

ANN ARBOR PLANNING DEPARTMENT STAFF REPORT

For Planning Commission Meeting of July 21, 2020

**SUBJECT: 841 Broadway PUD Site Plan (841 Broadway Street)
File Nos. SP19-048**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve 841 Broadway PUD Site Plan, and Development Agreement conditioned upon sanitary mitigation and tree mitigation calculations being resolved prior to scheduling for City Council.

STAFF RECOMMENDATION

Staff recommends that the 841 Broadway PUD Site Plan be **approved** because the development would comply with the PUD Zoning District with Supplemental Regulations as well as all applicable local, state and federal laws, ordinances, standards and regulations, would limit the disturbance of natural features to the minimum necessary to allow reasonable use of the land, and would not cause a nuisance or a detrimental effect on the public health, safety and welfare.

PROJECT LOCATION

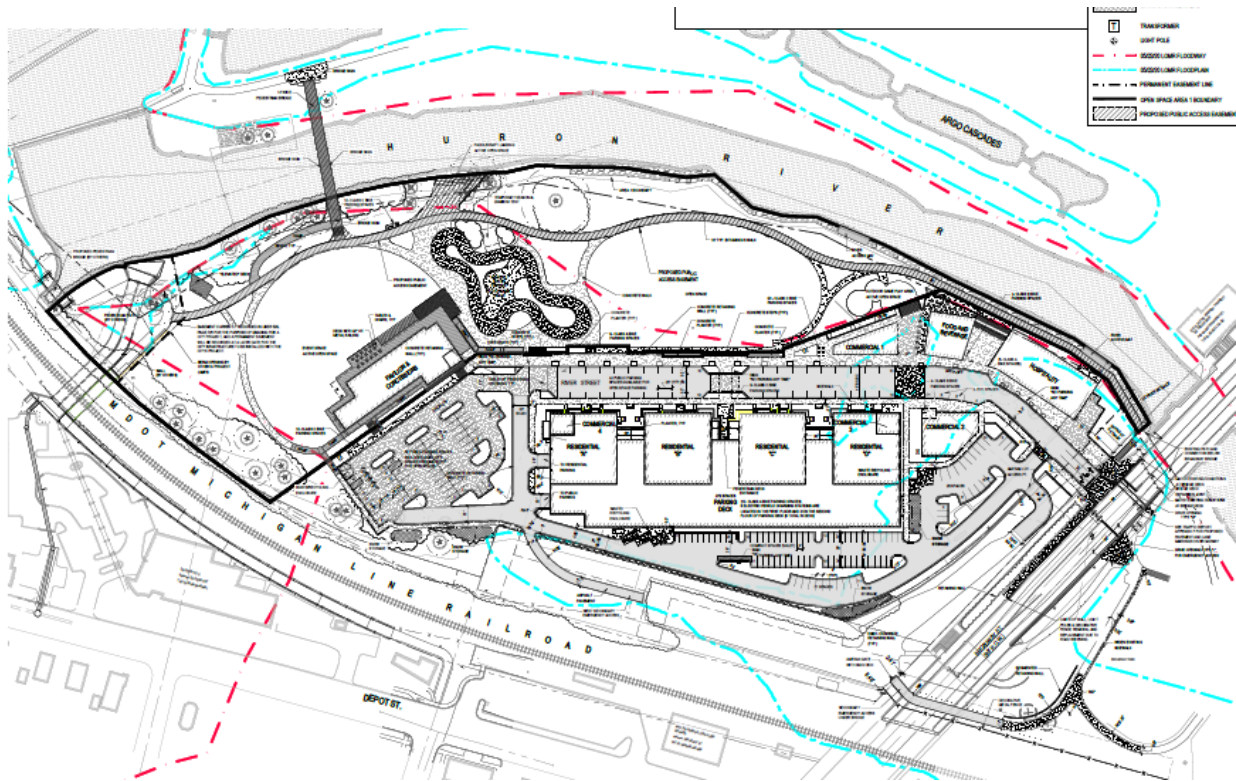
This site is located on the north side of Broadway Street, east of Depot Street and west of the Huron River. This site is located in the Central Area and located in the Huron River Watershed.

PROJECT DESCRIPTION

The petitioner seeks to develop this 13.8-acre parcel zoned PUD (Planned Unit Development District with Supplemental Regulations "PUD") to allow the development of a mixed-use project containing 96 attached residential units, parking garage, surface parking lots, 8,200 square feet of retail, 5,600 square feet of restaurant uses, 148 room hotel, and a minimum of six contiguous acres of public open space. Residential units will have a maximum of three bedrooms per unit with the exception of a maximum of eight units which will be permitted to have a maximum of five bedrooms. The entire site will have a Floor Area Ratio (FAR) of 62%, compliant with the PUD which allows up to 80% FAR.

