

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of September 4, 2008

**SUBJECT: City Place PUD Zoning District and PUD Site Plan
(407-437 South Fifth Avenue) File Nos. PUDZ08-001 & PUDSP08-004**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the City Place PUD Zoning District and Supplemental Regulations, and PUD Site Plan and Development Agreement.

STAFF RECOMMENDATION

Staff recommends **denial** of the proposed PUD zoning, because the uses, physical characteristics, design features and amenities proposed do not provide an overall beneficial effect for the City and are not consistent with elements of the adopted Master Plan.

Staff recommends **denial** of the PUD site plan because it does not achieve the purposes of a PUD zoning district and would have a detrimental effect on the public welfare.

LOCATION

The site is located on the east side of South Fifth Avenue, south of East William Street and north of East Jefferson Street. The site is comprised of 407, 411, 415, 419-21, 427, 433, and 437 South Fifth Avenue. The site abuts the East William Street Historic District to the north (Central Area, Allen Creek Watershed).

DESCRIPTION OF PROJECT

The petitioner seeks to rezone seven lots (1.23 acres total) currently zoned R4C (Multiple-Family Dwelling District) to PUD (Planned Unit Development). The petitioner has also submitted a PUD site plan for a five-level (plus underground parking), 90-unit apartment building. The 164-bedroom apartment building would be clad in brick and limestone veneer, composite shingles and composite siding on the front elevation, and vinyl and composite shingles, composite siding and brick veneer on the sides and rear elevation. One level of parking would be located beneath the structure providing 97 parking spaces. All storm water runoff from impervious surfaces would be collected in an underground detention tank system. There are five landmark trees on the site and three are proposed to be removed.

PUD Zoning District and Supplemental Regulations – A PUD Zoning District is proposed for the 53,579-square foot site. PUD Supplemental Regulations have been drafted to allow 208 percent maximum floor area ratio (FAR). The Supplemental Regulations also propose smaller front, side and rear setbacks than are permitted in the

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existing R4C zoning district, and increased height. Permitted principle and accessory uses are to be the same as those allowed in the R4C district.

The Supplemental Regulations also stipulate that at least 38 units will be affordable to residents earning equal or less than 90 percent of area median income (AMI), and that an additional 14 units will be reserved for residents earning below 80 percent of AMI. Other proposed site and design features are also included in the Supplemental Regulations.

PUD Site Plan – A PUD Site Plan is proposed for a 123,168-square foot building to replace the seven existing houses on the site. The proposed building is 327.24 feet long, 48 feet tall and 96.5 feet deep. The 90 units would contain 164 bedrooms.

ZONING COMPARISON CHART

		EXISTING	PROPOSED	PROPOSED PUD Supplemental Regulations	REQUIRED BY CURRENT ZONING
Zoning		R4C	PUD	PUD	R4C
Gross Lot Area		7 lots, ranging from 5,200 sq ft to 10,300 sq ft	53,579 sq ft (1.23 acres)	53,579 sq ft	8,500 square feet (2,175 sq ft per dwelling unit)
Floor Area Ratio		N. A.	208%	208% MAX	NA
Setbacks	Front	Varies from approx 14 ft to 28 ft	19.5 ft	19.5 ft	25 ft plus 36.875 ft* Total = 61.875 ft
	Side: North	Varies from 3 ft to 15 ft	18.9 ft	18.9 ft	12 ft least one/26 ft total of two* 21.25 ft (north) 23.25 ft (south)
	Side: South	Varies from 3 ft to 15 ft	30.63 ft	30.63 ft	
	Rear	Varies from 45 ft to 80 ft	31.6 ft	31.6 ft	30 ft plus 36.875 ft* Total = 66.875
Height		Varies – approx 30 feet	48 ft	48 ft	30 ft MAX
Parking – Automobiles		Varies	97 spaces	97 spaces	1.5 spaces/ dwelling unit
Parking – Bicycles		Varies	64 spaces – Class A, 20 spaces – Class C	64 spaces – Class A 20 spaces – Class C	1 space/5 units

* Per Chapter 55: additional front, side, and rear setbacks for buildings over 30 feet high and 50 feet wide.

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Multiple-Family Residential/Office	C2A/R (Commercial/Residential District)
EAST	Multiple-Family Residential	R4C (Multiple-Family Dwelling District)
SOUTH	Multiple-Family Residential	R4C
WEST	Multiple-Family Residential, Parking, and Church	R4C and P (Parking District)

PLANNING BACKGROUND

The Central Area Plan recommends multiple-family residential use for this site. Per page 65 of the plan, “this classification includes areas on the edge of downtown and in the campus area where higher density development such as apartments and group quarters is appropriate, although the preservation of existing single and two-family structures in this area is encouraged as well.”

The following are some of the applicable Goals and Actions stated in the Central Area Plan (see pages 19 – 63 for additional background, problem statements, and goals and actions).

a. Neighborhood Preservation

- i. To protect, preserve, and enhance the character, scale and integrity of existing housing in established residential areas, recognizing the distinctive qualities of each neighborhood.
- ii. To encourage the development of new architecture, and modifications to existing architecture, that complements the scale and character of the neighborhood.

b. Infill Development

- i. To ensure that new infill development is consistent with the scale and character of existing neighborhoods, both commercial and residential.

c. Tension between Commercial and Residential Uses

- i. To protect housing stock from demolition or conversion to business use, and to retain the residential character of established, sometimes fragile, neighborhoods adjacent to commercial or institutional uses.

d. Out of Scale Construction

- i. To encourage the construction of buildings whose scale and detailing is appropriate to their surroundings

e. Historic Preservation

- i. To encourage the preservation, restoration or rehabilitation of historically and culturally significant properties, as well as contributing or complimentary structures, streetscapes, groups of buildings and neighborhoods.
- ii. To preserve the historic character of Ann Arbor's Central Area.
- iii. Where new buildings are desirable, the character of historic buildings, neighborhoods and streetscapes should be respectfully considered so that new buildings will complement the historic, architectural and environmental character of the neighborhood.

This project lies within the Central Area, but outside of the downtown. It is not within the Downtown Development Authority District. The Central Area Plan states on page 46:

For purposes of this plan, the downtown is defined as the area contained in the 66-block Downtown Development Authority (DDA) District.

For this reason, the site was not included in the Calthorpe planning process or the Ann Arbor Discovering Downtown planning process. Therefore, though it is located in close proximity to downtown, the recommendations found in those plans are not applicable to this site.

HISTORY

In January 2008, the City Planning Commission voted to recommend denial of a slightly larger site plan and conditional zoning petition. In May 2008, the City Planning Commission voted to recommend denial of a PUD site plan that was nearly identical to the previous submittal. The applicants withdrew both applications before they were scheduled for City Council.

The current proposal has been modified from the previous submittal in the following manner:

- The number of dwelling units has been reduced from 98 to 90.
- The number of bedrooms has been reduced from 197 to 164.
- The length of the building has been reduced from 352' to 327'.
- The total size of the building has been reduced from 134,483 square feet to 123,168 square feet, a decrease of about 9 percent.
- A "notch" has been provided along the Fifth Avenue frontage of the building in an attempt to minimize the visual impact.
- The façade has been modified.

The seven houses proposed to be demolished make up the bulk of one of the most intact late 19th-early 20th century streetscapes in the City of Ann Arbor. Three of the seven houses were a part of the now-defunct Individual Historic Properties Historic District (415, 419, and 437 South Fifth Avenue). The following are brief descriptions of the properties (more information is available from staff upon request).

407 South Fifth Avenue – c.1899

This Dutch Gambrel style house was built around 1899. The first occupant listed in the Polk Directory was Ms. Richmond Bannister (widow of William) in 1902.

411 South Fifth Avenue: Andrew Reule House – c.1901

This house is a fine example of the Queen Anne style and features cross-gabled roofs and varying sized windows, including unusual oval and Diocletian shapes. Mr. Reule, a downtown clothier, occupied this house from 1902 until at least 1940.

