

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of October 2, 2007

SUBJECT: McKinley Towne Centre Liberty Retail PUD Zoning District and PUD Site Plan (500-510 E. Washington and 505-515 E. Liberty) File Nos. 9291A19.03 and .05

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the McKinley Towne Centre Liberty Retail PUD Zoning District and Supplemental Regulations, PUD Site Plan and Development Agreement, subject to receiving approval by the Washtenaw County Drain Commissioner, and addressing all outstanding Systems Planning Unit comments.

STAFF RECOMMENDATION

Staff recommends that the McKinley Towne Centre Liberty Retail PUD zoning district and supplemental regulations be **approved** because the uses, physical characteristics, design features and amenities proposed provide a beneficial effect for the City and are consistent with elements of the adopted Master Plan, as discussed below.

Staff recommends that the McKinley Towne Centre Liberty Retail PUD site plan be **approved** because it would comply with the PUD zoning district development program and supplemental regulations; would not cause a public or private nuisance; and would not have a detrimental effect on the public health, safety or welfare.

STAFF REPORT

This petition was tabled at the September 18, 2007 Planning Commission meeting so that staff and the petitioner could address the issues regarding architectural design, floor area ratio regulations, and pedestrian access along the east side of the site.

Architectural Design – The Commission encouraged the petitioner to provide more vertical design elements in the proposed façade to a sense of further variety. It was noted that the existing streetscape along Main Street has the appearance of all storefronts having 22 or 44-foot widths, even if the store space is part of a larger building. (Most downtown lots were originally platted to be 66 feet wide, and many buildings were built containing 22, 44 or 66-foot wide storefronts.)

The petitioner has proposed a revised East Liberty Street façade that uses roughly 20-foot wide segments. Additional variation has also been provided at the roofline as well as the depth of the façade. The petitioner has prepared the façade design with the idea of possibly using it as the base for a future tower building.

Floor Area Ratios – The previous draft of the PUD Supplemental Regulations contained a maximum FAR of 600 percent for the proposed district. This measurement included the portion

8a

of the building used for parking, as above grade parking is considered usable floor area in accordance with the definition of nonresidential usable floor area set forth in the Zoning Ordinance. The Commission expressed a desire to have separate maximum FAR percentages for areas used for off-street parking and areas used for commercial, office or residential uses. The proposed PUD Supplemental Regulations have been revised as follows:

(G) Floor Area Ratio (FAR) and Open Space Requirements:

The normal maximum FAR permitted in this district shall be 400 percent. The normal maximum FAR may be increased up to 660 percent if the additional amount of floor area is devoted to residential uses. There shall be no requirement for the placement of residential uses within the district, meaning that the residential uses may be located on any floor of a multi-story building (except the first floor) and are not restricted to the upper-most floors.

Any floor area used for shared off-street parking shall not contribute to the FAR calculation. Shared off-street parking means that which is open to the public via permits or hourly fees.

There shall be no minimum open space requirement.

