

ZONING ORDINANCE NO: 2018-21

1st READING 10-25-18 pg. 163  
FINAL READING 7-9-18 pg 173  
MINUTE BOOK # 29

**AN ORDINANCE OF THE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING THE CLEVELAND MUNICIPAL CODE TITLE 14 CHAPTER 2 SO AS TO ESTABLISH A PLANNED UNIT DEVELOPMENT (PUD) TO BE KNOWN AS SUNSET DRIVE PROPERTY “PUD 19” ON PROPERTY DESCRIBED AS TAX MAP 42P GROUP J PARCELS 5.00, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT; AMENDING THE ZONING PLAN AND ZONING MAP FOR PUD 19; MAKING VIOLATIONS OF THE ORDINANCE UNLAWFUL AND PROVIDING FOR PENALTIES; ESTABLISHING LISTS OF PERMITTED USES AND PROHIBITED USES; ESTABLISHING DEVELOPMENT STANDARDS AND PROCESSES AND RELATED REQUIREMENTS; STATING RESPONSIBILITY FOR COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS; PROVIDING FOR ERRORS AND OMISSIONS AND POSSIBLE FUTURE REVISIONS TO THE PUD; 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 it is intended that the developers of the property or any subsequent owners, shall hereinafter be referred to as “Developers” and; and whereas the City desires to establish a unique zoning district with special use restrictions and development standards for the property described herein through the adoption of this PUD, 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 3 herein as “PUD 19” subject to the provisions described in each section of this ordinance. The permitted uses in the PUD 19 zoning district are those uses outlined in Section 5 of this ordinance. The development standards for the PUD19 district are those outlined in this ordinance, including requirements for plan approval, and compliance with applicable permitting requirements.

**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.**

PUD 19, Sunset Dr Property (name may be revised during the platting process with approval of the Cleveland Municipal Planning, includes property generally identified as Tax Map42P Group J Parcel 5.00. Exhibit A illustrates the overall delineation of development areas for the subject property.

### **Section 4. GENERAL PROJECT DESCRIPTION AND DEVELOPMENT DENSITY.**

This section is intended to provide a general description of the Sunset Dr Property. It is proposed that Area A as shown in Exhibit A contains an existing building which has served as an educational facility since the early 1940's. It is the intent that this building and the area surrounding it may continue to be utilized for limited professional uses. The remaining area generally described as Area B in Exhibit A may be developed in future uses consistent with the existing R2 uses as described in Section 5 of this ordinance. The general development shall be consistent with the conceptual plan in Exhibit B in terms of layout but the exact location and number of units will be approved through the site review or platting process.

### **Section 5. PERMITTED USES AND PROHIBITED USES.**

#### **5.A. PERMITTED USES**

##### **Area A**

Uses allowed includes the following uses:

- A. Professional offices;
- B. Government offices;
- C. Service businesses such as catering, dry cleaners, interior decorating services, printing, tailoring, travel agencies, upholstery;
- D. Educational Institutions including pre-school, daycare, primary and secondary schools, colleges and other higher education institutions;
- E. Commercial or trade schools, such as dance studios, martial arts studios, etc.
- F. Personal service businesses, such as barbers, beauty salons, nail salons, photography studios and the like;
- G. Churches with or without day care, preschool, primary, or secondary schools;
- H. Public libraries;
- I. Veterinary offices and clinics, without outside kennels or runs;
- J. Uses permitted within the R2 Low Density Single and Multi-family Residential Zone

##### **Area B**

- A. Uses permitted within the R2 Low Density Single and Multi-family Residential Zone

## **5.B. CONDITIONAL USES**

There are no conditional uses within PUD19.

## **5.C. PROHIBITED USES**

Any use not expressly permitted within this ordinance is permitted to operate within the boundaries of the PUD19 Ordinance.

