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July 30, 2009

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Mayor John Hieftje
Members of the City Council
City of Ann Arbor
101 N. Fifth Avenue
Ann Arbor, MI

Re: Opposition to Moratorium on Projects in R4C Zoning Districts

Dear Mayor Hieftje and Members of City Council:

Fifth Avenue Limited Partnership ("FA") vigorously objects to the proposed moratorium on projects located in the R4C zoning district, and requests that even if Council enacts such a moratorium, it exclude the property owned by FA which is part of active redevelopment applications. FA objects to this moratorium for several reasons; understanding them requires a brief review of the situation.

FA's "City Place" site plan (the "Site Plan") was recently before Council for consideration. Because the Site Plan met all R4C zoning requirements and all other City requirements, it was entitled to approval. While FA believes this project provides numerous benefits to the City, FA nevertheless recognizes that an alternative project might meet more of the City's goals. Therefore, following discussions with City representatives, and in the spirit of working cooperatively with the City, FA requested that the Site Plan be tabled so that FA could pursue an alternative Planned Unit Development ("PUD") project. Council tabled the Site Plan to January, and specifically directed the Planning Department to process a new PUD application for this property; Council also provided that FA could request the Site Plan be brought back to the table for Council action upon 35 days notice.

It is important for Council to recognize that requesting this tabling represented a not insignificant risk to FA. FA had completed all of the lengthy and expensive City review processes, and on the eve of probable approval, FA voluntarily postponed Council consideration of the Site Plan. This tabling request also required that FA trust Council to act fairly in its continued treatment of FA's ongoing efforts to redevelop this site.

It appears Council will consider at its August meeting a moratorium on PUD and site plans in R4C zoning districts. FA objects to such a moratorium as it relates to the City Place property for several reasons. First, as currently worded, this moratorium would prevent the

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processing of the alternative PUD for this site, and would also prevent Council from acting on the tabled Site Plan if FA requests that it be brought back before Council. This would contradict Council's explicit directions taken at its July 20, 2009 meeting regarding the City Place property.

Second, enacting such a moratorium would violate the trust FA placed in Council to act fairly towards FA's redevelopment efforts for this site. It is difficult to conclude that this moratorium has any other goal except preventing redevelopment of the City Place site, and it could be construed as an attempt to stop the City Place project without having to formally deny a site plan or PUD. It would simply be unfair to place the City Place property under a moratorium, especially the Site Plan, after FA has already completed the City's lengthy and expensive application and review process. This would not be the spirit of cooperation FA was expecting when it agreed to request tabling of the Site Plan.

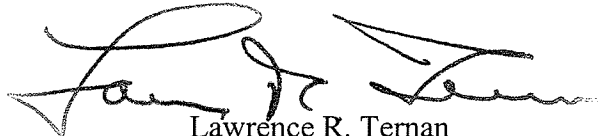
Third, such a moratorium is poor urban planning, particularly as it relates to PUD applications. A PUD provides significant opportunities for Council to create the best possible project for a particular site, regardless of the underlying zoning. Therefore, enacting such a moratorium prevents even the most beneficial projects from moving forward. This would be true for the alternative City Place PUD.

FA requests that the Council does not adopt any moratorium. If a moratorium is approved, the request is that FA's property and the Site Plan and alternate PUD application be expressly excluded from the moratorium. If that is not done, FA will be forced to consider remedies to protect its valuable property rights. The moratorium, as written, would effectively "take" from FA its development rights and rights to "due process".

FA believes its alternative PUD will maximize the ability to achieve the City's and FA's mutual goals, and FA strongly desires to work with the Council and City staff to bring such a project forward. FA hopes that you recognize it is necessary to write this letter so there are no misunderstandings and to place FA's objection to the moratorium on the record.

Very truly yours,

BEIER HOWLETT, P.C.



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cc: Clients