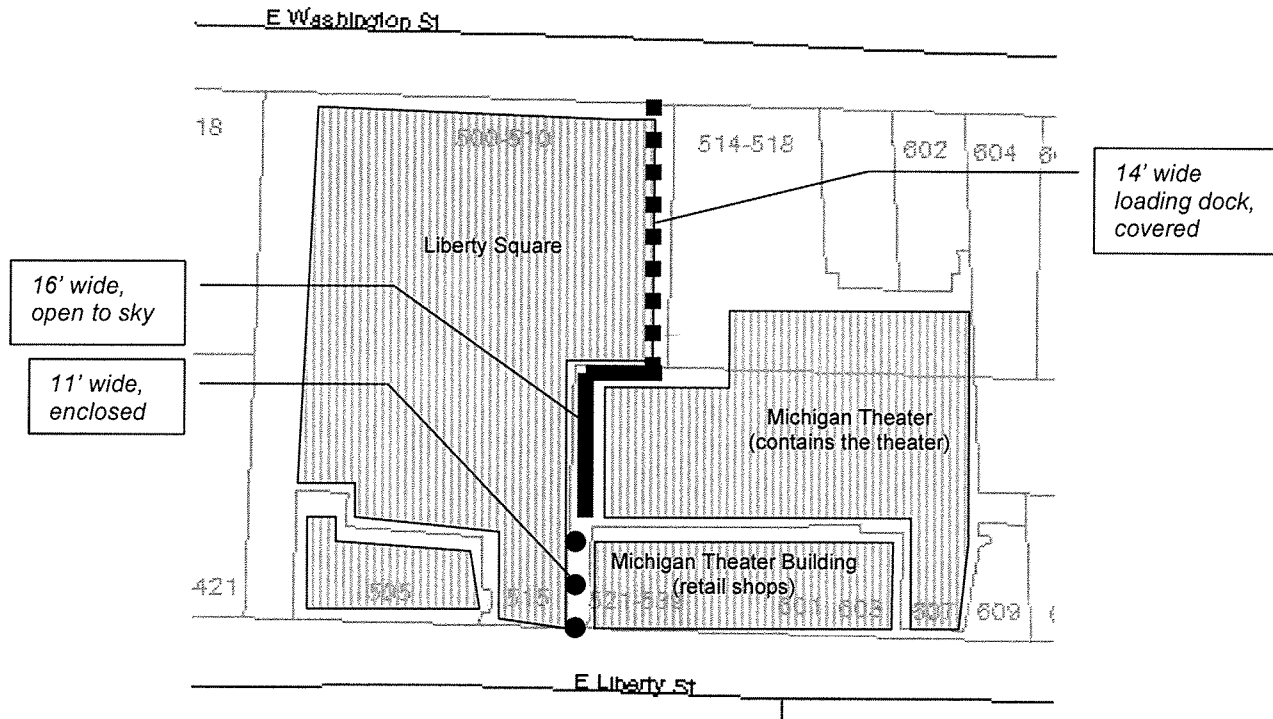
The revised PUD Supplemental Regulation language has been based on the A2D2 downtown zoning committee's recommendation for the C2A district, which proposes to exempt shared off-street parking from floor area measurements.

Existing and Proposed Floor Area – Of the 266,371-square foot Liberty Square building, 203,815 square feet is the parking deck. The existing FAR of the Liberty Square building is 593 percent, which can be broken down to 454 percent as parking and 139 percent as commercial use. Excluding the shared off-street parking deck, the proposed McKinley Towne Centre-Liberty Retail building will contain 87,056 square feet of floor area and the FAR will be 174 percent. This includes the additional floor area proposed in place of the existing, vacant bank building at 505 East Liberty Street.

Alley Along East Side of Site – It was noted by the petitioner that an alley exists along the east side of the site, between the Liberty Square building and the Michigan Theater. The Commission requested staff to research the ownership and access rights of this existing alley. Staff worked with the City Attorney's Office who has recently performed a title search of the Michigan Theater property, and revisited the site. Keeping in mind that the definition of an alley is a passageway between or behind buildings, there is an alley to the east of the site. It is not, however, a public right-of-way.

Starting at East Liberty Street, the existing alley is approximately 11 feet wide and 50 feet in length and is enclosed by the Michigan Theater Building, which is owned by MTBU, LLC. (The Michigan Theater Foundation, Inc. has an easement over this area for theater egress.) From there, the alley widens to approximately 16 feet and is open to the sky, occupying the side setback area of the almost-landlocked-parcel owned by the Michigan Theater Foundation, Inc. The alley makes a 90-degree turn on the Michigan Theater Foundation parcel and intersects with the theater's loading dock that is on the Liberty Square property, finally ending at East Washington Street. The alley is a true passageway between and behind buildings, but has no public easement associated with it. It uses a combination of space intended for emergency

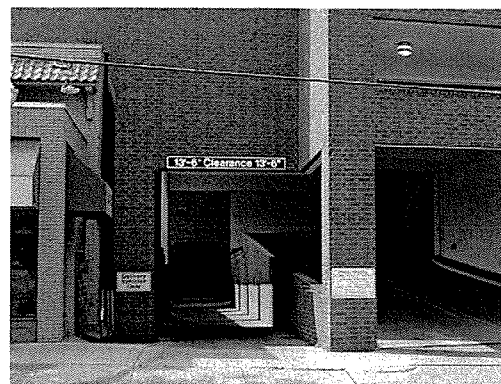
egress (not necessarily ingress) and vehicular use area. Maintenance of the alley is the responsibility of each of the private property owners.