## **Section 6. DEVELOPMENT AREAS AND RELATED REQUIREMENTS.**

### **6.A. DEVELOPMENT AREAS.**

Exhibit A identifies the areas within PUD19 Sunset Drive Property, which was reviewed by the Cleveland Municipal Planning Commission for consideration at their regular meeting May 15, 2018, which may allow commercial activity outlined in section 5. In no case shall any area larger than 1.35 acres of PUD19 be utilized for any commercial activity. All development within PUD19 must be consistent with Exhibit A with regards to the delineation of proposed uses and consistent with the conceptual plan shown Exhibit B in terms of general design and development layout. Additional plans, plats, and other development-related documents and permits will be necessary to carry out the construction of this project.

### **6.B. PLATS.**

One or more plats may need to be prepared for the PUD19 property by the Developer for approval in accordance with the City of Cleveland, Tennessee subdivision regulations. These plats will describe and dedicate public streets any other public properties; identify lots; and identify easements that are necessary for various purposes within the development such as utilities, access, maintenance, and conservation, etc.

### **6.C. PRIVATE DEVELOPMENT DOCUMENTS.**

The Developer shall prepare and implement such master covenants, restrictions, condominium association documents, common area agreements, and the like which the Developer determines are necessary to carry out the development of PUD 19 as permitted herein. It is a requirement of this ordinance that such documents are in place and enforced by the Developer (or Developer's heirs, successors, or assigns) to the extent necessary for PUD 19 to function as described herein. The City of Cleveland assumes no responsibility to review these documents, or to determine their adequacy to these purposes, or to enforce any of their provisions, or to otherwise be a party to them.

### **6.D. DETAILED SITE PLANS.**

The Developer shall prepare and submit to the City of Cleveland, TN for approval by the Cleveland Municipal Planning Commission a master site plan for phase all future phases of

development. These site plans shall indicate lot configurations, setbacks, structure types, streets, lanes, sidewalks, common areas, utility locations, etc. The information in the detailed site plan will be congruous with the plat developed for the lots and adjacent public street infrastructure and with the conceptual layout shown in Exhibit B. The content and level of detail of the site plan will be sufficient for City staff to determine compliance of the proposed development with this ordinance and any other applicable City ordinances.

## **Section 7. DEVELOPMENT STANDARDS**

The development standards for PUD19 shall be those established in this ordinance or incorporated herein. Where development standards are not otherwise included in this ordinance, the standards shall be those in the PI Professional Institutional Zoning District for any commercial uses and the R2 Low Density Single and Multi-family Residential Zoning District for residential areas as described in the City of Cleveland's zoning regulations.

Requirements of the City's adopted building codes, fire codes, stormwater regulations and other ordinances affecting the development, use, and maintenance of property shall apply.

### **7.A. BUILDING SETBACKS**

Unless alternate setbacks are expressly approved by the Planning Commission no residential structure shall be located less than 10 feet from the front property line along McNabb Dr or 20 feet from the edge of pavement, whichever is greater. Maximum setbacks from all property lines adjoining a public right-of-way shall be 30 feet from the property line or edge of pavement whichever is greater. Front setbacks for residential structures shall be 20 feet from property lines along Sunset Dr and 15 feet from Woodlawn Ave. Townhome style units are permitted with a zero-foot setback between units, however end units shall maintain a 7 foot side separation between buildings within the PUD boundary. All other setbacks shall be a minimum of 10 feet.

Non-residential uses shall have a minimum setback of 30 feet along front property lines and 15 feet for the side and rear. Accessory structures may be within 5 feet from the side or rear setbacks for both area A and area B.

### **7.B. STORMWATER REQUIREMENTS.**

All improvements must comply with any applicable state or federal law or regulation concerning stormwater or floodplain requirements.

### **7D. SIGNAGE**

No part of any sign shall be within 5' of any right-of-way. For non-residential uses, wall signs may be allowed for a size up to 25% of the size of any building elevation it is located on. No more than one (1) ground sign may be permitted in the non-residential area and it shall be limited to monument style signage with no LED messaging permitted. No sign shall be located in such a way as to obstruct the view of traffic or create any safety hazard and is subject to approval of the City's Transportation Engineer. All other standards within the City's sign ordinance shall apply unless in direct conflict with this ordinance in which case this ordinance shall prevail.

