

900 BRIARWOOD CIRCLE DEVELOPMENT AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 2023, 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 Outparcel LLC, a Delaware Limited Liability Corporation, with principal address at 225 West Washington St, Indianapolis, IN 46204, hereinafter called the DEVELOPER, witnesses that:

WHEREAS, the DEVELOPER owns certain land in the City of Ann Arbor, described in Paragraph T-4 below (the "Property") and site planned as 900 Briarwood Circle (the "Project") and

WHEREAS, the DEVELOPER has caused certain land in the City of Ann Arbor, described below to be surveyed, mapped and site planned as 900 Briarwood Circle, 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, on _____, 2023, City Council approved the 900 Briarwood Circle Site Plan ("Site Plan") and the 900 Briarwood Circle Development Agreement ("Agreement") pursuant to a resolution adopted on the date, and

WHEREAS, the CITY desires to ensure 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.

THE DEVELOPER HEREBY AGREES:

(P-1) Upon DEVELOPER's election to pursue construction of the Project pursuant to the Site Plan (the "Start Date"), to prepare and submit to the CITY for approval plans and specifications ("the Plans") prepared by a registered professional engineer for construction of infrastructure improvements consisting of public water mains, public sanitary sewer mains, private storm water management system, and private sidewalk, ("the Improvements") provided that no work on said Improvements shall be commenced until the Plans have been approved by the CITY Administrator or their 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 following the Start Date, 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. 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 construct all non-motorized Improvements to Briarwood Circle, as shown on the Site Plan and civil construction drawings approved by the CITY, including but not limited to pavement markings and all crosswalks prior to issuance of any certificate of occupancy for the Project.

(P-4) To furnish, within 30 days of completion, an engineer's certificate that the construction of the private 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-5) To grant easements to the CITY for public water main and sanitary sewer as shown on the Site 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 reasonably acceptable to the CITY Attorney. The easements must be accepted by City Council prior to the request for and issuance of any certificate of occupancy, although the easements may be accepted at a later time as determined by the CITY Public Services Area.

(P-6) 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-7) To install all public 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. The final course of asphalt paving for the parking lot and all access drives serving each respective building shall be completed prior to the issuance of any certificate of occupancy for that building.

(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, such as street widening, storm sewers, curb and gutter, sidewalks, bike paths, street lights, and the planting of trees along State Street frontage when such Improvements are determined by the CITY to be necessary.

(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 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 Improvements in the Project prior to final written acceptance of the public Improvements 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 Improvements and until notice of acceptance by the CITY of the Improvements.

(P-11) 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-12) To design, construct, repair and maintain this Project in accordance with the provisions of Chapter 119 (Noise Control) to ensure that any noise emanating from said Project will not impact nearby residents or businesses. In addition, DEVELOPER shall review existing noise sources surrounding said Project 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-13) To include the elevation drawings, as submitted to City Council, as part of the 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 submitted to the CITY and 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-14) To remove all discarded building materials and rubbish from the Project at least once each month during construction of the Project Improvements, and within one month after completion or abandonment of construction.

(P-15) As of the date hereof, 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-16) Failure to construct, repair and/or maintain the site pursuant to the 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 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 Site Plan and/or Agreement.

(P-17) 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 Property and may be placed on the CITY tax roll as a single lot assessment, or if the Project 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-18) 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.

(P-19) The building in the Project that contains multi-family residential units shall be constructed and operated as an all-electric building without any natural gas connections, except for a natural gas connection needed for emergency back-up power generation.

THE CITY HEREBY AGREES:

(C-1) In consideration of the above undertakings, to approve the 900 Briarwood Circle 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 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 prior to the completion of the required Improvements unless prior approval of the CITY is received. Such approval shall not be withheld and/or

delayed unreasonably, provided, however DEVELOPER shall be permitted, without the CITY's approval, to assign its obligations hereunder to another entity so long as DEVELOPER is a constituent member of such assignee, it being agreed that such conveyance shall be subject to the terms of this Agreement and, upon such conveyance, the grantee shall be bound to the terms.

