

## **BRIARWOOD RESTAURANTS DEVELOPMENT AGREEMENT**

THIS AGREEMENT, made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the City of Ann Arbor, a Michigan Municipal Corporation, with principal address at 301 East Huron Street, Ann Arbor, Michigan 48107, hereinafter called the CITY; and Briarwood Shops, LLC, a Delaware Limited Liability Company, with principal address at 1250 E. Missouri Avenue, Phoenix, Arizona 85014, 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 Restaurants 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 Briarwood Restaurants, and desires site plan approval, land division approval 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 PROPRIETOR will install these improvements prior to any certificate of occupancy 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, and public and private storm water management systems ("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.

(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. 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 make payment in full all improvement charges to the CITY for the project's initial water service and sanitary sewer service connections. These improvement charges will be due at the time the utility services become active. The charges will be fully refunded to the PROPRIETOR upon providing verifiable evidence of water, sanitary and storm water sewer easements that were granted by the CITY permitting the PROPRIETOR to connect into the CITY's services free of charge.

(P-6) To install all water mains, storm sewers and sanitary sewers, through the first course of asphalt, pursuant to CITY approved plans and specifications, prior to the issuance of any building permits.

(P-7) 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-8) 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-9) To prepare and submit to the Washtenaw County Water Resources Commissioner for approval storm water management measures, including the analysis report, clean-out and plans for the redesign of the existing retention pond north of Briarwood Circle Drive required to handle the storm water runoff of the proposed development prior to the issuance of any certificates of occupancy.

(P-10) To construct, repair and/or adequately maintain the off-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-11) After construction of the existing off-site storm water management system, to commission an annual inspection of the system by a registered professional engineer evaluating its operation and stating required maintenance or repairs, and to provide a written copy of this evaluation to the CITY Public Services Area.

(P-12) 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-13) 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-14) 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-15) 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-16) 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-17) 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 Restaurants 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:

A part of the North ½ of Section 8, Town 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan, being more particularly described as: Commencing at the Northeast corner of said Section 8; thence South 01 degrees 39 minutes 00 seconds East 623.58 feet along the east line of said Section 8; thence North 87 degrees 39 minutes 00 seconds West 100.24 feet to the west right-of-way line of State Street; thence North 01 degrees 39 minutes 00 seconds West 25.24 feet along said west right-of-way line of State Street for a POINT OF BEGINNING; thence 26.12 feet along the arc of a 70.00 foot radius curve to the left, having a chord bearing North 76 degrees 57 minutes 33 seconds West 25.97 feet; thence North 87 degrees 39 minutes 00 seconds West 466.08 feet; thence 185.00 feet along the arc of a 200.00 foot radius curve to the left, having a chord bearing South 65 degrees 51 minutes 00 seconds West 178.48 feet; thence South 39 degrees 21 minutes 00 seconds West 224.47 feet; thence 47.12 feet along the arc of a 30.00 foot radius curve to the left, having a chord bearing South 05 degrees 39 minutes 00 seconds East 42.43 feet; thence North 50 degrees 39 minutes 00 seconds West 33.89 feet; thence South 39 degrees 21 minutes 00 seconds West 56.00 feet; thence South 16 degrees 51 minutes 00 seconds West 554.62 feet; thence North 73 degrees 09 minutes 00