## **7.D NOISE AND VIBRATION MITIGATION**

Noise and vibrations are to be managed during the construction and operation phases of PUD19. During construction, construction-related noise, vibrations, and traffic in the PUD19 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 PUD19 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 PUD19 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 PUD19 zoning district concerning noise or vibrations, City determines that there is a continued persistent pattern of noise or vibration emanating from the PUD19 district, Developer and/or any business in the PUD19 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.

## **7.E. HOURS OF OPERATION**

Operation of any commercial activity shall be limited to no later than 9pm nor earlier than 6am.

## **7.F LIGHTING**

The developer shall ensure that the exterior lighting of buildings, parking lots, signs, etc., 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. Any new light poles located on site shall be no higher than 15' above grade.

## **7.G. ACCESS**

In no circumstance shall any new accesses including driveways, public or private streets be constructed to provide access from Sunset Drive NW. This would not prohibit the closing, improvement or relocation of any existing driveway located in Area A. The residential area shall be served by one new private driveway connecting from Woodlawn Ave which shall provide access to parking areas for all units in the residential area. All building fronts shall be facing the public right-of-ways with parking accessed by the private drive. A two-foot grass strip shall be

provided between the parking areas of each unit as shown in Exhibit B. Sidewalks shall be provided from the front doors of units along McNabb connecting to the public right-of-way.

#### **7.H BUFFERING AND OPEN SPACE**

A buffering area shall be provided for separating Areas A and B and shall be constructed to a standard not less than a "Type B" buffering as described within section 3.3 of the Cleveland Zoning Ordinance. In addition, a landscaped area not less than .25 (one quarter) acres in size, not including any detention area, shall be provided as a usable community space. Community space may include parks, benches, picnic tables, playground equipment or similar amenities.

#### **7.I. MISCELLANEOUS STANDARDS**

Impervious areas shall comprise no more than 75% of the total site, regardless of any division of land, within the boundaries of PUD19 and a minimum of 25% of greenspace shall be provided. Parking for commercial uses shall be provided on each individual lot at a rate as prescribed in the Cleveland Zoning Ordinance unless deemed not necessary by the City's Transportation Engineer. Parking for any residential development shall be provided on each individual lot at a rate not less than 2 parking space per residential unit.

All residential structures shall have a minimum of 25% brick or stone on the front façade facing any public right-of-way.

#### **Section 8. 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 PUD 19. 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 by the City's Building Official). 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 9. 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. Where this ordinance contemplates the future approval of a detailed site plan, or the future approval of a plat by the Cleveland Municipal Planning Commission, and where this ordinance contemplates the

future refinement of plans to conform with permitting requirements or conditions of approval necessitated by staff review, and where the Developer and the City of Cleveland may enter into future agreements regarding possible public facilities, infrastructure, and/or services within PUD19, an amendment to this ordinance is not required to implement such site plan, plat, or refinement to plans necessitated by permitting or review requirements, or agreement pertaining to public facilities, infrastructure, or services.

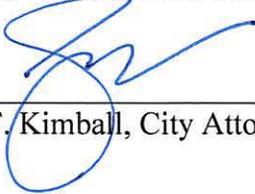
**Section 10. BINDING UPON OTHERS.**

This ordinance is a law and not a contract, and as such it is generally binding upon all development and use of property in the PUD19 zoning district and is binding upon City's regulation of these activities in this location. Moreover, 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 current owner of record, any heirs, 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.

