

**PLANNED DEVELOPMENT AGREEMENT**

**for**

**WASHINGTON CREEK**

**Entered into between:**

**Charter Township of Washington, a Michigan Municipal Corporation**

**and**

**Sairam Properties, LLC, a Michigan limited liability company**

**Dated: \_\_\_\_\_, 2017**

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## WASHINGTON CREEK PLANNED DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CHARTER TOWNSHIP OF WASHINGTON (“Township”) a Michigan municipal corporation, with offices located at 57900 Van Dyke, Washington Township, Michigan 48094 and SAIRAM PROPERTIES, LLC (“Developer” or “Sairam”), a Michigan limited liability company, with offices located at 4071 Keats Drive, Troy, Michigan 48085.

Project Developer: Sairam Properties, LLC  
4071 Keats Drive  
Troy, MI 48085

Project Engineer: Design Haus  
301 Walnut Boulevard  
Rochester, MI 48307

### RECITALS

- i. The Developer owns a 70 acre parcel of land in the Township, described in Exhibit A (the “Land”), which is currently zoned RR, Rural Residential.
- ii. The intent of the Project is to develop seventy-one (71) residential site condominium units in Phase 1 in addition to future phases consisting of sixty-three (63) site condominium units in Phase 2; forty-two (42) site condominium units in Phase 3; 96 townhouse units in Phase 4; and, one 15,000 square feet retail/service unit in Phase 5.
- iii. The Developer desires to constitute and develop the Land as a Planned Unit Development (a “PUD”), under the provisions of Section 12.47 of the Township's Zoning Ordinance (the “Zoning Ordinance”), to consist of a premier detached single family site condominium development in accordance with the Michigan Condominium Act known as Washington Creek (the “Development”).
- iv. Any and all builders constructing single family detached dwellings on the Condominium sites of the Planned Development District (a “PUD”), under the provisions of Section 12.47 of the Township's Zoning Ordinance (the “Zoning Ordinance”), shall be required by the Developer and this Agreement to construct all such structures in a manner consistent with the Developer's design concept; this includes, to all facade treatments indicated In Schedule “B”, exterior materials, colors, footprints, orientation of garages, building massing, porches, decorative walls, setbacks, and rooflines, of the detailed conceptual single family residences that are approved as part of this PUD (the “Proposed Building Features”).
- v. The PUD is more particularly depicted in, and will be developed In accordance with (i) the Conceptual Development Plan (the “Development Plan”), attached hereto as Exhibit B which shall include the Cover Sheet, Existing Conditions Plan, Development Plan and Landscape Plan and (ii) the design characteristics illustrated by the Conceptual House Plans, (the “Conceptual House Plans”) attached hereto, marked Exhibit “C.”

vi. The General Common Elements within the Development will be owned, operated and maintained by the condominium association (the "Association") in the form of a Michigan non-profit corporation, for a perpetual term, with general and special assessment powers, and formed in conjunction with the Condominium approval and construction of the Development. The common areas, parks, together with the private roadways will be General Common Elements pursuant to the Master Deed. Each condominium site owner within in the Development will be a member of the Association (at all times during the term of such ownership), and subject to assessment, thereby.

vii. The Association will be authorized to perform the functions and duties delegated and assigned to it by the Master Deed and the Association By-Laws (together known as the "Master Deed"), either directly, or through maintenance contractors or a management agent engaged by the Association, or through an association in which such Association is a constituent member, or any combination thereof.

viii. Dwellings shall have the approved Proposed Building Features of the Conceptual House Plans and conform to the house construction and condominium site Improvement standards, set forth below, which shall become a part of the Master Deed and subject to architectural review. All dwellings and Individual condominium sites shall be developed to meet the following standards (the "Architectural Guidelines"):

1. All dwellings shall be designed and constructed with architectural characteristics similar to the elevations and footprints indicated in Exhibit "C".
2. No outbuildings shall be allowed. Children's play structures, gazebos, trellises and other similar "landscape" related structures are permissible.
3. Below ground swimming pools will be permitted, in accordance with the Charter Township of Washington and State of Michigan requirements. No above ground pools shall be permitted.
4. All driveways, aprons and parking areas shall be paved with concrete, asphalt, brick pavers or other similar materials. All driveway aprons constructed in the road right-of-way shall meet Charter Township of Washington and Macomb County Road Commission standards.

ix. The Township has an interest in assuring that the proposed dwellings will be constructed with the Proposed Building Features as indicated on the Conceptual House Plans and architectural guidelines. The Developer shall be responsible for reviewing the proposed house plans to determine compliance with the Proposed Building Features, this agreement, and compliance with the Master Deed.

NOW, THEREFORE, it is hereby agreed as follows:

**1. SUMMARY DESCRIPTION OF THE PROJECT**

The Project covers an area comprising approximately 70 acres, located generally at M-53 and 31 Mile Road in Washington Township. Developer is proposing to develop single family homes, townhomes and commercial units that generally meets the requirements of the Zoning Ordinance and that are consistent with the conditions imposed in the recommendation of approval by the Planning Commission. The proposed use is as follows: single family residential, multi-family residential and commercial.