The site plan depicts the 96 dwelling units in four six-story buildings with a two-story parking deck attached. The retail space will be divided between two detached buildings containing a total of 7,700 square feet and one smaller retail unit in two of the four residential buildings. Several surface parking lots are also proposed, this parking will be provided for the retail, restaurant and recreational amenities. The petitioner is proposing outdoor recreation and open space on at least six acres of the site. Recreation opportunities provided will include: ice rink,

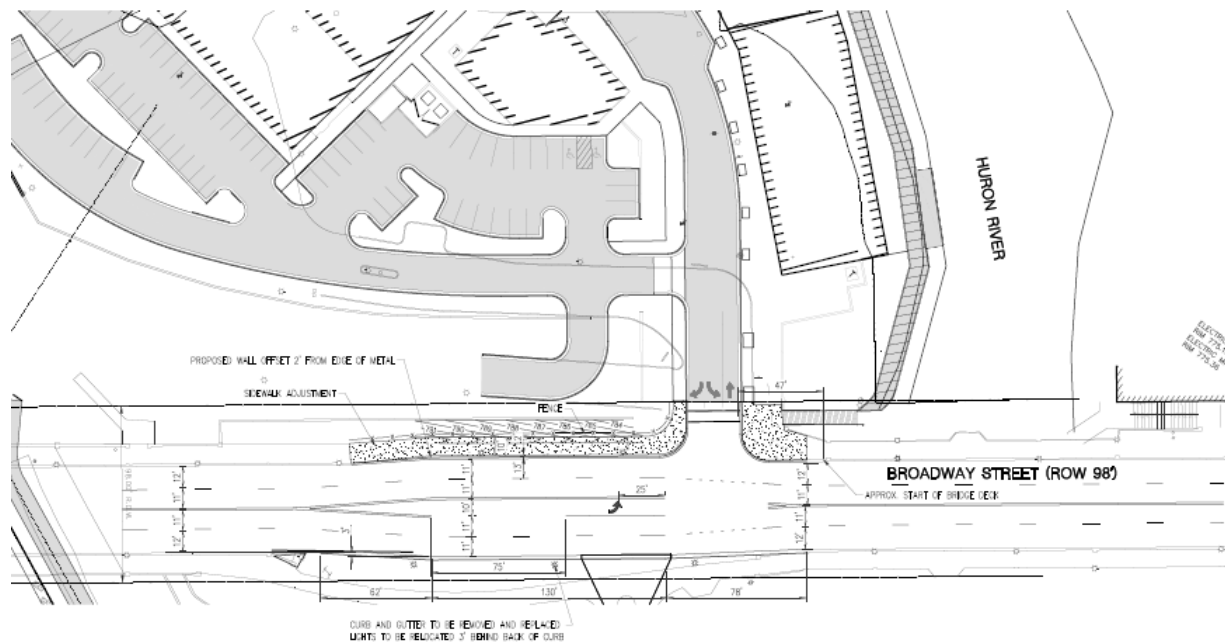
interactive water feature, non-motorized watercraft launch area and canoe/kayak rental area. Any canoe/kayak rental facility will be operated at the discretion of the City of Ann Arbor. A 9,722 square foot pavilion and concession building is proposed in the recreation area.



Internal vehicular circulation is proposed by private streets accessed by one curb-cut off Broadway Street. Sidewalks are proposed along the edge of the outer internal private streets leading to the existing Broadway Street sidewalk.

Parking will be provided in a structured garage and additional surface lots at a rate of one space per 500 square feet of floor area regardless of use (residential, office or commercial). In addition to the required parking 50 additional spaces shall be provided solely for public use in support of the recreational opportunities on site.

A new traffic signal will be added to the intersection of this driveway and Broadway Street. A center turning lane will be created by adjusting lane markings with a slight adjustment of the pavement area. The structural elements of the bridge will not be modified; however, the sidewalk will be shifted slightly to accommodate the new lane widths.



A minimum of six contiguous acres are required for permanent public open space according to the Supplemental Regulations. The site plan designates 6.09 acres for limited recreational and associated uses. In addition, only 56% of the site is covered with impervious surface, Supplemental Regulations permit a maximum of 60% impervious cover.

Natural features are composed of landmark trees and floodway/floodplain. The majority of the landmark trees are located along the western edge of the property and adjacent to the river. A total of 11 landmark trees will be removed for construction of the riverfront pathway. Mitigation trees will be planted on-site.