**Section 11. 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 AS TO FORM:

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

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

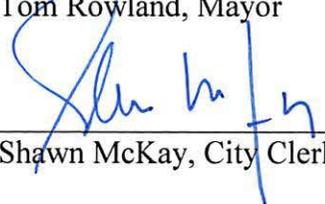
  
\_\_\_\_\_  
Shawn McKay, City Clerk

Exhibit A



Exhibit B



ZONING ORDINANCE 2023-30

AN ORDINANCE OF THE OF THE CITY OF CLEVELAND, TENNESSEE AMENDING THE CLEVELAND MUNICIPAL CODE TITLE 14 CHAPTER 2 SO AS TO ESTABLISH A PLANNED UNIT DEVELOPMENT (PUD) TO BE KNOWN AS SUNSET DRIVE PROPERTY "PUD 19" ON PROPERTY DESCRIBED AS TAX MAP 42P GROUP J PARCELS 5.00, AS MORE PARTICULARLY DESCRIBED HEREIN; PROVIDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT; AMENDING THE ZONING PLAN AND ZONING MAP FOR PUD 19; MAKING VIOLATIONS OF THE ORDINANCE UNLAWFUL AND PROVIDING FOR PENALTIES; ESTABLISHING LISTS OF PERMITTED USES AND PROHIBITED USES; ESTABLISHING DEVELOPMENT STANDARDS AND PROCESSES AND RELATED REQUIREMENTS; STATING RESPONSIBILITY FOR COMPLIANCE WITH OTHER APPLICABLE LAWS AND PERMITTING REQUIREMENTS; PROVIDING FOR ERRORS AND OMISSIONS AND POSSIBLE FUTURE REVISIONS TO THE PUD; 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 it is intended that the developers of the property or any subsequent owners, shall hereinafter be referred to as "Developers" and; and whereas the City desires to establish a unique zoning district with special use restrictions and development standards for the property described herein through the adoption of this PUD, 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 3 herein as "PUD 19" subject to the provisions described in each section of this ordinance. The permitted uses in the PUD 19 zoning district are those uses outlined in Section 5 of this ordinance. The development standards for the PUD19 district are those outlined in this ordinance, including requirements for plan approval, and compliance with applicable permitting requirements.

**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.

PUD 19, Sunset Dr Property (name may be revised during the platting process with approval of the Cleveland Municipal Planning, includes property generally identified as Tax Map42P Group J Parcel 5.00. Exhibit A illustrates the overall delineation of development areas for the subject property.

### Section 4. GENERAL PROJECT DESCRIPTION AND DEVELOPMENT DENSITY.

This section is intended to provide a general description of the Sunset Dr Property. It is proposed that Area A as shown in Exhibit A contains an existing building which has served as an educational facility since the early 1940's. It is the intent that this building and the area surrounding it may continue to be utilized for limited professional uses. The remaining area generally described as Area B in Exhibit A may be developed in future uses consistent with the existing R2 uses as described in Section 5 of this ordinance. The general development shall be consistent with the conceptual plan in Exhibit B in terms of layout, but the exact location and number of units will be approved through the site review or platting process.

### **Section 5. PERMITTED USES AND PROHIBITED USES.**

#### **5.A. PERMITTED USES**

##### **Area A**

Uses allowed includes the following uses:

- A. Professional offices;
- B. Government offices;
- D. Educational Institutions including pre-school, daycare, primary and secondary schools, colleges, and other higher education institutions;
- E. Commercial or trade schools, such as dance studios, martial arts studios, etc.
- J. Uses permitted within the R2 Low Density Single and Multi-family Residential Zone

##### **Area B**

- A. Uses permitted within the R2 Low Density Single and Multi-family Residential Zone

## **5.B. CONDITIONAL USES**

There are no conditional uses within PUD19.

## **5.C. PROHIBITED USES**

Any use not expressly permitted within this ordinance is permitted to operate within the boundaries of the PUD19 Ordinance.

## **Section 6. DEVELOPMENT AREAS AND RELATED REQUIREMENTS.**

### **6.A. DEVELOPMENT AREAS.**

Exhibit A identifies the areas within PUD19 Sunset Drive Property, which was reviewed by the Cleveland Municipal Planning Commission for consideration at their regular meeting May 15, 2018, which may allow commercial activity outlined in section 5. In no case shall any area larger than 1.35 acres of PUD19 be utilized for any commercial activity. All development within PUD19 must be consistent with Exhibit A with regards to the delineation of proposed uses and consistent with the conceptual plan shown Exhibit B in terms of general design and development layout. Additional plans, plats, and other development-related documents and permits will be necessary to carry out the construction of this project.

