

PLANNING AND DEVELOPMENT SERVICES STAFF REPORT

For Planning Commission Meeting of June 17, 2008

SUBJECT: Briarwood Lots 12 & 13 PUD Zoning and Site Plan (South side of Briarwood Circle Drive, west of State Street) File Nos. 12081D2.03c and .05

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 PUD Zoning District and Supplemental Regulations, and PUD Site Plan and Development Agreement, subject to providing adequate sanitary sewer capacity, and subject to contributing to the cost of mitigating traffic issues.

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).

DESCRIPTION OF PETITION

General Information – The petitioner 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 to a 173-space on-site parking lot. The petitioner also proposes to provide an access easement to 25 existing spaces immediately north of Briarwood Circle Drive in the Briarwood Mall parking lot. Eight Class A bicycle parking spaces are proposed (two are proposed to be deferred). An eight-foot wide concrete sidewalk is proposed along the south side of Briarwood Circle Drive to connect with existing sidewalks to the west and east of the site. To encourage pedestrian access, the petitioner is proposing a painted crosswalk across Briarwood Circle Drive to a sidewalk within the Briarwood Mall parking lot that connects to a mall entrance.

Traffic Impact - A traffic impact report was completed for this project by Midwestern Consulting Inc. on April 28, 2008. The following were the conclusions of the report:

- The proposed development will generate new traffic volumes, which will access the outlet sites via Briarwood Circle Drive.
- The existing transportation system is adequate to operate at existing service levels without requiring additional lanes or traffic signal modifications.

Jd

- It is concluded, within a reasonable degree of engineering certainty, that the proposed development of Briarwood Lots 12 and 13 will not adversely impact traffic operations along area streets and highways with planned improvements.

Staff is currently working with the petitioner to determine an appropriate contribution to planned improvements at the intersection of State Street and Hilton Way. This agreement will be reflected in the development agreement.

Natural Features – A small, mid-level quality woodland exists on the south side of the site. A small portion of the northeast portion of the woodland is proposed to be disturbed to accommodate the construction of the east hotel. A total of 18 trees are proposed to be removed including Linden, American Elm, Sugar Maple and Black Walnut. Although a Black Walnut reaches 15 inches in size (diameter, breast height), most woodland trees proposed to be removed vary in size from 8-11 inches. The petitioner is required to provide 91.5 inches of woodland replacement for removing 183 inches of woodland trees and proposes 92.5 inches or 37 trees. The species of proposed replacement trees include Sugar Maple, Honey Locust, Tulip Tree and Red Oak. A total of 69 new trees will be planted on the site.

The petitioner is proposing to bring both hotels as close to Briarwood Circle Drive as possible to reduce encroachment into the woodland but is restricted by utility easements along the north side of the site. Both hotels are set back 36.6-feet from the edge of Briarwood Circle Drive (private street) and 20 feet from the edge of the proposed sidewalk.

Storm Water Detention – Storm water runoff from the site will be collected and distributed to the existing regional detention facility in the Briarwood Mall area. Interconnected detention ponds exist immediately east and west of the site and are connected by storm sewer piping. Additionally, a rain garden is proposed southeast of the east hotel to handle a small amount of stormwater runoff. The Washtenaw County Drain Commission has provided a letter of preliminary project approval.

Height – The petitioner proposes that both hotels be four stories in height. The height of a building is determined by measuring the average elevation of the finished grade within 20 feet of the building. This takes into consideration grades that surround a building. The petitioner is proposing to configure the site so that the parking lot is shared in the center with the hotels at either end. This configuration places the hotels near the edge of the slopes that slope down toward the detention ponds. The petitioners therefore are requesting a maximum of 60 feet in height, even though the site plan, development agreement, and supplemental regulations limit the actual height of the buildings to no more than four stories.

Sanitary Sewer – A preliminary downstream sewer capacity analysis has yet to be performed for this project. This analysis must be completed to determine what, if any, sanitary sewer capacity improvements need to be performed. It is anticipated that the analysis will be completed this summer.