**2. ADHERENCE TO REQUIREMENTS FOR DEVELOPMENT**

The Property shall be developed and improved in full compliance with the following (collectively referred to as the “Development Documents”):

- a. Appendix A to the Code of Ordinances for Washington Township, the Zoning Ordinance. The Project is being developed in accordance with the provisions of Section 27.04, Planned Development (PUD), permitting the uses as shown on the conceptual development plan attached as Exhibit B.
- b. Exhibit B, the conceptual development plans for the Washington Creek Project, prepared by Design Haus, consists of the following pages:
  - Sheet no. 1 Cover Sheet
  - Sheet no. 2 Existing Conditions Plan
  - Sheet no. 3 Development Plan
  - Sheet no. 4 Development Plan (cont.)
  - Sheet no. 5 Landscape Plan
- c. Conditions imposed on the Project by the Planning Commission at the \_\_\_\_\_, 20\_\_, recommendation to the Township Board, including the conditions recommended by the Township’s Community Planner and Engineer and any other staff, and any other reasonable conditions which may be subsequently imposed by the Township Board on the Washington PUD approval. These conditions include:
  - See Exhibit D.
- d. This Planned Development Agreement and any conditions imposed herein.
- e. Any and all conditions of the Final PUD Conceptual Development Plan Approval pertaining to the Project and reflected in the official minutes of such meetings, (See Exhibit E). The Final Site Plan shall be designed in conformance with the requirements of this Development Agreement. Once the Final Site Plan is

approved, the Final PUD Conceptual Development Plan (Exhibit B) and minutes of the Planning Commission and Township Board meetings (Exhibit E) and shall supersede the Preliminary PUD Conceptual Development Plan Approval.

- f. The Washington Township Engineering Design Standards and any other reasonable conditions which might be required by the Township Engineer.

Furthermore, all development and improvement of the Property by Developer and all use of the Property shall be subject to and in accordance with all applicable Township Ordinances, and shall also be subject to and in accordance with all other approvals and permits required under applicable Township Ordinances, the Development Documents and state laws for the respective components of the Project. To the extent that there are conflicts or discrepancies between respective provisions of the Development Documents, or between provisions of the Development Documents and Township Ordinances, the PUD Agreement shall control. In the event the PUD Agreement is silent on any matters otherwise covered by the PUD or Township Ordinances and regulations, the PUD Agreement and Township Ordinances and regulations shall apply.

All future owner(s) of the Property shall be bound by the terms of this Development Agreement and the Developer's authority and responsibilities stated herein. It shall be the responsibility of the Developer to transmit notice to all future owner(s) of the Property of the requirements contained within this PUD Agreement. The Township shall require that all developers, present or future, of any portion of the PUD, as the same may be expanded by the Township, and their respective successors in title, comply with the Township Ordinances and the Development Documents.

### **3. ADHERENCE TO ORDINANCES**

Developer shall comply with all applicable Township ordinances, including the Zoning Ordinance, Condominium Ordinance, and/or the Subdivision Control Ordinance, in effect at the time of development, except where modified by this PUD Agreement, Developer acknowledges that certain provisions of this PUD Agreement may exceed the requirements of the Zoning Ordinance, and the Township acknowledges that items shown in the Plan may be less than the requirements of the Zoning Ordinance. Developer shall fully comply with all engineering and other local, state and federal codes and regulations in effect at the time of development of the Project, unless superseded or otherwise covered in the PUD Agreement and the Final Site Plan.

### **4. PERMITS AND AUTHORIZATIONS**

The Township shall grant to Developer and its contractors and subcontractors all Township permits and authorizations necessary to bring all utilities including electricity, telephone, gas, cable television, water, storm and sanitary sewer to the Property and to otherwise develop and improve the Property in accordance with the Plan, provided the Developer has first made all requisite applications for permits, complied with the requirements for said permits, and paid all required fees. Any applications for permits from the Township will be processed in the customary manner. The Township will cooperate with Developer in connection with Developer's applications for any necessary county, state, federal or utility company approvals,

permits or authorizations to the extent that such applications and/or discussions are consistent with the Plan, and this PUD Agreement.

## **5. EXPIRATION**

The PUD shall be in effect for a period of 6 years for Phases 1-3, and 10 years for Phases 4-5, during which time Developer shall obtain final site plan approval and building permits, and begin substantial construction of the Project or a specific phase for the Project or phase to vest. The Final Planned Development was approved on \_\_\_\_\_, 20\_\_\_. This agreement expires on \_\_\_\_\_, 20\_\_\_. Construction of the site improvements in Phase 1 shall commence within one year of the date of approval and be substantially complete by the end of the 6th year for Phases 1-3 and the 10<sup>th</sup> year for Phases 4-5.

The Developer has a right to request an extension for good cause from the Township Board not less than 90 days prior to the expiration date of this agreement per Section 27.04 of the Zoning Ordinance.

