

Upon Recording Return To:
Morris Manning & Martin, LLP
3343 Peachtree Road, Suite 1600
Atlanta, Georgia 30326
Attn: Carl E. Westmoreland, Jr., Esq.

AGREEMENT REGARDING PROPERTY RESTRICTIONS

THIS AGREEMENT REGARDING PROPERTY RESTRICTIONS (this "Agreement") is made and entered into this ____ day of _____, 2016 by and between BRANCH PROPERTIES, LLC, a Georgia limited liability company ("Developer") and PEACHTREE HILLS CIVIC ASSOCIATION, INC. a Georgia Non-Profit Corporation ("Association").

WITNESSETH:

WHEREAS, Developer intends to redevelop a certain parcel of property located at 2395, 2425, and 2451 Peachtree Road as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Property");

WHEREAS, the Association is a non-profit corporation devoted to the health, safety, general welfare and preservation of the Peachtree Hills neighborhood and residents thereof;

WHEREAS, Developer has submitted an application to the City of Atlanta, Application Number Z-15-059, requesting a rezoning of the Property from the C-3 and C-1-C classifications to the C-3 classification and an application for Special Exception, number V-16-006 to reduce the required number of loading spaces from six to four (herein after collectively referred to as the "Application");

WHEREAS, Developer has requested the support of the Association with respect to the Application, and in consideration of such support, Developer has agreed to execute and deliver this Agreement and further desires that the Property be made subject to the terms, covenants, conditions, restrictions and agreements set forth herein; and

WHEREAS, conditioned upon such terms, covenants, conditions, restrictions and agreements made by Developer herein, the Association supports such Application.

NOW, THEREFORE, for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants and agreements hereinafter set forth, Developer and the Association hereby covenant and agree as follows:

1. Private Conditions. Developer hereby covenants and agrees, and hereby subjects its interest in the Property to those certain conditions and restrictions (collectively, the "Private Conditions") more particularly described and set forth on Exhibit "B" attached hereto and made a part hereof. Notwithstanding anything herein to the contrary, this Agreement is subject to final approval by the City of Atlanta Mayor and City Council and the Board of Zoning Adjustment of the Application, and the issuance of any necessary permits to implement the Developer's intended improvements, subject only to the conditions contained herein.

2. Approval. The Association hereby approves the Application and further agrees to support the Application before the various City of Atlanta entities which will consider the Application.

3. Conveyance of Property. Developer hereby expressly acknowledges and agrees that any successor or assign of the Property is and shall be subject to the terms, conditions, covenants, restrictions and agreements set forth in this Agreement, and Developer agrees to expressly make the conveyance of the Property subject to the terms, conditions, covenants, restrictions and agreements set forth herein.

4. Enforcement/Remedies. It is the specific and express intent of all parties hereto, including specifically that the Association shall be entitled and shall have the right to seek judicial enforcement of the terms, conditions, restrictions, covenants and agreements set forth in this Agreement against Developer and against any successor and assign of Developer without being required to exhaust any administrative remedies available through the City of Atlanta. Without limitation of the foregoing, and to the extent necessary to ensure the enforcement rights of the Association, the parties shall and do hereby agree that this Agreement shall be deemed a contract for the benefit of the Association and its individual members which is enforceable by the Association in accordance with the holding of the Georgia Supreme Court in Muldawer v. Stribling, 243 Ga. 673 (1979). In the event the Association determines that there has been non-compliance with the Private Conditions in the Association's reasonable opinion, the Association may give the then owner of the Property (or any portion thereof) written notice of such noncompliance; if such non-compliance is not cured within thirty (30) days of the receipt of such written notice, the Association shall be entitled to immediately seek injunctive or other equitable relief to enforce the Private Conditions contained herein, it being understood and acknowledged that the Association shall not be required to show legal damages to enforce the terms hereof.

5. Run with the Land. The covenants, restrictions, agreements, terms and conditions contained herein shall run with the Property and shall benefit and burden the Developers of the Property and their successors and assigns in the Property unless rendered void and of no further force or effect under Paragraph 1 above as more particularly stated and set forth on the attached Exhibit "B".

6. Severability. A determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof.

7. Notices. Any notice or communications required or permitted hereunder shall be in writing and shall be sent either by: (a) courier delivery service with charges therefor billed to shipper; (b) expedited delivery service (such as Federal Express) with charges therefor billed to shipper; or (c) United States Mail, postage prepaid, registered or certified mail, return receipt requested. Any notice or communication sent as herein able provided shall be deemed given or delivered; (i) if sent by United States Mail, on the date appearing on the return receipt; (ii) on the date of delivery by courier or expedited delivery service, or (iii) on the date of return to the sender if the notice or communication cannot be delivered in accordance with this Paragraph. Any notice or communication required or permitted hereunder shall be addressed as follows: (x) if to Developer or its successors or assigns, the notice shall be sent to the mailing address of the then fee owner of the Property as set forth in the then current records of the Fulton County Tax Assessor; and (y) if to the Association, the notice shall be sent to the then current mailing address for the President of the Association. The parties may change their notice address pursuant to prior written notice to the other party.

8. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Georgia.

9. Duration. This Agreement shall be in effect for a term of twenty (20) years and shall be automatically renewed thereafter for an additional term of twenty (20) years unless the Developer or its successors initiate and successfully secure a rezoning of the Property through the City of Atlanta or other applicable jurisdiction then having zoning power over the Property in which event this Agreement shall automatically be rendered void and of no further force or effect.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which, together, shall constitute one and the same instrument.

