

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of August 18, 2009

SUBJECT: Briarwood Lots 12 & 13 Amended PUD Site Plan (South side of Briarwood Circle Drive, west of State Street) File No. SP09-016

PROPOSED CITY PLANNING COMMISSION MOTION

The Ann Arbor City Planning Commission hereby recommends that the Mayor and City Council approve the Briarwood Lots 12 & 13 Amended 8/13/09 PUD Supplemental Regulations, and 7/27/09 PUD Site Plan and 8/13/09 Development Agreement.

STAFF RECOMMENDATION

Staff recommends that the proposal be **approved** because it complies with all the applicable local, state and federal laws, ordinances, standards and regulations; would not cause a public or private nuisance; and would not have a detrimental effect on public health, safety or welfare.

LOCATION

The site is located on the south side of Briarwood Circle Drive, west of State Street (South Area). This site is located in the Malletts Creek Watershed.

DESCRIPTION OF PETITION

The petitioner is proposing an amended PUD Site Plan. This petition proposes to construct two, four-story hotels (total of 227 rooms) on this 8.28-acre site. The hotel proposed on the west side of the site will have 130 rooms, a pool and a small restaurant for hotel guests. The east hotel is proposed to be an extended stay facility and include kitchenettes in each of the 97 rooms. Vehicular access is provided from Briarwood Circle Drive.

The amended PUD Site Plan proposes elimination of the 25 off-site parking spaces located north of Briarwood Drive and the addition of 54 on-site parking spaces increasing the total to 227 spaces or one parking space per hotel room. The newly proposed parking lot modifications will result in a reduction of open space on the site from 70.1% to 66.8%. Additional trees (8) are proposed along the south property line to help compensate for the loss of open space and a retaining wall to separate the woodland from the parking area.

Additional changes to the site plan include an increase of floor area to the east hotel, Hotel B, of 620 square feet (155 square feet per 4 floors) and a reduction in floor area of Hotel A (5,048 square feet) for an overall reduction of 4,428 square feet. The amended site plan includes phasing the construction of the hotels with Hotel B proposed in Phase 1 and Hotel A in Phase 2. Phase 1 includes mass grading the entire site and the construction of Hotel B and associated parking. Phase 2 includes Hotel A and its' associated parking.

Development Agreement and Supplemental Regulations – A draft development agreement and supplemental regulations has been completed. It will be finalized prior to City Council approval.

COMPARISON CHART

| | | EXISTING | PROPOSED | REQUIREMENTS |
|-----------------------|-------|---|--|--|
| Zoning | | PUD | PUD | PUD |
| Gross Lot Area | | 361,038 sq/ft (8.28 acre) | 361,038 sq/ft | No minimum |
| Floor Area Ratio | | 0% for lots 12-13 (12.1% for lots 12-15) | 37.4% for lots 12-13 (30.1% for lots 12-15) | (38% MAX for lots 12-15, per existing PUD) |
| Setbacks | Front | NONE | 36 ft from Briarwood Circle 69 ft from I-94 | 36 ft MIN from Briarwood Circle 68 ft MIN from I-94 |
| | Side | NONE | 108 ft – West 251 ft – East | 108 ft MAX – West 251 ft MAX – East |
| Building Height | | NONE | 60 ft | 60 ft (MAX Allowed by existing PUD) 40 ft (MAX Allowed by R5) |
| Parking – Automobiles | | NONE | 227 spaces on site | 227 spaces MIN (required by existing PUD) 227 spaces MIN (required for hotels in Chapter 59 – Off Street Parking) |
| Parking - Bicycles | | NA | 8 spaces – Class A (2 deferred in Phase I) | 8 spaces – Class A |

SURROUNDING LAND USES AND ZONING

| | LAND USE | ZONING |
|-------|------------------------|--|
| NORTH | Regional Shopping Mall | C2B (Business Service District) and P (Parking District) |
| EAST | Retail | PUD (Planned Unit Development District) |
| SOUTH | Freeway | n/a |
| WEST | Hotel | R4B (Multiple-Family Dwelling District) |

HISTORY

Briarwood Shopping Mall was completed in 1973. At that time, outlots were created to accommodate future growth and expansion. In 1990, the South Area Plan was adopted and recommended research and industrial uses for the site (the site was zoned agricultural at the time). In 1995, the City completed an amendment to the South Area Plan, called “Briarwood Subarea Plan,” which recommended commercial uses for the site. In 1996, a PUD had been approved for a project called “Briarwood Lots 12, 13, 14 and 15,” which consisted of outlots on the south side of Briarwood Circle Drive. The approved PUD identified the following uses as permitted principal uses:

1. Retail sales.
2. Offices.
3. A motel, with a maximum capacity of 125 rooms.
4. A restaurant, not to exceed 8,000 square feet, to be constructed only in concurrence with and adjacent to the motel.

The maximum height for motel use was identified as 48 feet. The maximum floor area ratio (FAR) was identified as 20 percent for the entire development (Lots 12-15). Lot 15 is furthest to the east and consists primarily of a detention pond. Lot 14 now consists of a one-story retail building (La-Z-Boy). Lots 12 and 13 are located west of the La-Z-Boy property. The site is vacant and includes portions of existing detention ponds on the east and west sides. In 2005, a project called Dick's Sporting Goods, a single-story retail building, was approved for this site but was not built. A PUD Site Plan and revised supplemental regulations were approved in 2008 to allow two hotels totaling 227 rooms and 138,838 square feet of floor area. An administrative amendment to this site plan was approved in 2009 reducing off site parking from 26 spaces to 25 spaces and increasing on site parking from 172 spaces to 173 spaces.