seconds West 189.09 feet; thence 122.68 feet along the arc of a 156.20 foot radius curve to the right, having a chord bearing North 50 degrees 39 minutes 00 seconds West 119.55 feet; thence 122.68 feet along the arc of a 156.20 foot radius curve to the left, having a chord bearing North 50 degrees 39 minutes 00 seconds West 119.55 feet; thence North 73 degrees 09 minutes 00 seconds West 180.50 feet; thence South 16 degrees 50 minutes 57 seconds West 39.50 feet; thence North 73 degrees 09 minutes 00 seconds West 83.58 feet; thence North 16 degrees 50 minutes 20 seconds East 126.75 feet; thence South 73 degrees 09 minutes 40 seconds East 19.79 feet; thence North 17 degrees 02 minutes 13 seconds East 44.07 feet; thence North 73 degrees 09 minutes 40 seconds West 19.94 feet; thence North 16 degrees 50 minutes 20 seconds East 153.11 feet; thence South 73 degrees 09 minutes 40 seconds East 92.56 feet; thence 44.98 feet along the arc of a 30.00 foot radius curve to the right, having a chord bearing South 30 degrees 12 minutes 45 seconds East 40.88 feet; thence South 12 degrees 44 minutes 09 seconds West 41.85 feet; thence South 16 degrees 50 minutes 20 seconds West 172.97 feet; thence 22.37 feet along the arc of a 60.01 foot radius curve to the left, having a chord bearing South 06 degrees 48 minutes 42 seconds West 22.24 feet; thence South 73 degrees 09 minutes 00 seconds East 134.73 feet; thence 138.39 feet along the arc of a 176.20 foot radius curve to the right, having a chord bearing South 50 degrees 39 minutes 00 seconds East 134.86 feet; thence 106.97 feet along the arc of a 136.20 foot radius curve to the left, having a chord bearing South 50 degrees 39 minutes 00 seconds East 104.24 feet; thence South 73 degrees 09 minutes 00 seconds East 51.59 feet; thence North 16 degrees 51 minutes 00 seconds East 591.56 feet; thence South 50 degrees 39 minutes 00 seconds East 65.00 feet; thence North 39 degrees 21 minutes 00 seconds East 56.00 feet thence South 50 degrees 39 minutes 00 seconds East 8.70 feet; thence 47.12 feet along the arc of a 30.00 foot radius curve to the left, having a chord bearing North 84 degrees 21 minutes 00 seconds East 42.43 feet; thence North 39 degrees 21 minutes 00 seconds East 224.47 feet; thence 187.96 feet along the arc of a 249.00 foot radius curve to the right, having a chord bearing North 60 degrees 58 minutes 30 seconds East 183.53 feet; thence 44.11 feet along the arc of a 30.00 foot radius curve to the left, having a chord bearing North 40 degrees 28 minutes 30 seconds East 40.25 feet; thence North 01 degrees 39 minutes 00 seconds West 339.49 feet to the south right-of-way line of Eisenhower Parkway; thence North 87 degrees 25 minutes 50 seconds East 31.00 feet along said south right-of-way of Eisenhower Parkway; thence South 01 degrees 39 minutes 00 seconds East 342.31 feet; thence 45.03 feet along the arc of a 30.00 foot radius curve to the left, having a chord bearing South 44 degrees 39 minutes 00 seconds East 40.92 feet; thence South 87 degrees 39 minutes 00 seconds East 265.91 feet; thence North 88 degrees 54 minutes 00 seconds East 99.70 feet; thence South 87 degrees 39 minutes 00 seconds East 44.02 feet; thence 35.61 feet along the arc of a 60.00 foot radius curve to the left, having a chord bearing North 75 degrees 21 minutes 00 seconds East 35.09 feet to the said west right-of-way line of State Street; thence South 01 degrees 39 minutes 00 seconds East 70.25 feet along the said west right-of-way line of State Street to the POINT OF BEGINNING.

Subject to restrictions, reservations, and easements, if any.

(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  
301 East Huron Street  
Ann Arbor, Michigan 48107

By: \_\_\_\_\_  
John Hieftje, Mayor

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

Approved as to Substance:

\_\_\_\_\_  
Steven D. Powers, City Administrator

Approved as to Form:

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

Witness:

\_\_\_\_\_

By: \_\_\_\_\_  
*Name, Title*

STATE OF MICHIGAN     )  
                                      ) ss:  
County of Washtenaw     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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.