Solid Waste – Two solid waste/recycling enclosures are proposed; one will be located near the southwest corner of the east hotel while another will be located near the southwest corner of the west hotel.

Building Materials – The petitioner proposes a combination of split faced block, modular brick, EIFS, and concrete composite board (Hardyboard).

Development Agreement – A draft development agreement 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) | (20% MAX for lots 12-15, per existing PUD) |
| Setbacks | Front | NONE | 36.6 ft. from Briarwood Circle 69.8 ft from I-94 | 25 ft. MIN from Briarwood Circle 40 ft. MIN from I-94 |
| | Side | NONE | 251 ft. (east) 108.8 (west) | NONE NONE |
| Building Height | | NONE | 60 ft | 48 ft. (required by existing PUD) 40 ft. (required by R5) |
| Parking – Automobiles | | NONE | 198 spaces (173 spaces on site; 25 in adjacent lot) | 227 MIN (required by existing PUD) 227 MIN (required for hotels in Chapter 59 – Off Street Parking) |
| Parking - Bicycles | | NA | 8 spaces – Class A (2 deferred) | 8 spaces – Class A |

SURROUNDING LAND USES AND ZONING

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

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 (Lazy-Boy). Lots 12 and 13 are located west of the Lazy-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.

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 instead of one.
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 31 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 (30.1 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.

STANDARDS FOR PUD ZONING

The following is a list of beneficial affects for the City which warrant PUD zoning (per Chapter 55, Section 5:80(6) Standards for PUD Zoning District Review as described by the petitioner (staff comments in *italics*):

(a) The use or uses, physical characteristics, design features, or amenities proposed shall have a beneficial effect for the city, in terms of public health, safety, welfare, aesthetics, or convenience, or any combination thereof, on present and potential surrounding land uses. The beneficial effects for the City which warrant the zoning include, but are not limited to, features such as:

(i) Innovation in land use and variety in design, layout and type of structures which furthers the stated design goals and physical character of adopted land use plans and policies.

The proposed development is innovative in the design of the shared parking and off-site parking concept. The proposed hotels are a permitted use in the adopted Briarwood Subarea Plan, and the architecture will be complementary to the existing development of the area. Placing the hotels essentially perpendicular to I-94 maintains some views from the freeway to the regional mall, minimizes road noise to our guests, maximizes the amount of existing trees kept on site, and reduces impervious surface by sharing common facilities.

The site is on an AATA route (route #7) which provides bus service to downtown Ann Arbor. City plans and policies encourage redevelopment along transit corridors.

(ii) Economy and efficiency of land use, natural resources, energy, and provision of public services and utilities.

This is an infill project that utilizes the existing road and utility infrastructure and completes a water main loop along the south side of Briarwood Circle Drive. The site layout and multi-story plan is an efficient plan that provides more open space than is required. The layout also preserves 88 percent of the woodland trees.

(iii) Provision of usable open space.

Useable open space is provided on the south side of the site where the woodland fragment is preserved and a new path winds through the trees and connects the two hotels.

(iv) Preservation and protection of natural features that exceeds ordinance requirements; especially for those features prioritized in the land development regulations as being of highest concern, or that preserves existing conditions instead of merely providing mitigation.

All of the landmark trees will remain. The small percentage of the woodland trees that are to be removed will be mitigated on site with new tree plantings.

(v) Employment and shopping opportunities particularly suited to the needs of the residents of the city.

The proposed hotels will provide new employment opportunities and brings guests within walking distance of the existing regional retail center.

(vii) The use and reuse of existing sites and buildings which contributes to the desired character and form of an established neighborhood.

The proposed development is an infill project on a residual parcel on the south edge of Briarwood Mall. This site is the last vacant parcel and will complete the mall area development.

(c) The use or uses proposed shall not have a detrimental effect on public utilities or surrounding properties.

The proposed development improves fire protection and water service by completing the water main loop on the south side of Briarwood Circle Drive. The hotels will provide additional short term and extended stay opportunities that will bring more visitors to the mall area in particular and to the region in general.

(d) The use or uses proposed shall be consistent with the master plan and policies adopted by the city or the petitioner shall provide adequate justification for departures from the approved plans and policies.