(T-4) The obligations and conditions on the DEVELOPER, as set forth above in this Agreement and in the Site Plan, shall be binding on any successors and assigns in ownership of the following described parcel:

City of Ann Arbor, Washtenaw County, Michigan

900 Briarwood Circle

A part the North ½ Section 8, Town 3 South, Range 6 East, City Ann Arbor, Washtenaw County, Michigan and part of Seconds Briarwood Subdivision Seconds as recorded in Liber 22 of Plats, Page 66 through 75 inclusive, Washtenaw County Records, being more particularly described as: Commencing at the Northeast corner of Section 8; thence South 01 Degrees 39 Minutes 00 Seconds East 1097.00 along the east line of Section 8; thence South 87 Degrees 25 Minutes 00 Seconds West 100.01 feet to the west right-of-way line of State Street; thence South 01 Degrees 39 Minutes 00 Seconds East 83.24 feet along the west right-of-way line of State Street to the south right-of-way line of Briarwood Circle; thence 53.99 feet along the arc of a 100.00 foot radius curve to the left, having a chord bearing North 77 Degrees 07 Minutes 00 Seconds West 53.34 feet along the south right-of-way line of Briarwood Circle; thence South 87 Degrees 25 Minutes 00 Seconds West 421.82 feet along the south right-of-way line of Briarwood Circle; thence 48.62 feet along the arc of a 30.00 foot radius curve to the left, having a chord bearing South 40 Degrees 59 Minutes 04 Seconds West 43.47 feet along the south line of Briarwood Circle to the east right-of-way line of Briarwood Circle to the Point of Beginning; thence South 01 Degrees 38 Minutes 59 Seconds East 298.99 feet along the east right-of-way line of Briarwood Circle; thence 261.34 feet along a curve to the right, having a radius of 293.82 feet and a long chord which bears South 25 Degrees 51 Minutes 03 Seconds West 252.81 feet; thence 69.87 feet along a curve to the left, having a radius of 831.40 feet and a long chord which bears South 49 Degrees 01 Minutes 22 Seconds West 69.85 feet; thence South 46 Degrees 36 Minutes 56 Seconds West 159.00 feet; thence 102.22 feet along a curve to the right, having a radius of 887.37 feet and a long chord which bears South 49 Degrees 54 Minutes 55 Seconds West 102.17 feet; thence South 53 Degrees 12 Minutes 55 Seconds West 193.83 feet; thence North 36 Degrees 55 Minutes 03 Seconds West 56.01 feet; thence North 06 Degrees 35 Minutes 00 Seconds West 182.79 feet; thence North 73 Degrees 09 Minutes 00 Seconds West 410.38 feet; thence 55.70 feet along a curve to the left, having a radius of 212.79 feet and a long chord which bears North 80 Degrees 38 Minutes 59 Seconds West 55.54 feet; thence 55.70 feet along a curve to the right, having a radius of 212.79 feet and a long chord which bears North 80 Degrees 38 Minutes 59 Seconds West 55.54 feet; thence North 16 Degrees 51 Minutes 00 Seconds East 637.81 feet; thence South 73 Degrees 08 Minutes 58 Seconds East 66.11 feet; thence North 16 Degrees 51 Minutes 02 Seconds East 572.15 feet; thence 115.71 feet along a curve to the left, having a radius of 367.53 feet and a long chord which bears South 60 Degrees 02 Minutes 36 Seconds East 115.23 feet; thence South 50 Degrees 39 Minutes 05 Seconds East 564.80 feet; thence 256.49 feet along a curve to the right, having a radius of 299.93 feet and a long chord which bears South 26 Degrees 09 Minutes 00 Seconds East 248.75 feet to the Point of Beginning.

Said area contains 942,161.7 Square Feet or 21.63 Acres, more or less.

Parcel ID# 09-12-08-100-037

(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 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. DEVELOPER submits to the personal jurisdiction of any competent court in Washtenaw County, Michigan, for any action arising out of this Agreement. DEVELOPER also agrees that no action will be commenced against the CITY because of any matter arising out of this Agreement in any courts other than those in the County of Washtenaw, State of Michigan, unless original jurisdiction can be established in the United States District Court for the Eastern District of Michigan, Southern Division, the Michigan Supreme Court, or the Michigan Court of Appeals.

[Signatures on the following page]

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:

Milton Dohoney Jr., City Administrator

Approved as to Form:

Atleen Kaur, City Attorney

STATE OF _____)
) ss:
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Christopher Taylor, Mayor, and Jacqueline Beaudry, Clerk of the City of Ann Arbor, a Michigan municipal corporation, on behalf of the corporation.

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

BRIARWOOD OUTPARCEL LLC

By: _____
John Rulli, Chief Administrative Officer

STATE OF _____)
County of _____) ss:

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by John Rulli, Chief Administrative Officer of Briarwood Outparcel, LLC, a limited liability company, on behalf of the company.

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

DRAFTED BY AND AFTER RECORDING RETURN TO:
Kevin S. McDonald (P-61761)
Chief Deputy City Attorney
City of Ann Arbor
Office of the City Attorney
P.O. Box 8647
Ann Arbor, MI 48107-8647