Staff finds that this alley does offer pedestrians a mid-block passage between East Liberty and East Washington Streets, but only for those “in the know”. It does provide a useful function and makes closing the existing alley on the west side of the proposed PUD site less concerning. However, it is not an ideal space to safely convey pedestrians, mostly because of the portion that is the theater loading dock. Staff would be concerned about promoting its use for the general public.



E. Liberty St. entrance to alley



E. Washington St. entrance to alley

PUD Analysis – The Planned Unit Development petition form, as completed by the petitioner, was attached to the September 18, 2007 staff report. A brief summary of the standards for PUD Zoning District review, per Section 5:80(6) of the Zoning Ordinance, the petitioner’s responses and staff comments is provided below.

As set forth in Section 5:80(6), there are eight criteria to consider when evaluating a PUD petition.

- 1. Provides a beneficial effect for the City, which may include: innovation in land use; efficiency of land use, natural features and energy; providing usable open space; preserving and protection natural features; employment and shopping opportunities; expanding supply of affordable housing; use or reuse of existing sites.**

The petitioner has proposed that the beneficial effects provided by the PUD are (summarized) additional employment and shopping opportunities, as well as providing storm water management, redeveloping public spaces in the form of redesigning the Liberty Square parking deck pedestrian lobbies, and architectural design that is pedestrian friendly and promotes a lively downtown. Staff suggest reuse of an existing site could also be considered a beneficial effect. Incorporating architectural design guidelines and street-level use restrictions, which are in excess of existing minimum standards, are further beneficial effects that are beyond those suggested in Section 5:80(6)(1).

- 2. Beneficial effect could not be achieved under any other zoning district and not required under any existing standard or ordinance.**

Additional development is not possible for the Liberty Square site as this site already exceeds the maximum permitted floor area allowed in the C2B/R district. The contemplated development would be allowed if proposed Zoning Ordinance amendments associated with the A2D2 planning efforts are approved. However, at this time, the beneficial effects could not be achieved under any other zoning district. It should be noted, however, that providing storm water management is required under existing ordinances and, thus, should not be considered a beneficial effect.

- 3. Uses shall not have a detrimental effect on public utilities or surroundings.**

Existing public utilities will be improved with this development, and the proposed uses will be the same as those permitted surrounding the site.

- 4. Uses shall be consistent with master plan or adequate justification is provided.**

The proposed uses are consistent with the master plan.

- 5. Residential density consistent with master plan or underlying zoning, or additional density has been proposed in order to provide affordable housing.**

This criterion is not applicable to the petition.

- 6. Supplemental regulations include analysis and justification to determine what the benefit is, how it will be provided, and performance standards for evaluation.**

Supplemental regulations have been drafted that include all required information.

- 7. Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation within and to the district, and alternative transportation is encouraged.**

This criterion appears to have been satisfied. As before, staff encourage consideration of creating a pedestrian arcade along the west side of the site for optimal safe, convenient and well-defined pedestrian circulation. However, the proposed circulation pattern is acceptable.

8. Minimum necessary disturbance to existing natural features and historically significant architectural features.

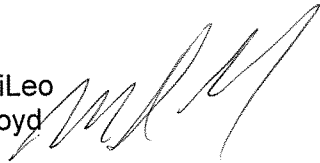
There are no natural features in the proposed district, nor historically significant architectural features. Adjacent to the east is the culturally significant Michigan Theater (Retail) Building and Michigan Theater marquee and lobby. The proposed PUD Site Plan presents a new East Liberty Street façade that will be complimentary to these existing cultural landmarks.

SERVICE UNIT COMMENTS

Systems Planning – Staff have been working with the petitioner to address the outstanding issues noted in the September 18, 2007 staff report. It appears that the petitioner has a full understanding of the revisions that are necessary and has provided revised plans, however, staff has not completed a review of the revised plans.

County Drain Commissioner - Review and approval by the County Drain Commissioner is still pending.

