNING;

thence continuing Northeasterly along the Southerly right-of-way line of Broadway Street (variable width) in the following four (4) courses:

- (1) N 57°48'00" E 237.30 feet,
- (2) N 25°54'20" E 32.17 feet,
- (3) N 57°48'00" E 10.02 feet
- and (4) N 58°18'42" E 33.55 feet (recorded as N 58°18'00" E);

thence along the centerline of Traver's Creek in the following four (4) courses:

- (1) S 22°41'48" E 13.78 feet (recorded as S 22°42'30" E),
- (2) S 52°07'48" E 51.77 feet (recorded as S 52°08'30" E),
- (3) S 65°43'18" E 29.31 feet (recorded as S 65°44'00" E)
- and (4) S 73°04'18" E 50.81 feet (recorded as S 73°06'00" E);

thence N 37°31'42" E 25.40 feet (recorded as N 37°31'00" E);

thence S 79°25'00" E 177.53 feet along the Northeasterly line of Lot 25 of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records;

thence S 31°16'00" W 410.58 feet along the Northwesterly line of Ross Maiden Lane Apartments;

thence S 58°44'00" E 74.99 feet;

thence S 31°16'00" W 29.50 feet along the West right-of-way line of Nielsen Court;

thence N 58°44'00" W 274.67 feet;

thence N 31°16'00" E 24.98 feet;

thence N 58°44'00" W 148.80 feet;

thence N 32°14'33" W 93.87 feet to the POINT OF BEGINNING. Being part of Lot 25 and Lots 29 and 30, of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records and part of Lots 82, 84 and 85 and Lots 86 and 87, and a vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records.

Parcel ID# 09-09-21-302-120

PHASE 2

LEGAL DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHWEST ¼ OF SECTION 21, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN: **(PHASE 2 of 1140 Broadway)**

COMMENCING 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 southeasterly along the northerly right-of-way line of Maiden Lane (50 feet wide) S 58°44'00" E 379.03 feet to the POINT OF BEGINNING;

thence N 31°16'00" E 226.00 feet;

thence S 58°44'00" E 274.67 feet;

thence along the westerly right-of-way line of Nielson Court (50 feet wide)

S 31°16'00" W 226.00 feet;

thence along said northerly line of Maiden Lane N 58°44'00" W 274.67 feet to the POINT OF BEGINNING.

Being Lots 72 thru 74, inclusive, and part of Lots 75, 83, and 85, and a vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records, also being Lots 26 thru 28, inclusive, and part of Lot 25 of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records and containing 1.43 acres of land, more or less. Subject to easements and restrictions of record, if any.

Parcel ID# 09-09-21-302-207

PHASE 3

LEGAL DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHWEST ¼ OF SECTION 21, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN: **(Phase 3 of 1140 Broadway)**

Commencing 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 15.38 feet to the POINT OF BEGINNING;

thence continuing Northeasterly along the Southerly right-of-way line of Broadway Street (variable width) N 57°48'00" E 228.61 feet;

thence S 32°12'00" E 13.00 feet;

thence N 57°48'00" E 68.00 feet;

thence N 32°12'00" W 13.00 feet;

thence continuing Northeasterly along the Southerly right-of-way line of Broadway Street (variable width) N 57°48'00" E 15.34 feet;

thence S 32°14'33" E 93.87 feet;

thence S 58°44'00" E 148.80 feet;

thence S 31°16'00" W 250.98 feet;

thence N 58°44'00" W 288.47 feet along the Northerly right-of-way line of Maiden Lane (50' feet wide)

thence N 43°59'08" W 43.21 feet;

thence N 58°43'59" W 36.37 feet;

thence N 32°12'00" W 6.19 feet to the POINT OF BEGINNING. Being part of Lots 75, 83, and 85, and Lots 76 through 82, inclusive, and part of Lots 84 and a vacated

alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats,
Washtenaw County Records and containing 1.84 acres of land, more or less.
Subject to easements and restrictions of record, if any.

Parcel ID#: 09-09-21-302-119

Exhibit B - Maximum Monthly Rent Example

Maximum Monthly Rent 2020

	2019 Fair Market Rent	5% Utility Allowance Rent	10% Utility Allowance Rent
Efficiency	\$900	\$855	\$810
1 bedroom	\$921	\$875	\$829
2 bedroom	\$1,124	\$1,068	\$1,012
3 bedroom	\$1,445	\$1,437	\$1,301
4 bedroom	\$1,767	\$1,679	\$1,590

Fair Market Rents include the cost of all utilities paid by the tenant, except telephone, cable/satellite television or internet.