All of the proposed buildings and improvements are in the floodplain of the Huron River. The petitioner has obtained a Letter of Map Revision (LOMR) from FEMA to move the floodway boundary away from the location of the proposed residential/hotel buildings. The impact of this proposal on the floodplain is reviewed by the Michigan Department of Environment, Great Lakes, and Energy (EGLE) during the permitting process. A floodplain permit from EGLE will be required prior to the issuance of any permits for this project and has been added to the Development Agreement. The feasibility of this proposed major development in the floodplain is heavily dependent on the ability of obtaining a floodplain permit from the MDEQ. The development proposal complies with current City of Ann Arbor Floodplain regulations, as well as the proposed floodplain overlay currently being considered by the City.

Affordable Housing is required as part of any residential PUD petition that includes housing density above what is permitted under the existing zoning. The formula for the required amount is listed in Chapter 55 (Unified Development Code). The current petitioner exceeds the base density by over 25%, which requires a minimum of 15% of the total units be dedicated as Affordable or a contribution in lieu of units. The petitioner has elected to provide the payment in lieu of units consistent with the formula adopted by City Council resolution. The final amount will be \$ 2,057,350.

This development is proposed to be built in two phases at an approximate cost of \$75 million. The first phase of development will include all residential, parking structure, open space

development, ice rink, launch, pavilion, pedestrian bridge. Phase two will include the retail, restaurant, and hotel. All infrastructure to support each phase must be installed prior to issuance of building permits

A secondary emergency-only access through Broadway Park was required in order to permit the range of uses proposed. The Park Advisory Commission (PAC) recommended approval of this emergency-only access in November 2019, but final determination will be made by the City Council through a separate instrument authorizing the access.

A neighborhood meeting was held on October 10, 2019 at University of Michigan’s Palmer Commons. Minutes of this meeting are included in the site plan file.

For stormwater management, the site is under the jurisdiction of the Washtenaw County Water Resources Commission (WCWRC). The WCWRC has stated that given the site’s classification as a Brownfield, no stormwater infiltration system will be permitted on the site. The WCWRC agrees to waive the requirement for on-site detention of the 100-year storm volume for the proposed development. However, water quality treatment prior to discharging storm water runoff into the Huron River is still required. Preliminary plan approval was granted by the WCWRC in April 2020.

SITE PLAN DATA ANALYSIS:

	REQUIRED	PROPOSED
Zoning District	PUD (Planned Unit Development)	PUD
Lot Area	13.81 acres (301,776 sq ft)	13.81 acres (301,776 sq ft)
Floor Area Ratio (FAR)	80% MAX	62.1%
Setback: Front (Broadway)	35 ft MIN 80 ft MAX	68 ft
Setback: River Side (North)	20 ft	29 ft
Setback: Side (South)	0 ft	> 200 ft
Setback: Rear (West)	0 ft	> 200 ft
Height	Residential Buildings: 80 ft Non-Residential: 105 ft	Residential Buildings: 75 ft Non-Residential (Hotel): 105 ft
Open Space	6.00 acres	6.09 acres
Impervious Surface	60% MAX (8.29 acres)	56% (7.73 acres)
Vehicle Parking	447 spaces: <ul style="list-style-type: none"> ➤ MIN 50% must be structured parking ➤ One EV charging station per 50 spaces ➤ 50 spaces delineated for open space users. 	485 spaces: <ul style="list-style-type: none"> ➤ 270 within parking structure ➤ 215 on-street and surface lots ➤ Includes 50 spaces delineated solely for open space and recreation users ➤ Includes 10 EV charging stations
Bicycle Parking	82 (includes 40 designated for open space users)	83 spaces: <ul style="list-style-type: none"> ➤ 17 Class A ➤ 6 Class B ➤ 60 Class C

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Huron River	PL (Public Land District)
WEST	Railroad & Commercial/Office	M1 (Limited Industrial District) & C3 (Fringe Commercial District)
SOUTH	Train Station & Office	M1 (Limited Industrial District)
EAST	Broadway Park (Public Park)	PL (Public Land District)

HISTORY

The Huron River was re-routed from the middle of this site to its current location in 1915. The site was used by the Michigan Consolidated Gas Company (MichCon) as a coal gasification facility in the early part of the 20th century. During this period of use, the soils were contaminated. The gasworks operation ended decades ago and MichCon removed many of the older structures and eventually replaced them with a service center in the middle to latter part of the 20th century. Over the past few years, DTE Energy (formerly MichCon) has removed all of the structures on the site. The access drive, parking lots, and building pads remain.