## **6. WATER AND SANITARY SEWER SYSTEMS**

The Developer shall, at its sole expense, construct and install improvements and/or connections tying into the municipal water and sanitary sewer systems. Such improvements shall be designed and constructed in accordance with the Final Site Plan approved, and all applicable Township, state, and county standards, codes, regulations, ordinances and laws. Such water and sanitary sewer service facilities, including any on-site and off-site facilities, extensions and easements to reach the area to be served, shall be provided by and at the sole expense of Developer, and shall be completed, approved and dedicated to the Township to the extent necessary to fully service all proposed and existing facilities, structures and uses within the phase of the Project to be served thereby. The water and sanitary sewer improvements within and for a particular phase must be completed and connected to the public systems so that each such phase or Development Area shall, upon completion and dedication of such improvements, be fully capable of standing on its own. In the event that Developer fails to complete the water system and/or sanitary sewer system, the Township may, but is not obligated to, complete construction of the Improvements. After providing notice as provided hereunder, the Township may elect to draw upon the Financial Assurance posted under Section 14 and install the water system and/or sanitary sewer system for such phase. Developer shall assume all risks associated with any non-availability of water and/or sanitary sewers to serve the structures within the Project, including without limitation, uninhabitable buildings and fire protection risks, and shall release, indemnify and hold harmless the Township from any and all claims arising by reason of any such non-availability. Developer shall, upon completion of installation and testing of the public water and sanitary sewer improvements for each phase of the Project, convey and dedicate all interests in such facilities to the Township by providing and executing documents and title work in accordance with all applicable Township Ordinances and regulations, and the area dedicated shall include any easements which may be required to access such improvements for maintenance and repair purposes.

Prior to drawing upon the Financial Assurance to complete construction of the water and/or sanitary sewer system improvements, the Township shall serve written notice upon

Developer, setting forth the manner in which it has failed to construct the improvements as required. The notice shall include a demand that the deficiencies be cured within fifteen (15) days. If the deficiencies set forth in the notice are not cured within said fifteen (15) day period, the Township may, but is not obligated to, draw upon the Financial Assurance and complete the construction, and assess the cost of construction not covered by the Financial Assurance, including any related administrative expense and attorney fees to Developer. The Township will not take action to enter the Property or collect the Financial Assurance if, within the fifteen (15) day period, Developer has taken appropriate steps to complete the water and/or sanitary sewer systems, and thereafter diligently pursues completion of the required work. In the event the Township enters upon the Property to complete the construction of the water and/or sanitary sewer systems, in accordance with this section, the Township shall add to the actual cost of construction a sum equal to twenty-five (25%) percent of the costs incurred by the Township in completing the same to cover the administrative costs of such work. All costs shall be due and payable upon receipt by Developer of a written invoice for the same from the Township with appropriate supporting documentation. Any amount not paid within thirty (30) days shall bear interest at the rate of one and one-half (1 ½%) percent per month until paid.

Should deficiencies in repair/maintenance of the water and/or sanitary sewer systems be determined by the Township to constitute an impending and immediate danger to the health, safety and welfare of the public, the Township shall have the right to take immediate corrective action and abate such danger. The Township will make its best effort to communicate with Developer by telephone at the number to be provided by Developer before taking such action, but the Township will not be required to delay any action in the event of an impending and immediate danger if it is unable to make contact with Developer. In the event the Township has to take action in an emergency, the Township shall provide notice of the action taken as soon as possible after the time of the action, and in any event no later than forty-eight (48) hours after taking such action. Should deficiencies in repair/maintenance of the Improvements (defined in Section 12) be determined to be a public or private nuisance, the same shall be abated pursuant to Township ordinances.

## **7. ROADS, DRIVES AND PARKING LOTS**

- a. All roads for the Project, including individual phases, shall be designed, situated and constructed in accordance with Township Engineering Design Standards and all applicable Township Ordinances, Macomb County Department of Public Services standards, the Development Documents, and the Final Site Plan. All private roads within the Project shall be private roads built to public road standards.
- b. Except as may result from the unavailability of asphalt due to winter weather conditions, all roads, drives and parking lots depicted on the Plan and the Final Site Plan, and which are necessary to serve any component of the Project then under construction shall be completed and approved (except top coat, if constructed utilizing bituminous paving materials) prior to issuance of a final Certificate of Occupancy for any building or structure to be served thereby within the component of the Project. In the event that Developer fails to complete the roads, drives and parking lots for any phase within the time required to meet the

phasing deadlines, the Township may, at its option, after first giving written notice to Developer of the deficiency and an opportunity to cure the same in the manner and within the time for cure provided in Section 6 above, elect to collect the Financial Assurance, posted under Section 13, and install the roads and drives for such phase. If the Township should elect to proceed with the construction of the roads and drives, building permits may be issued subject to installation and maintenance of an adequate gravel subsurface base for all entranceways and internal drive areas to provide access for construction traffic, Township personnel, or emergency and firefighting equipment. However, in the event the Township elects to issue building permits, the paving of all areas referenced in this paragraph shall be completed and approved (including top coat and parking lot striping) prior to issuance of a final Certificate of Occupancy. An extension of the time required to complete the paving of all areas may be granted by the Township administration, in its sole discretion, in the event of circumstances beyond the control of Developer, such as but not limited to adverse weather conditions. As part of any extension granted by the Township, to the extent the completion of the roads, drives and parking lots are not already secured by Financial Assurances previously posted by Developer, Developer shall post a Financial Assurance in an amount equal to one hundred fifty (150%) Percent of the Township's estimated cost of completing the construction of the roads, drives and parking lots as determined by the Township's Consulting Engineer.