415 South Fifth Avenue: Clayton Gaskell (Beakes) House – c. 1838

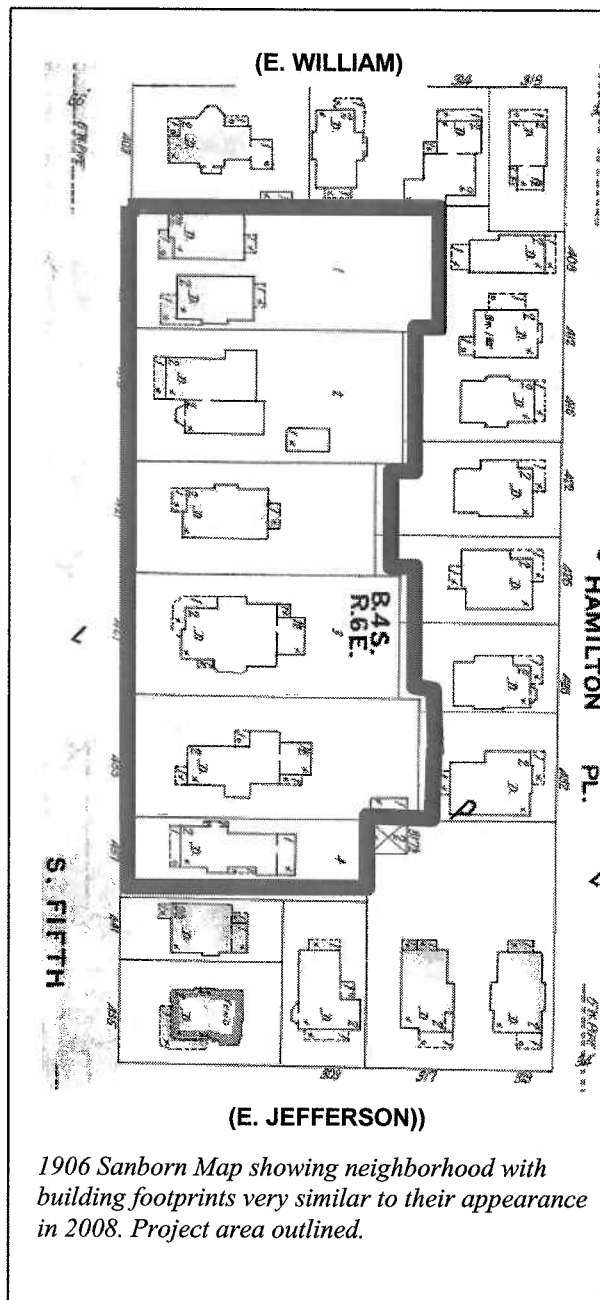
This Greek Revival style house is believed to be one of the oldest surviving houses in the city. Though it has been altered over the years, particularly the interior, it remains architecturally significant. It features a pedimented gable-front orientation, lunette in the attic, well-defined cornice, corner pilasters, and classical side entry. The house was the home of two important Ann Arbor mayors: Hiram Beakes, from 1860 until the late 1880s; and a short time later Samuel Beakes (no relation), for whom Beakes Street is named.

419 South Fifth Avenue: Henry & Mary Mann House – 1902

This late Queen Anne style house is symmetrical in form, with fancy shingle and fan patterned siding in the gables and brackets and upper spindles on the front porch. The house also features returns in the front gable and a full pediment and plain round Doric posts on the porch.

427 South Fifth Avenue: Francis M. Hamilton House - c.1894

This house first appears in Polk Directories in 1893 or 1894. Francis Hamilton moved in in 1896, and Hamilton descendents lived there until 1938. Mr. Hamilton was a Mayor of Ann Arbor, and the developer of Hamilton Place, in his Fifth Avenue backyard. The house is a restrained and symmetrical Queen Anne, with cross-gables, a cutaway corner and an open front porch.



1906 Sanborn Map showing neighborhood with building footprints very similar to their appearance in 2008. Project area outlined.

433 South Fifth Avenue – c. 1850s(?)

This very old and very charming house with its low pitched roof and symmetrical eaves appears on the 1880 Panorama View of the City of Ann Arbor, and could date back to the 1850s. Herbert Slauson lived here for many years after the turn of the 20th century. He was the Superintendent of Ann Arbor Public Schools, and the namesake of Slauson Middle School.

437 South Fifth Avenue: John McCarthy House – 1866

This house is an example of the simplest and most typical form of the Italianate style. It features a plain three-bay façade with the entrance at the right. The door is flanked by pilasters and a modified entablature.

ANALYSIS

1. Area median income is calculated based on family size and place of residence. The current area median income (AMI) in the Ann Arbor PMSA (which includes Washtenaw and Lenawee Counties) is \$64,100 for a family of two and \$80,200 for a family of four. Therefore, the 38 units that are affordable to residents earning less than 90 percent of AMI are for those earning less than \$76,900 (family of two) or \$96,250 (family of four). The 14 units for residents earning less than 80 percent of AMI are for those earning less than \$49,200 (family of two) or \$61,500 (family of four) annually.
2. Rezoning this property would eliminate the development standard of the R4C zoning district, which has long been established in this neighborhood, and increase the density significantly. It would also set a precedent that is attractive to other developers targeting R4C residential neighborhoods.
3. The applicant's description of environmentally-friendly aspects of the building are only vaguely quantified in the plan. Specifically, geo-thermal heating and cooling is included, which is laudable. The applicant will "use as many other LEED recommended design and construction techniques as are feasible," but is not more specific and makes no promises about achieving LEED or other energy efficiency standards.
4. The applicant says that the existing houses are inefficient from an energy standpoint. Historic houses are regularly made more energy efficient through a variety of means. There is considerable information available on how this can be achieved. Also, while some of the houses appear to be in very good exterior condition, others have been deteriorating under their current ownership. Energy inefficiencies caused by demolition by neglect are not irreversible.
5. The applicant states that because this project is a multiple-family use in a multiple-family district, it will not change the character of the neighborhood because those uses already exist. Removing seven houses with 22,888 total square feet of floor area (including garages) and replacing them with a single structure that is six times larger will permanently, and in this case, negatively change the character of the neighborhood.
6. The length of the proposed building (which exceeds the length of a football field), and its height and overall massing are inconsistent with the goals of the Central Area Plan and the scale and character of the surrounding neighborhood. For example, residents of Hamilton Place who have lots backing up to this site would view a 48-foot tall wall only

31 feet from their rear property line instead of the established pattern of a house on each lot surrounded by open spaces.

7. The petitioner has indicated that the seven houses that would be demolished are nearing the end of their useful lives. Historic buildings in worse condition are regularly rehabilitated by private owners in Ann Arbor and made comfortably habitable. Their useful lives, if properly maintained and rehabilitated, may easily extend into the 22nd Century.

8. The proposed rezoning and site plan are detrimental to the public welfare in that they are inconsistent with the Central Area Plan and are inconsistent with the established neighborhood character. The proposed rezoning and site plan require substantial alterations to required setbacks and height limits under the current zoning that are designed to provide adequate open space for the project and light to surrounding properties. Furthermore, the public benefits provided by the project are not substantial enough to justify the destruction of a functioning, intact, traditional neighborhood and streetscape.

STAFF COMMENTS

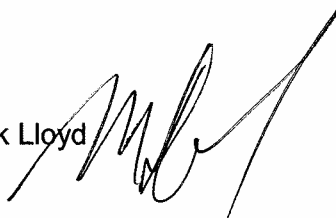
Parks and Recreation – The requested parkland contribution would be \$44,640, based on 1.2152 acres at \$40,000 per acre. The applicant has indicated that this contribution will be made by the developer.

Community Development – The proposed project aligns with the recommendations in the Affordable Housing Needs Assessment to increase the number of rental units targeted to households at 80 percent to 120 percent of Area Median Income in the downtown. This comment does not constitute an endorsement of the site plan, site location or design of the building.