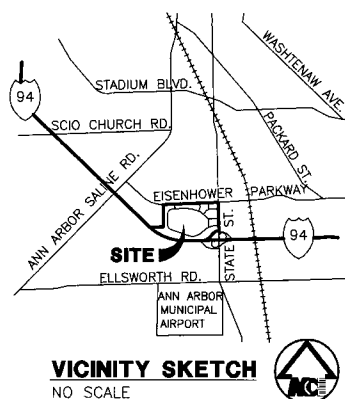
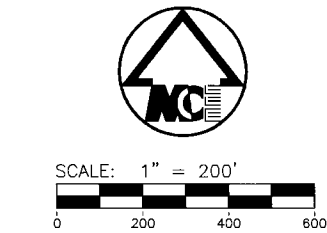
\_\_\_\_\_  
NOTARY PUBLIC  
County of Washtenaw, State of Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in the County of Washtenaw

STATE OF MICHIGAN     )  
                                      ) ss:  
County of Washtenaw     )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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) 794-6265



#### LEGAL DESCRIPTION

Land in the North 1/4 of Section 8, Town 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan, described as:

##### Parcel 1 - Fee Simple:

Commencing at the North 1/4 corner, Section 8, Township 3 South, Range 6 East, Pittsfield Township, now City of Ann Arbor, Washtenaw County, Michigan; Thence South 00 deg. 58' 55" East 41.0 feet along the North and South 1/4 line of said section; Thence North 86 deg. 38' 10" East 41.0 feet along the South line of the Eisenhower Parkway; Thence Southerly 55.13 feet along the arc of a circular curve to the left, radius 100.0 feet, chord South 14 deg. 12' 37" West 54.43 feet; Thence South 01 deg. 35' East 117.95 feet; Thence Southerly 47.64 feet along the arc of a circular curve to the left, radius 30.0 feet, chord South 47 deg. 04' 35" East 42.79 feet; Thence North 87 deg. 25' 50" East 175.00 feet; Thence South 02 deg. 34' 10" East 56.00 feet; Thence North 87 deg. 25' 50" East 249.65 feet; Thence South 16 deg. 51' West 445.64 feet for a POINT OF BEGINNING; Thence South 73 deg. 09' East 178.50 feet; Thence Easterly 22.08 feet along the arc of a circular curve to the left, radius 56.00 feet, chord South 84 deg. 26' 15" East 21.92 feet; Thence South 16 deg. 51' West 10.29 feet; Thence South 73 deg. 09' East 104.50 feet; Thence South 16 deg. 51' West 33.50 feet; Thence South 73 deg. 09' East 97.00 feet; Thence South 16 deg. 51' West 6.50 feet; Thence South 73 deg. 09' East 213.00 feet; Thence North 16 deg. 51' East 6.50 feet; Thence South 73 deg. 09' East 140.00 feet; Thence North 16 deg. 51' East 39.50 feet; Thence South 73 deg. 09' East 180.50 feet; Thence South 16 deg. 51' West 584.00 feet; Thence Easterly 55.70 feet along the arc of a circular curve to the left, radius 212.77 feet, chord South 80 deg. 39' East 55.54 feet; Thence Easterly 55.70 feet along the arc of a circular curve to the right, radius 212.77 feet, chord South 80 deg. 39' East 55.54 feet; Thence South 73 deg. 09' East 182.79 feet; Thence North 53 deg. 13' East 193.95 feet; Thence Northerly 95.77 feet along the arc of a circular curve to the left, radius 831.43 feet, chord North 49 deg. 56' 32" East 102.96 feet; Thence Northerly 160.60 feet along the arc of a circular curve to the left, radius 167.55 feet, chord North 25 deg. 48' 32" East 154.52 feet; Thence North 01 deg. 39' West 25.56 feet; Thence North 88 deg. 21' East 56.0 feet; Thence Southerly 112.71 feet along the arc of a circular curve to the left, radius 58.69 feet, chord South 56 deg. 40' East 96.17 feet; Thence South 21 deg. 41' East 58.00 feet; Thence Southerly 314.89 feet along the arc of a circular curve to the left, radius 831.43 feet, chord South 57 deg. 28' West 313.01 feet; Thence South 46 deg. 37' West 159.0 feet; Thence Southerly 102.23 feet along the arc of a circular curve to the right, radius 887.43 feet, chord South 49 deg. 55' West 102.17 feet; Thence South 53 deg. 13' West 236.82 feet; Thence Westerly 667.62 feet along the arc of a circular curve to the right, radius 893.38 feet, chord South 74 deg. 37' 30" West 652.20 feet; Thence North 16 deg. 52' 00" East 551.99 feet; Thence North 73 deg. 10' 10" West 218.45 feet; Thence North 16 deg. 52' 00" East 17.90 feet; Thence North 73 deg. 10' 10" West 11.69 feet; Thence South 61 deg. 49' 50" West 143.12 feet; Thence North 73 deg. 10' 10" West 394.24 feet; Thence North 28 deg. 10' 10" West North 143.12 feet; Thence North 73 deg. 10' 10" West 11.53 feet; Thence North 16 deg. 52' 00" West 585.47 feet; Thence North 73 deg. 09' 00" West 101.34 feet; Thence Northerly 340.72 feet along the arc of a circular curve to the right, radius 1496.42 feet, chord North 86 deg. 37' 36" West 339.99 feet; Thence continuing Northerly 470.03 feet along the arc of a circular curve to the right, radius 455.25 feet, chord North 30 deg. 31' 36" West 449.43 feet; Thence South 73 deg. 09' East 124.48 feet; Thence North 16 deg. 51' East 241.63 feet; Thence South 73 deg. 09' East 487.50 feet; Thence North 16 deg. 51' East 563.99 feet to the POINT OF BEGINNING, being part of the North 1/2 of Section 8, Township 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan.

