

## Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Ann Arbor (“City”), a Michigan municipal corporation, with offices located at 301 E. Huron St., Ann Arbor, Michigan 48107, and Morningside Lower Town, LLC (“Developer”), a Michigan limited liability company, with principal address at 223 W. Erie, Third Floor, Chicago, Illinois 60654.

### Recitals

- A. The Michigan Zoning Enabling Act (P.A. 110 of 2006, as amended) allows for conditional zoning of land when the City is amending its zoning map, or a conditional zoning of land when the City is zoning property in MCL 125.3405.
- B. The City of Ann Arbor recognizes that there are certain instances where it would be in the best interest of the City, as well as advantageous to the Developer, for certain conditions to be proposed as part of a request for rezoning or a request for an amendment to the zoning map.
- C. On February 27, 2017, the Developer applied for an amendment to the City zoning map for land in the City of Ann Arbor site planned as 1140 Broadway, as more fully described on the attached **Exhibit A** (the “Property”).
- D. Included with the rezoning petition, the Developer voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On July 5, 2017, the Planning Commission, after public hearing, recommended approval of the rezoning of the Property to C1A/R (Campus Business

Residential District) with Conditions. The Developer also submitted a Site Plan showing the specific proposed use and site design of the property.

- F. On \_\_\_\_\_, the City approved the conditional rezoning subject to this Statement of Conditions.
- G. Based on the specific facts and circumstances regarding this property, the City has decided to accept the Developer's offer of conditional zoning.
- H. By executing this Statement of Conditions, the City and the Developer desire to set forth and confirm the conditions under which the City granted conditional zoning of this Property.

NOW, THEREFORE, Developer and City agree:

1. Conditions Running with the Property. This Statement of Conditions covers the Property described in the attached Exhibit A. The Statement of Conditions is incorporated into the zoning of the Property and shall be binding upon and inure to the benefit of the Developer and the City, and their heirs, successors and assigns, and shall run with the Property.
2. Site Plan. The conditional zoning was granted by the City based, in part, by the Developer's stated proposed use of the Property as a mixed-use urban village development, as shown in an excerpt from the proposed Site Plan attached as **Exhibit B**.
3. List of Conditions. The conditional zoning was granted to the Developer based on conditions that were voluntarily offered by the Developer. The City and Developer agree that restrictions on the use and development of the land are necessary for consistency and conformance to the Master Plan – Future Land Use Element with regard to new development in the Central planning area. The conditions which form the basis of the City's grant of the conditional zoning are as follows:

The height of any structure on the Property within 70 feet of the centerline of Traver Creek shall be a maximum of four stories and a maximum of 60 feet, and the height of any structure on all other areas of the Property shall be a maximum of eight stories and a maximum of 100 feet.

4. Developer Acknowledgment. Developer acknowledges that it voluntarily offered and consented to all of the provisions contained in this Statement of Conditions. Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that the Statement of Conditions does not constitute a taking of property for any purpose or a violation of any constitutional right; and agrees to be bound by each and every provision of this Statement of Conditions. Furthermore, it is

agreed and acknowledged that any improvements and undertakings described herein are necessary and roughly proportional to the burden imposed by the conditional zoning, and are necessary to insure capability with adjacent and surrounding uses of land; to promote use of the Property in a socially and economically manner; and to achieve other legitimate objectives of the City authorized by law.

