

BRIARWOOD RESTAURANTS DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this ____ day of _____, 20__, by and between the City of Ann Arbor, a Michigan municipal corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY, and Briarwood Shops, LLC, a Delaware limited liability company, with address c/o Simon Property Group, with principal address at 225 West Washington Street, Indianapolis, Indiana 46204, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below (the "Restaurant Parcel"), which along with adjacent land owned by Macy's Retail Holdings, Inc. (the "Macy's Parcel") is site planned as Briarwood Restaurants, 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 Restaurants, and desires site plan approval, land division approval and development agreement approval thereof, and

WHEREAS, on _____, 2014, City Council approved the Briarwood Restaurants Site Plan (together with any amendments, the "Site Plan" or "Project") and Briarwood Restaurants Development Agreement (the "Agreement") pursuant to a resolution adopted on that date, 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 certificate of occupancy being issued.

SHOULD PROPRIETOR PROCEED WITH CONSTRUCTION OF THE SITE PLAN, 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 and private storm water management systems for the Project ("the Improvements") provided that no work on said Improvements shall be commenced until the

Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement for the Project 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 pursuant to the Plans approved by the CITY as set forth in Paragraph P-1, 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 Improvements set forth in Paragraph P-1 above for the Project 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 grant easements to the CITY for all public utilities (sanitary sewer, water mains, and fire hydrants) on the Restaurant Parcel as shown on the Site Plan and the final approved construction plan, subject to City Council approval. PROPRIETOR shall submit a legal description and survey drawing for the easements for the public utilities on the Restaurant Parcel prior to the request for and issuance of building permits, and the easement shall be granted to the CITY in a form provided by and acceptable to the City Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy for the Restaurant Parcel.

(P-5) To assist the CITY in acquiring easements for all public utilities (sanitary sewer, water mains, and fire hydrants) on the Macy's Parcel as shown on the Site Plan and the final approved construction plan, subject to City Council approval. PROPRIETOR shall submit evidence that the owner of the Macy's parcel has the authority to grant the easements and will cooperate and grant the easements shown on the Site Plan in accordance with the terms of this Agreement. The evidence must be determined to be satisfactory to the City Attorney prior to the request for and issuance of grading and building permits for the Project. PROPRIETOR shall submit a legal description and survey drawing the easements for the public utilities on the Macy's Parcel prior to the request for and issuance of building permits, and the easement shall be granted by the owner of the Macy's Parcel in a form provided by and acceptable to the CITY Attorney. The easement must be accepted by City Council prior to the request for and issuance of any temporary or final certificate of occupancy for the Restaurant Parcel.

(P-6) To make payment in full to the CITY for the project's water service and sanitary sewer service tap fees and meter set fees for the Restaurant Parcel, which shall be due at the time the utility services become active.

(P-7) To install all water mains, storm sewers, sanitary sewers and fire hydrants as shown on the Site Plan, through the first course of asphalt, pursuant to CITY approved plans and specifications, prior to the issuance of any building permits for the Restaurant Parcel.

(P-8) To install all required off-site improvements, including, landscape islands and trees, and Class B and C bicycle parking racks on the Macy's Parcel, prior to the issuance of any temporary or permanent certificate of occupancy for the Restaurant Parcel.

(P-9) Prior to application for and issuance of certificates of occupancy, to disconnect 11 footing drains in accordance with the Guidelines for Completion of Footing Drain Disconnections, Table A, and adopted by City Council, August 18, 2003 and revised November 30, 2005 (the "Guidelines"). Due to sewer capacity constraints during wet weather events, all disconnections shall be made upstream of the capacity constraint in the Pittsfield trunkline near the intersection of Hikone Drive and Packard Road (Manhole ID 71-62980). In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and PROPRIETOR agree to adjust the number of footing drains to be disconnected in accordance with the Guidelines. At the discretion of the CITY Public Services Area, the PROPRIETOR may be allowed to obtain partial certificates of occupancy for the Restaurant Parcel prior to the completion of all of the required footing drain disconnects on a prorated basis (i.e., an individual certificate of occupancy for a single building rather than for both buildings on the Restaurant Parcel), so long as such completed improvements otherwise satisfy the Guidelines described herein.

(P-10) To indemnify, defend 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-11) 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 additional insured to protect and indemnify the CITY against any claims for damage due to public use of the public improvement(s) in the Project 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-12) To prepare and submit to the Washtenaw County Water Resources Commissioner for approval a plan for storm water management measures required to handle the storm water runoff of the proposed development, including an analysis report, clean-out and plans for the redesign of the existing retention pond north of Briarwood Circle Drive, prior to the request for and issuance of any certificates of occupancy for the Restaurant Parcel.

(P-13) To construct, repair and/or adequately maintain the off-site storm water management system described in P-10 above. If the PROPRIETOR fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the PROPRIETOR at the address listed above, requiring it to commence and complete the items stated in the notice within the time set forth in the notice. The CITY may cause the work to be completed at the expense of the PROPRIETOR if the PROPRIETOR does not complete the work within the time set forth in the notice.

(P-14) After construction of the existing off-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating

its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.

(P-15) 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-16) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the development improvements for the Project, and within one month after completion or abandonment of construction.

(P-17) PROPRIETOR is the sole title holder in fee simple of the land described as the Restaurant Parcel 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-18) Failure to construct, repair and/or maintain the site pursuant to the Site Plan and/or failure to comply with any of this 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 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 Site Plan and/or Agreement.

(P-19) 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-20) 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) That easements for public water and sewer mains recorded as Liber 1600, Page 325 and Liber 1525, Page 515, respectively, allow the PROPRIETOR to connect to these public water and sewer mains without the necessity of paying connection or improvement charges for the Briarwood Restaurants Project.

(C-2) In consideration of the above undertakings, to approve the Briarwood Restaurants Site Plan.

(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 Site Plan, shall be binding on any successors and assigns in ownership of the Restaurant Parcel described on Exhibit "A" attached hereto.

(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 for the Project 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 for the Project unless and until the CITY has notified the PROPRIETOR in writing that the PROPRIETOR has satisfactorily corrected the item(s) the PROPRIETOR has failed to perform.

(T-6) This agreement shall be interpreted, enforced and governed under the laws of the State of Michigan and Ann Arbor City Code.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day first above written.

CITY OF ANN ARBOR, MICHIGAN
301 East Huron Street
Ann Arbor, Michigan 48107

By: _____
John Hieftje, Mayor

By: _____
Jacqueline Beaudry, City Clerk

Approved as to Substance:

Steven D. Powers, City Administrator

Approved as to Form:

Stephen K. Postema, City Attorney

By: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____ by John Hieftje, Mayor and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, a Michigan corporation, on behalf of the corporation.

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

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

The foregoing instrument was acknowledged before me this _____, by
_____, _____ of Briarwood Shops, LLC, a Delaware limited liability company,
on behalf of the limited liability company.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Ann Arbor Planning & Development Services
ATTN: Wendy Rampson
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 794-6265

Exhibit A
Property Description
Restaurant Parcel

A part of the North ½ of Section 8, Town 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan, being more particularly described as: Commencing at the Northeast corner of said Section 8; thence South 01 degrees 39 minutes 00 seconds East 623.58 feet along the east line of said Section 8; thence North 87 degrees 39 minutes 00 seconds West 100.24 feet to the west right-of-way line of State Street; thence North 01 degrees 39 minutes 00 seconds West 25.24 feet along said west right-of-way line of State Street; thence 26.12 feet along the arc of a 70.00 foot radius curve to the left, having a chord bearing North 76 degrees 57 minutes 33 seconds West 25.97 feet; thence North 87 degrees 39 minutes 00 seconds West 466.08 feet; thence 185.00 feet along the arc of a 200.00 foot radius curve to the left, having a chord bearing South 65 degrees 51 minutes 00 seconds West 178.48 feet; thence South 39 degrees 21 minutes 00 seconds West 224.47 feet; thence 47.12 feet along the arc of a 30.00 foot radius curve to the left, having a chord bearing South 05 degrees 39 minutes 00 seconds East 42.43 feet; thence North 50 degrees 39 minutes 00 seconds West 33.89 feet; thence South 39 degrees 21 minutes 00 seconds West 56.00 feet; thence South 16 degrees 51 minutes 00 seconds West 554.62 feet; thence North 73 degrees 09 minutes 00 seconds West 137.50 feet for a POINT OF BEGINNING; thence North 73 degrees 09 minutes 00 seconds West 51.59 feet; thence 122.68 feet along the arc of a 156.20 foot radius curve to the right, having a chord bearing North 50 degrees 39 minutes 00 seconds West 119.55 feet; thence 122.68 feet along the arc of a 156.20 foot radius curve to the left, having a chord bearing North 50 degrees 39 minutes 00 seconds West 119.55 feet; thence North 73 degrees 09 minutes 00 seconds West 180.50 feet; thence South 16 degrees 50 minutes 57 seconds West 39.50 feet; thence North 73 degrees 09 minutes 00 seconds West 83.58 feet; thence North 16 degrees 50 minutes 20 seconds East 126.75 feet; thence South 73 degrees 09 minutes 40 seconds East 19.79 feet; thence North 17 degrees 02 minutes 13 seconds East 44.07 feet; thence North 73 degrees 09 minutes 40 seconds West 19.94 feet; thence North 16 degrees 50 minutes 20 seconds East 153.11 feet; thence South 73 degrees 09 minutes 40 seconds East 92.56 feet; thence 44.98 feet along the arc of a 30.00 foot radius curve to the right, having a chord bearing South 30 degrees 12 minutes 45 seconds East 40.88 feet; thence South 12 degrees 44 minutes 09 seconds West 41.85 feet; thence South 16 degrees 50 minutes 20 seconds West 172.97 feet; thence 22.37 feet along the arc of a 60.01 foot radius curve to the left, having a chord bearing South 06 degrees 48 minutes 42 seconds West 22.24 feet; thence South 73 degrees 09 minutes 00 seconds East 134.73 feet; thence 138.39 feet along the arc of a 176.20 foot radius curve to the right, having a chord bearing South 50 degrees 39 minutes 00 seconds East 134.86 feet; thence 106.97 feet along the arc of a 136.20 foot radius curve to the left, having a chord bearing South 50 degrees 39 minutes 00 seconds East 104.24 feet; thence South 73 degrees 09 minutes 00 seconds East 51.59 feet; thence South 16 degrees 51 minutes 00 seconds West 20.00 feet to the POINT OF BEGINNING.

Tax Parcel Number: _____