

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of October 6, 2009

**SUBJECT: The Moravian PUD Zoning District and PUD Site Plan
(201, 211 and 215 East Madison Street; 554 and 558 South Fifth Avenue;
and 547, 551 and 553 South Fourth Avenue)
File Nos. PUDZ08-036 and SP08-022**

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve The Moravian Planned Unit Development (PUD) Zoning District and Supplemental Regulations, PUD Site Plan dated September 2, 2009, and Development Agreement, subject to removal of the district from the floodway by adoption of modernized flood insurance rate maps, and subject to variances granted by the Zoning Board of Appeals related to the number and dimensions of curb cuts.

STAFF RECOMMENDATION

Staff recommends that The Moravian PUD Zoning District and Supplemental Regulations be **postponed** following a public hearing and Commission discussion to allow the petitioner time to incorporate comments received.

Staff recommends that The Moravian PUD Site Plan be **postponed** following a public hearing and Commission discussion to allow the petitioner time to incorporate comments received.

LOCATION

This site is located on the north side of East Madison Street between South Fourth and South Fifth Avenues. It is in the Central planning area and within the Allen Creek watershed area.

DESCRIPTION OF PETITION

The petitioners have assembled eight parcels at the southern end of the Packard/Fourth/Fifth/Madison block to create a 0.8-acre site (37,026 square feet). They request that the site be rezoned to PUD to allow multiple-family use with live-work opportunities and customary accessory uses such as leasing office, recreational and fitness facilities and child care. The petitioners also seek approval to construct a five-story structure consisting of one floor of parking and four floors of residential units. A total of 63 dwelling units, including 9 units affordable to lower income households, and 90 off-street vehicular parking spaces are proposed.

Existing Conditions – The eastern half of the site is currently zoned R4C (Multiple-Family Dwelling District). The western half is currently zoned M1 (Limited Industrial District).

Seven of the eight parcels contain houses that have been converted to single- and multiple-unit rentals. One parcel contains an industrial building that has been converted to a multiple-unit apartment building. There are a total of 19 dwelling units currently on the site. The site is on the north face of the Allen Creek valley. The highest point of the site is at the northeast corner and the lowest point is at the southwest corner. From high point to low point the site falls more than 16 vertical feet. The 100-year floodplain of the Allen Creek covers the south and west portions of the site and the 100-year floodway covers the southwest corner. There are two landmark trees on the site and three additional landmark trees off-site but whose critical root zones extend onto the site. The two on-site landmark trees, an 18-inch and a 23-inch black walnut, will be removed and mitigated with new trees. The off-site landmark trees will not be impacted and require no mitigation.

PUD Zoning District and Supplemental Regulations – A PUD Zoning District is proposed to consolidate the site into one zoning district. Supplemental Regulations have been drafted to allow multiple-family and limited live-work uses along with traditional accessory uses. Highlights of the proposed Supplemental Regulations include:

- Multiple-family residential and live/work space for artists and entrepreneurs in the district are the permitted **principal uses**
- Additional **accessory uses** include incidental food and beverage sales, child care and health care space, outdoor recreational and indoor fitness uses, and leasing/management offices
- Minimum **front setbacks** range from 4 feet (East Madison Street) to 14 feet (South Fourth Avenue)
- Minimum **side/rear setbacks** are 12 feet
- Maximum **height** is 70 feet inclusive of all building elements and 5 stories
- Minimum 400 square feet of **lot area per dwelling unit** (density) and 83.5 square feet of lot area per bedroom
- The total **floor area** limited to 210 percent of the lot area
- Minimum 1.25 off-street **vehicular parking** spaces per unit required up to a maximum of 90 spaces total
- Minimum of 1 off-street **bicycle parking** space per 3 bedrooms required
- Minimum of 15 percent of all dwelling units are **affordable** units to lower income households
- **Landscape, screening and architectural design** standards
- LEED certification is required for **energy and environmental design**

PUD Site Plan – A PUD site plan is proposed to construct a five-story building consisting of one parking level and four floors of residential use. Live/work spaces are included in the parking level. Due to the slope of the site, the building appears four stories at the northeast corner, four and a half stories at the southeast corner, and five stories on the west.

The parking level of the building is rectangular. The exterior walls of the parking level are set back a minimum of 14 feet from South Fourth Avenue, between 4 and 8 feet from East Madison Street, and a minimum of 8 feet from South Fifth Avenue. On the north side, the setback of the

parking level ranges from 0 feet on the eastern half and 12 feet on the western half (note that northeastern quarter of the parking level is entirely below grade). Access to the parking level is provided from South Fourth Avenue.

On top of the rectangular parking level is the L-shaped 4-story residential portion of the building. The residential floors are flush with the parking level on the west, south and parts of the north and east sides of the building. However, the residential floors do not extend over the northeast quarter of the parking level. There is a surface parking lot above the northeast quarter of the parking level. Because the residential floors share the same exterior walls as the parking level on three sides, they also have a minimum setback of 14 feet from South Fourth Avenue, between 4 and 8 feet from East Madison Street, and 8 feet from South Fifth Avenue. The residential floors of the building are setback between 32 and 62 feet from the eastern half of the north property line (whereas the proposed setback is 0 feet for the parking level). The main entrance to the residential portion of the building is from South Fifth Avenue.

A total of 63 dwelling units are proposed on the four residential levels of the building, as follows:

	4-Bedroom	3-Bedroom	2-Bedroom	1 Bedroom	Efficiency
Number of Units	7	36	8	9	3

These 63 dwelling units provide a total of 164 bedrooms. Nine units will be designated affordable units for lower income households. (Lower income households are defined by the Zoning Ordinance as earning 80% or less than the area median income.)

The parking level provides 66 vehicular spaces and 48 Class A (enclosed, long-term) bicycle spaces. An additional 24 off-street vehicular parking spaces and 34 Class C (open, hoop-style) bicycle spaces are provided in the surface parking lot. Access to the surface parking spaces is from South Fifth Avenue. The lower parking level and the upper surface parking lot are not connected.

Three Live/Work spaces are proposed at the southwest corner of the building. Each unit measures about 28 feet wide by 22 feet deep. The live/work spaces are accessible from doors on the front of the building facing East Madison Street and from rear doors leading to the parking level. There is no direct connection between the live/work spaces and the residential portion of the building, but these spaces are intended for use by residents of the building for home occupations, entrepreneurial businesses, and art studios. The live/work spaces are also intended to provide activity at the street level and promote appropriate mixed uses in the PUD district.

The mass of the building has been articulated, or broken down, into several building modules, a traditional design tool used for large buildings. The southern façade of the proposed building, along East Madison Street, is 241 feet in length but has been broken into six modules by varying both the building setback and the façade materials. The western façade, along South Fourth Avenue, is 140 feet in length but has been broken into four modules. This façade is also articulated by both setback and material variation. The eastern façade, along South Fifth Avenue, is 80 feet in length but has been broken into two modules.

Other significant features proposed are:

- Sidewalk Park – A sidewalk park is proposed on the west side of the site between the entrance to the parking level and South Madison Street. The park straddles the property

line, half of the park is in South Fourth Avenue right-of-way and the other half is on the proposed site. The petitioner has proposed to convey an easement to the City for public use of the entire pocket park. Permanent outdoor seating and landscaping is proposed to enhance the area. Two additional benches are proposed on the site along the East Madison Street sidewalk. Public use easements will be conveyed for these benches as well.