5. Authority to Execute. This Statement of Conditions has been authorized by all necessary action of Developer, and Developer acknowledges that it is the owner of the Property or has been authorized by the owner to conditionally zone this Property. Furthermore, the signatory for Developer acknowledges that he is authorized to enter and execute this Statement of Conditions on behalf of Developer, and bind the Developer to its terms.
6. City Approval. The Statement of Conditions and the City's approval of these conditions is based on the particular facts and circumstances presented, as well as the surrounding land uses and other characteristics regarding this property, and approval of these conditions for this Property may not be relied on as precedent by any other property owner seeking a conditional zoning.
7. Obligation to Obtain Other Approvals. Developer acknowledges that any use or development approved by this conditional zoning that may require a special land use permit, a variance, or site plan approval under the terms of Ann Arbor City Code, may only be commenced if such special land use permit, variance, and/or site plan approval is ultimately granted in accordance with the terms of Ann Arbor City Code.
8. Amendment. This Statement of Conditions may only be amended in the same manner as prescribed for a rezoning of property under the terms of Ann Arbor City Code.
9. Compliance with Statement of Conditions. Developer shall continuously operate and maintain the development and/or use of the Property in full compliance with all of the conditions set forth in this Statement of Conditions. Any failure to comply fully with the conditions contained with the Statement of Conditions shall constitute a violation of the Zoning Ordinance of Ann Arbor City Code, and shall be punished accordingly. Any such violation shall be deemed a nuisance per se and subject to judicial abatement, or any other remedy as provided by law.
10. Rezoning. Developer acknowledges that nothing in this Statement of Conditions shall prohibit the City from exercising its right to rezone the property at any time as allowed by law. The City acknowledges that nothing in this Statement of Conditions shall prohibit the Developer from requesting a rezoning of the Property at any time.

CITY OF ANN ARBOR  
a Michigan municipal corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

Morningside Lower Town, LLC  
a Michigan limited liability company

By: \_\_\_\_\_

STATE OF MICHIGAN        )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by Christopher Taylor and Jacqueline Beaudry, the Mayor and City Clerk respectively of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
Acting in the County of Washtenaw  
My Commission Expires: \_\_\_\_\_

STATE OF MICHIGAN        )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017 by \_\_\_\_\_, of Morningside Lower Town, LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
My Commission Expires: \_\_\_\_\_

Drafted by and after recording return to:  
Kevin S. McDonald (P-61761)  
Senior Assistant City Attorney  
City of Ann Arbor, Office of the City Attorney  
P.O. Box 8647  
Ann Arbor, MI 48107-8647

**Exhibit A**

LEGAL DESCRIPTION OF A LAND LOCATED IN THE  
CITY OF ANN ARBOR, WASHTENAW COUNTY, MICHIGAN

Beginning at the Westerly corner of Lot 78 of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records; thence Northeasterly along the Southerly right-of-way line of Broadway Street (variable width) in the following four (4) courses: (1) N 57°48'00" E 564.63 feet, (2) N 01°45'27" E 20.50 feet, (3) N 57°48'00" E 25.88 feet and (4) N 58°18'42" E 33.55 feet (recorded as N 58°18'00" E); thence along the centerline of Traver's Creek in the following four (4) courses: (1) S 22°41'48" E 13.78 feet (recorded as S 22°42'30" E), (2) S 52°07'48" E 51.77 feet (recorded as S 52°08'30" E), (3) S 65°43'18" E 29.31 feet (recorded as S 65°44'00" E) and (4) S 73°04'18" E 50.81 feet (recorded as S 73°06'00" E);

thence N 37°31'42" E 25.40 feet (recorded as N 37°31'00" E);  
thence S 79°25'00" E 177.53 feet along the Northeasterly line of Lot 25 of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records;  
thence S 31°16'00" W 410.58 feet along the Northwesterly line of Ross Maiden Lane Apartments;  
thence S 58°44'00" E 74.99 feet;  
thence S 31°16'00" W 255.50 feet along the West right-of-way line of Nielsen Court;  
thence N 58°44'00" W 653.70 feet along the Northerly right-of-way line of Maiden Lane to the Point of Beginning. Being Lots 25 through 30 ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records and Lots 72 through 82, inclusive, Lots 83 through 87, inclusive and a vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records.

Parcel ID#: \_\_\_\_\_

**Exhibit B**

Excerpt From 1140 Broadway Site Plan approved by City Council