- c. The Township agrees to the proposed private road hierarchy, geometrics, utility locations and amended rights-of-way as depicted on the Plan, subject to Final Site Plan Approval.
- d. No building permits shall be issued for an approved phase or, if none, the Project, until the infrastructure is installed. This shall include, at a minimum, internal roads, water and sewer lines, and storm water drainage and detention.

## **8. LANDSCAPING, LIGHTING, AND ARCHITECTURAL STANDARDS**

Developer shall construct the Project in full compliance with the Development Documents, and the Design Guidelines in effect at the time of development, which shall govern the landscaping, lighting, signs, architectural and other standards applicable to the Project in the event of a conflict with the Development Documents.

## **9. STORM WATER DETENTION/RETENTION SYSTEM**

Developer, at its sole expense, shall construct and maintain a storm water detention/retention system ("System"), which System may include both on-site and off-site improvements, in accordance with the Plan, Development Documents, the final site plan approval, and all applicable ordinances, laws, codes, standards and regulations. The System shall be constructed and made to operate using best management practices. At a minimum, the System shall be designed in accordance with Macomb County standards. The System shall provide storm water detention/retention for all the Property.

**10. OPEN SPACE AND NATURAL FEATURES**

Developer shall dedicate a minimum of 15%, or such other amount as agreed upon by the Township and Developer, of the Property as open space. The open spaces shall be designed and landscaped to create natural areas that add to the overall aesthetics of the Project. For the purpose of insuring long term preservation of open space and natural features within the Project, all open space and storm water drainage and detention areas and facilities, shall be perpetually preserved as unimproved areas (other than Improvements installed in accordance with the Plan) by way of provisions contained in the Declaration of Restrictions or Master Deed.

**11. MAINTENANCE OBLIGATIONS**

Provision for the continued maintenance of all structures, roads, drives, parking lots, sidewalks, parks, open spaces, natural features, landscape materials, lighting system, and other improvements (all collectively “Improvements”), and the posting of the required Financial Assurances for the Public Improvements, are of major importance to the continued success of the Project. To ensure the proper installation and continued repair/maintenance of the Improvements, the following standards are imposed, which shall be incorporated into all contract documents relative to the Project, including, but not limited to, the Declaration of Restrictions and/or Master Deed as provided below:

**a. Developer Obligation to Construct and Repair/Maintain Improvements**

Developer shall be responsible for the construction of all Improvements in the Project, or any approved phase thereof, including the installation of water and sewer, at no cost to the Township.

**b. Maintenance Obligations**

An association shall be established by Developer for maintenance of the common areas to control and be responsible for the repair/maintenance of the Improvements for the Project, at no cost to the Township, and to levy and collect assessments as necessary to pay the cost of such repair/maintenance. For purposes of this Development Agreement, the term “Association” shall refer to the association which will be created at a point designated by Developer in any declaration of covenants and restrictions or master deed, or other similar document.

**c. Additional Obligations**

i. Except as provided in subparagraph 11(e) below, Developer shall be responsible for the repair/maintenance of the all Improvements within the Project, at no cost to the Township, until such time as the Association is formed and the appropriate Declaration of Restrictions and/or Master Deed has been recorded, which sets forth the rights, powers, privileges, responsibilities and duties so assigned and conveyed, and which makes the

Association responsible for the repair/maintenance of the Improvements. At that time the Association shall become responsible for the same and Developer shall no longer be so responsible.

- ii. To the extent necessary to permit the Township to perform any right granted to or obligation assumed by the Township pursuant to this Agreement, including without limitation the right to complete and/or maintain the Improvements in the event Developer, the property owner or the Association fail to do so as required by this Agreement, Developer hereby grants and conveys to the Township a right and easement over the common areas and open spaces of the Project and other elements necessary to provide for maintenance, operation and repair of Improvements, and Developer hereby covenants for itself, its successors, heirs and assigns, that the Township shall have a continuing right to enter onto the Project and the Property for the foregoing purposes in connection with the Improvements incorporated into the Project. Developer shall provide individual easements in recordable form for each infrastructure component of the Improvements.
- iii. The Improvements as constructed shall not be altered in any material way. The repair and maintenance of the Improvements shall not be deemed a material alteration.
- iv. Easements for the repair/maintenance of the Improvements are acknowledged and reserved as shown on the approved final utility plan. No structure, landscaping, planting, fill or other material shall be placed which may interfere with, impede, obstruct or change the direction of the water flow within the easements for the System, Project drainage areas, and utility easement areas, or which otherwise interferes with the use and maintenance of the Improvements. The repair/maintenance of all of the aforementioned easement areas shall be the responsibility of and enforced by Developer until formation of the Association, at which time the Association shall be responsible for the same and the Developer shall no longer be so responsible.
- v. In the event the Township determines that the Improvements are not being properly repaired/maintained, the Township shall serve written notice upon the developer and/or the Associations, as appropriate, setting forth the manner in which they have failed to repair/maintain the Improvements, in reasonable condition and order. Written notice required in this Development Agreement may be provided by mail, or by electronic means or facsimile with a hard copy by mail. The notice shall include a demand that deficiencies in the repair/maintenance be cured within fifteen (15) days. If the deficiencies set forth in the notice are not cured within said fifteen (15) day period, the Township may enter upon the Property to repair/maintain the Improvements, and assess the cost of such repair/maintenance, including any related administrative expense and