PLANNING BACKGROUND

The South Area Plan (1990) recommends research and industrial uses for the site. The site is currently zoned PUD. Conditions have changed over the past two decades as the Briarwood area has become a major regional commercial center with a wide variety of land uses. The site's proximity to Interstate 94, employment centers in the area, retail/restaurant opportunities and Detroit Metro Airport make it appropriate for hotel uses.

The petitioner is proposing to modify four elements of the PUD:

1. The construction of two hotels in two phases.
2. Increasing the number of allowable hotel rooms from 125 to 227.
3. Increasing allowable height from 48 feet to 60 feet.
4. Increasing the allowable FAR from 20 percent to 38 percent.

These proposed revisions to the PUD are consistent with the uses of the existing PUD. The project also proposes to use land and infrastructure more efficiently than the existing PUD. Additionally, the project will encourage pedestrian access to Briarwood Mall and other uses in the area, which is consistent with the goals of the Citywide Non-motorized Plan that encourages a mixture of compact land uses to support non-motorized travel.

The proposed project is consistent with the permitted principal uses (motel) identified in the Briarwood Lots 12-15 PUD. Although the project proposes to increase the FAR beyond what is allowed in the existing PUD, the proposed FAR (38 percent) is lower than that allowed in the Office (40 percent), ORL (40 percent), C1 (40 percent), and C3 (50 percent) zoning districts. The proposed project is consistent with the character of the Briarwood area, which includes more intense regional commercial uses.

STAFF COMMENTS

Planning – Staff supports the proposed footprint increase, slight change to Hotel B façade and increased parking counts. The petitioner has indicated Briarwood Mall is unwilling to allow parking on site due to leasing constraints and the proposed hotel requires one space per room.

The proposed façade change and floor area change are slight and do not impact the proposal in a negative way.

Public Services (Engineering) – Staff has modeled the impacts to the downstream sanitary sewer as a result of this project. The results from this model have indicated sufficient capacity exists in the local sewer system for this development. However, the model has identified capacity issues in the downstream trunkline sewer. In accordance with the Development Sewage Flow Offset Mitigation Program, footing drains must be disconnected to offset the proposed flow generated by the development (as well as 20% system recovery factor). In order to address this trunkline issue, these disconnections are to be performed upstream of the location of the identified trunkline capacity problem. This condition has been included in the site development agreement for this project.

Malletts Creek Coordinating Committee - The committee suggested modifying the phase lines to put the southern parking bay and associated retaining wall in Phase 2. That way, if Phase 2 is delayed or never built, the woodland would be less impacted.

Petitioner Response: "The portion of the retaining wall included in phase 1 extends only along the parking spaces that are included in phase 1. The wall height ranges from about two feet in height at the east end (at the trash area) to about 3½ feet in height at the west end (at the future steps). This portion of the wall can be constructed as a gravity wall with no tiebacks, anchors or other excavation behind the wall. The minimum distance between the retaining wall and the woodland trees is approximately 19 feet in Phase 1. That is enough room to construct this wall and not disturb the woodland. The woodland will be protected. Constructing this portion of the wall will establish the limit of disturbance and assist in determining the alignment of the wood chip path above the wall. Constructing the parking spaces along the retaining wall minimizes the total amount of Phase 1 paving needed to provide the required number of parking spaces, and locates the spaces closer to the Phase 1 hotel."

The committee suggested the proximity of the grading limits to the retaining wall may not be enough room shown to construct the wall without going beyond the grading limits. Five feet is shown between the top of the wall and the grading limit. The detail on sheet 15 shows a minimum of 3 feet of excavation beyond the wall with anchors extending 6 plus feet beyond that in Phase 2. Since the grading limits are at the woodland boundary, if disturbance occurs beyond the grading limits, the woodland will be disturbed.

Petitioner Response: "All work required to construct the walls will be done from the parking lot side of the wall. There is no need for any construction disturbance above the wall. As noted above, the Phase 1 wall is very short and does not require tiebacks. Grading required behind the wall is minimal, with a total width of excavation at approximately 6 feet (width of wall unit plus 3 feet). The minimum distance from the Phase 1 wall to the trees is 19 feet, more than enough distance to construct the wall without impacting the trees. There will be no woodland disturbance in Phase 1.

The Phase 2 wall is taller and does require the use of some type of tieback system. The Phase 2 portion of the wall is a minimum of 14 feet from the trees. That is why a duckbill anchor system is specified.

Excavation to construct the wall is designed to be limited to the width of the wall units plus about 3 feet, as shown on the detail on sheet 15. That would require an excavation width of about 6 feet. The construction fence and grading limits shown on sheet 8 are 7 feet behind the face of the wall.

For the segment of the wall that is 6 to 7 feet in height, a single row of anchors will be required, spaced horizontally at approximately 6 feet on center. Where the wall is 4 to 6 feet in height, a single row of anchors will be required, spaced horizontally at approximately 9 feet on center. The anchors are driven or screwed into the soil without excavating as you would to install fabric tiebacks. Woodland disturbance in Phase 2, if any, will be minimal.