##### Parcel 2 - Fee Simple:

Commencing at the Northeast corner of Section 8, Township 3 South, Range 6 East, Pittsfield Township, now City of Ann Arbor, Washtenaw County, Michigan; Thence South 01 deg. 39' 00" East 623.58 feet; Thence North 87 deg. 39' West 100.24 feet; Thence North 01 deg. 39' West 25.24 feet along the West line of South State Street to the POINT OF BEGINNING; Thence Westerly 26.12 feet along the arc of a circular curve to the left, radius 70.0 feet, chord North 76 deg. 57' 40" West 25.97 feet; Thence North 87 deg. 39' West 466.08 feet; Thence Southerly 185.0 feet along the arc of a circular curve to the left, radius 200.0 feet, chord South 65 deg. 51' West 178.48 feet; Thence South 39 deg. 21' West 224.47 feet; Thence Southerly 47.12 feet along the arc of a circular curve to the left, radius 30.0 feet, chord South 05 deg. 39' East 42.43 feet; Thence North 50 deg. 39' West 33.89 feet; Thence South 39 deg. 21' West 58.0 feet; Thence South 16 deg. 51' West 554.62 feet; Thence North 73 deg. 09' West 137.50 feet; Thence North 16 deg. 51' East 611.57 feet; Thence South 50 deg. 39' East 65.00 feet; Thence North 39 deg. 21' East 56.00 feet; Thence South 50 deg. 39' East 8.70 feet; Thence Easterly 47.12 feet along the arc of a circular curve to the left, radius 30.0 feet, chord North 84 deg. 21' East 42.43 feet; Thence North 39 deg. 21' East 224.47 feet; Thence Northerly 167.96 feet along the arc of a circular curve to the right, radius 249.0 feet, chord North 80 deg. 58' 30" East 183.55 feet; Thence continuing Northerly 44.11 feet along the arc of a circular curve to the left, radius 30.0 feet, chord North 40 deg. 28' 30" East 40.25 feet; Thence North 01 deg. 39' West 339.49 feet; Thence North 87 deg. 25' 50" East 31.0 feet along the South line of the Eisenhower Parkway; Thence South 01 deg. 39' East 342.31 feet; Thence Southerly 45.03 feet along the arc of a circular curve to the left, radius 30.0 feet; Thence North 44 deg. 39' East 40.92 feet; Thence South 87 deg. 39' East 265.91 feet; Thence North 88 deg. 54' East 99.70 feet; Thence South 87 deg. 39' East 44.02 feet; Thence Northerly 35.81 feet along the arc of a circular curve to the left, radius 60.0 feet, chord North 75 deg. 21' East 35.09 feet; Thence South 01 deg. 39' East 70.25 feet along the West line of South State Street to the Point of Beginning, being part of the Northeast 1/4 of Section 8, Township 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan.