In 2012 as part of an ongoing environmental remediation of the site, DTE Energy removed contaminated soil in some locations of the site, replaced the soil with clean fill, and constructed a containment cap along the Huron River. The work required the removal of landmark trees along the riverbank in order to remove contaminated soil underneath them. The work and the resulting disturbance to the protected Natural Features (landmark trees, river buffer) on the site required approval from the Planning Commission. The work also triggered the need for a storm water detention system to be provided on the site. It was determined that because contaminated soil would remain on the site after remediation, installing a new detention system will be harmful to groundwater and the Huron River. The petitioner could have avoided providing detention systems if they removed the impervious surface on the site. However, removing impervious surfaces would allow contaminants in the soil to leach into the Huron River and ground water. At that time since no development was proposed, it was agreed that leaving the existing impervious surfaces would continue to provide a cap on top of the contaminated soils that remained after initial remediation. The plan was consistent with Part 201 of the Michigan Natural Resources and Environmental Protection Act

On May 15, 2012, the Planning Commission granted approval of the natural features disturbance plan contingent upon a variance granted by the Zoning Board of Appeals (ZBA) from providing required storm water detention on the site. On May 23, 2012, the ZBA granted the requested variance.

On July 1, 2019, the City Council approved the Area Plan and PUD for the subject parcel. This approval set the parameters for development of the site. The site plan submitted is consistent with the Area Plan and PUD Supplemental Regulations approved by Council.

PLANNING BACKGROUND

The Master Plan: Land Use Element recommends Commercial/Office uses in the eastern half of the site adjacent to Broadway and Parks/Open Space on the western half of the property.

DEPARTMENT COMMENTS

Systems Planning – Petitioner is still working on revising some easement widths and exact locations on the plans. Engineering staff has identified that these issues can be revised and finalized during construction plan stage before issuance of any permits for the project. Regarding the non-motorized bridge planned for crossing the river, the bridge material may be either weathering steel with concrete deck, or painted steel superstructure with wood deck. Final bridge materials will be approved by Parks and Recreation.

Sanitary Mitigation calculations are still under review currently. The final required mitigation amount that is required must be finalized before City Council approval.

Parks – Parks staff will consult with the petitioner on final site amenities provided. The City will own or operate any watercraft rental on the site. Requirements for this arrangement are detailed in the Supplemental Regulations. The petitioner will establish a private conservancy that will manage the additional recreational opportunities.

Regarding the parking provided for the recreational uses, City owned parks do not charge for public parking and to be consistent, the fifty public parking spaces should also be free of charge. The City has designated park visitor spaces in lots that also have permit-only spaces, and they are regulated by posted signs. While enforcement of that use in City parks is by honor code, the petitioner could consider instituting a time limit to the public visitor spaces and having that enforced to deter abuse.

Planning – Staff supports the proposed mix of uses, density and rezoning as this site is located near bus stops, existing utilities, public parks and provides direct linkages to pedestrian and non-motorized pathways. A minimum of six acres is preserved as publicly accessible open space. This open space includes recreational amenities such as: ice rink, water feature, benches, tables, a link to the Border to Border trail, pathways, as well as non-motorized river access. The site plan that is proposed is very similar to the Area Plan that was approved as part of the PUD Zoning regulations and will have a positive impact on the adjacent area.

Traffic Review

The petitioner and City's Traffic Engineer worked extensively to address concerns regarding traffic. The City also hired a consultant to assist in the review. The review consisted of a large amount of data and research being analyzed before any recommendations were made. The Traffic Impact Study has been approved. The City's Traffic Engineer will be available for discussion at the meeting.

Stormwater and Floodplain Programs Coordinator

Due to the proposed relocation of the floodplain boundary, a Letter of Map Revision based on Fill (LOMR-F) will be required for this project per National Flood Insurance Program (NFIP) regulations. The LOMR-F must be obtained before the City will issue any Certificates of Occupancy. This is stated in the Development Agreement as a site plan condition.

Dam Failure Inundation Area Recommendations:

The 841 Broadway Street site is immediately downstream of the Argo Dam. The City has a dam break study for Barton Dam that includes Argo Dam. In the event of a dam break, this site could have as much as 15 feet of water moving across it. While there are not laws against building in dam inundation areas, it is recognized as hazardous, and puts a burden on the municipality to provide emergency services to the development in the event of a dam failure.

An inquiry was made to the Michigan Department of Environmental Quality Hydrologic Studies and Dam Safety Unit to see if there are recommendation for building in dam inundation areas. Based on the input from the State, City Staff recommended that an emergency plan be developed by the petitioner and reviewed by the City Emergency Manager to ensure that site ingress/egress by residents and emergency vehicles is considered. The petitioner has developed an Emergency plan that is currently under review by the City's Emergency Manager.