- Landscape, street tree and mitigation plan – Numerous understory trees, such as serviceberry and dogwood trees, are proposed in the front open space of the site. Numerous shrubs and groundcover plants are also proposed in the front open space and will soften the appearance of the building from the streets. A 4-caliper inch honey locust tree is proposed on the west side of the site as the focal point of the proposed pocket park. Seventeen street trees are proposed to be installed by the petitioner. Seven mitigation trees, each 2 ½-caliper inches, are proposed on the west half of the north side of the site. Two additional mitigation trees, also 2 ½ -caliper inches each, are proposed in the southeast and southwest corners of the site.
- Screening/Conflicting Land Use Buffer – A retaining wall along the north lot line provides screening for the surface parking lot. It includes a wall that is 30 inches in height at its lowest point. (Note that the screen wall is proposed in lieu of a traditional conflicting land use buffer, which requires a 15-foot buffer strip and plantings in addition to a screen wall of some sort.)
- Storm Water Management and Floodplain Capacity – The site is in the jurisdiction of the Washtenaw County Water Resources Commissioner. The Water Resources Commissioner's office has granted preliminary approval for a storm water management system proposed underneath the parking level. Currently, about half of the site, the lower western half, is within the 100-year floodplain of Allen Creek and about a quarter of the site, the lowest western corner, is within the floodway. Draft flood insurance rate maps issued for review by the Federal Emergency Management Agency in July 2007 revised the current floodway limits so that the entire subject site is outside of the floodway. The limits of the 100-year floodplain remain the same. The existing site provides approximately 17,200 cubic feet of flood storage. The proposed development will provide approximately 29,900 cubic feet, an increase of about 74%.
- Sustainable Development – The proposed site plan includes many sustainable development features as required by the proposed supplemental regulations. The building will be certified by the US Green Building Council Leadership in Energy and Environmental Design (LEED) program. It will also utilize a geothermal heating and cooling system, a renewable and sustainable energy source.

Traffic Impact Study – A traffic impact study was prepared for a previously proposed petition for a 161-unit high-rise multiple-family building on this site. That study concluded that the 161-unit development would not adversely impact the traffic operations on area streets and that no traffic mitigation measures were needed. These conclusions remain valid for the proposed development because the proposed development has the same basic premise but at a significantly reduced scale. A copy of the previous traffic impact study is included with the current petition file.

SURROUNDING LAND USES AND ZONING

	LAND USE	ZONING
NORTH	Single, Multiple-Family Residential	R4C (Multiple-Family Dwelling District)
EAST	Single, Multiple-Family Residential	R4C
SOUTH	Industrial (Fingerle Lumber)	M1 (Limited Industrial District)
WEST	Institutional (UM offices)	M1

COMPARISON CHART – ZONING DISTRICTS

		EXISTING		PROPOSED
Zoning		M1	R4C	PUD
Permitted Principal Uses		All RE (Research) and O (Office) uses, trade, transportation, laundry services, manufacturing plants, auto repair	Single, two and multiple-family residential, rooming/boarding houses, nursing homes, child care centers	Multiple-family residential
Permitted Accessory Uses		Incidental retail sales, one dwelling unit for security person.	Social club/recreational center, home occupations.	Live/work space for artists, entrepreneurs, professionals; child care center; recreation; food and beverage sales, health care space; sales and leasing office
Lot Area		13,000 sq ft	8,500 sq ft	0.85 acres (37,201 sq ft) MIN
Lot Area per Dwelling Unit (DU)		Not applicable	2,175 sq ft/DU	400 sq ft/DU <u>and</u> 225 sq ft/bedroom <u>and</u> 210% FAR MAX
FAR		60% MAX	Not applicable	
Setbacks	Front	30% of width up to 40 ft MIN	25 ft MIN or average, plus additional if <50 ft bldg width or <30 ft bldg height	Madison – 4 ft MIN Fifth – 8 ft MIN Fourth – 14 ft MIN
	Side	15% of width up to 25 ft MIN	12 ft one, 26 ft total MIN, plus additional if <50 ft bldg length or <30 ft bldg height	12 ft MIN
	Rear	50 ft MIN abutting R	30 ft MIN, plus additional if <50 ft bldg length or <30 ft bldg height	
Height		35 ft – 3 stories MAX	30 ft MAX	70 ft – 5 stories MAX to highest point all inclusive
Vehicle Parking		1 per 600 sq ft limited industrial use MIN	1.5 per dwelling unit MIN	1.25 per dwelling unit MIN, 90 spaces MAX
Bicycle Parking		1 per 6,000 sq ft limited industrial use MIN (Class B)	1 per 5 dwelling units MIN (50% Class A, 50% Class C)	1 per 3 bedrooms MIN
Open Space		Not applicable	40% MIN, including 300 sq ft per dwelling unit usable	20% MIN

COMPARISON CHART – SITE PLAN

		EXISTING	PROPOSED	REQUIRED
Zoning		R4C Multiple-Family Residential M1 Industrial	The Moravian PUD	The Moravian PUD
Lot Area		0.85 acres (37,201 sq ft)	0.85 acres (37,201 sq ft)	0.85 acres (37,201 sq ft) MIN
Floor Area, Density Limitations		Unknown floor area, 19 dwelling units	63 dwelling units with total of 164 bedrooms	400 sq ft/DU <u>and</u> 225 sq ft/bedroom <u>and</u> 210% FAR MAX (up to 93 units w/165 bedrooms, in 78,122 sq ft)
Setbacks	Front	6 ft average	Madison – 4 ft Fifth – 8 ft Fourth – 14.8 ft	Madison – 4 ft MIN Fifth – 8 ft MIN Fourth – 14 ft MIN
	Side	9 ft average	12.4 ft	12 ft MIN
	Rear	25 ft average		
Height		Estimated 28 ft average	55 ft 11 in, 5 stories	70 ft – 5 stories MAX to highest point all inclusive
Vehicle Parking		Estimated 22 spaces	90 off-street spaces	1.25 per dwelling unit MIN, 90 spaces MAX
Bicycle Parking		None	48 Class A, 34 Class C (82 total)	1 per 3 bedrooms MIN (55 spaces)
Open Space		Unknown	24% (9,134 sq ft)	20% MIN

HISTORY

The lots that make up the proposed site are part of the Plat of Maynard and Morgan's Addition to the City of Ann Arbor, recorded in 1859. The neighborhood was built up in the 1880s and 1890s, and remains remarkably intact. An 1880 bird's-eye view map of the City shows only one house on the proposed site, at 558 South Fifth Avenue. The earliest Polk City Directory available by street address is the 1884 edition, and six of the eight structures are listed there in that year. All of the existing houses but one (the apartment building/garage at 551 South Fourth Avenue) appear to be original, and the homes' footprints have been altered very little or not at all over the last 120 or so years. Additional information about each of the existing structures on the proposed site has been prepared by the Historic District Coordinator and can be provided upon request. It is likely that the homes were all owner-occupied until the 1970s, perhaps some even later, although accepting student boarders was a very common practice amongst single-family homeowners between the 1880s and 1940s.

A PUD Zoning District and PUD Conceptual Plan petition for this site, The Madison, was submitted in 2008 to allow a high density residential development. Highlights of The Madison PUD proposal included:

- 14-story residential building on top of 2 levels of parking
- 161 dwelling units with a total of 445 bedrooms
- Over 700% FAR

- Front setbacks ranging between 8 feet minimum and 16 feet maximum.

At their meeting of October 21, 2008, the Planning Commission recommended denial of The Madison. The petition was withdrawn in November, 2008. The petitioner had a pre-petition conference with the Planning Commission on December 22, 2008 for the current proposal, The Moravian PUD. The petitioner informally presented the submitted petition to the Planning Commission at their September 10, 2009 working session.

PLANNING BACKGROUND

The site is located in the Central planning area. The Central Area Plan (adopted 1992) recommends multiple-family residential for future land use of the entire subject site. This land use classification includes areas on the edge of downtown and in the campus area where higher density development such as apartments and group quarters is appropriate, although the preservation of existing single and two-family structures in this area is encouraged as well (see page 65). Two chapters of the Plan are particularly relevant to the proposed petition, the *Housing and Neighborhoods* chapter (beginning on page 24) and the *Development/Redevelopment* chapter (beginning on page 39).

In the area of *Housing and Neighborhoods*, the goal is “to promote sound and attractive residential neighborhoods which meet the housing needs of the current and future population, which are adequately served by urban services, infrastructure and facilities, and which conserve environmental quality.” The desire and need to preserve the existing character, scale and integrity of the existing housing stock and established neighborhoods is a repeated theme in many of the action statements along with encouraging more affordable housing, achieving and maintaining a balance of rental and owner-occupied dwellings, and increasing rental and ownership opportunities for lower income persons and families.

Regarding *Development/Redevelopment*, the goal is “to encourage sensitive, attractive, and innovative development and renovation in downtown Ann Arbor and in adjacent neighborhoods; and to pay special attention to the interface zones between central Ann Arbor and residential neighborhoods, and to insure that projects in these areas both contribute to downtown liveliness and help buffer established neighborhoods from further erosion.” Most action statements in this chapter are focused on compatibility, appropriateness, and sensitivity.

