

**Ordinance No: 2010-11**

**AN ORDINANCE OF THE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING THE CLEVELAND MUNICIPAL CODE TITLE 14 CHAPTER 2 SO AS AMEND THE PLANNED UNIT DEVELOPMENT (PUD) ZONING DISTRICT KNOWN AS "PUD 7" ON CERTAIN PROPERTY ON ELLIS CIRCLE (Tax Map 34I Group A Parcels 1, 2, 8, 9, 9.01, 10 and 11) AS MORE PARTICULARLY DESCRIBED HEREIN; AMENDING THE ZONING PLAN AND ZONING MAP FOR PUD7; MAKING VIOLATIONS OF THE ORDINANCE UNLAWFUL AND PROVIDING FOR PENALTIES; ESTABLISHING A LIST OF PERMITTED USES; ESTABLISHING CONDITIONS MITIGATION OF NOISE AND VIBRATION; ESTABLISHING SITE PLAN REQUIREMENTS; ESTABLISHING REQUIREMENTS FOR TRAFFIC CIRCULATION ON AND ADJACENT TO THE SITE AND PARKING, FIRE LANES, AND SERVICE AND DELIVERY VEHICLES; ESTABLISHING REQUIREMENTS FOR IMPERVIOUS AREAS, STORMWATER MANAGEMENT, LANDSCAPING, TREE PRESERVATION, BUFFERING, LIGHTING; ESTABLISHING REQUIREMENTS FOR GENERAL APPEARANCE, SIGNAGE AND OUTDOOR DISPLAYS; ESTABLISHING REQUIREMENTS FOR LITTER AND SOLID WASTE CONTROL AND DRAINAGE STRUCTURE MAINTENANCE; STATING RESPONSIBILITY FOR COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS; REQUIRING PROPER SUBDIVISION AND SITE PLANNING; REQUIRING A PUD DEVELOPMENT PLAN; PROVIDING FOR TIME LIMITS AND POSSIBLE REVERSION TO THE FORMER ZONING CLASSIFICATION; PROVIDING FOR ERRORS AND OMISSIONS AND POSSIBLE FUTURE REVISIONS TO THE PUD; COMMUNICATING THE BINDING EFFECT OF THE ORDINANCE UPON OTHERS; AND PROVIDING FOR CONFLICTS, SEVERABILITY, AND AN EFFECTIVE DATE**

**WHEREAS the City of Cleveland, Tennessee, hereinafter "City", desires orderly land development in furtherance of the public welfare and has adopted the Planned Unit Development, hereinafter "PUD", process as an alternative development standard whereby to accomplish such development; and**

**WHEREAS City's future land use plan contemplates the establishment of commercial land uses in the area addressed in this PUD ordinance; and**

**WHEREAS City, acting through its Planning Commission, has actively engaged in the planning of a Peerless Road Extension to serve the area of this PUD and other nearby property, and has otherwise given thoughtful consideration to the future development of this area; and**

**WHEREAS it is the desire of the property owner(s), hereinafter "Developers", to put forward such a plan for orderly development and to rezone the property in accordance with the PUD process, NOW THEREFORE BE IT ORDAINED:**

**Section 1. ZONING PLAN AND MAP AMENDMENT.** The zoning plan and map are hereby amended so as to zone the property described in Section 2 herein as "PUD7" subject to the provisions described in each section of this ordinance. The permitted uses in the PUD7 zoning district are those uses outlined in this ordinance. There are no conditional uses within the PUD7 district. The development standards for the PUD7 district are those outlined in this ordinance. Where the PUD7 Ordinance is silent as to a particular development standard, the standard applicable in the CH Commercial Highway zoning district, if there is any such standard, shall be applied.

**Section 2. VIOLATIONS UNLAWFUL AND SUBJECT TO PENALTIES.** Any development or use of the property described herein in manner contrary to the terms of this ordinance is a zoning violation and is unlawful, subject to the penalties prescribed by the Cleveland Municipal Code and the laws of Tennessee.

**Section 3. PROPERTY DESCRIPTION.** Note: legal description below of the REZONING AREA is provided by Developer. Legal description to be based upon survey by Brown Surveying that is included as "EXHIBIT A".