Planning – Planning staff does not support this rezoning and site plan. The proposed PUD zoning and site plan are inconsistent with the recommendations of the Central Area Plan; the proposed project significantly exceeds the area, height, and placement standards of the existing R4C zoning district in this neighborhood. The length of the building exceeds the length of a football field and would be significantly out of character with the established neighborhood.

The project will have negative impacts on public welfare by replacing the existing homes, which contribute to the historic fabric of the neighborhood, with a building that would significantly and negatively alter the character of the existing neighborhood. The project would also negatively impact public welfare by imposing additional demands on public parking opportunities in the area since the project only provides parking for 97 vehicles but is proposing 164 bedrooms. The parking requirement for an R4C project with 90 dwelling units would be 135 spaces.

Prepared by Jeff Kahan
Reviewed by Connie Pulcifer and Mark Lloyd
jsj/8/27/08



Attachments: Zoning/Parcel Maps
Aerial Photo
Site Plan
Landscape Plan
Elevations
Applicant's PUD Application
Supplemental Regulations
8/26/08 Draft Development Agreement

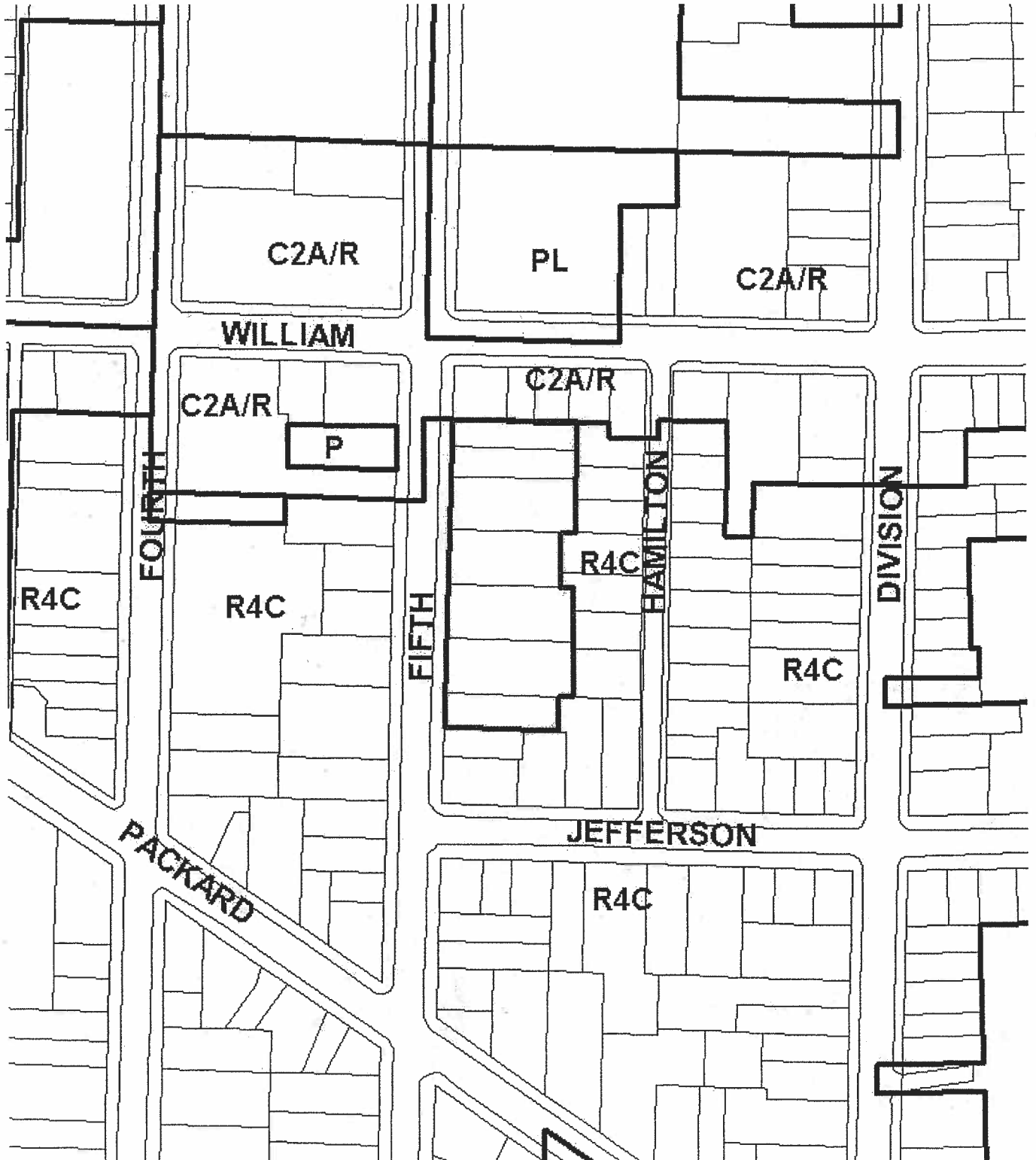
c: Owner: Fifth Avenue Limited Partnership
403 South Fifth Avenue
Ann Arbor, MI 48104