The following are some of the specific applicable actions found in the Central Area Plan:

Neighborhood Preservation

- To protect, preserve, and enhance the character, scale and integrity of existing housing in established residential areas, recognizing the distinctive qualities of each neighborhood.
- To encourage the development of new architecture, and modifications to existing architecture, that complements the scale and character of the neighborhood.

Infill Development

- To ensure that new infill development is consistent with the scale and character of existing neighborhoods, both commercial and residential.

Tension between Commercial and Residential Uses

- To protect housing stock from demolition or conversion to business use, and to retain the residential character of established, sometimes fragile, neighborhoods adjacent to commercial or institutional uses.

Out of Scale Construction

- To encourage the construction of buildings whose scale and detailing is appropriate to their surroundings.

Historic Preservation

- To encourage the preservation, restoration or rehabilitation of historically and culturally significant properties, as well as contributing or complimentary structures, streetscapes, groups of buildings and neighborhoods.
- To preserve the historic character of Ann Arbor's Central Area.
- Where new buildings are desirable, the character of historic buildings, neighborhoods and streetscapes should be respectfully considered so that new buildings will complement the historic, architectural and environmental character of the neighborhood.

This project lies within the Central Area but outside of the downtown. It is not within the Downtown Development Authority boundary. On page 46, the Central Area Plan states: For purposes of this plan, the downtown is defined as the area contained in the 66-block Downtown Development Authority (DDA) District. For this reason the site was not included in the Calthorpe planning process or the Ann Arbor Discovering Downtown planning process. Therefore, although it is located in close proximity to downtown, the recommendations found in those plans are not applicable to this site.

STANDARDS FOR PUD ZONING DISTRICT REVIEW

As set forth in Section 5:80(6) of the Zoning Ordinance, there are eight criteria to consider when evaluating a PUD Zoning District petition. The criteria are paraphrased below in bold text. The petitioner has provided a detailed Project Narrative (attached) that contains information relative to each of the standards for review. Staff's responses to each criteria and the petitioner's Project Narrative are provided below in *italic* type.

- 1. The use(s) provide 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.**

Staff believes the proposed zoning district would provide several of the example beneficial effects for the City, including innovation in land use, efficiency in land use and energy and expanding the supply of affordable housing. The proposed development seeks to provide housing for niche market that is currently underserved, housing for entry level downtown workers, by innovative restrictions on the number of bedrooms in each unit and the minimum required lot area standard. Efficiency in land use and energy will be provided through the design of the development and its certification by an independent council. The supply of affordable housing will also be expanded by the proposed development.

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

The restrictions placed on the number of bedrooms in each unit and the minimum lot area requirements, as well as the requirements for affordable housing, development certification and allowances for live/work space within the development could not be achieved under any other zoning district and are not required under any existing standard or ordinance.

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

The principal use of the district is multiple-family residential which will not have a detrimental effect on public utilities or the surroundings.

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.

The proposed district will allow more residential density than the underlying zoning or future land use recommendation in the master plan, but affordable housing has been proposed as part of the increased density.

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 and continue to be refined by staff to ensure that sufficient analysis, justification and performance standards will be included so that the proposed beneficial effects are achieved and maintained.

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. Vehicular and pedestrian circulation is well defined and access is safe. The traffic impact study provided for a previous, more intense development on this site concluded there would be no congestion in or near the district as a result of the rezoning. The previous traffic impact study conclusions continue to be valid for the currently proposed, less intense uses.

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

It appears the development has minimized the disturbance to the existing natural features. Significant disturbance is proposed to the existing architectural features of the site (they are all proposed to be demolished), but while they are historic because of their age, none of the existing buildings are in a designated or contemplated historic district.

SERVICE UNIT COMMENTS

Land Development – The southwest corner of the property currently is within the floodway of the Allen Creek overland flow. FEMA is in the process of revising the Flood Insurance Rate Maps (FIRM) as part of the map modernization project. FEMA issued preliminary FIRMs in July 2007 that indicate the property will be removed from the floodway and be considered 100-year

floodplain only. The preliminary FIRMs are not expected to become official until sometime in mid-2009. As the Michigan Department of Environmental Quality prohibits residential construction within regulated floodways, and the City of Ann Arbor Flood Mitigation Plan recommends avoiding new construction within the floodway, City staff cannot support construction of this project until the new FIRMs are adopted and the proposed building is removed from the floodway of Allen Creek. Staff recommends that approval of this site be conditioned upon removal of the building site from the floodway by adoption of the new FIRMs.

Systems Planning – The curb cut on South Fifth Avenue is closer to the adjacent property line than allowed by code, there are more total curb cuts to the site than allowed by code, and the width of the curb cut on South Fourth Avenue is wider than allowed by code. Variances from the Zoning Board of Appeals must be granted for the curb cuts to remain as proposed. The proposed sanitary sewer flows anticipated from this development must be modeled to determine downstream impacts. The existing hydrant at the south end of the six-inch water main must be relocated to connect to another water main. Fourteen footing drain disconnections are required to mitigate the impact of this development on the waste water treatment system.

Planning and Development Services – Staff previously recommended denial for a petition to rezone this site to PUD to allow high-rise multiple-family residential use, known as The Madison PUD. That petition would have allowed a building about 16 stories tall containing approximately 160 dwelling units. Staff identified three major issues, the proposed location, the proposed height and the proposed density and suggested that either the location or the density and height must be reconsidered. The Planning Commission recommended denial of The Madison PUD petition and it was withdrawn by the petitioner before any City Council action.

The current petition, The Moravian, has significantly reduced the proposed height and density compared to The Madison. It is still a relatively large development compared to its immediate neighbors to the north but staff believes The Moravian has been designed to be compatible with its surroundings. The Moravian's mass has been broken down through architectural details and offers a reasonable transition between the existing nonresidential buildings on East Madison Street, the industrial uses on the south side of East Madison Street, and the residential buildings to the north on South Fourth and South Fifth Avenues.

Staff acknowledges that the proposed petition is not exactly characteristic of the area and that it meets some of the goals and recommendations of the Central Area Plan but is contrary to others. However, the purpose of planned unit developments is to allow a project that doesn't exactly fit with the current zoning designation or the master plan future land use recommendations but does provide sufficient justification to deviate from those and does provide an overall beneficial effect for the City. Staff has worked as an agent of the Planning Commission to suggest revisions to the petition to achieve sufficient justification and providing an overall beneficial effect. At this point further revisions, if necessary, should be at the direction of the Planning Commission.

Attachments: Parcel/Zoning Map
Aerial Photo
Site Plan and Elevations
Supplemental Regulations 10/2/09
Development Agreement 9/20/09

c: Petitioner: Jeffrey P. Helminski
The Moravian Companies
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City Attorney
Systems Planning
File Nos. PUDZ08-036 and SP08-022

Parcel and Zoning Map:

The Moravian PUD Zoning District and Site Plan

Map Legend

- Parcels
- Edge Of Pavement
- Railroads



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Aerial Photo (2006):