##### Parcel 3 - Fee Simple:

Commencing at the Northeast corner of Section 8, Township 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan; Thence South 01 deg. 39' 00" East 1518.95 feet along the East line of said Section; Thence South 87 deg. 25' 00" West 233.94 feet along the Northerly right-of-way line of Hilton Boulevard; Thence continuing said right-of-way line 297.50 feet along the arc of an 892.43-foot radius circular curve to the left through a central angle of 19 deg. 06' 00" having a chord which bears South 77 deg. 52' 00" West 296.13 feet; Thence South 21 deg. 41' 00" East 61.00 feet; Thence along the Southerly right-of-way line of Briarwood Circle Drive in the following courses: 314.89 feet along the arc of an 831.43-foot radius circular curve to the left through a central angle of 21 deg. 42' 00" having a chord which bears South 57 deg. 28' 00" West 313.01 feet, South 46 deg. 37' 00" West 159.00 feet, 102.23 feet along the arc of an 887.43-foot radius circular curve to the right through a central angle of 06 deg. 35' 00" having a chord which bears South 49 deg. 55' 00" West 102.17 feet, South 53 deg. 13' 00" West 236.82 feet, 836.27 feet along the arc of an 893.38-foot radius circular curve to the right through a central angle of 53 deg. 38' 00" having a chord which bears South 80 deg. 02' 00" West 806.07 feet and North 73 deg. 09' 00" West 50.81 feet to the POINT OF BEGINNING; Thence North 16 deg. 52' 00" East 567.78 feet; Thence South 73 deg. 10' 10" West 218.45 feet; Thence South 16 deg. 52' 00" West 551.99 feet; Thence along the Southerly right-of-way line of Briarwood Circle Drive Southerly 168.85 feet along the arc of a circular curve to the right radius 893.38 feet, chord North 78 deg. 33' 30" West 168.40 feet; Thence North 73 deg. 09' 00" West 50.81 feet continuing along said right-of-way line to the Point of Beginning, said parcel being part of the Northeast 1/4 of Section 8, Township 3 South, Range 6 East, City of Ann Arbor, Washtenaw County, Michigan.

##### Parcel 4 - Fee Simple:

A part of Lot 2 of BRIARWOOD SUBDIVISION, as recorded in Liber 22, Pages 66 through 75, inclusive of Plots, Washtenaw County Records, more particularly described as: Beginning at the Northeast corner of Lot 3, BRIARWOOD SUBDIVISION, as recorded in Liber 22, Pages 66 through 75, inclusive of Plots, Washtenaw County Records; thence South 01 degrees 39 minutes 00 seconds East 195.51 feet along the Westerly right-of-way line of State Road; thence South 88 degrees 21 minutes 20 seconds West 54.00 feet; thence North 01 degrees 38 minutes 40 seconds West 7.31 feet; thence South 88 degrees 21 minutes 20 seconds East 124.83 feet; thence South 01 degrees 38 minutes 40 seconds East 18.00 feet; thence South 88 degrees 21 minutes 20 seconds West 16.00 feet; thence North 01 degrees 38 minutes 40 seconds East 18.00 feet; thence South 88 degrees 21 minutes 20 seconds West 204.14 feet; thence South 01 degrees 38 minutes 40 seconds East 26.00 feet; thence South 88 degrees 21 minutes 20 seconds West 72.00 feet to a point on the Easterly right-of-way line of Market Place; thence North 01 degrees 39 minutes 00 seconds East 207.00 feet along said right-of-way line to a point on the Southerly right-of-way line of Eisenhower Parkway; thence North 87 degrees 25 minutes 50 seconds East 471.03 feet along said right-of-way line to the point of beginning.