The proposed hotel use is consistent with the Briarwood Subarea Plan and the existing PUD.

(f) The supplemental regulations shall include analysis and justification sufficient to determine what the purported benefit is, how the special benefit will be provided, and performance standards by which the special benefit will be evaluated.

The supplemental regulations are attached. The public will benefit from the additional hotel facilities, the employment opportunities, the preservation of all of the landmark trees and most of the woodland trees, the completion of the water main loop, the extension of the sidewalk loop, and the provision of benches overlooking the two detention ponds.

(g) Safe, convenient, uncongested, and well-defined vehicular and pedestrian circulation within and to the district shall be provided and, where feasible, the proposal shall encourage and support the use of alternative methods of transportation.

Well-defined vehicular and pedestrian access is provided. Bicycle parking is also provided as required.

The site is on an AATA route.

(h) Disturbance of existing natural features, historical features and historically significant architectural features of the district shall be limited to the minimum necessary to allow a reasonable use of the land and the benefit to the community shall be substantially greater than any negative impacts.

The site is designed and engineered to minimize impacts on the natural features. No landmark trees are to be removed. A small number of woodland trees are to be removed and mitigated on site with new tree plantings. The removal of dead trees in the woodland will be done with minimal disturbance, without heavy equipment and leaving the stumps in place.

DEPARTMENT COMMENTS

Planning – Staff supports the project because it promotes a number of elements of sustainable land use practices. The project proposes to create new hotel rooms in a location that encourages non-motorized access to retail and restaurant locations. Locating the hotels as close to Briarwood Circle Drive as possible also encourages pedestrian access. The project proposes to reduce the amount of impervious surfaces by sharing a parking lot on-site and using an existing parking lot off-site. The project also provides a rain garden to handle some of the stormwater. A proposed path through the woodland is a pedestrian amenity that will provide better access to this natural feature.

Staff recommends the use of brick for the entire first and second floors of each hotel to convey a sense of quality and permanence. The site is highly visible from I-94 and the petitioner is requesting a land use intensity that exceeds what is allowed by the existing PUD.

Fire - Hydrant coverage and site access is adequate.

Public Services (Engineering) – Sanitary sewer analysis must be completed prior to City Council approval.

Public Services (Transportation) – Staff is currently evaluating appropriate safety improvements to the intersection of State Street and Hilton Way. The City received a safety grant in 2007 to assist in funding the improvements. Staff is requesting that the petitioner pay a portion of these improvement costs. The contribution will be reflected in the development agreement.