Urban Forestry – Tree mitigation calculations need revisions. Sufficient room exists on the site for mitigation, but calculations need to be reviewed and approved prior to City Council approval.

Prepared by Matt Kowalski
Reviewed by Brett Lenart
/mg

Attachment: Zoning and Aerial Map
841 Broadway Development Agreement
[PUD Supplemental Regulations](#)
[PUD Site Plan](#)

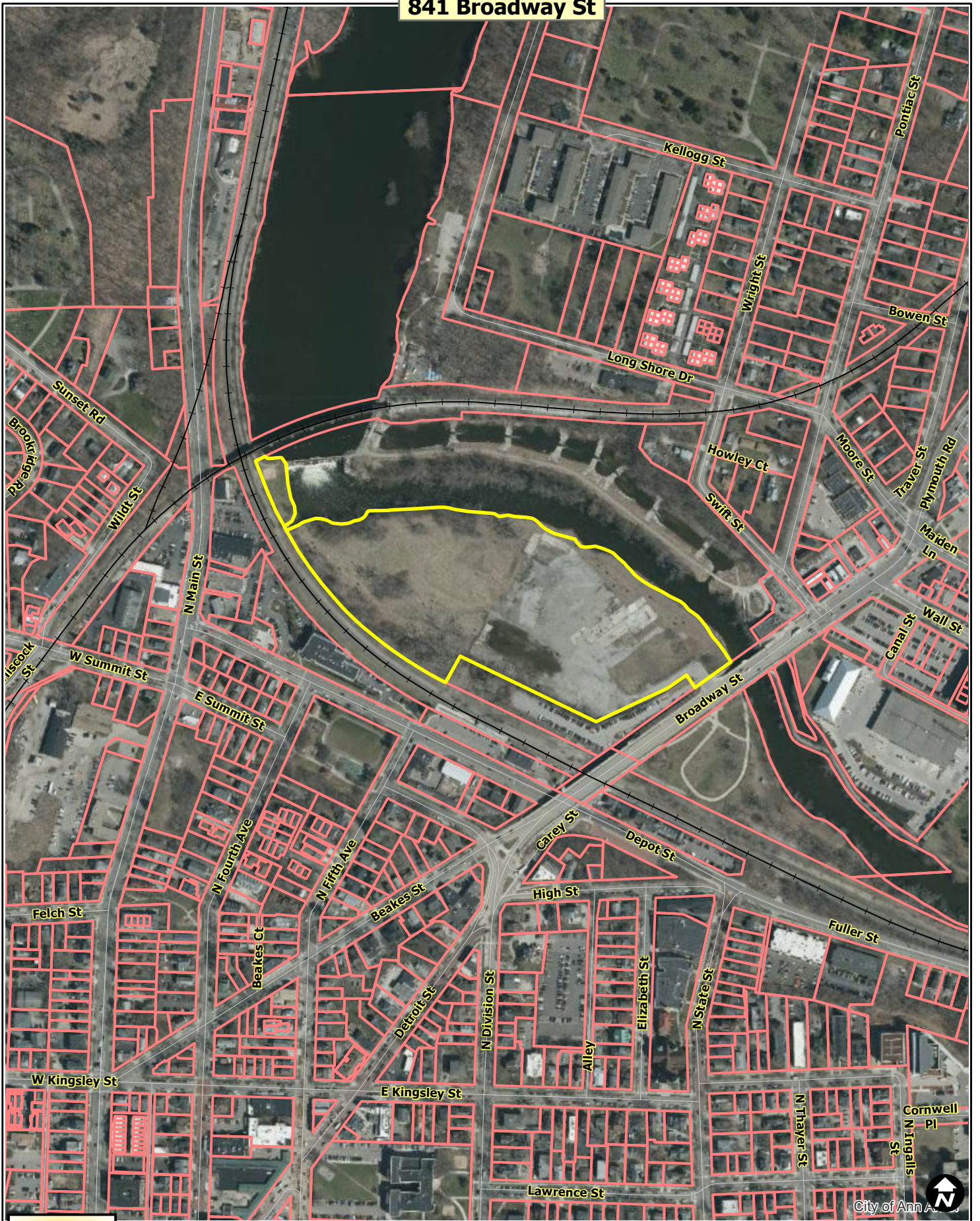
c: Petitioner: Roxbury Group
Callen Vanhermert
Lower Town Partners LLC
117 Griswold
Detroit, MI 48226