Staff will monitor construction to ensure the petitioner is following its approved site plan. Any disturbance of natural features shown to be protected on the site plans will result in enforcement action. Tree protection fencing must be installed with soil erosion control installations per the site plan detail prior to any excavation.

Prepared by Chris Cheng
Reviewed by Connie Pulcifer
jsj/8/13/09

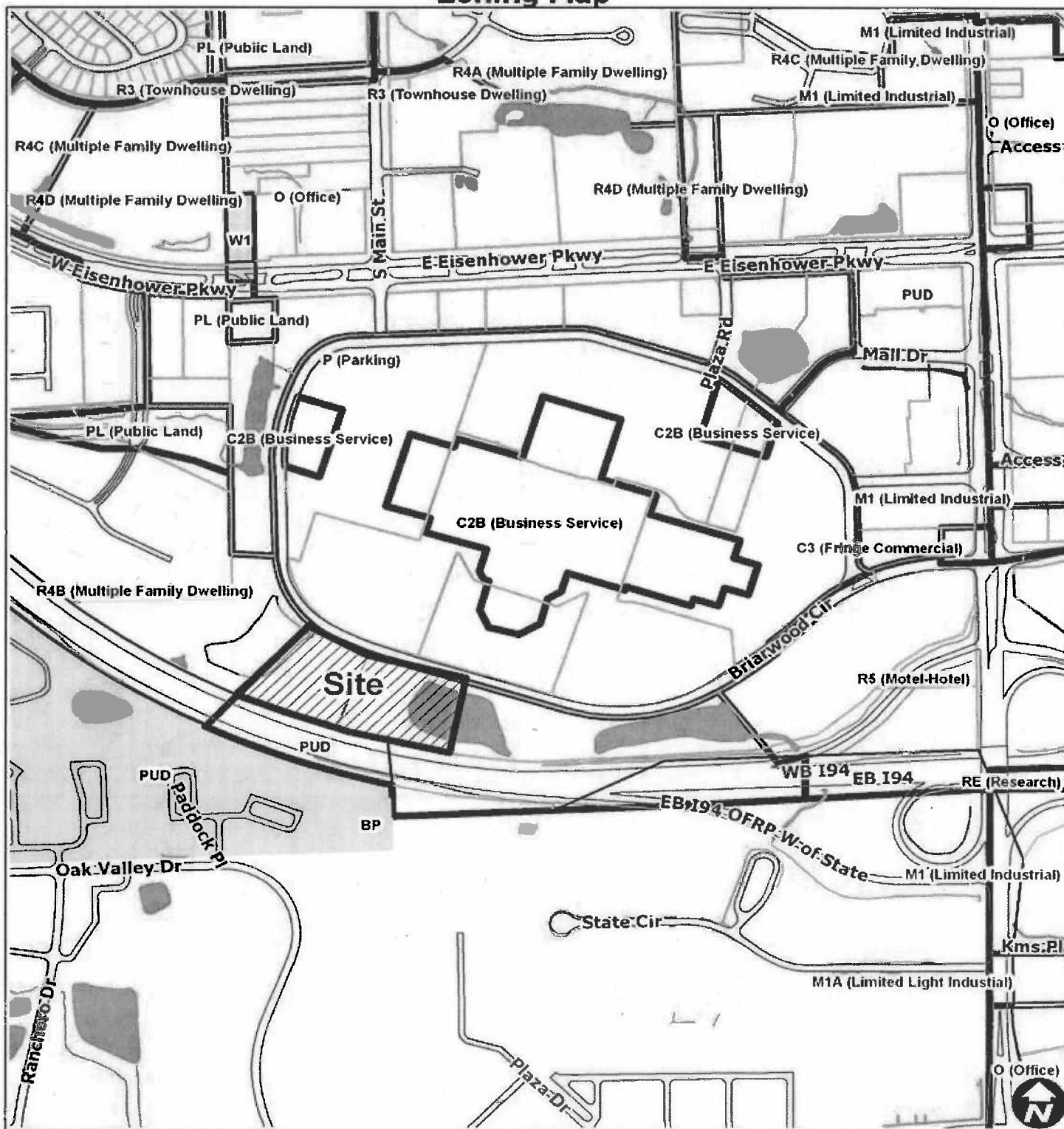
Attachments: Parcel/Zoning Map
Aerial Photo
7/27/09 Site Plan
7/27/09 Landscaping Plan
7/27/09 Elevations
Citizens Participation Report
8/13/09 Draft Supplemental Regulations
8/13/09 Draft Development Agreement