attorney fees, to the owners of the parcels within the Project. The Township will not take action to enter upon the Property and repair/maintain the Improvements if, within the fifteen (15) days following the Township's notice, the developer, the property owner(s) or the Association, as applicable, has taken appropriate steps to repair/maintain the Improvements, and thereafter diligently pursues completion of the required repair/maintenance work. In the event the Township enters upon the Property to repair/maintain the Improvements in accordance with this section, the Township may add to the actual cost of maintenance and repair a sum equal to twenty-five (25%) percent of the costs incurred by the Township in completing the same to cover the costs of servicing this Agreement. The Township may require the payment of such monies prior to commencement of the work. In any event, all maintenance assessments shall be due and payable upon receipt by the developer, the applicable property owner(s) or the Association, as applicable, of a written invoice for the same from the Township with appropriate supporting documentation. Any assessment not paid within thirty (30) days following the delivery of the invoice shall bear interest at the rate of one and one-half (1 ½%) percent per month until paid. If such costs and expenses have not been paid within thirty (30) days of a billing to the developer, the property owner(s) or the Association, as applicable, all unpaid amounts may be placed on the delinquent tax roll of the Township, as to the applicable component of that particular parcel of Property, and shall accrue interest at the rate of one and one-half (1 ½%) percent per month and penalties, and shall be collected as, and shall be deemed delinquent real property taxes, according to the laws made and provided for the collection of delinquent real property taxes. At the discretion of the Township, such costs and expenses may also be collected by suit initiated against Developer, the applicable property owner(s) or the Association and/or future owners, as applicable, and in the event the Township prevails in such suit, the Developer, the applicable property owner(s), Association and/or future owner shall pay all court costs and reasonable attorney fees incurred by the Township in connection with such suit. The Township shall also have the enforcement rights otherwise provided in applicable Township Ordinances and the Development Documents.

- vi. Should deficiencies in repair/maintenance of the Improvements be determined by the Township to constitute an impending and immediate danger to the health, safety and welfare of the public, the Township shall have the right to take immediate corrective action and summarily abate such danger. The Township will make its best effort to communicate with the developer, the applicable property owner(s) or the Association, as applicable, by telephone at the number to be provided by Developer, the applicable property owner(s) and the Association before taking such action, but the Township will not be required to delay any action in the event of an impending and immediate danger if it is unable to make contact with Developer, the applicable property owner(s) or the

Association, in which event the Township will provide notice of the action taken as soon as possible after the time of the action, and in any event no later than forty-eight (48) hours after taking such action. Should deficiencies in repair/maintenance of the Improvements be determined to be a public or private nuisance, the same may be abated pursuant to Township ordinances.

- vii. Any repair/maintenance assessments imposed by the Township shall be secured by a lien and encumbrance upon that portion of the Property with respect to which the assessment is made, and, if the assessments are not timely paid by the Developer, the applicable property owners, or the Association, as applicable, the liens may be enforced by the Township in the same manner as enforcement of liens for delinquent real property taxes.

## **12. MASTER DEED**

The developer shall submit to the Township a proposed Master Deed and Bylaws, including the Exhibit B condominium plan (“Master Deed”), for the Project. The proposed documents shall be subject to review and approval by the Township Attorney and Township staff prior to recording. The Master Deed shall be fully executed and recorded prior to the issuance of any certificate of occupancy by the Township. As part of the Master Deed, there shall be provisions obligating Developer and all future successor owners of the applicable portions of the Property to maintain and preserve all the Improvements, the private roads, drives, entranceways, parking, walkways, screening walls, landscaping, lighting, signage, greenbelts, open areas, pedestrian walkways and open area amenities, setbacks, the System and related easements and any other private common elements and Improvements for or within the Project in good working order and appearance at all times and in accordance with the Development Documents and Section 11 of this Development Agreement. The Master Deed shall also contain reference to the actions which may be taken by the Township pursuant to Section 11 in the event that the Improvements are not preserved, maintained or repaired. Additionally, the Master Deed shall identify and make reference to the Development Documents and the regulations of the Property therein, including a reference to this Development Agreement.

In the event an Association is not created under Section 11 of this Development Agreement, the Master Deed shall contain provisions providing for the continued maintenance/repair of the Improvements, at no cost to the Township, and provisions requiring the levying and collection of assessments as necessary to pay the cost of such repair/maintenance and to ensure the ability to pay the cost of future repairs and maintenance of the Improvements. In addition, the Master Deed shall contain provisions granting the Township the right to enter the Property to maintain/repair the Improvements and to collect the costs associated with such action as set forth in Section 11(vi) and (vii).