### **6.B. PLATS.**

One or more plats may need to be prepared for the PUD19 property by the Developer for approval in accordance with the City of Cleveland, Tennessee subdivision regulations. These plats will describe and dedicate public streets any other public properties; identify lots; and identify easements that are necessary for various purposes within the development such as utilities, access, maintenance, and conservation, etc.

### **6.C. PRIVATE DEVELOPMENT DOCUMENTS.**

The Developer shall prepare and implement such master covenants, restrictions, condominium association documents, common area agreements, and the like which the Developer determines are necessary to carry out the development of PUD 19 as permitted herein. It is a requirement of this ordinance that such documents are in place and enforced by the Developer (or Developer's heirs, successors, or assigns) to the extent necessary for PUD 19 to function as described herein. The City of Cleveland assumes no responsibility to review these documents, or to determine their adequacy to these purposes, or to enforce any of their provisions, or to otherwise be a party to them.

#### **6.D. DETAILED SITE PLANS.**

The Developer shall prepare and submit to the City of Cleveland, TN for approval by the Cleveland Municipal Planning Commission a master site plan for phase all future phases of development. These site plans shall indicate lot configurations, setbacks, structure types, streets, lanes, sidewalks, common areas, utility locations, etc. The information in the detailed site plan will be congruous with the plat developed for the lots and adjacent public street infrastructure and with the conceptual layout shown in Exhibit B. The content and level of detail of the site plan will be sufficient for City staff to determine compliance of the proposed development with this ordinance and any other applicable City ordinances.

#### **Section 7. DEVELOPMENT STANDARDS**

The development standards for PUD19 shall be those established in this ordinance or incorporated herein. Where development standards are not otherwise included in this ordinance, the standards shall be those in the PI Professional Institutional Zoning District for any commercial uses and the R2 Low Density Single and Multi-family Residential Zoning District for residential areas as described in the City of Cleveland's zoning regulations.

Requirements of the City's adopted building codes, fire codes, stormwater regulations and other ordinances affecting the development, use, and maintenance of property shall apply.

#### **7.A. BUILDING SETBACKS**

Unless alternate setbacks are expressly approved by the Planning Commission no residential structure shall be located less than 15 feet from the front property line along Woodlawn Avenue when rear parking is included. If the garage is not included the front setback along Woodlawn Avenue shall be a minimum of 25 feet from the front property line. The side setback for structures facing Woodlawn Avenue off of McNabb Drive shall be a minimum of 15 feet.

Along McNabb Drive the front setback shall be a minimum of 25 feet from the front property line. No residential structures may be built to access Sunset Drive. Townhome style units are permitted with a zero-foot setback between units; however, end units shall maintain a 5-foot side separation between buildings within the PUD boundary. All other setbacks shall be a minimum of 10 feet.

Non-residential uses shall have a minimum setback of 30 feet along front property lines and 15 for the side and rear. Accessory structures may be within 5 feet from the side or rear setbacks for both area A and area B.

## **7.B. STORMWATER REQUIREMENTS.**

All improvements must comply with any applicable state or federal law or regulation concerning stormwater or floodplain requirements. .

## **7D. SIGNAGE**

No part of any sign shall be within 5' of any right-of-way. For non-residential uses, wall signs may be allowed for a size up to 25% of the size of any building elevation it is located on. No more than one (1) ground sign may be permitted in the non-residential area, and it shall be limited to monument style signage with no LED messaging permitted. No sign shall be located in such a way as to obstruct the view of traffic or create any safety hazard and is subject to approval of the City's Transportation Engineer. All other standards within the City's sign ordinance shall apply unless in direct conflict with this ordinance in which case this ordinance shall prevail.

