

**GLACIER HILLS REVISED PLANNED PROJECT SITE PLAN  
DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_ day of \_\_\_, 2010, 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 Glacier Hills, Inc., a Michigan corporation, with principal address at 1200 Earhart Road, Ann Arbor, Michigan 48105-2768, hereinafter called the PROPRIETOR, witnesses that:

WHEREAS, the PROPRIETOR owns certain land in the City of Ann Arbor, described below and site planned as Glacier Hills Skilled Nursing Care Facility Addition Revised Planned Project Site Plan, and

WHEREAS, the PROPRIETOR has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as Glacier Hills Skilled Nursing Care Facility Addition Revised Planned Project Site Plan, and desires 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(S) HEREBY AGREE(S):**

(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, and public sidewalk ("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 design and construct all public sidewalks included in the Improvements in paragraph P-1 and P-2 above in compliance with the Americans with Disabilities Act as well as the City of Ann Arbor Public Services Department Standard Specifications.

(P-4) 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-5) 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 the public sidewalk. 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-6) Specific to the easement for public sidewalk set forth in paragraph P-5 above, the easement for the public sidewalk shall be generally as shown on the approved site plan with terms acceptable to the City, and at a minimum shall include:

- a) the PROPRIETOR shall maintain, repair and replace any footbridge included as part of the public sidewalk,
- b) the PROPRIETOR shall be solely responsible for the maintenance and repair of the sidewalk consistent with Chapter 49 of City Code as if the sidewalk was located in the public right-of-way.

(P-7) Prior to the PROPRIETOR's request for a certificate of occupancy, the public Improvements set forth in paragraphs P-1, P-2, P-3, P-4, P-5, and P-6 must be accepted by the CITY.

(P-8) To install all water mains, storm sewers, and sanitary sewers, 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-9) To be included in a future special assessment district, along with other benefiting property, for the construction of additional improvements to Earhart Road such as street widening, storm sewers, curb and gutter, sidewalks, street lights, and the planting of trees along the Earhart Road frontage when such improvements are determined by the CITY to be necessary.

(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 to include the CITY as an 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-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 acceptance of the public improvements by the CITY or granting of Certificate of Occupancy. Existing woodland or landmark 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, 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 street tree escrow is \$851.50 according to CITY policy at the time of approval of this Agreement.). 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 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-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) Prior to application for and issuance of certificates of occupancy, to disconnect two 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).

(P-17) The land may not be divided such that an additional building parcel is created.

(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 Glacier Hills Skilled Nursing Care Facility Addition Revised Planned Project Site Plan.

(C-2) To provide timely and reasonable CITY inspections as may be required during construction.

(C-3) 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:

Commencing at the SW corner of Section 24, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence S 86°50'45" E 75.54 feet along the South line of said Section 24 of the East right-of-way line of Earhart Road for the POINT OF BEGINNING,

thence N 00°13'00" W 1869.64 feet along the East right-of-way line of Earhart Road;  
thence S 40°43'00" E 150.00 feet along the Southwesterly right-of-way line of US-23 Expressway;  
thence Southeasterly 1524.25 feet in the Southwesterly right-of-way line of US-23 and along the arc of a circular curve concave to the Southwest, radius 3622.72 feet, central angle 24°06'25", chord S 28°39'45" E 1513.02 feet to the South line of said Section 24;  
thence N 86°50'45" W 1245.96 feet along the South line of said Section 24 to the POINT OF BEGINNING. Being a part of the SW 1/4 of Section 24, T2S, R6E, containing 31.47 acres of land, more or less, being subject to a scenic easement, said easement described as follows:

Commencing at the SW corner of Section 24, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence S 86°50'45" E 75.54 feet along the South line of said Section 24 to the East right-of-way line of Earhart Road for the POINT OF BEGINNING,

thence N 00°13'00" W 160.28 feet along said East right-of-way line of Earhart Road;  
thence S 86°50'45" E 310.00 feet;  
thence S 68°11'48" E 187.63 feet;  
thence S 86°50'45" E 730.00 feet to the Southwesterly right-of-way line of US-23 Expressway;  
thence Southeasterly 106.84 feet in the Southwesterly right-of-way line of said US-23 and along the arc of a circular curve concave to the Southwest, radius 3622.72 feet, central angle 01°41'23", chord S 17°27'14" E 106.84 feet to the South line of said Section 24;  
thence N 86°50'45" W 1245.96 feet along the South line of Section 24 to the POINT OF BEGINNING. Being a part of the SW 1/4 of Section 24, T2S, R6E, containing 3.37 acres of land, more or less, said easement recorded in Liber 1959, Page 679.

Subject to 40' wide public water main easement said easement described along the centerline as follows:

Commencing at the SW corner of Section 24, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan; thence S 86°50'45" E 75.13 feet along the South line of said Section 24; thence N 00°13'00" W 788.18 feet along the East right-of-way line of Earhart Road to the POINT OF BEGINNING;

thence S 82°14'05" E 115.02 feet;  
thence N 00°00'00" E 81.32 feet;  
thence S 00°00'00" W 101.82 feet;  
thence S 48°59'27" E 121.92 feet;  
thence S 04°08'56" W 193.51 feet;  
thence S 89°05'32" E 284.04 feet;  
thence 94.22 feet along the arc of a circular curve to the right having a radius of 334.24 feet, a central angle of 16°09'08", having a chord bearing S 81°00'58" E 93.91 feet;  
thence S 72°56'24" E 207.36 feet;  
thence N 60°43'44" E 179.98 feet;  
thence N 30°44'08" W 172.19 feet;  
thence N 42°25'54" W 134.13 feet;  
thence N 00°58'16" W 147.52 feet;  
thence N 31°24'43" W 76.75 feet;  
thence S 62°00'45" W 198.18 feet;  
thence N 80°11'27" W 108.59 feet;  
thence N 30°22'20" W 124.60 feet;  
thence N 26°33'54" E 252.68 feet;  
thence N 25°15'11" W 58.60 feet;  
thence 537.44 feet along the arc of a circular curve to the left having a radius of 518.08 feet, a central angle of 59°26'14" and a chord bearing N 59°35'28" W 513.66 feet;  
thence N 89°18'35" W 5.73 feet to the East right-of-way line of Earhart Road, also being the POINT OF ENDING.

Being Subject to:

Easement granted to the Detroit Edison Company, as recorded in Liber 1 of Grants, Page 368, Washtenaw County Records.

Right of way in favor of Michigan Consolidated Gas Company, as recorded in Liber 1418, Page 9, Washtenaw County Records.

Declaration of Building and Use Restrictions, as recorded in Liber 1959, Page 673, Washtenaw County Records.

Grant of Conservation Easement, as recorded in Liber 1959, Page 679, Washtenaw County Records.

Easement in favor of Michigan Bell Telephone Company, as recorded in Liber 2650, Page 823, Washtenaw County Records.

(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.

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

GLACIER HILLS, INC.  
A Michigan corporation  
1200 Earhart Road  
Ann Arbor, Michigan 48105

Witnesses:

\_\_\_\_\_  
  
\_\_\_\_\_

By: \_\_\_\_\_  
Raymond J. Rabidoux  
Chief Executive Officer

STATE OF MICHIGAN    )  
  ) ss:  
County of Washtenaw    )

On this \_\_\_\_\_ day of \_\_\_\_\_, 2010, 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 \_\_\_\_\_, 2010, before me personally appeared Raymond J. Rabidoux 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) 794-6265