## **13. FINANCIAL ASSURANCE REQUIREMENTS**

Developer, prior to commencing construction of any phase, shall deposit with the Township or a financial institution acceptable to the Township, cash, certified check, or an

automatically renewing irrevocable letter of credit, or such other assurance as may be required by the Township, whichever Developer elects, running to the Township, to provide financial assurance (the "Financial Assurance") for the construction of the System, water and sewer, and roads (referred to as "Public Improvements") in accordance with Township policy. The Financial Assurance required shall be in the amount of One Hundred Ten (110%) percent of the cost of construction of the Public Improvements, for the particular phase being developed as specified in a contract for construction, which estimate has been approved by the Township's Engineer. The Financial Assurance shall secure the completion of the Public Improvements. If and to the extent the another governmental entity having jurisdiction requires a bond or other security to secure the completion of any of the Public Improvements, and to avoid imposing on Developer the obligation of bonding twice for the same Public Improvement, the amount of the Financial Assurance required by this Agreement shall be reduced by the amount of the financial assurance required by the other governmental entity. The Township will rebate to Developer as work progresses, and if approved by the Township, amounts of any cash deposits, or reduce the irrevocable letter of credit, as may be applicable, equal to the ratio of the work completed on the Public Improvements in each respective phase of the Project. However, at no time shall the amount retained for any incomplete work total less than 110% of the value of the remaining work, as determined by the Township's Engineer.

Concurrently with approval by the Township of any streets or other Public Improvements, a two (2) year maintenance bond or such other assurance reasonably acceptable to the Township, in the amount of 110% of the total cost of the road running from the date of final approval of the Public Improvements, as established by the Township, or other Financial Assurance, running to the Township equal to 25% of the construction costs for the Public Improvements shall be posted by Developer. Additionally, in accordance with the Township's Engineering Design Standards, as-built plans certified by a licensed engineer, reviewed by the Township's engineer, shall be submitted to the Township.

#### **14. INSURANCE**

The Developer or its Contractor, or any of their subcontractors, shall not commence work under this agreement until they have obtained the insurance required under this paragraph, and shall keep such insurance in force during the entire life of this agreement. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the Charter Township of Washington. The requirements below should not be interpreted to limit the liability of the Developer or its Contractor. All deductibles and SIR's are the responsibility of the Developer or its Contractor.

The Developer or its Contractor shall procure and maintain the following insurance coverage:

a. Worker's Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

b. Commercial General Liability Insurance: on an "Occurrence Basis" with limits of liability not less than \$3,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C)

Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included; (E) Deletion of all Explosion, Collapse, and Underground (XCU)\_exclusion, if applicable.

c. Automobile Liability: including Michigan No-Fault Coverages, with limits of liability not less than \$3,000,000 per occurrence, combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

d. Additional Insured: Commercial General Liability and Automobile Liability, as described above, shall include an endorsement stating the following shall be *Additional Insureds*: The Charter Township of Washington, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed by naming the Charter Township of Washington as additional insured, coverage afforded is considered to be primary and any other insurance the Charter Township of Washington may have in effect shall be considered secondary and/or excess.

e. Cancellation Notice: All policies, as described above, shall include an endorsement stating that it is understood and agreed Thirty (30) days, Ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: (Charter Township of Washington , Contact Name, Title, Address).

f. Proof of Insurance Coverage: The Developer or its Contractor shall provide the Charter Township of Washington, at the time that the contracts are returned by him/her for execution, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable. Copies or certified copies of all policies mentioned above shall be furnished, if so requested.

If any of the above coverages expire during the term of this agreement, the Developer or its Contractor shall deliver renewal certificates and endorsements to the Charter Township of Washington at least ten (10) days prior to the expiration date.

## **15. REIMBURSABLE COSTS**

- a. The Developer shall reimburse the Township for the following costs:
  - i. All reasonable planning, engineering, legal and any consultant fees incurred in connection with the review and approval of the Project, in accordance with the Township's Planning and Engineering Services Fee Schedules.
  - ii. All reasonable planning, engineering, legal and any consultant fees, along with applicable permit and inspection fees, which may be incurred throughout the construction of the Project as a result of any required

inspections or actions taken to ensure compliance with the Development Documents.

- b. In addition, Developer shall be responsible for all costs associated with the submission to the Township and consideration of all plans and documents associated with the Project, including, but not limited to, site plans, landscaping plans, engineering plans, as-built plans, permits, inspections, etc. Further, Developer shall be responsible for all costs related to variance requests, special use requests, and review and approval of any other agreements associated with the Project, including but not limited to, Master Deed, petitions for any special assessments district, and other similar documents, plans and costs.

**16. ACCESS TO PROPERTY**

In all instances in which the Township, pursuant to this Agreement, utilizes the proceeds of a Financial Assurance given to secure completion or maintenance of improvements, and at any time throughout the period of development and construction of any part of the Project, the Township, its contractors, representatives, consultants and agents, shall be permitted, and are hereby granted authority, to enter upon all or any portion of the Property for the purpose of inspecting and or completing the respective Improvements, and for the purposes of inspecting for compliance with and enforcement of the Plan and this Development Agreement.