The Moravian PUD Zoning District and Site Plan

Map Legend

— Railroads

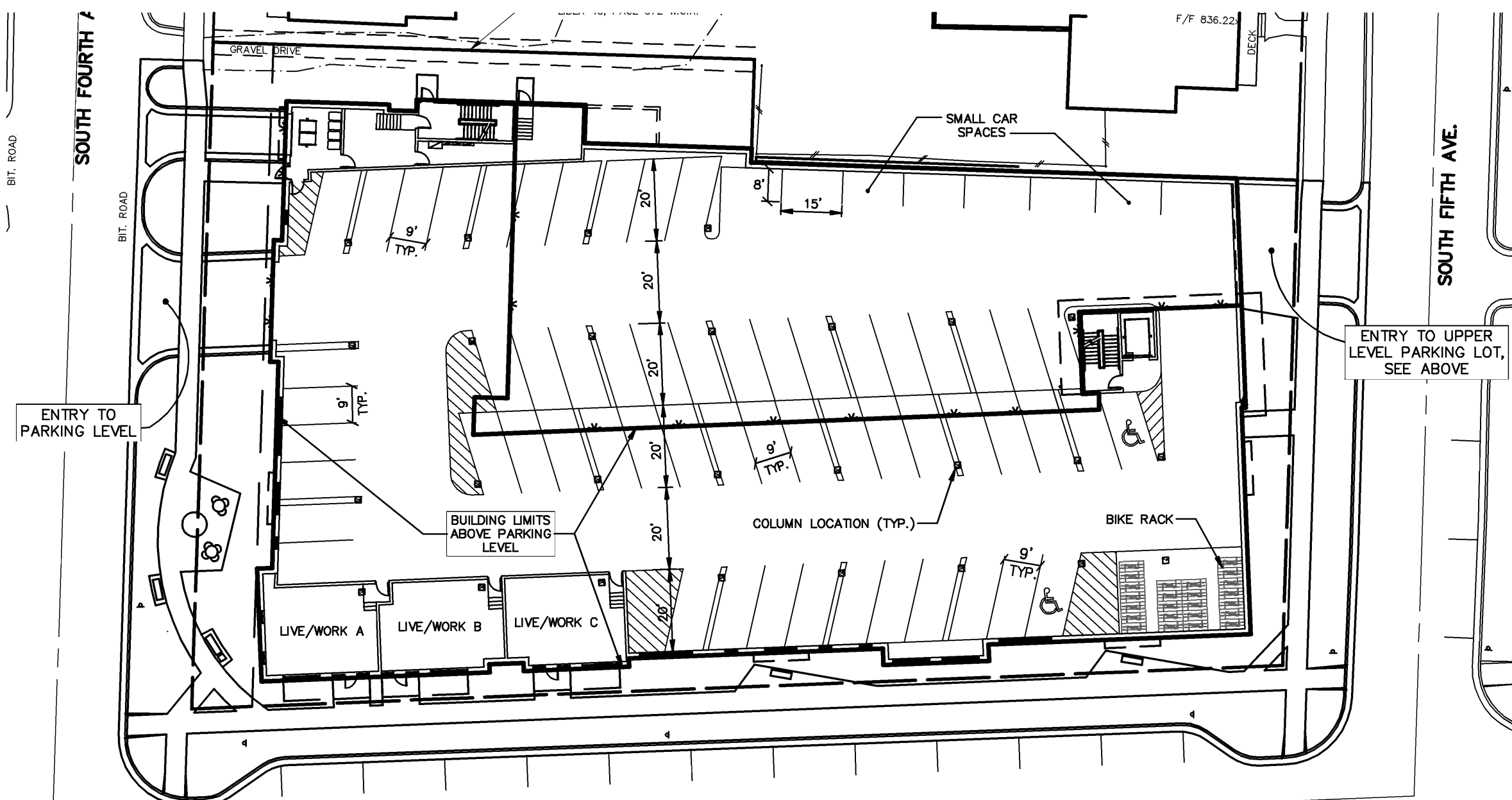
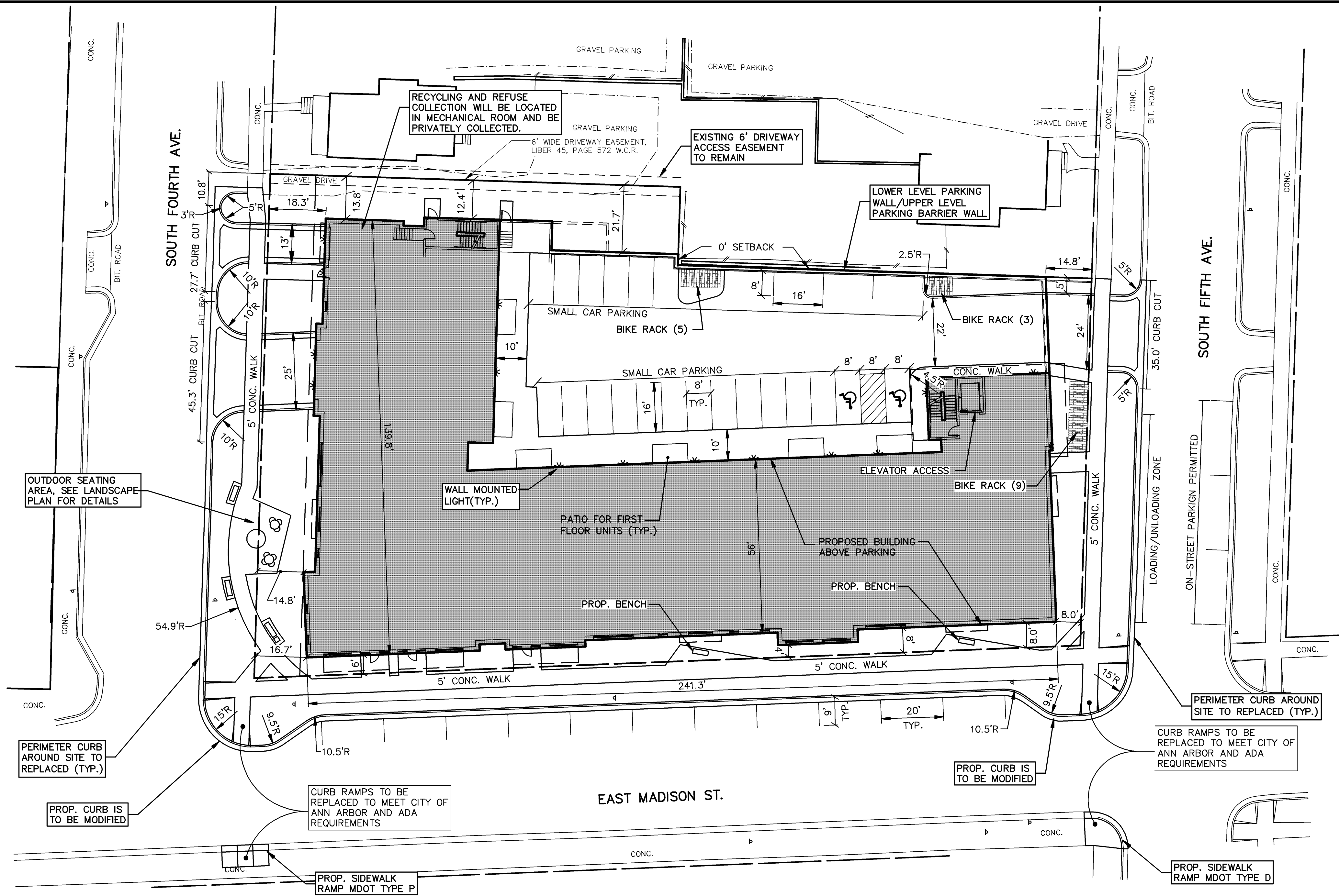


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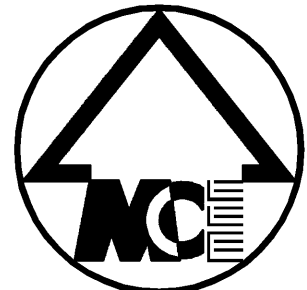
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PARKING LAYOUT LOWER LEVEL
SCALE: 1" = 30'



SCALE: 1" = 20'
0 20 40 60

LEGEND

- | | |
|-------|------------------------------|
| 838 | EXIST. CONTOUR |
| 836.2 | EXIST. SPOT ELEVATION |
| U.P. | EXIST. UTILITY POLE |
| G.P. | EXIST. GUY POLE |
| OH | ELEC. TRANSFORMER |
| t | EXIST. OVERHEAD UTILITY LINE |
| e | EXIST. LIGHT POLE |
| g | EXIST. TELEPHONE LINE |
| w | EXIST. ELECTRIC LINE |
| h | EXIST. GAS LINE |
| + | EXIST. WATER MAIN |
| + | EXIST. HYDRANT |
| + | EXIST. GATE VALVE IN BOX |
| + | EXIST. GATE VALVE IN WELL |
| + | EXIST. CURB STOP & BOX |
| + | EXIST. BLOW-OFF |
| + | EXIST. STORM SEWER |
| + | EXIST. CATCH BASIN OR INLET |
| + | EXIST. CLEANOUT |
| + | EXIST. SANITARY SEWER |
| + | Q OF DITCH OR EDGE OF WATER |
| + | DRAINAGE DIRECTION |
| + | SIGN |
| + | MAILBOX |
| + | TELEPHONE RISER |
| + | GAS METER |
| + | FENCE |
| + | TREE OR BRUSH LIMIT |
| + | SINGLE TREE |
| + | LANDMARK TREE |
| + | TREE CRITICAL ROOT ZONE |
| + | SECTION CORNER |
| + | SOIL BORING LOCATION |
| + | SET IRON PIPE |
| + | FOUND IRON PIPE |
| + | FOUND MONUMENT |
| + | SET IRON ROD |
| + | FOUND IRON ROD |
| + | CONTROL PT. |