Owner: Detroit Edison
Jason Clemens
1 Energy Plaza
Detroit, MI 48226

Petitioner's Representative: Cheryl Zuellig
SmithGroup
201 Depot Street
Ann Arbor, MI 48104

Building
Engineering - Private Development
File Nos. SP19-048

841 Broadway St



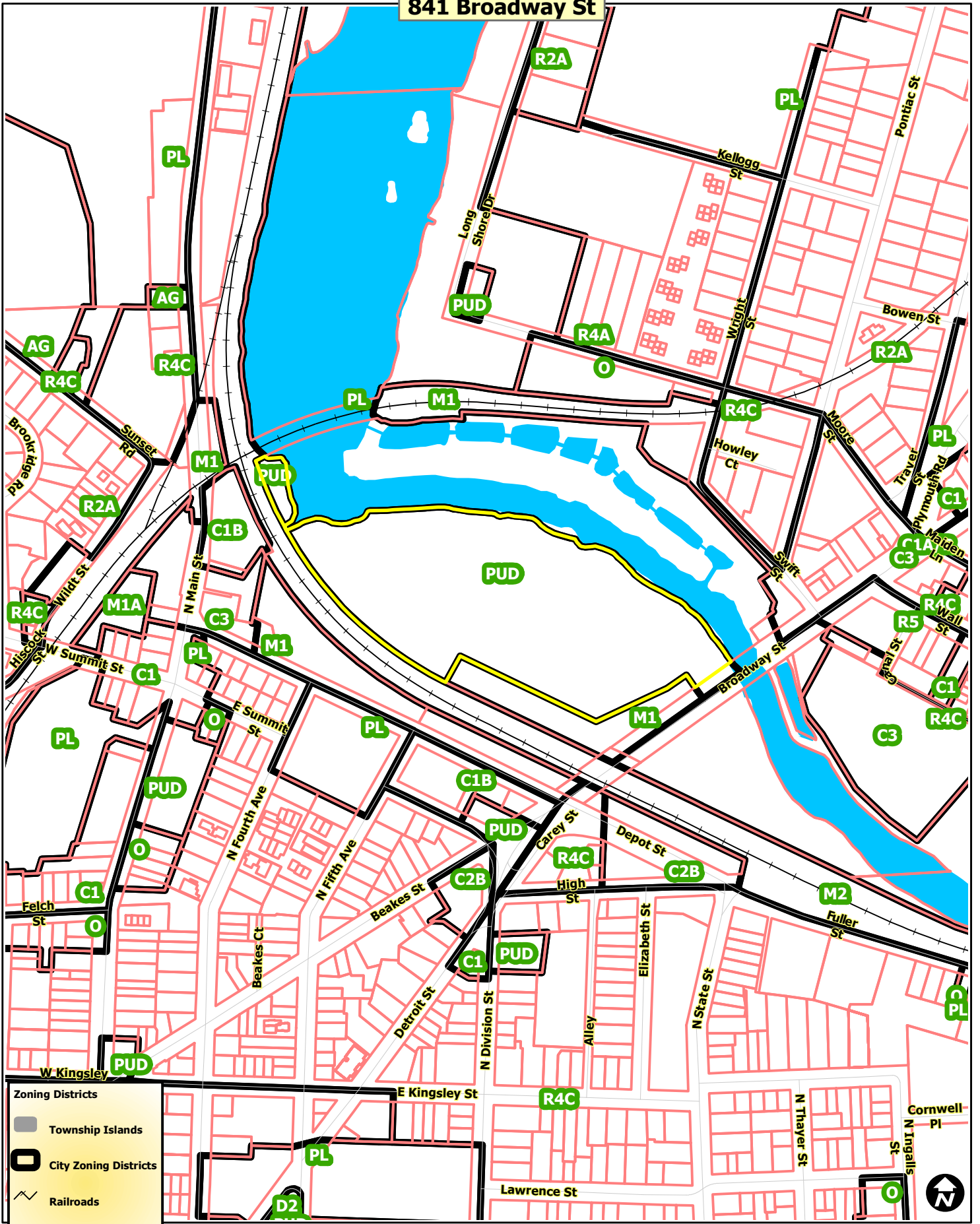
 Railroads
 Tax Parcels



City of Ann Arbor 

Map date: 7/10/2020
Any aerial imagery is circa 2018 unless otherwise noted
Terms of use: www.a2gov.org/terms

841 Broadway St



Zoning Districts

- Township Islands
- City Zoning Districts
- Railroads
- Huron River
- Tax Parcels