Petitioner: Midwestern Consulting, LLC
3815 Plaza Drive
Ann Arbor, MI 48108

Systems Planning
File Nos. PUDZ08-001 & PUDSP08-004

City Place

Zoning Map




200 0 200 400 Feet



City Place PUD



0 100 200 400 Feet

Map Legend
 Railroads

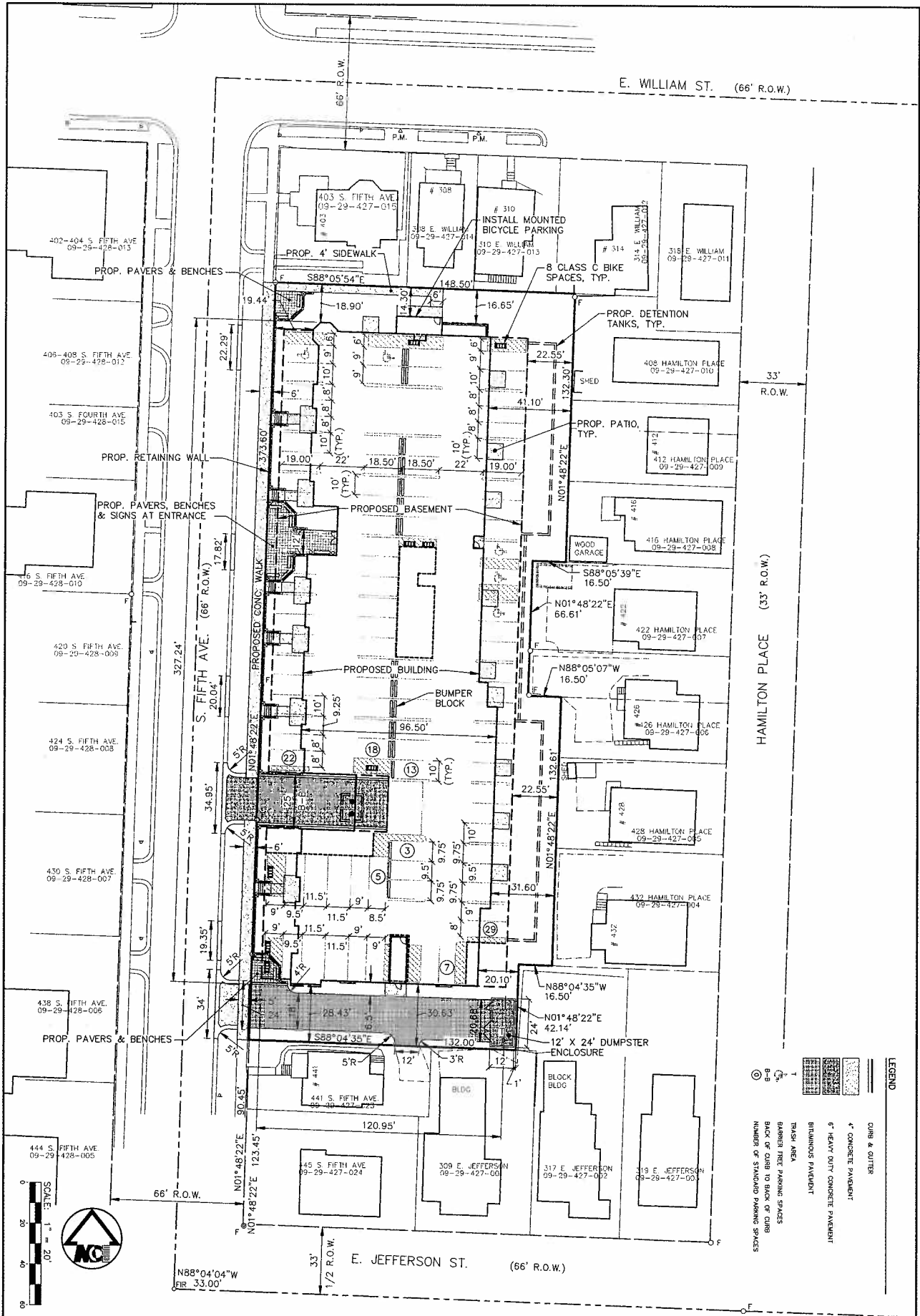


Maps available online:
<http://gisweb.ewashtenaw.org/website/mapwashtenaw/>

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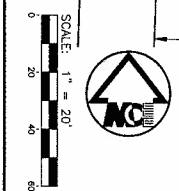
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	1-26-09 PDC:JCA
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CITY PLACE
P.U.D. SITE PLAN
DIMENSIONAL SITE PLAN

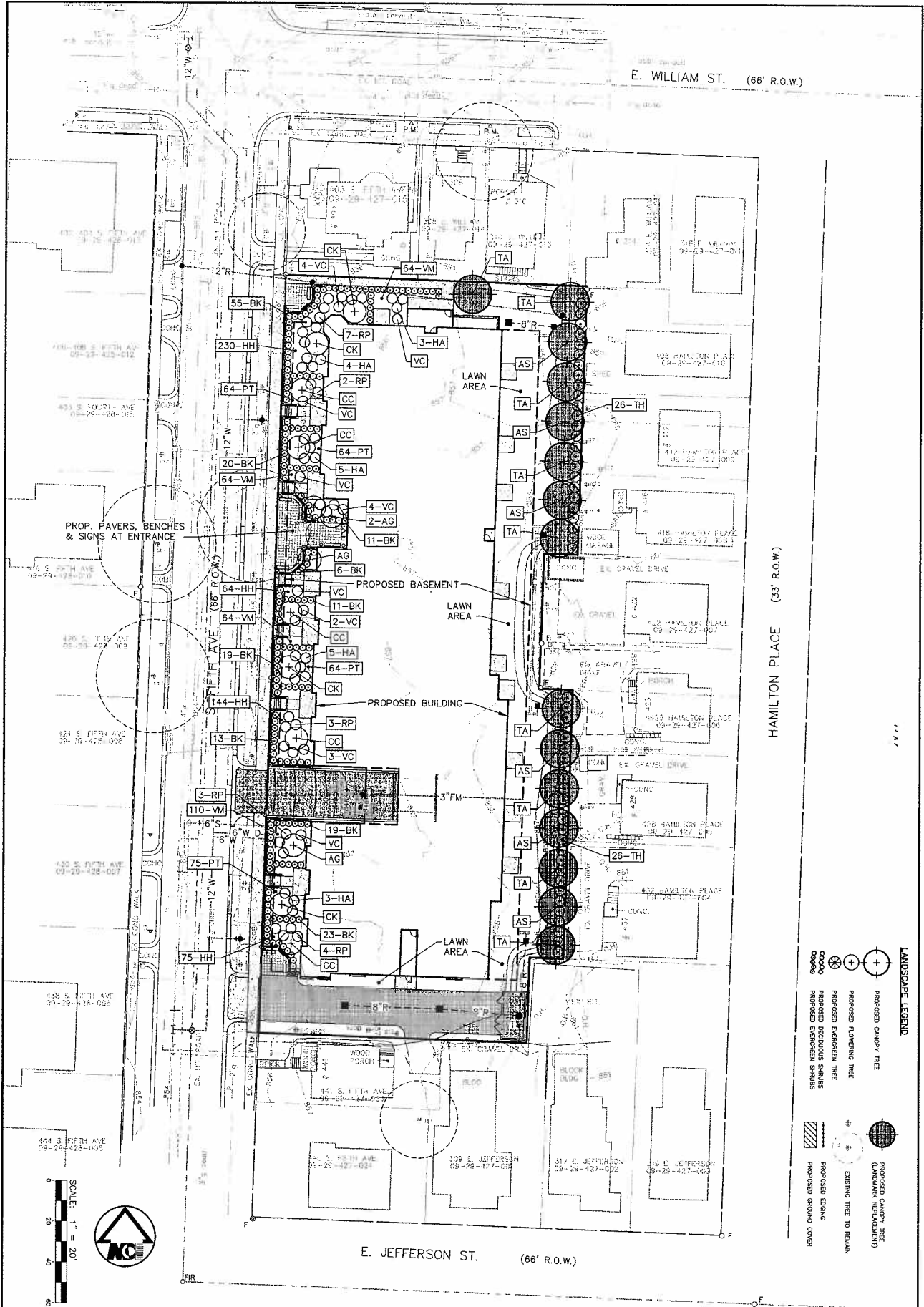
CLIENT
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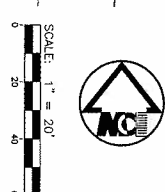


LEGEND

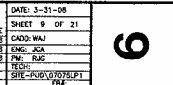
	CURB & GUTTER
	CONCRETE PAVEMENT
	HEAVY DUTY CONCRETE PAVEMENT
	BITUMINOUS PAVEMENT
	TRASH AREA
	BARrier FREE PARKING SPACES
	BACK OF CURB TO BACK OF CURB
	NUMBER OF STANDARD PARKING SPACES



- LANDSCAPE LEGEND**
- PROPOSED CANOPY TREE
 - PROPOSED FLOWERING TREE
 - PROPOSED EVERGREEN TREE
 - PROPOSED DECIDUOUS SHRUB
 - PROPOSED EVERGREEN SHRUB
 - PROPOSED CANOPY TREE (LANDMARK REPLACEMENT)
 - PROPOSED TREE TO REMAIN
 - PROPOSED ECOPAC
 - PROPOSED GROUND COVER



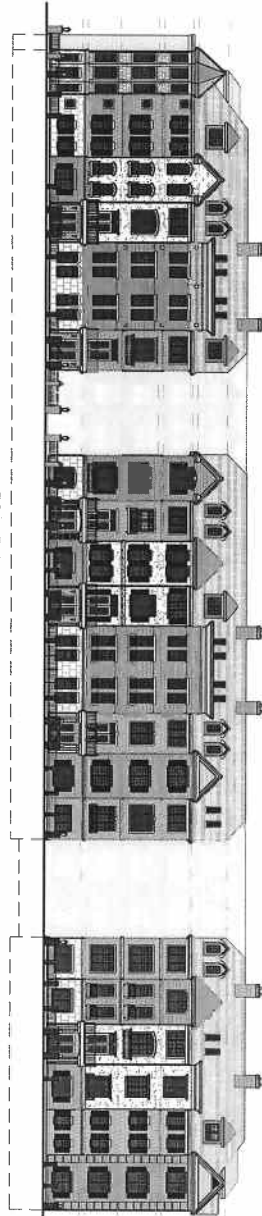
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	TR. A/S
	TR. S
	SITE/INS/VIDEO/PLT