c: Developer: Raymond Management Company
8333 Greenway Blvd.
Middleton, WI 53562

Engineer: Midwestern Consulting, Inc.
3815 Plaza Drive
Ann Arbor, MI 48108

City Attorney
Systems Planning
File No. SP09-016

Briarwood Lots 12 & 13 Zoning Map



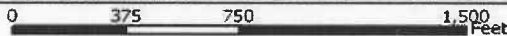
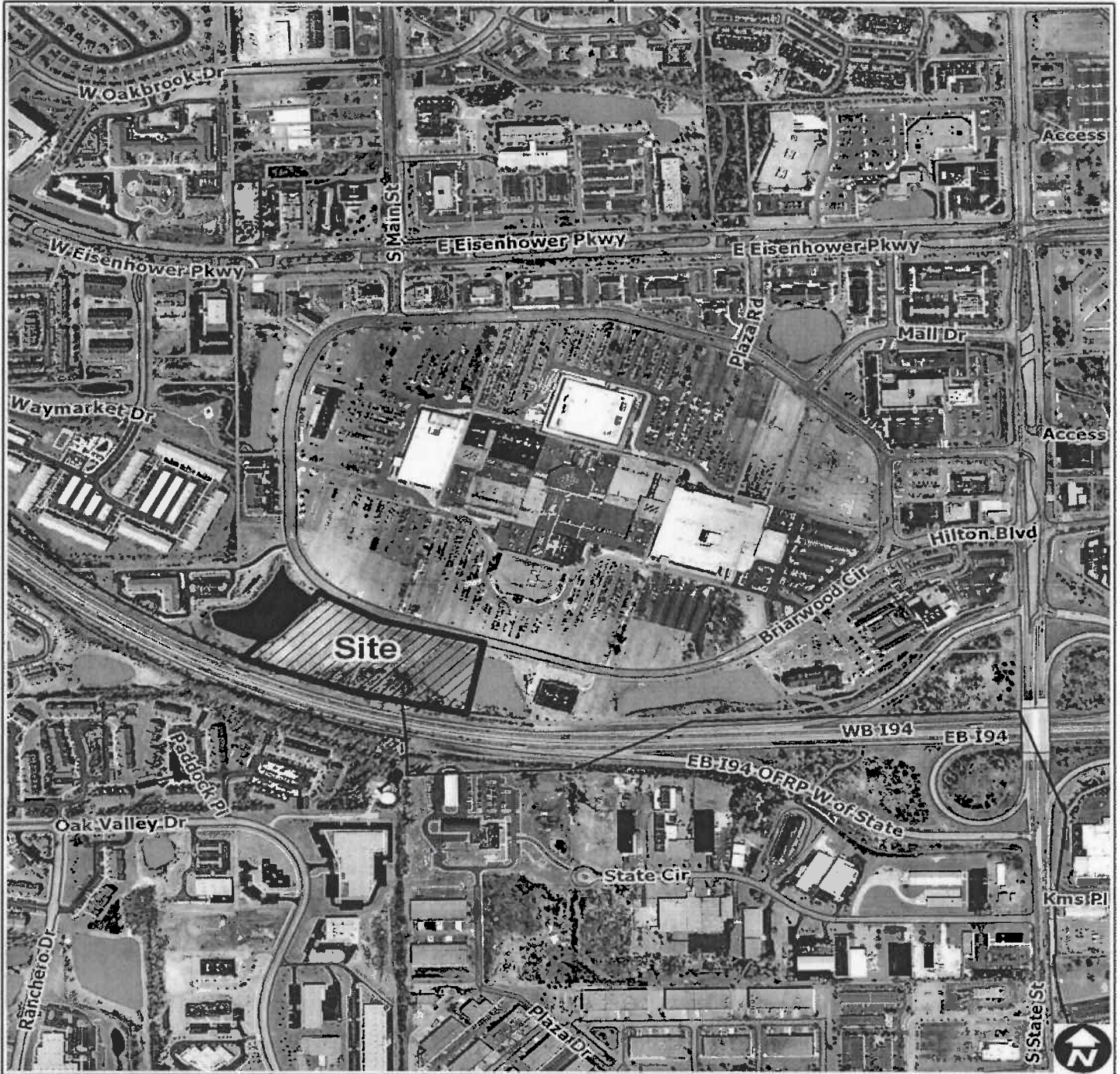
| Map Legend | |
|------------|------------------|
| | City Boundary |
| | Railroads |
| | Edge Of Pavement |
| | Parcels |



Maps available online:
<http://gisweb.ewashtenaw.org/website/mapwashtenaw/>

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Briarwood Lots 12 & 13 Aerial Map



| Map Legend | |
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| | City Boundary |
| | Railroads |
| | Edge Of Pavement |
| | Parcels |

