

AGREEMENT FOR DEVELOPMENT

This Agreement for Development (the “Agreement”) is entered into by and between MDM Hemlock, L.L.C., a Michigan limited liability company (“MDM Hemlock”), whose mailing address is 857 W. Washington Street, Suite 301, Marquette, Michigan 49855, and the City of Marquette, Michigan, a Municipal Corporation (“City”), whose mailing address is 300 West Baraga Avenue, Marquette, Michigan 49855, effective as of the later of the dates set forth after the Parties’ signatures below. MDM Hemlock and City are referred to herein, collectively, as the “Parties.”

RECITALS

WHEREAS, MDM Hemlock intends to construct a multi-phased residential development on certain real property located at 3102 S. McClellan Ave., 3120 S. McClellan Ave., 3131 S. McClellan Ave., 3140 S. McClellan Ave., 3151 S. McClellan Ave., 3161 S. McClellan Ave., and 3170 S. McClellan Ave., City of Marquette, County of Marquette, Michigan (collectively, “Heartwood Forest Property,” as generally outlined on Exhibit A); and

WHEREAS, the City finds that development of the Heartwood Forest Property will benefit the community by building up to 70 units of middle income housing, raising property values in the surrounding area, and creating a new taxable development (the “Project”); and

WHEREAS, MDM Hemlock intends to develop the Project in three phases, with the minimum investment into Phase 1 being \$5,000,000 and expects to make similar investments in subsequent stages; and

WHEREAS, in consideration of the development by MDM Hemlock, the City is willing to install the necessary public infrastructure to the Heartwood Forest Property or the Project up to the maximum cost of \$2,000,000.00; and

WHEREAS, it is agreed by the Parties that the City will install the necessary public infrastructure congruent with the development timeline as defined by MDM Hemlock, therefore phasing the investment made by the City.

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals are restated and incorporated herein by this reference.
2. Installation of Public Infrastructure. The City, at its sole expense, shall install all public roads, curbs, street lighting, electricity, sidewalks, water, sewer, stormwater, to and within the Heartwood Forest Property up to a maximum cost of \$2,000,000.00. Any additional needed or desired public infrastructure shall be installed by MDM Hemlock, at its sole expense. Attached within Exhibit B are scopes of work for each public infrastructure component to be installed by the City. The specific locations of all public infrastructure shall be mutually determined by the parties in conjunction with the development of the final site plan for the Project. Attached in Exhibit A is a preliminary site plan of the Project.
3. Development of Heartwood Forest Property. MDM Hemlock agrees to develop the Project as a multi-phased residential development with the first phase of the Project commencing no later than

180 days following satisfaction of both the following conditions: (1) receipt of written notice from the City stating that the improvements described at paragraph 2 above are complete and (2) receipt of approval of all necessary permits. MDM Hemlock agrees to expend minimum of \$5 million on Phase 1 of the Project no later than 30 months after the Project is commenced.

4. Force Majeure. In discharging its duties as set forth in this Agreement, MDM Hemlock shall be held to a standard of reasonableness and shall not be liable to City for matters outside its control, including, without limitation, labor disputes, civil commotion, war, riots, fires, floods, earthquakes, inclement weather, governmental regulations or controls, pandemics, epidemics, local disease outbreaks, public health emergencies, quarantines, casualty, strikes, the unavailability of labor or materials to the extent beyond the control of the party affected, embargoes, civil strife, acts of terrorism, or acts of God, in addition to any and all other events, regardless of their dissimilarity to the foregoing, deemed to render performance of the Agreement impracticable or impossible under the law, in which event the non-performing party shall be excused from its obligations for the period of the delay.
5. Payment of Taxes. MDM Hemlock agrees to pay all real property and other taxes due and owing by MDM Hemlock with respect to the Heartwood Forest Property, as and when the same become due. MDM Hemlock recognizes and agrees that its failure to pay said taxes is an Event of Default and breach of this Agreement.
6. Event of Default. An Event of Default shall consist of any misrepresentation by either party or the failure of either party to comply with any term or conditions of this Agreement.
7. Remedies. Upon any Event of Default, the non-defaulting party shall be entitled to seek all remedies available at law or inequity. In the event a lawsuit is required by the non-defaulting party to enforce its remedies against the defaulting party, the non-defaulting party, if prevailing, shall be entitled to recover its costs and attorney's fees.
8. Assignment. Except as provided in this paragraph, no party to this Agreement may transfer, assign or delegate to any other person or entity all or any part of its rights or obligations arising under this Agreement without the prior consent of all other parties hereto. Consent may be given or withheld in the sole and absolute discretion of the party from whom consent is sought. Notwithstanding the foregoing, the parties agree that MDM Hemlock may assign any and all rights and obligations of this Agreement to an entity in which Robert E. Mahaney and/or Mary D. Mahaney and any trust in their name has a majority ownership and controlling interest.
9. Notices. All written notices, certificates or communications required by this Agreement to be given shall be sufficiently given and shall be deemed delivered when personally served or when mailed postage prepaid and addressed to the other party at the address listed in this Agreement, or any other address as provided in writing.
10. Amendment. No amendment or modification to or of this Agreement shall be binding upon any party hereto until such amendment or modification is reduced to writing and executed by both parties.

11. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of Michigan.
12. Permits and Approvals. MDM Hemlock shall be responsible for obtaining, at its sole cost and expenses, all easements, rights-of-way, licenses, permits, approvals and any other permissions necessary for the construction of the Project. Except as to the public infrastructure specified herein, MDM Hemlock, at its sole cost and expense shall be responsible for the development and construction of the Project. The City at its sole cost and expense shall be responsible for installation and completion of all public infrastructure as described in paragraph 2 of this Agreement as well as any other obligations imposed upon the City as provided herein.
13. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.
14. Counterparts, Facsimile/Electronic Copies and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by electronic signatures, which shall be deemed original signatures. The parties further agree that facsimiles and/or emailed/electronic copies of signatures (such as .pdf) shall serve as originals.
15. Entire Agreement. This Agreement embodies and constitutes the entire understanding between the Parties with respect to the transaction contemplated herein, and all prior or contemporaneous negotiations, communications, conversations and understandings of the Parties, written or oral, are merged into this Agreement.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date set forth after their signatures below.

MDM Hemlock, L.L.C.

Robert E. Mahaney, Manager

Date

City of Marquette, Michigan

Jennifer A. Smith, Mayor

Date

Kyle Whitney, City Clerk

Date

Approved as to Substance:

Karen M. Kovacs, City Manager

Date

Approved as to Form:

Suzanne C. Larsen, City Attorney

Date

PRELIMINARY SITE PLAN

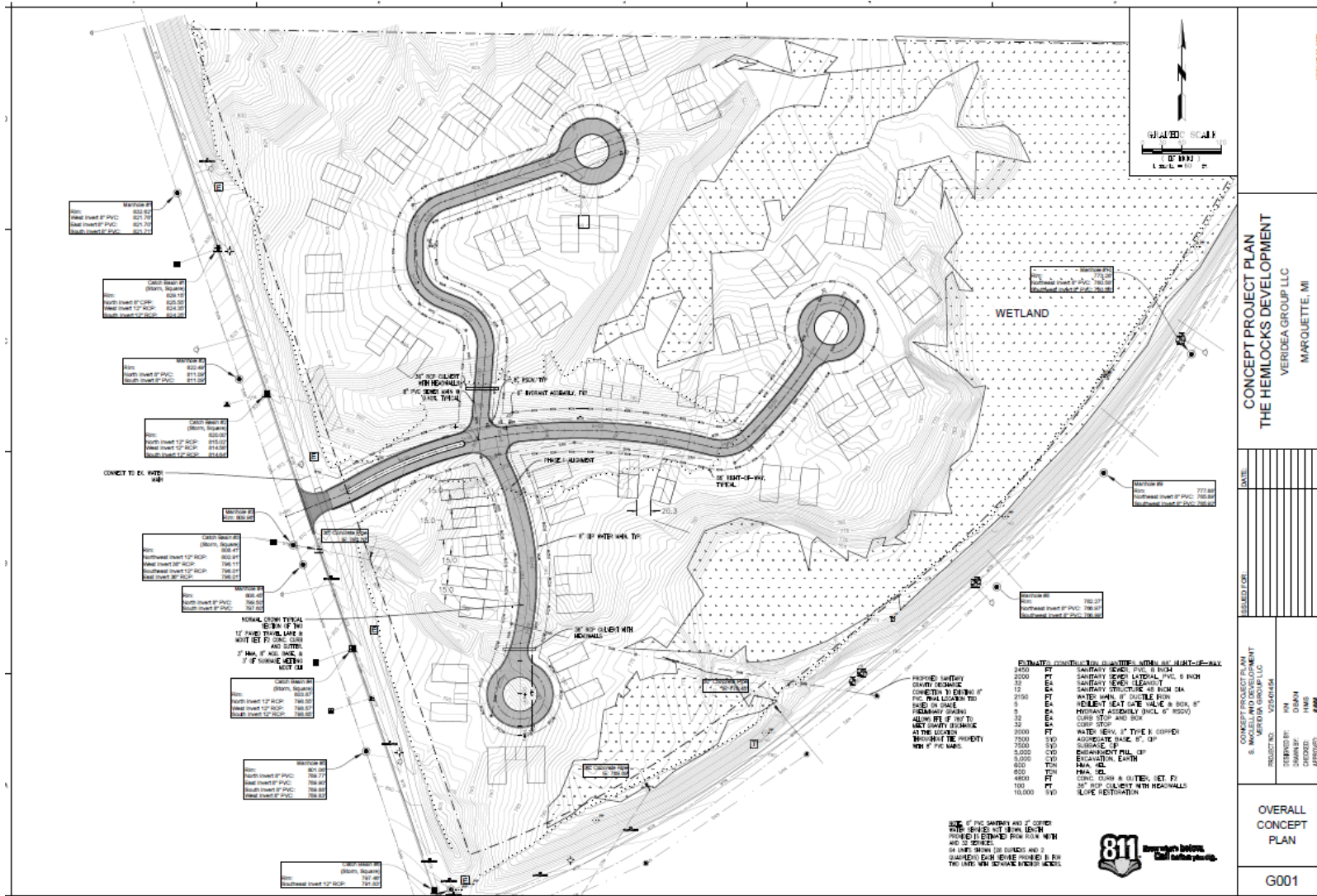


EXHIBIT B

PUBLIC INFRASTRUCTURE SCOPE OF WORK TO BE COMPLETED BY CITY OF MARQUETTE

***All scopes of work include the necessary permitting and entitlements**

1. Roadwork

- All public roads that will be maintained by the City of Marquette.
 - Includes excavating, grading, fill, dumping fees, etc.

2. Curbs

- Any concrete curbing that is required on public roads.

3. Street Lighting

- All lighting that is required along public roads.

4. Electricity

- Bring electricity into the development and install it along public roads to provide hook up for future phases of the development.

5. Sidewalks

- All sidewalks that are sited along public roads.

6. Water

- Run the water main along public roads.

7. Sewer

- Run the sewer main along public roads.

8. Stormwater

- Any stormwater retention work that is required.