**REZONING AREA:**

Western Parcel (Parcels 034I-A-010.00 & 034I-A-011.00)

Beginning at the southwestern most corner of parcel 10, thence run North 16 degrees 15 minutes 49 seconds East along the eastern right of way line of Interstate 75 for a distance of 788.31 feet, thence South 64 degrees 53 minutes 48 seconds East along the northern property line of parcel 11 for a distance of 297.89 feet, thence run South 24 degrees 15 minutes 39 seconds West along the western right of way line of Ellis Circle for a distance of 740.39 feet, thence run South 44 degrees 36 minutes 05 seconds West a distance of 76.44 feet, thence North 53 degrees 14 minutes 36 seconds West along the northern right of way for Paul Huff Parkway for a distance of 165.50 feet to the Point of Beginning.

Containing 4.41 acres, more or less.

Eastern Parcel (Parcels 034I-A-001.00, 034I-A-002.00, 034I-A-008.00, 034I-A-009.00, & 034I-A-009.01)

Beginning at the southwestern most corner of parcel 8, thence run North 23 degrees 04 minutes 45 seconds East along the eastern right of way line of Ellis Circle for a distance of 150.00 feet, thence North 24 degrees 14 minutes 52 seconds East along the northern property line of parcel 11 for a distance of 583.00 feet, thence run South 64 degrees 52 minutes 32 seconds East along the southern right of way line of Ellis Circle for a distance of 197.25 feet, thence run South 19 degrees 57 minutes 09 seconds West a distance of 92.04 feet, thence run South 21 degrees 32 minutes 26 seconds West a distance of 52.49 feet, thence run South 29 degrees 03 minutes 29 seconds West a distance of 35.91 feet, thence run South 28 degrees 27 minutes 46 seconds West a distance of 142.74 feet, thence run North 66 degrees 41 minutes 00 seconds West a distance of 5.07 feet, thence run South 24 degrees 00 minutes 00 seconds West a distance of 387.80 feet, thence North 66 degrees 44 minutes 21 seconds West for a distance of 188.10 feet to the Point of Beginning.

Containing 3.24 acres, more or less.

Section 4. PERMITTED USES. The following uses, described by the North American Industrial Classification System (NAICS) code numbers, are permitted with exceptions as noted:

- 4413 Automotive Parts, Accessories, and tire stores
- 442 Furniture and home furnishings stores
- 443 Electronics and appliance stores
- 444 Building material and garden equipment and supplies dealers
- 445 Food and beverage stores (includes alcoholic beverages as otherwise permitted by State and local law)
- 446 Health and personal care stores
- 447 Gasoline Stations
- 448 Clothing and accessories stores
- 451 Sporting goods, hobby, book, and music stores
- 452 General merchandise stores
- 453 Miscellaneous store retailers
- 511 Publishing industries (excluding manufacturing and warehousing)
- 512 Motion Picture and sound recording industries (excluding manufacturing and warehousing)
- 513 Broadcasting and telecommunications (excluding manufacturing and warehousing)
- 514 Information services and data processing services
- 52 Finance and Insurance
- 531 Real estate
- 532 Rental and Leasing services (excluding outdoor storage of vehicles and equipment for lease.)
- 54 Professional, scientific, and technical services (excluding any outdoor kennels or runs associated with veterinary services)
- 55 Management of companies and enterprises
- 561 Administrative support services (excluding 561210 facilities support services, 561710 exterminating and pest control services, 561730 landscaping services, 561740 carpet and upholstery cleaning services, 561910 packaging and labeling services NOTE: this does not exclude the "Mailboxes, Etc." type of businesses found in many shopping centers)
- 61 Educational services
- 621 Ambulatory health care services
- 7111 Performing arts companies
- 7139 Other amusements and recreational industries
- 72111 Hotels (except casino hotels) and motels
- 7221 Full service restaurants (not co-located with hotel or motel)
- 7222 Limited service eating places (not co-located with hotel or motel)
- 72232 Caterers
- 811211 Consumer electronics repair and maintenance
- 811212 Computer and office machine repair and maintenance
- 811430 Footwear and leather goods repair

- 8121 Personal care services
- 81292 Photofinishing
- 812310 Coin-operated Laundries and Drycleaners
- 812320 Drycleaning and Laundry Services (except coin-operated)
- 92 Public administration

Other office uses allowed in the PI zoning district but not specifically included above are allowed.