CITY PLACE
P.U.D. SITE PLAN
LANDSCAPE PLAN

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FRONT ELEVATION-WEST

drawn kkk
 date 09.18.07 12.18.07
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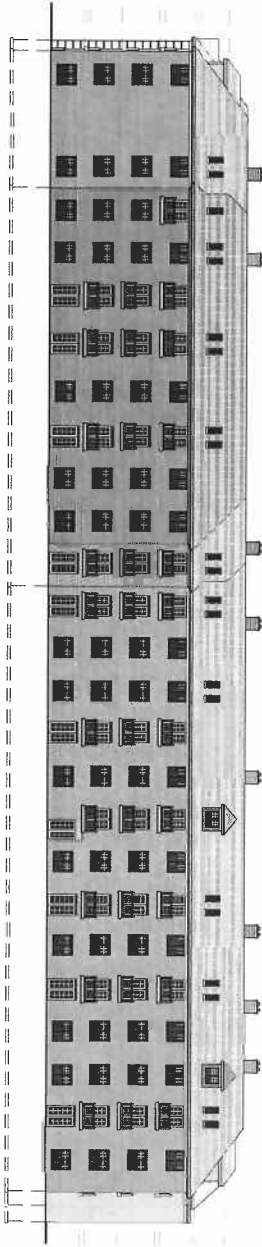
REVISIONS

J BRADLEY MOORE & ASSOCIATES
 4844 Jackson Road, #150 Ann Arbor, MI 48103 (734) 930-1500

City Place
 Building Elevation

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REAR ELEVATION-EAST
NOT TO SCALE

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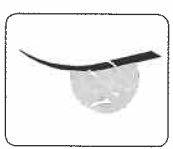
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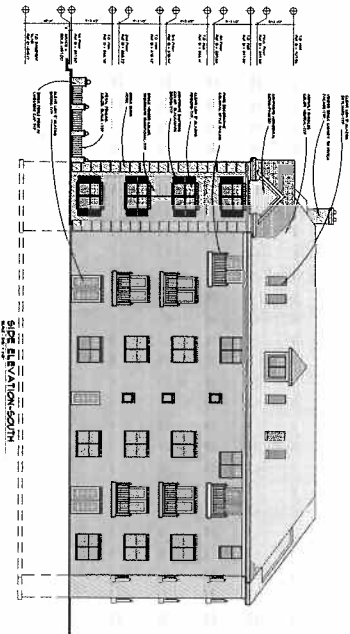
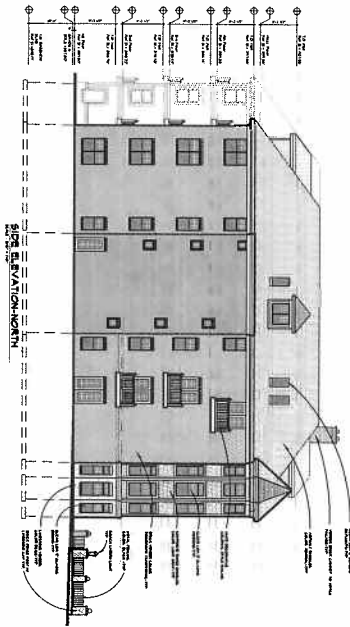
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APPLICATION FOR “PLANNED UNIT DEVELOPMENT”

407-437 S. Fifth Avenue

I. Introduction

Following Planning Commission comments on its earlier PUD proposal, Fifth Avenue Limited Partnership revised this application to address the Commission’s comments. These revisions include:

- Reducing the length of the building, which enhances its aesthetics, increases the side yard setbacks, and eliminates the need for a variance
- Reducing the mass of the building by creating an additional break, or “notch,” in the brownstone façade, which enhances the building’s aesthetics by breaking it into three distinct parts
- Creating several public “pocket” parks/pedestrian amenities with historical markers
- Adding significant architectural detailing so as to strengthen the brownstone/rowhouse style, including a wider variety of exterior materials, window styles, dormers, porch details, and individualized detail
- Adding additional entry features from Fifth Avenue, strengthening the appearance of individual units within the brownstone/rowhouse style
- Adding brick to the sides and rear of the building to enhance aesthetics

These revisions improve the proposal, and make it vastly superior to a “matter of right” development which is possible on this site. A more comprehensive analysis of the “matter of right” development, which demonstrate the superiority of this proposal to the “matter of right” option, has been included with this re-submission. Accordingly, Fifth Avenue Limited Partnership (FALP) requests that the Planning Commission recommend approval of this revised PUD and site plan to the City Council.

The project, located at 407-437 S. Fifth Avenue, which in conjunction with a simultaneous site plan application, will allow the construction of a new, four and one half story apartment building. This apartment building will provide both “workforce housing” and “affordable housing” in a location very close to the Downtown, and will utilize numerous environmentally-friendly design and construction techniques. Rezoning the property will allow the construction of this attractive new building, and create a use of the site that is consistent with City goals. Accordingly, this project will:

- Create significant new “workforce housing,” a type of housing missing from current development proposals in the Downtown area
- Create significant new “affordable housing,” the first and only rental units created in the Downtown area through the Planned Unit Development process
- Create an environmentally sustainable building, including use of geothermal heating and cooling

- Contribute density of housing and diversity of residents to the Downtown, thus contributing to the strength of Downtown, consistent with City planning goals
- Create an attractive building which enhances the pedestrian environment, including underground parking for residents and guests
- Create a project superior to what could be constructed under a “matter of right” development

This Application for “Planned Unit Development” (PUD) first outlines the existing conditions and the proposed rezoning, and then provides the information requested in the City's “Petition for Establishment of . . .Planned Unit Development” form. The information required by Section 5:80 of the Zoning Regulations, related to petitions for PUDs, is also included as noted below. Fifth Avenue Limited Partnership has also applied for site plan approval; the information required for that application is contained on the site plan itself.

II. Existing Conditions

A. Zoning

407-437 S. Fifth Avenue (the Site) is currently located in the R4C zoning district. This zoning designation extends generally to the south, east, and southwest. Land to the north and northwest of the Site is the C2A/R zoning district, along William Street, although there is a large block of land with the Public Land zoning designation north of the Site where the Ann Arbor Public Library is located.

B. Land Uses

The Site includes seven lots, each of which contains an older building. All of the buildings, over the years, have been converted from their original single family use to multiple family use. In fact, 407 S. Fifth Avenue was, until very recently, a dental office. The buildings on the Site are two and one half stories in height, with approximate heights of 30 to 35 feet. These buildings have a variety of front setbacks from Fifth Avenue, and a range of side and rear setbacks. Within the 7 buildings are 23 rental units. At present, the rent structure for the units within these buildings is quite competitive, and the units are generally rented to people who work in the Downtown Ann Arbor area, as well as at the University of Michigan. Several of the buildings also have garages at the back, as well as gravel parking areas providing limited parking for tenants. None of the buildings on the Site is located within the William Street Historic District (or any other historic district), although several of the buildings are quite old. There is no on-site stormwater detention.

The area to the east and south of the Site is predominantly used for multiple family purposes, with a large quantity of University of Michigan students residing in the area. The vast majority of the surrounding buildings have been converted from their original single family use to multiple family use. The buildings in the general area are a

variety of heights, ranging from two to four stories in height, with all different types of setbacks, architectural styles, and levels of maintenance.

To the west are a variety of uses, including multiple family housing, a parking lot, a large church and church playground, a funeral home, and a few single family, owner occupied structures. These structures are a variety of heights, including some much taller structures, and all have a variety of setbacks.

To the north, along William Street, and located within the William Street Historic District, is an older building converted to commercial and multiple family uses, and along William Street are more multiple family uses. These structures are two to three stories, although the apartment building on William Street is three and one half stories in height.

To the north of William Street is the Ann Arbor Public Library, the old YMCA site, and the Downtown Ann Arbor area, with its wide mix of uses. Buildings to the north tend to be both taller and larger, with the Library being four stories, and the old YMCA measuring seven stories in height.