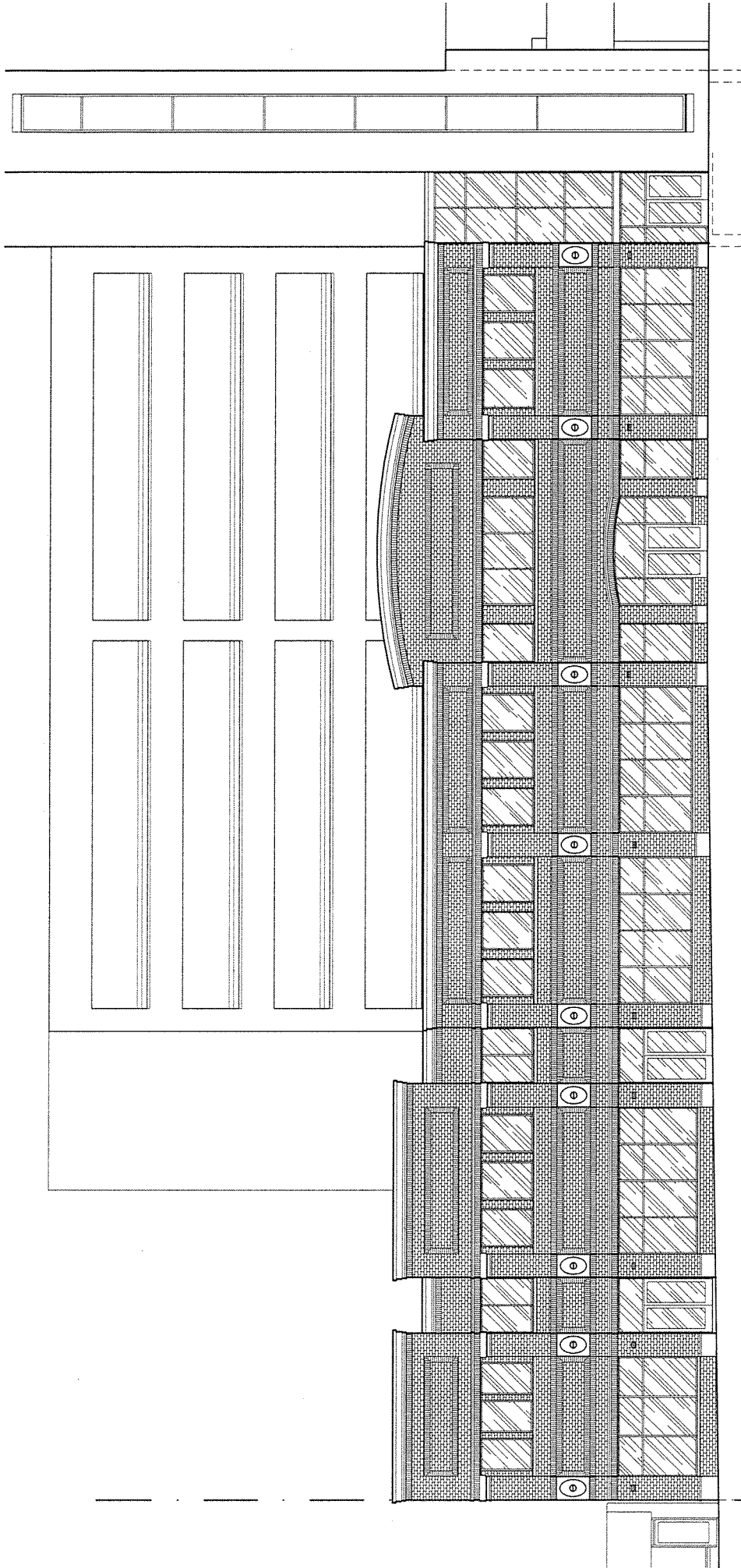
Prepared by Alexis DiLeo
Reviewed by Mark Lloyd
jsj/9/27/07



Attachments: Revised Elevations
9/24/07 Supplemental Regulations
9/13/07 Development Agreement

c: Owner: McKinley, Inc.
320 North Main Street, Suite 200
Ann Arbor, MI 48104
Attention: Frances Todor-Hargreaves

City Attorney
Systems Planning
File Nos. 9291A19.03 and .05



PROPOSED SOUTH ELEVATION

(REVISED 9/21/07)

1/4" = 1'-0"

McKINLEY TOWNE CENTRE—LIBERTY SUPPLEMENTAL REGULATIONS

Section 1: Purpose

It is the purpose of the City Council in adopting these regulations to provide for reasonable utilization of two parcels, in a manner that will permit the redevelopment and expansion of an existing nonconforming structure consistent with its immediate surroundings and the general downtown area of the City.