Map date: 7/10/2020
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841 BROADWAY DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and Lower Town Partners, a Michigan Limited Liability Corporation, with principal address at 1117 Griswold, Suite 1416, Detroit Michigan 48226, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as 841 Broadway, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 841 Broadway, and desires site plan and development agreement approval thereof, and

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

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

THE DEVELOPER(S) HEREBY AGREE(S):

(P-1) To prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of public water and sanitary sewer mains, public and private storm water management systems, public streets, 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 DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER at the address listed above requiring it to commence and complete the Improvements in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER, if the DEVELOPER does not complete the work within the time set forth in the notice. Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(P-3) To furnish, within 30 days of completion, an engineer's certificate that the construction of the public Improvements set forth in Paragraph P-1 above have been completed in accordance with the specifications of the CITY in accordance with the approved plans. The engineer's certificate will cover only those items the DEVELOPER'S engineer inspects.

(P-4) Prior to the issuance of building permits and recording master deed,, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the CITY, easements for the construction and maintenance of public utilities and public streets. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(P-5) To provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public. At the request of the DEVELOPER, the CITY will provide and install all street name signs and invoice the DEVELOPER for actual cost of installation.

(P-6) Prior to issuance of building permits for the condominium units, to install the condominium unit corners or provide escrow funds to insure placement of monuments and condominium unit corners in accordance with section 125 of Public Act No. 288, Subdivision Control Act, for all condominium units assign condominium unit numbers in the master deed that conform to those on the approved site plan.

(P-7) 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. The final course of asphalt paving shall be completed prior to the issuance of first Certificate of Occupancy on the site.

(P-8) To maintain the streets, including snow and ice removal, if certificates of occupancy are finalized before the street Improvements have been accepted for maintenance by the CITY.

(P-9) To be included in a future special assessment district, along with other benefiting property, for the construction of additional Improvements to Broadway, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Broadway frontage when such Improvements are determined by the CITY to be necessary. (A provision shall be included in the master deed for the project stating that if the CITY undertakes to establish a special assessment district to improve Broadway, each unit shall be assessed its pro rata share of the cost of Improvements allocable to the Property.)

(P-10) To convey to the CITY, prior to the issuance of any permits and subject to acceptance by the Ann Arbor City Council, insert the property or easement (such as right of way) to be conveyed as shown on Attachment A (if necessary).

(P-11) To indemnify, defend and hold the CITY harmless from any claims, losses, liabilities, damages or expenses (including reasonable attorney fees) suffered or incurred by the CITY based upon or resulting from any acts or omissions of the DEVELOPER, its employees,

agents, subcontractors, invitees, or licensees in the design, construction, maintenance or repair of any of the Improvements required under this Agreement and the approved site plan.

(P-12) To cause to be maintained General Liability Insurance and Property Damage Insurance in the minimum amount of \$1,000,000 per occurrence and naming the CITY as additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the 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-13) Existing landmark and street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a minimum of three years after acceptance of the public Improvements by the CITY or granting of Certificate of Occupancy. Existing landmark and street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public Improvements or granting of Certificate of Occupancy, shall be replaced by the DEVELOPER as provided by Chapter 55 of the Ann Arbor City Code.

(P-14) To 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 DEVELOPER to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the DEVELOPER one year after the date of acceptance by the CITY.

(P-15) To create an association composed of all owners of 841 Broadway condominium, hereinafter called the "Association", in which membership shall be required by covenants and restrictions recorded as part of the master deed for *insert name of association*. The association(s) shall be responsible for and shall execute the appropriate documents insuring perpetual maintenance and ownership of the landscape materials, exterior lighting, seating structures, driveways, on-site storm water management system, and all other common elements.

(P-16) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the DEVELOPER if the DEVELOPER does not complete the work within the time set forth in the notice.

(P-17) 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 DEVELOPER or Association, as appropriate, fails to maintain any portion of the system, the CITY may send notice via first class mail to the DEVELOPER, 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 DEVELOPER or Association if the DEVELOPER 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 DEVELOPER in the master deed.

(P-18) 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-19) To prepare and submit to the Planning Services Unit one copy of the Master Deed, along with the required review fee, prior to issuance of building permits.

(P-20) That traffic mitigation measures in the Broadway will be beneficial to the DEVELOPER'S property and, therefore, to pay the CITY \$ _____ for its share of the cost for traffic mitigation measures, which may include, but are not limited to one or more of the following:

a) *list out specific anticipate Improvements*

b)

c)

d) Other less traditional measures, which will similarly mitigate excess traffic, flow at the intersection with similar benefit to the DEVELOPER'S property by facilitating decreased use of automobiles and increased use of alternate modes of transportation. These measures may include, but are not limited to, park and ride lots, bicycle and pedestrian facilities, and transit Improvements.

