

## Conditional Zoning Statement of Conditions

This Conditional Zoning Statement of Conditions (“Statement of Conditions”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, 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 Broadway, LLC, a Michigan limited liability company (“Broadway”), Morningside Nine99, LLC, a Michigan limited liability company (“Nine99”), and Morningside Maiden Lane, LLC, a Michigan limited liability company (“Maiden Lane”), with principal addresses at 223 W. Erie, Third Floor, Chicago, Illinois 60654 (Broadway, Nine99, and Maiden Lane are collectively the “Developer”). This Conditional Zoning Statement of Conditions supersedes all previous versions of the Conditional Zoning Statement of Conditions, by and between the City and Developer, or predecessor developer, Morningside Lower Town, LLC, (“Lower Town”) for land in the City of Ann Arbor more fully described in the Attached Exhibit A (the “Property”).

### **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, Lower Town applied for an amendment to the City zoning map for the Property, along with a request to approve the 1140 Broadway Planned Project Site Plan for the Property.
- D. Included with the rezoning petition, Lower Town voluntarily offered in writing conditions regarding the use and development of the land to be incorporated into the zoning of the Property.
- E. On December 4, 2017, the City approved the rezoning of the Property to C1A/R (Campus Business Residential District) with Conditions.
- F. On September 4, 2018, following a request from Lower Town, the City

approved an additional zoning condition of the Property that included adherence to the 1140 Broadway Planned Project Site Plan as a required condition.

- G. The Developer requested a modification to the conditions in January 2023, and on May 2, 2023, the Planning Commission, after holding a public hearing, recommended approval of these revised conditions, removing the additional condition provision added in 2018.
- H. Based on the specific facts and circumstances regarding this Property, the City has decided to accept the Developer's offer of conditional zoning.
- I. By executing this Statement of Conditions, the City and the Developer desire to set forth, confirm and amend the conditions under which the City grants conditional zoning of this Property.
- J. On \_\_\_\_\_, 2023 the City approved this Statement of Conditions.

NOW, THEREFORE, Developer and City agree:

- 1. Conditions Running with the Property. This Statement of Conditions covers the Property described in **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 Northeast planning area. The conditions which form the basis of the City's grant of the conditional zoning are as follows:
  - A. The height for any part of a building or structure on the Property shall be a maximum of seven stories and a maximum of 91 feet, which shall be further restricted to a maximum height of four stories and a maximum height of 60 feet within the area defined by the attached **Exhibit C**.
  - B. The maximum height limitations shall include architectural features such as parapet walls, railings, skylights and similar structures, but shall exclude structures such as chimneys and ventilation assemblies,

mechanical equipment and screens, elevator penthouses, solar panel installations, antennae and similar structures. Excluded structures shall not extend more than the minimum height necessary to achieve their intended purpose, and shall not extend more than 20 feet above the maximum height limit.

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, MICHIGAN  
301 East Huron Street  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023 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  
Acting in the County of Washtenaw  
My Commission Expires:

MORNINGSIDE BROADWAY, LLC

By: \_\_\_\_\_  
Ronald Mucha, Authorized Signatory

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing Agreement was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2023 by Ronald Mucha, authorized signatory of Morningside Broadway, LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_

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

MORNINGSIDE NINE99, LLC

By: \_\_\_\_\_  
Ronald Mucha, Authorized Signatory

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing Agreement was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2023 by Ronald Mucha, authorized signatory of Morningside Nine99, LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_

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

MORNINGSIDE MAIDEN LANE, LLC

By: Morningside Lower Town Holdings, LLC  
its Manager

By: \_\_\_\_\_  
Ronald Mucha, Authorized Signatory

STATE OF MICHIGAN            )  
  ) ss  
COUNTY OF WASHTENAW )

The foregoing Agreement was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2023 by Ronald Mucha, authorized signatory of Morningside Maiden Lane, LLC, a Michigan limited liability company, on behalf of the company.

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

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

Exhibit A

In the City of Ann Arbor, Washtenaw County:

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.