These regulations seek to promote development that provides a mix of uses appropriate to the downtown area and provides a building that will arrange these uses in a manner that is efficient for the surrounding neighborhood, advances the City's land use plans and policies, and contributes to the overall character and excitement of the State Street area.

Section 2: Applicability.

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

Lots 5, 6, 16, 17, and 18, Assessor's Plat No. 27 according to the plat thereof as recorded in Liber 9 of Plats, Page 18, Washtenaw County Records. (Including all of Ann Arbor Tally Hall Condominium.)

Further, the provisions of these regulations shall be adopted and incorporated into the McKinley Towne Centre – Liberty Planned Unit Development (PUD) zoning district. These regulations, however, are intended to supplement only those provisions in the City Codes that may be modified as a part of a PUD and shall not be construed to replace or modify other provisions or regulations in the City Codes.

Section 3: Findings

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

- (A) It is desirable to redevelop and expand the existing buildings in the district, which will reinvigorate vacant and underutilized buildings.
- (B) The surrounding neighborhood and the State Street Area Association are made up of the traditional downtown buildings within which are unique retail and service businesses that contribute to the identify of the City of Ann Arbor.
- (C) It is in the best interest of the surrounding properties and the City of Ann Arbor that the Tally Hall Condominium is redesigned, redeveloped and expanded to strengthen the downtown core of Ann Arbor with activity.
- (D) The limitations placed on the street-level activities and architectural design are intended to assure the success of the district as well as enhancing the East Liberty Street corridor. These supplemental regulations, together with the PUD Site Plan, will expand existing office space and create more employment opportunities in the downtown area, replace lost street-level activity, and promote a healthy, vibrant, desirable downtown.

- (E) The current design and structure of the Tally Hall Condominium and the existing vacant bank building are not in compliance of the existing zoning regulations. Both are built with zero lot line setbacks and the Condominium is well in excess of the permitted FAR percentages. These conditions make the site un-redevelopable in its current condition. These regulations will permit the redesign of the building so that interested businesses will be provided with the space necessary to be successful in this area. The regulations also provide for an element of mixed use to be added to the current Tally Hall Condominium.
- (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:

The permitted principal uses shall be the same as those in the C2A (Central Business District) as set forth in the Zoning Ordinance, Chapter 55 of the Ann Arbor City Code. However, only commercial, retail and restaurant uses are permitted at the street-level floors adjacent to East Liberty Street. Office and residential uses are prohibited in this location.

- (B) Permitted accessory uses shall be:

The permitted accessory uses shall be the same as those in the C2A (Central Business District) as set forth in the Zoning Ordinance, Chapter 55 of the Ann Arbor City Code.

- (D) Setbacks:

There shall be no minimum front or side setback.

- (E) Height:

There shall be no maximum height. The minimum height shall be the same as that in the C2A (Central Business District) as set forth in the Zoning Ordinance, Chapter 55 of the Ann Arbor City Code.

- (F) Lot Size:

The minimum lot size in this district is 50,009 square feet.

- (G) Floor Area Ratio (FAR) and Open Space Requirements:

The normal maximum FAR permitted in this district shall be 400 percent. The normal maximum FAR may be increased up to 660% if the additional amount of floor area is devoted to residential uses. There shall be no requirement for the placement of residential uses within the district, meaning that the residential uses may be located on any floor of a multi-story building (except the first floor as stated in paragraph A, above) and are not restricted to the upper-most floors.

Any floor area used for shared off-street parking shall not contribute to the FAR calculation. Shared off-street parking means that which is open to the public via permits or hourly fees.

There shall be no minimum open space requirement.

(H) Parking:

There shall be no off-street parking requirement for any use within the normal maximum FAR. One off-street parking space shall be required for every dwelling unit provided within area in excess of the normal maximum FAR, and/or one off-street parking space shall be required for every 1,000 square feet of nonresidential space provided within area in excess of the normal maximum FAR.

One hundred percent of all parking spaces provided in the district may be compact sized, 8 feet in width and 16 feet in depth. All aisles leading to parking spaces may be a minimum of 20 feet in width.

(I) Landscaping, Screening and Buffers:

There shall be no landscape, screening or buffer requirement in this district.