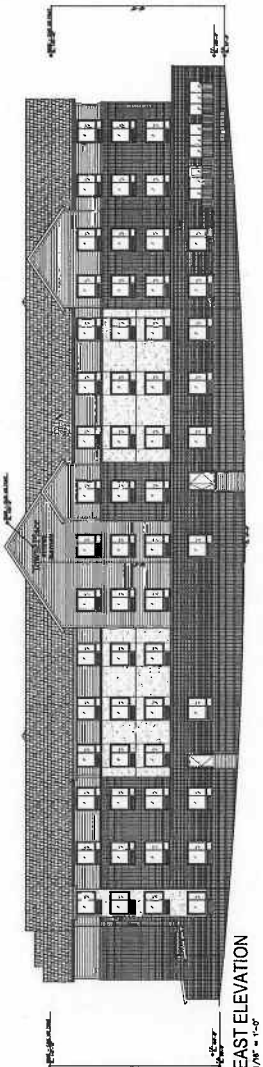


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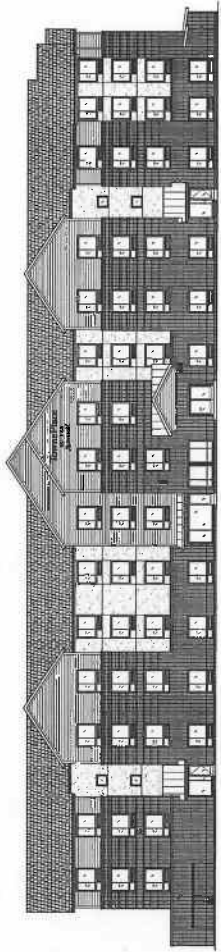
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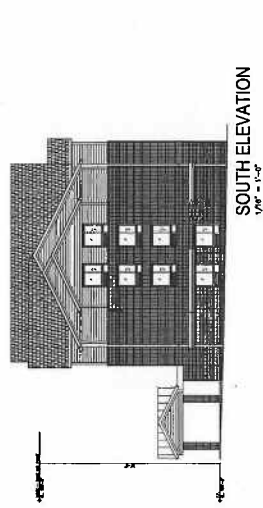
GUY HOOK & ASSOCIATES
ARCHITECTS
2001 SOUTHWEST DRIVE
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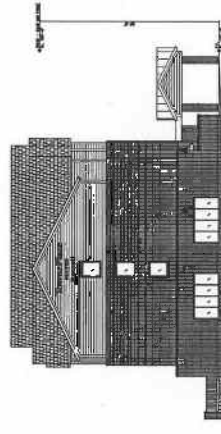
EAST ELEVATION
1/8" = 1'-0"



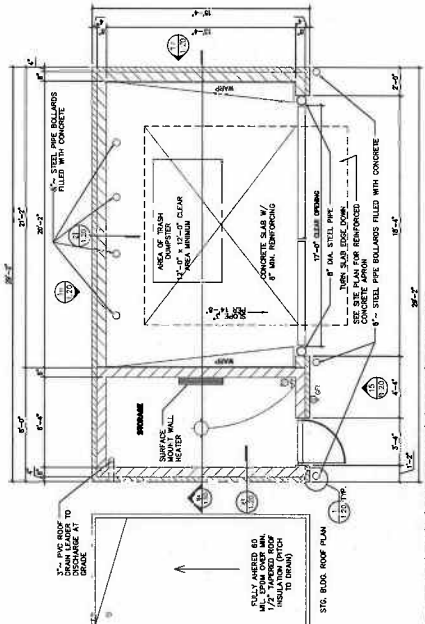
WEST ELEVATION
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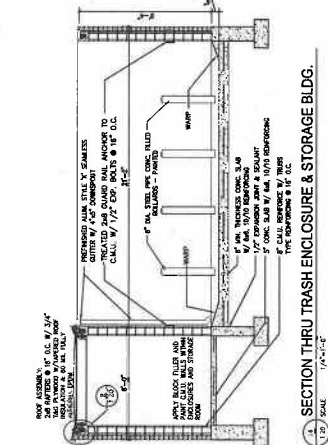
SOUTH ELEVATION
1/8" = 1'-0"



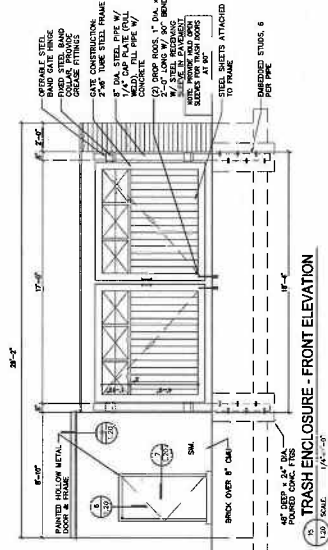
NORTH ELEVATION
1/8" = 1'-0"



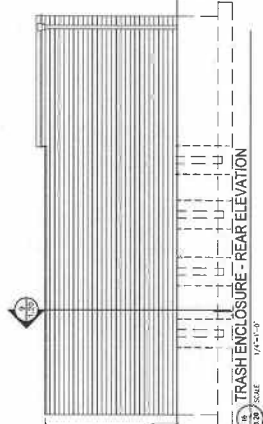
TRASH ENCLOSURE PLAN & STORAGE BUILDING
1/8" = 1'-0"



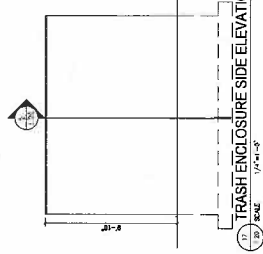
SECTION THRU TRASH ENCLOSURE & STORAGE BLDG.
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TRASH ENCLOSURE - FRONT ELEVATION
1/8" = 1'-0"



TRASH ENCLOSURE - REAR ELEVATION
1/8" = 1'-0"



TRASH ENCLOSURE SIDE ELEVATION
1/8" = 1'-0"

MATERIALS LEGEND

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PROJECT: PROPOSED HOTEL "B" - BRIARWOOD LOTS 12 & 13
ANN ARBOR, MICHIGAN
BRIARWOOD CIRCLE DRIVE
RAYMOND MANAGEMENT, INC.
7700 MENAUL POINT ROAD, SUITE 100
MADISON, WISCONSIN

CLIENT: RAYMOND MANAGEMENT, INC.
ANN ARBOR, MICHIGAN
BRIARWOOD CIRCLE DRIVE
7700 MENAUL POINT ROAD, SUITE 100
MADISON, WISCONSIN
PROJECT: 2002008
FILE: HQ-801-2002008
DRAWN BY: RC
DATE: 09/08/08
AMENDED SITE PLAN
6-17-09
7-22-09
7-27-09



