

**300 WEST HURON HOTEL DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2021, 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 Hawkeye Hotels, a [Type of Entity], with principal address at 2706 James St., Coralville, IA 52241, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 300 West Huron, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 300 West Huron Hotel, and desires Site plan and development agreement approval thereof, and

WHEREAS, the DEVELOPER desires to build or use certain Improvements with and without the necessity of special assessments by the CITY, and

WHEREAS, the CITY desires to 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(S) HEREBY AGREE(S):**

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of [public water main], private storm water management system, public street, public sidewalk, private sidewalk, and street lights ("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 public 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 obtain an easement for the proposed storm sewer outlet into the private storm sewer on 310 W. Huron Street. Legal descriptions and drawings for this easement shall be submitted for review by City staff prior to execution. The easement must be recorded, with a copy provided to the City, prior to the issuance of any permits, except for demolition permits.

(P-5) To construct and maintain the on-street drop-off area for use by the Development and its guests. Maintenance includes snow/ice removal, pavement repair and replacement. All improvements must meet City Standards. City retains the right to utilize or eliminate this area in the future.

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to West Huron Street and North First Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along West Huron Street and North First Street frontage when such Improvements are determined by the CITY to be necessary.

(P-7) To indemnify, defend and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the DEVELOPER, its employees, agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-8) Existing 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 granting of a Certificate of Occupancy. Existing street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after granting a Certificate of Occupancy, shall be replaced by the DEVELOPER as provided by Chapter 55 of the Ann Arbor City Code.

(P-9) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the development prior to final written acceptance of the public improvement(s) by the CITY. Evidence of such insurance shall be produced prior to any construction of improvement and a copy filed with the City Clerk's Office and shall remain in full force and effect during construction of the public improvement(s) and until notice of acceptance by the CITY of the Improvements.

(P-10) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Public Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the DEVELOPER to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the DEVELOPER one year after the date of acceptance by the CITY.

(P-11) 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-12) 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-13) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-14) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-15) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development Improvements, and within one month after completion or abandonment of construction.

(P-16) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this agreement. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent).

(P-17) Prior to issuance of building permits, to provide a management plan that indicates how the one car-sharing service parking spaces proposed as part of the development and contributing to the off-street parking requirements will be reserved, signed and enforced. Prior to request for or issuance of any certificate of occupancy, and consistent with Chapter 55 of Ann Arbor City Code, to provide a recorded, off-site permanent parking easement for the two car-sharing spaces. DEVELOPER shall provide the CITY with proof of the availability to residents of the car-sharing service within 15 days of request. DEVELOPER agrees and acknowledges that failure to maintain the car-sharing service will be a violation of the Unified Development Code regarding the minimum required number of parking spaces, consistent with Chapter 55 of Ann Arbor City Code. In the event that DEVELOPER is unable to contract with a vendor to provide such car sharing services, or the full number of cars required herein, then

DEVELOPER shall provide the minimum number of parking spaces on or off-site as required by City Code.

(P-18) 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-19) Failure to construct, repair and/or maintain the site pursuant to the approved 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 approved 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 approved site plan and/or Agreement.

(P-20) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-21) 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 300 West Huron Hotel.

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

(C-3) To record this Agreement with the Washtenaw County Register of Deeds.

**GENERAL TERMS**

Both the DEVELOPER and the CITY agree as follows:

(T-1) This Agreement is not intended to create a contractual right for third parties.

(T-2) This Agreement and any of its terms, conditions, or provisions cannot be modified, amended, or waived unless in writing and unless executed by both parties to this Agreement. Any representations or statements, whether oral or in writing, not contained in this Agreement shall not be binding on either party.

(T-3) This Agreement and any of its terms or conditions shall not be assigned or transferred to any other individual or entity unless prior approval of the CITY is received. Such approval shall not be withheld unreasonably.

(T-4) The obligations and conditions on the DEVELOPER, as set forth above in this Agreement and in the approved site plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

Parcel 1

Beginning at a point on the North line of Huron Street, one chain and seventy-three links West from the corner formed by the intersection of the North line of Huron Street, with the West line of First Street, said point being the Southeast corner of land now or formerly owned by Hattie M. Doig; and running from thence North along the East line of Doig's land about eight rods, to the Northeast corner of said Doig's land; thence East parallel with the North line of Huron Street, thirty-six feet; thence South parallel with the first mentioned line, to Huron Street; thence West along the North line of Huron Street, thirty-six feet to the Place of Beginning, and being a part of Block One North of Huron Street, Range 1 East, in the Original Plat to the Village (now City) of Ann Arbor, Washtenaw County, Michigan.

Parcel 2

Beginning at the Southeast corner of Block 1 North, Range 1 East, Original Plat of the Village (now City) of Ann Arbor, as recorded in Transcripts, Pages 152 and 153, Washtenaw County Records; thence North 89 degrees 40 minutes 20seconds West 78.18 feet along the Northerly right-of-way line of Huron Street; thence North 92.00 feet parallel with the Westerly right-of-way line of North First Street; thence South 89 degrees 40 minutes 20 seconds East 78.18 feet parallel with the Northerly right-of-way line of Huron Street; thence South 92.00 feet along the Westerly right-of-way line of North First Street to the point of beginning, being a part of Block 1 North, Range 1 East, of said Original Plat of the Village (now City) of Ann Arbor.

Parcel 3

*Commencing at the Southeast corner of Block 1 North, Range 1 East, Original Plat of the Village (now City) of Ann Arbor, as recorded in Transcripts, Pages 152 and 153, Washtenaw County Records; thence North 92.00 feet along the Westerly right-of-way line of North First Street to the point of beginning; thence North 89 degrees 40 minutes 20 seconds West 78.18 feet parallel with the Northerly right-of-way line of West Huron Street; thence North 40.00 feet parallel to the Westerly right-of-way line of North First Street; thence South 89 degrees 40 minutes 20 seconds East 78.18 feet parallel with the Northerly right-of-way line 40.00 feet along the Westerly right-of-way line of North First Street to the point of beginning, being a part of Block 1 North, Range 1 East, of said Original Plat of the Village (now City) of Ann Arbor.*

Parcel ID numbers: 09-09-29-214-013  
09-09-29-214-014  
09-09-29-214-015

(T-5) In addition to any other remedy in law or in equity failure to comply with all of the above paragraphs on the part of the DEVELOPER, or any part of the approved site plan, in part or in whole, shall give the CITY adequate basis and cause to issue a stop work order for any previously-issued building permits and shall be an adequate basis and cause for the CITY to deny the issuance of any building permits, certificates of occupancy, or any other permits unless and until the CITY has notified the DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER has failed to perform.

(T-6) This Agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code. 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.

CITY OF ANN ARBOR, MICHIGAN  
301 East Huron Street  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to Substance:

\_\_\_\_\_  
Tom Crawford, City Administrator

Approved as to Form:

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

ENTITY NAME

By: \_\_\_\_\_  
[Name, Title]

STATE OF MICHIGAN )  
                                  ) ss:  
County of Washtenaw )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

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

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021 by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_, on behalf of the \_\_\_\_\_.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Ann Arbor Planning & Development Services  
ATTN: Brett Lenart  
Post Office Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6265