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THE MORAVIAN
Ann Arbor, MI

Revisions

09-02-09 PUD/SPA
08-07-09
08-05-09
03-04-09
03-03-09
02-18-09
02-13-09

Date
01-27-09
Drawn
SRB
Checked
Approved

☒ Preliminary
☐ Construction
☐ Record
Do not scale
Use figured
dimensions only
Copyright © 2008

Block Number

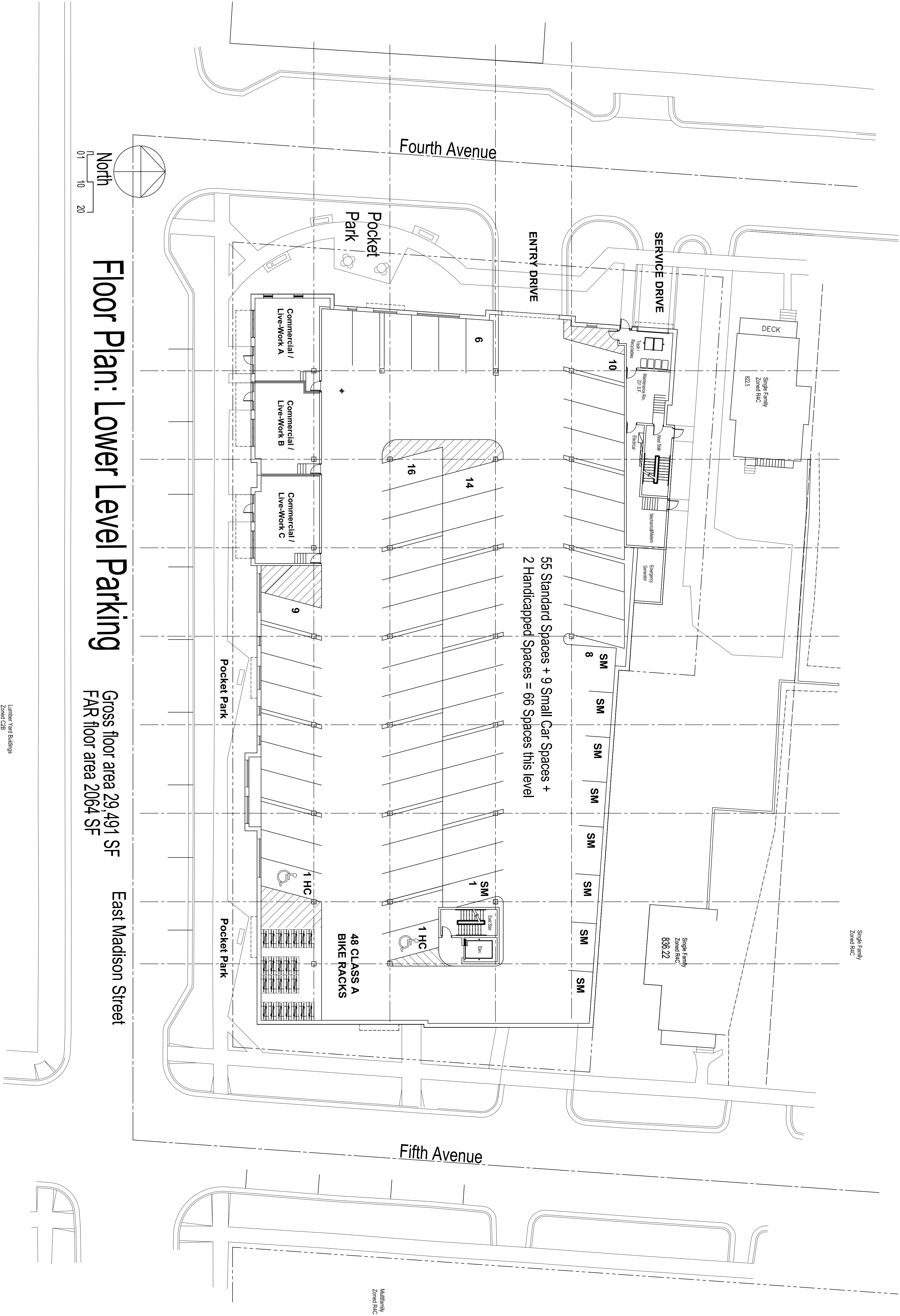
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Title
Single Family
Zoned R4C

Floor Plan
Lower Level Parking

Scale: 1/16" = 1'-0"

Sheet
A1



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THE MORAVIAN
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Revisions

09-02-09 PUD/SPA
08-07-09
08-05-09
03-04-09
03-03-09
02-18-09
02-13-09

Date
01-27-09
Drawn
SRB
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Approved
Budget Number

☒ Preliminary
☐ Construction
☐ Record

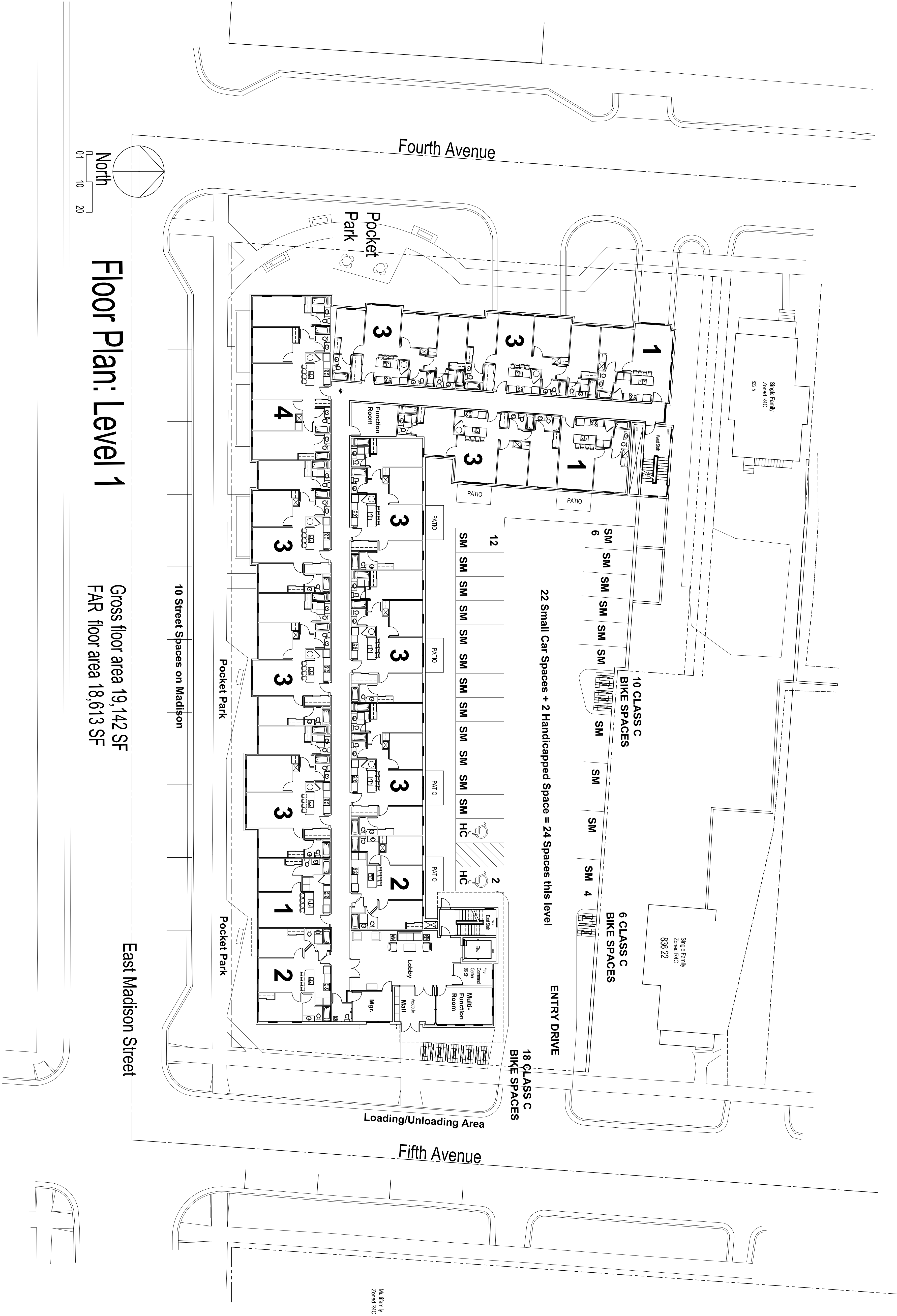
Do not scale
Use figured
dimensions only
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Job Number
28114.2