Civil, Environmental and
Transportation Engineers
Planners, Surveyors,
Landscape Architects

3815 Plaza Drive
Ann Arbor, Michigan 48108
734.995.0200 Phone
734.995.0599 Fax

August 7, 2009

City of Ann Arbor
Planning Department
100 N. Fifth Avenue
Ann Arbor, MI 48107-8647

Attn: Chris Cheng

via email to ccheng@a2gov.org

Re: **Briarwood Lots 12 and 13 Hotels
Amended PUD Site Plan
Citizen Participation Report**

Dear Mr. Cheng:

The following is the Citizen Participation Report for the proposed Amended PUD Site Plan for Briarwood Lots 12 and 13 Hotels.

1. Approximately 510 postcard notices were sent out on July 7, 2009 to all addresses provided by the City for locations within 500 feet of the site.
2. 58 postcards were received stamped "return to sender, vacant, unable to forward." These cards were all addressed to Signature Club Apartment units.
3. 10 postcards were received stamped "return to sender, not deliverable as addressed, unable to forward." These cards were all addressed to locations along Briarwood Circle Drive.
4. 442 postcards were apparently delivered successfully.
5. No comments were received by phone, mail or email.

Please contact us if additional information is required. Thank you for your assistance.

Respectfully submitted:
MIDWESTERN CONSULTING

A handwritten signature in black ink, appearing to read 'Earl F. Ophoff', is written over a printed name and title.

Earl F. Ophoff, Project Manager

Cc: Raymond Management Company, 8333 Greenway Boulevard, Suite 2000,
Middleton, WI 53562; attn: Jeff Kraemer

Gary Brink and Associates, 8401 Excelsior Drive, Madison, WI 53717; attn: Gary
Brink

R:\08022\ACAD\Marketing\08022PC.dwg, 8:5X11 (Postcard), 6/16/2009 1:13:14 PM, WAJ, \\Data1\Canon_IRC\3480_PC16--Main



Notice of proposed Briarwood Lots 12 and 13 Hotels, Amended Planned Unit Development Site Plan

BRIARWOOD MALL

Postcards are being sent to all residents living within 500 feet of the project site giving notice that an Amended Site Plan petition has been submitted. The Site Plan for two hotels was originally approved on 9/22/08. Amended Site Plans are available for review in the City Hall lobby. The City Planning Commission is expected to consider the site plan on 8/18/09.

Project Location: South side of Briarwood Circle Drive between the Extended Stay America hotel and the former Lazy Boy Showroom.

Project Description: Proposed revisions include eliminating all off-site parking and adding 54 spaces on-site. 227 hotel rooms and 227 parking spaces are proposed. Additional tree plantings are proposed on the south side of the hotels and parking lot adjacent to I-94. Hotel 'B' has been revised to change 8 "king studio" rooms to 8 "queen double" rooms. This adds 155 square feet to the Hotel 'B' footprint and 620 square feet to the total floor area. The west facade of Hotel 'B' is also revised to incorporate the floor area revision into larger gabled areas on each side of the main entry.

Questions or Comments: Please contact Earl Ophoff at Midwestern Consulting prior to July 22, 2009, at (734) 995-0200, efo@midwesternconsulting.com.

10 To Screen
Bard TXT



3815 Plaza Drive

Ann Arbor, MI 48108

Engineering

Civil

Transportation

Environmental

Surveying

Planning

Landscape architecture

GIS / MIS

**Briarwood Lots 12 & 13 PUD Zoning District
Supplemental Regulations**

Section 1: Purpose

It is the purpose of the City Council in adopting these regulations to provide for the coordinated and unified re-development of this parcel of land, which is currently vacant. These regulations seek to promote development of two hotels which can provide hospitality services to Ann Arbor visitors and provide opportunities for pedestrian access to a variety of retail and restaurant services, share parking with the adjoining shopping mall and be compatible with surrounding land uses.

Section 2: Applicability.

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

Lots 12 & 13, Briarwood Subdivision, as recorded in Liber 22, Pages 66-75 of Plats, Washtenaw county Records, Washtenaw County, Michigan.

Further, the provisions of these regulations shall be adopted and incorporated into the Briarwood Lots 12 & 13 Planned Unit Development zoning district. These regulations, however, are intended to supplement only those provisions in the City Codes that may be modified as a part of a PUD and shall not be construed to replace or modify other provisions or regulations in the City Codes.

Section 3: Findings

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

- (A) It is desirable to develop the parcel described above with hotel uses that can add to the mixture of uses within walking distance of Briarwood Mall.
- (B) Mallets Creek and the Huron River and their associated watersheds will be protected and enhanced by the expanded and a unified storm water management system within the development.
- (C) A compact, pedestrian-oriented development with protected open space will provide an amenity for guests and employees of the hotels.
- (D) Additional job opportunities within the City limits will result from the development of the hotel uses.
- (E) Negative impacts of the development on the surrounding public street system and adjacent intersections will be mitigated by the petitioner's contribution to appropriate remedial measures, which are an outcome of a comprehensive traffic study, and by the reduction in vehicle trips, which result from the close proximity to nearby services.