Prepared by Jeff Kahan
Reviewed by Connie Pulcifer and Mark Lloyd
jsj/6/12/08

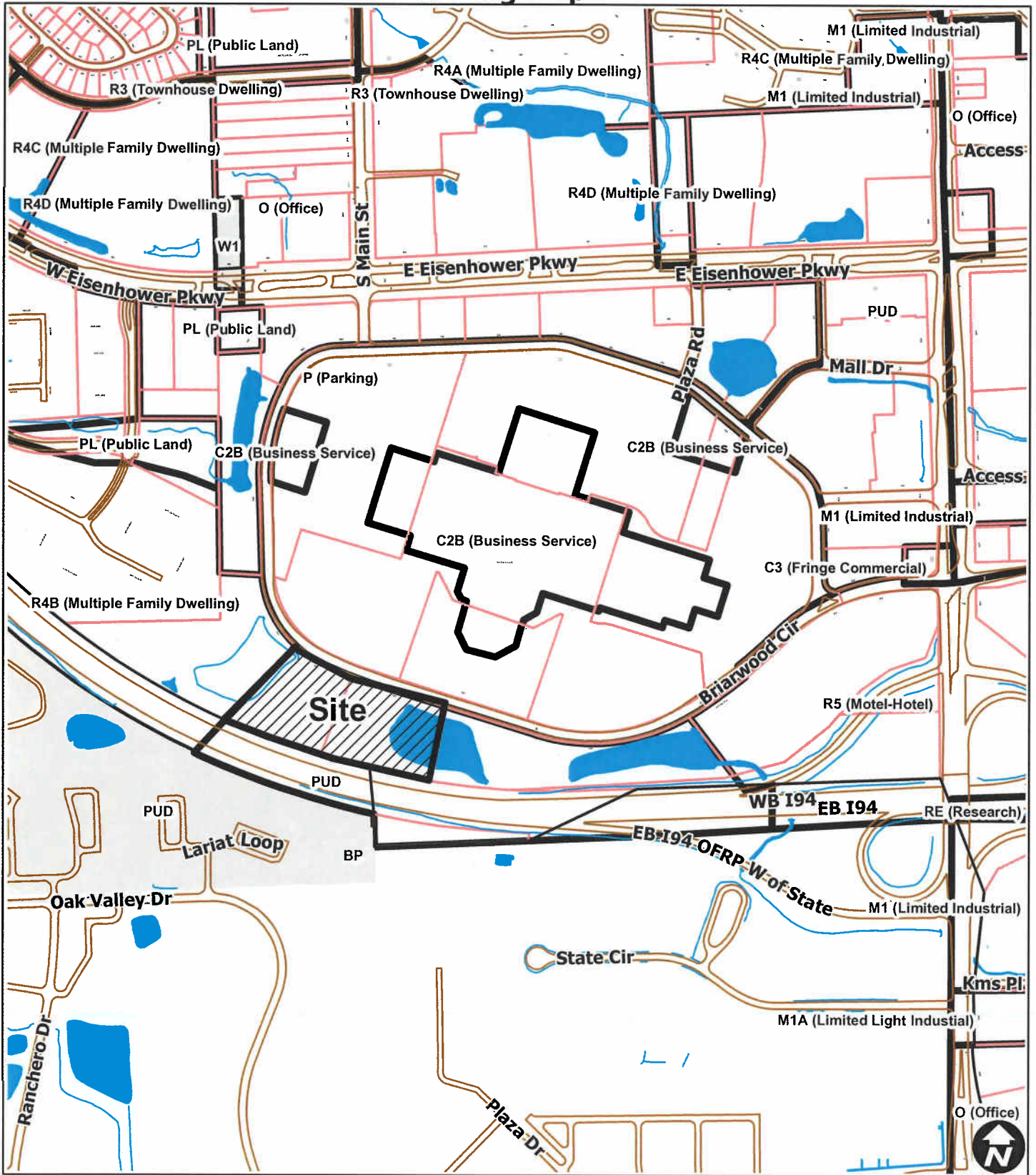
Attachments: Parcel/Zoning Map
Aerial Photo
Site Plan
Landscaping Plan
Elevations
6/11/08 Draft Supplemental Regulations
6/10/08 Draft Development Agreement

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

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

City Attorney
Systems Planning
File No. 12081D2.03c and .05

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

0 375 750 1,500 Feet



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

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**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 and 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 exclusively serving hotel guests

- (B) Permitted accessory uses shall be:

Parking Lots

- (C) Setbacks (see Exhibit A):

Front: South (Briarwood Circle Drive) – 35 feet minimum
 East (I-94) – 65 feet minimum

Side: West 100 feet minimum

Rear: North 245 feet minimum

- (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 8.9-acre zoning district and shall not exceed 31 percent based on gross building square footage.

- (G) Parking:

Vehicular: No fewer than 170 vehicle parking spaces and no more than 180 vehicle parking spaces shall be provided on site. Parking easements with

Briarwood mall for shared 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. At least 25 off-site parking spaces, as shown on the approved site plan, shall be provided. 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, Conceptual Plan):

Briarwood Circle Drive – one curb cut 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 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, upper story balconies and varied rooflines.

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

East Building: At least two, one facing west and one facing north

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

(L) Phasing

The PUD shall be constructed in one phase.

Attachment: Exhibit A – Conceptual Plan

Prepared by Jeffrey Kahan
JK/lf

BRIARWOOD LOTS 12 & 13 PUD DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2008, 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 PROPRIETORS will install these improvements prior to any permits being issued.