**17. ENFORCEMENT AND REMEDIES**

In the event there is a failure to timely perform any obligation or undertaking required by this Development Agreement, the Township shall serve written notice upon Developer setting forth such deficiency and a demand that the deficiency be cured within fifteen (15) days following the notice (with the exception of a deficiency determined by the Township to constitute an impending and immediate danger to the health safety, and welfare of the public, for which the provisions of Section 12(c)(vii) shall apply). If the deficiency set forth in the notice is not cured within said fifteen (15) day period, and the deficiency relates to items which can be cured by the Township, the Township may enter upon the Property to cure the deficiency, and assess the cost of such cure, including any related administrative expense and attorney fees, to Developer. The Township will not take action to enter upon the Property and cure the deficiency if, within the fifteen (15) days following the Township's notice, Developer has taken appropriate steps to cure the deficiency, and thereafter diligently pursues completion of the required work. In the event the Township enters upon the Property to cure the deficiency in accordance with this section, the Township may add to the actual cost to cure a sum equal to twenty-five (25%) percent of the costs incurred by the Township in completing the same to cover the costs of servicing this Agreement. The Township may require the payments of said monies prior to the commencement of work. In any event, all costs shall be due and payable upon receipt by Developer of a written invoice for the same from the Township with appropriate supporting documentation. Any costs not paid within thirty (30) days following the delivery of the invoice and supporting documentation shall bear interest at the rate of one and one-half (1 1/2%) percent per month until paid. The payment obligation under this paragraph shall be secured by a lien

against the Property, which lien shall be deemed effective as of the date of the initial written notice of deficiency provided to Developer, or in emergency circumstances, the date at which the Township incurred its first cost or expense in taking corrective action. Such security shall be realized by placing a billing which has been unpaid by Developer for more than thirty (30) days on the delinquent tax rolls of the Township relative to the Property, to accumulate interest and penalties, and to be deemed and collected, as and in the same manner as made and provided for collection of delinquent real property taxes. In the discretion of the Township, such costs and expenses may be collected by suit initiated against Developer, and in such event, Developer shall pay all court costs and attorney fees incurred by the Township in connection with such suit if the Township prevails in collecting funds.

If the deficiency relates to a matter that cannot be cured through repair or maintenance by the Township (e.g. failure to maintain insurance, failure to provide Financial Assurance, etc.), the notice shall set forth the deficiency and the date, time and place for a hearing before the Township Board, for the purpose of allowing Developer an opportunity to be heard as to the reasons for the deficiency, and what actions will be taken to correct the deficiency. At any such hearing, the time for curing and the hearing itself may be extended and/or continued to a date certain. If, following the hearing described above, the Township Board determines that the obligation has not been fulfilled or has not been corrected within the time specified in the notice, or if an emergency situation exists as determined by the Township in its discretion, the Township shall have the power and authority, but not the obligation, to take any or all of the following actions, in addition to any actions authorized under this Development Agreement, Township ordinances or state law:

- a. Initiate legal action for the enforcement of any of the provisions set forth in the Development Documents. In the event the Township obtains any relief as a result of litigation, Developer shall pay all court costs and reasonable attorney fees incurred by the Township in connection with such legal action
- b. The Township may issue a stop work order with cause as to any or all aspects of the Project, may deny issuance of any requested building permit or certificate of occupancy within the Project regardless of whether Developer is the named applicant for such permit or certificate of occupancy, and may suspend further inspections of any or all aspects of the Project pending a cure of any such deficiencies.

The rights and remedies accorded the Township pursuant to this Development Agreement, the ordinances of the Township and/or applicable law are cumulative and may be exercised in any order, without precluding the right of the Township to exercise any other right or remedy at a later time.

## **18. DEVELOPER ACKNOWLEDGMENT**

By execution of this Development Agreement, Developer agrees that the conditions contained herein are fair, reasonable and equitable requirements and conditions; agrees that this Development Agreement does not constitute a taking of property for any purpose, is not a violation of any constitutional rights; and agrees to be bound by each and every provision of this

Development Agreement. Furthermore, it is agreed that the Improvements and undertakings described herein are necessary and roughly proportional to the burden imposed, and are necessary in order to ensure that public services and facilities will be capable of accommodating the Project, and the increased service and facility loads caused by the Project; to protect the natural environment and conserve natural resources; to ensure compatibility with adjacent uses of land; to promote use of the Property in a socially and economically desirable manner; and to achieve other legitimate objectives authorized by law. It is further agreed and acknowledged that all the required Improvements, both on-site and off-site, are clearly related to the burdens to be created by the Project, and all such improvements are clearly and substantially related to the Township's legitimate interests in protecting the public health, safety and welfare.

**19. MISCELLANEOUS**

**a. Binding Effect**

This Development Agreement shall be binding upon and inure to the benefit of the parties and their heirs, successors and assigns. The rights and obligations contained in this Development Agreement shall run with the Property. Developer shall be required, at its sole cost, to record this Development Agreement within thirty (30) days of execution with the Macomb County Register of Deeds, and provide a recorded copy to the Township as soon as a recorded copy is returned to Developer by the Macomb County Register of Deeds.

**b. Authority**

This Development Agreement has been duly authorized by Developer and the Township, through the approval of the Township Board at a meeting in accordance with the laws of the State of Michigan and the Ordinances of the Township. By the execution of this Agreement, the parties warrant that they have the authority to execute this Development Agreement, and Developer warrants that it has the authority to bind it and its respective entities to the terms and conditions of this agreement.

**c. Final Site Plan Approval**

Developer acknowledges that, at the time of the execution of this Development Agreement, Developer has not yet obtained Preliminary or Final Site Plan Approval, as required. Developer acknowledges that the Planning Commission may impose additional conditions other than those contained in this Development Agreement during Site Plan review and approval so long as those conditions are consistent with the approvals previously given and the intent of this Development Agreement. Developer agrees that any additional conditions which may be attached to the Final Site Plan Approval by the Planning Commission shall be incorporated into and made a part of this Development Agreement, and shall be enforceable against Developer, in the event Developer proceeds with the Project.