**Now known as:**

1200 BROADWAY STREET  
#09-09-21-302-120

LEGAL DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHWEST ¼ OF  
SECTION 21, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR,  
WASHTENAW COUNTY, MICHIGAN

COMMENCING 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) N 57°48'00"E 327.33 feet to the POINT OF BEGINNING;

thence continuing 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 237.30 feet,
- (2) N 25°54'20" E 32.17 feet,
- (3) N 57°48'00" E 10.02 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 29.50 feet along the West right-of-way line of Nielsen Court;  
thence N 58°44'00" W 274.67 feet;  
thence N 31°16'00" E 24.98 feet;  
thence N 58°44'00" W 148.80 feet;  
thence N 32°14'33" W 93.87 feet to the POINT OF BEGINNING. Being part of Lot 25 and Lots 29  
and 30, of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats,  
Washtenaw County Records and part of Lots 82, 84 and 85 and Lots 86 and 87, and a  
vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats,  
Washtenaw County Records.

1100 BROADWAY STREET  
#09-09-21-302-119

LEGAL DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHWEST ¼ OF  
SECTION 21, TOWN 2 SOUTH, RANGE 6 EAST, CITY OF ANN ARBOR,  
WASHTENAW COUNTY, MICHIGAN

Commencing 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)  
N 57°48'00" E 15.38 feet to the POINT OF BEGINNING;

thence continuing Northeasterly along the Southerly right-of-way line of Broadway Street (variable  
width) N 57°48'00" E 228.61 feet;  
thence S 32°12'00" E 13.00 feet;  
thence N 57°48'00" E 68.00 feet;  
thence N 32°12'00" W 13.00 feet;  
thence continuing Northeasterly along the Southerly right-of-way line of Broadway Street (variable  
width) N 57°48'00" E 15.34 feet;  
thence S 32°14'33" E 93.87 feet;  
thence S 58°44'00" E 148.80 feet;  
thence S 31°16'00" W 250.98 feet;  
thence N 58°44'00" W 288.47 feet along the Northerly right-of-way line of Maiden Lane (50' feet  
wide)  
thence N 43°59'08" W 43.21 feet;  
thence N 58°43'59" W 36.37 feet;  
thence N 32°12'00" W 6.19 feet to the POINT OF BEGINNING. Being part of Lots 75, 83, and 85,  
and Lots 76 through 82, inclusive, and part of Lots 84 and a vacated alley of ASSESSOR'S  
PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records and



containing 1.84 acres of land, more or less. Subject to easements and restrictions of record, if any.

999 MAIDEN LANE  
09-09-21-302-207

LEGAL DESCRIPTION OF A PARCEL OF LAND LOCATED IN THE SOUTHWEST ¼ OF  
SECTION 21, TOWN 2 SOUTH, RANGE 6 EAST, 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 southeasterly along the northerly right-of-way line of Maiden Lane (50 feet wide) S 58°44'00" E 379.03 feet to the POINT OF BEGINNING;

thence N 31°16'00" E 226.00 feet;

thence S 58°44'00" E 274.67 feet;

thence along the westerly right-of-way line of Nielson Court (50 feet wide)

S 31°16'00" W 226.00 feet;

thence along said northerly line of Maiden Lane N 58°44'00" W 274.67 feet to the POINT OF BEGINNING. Being Lots 72 thru 74, inclusive, and part of Lots 75, 83, and 85, and a vacated alley of ASSESSOR'S PLAT NO. 33, as recorded in Liber 9, Page 46 of Plats, Washtenaw County Records, also being Lots 26 thru 28, inclusive, and part of Lot 25 of ASSESSOR'S PLAT NO. 32, as recorded in Liber 9, Page 45 of Plats, Washtenaw County Records and containing 1.43 acres of land, more or less. Subject to easements and restrictions of record, if any.

Parcel ID#: 09-09-21-302-119, 09-09-21-302-120, 09-09-21-302-207

Exhibit B

Excerpt From 1140 Broadway Site Plan approved by City Council



Exhibit C

Height Limitation Area