Restaurants, taverns, bars, lounges, and the like are not allowed in the same building as a hotel or motel in PUD 7. This provision is not intended to prohibit hotel breakfasts as typically served in a hotel lobby area, vending machine sales or other sales of snack items on hotel grounds, or the provision of catered meals in association with meetings or other events on hotel grounds.

Outdoor seating is allowed to be incorporated into the design of full service restaurants and limited service eating places. Such uses, if developed in PUD 7, shall be designed, built, and operated so as to minimize noise impacts on nearby residential uses.

Billboards are allowed within the PUD 7 area within 200 feet of I-75 and otherwise consistent with the zoning regulations applicable to billboards.

Uses other than those described herein are not permitted in the PUD 7 zoning district. All of the uses described above according to their NAICS classification are uses by right. Businesses described as "sex outlets" in the City's zoning regulations, vehicle repair shops (except installation of tires and batteries), and vehicle sales or leasing establishments are expressly prohibited in the PUD 7 zoning district.

#### Section 5. NOISE AND VIBRATION MITIGATION.

Noise and vibrations are to be managed during the construction and operation phases of PUD 7. During construction, construction-related noise, vibrations, and traffic in the PUD7 zoning district shall be managed so as to not unduly interfere with the nearby residential uses. Developer, developer's heirs or successors or assigns, and all contractors and subcontractors will promptly comply with any directive from City to manage construction-related noise, vibrations, and or traffic. Developer and all businesses in the PUD 7 zoning district shall mitigate potential noise or vibration problems from the site by prompt compliance with any City request to adjust volume, frequency, time, or duration of any noise or vibration that the City determines would be bothersome to a reasonable person off-site. Developer and businesses in the PUD 7 zoning district shall affirmatively manage all activities on the site so as to mitigate any noise or vibration that the City determines to likely be bothersome to reasonable person off-site. If after previous requests to Developer and/or any business located in the PUD 7 zoning district

concerning noise or vibrations, City determines that there is a continued persistent pattern of noise or vibration emanating from the PUD 7 district, Developer and/or any business in the PUD2 zoning district must undertake specific appropriate management actions requested by City to mitigate the problem including, but not limited to, the following actions if applicable: reducing or eliminating outdoor music, private security to eliminate cruising or loitering on-site, etc.

## Section 6. SITE PLANNING AND DEVELOPMENT COORDINATION

### 6.A. Conceptual Site Plan for PUD 7

A conceptual site plan for PUD 7 has been prepared by Miller McCoy Engineers (see EXHIBIT A) and presented by Developer to the Cleveland Municipal Planning Commission on March 23, 2010. This site plan is very general in nature, identifying the location of a proposed hotel site in the northeastern part of the PUD 7 property, the likely location of a future restaurant site (could possibly be other uses as allowed by PUD 7) in the southeastern portion of the PUD 7 site, and an area for future development in the western portion of the PUD 7 site where other allowable PUD 7 uses will be located.

### 6.B. Detailed Site Plans for PUD 7 Development

A detailed site plan, consistent with the conceptual site plan, is required prior to development of any portion of the site with new commercial buildings. The detailed site plan will meet the normal site plan requirements of City for commercial development and will be reviewed in accordance with the normal process except that Planning Commission approval of the site plan shall be required.

### 6.C. Development Coordination

Site planning that facilitates development coordination is important on two levels concerning PUD 7. First, the detailed site plans for the different areas within PUD 7 need to be coordinated. It is anticipated that the detailed site planning for the various building locations in PUD 7 will be carried out in a coordinated fashion, incorporating as many common or complementary features as feasible. Examples of such coordination could include shared sign locations, interconnecting walkways, shared driveways or parking, shared stormwater drainage, similar landscape design, etc. Second, PUD 7 is part of a larger potential development area at Exit 27 for which there must be coordination on at least the Peerless Road Extension access and perhaps on other issues if agreement is achieved with and among the property owners. PUD 7 is written such that the City and Developer can take advantage of such internal and external opportunities for coordination.