C. Infrastructure

The Site is located on Fifth Avenue, a major southbound artery within the Downtown area, and classified as a “Major Arterial Street” in the Downtown Plan. There is no on-street parking at this time in front of the Site. Fifth Avenue continues past E. Jefferson Street, and then crosses Packard Road (classified as an “Intermediate” street in the Downtown Plan). Just to the north is William Street, a significant east-west artery in the Downtown area (classified as a “Minor” street in the Downtown Plan). The Site is served by City water, sanitary sewer, storm sewer, and garbage pick up. Utilities are provided by local utility companies.

III. Proposed Rezoning to PUD

A. Land Uses: Description of Building

As noted above, each of the buildings on the Site is already used for multiple family purposes. In fact, none of the buildings, except for 411 S. Fifth Avenue, have been single family homes for many years and one was recently used for a professional office. Under FALP’s proposal, the use of the Site would remain multiple family. The existing buildings would be removed after salvage operations were completed, and a new building constructed in their place. The new building would be four and one half stories in height, measuring approximately 55 feet high at its very peak. It would contain 90 residential units.

The building is designed to reflect a traditional “brownstone” appearance, such that there is a significant amount of articulation in the façade. The building will maintain the existing front yard setback, and will have side and rear yard setbacks typical in this

neighborhood. The building is separate into three pieces by a “notch” at the main entrance, and another “notch” at the drive way entrance. The three portions of the building measure between 76 and 106 feet, with the notches measuring 28 and 24 feet. The building will contain one floor of below-grade parking, containing 97 parking spaces. This would be accessed from Fifth Avenue by a single curb cut, thus eliminating the multiple curb cuts which currently exist on the Site. Because the parking is below-grade, all of the gravel parking lots will be eliminated and replaced with yards and vegetation.

FALP is gearing the building to be affordable to people generally earning between 80 and 120 percent of the “Area Median Income” (AMI). To assure the City that the project will provide housing to this cohort, FALP proposes that the PUD Supplemental Regulations require that at least 38 units (50 percent of the units remaining after excluding the 14 units reserved for lower income households) be affordable to residents earning less than 90 percent of the AMI. This is the cohort currently renting the units on the Site, and FALP desires to continue with this market. FALP is achieving this goal by keeping the units moderate in size. There are some larger units that might be appropriate for families or larger renting groups. Thus, the project will provide housing for Downtown workers who do not earn at the top ranges of income, such as City or County employees, or support staff for many Downtown businesses or restaurants.

Furthermore, as required pursuant to Section 5:80(6)(e) of the Zoning Regulations, 14 of the units (15 percent of the total number of units) will be reserved for residents earning below 80 percent of the AMI. This will be guaranteed through the Supplemental Regulations. The project will therefore create the first affordable rental housing units created in the Downtown area through the PUD process. Thus, the project will create 90 units of housing for residents of modest income levels, including a guaranteed 52 units affordable to residents with more modest incomes. This will provide an opportunity for these workers to live close to their jobs, and contribute to the diversity of residents in the Downtown area.

The design and construction of the new building will utilize numerous environmentally-friendly techniques, including but not limited to geo-thermal heating and cooling, extra insulation above building code standards, and an energy management system, thus dramatically reducing the need for generated heating and cooling. FALP will also use as many other “LEED” recommended design and construction techniques as are feasible. Stormwater runoff will be minimized because, due to the below-grade parking structure, there will be less impervious surface on the Site than there might otherwise be. The runoff will also be detained on the Site through use of underground storage tanks, thus helping to reduce the impact on the City stormwater system during rain events. Accordingly, the building will be environmentally sustainable far into the future.

B. Zoning: R4C to PUD

FALP proposes to rezone the Site to PUD. Through the PUD Supplemental Regulations, the City can be assured that it will receive the benefits contemplated by the PUD. A critical issue to keep in mind when reviewing this proposal is how it compares to a “matter of right” project on the Site. That is, because FALP will be proceeding with a development on the Site, the decision is not over whether FALP’s proposal is preferable to the existing buildings, but rather whether FALP’s proposal is preferable to a “matter of right” development on the Site. FALP believes strongly that its proposal is superior to a “matter of right” development, and makes a greater contribution towards many City planning goals.

To construct the building as proposed in the site plan submitted simultaneously with this application for rezoning, reductions in the otherwise applicable yard and rear setbacks are required. FALP proposes that the least side setback measure 14.3 feet; 12 feet would be required at ground level and 14.5 feet would be required above the third floor. FALP proposes the total of the side setbacks measure 41.8 feet; 38 feet would be required. Finally, FALP proposes that the minimum rear yard setback measure 31.6 feet; otherwise 70 feet would be required at ground level and 72.5 would be required above the third floor.

C. Infrastructure

The new building and Site will still be accessed from Fifth Avenue; no changes are proposed. In fact, the project will be served by one single curb cut, eliminating three curb cuts, enhancing the pedestrian experience in this location. FALP will construct all appropriate water, storm and sanitary sewer systems required to serve the building and Site.

IV. PUD Petition Information

A. Legal Description (Section 5:80(4)(c))

A legal description and boundary survey of the Site are attached as Exhibit A.

B. Petitioner Requesting Rezoning (Section 5:80(4)(a))

The petitioner requesting the rezoning of the Site is Fifth Avenue Limited Partnership, whose General Partner is Ann Arbor Builders, Inc., c/o Alex de Parry, President, whose address is 403 S. Fifth Avenue, Ann Arbor, MI 48104. Telephone 761-8990. FALP’s interest in five of seven of the parcels is as owner of the fee simple absolute title.

C. Other Interested Parties (Section 5:80(4)(a))

There are several other parties with an interest in the petition for rezoning:

1. 407 S. Fifth Avenue. 407 S Fifth Ave Partnership owns the property. FALP and 407 S Fifth Ave Partnership have entered into a binding agreement by which FALP will purchase this property. A letter authorizing this application for rezoning is attached as Exhibit B.

2. 437 S. Fifth Avenue. Daniel P. Pampreen owns the property. FALP and Pampreen have entered into a binding agreement to develop 437 S. Fifth Avenue as part of the Site and the FALP project. A letter authorizing this application for rezoning is attached as Exhibit C.

D. Request for Rezoning

FALP requests that the Official City Zoning Map be amended to reclassify this property from R4C to “Planned Unit Development” to permit the uses described in the PUD Supplemental Regulations, a copy of which are attached as Exhibit D. A Pre-Petition Conference was held with the Planning Commission on March 11, 2008.

E. Conceptual PUD Plan (Section 5:80(4)(b))

A conceptual PUD plan is submitted as part of the site plan application files simultaneously with this application for rezoning to PUD.

F. PUD Development Program (Section 5:80(4)(d))

1. Objectives and Purposes

The goal of the PUD is to create a project superior to that which could be constructed as a “matter of right” project, specifically:

A. create 90 units of “workforce housing”- designed for working people, not students, 38 of which would be reserved for rental at rates affordable for workers earning less than 90 percent of the AMI and 14 of which would be reserved for workers earning less than 80 percent of the AMI;

B. create a significant residential component in the Downtown, contributing both to density and to diversity of housing options and residents;

C. create an attractive, pedestrian-friendly building, compatible with the uses and structures in the neighborhood;

D. create an environmentally sustainable building employing “green building” techniques, including a geothermal heating and cooling system, significantly reducing the “carbon footprint” of the residents of the building;

E. providing underground parking for residents and visitors, enhancing the pedestrian experience by the Site and improving the aesthetics of the Site;

2. Beneficial Effect (also outlined below in Section 5:80(6))

The beneficial effect of this PUD will be to create additional density in Downtown Ann Arbor, which is a goal of the City planning documents, including the Downtown Plan (1988), the Central Area Plan (1992), and the Downtown Residential Task Force (2004). Furthermore, the project is designed to be affordable to residents earning more modest incomes, a type of housing in short supply in the Downtown area. Therefore, the project will increase the diversity of housing options and diversity of residents in the Downtown area.