## **7.D NOISE AND VIBRATION MITIGATION**

Noise and vibrations are to be managed during the construction and operation phases of PUD19. During construction, construction-related noise, vibrations, and traffic in the PUD19 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 PUD19 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 PUD19 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 PUD19 zoning district concerning noise or vibrations, City determines that there is a continued persistent pattern of noise or vibration emanating from the PUD19 district, Developer and/or any business in the PUD19 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.

## **7.E. HOURS OF OPERATION**

Operation of any commercial activity shall be limited to no later than 9pm nor earlier than 6am.

## **7.F LIGHTING**

The developer shall ensure that the exterior lighting of buildings, parking lots, signs, etc., 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. Any new light poles located on site shall be no higher than 15' above grade.

## **7.G. ACCESS**

In no circumstance shall any new accesses including driveways, public or private streets be constructed to provide access from Sunset Drive NW. This would not prohibit the closing, improvement or relocation of any existing driveway located in Area A. A two-foot grass strip shall be provided between the parking areas of each unit as shown in Exhibit B. Sidewalks shall be provided from the front doors of units along Woodlawn Avenue and McNabb Drive connecting to the public right-of-way.

## **7.H BUFFERING AND OPEN SPACE**

A landscaped area not less than .25 (one quarter) acres in size, not including any detention area, shall be provided as a usable community space. A Type "B" buffer shall be planted on the eastern property line if the current row of tree's is removed or damaged. Community space may include parks, benches, picnic tables, playground equipment or similar amenities.

## **7.I. MISCELLANEOUS STANDARDS**

Impervious areas shall comprise no more than 75% of the total site, regardless of any division of land, within the boundaries of PUD19 and a minimum of 25% of greenspace shall be provided. Parking for commercial uses shall be provided on each individual lot at a rate as prescribed in the Cleveland Zoning Ordinance unless deemed not necessary by the City's Transportation Engineer. Parking for any residential development shall be provided on each individual lot at a rate not less than 2 parking space per residential unit.

All residential structures shall have a minimum of 25% brick or stone on the front façade facing any public right-of-way. All driveways must be separated by a minimum 2' landscape strip. If units are to access directly on to McNabb Drive the developer shall improve the impacted section of road to current city standards.

## **Section 8. 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 PUD 19. 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 by the City's Building Official). 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 9. 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. Where this ordinance contemplates the future approval of a detailed site plan, or the future approval of a plat by the Cleveland Municipal Planning Commission, and where this ordinance contemplates the future refinement of plans to conform with permitting requirements or conditions of approval necessitated by staff review, and where the Developer and the City of Cleveland may enter into future agreements regarding possible public facilities, infrastructure, and/or services within PUD19, an amendment to this ordinance is not required to implement such site plan, plat, or refinement to plans necessitated by permitting or review requirements, or agreement pertaining to public facilities, infrastructure, or services.

#### **Section 10. BINDING UPON OTHERS.**

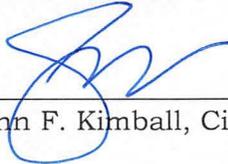
This ordinance is a law and not a contract, and as such it is generally binding upon all development and use of property in the PUD19 zoning district and is binding upon City's regulation of these activities in this location. Moreover, it shall be the duty of the Developer to ensure compliance with all 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 current owner of record, any heirs, 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.

#### **Section 11. CONFLICTS, SEVERABILITY, AND EFFECTIVE DATE.**

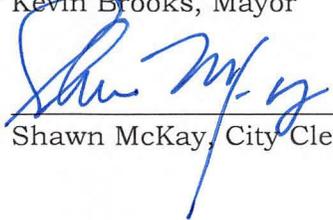
Where this ordinance is in conflict with existing ordinances with respect to the development of this property the terms of this ordinance shall prevail unless stated

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 AS TO FORM:

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

  
\_\_\_\_\_  
Kevin Brooks, Mayor

  
\_\_\_\_\_  
Shawn McKay, City Clerk

