

## **1146 SOUTH MAPLE ROAD – HICKORY WAY III DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2025, 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 Hickory Way Apartments III Limited Dividend Housing Association LLC, a limited liability company, with principal address at 1327 Jones Dr., Suite 102, Ann Arbor, MI 48105, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described in Paragraph T-4 below (the "Property") and site planned as Hickory Way III (the "Project"), and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Hickory Way III, and desires PUD 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, on \_\_\_\_\_, 2025, City Council approved the 1146 South Maple Road - Hickory Way III Site Plan ("Site Plan") and 1146 South Maple Road - Hickory Way III Development Agreement ("Agreement") pursuant to a resolution adopted on that date, and

WHEREAS, the CITY desires to ensure 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 private storm water management system, public sidewalk, private sidewalk, and ("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. Every owner of a portion of the Property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the private Improvements set forth in Paragraph P-1 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) To grant an easement to the CITY for water utilities and public right-of-way as shown on the Site Plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits, and the easements shall be granted to the CITY in a form reasonably acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy, although the easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-5) DEVELOPER shall convey easements to the City for open space along the south 12 feet of the Property and open space, maintenance, and public access along the west 20 feet of the Property in a form subject to the approval of the City Attorney.

(P-6) DEVELOPER shall ensure that Habitat for Humanity will have an opportunity to salvage materials from the house on the Property prior to demolition of the house existing on the Property at the time of this Agreement.

(P-7) To convey to the CITY, prior to the issuance of any permits and subject to acceptance by the Ann Arbor City Council, easements for open space along the south 12 feet of the Property and open space, maintenance, and public access along the west 20 feet of the Property in a form subject to the approval of the City Attorney.

(P-8) To provide, prior to the issuance of building permits, a signing plan to the Fire Department according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-9) To install all storm sewers and sanitary sewers, 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.

(P-10) To be included in a future special assessment district, along with other benefiting Property, for the construction of additional Improvements to South Maple Road, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along South Maple Road frontage when such Improvements are determined by the CITY to be necessary.

(P-11) 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 Site Plan.

(P-12) 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 Project 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-13) Existing landmark trees 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 trees 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 Occupancy, shall be replaced by the DEVELOPER as provided by Chapter 55 of the Ann Arbor City Code.

(P-14) 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-15) 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.

(P-16) To provide a minimum of 39 units in this Project leased at or below 60 percent of the City of Ann Arbor median household income, as defined by the United States Department of Housing and Urban Development (HUD) in perpetuity. The PROPRIETOR or its designee shall verify the income eligibility of the tenant using a form approved by the CITY and the CITY or its designee shall certify that the renter is income eligible. The affordable units shall remain available to individuals and families with income at or below 60 percent of the City median income in perpetuity. The PROPRIETOR agrees to execute a Housing Affordability Covenant with the CITY, and to record such covenant prior to recording of the Master Deed.

(P-17) To design, construct, repair and maintain this Project in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said Project will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said Project 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-18) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the Project Improvements, and within one month after completion or abandonment of construction.

(P-19) 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 (have) legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-20) Failure to construct, repair and/or maintain the site pursuant to the Site Plan and/or failure to comply with any of this approved 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 Site Plan and/or the terms and conditions of the approved 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 Site Plan and/or Agreement.

(P-21) 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 Project 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-22) 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 Hickory Way III 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 Site Plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

COMMENCING AT THE NORTHEAST CORNER OF SECTION 36, SCIO TOWNSHIP, WASHTENAW COUNTY, MICHIGAN; THENCE SOUTH 01 DEGREES 19 MINUTES EAST 954.44 FEET IN THE LAST LINE OF SECTION FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 1 DEGREES 19 MINUTES EAST 155.00 FEET; THENCE SOUTH 88 DEGREES 09 MINUTES WEST 320.00 FEET; THENCE NORTH 4 DEGREES 27 MINUTES WEST 155.23 FEET; THENCE NORTH 88 DEGREES 09 MINUTES EAST 328.50 FEET TO THE PLACE OF BEGINNING, BEING PART OF THE EAST 1/2 OF NORTHEAST 1/4, SECTION 36, TOWN 2 SOUTH, RANGE 5 EAST, WASHTENAW COUNTY, MICHIGAN.

Parcel ID H-08-36-150-006: 50,247 SF, 1.15 acres (+/-)

(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 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. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the City because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.



HICKORY WAY APARTMENTS III LIMITED  
DIVIDEND HOUSING ASSOCIATION, LLC

By: \_\_\_\_\_  
Wendy Carty-Saxon, Manager

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_ by Wendy Carty-Saxon, Manager of Hickory Way Apartments III Limited Dividend  
Housing Association, LLC, a limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
County of \_\_\_\_\_, State of \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Christopher Frost (X-XXXXXXX)  
Senior Assistant City Attorney  
City of Ann Arbor  
Office of the City Attorney  
P.O. Box 8647  
Ann Arbor, MI 48107-8647