## **Section 7. ACCESS, TRAFFIC CIRCULATION, PARKING, FIRE LANES, SERVICE AND DELIVERY VEHICLES.**

### **7.A. Access**

It is intended that the site will have access to and from Paul Huff Parkway via the proposed Peerless Road Extension, Benton Drive, and the portion of Ellis Circle that would remain after the closure of the eastern intersection of Ellis Circle with Paul Huff Parkway as part of the Peerless Road Extension plan, but it is not intended that any part of PUD 7 would have a driveway connecting directly with Paul Huff Parkway. However, nothing herein shall prohibit the otherwise lawful review and approval of further improvements to the internal street access system, including but not limited to such improvements in cooperation with other nearby property owners, where these street improvements may redesign or relocation of existing streets or new streets (street redesign will require review and approval by the Cleveland Municipal Planning Commission). It is intended that existing developed residential properties that area access primarily from Robin Hood Drive would be protected from any new construction street or driveway connection from PUD 7 property to Robin Hood Drive (bicycle and pedestrian connections are not specifically prohibited by PUD 7). All proposed improvements within public rights-of-way must be constructed to City standards. Unless it is explicitly agreed as otherwise, Developer shall provide any right-of-way and construct any improvements in newly designed or improved public rights-of-way within the PUD 7 property. The Developer shall provide properly designed pedestrian circulation interconnecting the constituent parts of PUD 7 including sidewalk access within PUD 7 that could form a reasonable sidewalk linkage to the proposed Peerless Road extension.

### **7. B. Traffic Circulation, Parking, Fire Lanes, Deliveries, etc.**

Driveway entrances to the site shall be developed with adequate turning radii for entering and exiting vehicles, including delivery vehicles. Internal traffic circulation and parking on sites, delivery access, service access for solid waste pick-up, etc., and fire and emergency access must be maintained in the site design and specifically addressed in site planning for individual developments within PUD 7. In the event that the PUD 7 site is served by a public transit service, stopping of transit vehicles for entering or exiting passengers shall be outside the designated fire lane unless otherwise approved by the City's fire department. Any drive-through window facilities that are developed on the site, including the outparcels, shall comply with City standards with respect to vehicle stacking, etc. and shall be designed so as to minimize potential conflicts with other vehicles and pedestrians. Where transit stop areas or bicycle parking areas are provided in PUD 7, these areas will not count against impervious area limits. Parking standards shall be as otherwise required by City zoning regulations, subject to a decrease of up to 20% that may be granted by the Planning Commission in consideration of factors such as pedestrian, bicycle, and transit

access, shared parking arrangements, enhanced landscaping, innovative stormwater management practices, and the like.

## **Section 8. IMPERVIOUS AREAS, STORMWATER MANAGEMENT, LANDSCAPING, TREE PRESERVATION, BUFFERING, LIGHTING.**

### **8.A. Impervious Areas**

An impervious area calculation is to be included in detailed site plans for the PUD 7 area. The impervious area of the site is understood to include the foot prints for all structures on the site as well as other paved or concrete areas that do not readily absorb water, generally that which is not greenspace. The impervious area for the site shall not exceed 85% of the total PUD 7 area excluding public rights-of-way.

### **8.B. Stormwater Management**

Development within the PUD 7 area must meet the City's stormwater regulation requirements. In conjunction with each detailed site plan for development within PUD 7, a drainage plan must be prepared by a professional engineer and approved by the City Engineer prior to development of the site. For purposes of stormwater management, the PUD 7 area will be regarded as an area under a common plan of development and a Notice of Intent (NOI) is required before development of any portion of the site.