Title
Floor Plan
Level 1

Scale: 1/16" = 1'-0"

Sheet
A2



Lumber Yard Buildings
Zoned C2B

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THE MORAVIAN
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Revisions

09-02-09 PUD/SPA
08-07-09
08-05-09
02-13-09

Date
01-27-09
Drawn
SRB
Checked
Approved

☒ Preliminary
☐ Construction
☐ Record

Do not scale
Use figured
dimensions only

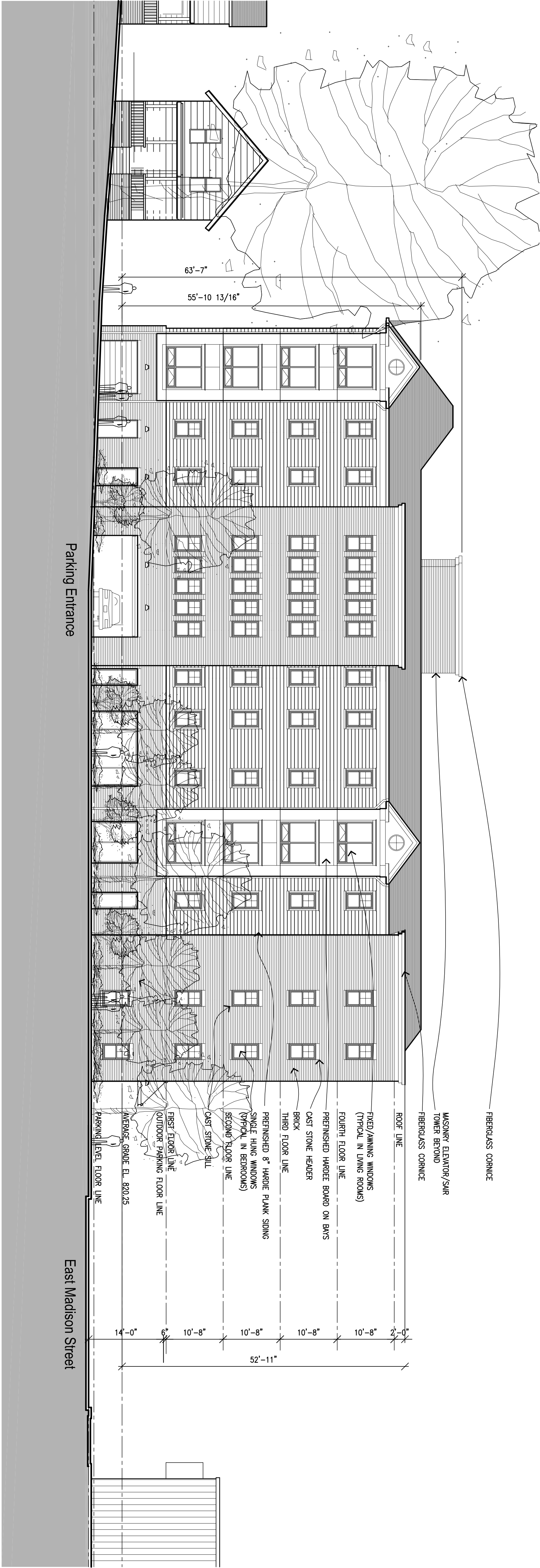
Copyright © 2008

Job Number
28114.2

West & South
Elevations

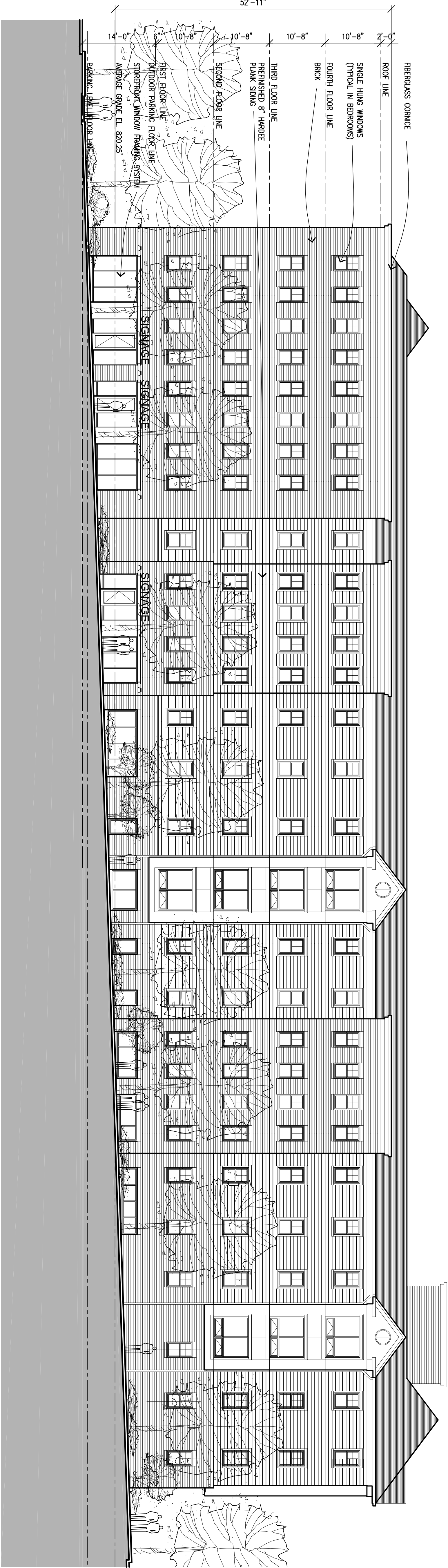
Scale: 3/32" = 1'-0"

Sheet
A5



West Elevation - Fourth Avenue

0 2 4 8 16 32



South Elevation - East Madison Street

0 2 4 8 16 32



NEUMANN SMITH architecture

400 Galleria Officecentre
Suite 555
Southfield, Michigan 48034
phone 248.352.8310
fax 248.352.1821
ns@neumannsmith.com

THE MORAVIAN
Ann Arbor, MI



Revisions

09-02-09 PUD/SPA
08-07-09
08-05-09
03-04-09
03-03-09
02-18-09
02-13-09

Date ☒ Preliminary
Drawn ☐ Construction
SRB ☐ Record
Checked ☐
Do not scale
Use figured
dimensions only
Approved _____
Copyright © 2008

Block Number
Job Number
Title
Sun Studios

Sheet
A11

The Moravian Supplemental Regulations

Section 1: Purpose

It is the purpose of the City Council in adopting these regulations to provide for the comprehensive, unified redevelopment of these eight parcels to provide a truly unique living environment for the young professionals that the City of Ann Arbor wishes to attract and retain. These regulations seek to promote development that contributes to the regional character of the neighborhood and establishes an integrated building, parking, landscaping, and pedestrian corridor.