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, public streets, 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 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. Every owner of a portion of the property, including co-owners of condominium units, shall pay a pro-rata share of the cost of the work. That portion of the cost of the work attributable to each condominium unit shall be a lien on that Property and may be collected as a single tax parcel assessment as provided in Chapter 13 of the Ann Arbor City Code.

(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) Prior to the issuance of building permits, to deposit with a mutually acceptable escrow agent fully executed documents in a form acceptable to the CITY, which will convey, upon delivery to the

CITY, easements for the construction and maintenance of public utilities and public streets. The escrow agreement shall provide for delivery of the documents to the CITY solely upon the condition that the CITY has accepted the public Improvement to be conveyed by the easement.

(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. *At the request of the PROPRIETOR, the CITY will provide and install all street name signs and invoice the PROPRIETOR for actual cost of installation.*

(P-6) Prior to issuance of building permits, to install the lot monuments and lot corners or provide escrow funds to insure placement of monuments and lot corners in accordance with section 125 of Public Act No. 288, Subdivision Control Act, for both lots and assign lot numbers that conform to those on the approved site plan.

(P-7) To install all water mains, storm sewers, sanitary sewers and public streets, 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-8) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to State Street or Eisenhower Boulevard, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along State Street or Eisenhower Boulevard frontage when such improvements are determined by the CITY to be necessary.

(P-9) To convey to the CITY, prior to the issuance of any permits and subject to acceptance by the Ann Arbor City Council, utility easements as shown on Attachment A.

(P-10) 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-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 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-12) 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 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-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 PROPRIETOR 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 PROPRIETOR 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 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-15) After construction of the private on-site storm water management system, to maintain it in good working order. Any proposed changes to the 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. Provisions for maintenance and responsibility for the storm water management system, shall be included by the PROPRIETOR in the master deed.

(P-16) 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-17) Prior to building permits being issued, to restrict, but not prohibit, by covenants and restrictions recorded with the Washtenaw County Register of Deeds, the use of lawn care chemicals and fertilizers in order to minimize the impacts on Malletts Creek and the Huron River.

(P-18) To prepare and submit to the Planning and Development Services Unit one copy of the Master Deed, along with the required review fee of \$3,500.00, prior to issuance of building permits.

(P-19) That traffic mitigation measures in the State Street *corridor* will be beneficial to the PROPRIETOR'S property and, therefore, to pay the CITY \$_____ 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) *list out specific anticipate improvements*

b)

c)

d) Other less traditional measures, which will similarly mitigate excess traffic, flow at the intersection with similar benefit to the PROPRIETOR'S property by facilitating decreased use of automobiles and increased use of alternate modes of transportation. These measures may include, but are not limited to, park and ride lots, bicycle and pedestrian facilities, and transit improvements.

The PROPRIETOR(S) will pay to the CITY, _____ 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 \$_____, as set forth above, of the traffic mitigation measures the CITY finds necessary to address the impact of the PROPRIETOR'S development.

(P-20) 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-21) 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 changes to the approved building elevations, setbacks, aesthetics, or materials, 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-22) 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-23) To apply for and obtain, prior to issuance of any Certificates of Occupancy, Letters of Map Revision (LOMAR) from the Federal Emergency Management Agency for modifications in the floodplain elevations on the site, and to furnish to the CITY copies of the LOMAR and an Elevation Certificate for each building (*or as applicable, component*).

(P-24) No lot may be divided such that an additional building parcel is created.

(P-25) Prior to application for and issuance of certificates of occupancy, to disconnect _____ footing drains 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). 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-26) 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-27) 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-28) 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-29) 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.

(C-2) To use the \$ _____ as stated above contribution for traffic mitigation measures at the insert name of improvement as stated 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 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 and 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.

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

CITY OF ANN ARBOR, MICHIGAN
100 North Fifth Avenue
Ann Arbor, Michigan 48107

Witnesses:

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: _____
Name, Title

STATE OF MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2008, 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 MICHIGAN)
) ss:
County of Washtenaw)

On this _____ day of _____, 2008, before me personally appeared _____, 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 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
Post Office Box 8647
Ann Arbor, Michigan 48107
(734) 994-2800