11. Estoppel. Upon written request by the Developer, the Association shall provide an executed estoppel certificate within 10 (ten) days confirming the status of the Developer's compliance with this Agreement.

12. Miscellaneous. The terms of this Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument or instruments in writing, properly executed and delivered by all of the parties hereto. Time is of the essence of this Agreement. All of the provisions of this Agreement are hereby made binding upon the personal representative, heirs, successors and assigns of the parties hereto. The parties acknowledge that each party and its counsel, if any, have reviewed and approved this

Agreement and that the usual rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

Exhibit "B"
PRIVATE CONDITIONS

It is to be noted that while many of the following Private Conditions are similar or identical to the conditions that may be attached to and made a part of approval of the Application (collectively, the "Zoning Conditions"). It is the intent of the parties hereto that the following Private Conditions shall constitute a separate and distinct framework of conditions from the Zoning Conditions, and which Private Conditions, among other things, may be enforced by private action (whether or not the City of Atlanta Zoning Enforcement has elected to enforce any of the Zoning Conditions). Nothing in this Agreement shall preclude the Developer from seeking a future rezoning of the Property and, upon successful completion and approval by the City of Atlanta or other applicable jurisdiction, then having zoning power over the Property, these Private Conditions shall automatically be deemed void and of no further force or effect. Upon filing of a future rezoning application and during the pendency thereof Developer agrees to negotiate with the Association such conditions that are mutually agreeable to the Developer and Association. If the Parties are not successful in executing an agreement that is mutually agreeable, nothing from this agreement will prevent Developer from pursuing the revised zoning for the Property. To the extent that the conditions of this Agreement are more restrictive than or are not reflected in conditions applied to the Property by the Atlanta City Council, the conditions in this Agreement will control, although any condition will automatically be modified if necessary to comply with requirements imposed by the City of Atlanta. The following constitute and form the Private Conditions:

- 1) Conceptually, the project shall be developed consistent with the site plan by the Preston Partnership, LLC ("Preston") dated December 21, 2015, stamped received by the Office of Planning on January 14, 2016 (the "Site Plan"), attached hereto as Exhibit "C" provided, however, this Condition 1 shall not preclude the application of the applicable zoning regulations or other governmental requirements.
- 2) Conceptually, the project shall be developed consistent with the elevations by Preston and attached hereto as Exhibit "D", provided, however, this Condition 2 shall not preclude the application of the applicable zoning regulations or other governmental requirements.
- 3) Streetscape for the development will be consistent with that required by the City's MRC regulations, as modified to meet the requirements of the Georgia DOT.
- 4) The Developer with provide adequate off street parking for all construction vehicles and will post signs and otherwise direct all construction traffic not to proceed farther east on Terrace Drive than the eastern boundary of the property owned by the Developer.
- 5) If determined to be a system improvement eligible for impact fee credits and subject to approval by the City of Atlanta, improvements will be constructed by the Developer on Terrace Drive as indicated on the plan attached as Exhibit "E".
- 6) Developer shall support the direction of the transportation impact fees from the proposed development not used for construction of the improvement described in 5) above to the District 7

Sidewalk Fund to be used to construct sidewalks within the Peachtree Hills neighborhood as directed by the Association.

7) Beginning on the date of issuance of the building permit for the project and continuing until issuance of the certificates of occupancy necessary for the occupation of the full development, the Developer shall pay the Association the sum of \$1,000.00 per month for security issues to and including any studies undertaken by the Association for the purpose of evaluating the safe passage and flow of traffic to and from the development.

8) Developer must maintain the minimum number of parking spaces (excluding loading spaces) in the parking deck as required by the City of Atlanta. Developer shall install and maintain any and all landscape areas along Peachtree Road and Terrace Drive as depicted on the Site Plan attached as Exhibit "C".

9) Developer shall manage all trash and debris on the Property to avoid or otherwise mitigate trash or debris blowing or washing off the Property onto Terrace Drive.

10) All exterior lighting installed on the Property shall be designed to be shielded at the source and constructed so as to minimize light spillage off-site and shall further be directed downward and away from adjacent properties.

11) All dumpsters, loading and service facilities shall be screened from Peachtree Road and Terrace Drive.

12) Trash removal at the Property shall take place no earlier than 7:00 a.m. and no later than 7:00 p.m. on Monday through Sunday.

13) Any construction on the Property shall take place no earlier than 7:00 a.m. and no later than 7:00 p.m. on Monday through Friday and no earlier than 9:00 a.m. and no later than 5:00 p.m. on Saturday. No construction shall take place on Sundays. The foregoing construction timing limitations shall not apply to interior construction. During construction, all construction equipment (including, without limitation, all construction vehicles, construction equipment and vehicles of construction workers) shall be parked solely off street except as permitted by the City of Atlanta. All building materials shall be stored solely off street during construction. Any construction staging on Terrace Drive shall be minimized. During construction, the Developer shall keep Peachtree Road and Terrace Drive clean and free of construction debris, rubbish and any mud and dirt emanating from the Property. Also during construction, the Developer of the Property shall provide the Association with a contact name and telephone number which will be answered 24 hours a day, 7 days a week regarding problems with the construction.

14) The east elevation of the parking deck shall be architecturally compatible with the rest of the building. A row of evergreen trees shall be planted along the east property line abutting the parking deck. Parking deck lighting will be shielded at the source to minimize light spillage to the street.

15) Subject to approval by the City of Atlanta and the Georgia DOT, the Property will have three points of vehicular access with Peachtree Road being the main entrance.