Section 2: Applicability

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

The South 45 feet of the West 93 feet of Lots 17 and 18, Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, pages 572-574, Washtenaw County Records [201 East Madison Street]; and,

The South 76 feet of the East 40 feet of Lot 17, Block 5 south, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, pages 572-574, Washtenaw County Records [211 East Madison Street]; and,

A part of lot 16, Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records, more particularly described as: Commencing at the Southwest corner of said Lot 16; thence running East on the North line of Madison Street 42 feet; thence North parallel with the West lot line 65 ½ feet; thence West parallel with Madison Street 42 feet; thence South on the West line of Lot 16, 65 ½ feet to the Place of Beginning [215 East Madison Street]; and,

The South 8 feet of Lot 14 and all of Lots 15 and 16, except the South 65.5 feet, of Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [554 South Fifth Avenue]; and,

Commencing at the Southeast corner of Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records; thence North on the West line of Fifth Avenue, 65 ½ feet; thence Westerly to a point in the West line of Lot 16 of said Block, 65 ½ feet North of the North line of Madison Street; thence South to Madison Street; thence Easterly along the North line of Madison Street to the Place of Beginning, in the City of Ann Arbor, Washtenaw County, Michigan, excepting and reserving therefrom the west 42 feet thereof, sold by George Otto by Deed dated September 21, 1908 and recorded September 21, 1908 in Liber 172 of Deeds, Page 223, Washtenaw County Records, being a part of Lots 15 and 16, Block 5 South, Range 5 East, of said Maynard and Morgan's Addition [558 South Fifth Avenue]; and,

The South half of Lot 19 in Block 5 South of Huron Street, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, reserving 3 feet in width by the entire length

along the East and West centerline of said Lot on the South side of said centerline and conveying 3 feet in width along the North side of said centerline. Such 6 feet in width to be used for a right of way by the parties owning said Lot or a part of it (and other lands), according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [547 South Fourth Avenue]; and,

The North 44 feet of Lots 17 and 18 in Block 5 South of Huron Street, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [551 South Fourth Avenue]; and,

Commencing at a point in the East line of South Fourth Avenue, 44 feet South of the Northwest corner of Lot 17 in Block 5 South, Range 5 East; thence running East 92 feet parallel with the North line of Lots to a point 40 feet West of the West line of Lot 16; thence South parallel with the West line of Lot 16, 40 feet (measured 33.44 feet); thence West parallel with the North line of Lots to the East line of South Fourth Avenue; thence North on the East line of said Avenue to the Place of Beginning, being a part of Lots 17 and 18 in Block 5 South, range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [553 South Fourth Avenue].

Further, the provisions of these regulations shall be adopted and incorporated into The Moravian Planned Unit Development District. These regulations, however, are intended to supplement only those provisions in the City Code that may be modified as a part of a PUD such as zoning, landscaping and parking, and shall not be construed to replace or modify other provisions or regulations in the City Code.

Section 3: Findings

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

- (A) It is desirable to redevelop the lots described above for new and unique living opportunities in Ann Arbor.
- (B) The surrounding neighborhood contains existing homes, apartments, industrial and commercial uses, Main Street's shopping, dining and entertainment to the west, employment centers to the north, athletic venues to the south and the U of M's central campus to the east.
- (C) It is in the best interest of the surrounding properties and the City of Ann Arbor that a vibrant pedestrian oriented young professional community be established in a location with so many opportunities for it to prosper nearby. Additionally, the inherent low base elevation of the site lend well to reducing the impact of the building on the neighborhood.
- (D) The limitations placed on the land uses permitted and the integrated landscaping, parking, sustainable building practices, building placement, and architectural design will contribute to the regional quality of the existing neighborhood and will enhance the image of the City of Ann Arbor.
- (E) In addition to providing a truly unique living environment for the young professional, The Moravian will also provide for additional affordable housing, enhance public health, safety and welfare by significantly increasing the floodplain storage of the Allen Creek on this site, providing sustainably designed energy efficient housing and redeveloping an existing brownfield site.
- (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 privileges nor deprivation of property rights.

Section 4: PUD Regulations

(A) Permitted principal uses shall be:

1. Single family and multi-family residential, provided that all bedrooms in a dwelling unit have an exterior window that allows natural light
2. Live/Work Space as shown on an approved site plan subject to the following:
 - a. The Live/Work Space is intended to allow opportunity for residents of the district who are small business owners, artists, sole practitioners, entrepreneurs and similar others to live and work in very close proximity. Nonresidents of the district may also enjoy this opportunity after residents are first accommodated.
 - b. Live/Work Spaces up to 3,000 square feet in total floor area, including a minimum of two and a maximum of six, shall be permitted.
 - c. Use of the Live/Work Space may include typical artistic, sole practitioner and entrepreneur endeavors such as, but not limited to: business professionals and consultants, excluding practicing doctors and dentists; creation, display and sales of art and crafts; teaching, tutoring and lessons; sales of convenience good for district residents and immediate neighbors such as coffee, snacks and prepared meals, and newspapers.

(B) Permitted accessory uses shall be:

1. Incidental sales of snacks, beverages, personal grooming and hygiene products, and household cleaning products, and similar convenience products from space other than Live/Work Spaces and located within the building at or near the primary residents' entrance.
2. Child care or health care center, provided primarily as a service to the residents.
3. Outdoor areas for active or passive recreation.
4. Leasing/sales, office, common areas, lounge/club areas, fitness and tanning facilities and other similar uses typically associated with apartment buildings.

(C) Setbacks:

The minimum setbacks from a lot line adjacent to a public street shall be:

East Madison Street – 4 feet
South Fifth Avenue – 8 feet
South Fourth Avenue – 14 feet

The minimum setback from a lot line adjacent to another lot shall be 12 feet.

- (D) Height: The maximum height shall be five stories and 70 feet. Of the five stories, one may be used for enclosed parking and up to four may be used for residential uses. The height in feet shall be measured from the lowest finished grade elevation at an exterior wall to the highest point of the roof and shall include any architectural details and mechanical units.

(E) District and Lot Size: The minimum district and lot size shall be 0.84 acres (37,201 square feet).

(F) Floor Area and Density Limits: The maximum floor area shall be 210% of the lot area (37,201 square feet). The floor area of an off-street parking structure shall not be included in the maximum floor area allowance. Within the maximum floor area allowance, a minimum lot area of 400 square feet shall be required for each dwelling unit and 225 square feet shall be required for each bedroom shown on an approved site plan.

For example, a building of up to 78,122 square feet may be permitted and may contain up to 93 dwelling units with a combined total of 165 bedrooms.

(G) Off-Street Parking:

Off-street parking for vehicles shall be provided at the rate of 1.25 spaces per dwelling unit up to 90 spaces maximum.

Off-street parking for bicycle shall be provided at the rate of 1 space for every 3 bedrooms, of which a minimum of 75% shall be Class A spaces (medium to long-term parking) and a minimum of 25% shall be Class C spaces (short-term parking). The design of the bicycle parking facilities shall be the standards of Chapter 59, Off-Street Parking, Section 5:168.1.

(H) Open Space, Landscaping and Screening:

1. Open Space – A minimum of 20% of the lot area shall be open space as defined in Chapter 55, Zoning, Section 5:1.¹
2. Landscaping – All open space areas except for sidewalks, pedestrian paths, paved recreational space and off-street bicycle parking facilities, shall be landscaped with live trees, shrubs, ground cover, lawn or flower beds. Landscaping shall be provided as shown on an approved site plan.
3. Screening of Vehicular Use Area/Conflicting Land Use Buffer – All vehicular use areas and unenclosed parking spaces visible from the public right-of-way and adjacent properties shall be screened from view. Screening must be provided at least 30 inches in height above the vehicular use area grade. Screening may be provided by solid fences, retaining walls, or hedges.
4. Screening of Mechanical Equipment – All mechanical equipment, including roof-mounted and ground-mounted, visible from the public right-of-way within 100 feet of the district shall be screened from view. Screening may be provided by architectural walls, retaining walls, fences, or hedges.

(I) Energy and Environmental Design:

¹ Chapter 55, Section 5:1(36) Open Space: The portion of a lot which is devoted to outdoor recreation space, greenery, and space for household activities. Open space area may include, but shall not be limited to, lawns, landscaping and gardens, wooded areas, sidewalks and walkways, active and passive recreational areas, unenclosed accessory structures used for recreational purposes, permanent or seasonal water surfaces and protected natural areas. It shall not include area covered by parking lots, driveways, refuse facilities, or enclosed accessory structures.

Development in the district shall obtain LEED New Construction Version 2.2, or higher, certification by the US Green Building Council within 6 months of issuance of a certificate of occupancy (the first certificate of occupancy if more than one is necessary). Failure to obtain certification shall be a violation of this ordinance. The penalty of such violation shall be 20 percent of the construction value of development in the district as set forth on the building permit application(s). Failure to obtain certification shall not affect the right to occupy the development and no additional penalty shall be imposed for failure to obtain certification. Payment of the penalty shall constitute compliance with this provision.