The project will also create this new housing in an environmentally-sustainable manner. The City is striving to reduce its “carbon footprint” and be environmentally progressive. The project will be able to provide housing for about four times the current number of residents for about the same level of energy consumption. That is, because the existing houses are so inefficient from an energy standpoint, and the new building will be highly efficient, it will reduce the amount of energy use by 75 percent over what would be used in the existing buildings. Thus, this project will be more sustainable environmentally. Furthermore, not only will the project provide housing in town, reducing the residents’ dependency on single occupancy vehicles, but the Site is immediately adjacent to the Ann Arbor Transportation Authority terminal, providing easy access to alternative forms of transportation.

The project will also be very pedestrian-friendly, another City goal. The underground parking for residents and guests will eliminate the need for a less-attractive surface parking lot. Also, the project will reduce the number of curb cuts. Both of these will enhance the pedestrian environment in the area. The brownstone design of the building, and the articulation and materials of the façade, will also contribute to a favorable pedestrian experience.

3. Beneficial Effect Not Achievable Under Existing Zoning

The Site is currently zoned R4C.¹ If FALP were to develop the Site under the R4C zoning requirements, it would create a less desirable project. Because R4C is, in reality, a lower density zoning (and no longer appropriate for this scarce urban land), the project would maximize the number of units, resulting in 24 units. Furthermore, this zoning would create the incentive to maximize the number of bedrooms per unit,

¹ FALP previously requested that the Site be rezoned to “C2A/R-Conditional Zoning;” however, Planning Commission recommended denied of that application on January 15, 2008.

resulting in a total bedroom count of 144. This type of living unit would be much more attractive to University of Michigan undergraduates than the “workforce housing” FALP desires to create, but that is how R4C zoning would drive the development program.

Because of the lower density, there would be no economic incentive to construct underground parking, as FALP has proposed. There would be ample room on the Site for a surface parking lot for the 36 to 40 vehicles that would be required. Nor would there be an economic incentive to install the geothermal heating and cooling, or other environmentally-friendly techniques beyond those required by the applicable codes.

Thus, under the existing zoning, the project would likely become undergraduate housing for 144 residents, with a surface parking lot. While this would still add residents in the Downtown area, these are not the type of residents that FALP desires to serve, nor would this type of housing provide the variety of housing options that would be beneficial to the Downtown area. Thus, the beneficial effects of the project cannot be achieved under the R4C zoning, and in fact, the PUD contributes more significantly to City goals than a project under R4C.

4. Conformity with City plans and policies

These issues are addressed in Section 5:80(6)(d) below.

G. Proposed Supplemental Regulations (Section 5:80(4)(e))

The proposed Supplemental Regulations are attached as Exhibit D.

H. Study Model (Section 5:80(4)(f))

The Planning Commission has not indicated that a model is necessary.

I. Additional Graphics (Section 5:80(4)(g))

FALP will submit graphics with its site plan application, and will supplement these as necessary.

J. Additional Housing Density (Section 5:80(4)(h))

Materials supporting the request for additional housing density are included below.

V. Standards for PUD Review

The explanation of how FALP’s proposal meets the standards of review for PUD approval are attached as Exhibit D. (The reason for this is so that they may be easily inserted into the site plan application materials.)

VI. Conclusion

FALP believes that its proposed rezoning of the Site to PUD, with its proposed site plan and apartment building, will meet many important City goals, and be a significant positive contribution to the Downtown. FALP believes that its proposal is consistent with the City's plans for this area, and requests that the Planning Commission make a positive recommendation to City Council.

Dated: June 16, 2008

Respectfully submitted,

Scott E. Munzel (P39818)
Scott E. Munzel, P.C.
121 W. Washington Street, Suite 400
Ann Arbor, MI 48104
(734) 994 6610
Attorney for Fifth Avenue Limited Partnership

PUD SUPPLEMENTAL REGULATIONS

Section 1: Purpose

It is the purpose of the City Council in adopting these regulations to provide for the reasonable redevelopment of seven parcels, developed in harmonious integration with the surrounding neighborhood and with the goal of strengthening the Downtown area. These regulations seek to promote a development that provides a mix of work force and affordable housing that is sustainable and energy efficient, advances the City's land use policies and plans, and contributes to the character of established neighborhoods.

Section 2: Applicability

The provisions of these regulations shall apply to the property described as follows:

Commencing at the intersection of the centerline of South Fifth Avenue (66 feet wide) and the centerline of East Jefferson Street (66 feet wide); thence S 88°04'04" E 33.00 feet along the centerline of said East Jefferson Street; thence N 01°48'22" E 123.45 feet along the East line of said South Fifth Avenue, and its extension thereof, to the POINT OF BEGINNING,

thence continuing N 01°48'22" E 373.60 feet along the East line of said South Fifth Avenue;
thence S 88°05'54" E 148.50 feet;
thence S 01°48'22" W 132.30 feet;
thence N 88°05'39" W 16.50 feet;
thence S 01°48'22" W 66.61 feet;
thence S 88°05'07" E 16.50 feet along the North line of Lot 3, Block 4 South, Range 6 East, of said "Original Plat of the City of Ann Arbor";
thence S 01°48'22" W 132.61 feet;
thence N 88°04'35" W 16.50 feet along the South line of said Lot 3;
thence S 01°48'22" W 42.14 feet;
thence N 88°04'35" W 132.00 feet to the POINT OF BEGINNING. Being a part of Lots 1, 2, 3 and 4, Block 4 South, Range 6 East, of said "Original Plat of the City of Ann Arbor", and containing 1.23 acres of land, more or less. Being subject to easements and restrictions of record, if any.

Further, the provisions of these regulations shall be adopted and incorporated into the City Place Planned Unit Development District. These regulations, however, are intended to supplement only those provisions in the City Code that may be modified as a part of a PUD such as zoning, landscaping and parking, and shall not be construed to replace or modify other provisions or regulations in the City Code.

Section 3: Findings

During the public hearings on the Planned Unit Development, the Planning Commission and City Council determined that:

- (A) It is desirable to develop the lots described above for residential purposes, related accessory, and public park uses.

- (B) The surrounding established neighborhood, of which the lots described above are a part, contains a mix of multiple family use structures, commercial uses, institutional uses, and governmental uses.
- (C) It is in the best interest of the surrounding properties and the City of Ann Arbor that the character and quality of the established neighborhood be maintained by placing restricting land use and development on the lots, described above, which will have a beneficial effect on, and will not adversely affect, the surrounding properties or the City, in terms of public health, safety or welfare.
- (D) The limitations placed on the land use permitted and the integrated landscaping, underground parking, pedestrian accessibility, building placement, architectural design, and public park amenities will contribute to the fabric of the neighborhood, strengthen the Downtown core through the addition of affordable and workforce housing units, and will enhance the image of the City along South Fifth Avenue corridor.
- (E) The petitioner's provision of appropriate landscaping and vegetation, underground parking for residents and guests of the building, and public parks will mitigate any negative impacts the development may have on the surrounding neighborhoods and the City's Downtown.
- (F) The parcel described above meets the standards for approval as a Planned Unit Development, and the regulations contained herein do not constitute the granting of special privilege nor deprivation of property rights.