The DEVELOPER(S) will pay to the CITY, *insert appropriate alternate*

(Alternate A) within 90 days of written notice of commencement of engineering design leading to construction or purchase order for materials, its share of the cost of the Improvements.

OR (Alternate B) within 60 days of invoicing, its share of the cost of the Improvements.

OR (Alternate C) within 90 days of written notice and reasonable documentation evidencing the cost of such traffic mitigation measures sent by the CITY to the DEVELOPER at the address listed above.

The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. However, the CITY agrees that it will not charge the DEVELOPER for more than \$ _____, as set forth above, of the traffic mitigation measures the CITY finds necessary to address the impact of the DEVELOPER'S development.

(P-21) To design, construct, repair and maintain this development in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said development will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said development and incorporate necessary design and construction techniques to ensure that future tenants will not be exposed to noise sources in violation of Chapter 119.

(P-22) To include the elevation drawings, as submitted to City Council, as part of the approved site plan and to construct all buildings consistent with said elevation drawings. If the DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-23) To remove all discarded building materials and rubbish from the development at least once each month during construction of the development 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-24) To apply for and obtain a floodplain permit from the Michigan Department of Environment, Great Lakes, and Energy (EGLE) prior to the issuance of any permits for this project.

(P-25) To apply for and obtain a Letter of Map Revision based on Fill (LOMR-F) for this project per National Flood Insurance Program (NFIP) regulations. The LOMR-F must be obtained before the City will issue any Certificates of Occupancy.

(P-24) No lot in 841 Broadway may be divided such that an additional building parcel is created.

(P-25) As part of the application for the first building permit, to provide documentation from an independent, qualified professional that verifies the building has been designed to achieve a minimum of two points under the U.S. Green Building Council Leadership in Energy and Environmental Design (LEED) Energy & Atmosphere Credit No. 1, based on the most recent version in effect at the date of this agreement. Compliance with this requirement shall be verified and documented by the independent, qualified professional using an industry standard software energy modeling tool (EQUEST or equivalent).

(P-26) Prior to the issuance of the first certificate of occupancy, to pay to the CITY an affordable housing contribution of \$2,057,350 to be deposited in the City of Ann Arbor Affordable Housing Trust Fund in compliance with the applicable PUD Ordinance Standards of July 2019 and the approved Supplemental Regulations for this lot.

(P-27) DEVELOPER is the sole title holder in fee simple of the land described below except for any mortgage, easements and deed restrictions of record and that the person(s) signing below on behalf of DEVELOPER has (have) legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-28) Failure to construct, repair and/or maintain the site pursuant to the approved site plan and/or failure to comply with any of this approved Agreement's terms and conditions shall

constitute a material breach of the Agreement and the CITY shall have all remedies in law and/or in equity necessary to ensure that the DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER shall be responsible for all costs and expenses including reasonable attorney fees incurred by the CITY in enforcing the terms and conditions of the approved site plan and/or Agreement.

(P-29) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER fails to make a timely or full payments to the CITY as set forth elsewhere in the Agreement to the CITY in the agreed upon manner, any unpaid amount(s) shall become a lien, as provided under Ann Arbor City Code and recorded with the Washtenaw County Register of Deeds, against the land described below and may be placed on the CITY tax roll as a single lot assessment, or if the development is converted to condominium ownership, every owner of a portion of the property shall pay a pro-rata share of the amount of the payments attributable to each condominium unit. If the unpaid amount(s), in whole or in part, has been recorded as a lien on the CITY'S tax roll and with the Washtenaw County Register of Deeds, upon payment of the amount in full along with any penalties and interest, the CITY, upon request, will execute an instrument in recordable form acknowledging full satisfaction of this condition.

(P-30) 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 *841 Broadway*.

(C-2) To use the \$ *insert sum as stated above* contribution for traffic mitigation measures at the *insert name of improvement as stated above*.

(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 DEVELOPER and the CITY agree as follows:

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

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

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

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

City of Ann Arbor, Washtenaw County, Michigan

[ALTA Legal description(s) to be inserted here:]
[Parcel ID Number(s) to be inserted here:]

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

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

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

By: _____
Christopher Taylor, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Tom Crawford, Interim City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__
by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan
municipal corporation, on behalf of the corporation.

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

STATE OF _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 202__
by _____, _____ of _____, a
_____, on behalf of the _____.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Ann Arbor Planning Services
ATTN: Brett Lenart

Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265