(J) Site Access:

A maximum of two curb cuts on East Washington Street shall be allowed for vehicular access to the district. No vehicular access shall be permitted from East Liberty Street.

(J) Architectural Design Guidelines:

Within two years from the time these Supplemental Regulations are adopted, the following architectural design guidelines shall apply. After two years from adoption, the architectural design guidelines shall be the same as those in effect for the downtown area and/or the State Street/Liberty Street area and/or the C2A zoning district in effect at the time. If no architectural design guidelines are in effect at the time, the below shall continue to apply.

Building massing – A variety of building heights should be provided. Taller portions of the building should be positioned away from neighboring buildings of a lower scale. Buildings should be divided into smaller modules that appear similar in scale to existing, traditional buildings. Building should have a traditional vertical base, middle and cap façade composition. First and second floors should be defined with clearly distinguishable details. Building should reflect traditional horizontal widths of buildings and lots, 22, 44 and 66 feet.

Building materials – Durable, high quality materials should be used that convey a sense of human scale and visual interest through texture, finish and detailing.

The following specific details and elements shall be used, incorporated and provided:

- Primary exterior façade materials shall be masonry (brick or stone, either natural or simulated) and glass.
- Use of exterior insulation finishing systems shall be used as an accent material only.
- At least 60 percent of the façade (measured horizontally as a percent of the total length of the façade) at the street level shall be glazing systems glazed with clear glass. Lightly tinted glass may only be used on windows above eye level, approximately 6 feet above the sidewalk grade and higher, on the street level.
- No garage doors, service doors, mechanical unit vents or similar shall be part of the East Liberty Street façade from the street level up to the second story above the street. No additional garage doors, service doors, vehicular openings, mechanical unit vents or similar shall be allowed on the East Washington Street façade as those existing at the time these supplemental regulations are adopted.

- All entrances, except for the pedestrian entrance to the parking garage on East Liberty Street, must be recessed to distinguish it from the building façade and to keep the public sidewalk free of encroachment or interference.

Prepared by Alexis DiLeo

McKINLEY TOWNE CENTRE—LIBERTY DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2007, 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 McKinley, Inc., a _____, with principal address at 320 North Main Street, Suite 200, Ann Arbor, Michigan, 48104, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as McKinley Towne Centre—Liberty 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 McKinley Towne Centre—Liberty PUD, and desires planned unit development 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 PROPRIETOR will install these improvements prior to any permits being issued.

THE PROPRIETOR HEREBY AGREES:

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water mains, private storm water management systems, public 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 Improvements and complete any necessary restoration work, 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 East Liberty and East Washington Streets, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along the East Liberty Street and East Washington Street frontages 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 East Liberty Street and East Washington Street 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) 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-9) 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-10) 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-11) 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 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-12) 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-13) Prior to application for and issuance of certificates of occupancy, to disconnect five footing drains from the same sanitary sewer sub basin as the project. CITY agrees to provide PROPRIETOR with a "certificate of completion" upon PROPRIETOR'S submittal of "Approved and Final Closed Out Permits" to the City of Ann Arbor Water Utilities Department.

(P-14) Prior to issuance of building permits, to contribute \$125,000 to the City of Ann Arbor Public Services Unit for deposit in Fund 0069, the Storm Water System Fund, as a contribution for the express purpose of improving the storm water management system within the same watershed.

(P-15) 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-16) 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-17) 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-18) 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 McKinley Towne Centre—Liberty PUD Site Plan.

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

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

GENERAL TERMS

Both the 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:

Lots 6, 16, 17 and 18, and the west 65.99 feet of Lot 5 of Assessor's Plat No. 27, according to the plat thereof, as recorded in Liber 9 of Plats, Page 18, Washtenaw County Records, Ann Arbor, Michigan. (Assessor's Parcel Nos. 09-29-108-027 and 028)

(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

Witness:

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2007, before me personally appeared John Hieftje, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan Municipal Corporation, to me known to be the persons who executed this foregoing instrument, and to me known to be such Mayor and Clerk of said Corporation, and acknowledged that they executed the foregoing instrument as such officers as the free act and deed of said Corporation by its authority.

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

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2007, before me personally appeared _____, to me known to be the person who executed the foregoing instrument, and acknowledged that he executed the foregoing instrument as his free act and deed.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Mark Lloyd, Manager
Ann Arbor Planning & Development Services
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800