##### Parcel 5 - Fee Simple:

Lot 3 of BRIARWOOD SUBDIVISION, as recorded in Liber 22, Pages 66 through 75, inclusive of Plots, Washtenaw County Records, Excepting therefrom the following described parcel: Beginning at the Northeast corner of Lot 3, BRIARWOOD SUBDIVISION, as recorded in Liber 22, Pages 66 through 75, inclusive of Plots, Washtenaw County Records; thence South 01 degrees 39 minutes 00 seconds East 195.51 feet along the Westerly right-of-way line of State Road; thence South 88 degrees 21 minutes 20 seconds West 54.00 feet; thence North 01 degrees 38 minutes 40 seconds West 7.31 feet; thence South 88 degrees 21 minutes 20 seconds East 124.83 feet; thence South 01 degrees 38 minutes 40 seconds East 18.00 feet; thence South 88 degrees 21 minutes 20 seconds West 16.00 feet; thence North 01 degrees 38 minutes 40 seconds East 18.00 feet; thence South 88 degrees 21 minutes 20 seconds West 204.14 feet; thence South 01 degrees 38 minutes 40 seconds East 26.00 feet; thence South 88 degrees 21 minutes 20 seconds West 72.00 feet to a point on the Easterly right-of-way line of Market Place; thence North 01 degrees 39 minutes 00 seconds East 207.00 feet along said right-of-way line to a point on the Southerly right-of-way line of Eisenhower Parkway; thence North 87 degrees 25 minutes 50 seconds East 471.03 feet along said right-of-way line to the point of beginning.

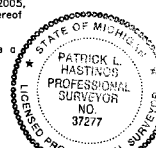
#### SURVEY CERTIFICATION

To METROPOLITAN LIFE INSURANCE COMPANY, a New York corporation its successors and assigns, BRIARWOOD LLC, a Delaware limited liability company, FIDELITY NATIONAL TITLE INSURANCE COMPANY, CHICAGO TITLE INSURANCE COMPANY, and FIRST AMERICAN TITLE INSURANCE COMPANY.

This is to certify that this map or plot and the survey on which it is based was made in accordance with "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" jointly established and adopted by ALTA and NSPS in 2005, includes items 1 through 4, 6 through 11a, and 13 and 14 of Table A thereof and is complete in accordance with the requirements of the Accuracy Standards as adopted by ALTA and NSPS and in effect on the date of this certification, undersigned further certifies that in my professional opinion, as a land surveyor registered in the State of Michigan, the Relative Positional Accuracy of this survey does not exceed that which is specified therein.

Date: October 21, 2009

By Patrick L. Hastings, Registration No. 37277



#### NOTES:

##### 1. FLOOD ZONE

Portions of Parcels II, IV and VI are currently in zone "AE" Flood Hazard Area and was scaled from the Flood Insurance Rate Map - Community Panel Number 260213 0010 C, with a revised date of January 2, 1992. ("AE" = the 100 year flood zone and is shown on sheet 4 of this survey) The remainder portions lie in zone "X", an area determined to be outside the 500 year flood plain per the above mentioned rate map.

Parcels I, III, and V lie entirely within zone "X", an area determined to be outside the 500 year flood plain per the above mentioned rate map.

##### 2. ZONING:

Parcel I - The building currently located within Parcel I is zoned C2B (business service). All property lying outside of said building is zoned P (Parking). The building located in Parcel I is subject to the following regulations:

- Minimum Yard Setbacks:
  - Front - 40 feet
  - Side - None
  - Rear - None
- Maximum usable floor space: 200% of lot area
- Maximum building height: 60 feet / 4 stories
- Minimum lot size: 4000 square feet

Parcel I, II and III lying outside the building is zoned P (Parking) and is subject to the following regulations:

- Minimum yard setbacks:
  - Front - equal to the largest required setback of abutting district(s).
  - Side - 2.5 feet / total of 2 sides, 5 feet
  - Rear - 2.5 feet
- Maximum usable floor space: N/A
- Maximum building height: Garages may not exceed height limit of nearest contiguous districts.
- Minimum lot size: N/A
- Minimum lot width: N/A

Parcel IV is zoned P.U.D. (Planned Unit Development) and the site plan approved by the City of Ann Arbor, dated May 1, 1984 contains no setback information.

Parcel V is zoned P.U.D. (Planned Unit Development). The site plan approved by the City of Ann Arbor, dated October 31, 1984 shows a 50 foot setback along State Street only.

That portion of the mall building lying within Parcel I has an area of 497,385 square feet as calculated based on exterior dimensions.