A renewable energy source, such as geothermal energy, shall be utilized as the primary energy source for heating and cooling systems in the district.

Best management practices shall be provided for solid waste disposal, including, but not limited to, recycling facilities provided for all residents of the district.

- (J) Affordability: A minimum of 15% of the total number of dwelling units in the district shall be designated as affordable housing for lower income households as defined in the Zoning Ordinance. The affordable units shall be provided in the district; however, when the affordable housing requirement results in a fractional unit, the requirement may be rounded up to the next whole number or the fractional unit shall be converted to an affordable housing contribution in lieu of the fractional unit consistent with the formula adopted by annual resolution of city council.

- (K) Architectural Design:

Development within the district shall be articulated with design elements, both horizontal and vertical, that add interest to the face of the building. Several building modules, being subparts of a larger building that appear as a single façade plane, shall be provided as part of the required articulation. The articulation and modulation shall result in an overall character that is complimentary to the established neighborhood surrounding the district as determined by the City Planning Commission and City Council.

Exterior façade materials shall include brick, stone, block, horizontal siding (either wood or cementitious) and glass. Exterior façade materials shall convey a sense of human scale by being sized and applied in customary proportions. For example, facades with conventionally-sized bricks allow persons to accurately estimate the height and width of an exterior wall better than facades with unusually small or large bricks.

Changes to the exterior facades as shown on the approved site plan shall require either the approval of the planning and development services manager if minor or the City Planning Commission if major. Minor or major changes shall be determined by the planning and development services manager, in consultation with the chair of the City Planning Commission if desired.

September 20, 2009

THE MORAVIAN PUD DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2009, 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 The Moravian Company, a _____, with principal address at _____, Michigan, 48xxx-xxx, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as The Moravian Planned Unit Development, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as The Moravian Planned Unit Development, and desires PUD 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 PROPRIETORS will install these improvements prior to any permits being issued.

THE PROPRIETOR(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, private storm water management systems, 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) Prior to the issuance of building permits, 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. 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 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.

(P-6) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to South Fourth Avenue, South Fifth Avenue and East Madison Street, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along said street frontages when such improvements are determined by the CITY to be necessary.

(P-7) 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-8) 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.

Parkland Dedication/contributions/street tree escrow

(P-9) To convey to the CITY prior to the issuance of building permits, an easement for public use of the pocket park as shown on the approved site plan.

(P-10) To install signage, acceptable to the CITY Community Services Area, prior to issuance of the certificate of occupancy, indicating the existence and permitted public use of the pocket park as shown on the approved site plan.

(P-11) To maintain the pocket park as shown on the approved site plan in neat, orderly, and good repair.

(P-12) 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 PROPRIETOR 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 PROPRIETOR one year after the date of acceptance by the CITY.

(P-13) 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-14) 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-15) Prior to the application for and issuance of any Certificate of Occupancy, to enter into an affordable housing covenant with the CITY, with terms acceptable to the CITY, to provide affordable housing for lower income households consistent with terms in the PUD Supplemental Regulations for the site and consistent with all City ordinances, policies and regulations regarding affordable housing.

(P-16) To contract with a non-profit affordable housing provider to manage the leasing and/or sales of the affordable housing units.

(P-17) 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-18) 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 shall be addressed in the manner provided in the PUD Supplemental Regulations.

(P-19) 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-20) To apply for and obtain, prior to issuance of any Certificates of Occupancy, Letters of Map Revision (LOMAR) from the Federal Emergency Management Agency for modifications in the floodplain elevations on the site, and to furnish to the CITY copies of the LOMAR and an Elevation Certificate for each building (*or as applicable, component*).

(P-21) No lot in the PUD district may be divided such that an additional building parcel is created.

(P-22) Use restrictions such as hours of operation, no sales of alcoholic beverages, no outside microphones, etc. (*used in Special Exception Use approvals*)

(P-23) Prior to application for and issuance of certificates of occupancy, to disconnect _____ footing drains from the sanitary sewer system in accordance with the *Guidelines for Completion of Footing Drain Disconnections, City of Ann Arbor - Development Offset-Mitigation Program* (November 2005 edition, as amended). The PROPRIETOR, however, may be allowed to obtain partial certificates of occupancy for the development prior to the completion of all of the required footing drain disconnects on a prorated basis, at the discretion of the CITY Public Services Area. CITY agrees to provide PROPRIETOR with a certificate of completion upon PROPRIETOR'S submittal of approved and final closed-out permits to the CITY Public Services Area.

(P-24) Pathways/pedestrian easements if these are being conveyed.

(P-25) To submit an Elevation Certificate and Flood Proofing Certificate prior to final approval of the building shell. The PROPRIETOR also acknowledges that the lowest level floor, designated as Level P1 on the Plans, must meet wet flood proofing requirements of ASCE 24-98 and that per ASCE 24-98 all materials below the flood elevation must meet the requirements of section 6.0, utilities must be elevated or protected to the requirements of section 8.0, and elevators must meet the requirements of section 8.5.

(P-26) 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-27) 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-28) 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-29) 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 *insert name of project*.

(C-2) To use the park contribution described above for improvements to the *insert name of parks to be improved*.

(C-3) To use the \$ *insert sum as stated above* contribution for traffic mitigation measures at the *insert name of improvement as stated above*.

(C-4) To provide timely and reasonable CITY inspections as may be required during construction.

(C-5) 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:

The South 45 feet of the West 93 feet of Lots 17 and 18, Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, pages 572-574, Washtenaw County Records [201 East Madison Street]; and,

The South 76 feet of the East 40 feet of Lot 17, Block 5 south, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, pages 572-574, Washtenaw County Records [211 East Madison Street]; and,

A part of lot 16, Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records, more particularly described as: Commencing at the Southwest corner of said Lot 16; thence running East on the North line of Madison Street 42 feet; thence North parallel with the West lot line 65 ½ feet; thence West parallel with Madison Street 42 feet; thence South on the West line of Lot 16, 65 ½ feet to the Place of Beginning [215 East Madison Street]; and,

The South 8 feet of Lot 14 and all of Lots 15 and 16, except the South 65.5 feet, of Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [554 South Fifth Avenue]; and,

Commencing at the Southeast corner of Block 5 South, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records; thence North on the West line of Fifth Avenue, 65 ½ feet; thence Westerly to a point in the West line of Lot 16 of said Block, 65 ½ feet North of the North line of Madison Street; thence South to Madison Street; thence Easterly along the North line of Madison Street to the Place of Beginning, in the City of Ann Arbor, Washtenaw County, Michigan, excepting and reserving therefrom the west 42 feet thereof, sold by George Otto by Deed dated September 21, 1908 and recorded September 21, 1908 in Liber 172 of Deeds, Page 223, Washtenaw County Records, being a part of Lots 15 and 16, Block 5 South, Range 5 East, of said Maynard and Morgan's Addition [558 South Fifth Avenue]; and,

The South half of Lot 19 in Block 5 South of Huron Street, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, reserving 3 feet in width by the entire length along the East and West centerline of said Lot on the South side of said centerline and conveying 3 feet in width along the North side of said centerline. Such 6 feet in width to be used for a right of way by the parties owning said Lot or a part of it (and other lands), according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [547 South Fourth Avenue]; and,

The North 44 feet of Lots 17 and 18 in Block 5 South of Huron Street, Range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [551 South Fourth Avenue]; and,

Commencing at a point in the East line of South Fourth Avenue, 44 feet South of the Northwest corner of Lot 17 in Block 5 South, Range 5 East; thence running East 92 feet parallel with the North line of Lots to a point 40 feet West of the West line of Lot 16; thence South parallel with the West line of Lot 16, 40 feet (measured 33.44 feet); thence West parallel with the North line of Lots to the East line of South Fourth Avenue; thence North on the East line of said Avenue to the Place of Beginning, being a part of Lots 17 and 18 in Block 5 South, range 5 East, Maynard and Morgan's Addition in the City of Ann Arbor, according to the plat thereof, recorded in Liber 45 of Deeds, Pages 572-574, Washtenaw County Records [553 South Fourth Avenue].

(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 _____, 2005, 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 _____, 2005, 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:
Ann Arbor Planning & Development Services
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800

DRAFT