### **8.C. Landscaping**

Landscaping serves a variety of purposes and it is a requirement of both the zoning regulations and the stormwater management regulations. Landscaping fulfills a Best Management Practice (BMP) requirement of the stormwater regulations. A landscaping plan shall be submitted with all detailed site plans for the PUD 7 area. The landscaping for the site shall be in accordance with a landscape plan prepared by a Tennessee registrant (engineer, architect, or landscape architect) and approved by the City. The design, installation, and maintenance of the landscaping shall meet the requirements of this ordinance and the City's regulations regarding landscaping. Landscaping shall be provided adjacent to all roadways abutting the site and internal areas within the parking lots and adjacent to buildings. Landscaping shall be professionally installed and maintained in perpetuity by the Developer and all heirs, assigns, and successors in title. Maintenance shall include irrigation, fertilization, pest and disease control, mowing, raking, replacement of dead or diseased plants, and other such activities as may be appropriate to a high quality professionally maintained landscape.

## 8.D. Tree Preservation

### 8.D.1. Applicability of Tree Preservation Ordinance

The City has a tree preservation ordinance that is applicable to this PUD 7 as described. An approved Tree Removal, Replacement, and Preservation Plan (TRRPP) is required to be approved by the City prior to the issuance of a land disturbance permit for any portion of PUD 7. Removal of trees with 6" diameter at breast height (dbh) from the PUD 7 property must be consistent with the approved TRRPP (does not apply to trees exempted from protection by the City's Tree Preservation ordinance). The TRRPP identifies forested areas on the site in relation to surrounding properties; it identifies a limited number of very large trees on the site; and it shows where on the site a limited number of trees (10 trees per acre or 10% of the tree canopy from larger trees) are to be preserved and/or replaced. Detailed site plans for PUD 7 properties need to be consistent with the TRRPP which may need to be amended from time-to-time throughout the development process.

### 8.D.2. Specifics of the TRRPP

The TRRPP is to include the general location of forested areas on the site and available aerial photography. The TRRPP is to identify general areas on the site within 50 feet of the PUD 7 boundary where tree preservation could occur (where the required tree preservation is not feasible within 50 feet of the PUD 7 boundary alternative areas within PUD 7 may be designated). The TRRPP is to identify how any trees and their associated understory will be preserved on the site (pre-development, during development, and post-development) consistent with guidelines provided by the Urban Forester. The TRRPP should result in a practical and sustainable preservation of trees that will provide benefits to the development and the community consistent with the purpose and intent of this ordinance. Trees that are preserved should be incorporated into any required buffering for the site or into site landscaping and trees that are preserved are intended to be counted toward the fulfillment of any requirements for buffering (if in the buffer area) or landscaping. Shielding of residential areas from roadways and other uses is an important consideration. Preserving of the largest tree or trees is not necessarily paramount but consideration should be given to size, species characteristics, potential positive and negative impacts of the particular trees in their location in light of the development plan, and long term survival of the trees. The TRRPP is to achieve a target of preserving 10 trees with a trunk diameter of 6 inches per acre, or canopy coverage from trees with a 6 inch trunk diameter that is equal to 10% of the site acreage. Trees preserved are to be from species approved by the Urban Forester and are to consist of at least 50% shade trees, by number of trees or percentage of canopy. The TRRPP is to identify the location, species, common name, and diameter at breast height (dbh) of the tree to be preserved and this same information is to be provided for any tree that exceeds 20 inches dbh not to exceed 20 trees per site (priorities for inclusion are

the largest trees, hardwood shade trees not otherwise listed among the exceptions for preservation, and trees within 50 feet of the PUD 7 boundary). Where a large tree of 20 inches or more dbh is included in the TRRPP to be preserved, it will count as two trees if the required minimum is to be met by preserving 10 trees per acre.

#### 8.E. Buffering

The City has a buffering ordinance that is to protect less intensive land uses, e.g. residential, from more intensive land uses, e.g. commercial, that locate on adjacent properties. Buffering for residential properties external to the PUD shall at a minimum adhere to the requirements of the buffering ordinance within the zoning regulations; however, the Planning Commission may approve alternative transitional buffering arrangements for residential property for which there has been a documented non-residential land use planning effort. Developer and all heirs, assigns, and or successors in title shall take particular care to provide and maintain a densely landscaped buffer that mitigates the intrusion of noise, light, and the view of the proposed commercial development in adjoining residential areas.