The Benignis building located on Parcel IV has an area of 7,128 square feet as calculated based on exterior dimensions.

The Mocaroni Grille building located on Parcel V has an area of 7,481 square feet as calculated based on exterior dimensions.

3. LEGAL DESCRIPTION TAKEN FROM FIDELITY NATIONAL TITLE COMPANY, COMMITMENT NO. 38322/11684514, REVISED DATE SEPTEMBER 23, 2009.

4. BEARINGS BASED ON BRIARWOOD SUBDIVISION, AS RECORDED IN LIBER 22 OF PLATS, PAGES 66 THROUGH 75, WASHTENAW COUNTY RECORDS.

##### Parcel 6 - Easements:

The Reciprocal and non-exclusive rights, easements, privileges of use, ingress and egress, parking, utilities and other purposes, in, on, over, under and under certain adjoining real property, with all rights, power, privileges and benefits incidental thereto, and rights in the use of Briarwood Circle Drive, South Main Street, Plaza Road, Market Place, Moll Drive and Briarwood Circle, as private road dedicated to the lot owners of BRIARWOOD SUBDIVISION, as recorded in Liber 22, Pages 66 through 75, inclusive of Plots, Washtenaw County Records, which provide uninterrupted access to public streets and roadways, all created and granted as appurtenant to Parcels 1, 2, and 3 above, in and by the following:

Operating Agreement dated February 2, 1972 by and among Briarwood, a Michigan co-partnership, Sears Roebuck and Co., a New York corporation, J.C. Penney Properties, Inc., a Delaware corporation and J.L. Hudson Company, a Michigan Corporation, recorded March 28, 1972 in Liber 1390, Pages 729 through 866, Washtenaw County Records, with Guaranty of J.C. Penney Company, Inc., recorded March 28, 1972 in Liber 1390, Page 867, Washtenaw County Records.

First Amendment to Operating Agreement among Briarwood, Sears Roebuck and Co., J.C. Penney Properties, Inc., and the J.L. Hudson Company dated as of April 13, 1973 and recorded June 6, 1973 in Liber 1441, Pages 488 through 546, Washtenaw County Records.

Second Amendment to Operating Agreement among Briarwood, Sears Roebuck and Co., J.C. Penney Properties, Inc., and the J.L. Hudson Company dated as of July 2, 1973 and recorded August 13, 1973 in Liber 1453, Page 420, and also recorded September 24, 1973 in Liber 1456, Page 54, Washtenaw County Records.

Third Amendment to Operating Agreement dated December 4, 1975 and recorded February 25, 1976 in Liber 1540, Page 1, Washtenaw County Records.

Fourth Amendment to Operating Agreement dated November 16, 1976 and recorded December 13, 1976 in Liber 1576, Page 799, Washtenaw County Records.

Fifth Amendment to Operating Agreement dated March 14, 1978 and recorded June 30, 1978 in Liber 1711, Page 1, Washtenaw County Records.

Sixth Amendment to Operating Agreement dated January 8, 1979 and recorded June 13, 1979 in Liber 1711, Page 369, Washtenaw County Records.

Supplemental Agreement dated February 2, 1972 between Briarwood and J.C. Penney Properties, Inc., with Guaranty of J.C. Penney Company, Inc. recorded March 28, 1972 in Liber 1390, Page 867, Washtenaw County Records.

Second Supplemental Agreement dated February 2, 1972 between Briarwood and J.C. Penney Properties, Inc., with Guaranty of J.C. Penney Company, Inc. recorded March 28, 1972 in Liber 1390, Page 877, Washtenaw County Records.

Seventh Amendment to Operating Agreement dated January 20, 1993 and recorded January 20, 1994 in Liber 2927, Page 1, Washtenaw County Records.

Third Supplemental Agreement recorded October 19, 2002 in Liber 4173, Page 441, Washtenaw County Records.

Assignment of Reciprocal Easement Agreement recorded in Liber 3893, Page 565, amended by Amended and Restated Assignment of Reciprocal Easement Agreement recorded in Liber 4433, page 707, Washtenaw County Records.

SEE SHEET 6 FOR EXCEPTIONS