Section 4: PUD Regulations

- (A) Permitted principal uses shall be:
 - 1) Any permitted principal use or special exception use permitted in the R1 Districts, subject to all the regulations that apply in those districts.
 - 2) Any permitted principal use or special exception use permitted in the R2A and R2B Two-Family Dwelling Districts and R3 Terrace-Family Dwelling District, subject to all the regulations of the district in which such use first occurs.
 - 3) Any permitted principal use or special exception use permitted in the R4 Districts, subject to all the regulations that apply in those districts.
 - 4) Multi-family dwellings.
- (B) Permitted accessory uses shall be:
 - 1) Those allowed in the R3 and R4 Districts.
- (C) Setbacks:
 - 1) Front yard – 19.5 feet minimum
 - 2) Side – least 14.3 feet minimum; total of two 44.9 feet
 - 3) Rear – 31.6 feet minimum
- (D) Height: Maximum height shall be restricted to:
 - 1) 48 feet average
- (E) Lot Size: minimum size of the PUD shall be 1.23 acres. The platted lots may be sold individually provided that cross-easements for access, shared parking, shared storm water retention, and utilities are created and recorded; that an agreement, signed by the purchaser(s) remain subject to all provisions of:

- 1.) Right-of-way for ingress and egress, as recorded in Liber 1765, page 313, Washtenaw County Records.
 - 2.) Terms, conditions, and description set forth in Driveway Agreement as recorded in Liber 378, page 30, Washtenaw County Records.
- (F) Floor Area Ratio and Open Space Requirements: Floor area in percentage of lot area shall not exceed 208 percent for the entire development. Minimum usable open space shall not be less than 46 percent.
- (G) Parking: Parking shall not be less than 1.0 cars per dwelling unit. Bicycle parking shall be provided in accordance with corresponding types of spaces as specified in Section 5:167 of Chapter 59 (Off-Street Parking) of the Ann Arbor City Code.
- (H) Landscaping, Screening and Buffers: Detailed landscape drawings and materials lists shall be submitted for review and approval at final phase PUD site plan. These plans must meet the following standards:
- 1) West - A minimum setback 19 feet wide containing shrubs and trees as shown on the approved PUD landscape plan.
 - 2) East - A minimum setback 31 feet wide containing shrubs and trees as shown on the approved PUD landscape plan.
 - 3) North and South- No buffers are required.
- (I) Site Access:
- 1) Handicapped accessible sidewalk connections shall be provided in at least one location to enter the building, and ramps shall be provided for crossing the driveways which enter from S. Fifth Avenue.
 - 2) Curb cuts onto S. Fifth Avenue shall be aligned with the building's driveway, and located in the shared driveway easement along the south property line so as to minimize traffic conflicts and the number of curb cuts.
- (J) Architectural Design: Detailed architectural drawings, colors, and materials have been submitted for review and approval as part of the PUD site plan. These plans must meet the following standards:
- 1) Exterior materials and colors shall be in harmony with the existing character of the surrounding residential neighborhoods.
 - 2) Building facades shall be detailed and shall provide architectural relief, a variety of materials, fenestration and/or varied roof lines on all sides of the buildings.
 - 3) Transformers, meters, rooftop-mounted equipment, and loading/service areas shall be screened and not visible from S. Fifth Avenue.
- (K) Affordability of Housing Units:
The development will contain 14 units reserved for residents earning less than 80 percent of the Area Median Income, and with rents restricted so as to remain affordable for those residents. The details of this requirement will be contained in a Housing Affordability Agreement to be executed by the City and the owners of the property. The development will contain 38 units reserved for residents earning equal to or less than 90 percent of the Area Median Income, and with rents restricted so as to remain affordable for those residents. The details of this requirement will be contained in the Housing Affordability Agreement.

- (L) Environmentally Sustainable Construction:
The building to be constructed by the owners of the property will contain additional insulation beyond that required by the applicable building codes, and will be served by a geothermal heating and cooling system, also not required by applicable building codes. These systems and all other systems or techniques used in the building beyond those requirements of the applicable building codes shall be incorporated into a Development Agreement to be executed by the City and the owners of the property.

CITY PLACE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 2008, by and between the City of Ann Arbor, a Michigan Municipal Corporation, with principal address at 100 North Fifth Avenue, Ann Arbor, Michigan 48107, hereinafter called the CITY; and Fifth Avenue Limited Partnership, a _____, with principal address at 403 South Fifth Avenue, Ann Arbor, Michigan 48103, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as City Place PUD, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as City Place PUD, and desires PUD site plan and development agreement approval thereof, and

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

WHEREAS, the CITY desires to insure that all of the improvements required by pertinent CITY ordinances and regulations be properly made, and that the PROPRIETORS will install these improvements prior to any permits being issued.

THE PROPRIETOR 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 private storm water management systems, sidewalks and streetlights ("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 PROPRIETOR fails to construct the improvements, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR, if the PROPRIETOR 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 PROPRIETOR'S engineer inspects.

(P-4) To install all water mains, storm sewers, sanitary sewers and public streets, 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-5) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to _____, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along _____, frontage when such improvements are determined by the CITY to be necessary. (A provision shall be included in the master deed of the project stating that if the CITY undertakes to establish a special assessment district to improve _____, each unit shall be assessed its pro rata share of the cost of improvements allocable to the Property.)

(P-6) To indemnify 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 PROPRIETOR, 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-7) 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 named 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-8) Existing landmark and street trees shown on the site plan as trees to be saved shall be maintained by the PROPRIETOR 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 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 PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-9) For the benefit of the residents of the PROPRIETOR'S development, to make a park contribution of \$44,640.00 to the CITY Parks and Recreation Services Unit prior to the issuance of building permits for improvements to CITY parkland in the vicinity of downtown.

(P-10) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation 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 PROPRIETOR 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 PROPRIETOR 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 PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR 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 PROPRIETOR if the PROPRIETOR 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 maintain it until non-developer co-owners elect one or more directors to the Association's board of directors. Thereafter, by provision in the master deed, the Association shall own and maintain the storm water management system. Any proposed changes to the system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the PROPRIETOR or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the PROPRIETOR, or Association, at the address listed above, requiring it to commence and complete the maintenance 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 PROPRIETOR or Association if the PROPRIETOR or Association does not complete the work, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the Association for 60 days after notice via first class mail, the CITY may bill each condominium unit for the pro rata share of the total cost, or assess the pro rata share of those costs to each condominium unit as a single tax parcel assessment as provided in Chapter 13 of Ann Arbor City Code. Provisions for maintenance and responsibility for the storm water management system, as well as the pro rata share of each condominium unit shall be included by the PROPRIETOR in the master deed.

(P-13) 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-14) Prior to building permits being issued, to restrict by covenants and restrictions recorded with the Washtenaw County Register of Deeds, the use of lawn care fertilizer to that which contains a low- or no-phosphorous analysis, in order to minimize the impact on the Allen Creek and Huron River watersheds, in keeping with the goals of reducing phosphorous pollution in the Allen Creek and Huron River watersheds by *insert number percent and with Best Management Practices recommended by insert name of study and date accepted by City if applicable.*

(P-15) 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, PROPRIETOR 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-16) 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. Add language about geothermal heating and cooling and building insulation in excess of what is required by code here. If the PROPRIETOR proposes any changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-17) 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-18) Prior to application for and issuance of certificates of occupancy, to disconnect 20 footing drains from the sanitary sewer system in accordance with the *Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor - Development Offset-Mitigation Program* (November 2005 edition, as amended). The PROPRIETOR, however, may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis, at the discretion of the CITY Public Services Area. CITY agrees to provide PROPRIETOR with a certificate of completion upon PROPRIETOR'S submittal of approved and final closed-out permits to the CITY Public Services Area.

(P-19) PROPRIETOR 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 PROPRIETOR has (have) legal authority and capacity to enter into this agreement for PROPRIETOR.

(P-20) 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 development 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 PROPRIETOR complies with the approved site plan and/or the terms and conditions of the approved development agreement. The PROPRIETOR 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 development agreement.

(P-21) In addition to any other remedy set forth in this Agreement or in law or equity, if PROPRIETOR 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-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 City Place PUD Site Plan.
- (C-2) To use the park contribution described above for improvements to downtown parks.
- (C-3) To provide timely and reasonable CITY inspections as may be required during construction.
- (C-4) To record this agreement with the Washtenaw County Register of Deeds.

GENERAL TERMS

Both the PROPRIETOR 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 PROPRIETOR, 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:

(insert legal description)

(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 PROPRIETOR, 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 PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR 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.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

Witnesses:

CITY OF ANN ARBOR, MICHIGAN
100 North Fifth Avenue
Ann Arbor, Michigan 48107

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Roger W. Fraser, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney