

**WOODBURY CLUB DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, 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 BRE Nixon Road Associates, LLC, a Michigan limited liability company, with principal address at 200 E. Brown Street, Suite 200, Birmingham, Michigan, 48009, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described below and site planned as Woodbury Club Apartments, and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Woodbury Club Apartments (the "Project"), and desires site plan and development agreement approval thereof, and

WHEREAS, the DEVELOPER 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 DEVELOPER will install these improvements prior to any permits being issued.

**IF THE DEVELOPER PROCEEDS WITH CONSTRUCTION OF THE PROJECT, THE DEVELOPER 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, private storm water management systems, public sidewalks and streetlights ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the City Administrator or designee, and until such other relevant information to CITY service areas as shall be reasonably required has been provided.

(P-2) To construct all Improvements set forth in Paragraph P-1 of this Agreement in accordance with the approved Plans and to repair all defects in the improvements that occur within one year from the date of acceptance of the Improvements by the CITY, commencing on the latest date of the acceptance of any Improvements by the CITY. If the DEVELOPER fails to construct the Improvements, the CITY may send notice via first class mail to the DEVELOPER 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 DEVELOPER, if the DEVELOPER 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 DEVELOPER's engineer inspects.

(P-4) To grant easements to the CITY for the construction and maintenance of public utilities as shown on the site plan and the final approved construction plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easements prior to the request for and issuance of building permits and the easements shall be granted to the CITY in a form acceptable to the CITY Attorney. The easements must be accepted by the CITY prior to the request for and issuance of any temporary or final certificate of occupancy, except the CITY Public Services Area may approve later acceptance of the easements in their sole discretion.

(P-5) To provide, prior to the issuance of building permits, a signing plan to the Fire Department and install all street name signs according to CITY specifications and to provide and install such temporary warning signs during the construction period as are appropriate to protect the health, safety and welfare of the public.

(P-6) To install all water mains, storm sewers, 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, except the timing of such work may be revised to be completed at a later time at the discretion of the CITY Public Services Area. The final course of asphalt paving shall be completed prior to the issuance of the final certificate of occupancy for the first completed residential building.

(P-7) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Nixon Road, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along Nixon Road frontage when such improvements are determined by the CITY to be necessary.

(P-8) To grant a variable width pedestrian access easement to the CITY, with a minimum width of 30 feet and a maximum width of 50 feet, from Nixon Road to the public park and western edge of the east parcel as shown on the site plan and the final approved construction plan, subject to City Council approval. The easement shall also grant the City reasonable access for parks maintenance vehicles. DEVELOPER shall submit legal descriptions and survey drawings for the easement prior to the request for and issuance of building permits and the easement shall be granted to the CITY in a form acceptable to the CITY Attorney. DEVELOPER shall have the right to modify the final location of the easement prior to the request for and issuance of certificates of occupancy with the approval of the CITY Public Services Area, which shall not be unreasonably withheld. The easement must be accepted by the CITY prior to the request for and issuance of any temporary or final certificate of occupancy, except the CITY Public Services Area may approve later acceptance of the easement in their sole discretion.

(P-9) 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 DEVELOPER, 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-10) 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 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-11) Existing woodland, landmark, and street trees shown on the site plan as trees to be saved shall be maintained by the DEVELOPER in good condition for a minimum of three years after acceptance of the public improvements by the CITY or granting of certificate of occupancy for the final unit. Existing woodland, landmark, or street trees that are determined by the CITY to be dead, dying or severely damaged due to construction activity within three years after acceptance of the public improvements or granting of certificate of occupancy for the final unit, shall be replaced by the DEVELOPER as provided by Chapter 57 of the Ann Arbor City Code.

(P-12) To convey to the CITY approximately 6.29 acres of land for a public park as shown on the site plan and the final approved construction plan subject to City Council approval. DEVELOPER shall submit a legal description and survey drawing for the public park prior to the request for and issuance of building permits and the land shall be conveyed to the CITY by warranty deed in a form acceptable to the CITY Attorney. The land must be accepted by the CITY prior to the request for and issuance of any temporary or final certificate of occupancy, except the CITY Community Services Area may approve later acceptance of the park in their sole discretion. A park identification sign shall be provided by the DEVELOPER per CITY specifications before issuance of any certificate of occupancy.

(P-13) To deposit, prior to any building permits being issued, a street tree planting escrow account with the Parks and Recreation Services Unit in the form of a check payable to the City of Ann Arbor. The escrow amount shall be based on the CITY policy in effect at that time and is to include all on-site public streets. The City Administrator may authorize the DEVELOPER to install the street trees if planted in accordance with CITY standards and specifications. If the street trees are found to be acceptable by the CITY, the escrow amount will be returned to the DEVELOPER one year after the date of acceptance by the CITY.

(P-14) To construct, repair and/or adequately maintain on-site storm water management system. If the DEVELOPER fails to construct, repair and/or maintain the private storm water management system, the CITY may send notice via first class mail to the DEVELOPER 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 DEVELOPER if the DEVELOPER does not complete the work within the time set forth in the notice.

(P-15) 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 upon request.

(P-16) Prior to the issuance of any permits, to submit to the CITY's Systems Planning Unit for review and approval a Wetland Monitoring Plan, to implement the plan concurrently with construction of the site improvements, and to submit an annual report regarding implementation of the Wetland Monitoring Plan recommendations to the CITY following issuance of certificates of occupancy.

(P-17) That traffic mitigation measures for the Nixon/Dhu Varren/Green intersection (the "Intersection") will be beneficial to the DEVELOPER's property and, therefore prior to the issuance of building permits to pay the CITY the DEVELOPER's proportional cost of improvements to the Intersection to mitigate the additional traffic generated by the DEVELOPER's project of Two Hundred Thousand Dollars (\$200,000) (the "DEVELOPER's Intersection Contribution"). The Developer's Intersection Contribution shall be used by the CITY, or its agents or contractors, solely for improvements to the Intersection. The CITY intends to use the DEVELOPER's Intersection Contribution to complete the improvements to the intersection no later than January 1, 2018, which is conditioned on Toll Brothers, Inc., or their affiliate or assignee: (1) acquiring the property adjacent to the Intersection, (2) making a contribution to the CITY of the land necessary to construct a roundabout at the Intersection, and (3) paying its proportionate cost of such improvements. In the event that such conditions are met, the CITY agrees to complete the improvements to the Intersection no later than January 1, 2018, and the DEVELOPER agrees that the DEVELOPER shall not request and the CITY shall not issue certificates of occupancy until after the reconstruction of the Intersection is substantially complete. In the event that such conditions are not met, the DEVELOPER agrees that the CITY shall retain the DEVELOPER's Intersection Contribution for future mitigation of the Intersection, and the DEVELOPER agrees that the DEVELOPER shall not request and the CITY shall not issue certificates of occupancy until the first to occur of: (1) completion of the Intersection improvements, or (2) January 1, 2019.

(P-18) 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, DEVELOPER 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-19) 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 DEVELOPER proposes any substantive changes to the approved building elevations, setbacks, aesthetics, or materials, that those changes be brought back to the City Council for consideration. The DEVELOPER is required to submit signed and sealed drawings to staff reflecting the elevations, setbacks, aesthetics, materials and site plan approved by City Council.

(P-20) 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-21) Prior to application for and issuance of certificates of occupancy, to disconnect 65 footing drains, which is based upon the uses currently existing on the Property and those currently contemplated by the Site Plan in accordance with the City of Ann Arbor Developer Offset Mitigation Program as revised by City Council on June 15, 2015 (the "Guidelines"), or to provide an alternative method of mitigation that results in an equivalent amount of sanitary flow removal in accordance with the Guidelines, or to provide mitigation to offset the increased sanitary flow as required by any City Council-approved amendments or replacements to the Guidelines. In the event the actual intensity of uses contemplated by the Site Plan are either increased or decreased, City and DEVELOPER agree to adjust the number of footing drains to be disconnected, or the amount of alternative mitigation to be provided, in accordance with the Guidelines. DEVELOPER 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, such discretion to be reasonably exercised.

(P-22) To grant an easement to the CITY for 27 feet of right-of-way as shown on the Site Plan and the final approved construction plan, subject to City Council approval. DEVELOPER shall submit legal descriptions and survey drawings for the easement prior to the request for and issuance of building permits and the easements shall be granted to the CITY in a form acceptable to the CITY Attorney. The easements must be accepted by the CITY prior to the request for and issuance of any temporary or final certificate of occupancy, except the CITY Public Services Area may approve later acceptance of the easements in their sole discretion.

(P-23) DEVELOPER 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 DEVELOPER has legal authority and capacity to enter into this Agreement for DEVELOPER.

(P-24) 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 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 DEVELOPER complies with the approved site plan and/or the terms and conditions of the approved Agreement. The DEVELOPER 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 Agreement.

(P-25) In addition to any other remedy set forth in this Agreement or in law or equity, if DEVELOPER 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-26) 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 Woodbury Club Apartments Site Plan.

(C-2) To use the DEVELOPER's contribution for traffic mitigation measures to make improvements at the Nixon/Dhu Varren/Green intersection, as stated in P-17 above.

(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 DEVELOPER 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 DEVELOPER, 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:

**PARCEL 1:**

OLD SID: I09-010-019-00 AA 10-8A NE 1/4 OF SE 1/4 SOUTH OF SOUTH LN OF HWY US 23 ROW EXCEPT THE W 50 FT OF S 450 FT OF N 1000 FT, ALSO EXC THE W 75 FT OF N 550 FT SEC 10 T2S R6E 27.99 AC

**PARCEL 2:**

AA 11-6A-1 (003) 7/88 THE NW 1/4 OF THE SW 1/4 LYING SOUTH OF SOUTH ROW LINE HWY US-23 PT OF SW 1/4 SEC 11, T2S-R6E 25.65 AC

Parcel ID#

(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 DEVELOPER, 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 DEVELOPER in writing that the DEVELOPER has satisfactorily corrected the item(s) the DEVELOPER 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) Neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (1) acts of God; (2) flood, fire, earthquake, or explosion; (3) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (4) government order or law; (5) actions, embargoes, or blockades in effect on or after the date of this Agreement; (6) action by any governmental authority; (7) national or regional emergency; (8) strikes, labor stoppages or slowdowns, or other industrial disturbances; and (9) shortage of adequate power or transportation facilities. The party suffering a force majeure event shall give prompt notice to the other party, stating the period of time the occurrence is expected to continue, and shall use diligent efforts to end the failure or delay and ensure the effects of such force majeure event are minimized.

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

By: \_\_\_\_\_  
Christopher Taylor, Mayor

By: \_\_\_\_\_  
Jacqueline Beaudry, City Clerk

Approved as to Substance:

\_\_\_\_\_  
Tom Crawford, Interim City Administrator

Approved as to Form:

\_\_\_\_\_  
Stephen K. Postema, City Attorney

BRE Nixon Road Associates, LLC  
a Michigan limited liability company

By: \_\_\_\_\_  
Mitchell Bleznak, Manager

STATE OF MICHIGAN    )  
                                  ) ss:  
County of Washtenaw    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Christopher Taylor, Mayor and Jacqueline Beaudry, City Clerk of the City of Ann Arbor, a Michigan municipal 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 Oakland     )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by Mitchell Blesznak, the Manager of BRE Nixon Road Associates, LLC, a Michigan limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
County of Oakland, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of \_\_\_\_\_

DRAFTED BY AND AFTER RECORDING RETURN TO:  
Ann Arbor Planning & Development Services  
ATTN: Colin Smith



Post Office Box 8647  
Ann Arbor, Michigan 48107  
(734) 794-6265