#### 8. F. Lighting

As part of each detailed site plan for development in PUD 7, a plan shall be provided for the exterior lighting of buildings, parking lots, signs, etc., that demonstrates the buffering of adjacent residential areas, and the mitigation of glare or distraction for adjacent roadways. Outdoor lighting for parking and sidewalk areas are to minimize light intrusion into nearby residential areas; and other exterior lighting and lighted surfaces are to be designed so as to minimize shining or reflecting into the aforementioned residential areas. Exterior lighting will also be designed in a way that mitigates any glare that would be encountered by motorist on adjacent roadways. Where it is necessary to maintain lighting for security, this lighting will be designed such that escape of lighting onto adjoining residential property is minimized. The lighting plan should include sufficient photometric detail to determine compliance with this ordinance.

### Section 9. GENERAL APPEARANCE, SIGNAGE, AND OUTDOOR DISPLAYS.

#### 9.A. General Appearance

Development within the PUD 7 area is at a major gateway or entrance to the City and is to have a high quality appearance. It is intended that the level of architectural amenity and detail, including quality and cost of materials and craftsmanship, will meet or exceed that found in the nearby Hickory Grove shopping center on Paul Huff Parkway. Common architectural elements and/or complementary design themes are encouraged to extend throughout the PUD 7 area. Specific designs, color choices, and materials are not prescribed by this

ordinance but it is expected that the quality of appearance would be consistent with better quality gateway commercial areas found in other communities. Illustrative proposed building elevations and landscaping plans will be considered together by the Planning Commission in order to determine that the proposed development is consistent with these general appearance requirements.

#### **9.B. Signage Plan**

When a detailed site plan is prepared for a development within the PUD 7 area it is to include a signage plan for primary signs, such as ground signs and wall signs. The signage plan is to identify the type, size, and general location of the proposed sign(s). The signage plan will demonstrate conformity with this section and the City's sign regulations where those are not otherwise modified by this section. Conformity with sign regulations means those regulations governing permit requirements, setbacks, maintenance, materials, lighting, motion or animation, etc.; whereas certain modifications are made in this ordinance regarding the type, number, size, and location of signs allowed in PUD 7.

#### **9.C. Signs in the PUD**

Type A and Type B portable signs, but not Type C portable signs, as defined in the City's zoning ordinance are permitted on the site in the manner otherwise allowed in the CH zoning district but not more than one portable sign for each principal building in PUD 7 is to be within 50 feet of the Paul Huff Parkway or I-75 right-of-way. Roof signs are not allowed in PUD 7. Wall signs in the PUD 7 area will not exceed 20% of the area of the wall or façade on which the sign is located. Ground signs of all types (pole, monument, pylon) are allowed, one per each principal building on the site containing the building and not to exceed 300 square feet in sign area for the proposed hotel and 150 square feet in sign area for other principal buildings. Location of ground signs for PUD 7 area development toward Paul Huff Parkway and I-75 is encouraged (can propose location for ground sign other than on parcel containing principal building---a multi-tenant pylon sign would be allowed near Paul Huff Parkway). It is intended that buildings and landscaping within the PUD 7 area would obscure the visibility of PUD 7 area signs from the nearby Robin Hood Drive residential area. Ground sign areas need to be landscaped.

#### **9.D. Outdoor Displays**

Outdoor displays of merchandise and outdoor storage of goods and merchandise, including but not limited to materials stored in trailers or shipping containers, is prohibited within 50 feet of any right-of-way. In no event shall any display or storage of merchandise be configured so as to impede the visibility of motorists within or adjacent to the subject property.