**d. Other Governmental Approvals**

It is understood that construction of some of the Improvements included in the Project may require the approval of other governmental agencies.

**e. Amendment**

This Development Agreement may only be amended pursuant to a written instrument signed by the Township and Developer.

**f. Partial Invalidity**

Invalidation of any of the provisions contained in this Development Agreement, or of the application thereof to any person by judgment or court order shall in no way affect any of the other provisions hereof or the application thereof to any other person and the same shall remain in full force and effect.

**g. No Partnership**

None of the terms or provisions of this Development Agreement shall be deemed to create a partnership or joint venture between Developer and the Township.

**h. Incorporation of Documents**

The recitals contained in this Development Agreement, the introductory paragraph, and all exhibits attached to this Agreement and referred to herein shall for all purposes be deemed to be incorporated in this Development Agreement by this reference and made a part of this Development Agreement.

**i. Cooperation**

In the event that any third-party brings an action against either party regarding the validity or operation of this Development Agreement, the parties shall cooperate with the other in good faith in any such litigation.

**j. Integration Clause**

This Development Agreement is intended as the complete integration of all understandings between the parties related to the subject matter herein. No prior contemporaneous addition, deletion or other amendment shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion or other amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the parties required herein, other than additional conditions which may be attached to final site plan approval by the Planning Commission as stated in subsection (c) above.

**k. No Third-Party Relationship**

The parties intend that this Development Agreement shall create no third-party beneficiary interest except for an assignment pursuant to this Agreement. The parties are not presently aware of any actions by them or any of their authorized representatives which would form the basis for interpretation construing a different intent and in any event expressly disclaim any such acts or actions, particularly in view of the integration of this Agreement.

**l. Agreement Jointly Drafted**

This Agreement represents the product of joint efforts and mutual understanding of Developer and the Township, and should be construed accordingly. Each party has had the opportunity to have this Agreement reviewed by legal counsel.

**m. Governing Law**

This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan, and shall be subject to enforcement only in Michigan courts. The parties agree that this Agreement is consistent with the intent and provisions of the Michigan and U.S. constitutions and applicable law.

**n. Survival of Terms.**

Any easement rights conveyed in this Development Agreement along with the following provisions will survive the expiration of this Development Agreement: including those listed in Section 2, Section 13 Section 14 Section 18, Section 19, Section 22, Section 23, and Section 24.

**o. Signed Counterparts.**

This Agreement may be executed in one or more counterparts by the different parties in separate counterparts, each of which, when executed, shall be deemed to be an original but all of which, when taken together, shall constitute one and the same Agreement. This Agreement may be transmitted by facsimile or electronic mail, and said facsimile or electronic signature shall be deemed as an original.

**p. Easements.**

Any easements granted or conveyed in this Development Agreement are non-exclusive easements.

**q. Notice.**

Unless later information is provided, notices under this Agreement will be provided to:

To Developer: Sairam Properties, LLC  
4071 Keats Drive  
Troy, MI 48085  
Attention: Mital Modi  
[mitalmodi@yahoo.com](mailto:mitalmodi@yahoo.com)

With a Copy to: H. William Freeman, Esq.  
Sullivan Ward Asher & Patton PC  
25800 Northwestern Highway – Suite 1000  
Southfield, MI 48075

To Washington Township:

Charter Township of Washington  
Attention: \_\_\_\_\_  
57900 Van Dyke  
Washington Township, MI 48094  
Phone: (586) 786-0010  
Fax: \_\_\_\_\_  
Email to:

With a copy to the Township Attorney at the same address.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Development Agreement to be executed on the day and year recited above.

CHARTER TOWNSHIP OF WASHINGTON  
a Michigan municipal corporation

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Supervisor

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: Clerk

**ACKNOWLEDGMENT**

STATE OF MICHIGAN    )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

The foregoing Agreement was acknowledged before me by \_\_\_\_\_, the duly elected Supervisor, and \_\_\_\_\_, the duly elected Supervisor and Clerk (respectively) of the Charter Township of Washington, on the \_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
\_\_\_\_\_, Notary Public  
\_\_\_\_\_ County, Michigan  
My Commission Expires: \_\_\_\_\_  
Acting in \_\_\_\_\_ County

[SIGNATURES CONTINUE ON FOLLOWING PAGE]



### **Table of Exhibits**

- Exhibit A:** Property Legal Description.
- Exhibit B:** Conceptual Development Plan and Description of permitted Uses
- Exhibit C:** Conceptual House Plans
- Exhibit D:** Conditions of Approval
- Exhibit E:** Planning Commission and Township Board Minutes.
- Exhibit F:** Schedule of Regulations and Modifications
- Exhibit G:** Fiscal Impact Analysis

**Exhibit A**

**Legal Description**

**Exhibit B**

**Conceptual Development Plan**

[Following]

**Exhibit C**

**Conceptual House Plans**

**Exhibit D**

**Conditions of Approval**

**Exhibit E**

**Planning Commission and Township Board Minutes**

**Exhibit F**

**Schedule of Regulations and Modifications**

**Fiscal Impact Analysis**