Sidewalks and paths around and through the site will facilitate easy pedestrian accessibility by surrounding land users.

- (F) Pedestrian paths through the woodland and the planting of native vegetation will provide pedestrian and recreational opportunities.
- (G) The parcel described above meets the standards for approval as a PUD, and the regulations contained herein constitute neither the granting of special privilege nor deprivation of property rights.

Section 4: PUD Regulations

- (A) Permitted principal uses of the components of the development (as diagrammed in Exhibit A, attached) shall be:

East Building: Hotel

West Building: Hotel with restaurant primarily serving hotel guests

- (B) Permitted accessory uses shall be:

Parking Lots

- (C) Setbacks (see Exhibit A):

Front: North (Briarwood Circle Drive) – 36 feet minimum
South (I-94) – 68 feet minimum

Side: West 108 feet minimum
East 251 feet minimum

Rear: None

- (D) Height: Maximum heights shall be restricted, as shown below (refer to Exhibit A, attached for building location):

East Building: 60 feet and 4 stories, maximum; 40 feet and 3 stories, minimum.

West Building: 60 feet and 4 stories, maximum; 40 feet and 3 stories, minimum.

Heights shall not be applicable to roof-mounted mechanical equipment.

- (E) Lot Size: The size of the PUD zoning district shall be 8.28 acres, more or less.

The PUD may be further subdivided into no more than two lots, in accordance with the laws of the State of Michigan; provided, however, that easements shall be recorded conveying to each owner the right of shared parking and vehicular and pedestrian access between any and all lots and addressing the ownership and obligation of maintenance and liability for those elements of the site, including, but not limited to, private streets and sidewalks, utilities, storm water management system, assignment of floor area in percentage of lot area within the PUD, and architectural review.

- (F) Floor Area Ratio: Floor area in percentage of lot area for the PUD shall be determined for the entire 8.28-acre zoning district and shall not exceed 38 percent based on gross building square footage.

(G) Parking:

Vehicular: 227 vehicle parking spaces shall be provided on site. Parking easements for shared on site parking spaces and access shall be recorded. Surface parking spaces shall conform to City standards and shall not exceed 9 feet by 18 feet for 90-degree parking or 9 feet by 20 feet for parking parallel to a curb. A permanent access easement shall be established and recorded by the developer.

Bicycle: No fewer than 8 Class A bicycle parking spaces shall be provided.

(H) Screening and Buffers:

The dumpsters shall be screened as shown on the approved site plan and shall meet the materials standards in the City of Ann Arbor Code of Ordinances.

(I) Landscaping and Site Amenities

Landscape design and installation shall be coordinated throughout the PUD zoning district, as referenced in Exhibit A. All paved surface materials and walls shall meet performance standards of the City of Ann Arbor Public Services Area Standard Specifications. All landscaping shall meet the materials standards established in Chapter 62, Landscape and Screening, of the City Code and in these supplemental regulations. All trees shall be planted at least 15 feet apart.

(J) Site Access

Vehicular: Access shall be limited to the following (refer to Exhibit A):

Briarwood Circle Drive – two curb cuts on the north side of the property.

Pedestrian: Barrier-free public access shall be provided to and within the site by sidewalks, not less than five feet in width, with access to and across Briarwood Circle Drive. Barrier-free public access shall be maintained to both buildings on the site and along all sidewalks.

(K) Architectural Design:

General: Principal exterior materials of all sides of buildings shall be brick, masonry, terra cotta, EFIS, and pre-cast concrete with accent materials including rough face concrete block, stucco, wood, and metal panels. Roof areas visible from ground level shall be surfaced with standing seam metal or asphalt (dimensional or architectural) shingles.

Transformers, meters, roof-mounted equipment, loading, and service areas shall be screened using materials consistent with buildings' principal and accent materials.

Facades: Building façades shall be detailed to provide architectural relief, accent materials, fenestration, and varied rooflines, and be consistent with the approved site plan.

Entrances: Public entrances to buildings shall be provided in no fewer locations than the following:

East Building: At least two, both facing west.

West Building: At least two, one facing east and one facing north.

(L) Phasing

The PUD may be constructed in two phases. Phase One includes mass grading the entire site, all public water main and sanitary sewer, Hotel 'B', necessary storm sewer including outlets for Hotel 'A' and 'B', 16 footing drain disconnects, 98 parking spaces, associated landscaping and site lighting, and a temporary drive to the west entry at Briarwood Circle Drive.

The future Phase Two area is to be temporarily stabilized with topsoil and seed, and a temporary sediment basin will be provided.

Phase Two includes Hotel 'A', 18 footing drain disconnects, 129 parking spaces and the remaining utilities, landscaping and lighting.

Attachment: Exhibit A – 7/27/09 Site Plan

Prepared by Jeffrey Kahan
JK/lf

BRIARWOOD LOTS 12 & 13 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 Raymond Management Company, a Wisconsin Corporation, with principal address at 8333 Greenway Boulevard, Suite 2000, Middleton, Wisconsin 53562, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as Briarwood Lots 12 & 13 Planned Unit Development (PUD), and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Briarwood Lots 12 & 13, 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 PROPRIETOR will install these improvements prior to any permits being issued, and

WHEREAS, on September 22, 2009, City Council adopted the PUD Zoning and Supplemental Zoning Regulations for the Briarwood Lots 12 & 13 PUD.