## **Section 10. LITTER, SOLID WASTE, AND DRAINAGE STRUCTURE MAINTENANCE.**

The method of solid waste disposal for each use throughout the project site shall be as approved by the City's Director of Public Works. Dumpsters shall be on a concrete pad and shall be screened by a masonry enclosure. Storage for inedible fats or greases shall likewise be enclosed and, if adjacent to a dumpster, shall be separated from the dumpster by a concrete block wall. Litter and debris shall be removed from the parking lots and grounds throughout the project site on a regular basis such that these materials do not accumulate noticeably on-site or migrate to surrounding property. Removal of litter and debris shall include the removal of such materials from drainage structures and other areas where accumulations may occur. Maintenance of drainage structures including removal of sediment, debris, and intrusive vegetation, such that these drainage structures continue to function as designed shall be the continuing responsibility of the developer, or its assigns or successors in title, and shall include effective control of algae, mosquitoes, and other such concerns as may occur with wet stormwater detention areas; such control by the developer will be monitored by the City and shall include technically appropriate means that may include mechanical aeration, application of chemicals, and/or other means. Mechanical sweeping of the parking lot and driveway areas shall be performed regularly by the Developer to control dirt, litter, and debris.

## **Section 11. SETBACKS, BUILDING HEIGHTS AND LAYOUT OF PUD 7**

### **11.A. Setbacks**

Building setbacks shall be as designated for the CG zoning district except as otherwise approved herein. Specifically, these are: front 40' plus 2' for each 10' or fraction thereof of building height over the first 10'; and side and rear 10' plus 3' for each 10' or fraction thereof of building height above the first 10'. For example, a building 50 feet tall would have a front setback of 48 feet and side and rear setbacks of 22 feet. If it deems appropriate during the detailed site plan approval, the Planning Commission may reduce the setback otherwise required along the I-75 on-ramp right-of-way by as much as 50% of the normal setback requirement (this corresponds to what would be allowed by zoning regulation under the minor encroachment process). The Planning Commission may approve the shifting of a proposed building on the site toward a local street, regardless of the otherwise required setback, to the extent it deems prudent to accomplish other planning purposes (e.g. preservation of land for future highway expansion, accommodation of bicycle facilities, etc.). The proposed hotel's drive-through canopy will be allowed to extend into the otherwise required setback from the local street, but not so as to interfere with public safety or utilities.

## 11.B. Building Height

The building height limit in PUD 7 shall be 50 feet, not including any parapet wall installed for aesthetics or safety.

### Section 12. COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS.

The Developer, and its assigns or successors in title, is responsible for obtaining all federal, state, and local permits required for the construction of the proposed shopping center and for construction on the outparcels and other construction on or adjacent to the site for which the Developer is responsible. In the event that there are state or federal agency permit requirements arising from PUD development of this site, such as the off-site mitigation for impacts on a blue-line stream as required by the Tennessee Department of Environment and Conservation (TDEC), the Developer is responsible for those permit requirements. If a state or federal agency causes the City of Cleveland to incur costs to comply with any permit requirements for the PUD development of this site, the Developer shall reimburse those costs to the City. The Developer and its assigns or successors in title shall carry out the construction on the project site in compliance with all applicable ordinances of the City of Cleveland, Tennessee, and also in compliance with applicable federal and state laws. Buildings shall be designed and constructed in accordance with adopted building codes and shall not be occupied until final inspections are complete and certificates of occupancy have been issued (permission for limited use of building after substantial completion of construction for fixture installation, furnishing, store stocking, employee training and the like may be granted by the City's Building Official and such permission shall not be unreasonably withheld). Failure to develop, use, or maintain the subject property other than in conformity with all of the requirements of this ordinance is unlawful and shall be deemed a violation of the City's zoning ordinance and a nuisance subject to the penalties described in the zoning ordinance and any increased fine as may be allowed by state law.

### Section 13. SUBDIVISION AND SITE PLANNING OF OUTPARCELS.

The aggregation of existing parcels into the development sites needed for the various developments within PUD 7 is anticipated to require the subdivision or re-subdivision of land. In order to accomplish this, the Developer is required to prepare a preliminary and final plat for approval by the Cleveland Municipal Planning Commission, and record the final plat(s) one approved. The platting of land into the proper parcels is a necessary precursor to the approval of the detailed site plan for the portion of PUD 7 in question. Such plat(s) should include the provision of right-of-way for any proposed future road improvements that are planned as the PUD 7 project progresses. Platting is to be carried out in accordance with the adopted subdivision regulations.

#### **Section 14. PUD DEVELOPMENT PLAN.**

The conceptual site plan and related drawings attached hereto or referenced herein as well as the terms and conditions of this ordinance comprise the development plan for the PUD. Detailed site plans as referred to in this ordinance are required to carry out the PUD 7 development and will be considered as part of the development plan when these are subsequently approved by the Planning Commission. It is understood that the owners of the individual properties within the development are each responsible for the compliance of their respective properties with the terms of this ordinance. The owners of the respective properties are expected to work cooperatively toward the achievement of the common development plan for this PUD but a violation by one landowner will not constitute a violation by another landowner. However, joint responsibility may be established for jointly used and maintained facilities that may be incorporated into the detailed site plan(s).

#### **Section 15. TIME LIMITS AND POSSIBLE REVERSION TO FORMER ZONING.**

The developer must have carried out a substantial development of this project within five years from the effective date of this ordinance or the City may cause the property to revert to its former zoning classification without liability for any damages. Substantial development shall be interpreted to mean commencement of construction on at least one commercial building (hotel, restaurant, etc.) within the PUD 7 area.

#### **Section 16. ERRORS, OMISSIONS, AND POSSIBLE FUTURE REVISIONS TO THE PUD.**

This ordinance may be amended from time to time as necessary after review by the Planning Commission and approval by the City Council subsequent to a public hearing. The Planning Commission has specific authority to review and approve detailed site plans for the development of PUD 7. Minor revisions to detailed site plans that affect a quantity or dimension by less than 20%, or which substitute a material for one of like or better quality in 20% or less of the project area, or which increase functionality by adding a feature desired in PUD 7 (e.g. sidewalk, transit stop, bike racks, etc.) can be approved through the staff site plan review committee with the consent of the City Manager and the Planning Commission Chairperson. Errors and omissions in the PUD 7 development plan that do not constitute a material change in the development plan can be corrected in the same manner as a minor revision.

#### **Section 17. BINDING UPON OTHERS.**

It shall be the duty of the Developer to ensure compliance with all terms of this ordinance affecting construction or maintenance. Wherever this ordinance establishes a duty, responsibility, or right for the Developer, the term "Developer"

is intended to encompass the purchaser(s) of the subject property and any assigns or successors in title, or any owners of record of the subject property as of the effective date of this ordinance and their heirs, assigns, or successors in title. The term "Developer" is also intended to include any holding company or other entity established for the ongoing operation and maintenance of the development of the subject property including, but not limited to, common areas, joint use or joint access areas, and undeveloped portions of the property that are intended for development. The term "Developer" is intended to include persons or firms or entities acquiring title to the subject property for the purpose of owning land and/or buildings in the PUD7 development which they may use for a business location or rental property. The term "Developer" also applies to leaseholders who have the right to make tenant improvements on the property. It is understood that persons and entities coming under the definition of "Developer" may at some point divest themselves of their property interests in PUD 7 such that they are no longer responsible for complying with terms of this ordinance.

Section 18. CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.

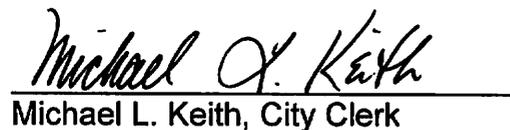
Where this ordinance is in conflict with existing ordinances with respect to the development of this property the terms of this ordinance shall prevail unless stated otherwise herein. In the event that any portion of this ordinance is determined to be invalid by any court of competent jurisdiction, the remaining portions of this ordinance shall remain in full force and effect. This ordinance shall take effect upon after passage and upon the execution of the development order as described above, the public convenience and necessity requiring it.

Approved this 10<sup>th</sup> day of May, 2010.

Approved as to form:

  
\_\_\_\_\_  
John F. Kimball, City Attorney

  
\_\_\_\_\_  
Tom Rowland, Mayor

  
\_\_\_\_\_  
Michael L. Keith, City Clerk

## **EXHIBIT A**

**EXHIBIT A consists of two drawings (see attached): a survey drawing prepared by Brown Surveying and a conceptual site plan prepared by Miller-McCoy Engineers.**