WHEREAS, on September 22, 2008, City Council approved the PUD Site Plan ("Site Plan") for Briarwood Lots 12 & 13 PUD pursuant to a resolution adopted on that date.

WHEREAS, on _____, 2009, City Council approved the Amended PUD Site Plan ("Site Plan") for Briarwood Lots 12 & 13 PUD pursuant to a resolution adopted on that date.

THE PROPRIETOR HEREBY AGREES:

(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, public and private storm water management systems, sidewalks and streetlights as shown on the Site Plan approved by the City, or as necessary to connect to existing City or other facilities either on or adjacent to the site ("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) Should the PROPRIETOR proceed with the project, 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.

(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) To convey to the CITY, prior to the issuance of any Certificate of Occupancy, and subject to acceptance by the Ann Arbor City Council, any easement shown on the Site Plan to be granted to the CITY for public utilities.

(P-5) To install all water mains, storm sewers and sanitary sewers, 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 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-7) 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.

(P-8) Existing woodland trees shown on the site plan as trees to be saved shall be maintained by the PROPRIETOR in good condition for a minimum of three years after the granting of Certificate of Occupancy. Existing woodland trees that are determined by the CITY Public Services Administrator or designee to be dead, dying or severely damaged due to construction activity within three years after acceptance of the issuance of the final Certificate of Occupancy, shall be replaced by the PROPRIETOR as provided by Chapter 57 of the Ann Arbor City Code.

(P-9) Should the PROPRIETOR proceed with the project, to construct, repair and/or adequately maintain the private on-site storm water management system. (The private on-site storm water management system connects to, but does not include, the public system which is under the oversight and control of the Washtenaw County Drain Commissioner.) 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-10) After construction of the private on-site storm water management system, to maintain it in good working order. Any proposed changes to the private on-site storm water management system must be approved by the City of Ann Arbor Systems Planning and Planning and Development Services Units. If the PROPRIETOR fails to maintain any portion of the 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 maintenance 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, as appropriate, within the time set forth in the notice. If the CITY completes the work, and the costs remain unpaid by the PROPRIETOR for 60 days after notice via first class mail, the CITY may bill the PROPRIETOR for the total cost, or assess those costs as provided in Chapter 13 of Ann Arbor City Code.

(P-11) 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-12) That traffic mitigation measures in the State Street *corridor* will be beneficial to the PROPRIETOR'S property and, therefore, to pay the CITY \$8,700.00 for its share of the cost for traffic mitigation measures, which may include, but are not limited to one or more of the following:

- a) Signalization of the State Street/Hilton Way intersection.
- b) Geometric and pavement marking revisions.

The PROPRIETOR will pay to the CITY \$8,700.00 within 60 days of invoicing, its share of the cost of the improvements.

The CITY has the right, in its sole discretion, to choose which traffic mitigation measures it will implement. However, the CITY agrees that it will not charge the PROPRIETOR for more than \$8,700.00, as set forth above, of the traffic mitigation measures the CITY finds necessary to address the impact of the PROPRIETOR'S development.

(P-13) 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-14) 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 material changes to the approved building elevations, setbacks, aesthetics, or materials, as determined by the Planning and Development Services Manager or designee, that those changes be brought back to the City Council for consideration. The PROPRIETOR is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-15) 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-16) No lot may be divided such that an additional building parcel is created.

(P-17) Prior to application for and issuance of certificates of occupancy, to disconnect 34 footing drains (18 for Hotel "A" as shown on the Site Plan at the west end of the site, and 16 for Hotel "B" as shown on the Site Plan at the east end of the site) 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), provided that the required footing drain disconnects are performed within the Southwest (Pittsfield) Submain service area, upstream of where the development flows connect to this submain (near the intersection of State Street and Mall Drive). 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-18) 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-19) 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-20) 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-21) 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 Briarwood Lots 12 & 13 PUD and PUD site Plan.

(C-2) To use the \$8,700.00 contribution, as stated above, for traffic mitigation measures identified in paragraph P-12.

(C-3) To provide timely and reasonable CITY inspections as may be required during construction.

(C-4) 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:

Lots 12 & 13, Briarwood Subdivision, as recorded in Liber 22, Pages 66-75 of Plats, Washtenaw county Records, Washtenaw County, Michigan.

(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.

(T-7) The recitals discussed above are true and accurate and are incorporated into and made a part of this Agreement.

(T-8) This Agreement replaces and supersedes all prior approvals and agreements affecting Briarwood Lots 12 & 13 including but not limited to that certain Briarwood Lots 12, 13, 14 & 15 Planned Unit Development Site Development Agreement and attachments, dated November 7, 1996, recorded at Liber 3449, page 117, et. seq., Washtenaw County Records.

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

Raymond Management Company
A Wisconsin corporation
8333 Greenway Boulevard, Suite 2000
Middleton, Wisconsin 53562

Witness:

By: _____
C.J. Raymond, President

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2009, 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)
) ss:
County of)

On this _____ day of _____, 2009, before me personally appeared C.J. Raymond, President, Raymond Management Company, 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 _____, State of _____
My Commission Expires: _____
Acting in the County of Washtenaw

DRAFTED BY AND AFTER RECORDING RETURN TO:

Wendy Rampson, Manager
Ann Arbor Planning & Development Services
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800