

AGREEMENT TO SUPPLY PUBLIC WATER SERVICE
FOR THE BLOSSOM RIDGE DEVELOPMENT IN OAKLAND TOWNSHIP

THIS AGREEMENT is made this _____ day of _____, 2017, among the CITY OF ROCHESTER HILLS (“the City”), a Michigan municipal corporation, whose offices are located at 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309, the CHARTER TOWNSHIP OF OAKLAND (“the Township”), a Michigan municipal corporation, whose offices are located at 4393 Collins Road, Rochester, Michigan 48306, and Blossom Ridge LLC (“Developer”), a Michigan limited liability company, whose address is 3005 University Drive, Auburn Hills, Michigan 48326.

WHEREAS, the City contracts with North Oakland County Water Authority (NOCWA) for public water supply, and the City has sufficient water supply available to service certain property (“the Property”), described in attached Exhibit A, that is owned and proposed for development by Developer in the Township; and

WHEREAS, the City and the Township have previously entered into Agreements to Supply Public Water Service to Oakland Township for the Hills of Oakland Subdivision (1988), Hills of Kings Pointe Subdivision and Musson Elementary School (1989); and

WHEREAS, the Township and the Developer desire to make an additional connection to and extension of the City’s water main in order to service the Property and to provide the interconnection and looping of water to the adjoining subdivisions of Hills of Kings Pointe and the Hills of Oakland as set forth in the engineering plans submitted by the Developer and approved by the Township and the City; and

WHEREAS, the Property is proposed for development for residential purposes as the Blossom Ridge Development to include single-family, multi-family units and a two-story assisted living facility.

WHEREAS, the parties contemplate a connection to the City’s existing 8” water main at a point near the cul-de-sac of Pine Air Court in the Hills of Kings Pointe Subdivision, the construction of a looped

water system into and through the Blossom Ridge Development with a second connection to the existing 12" water main on the south side of Dutton Road, and a third connection to the existing 12" water main on the east side of Adams Road near the entrance of The Hills of Oakland Subdivision.

NOW, THEREFORE, the parties agree:

1. Subject to compliance with the terms, provisions and conditions set forth in this Agreement and with all applicable City ordinances, the City will supply public water to the Township in order to service the Blossom Ridge Development to be developed on the Property. However, the City's obligation to supply water now or in the future is conditioned upon the Developer's and Township's complete compliance with this Agreement as well as all applicable City ordinances.
2. The City shall allow the Developer and the Township to connect to the City's water system at the existing 8" water main near the cul-de-sac of Pine Air Court in the Hills of Kings Pointe Subdivision, the construction of a water system into and through the Blossom Ridge Development with a second connection to the existing 12" water main on the south side of Dutton Road, and a third connection to the existing 12" water main on the east side of Adams Road near the entrance of The Hills of Oakland Subdivision. Between these three connections, the Developer shall construct a looped water system, as shown in attached Exhibit B.
3. Prior to construction or connection, the Developer shall submit construction engineering plans for the connections and water system to the City's Department of Public Services for approval. Before construction or connection, the Developer shall also provide the City with all necessary documentation, obtain all necessary connection and right-of-way permits and pay, where applicable, all tap-in, permits, lateral and other fees required by City ordinance.
4. For each building to be connected to the water system, the Developer shall pay all City charges as provided in City ordinance, as are now in effect and as may be adopted or amended in the future, before connection, with the precise amount of the capital charge to be that which is in effect at the time of the connection. None of the fees or charges will be refundable upon disconnection from the City water system, nor shall the City be obligated to reimburse or repay the Developer (or Developer's successors, assigns, or grantees) for any costs which may result from connecting to or disconnecting from the City's water system.
5. The City shall regard the Township as its customer, and the Township shall regard the Developer and the Developer's successors, assigns, and grantees (collectively referred to as the "User" or "Users") as the Township's customer(s). However, the City shall act as the Township's agent for purposes of

reading meters at the Property and for billing to and collecting from the Users the charges for water service and usage in accordance with paragraph 6 below.

6. The City shall, every two months, read the meters installed at the individual building sites and bill the Users for all water used since the previous billing. The charge for water shall be the service or usage rates required under City ordinance for customers located outside the City, the rate being subject to change by the City at any time. Rate increases and decreases shall be determined on a pro rata basis, based on increases or decreases, if any, imposed on residential customers situated within the City. Developer and the Township acknowledge that payment of the City's water rates and charges established by the City's ordinance is a material inducement to the City to supply water to the Property. Developer further agrees to waive and to defend and hold the City harmless from any claim by Developer, or by any other person or entity which controls Developer or which is under the control of Developer disputing or challenging any such rates or charges billed by the City in accordance with the City's ordinance. This Agreement shall be recorded in the office of the Oakland County Register of Deeds as notice to Developer's successor and assigns and shall run with the land, and Developer's obligations hereunder to pay the City's water rates and charges and to waive and hold the City harmless from claims disputing or challenging those rates and charges shall apply to and be binding on Developer's successors, assigns, and grantees.
7. Charges billed to Users shall be paid by the due date stated on the bill. The City may certify any charges which are delinquent for 6 months or more to the Township annually, in September of each year, and the Township shall use all legal means to collect the delinquent charges, plus any late payment charges required under City ordinance. In that event, the Township shall be solely responsible for obtaining payment or seeking reimbursement from the delinquent User, and the Township shall adopt and enforce the necessary ordinance to do so and to enforce and collect delinquent charges in a manner no less stringent than that authorized under City ordinance with respect to customers located in the City, and as to the extent authorized by law. Upon payment, in whole or in part, of any delinquent charges to the Township, the Township shall forthwith reimburse the City in the amount collected by the Township.
8. In addition to the foregoing, the City reserves the right to shut-off water service to a delinquent User if charges for water service are more than 30 days delinquent, and such service shall not be re-established until all delinquent charges, penalties and turn-on/off charges have been paid, as required under City ordinance.

9. The City shall supervise, inspect, test and approve the connection to and extension of the City's water system by the Township, and the extension shall be dedicated, with all necessary easements, to the City. The City shall at its cost maintain the water connection and extension. Upon termination of this Agreement, this water system extension, including all easements, property rights and physical assets, shall be transferred to the Township.
10. No cross connection shall be made between the public water system and a secondary water supply system, by submerged inlet or between a public water supply and piping which may contain sanitary sewage, waste or chemical contaminants. The City reserves the right to perform regular cross-connection control inspections.
11. The Township shall adopt, and the Developer and Developer's successors, assigns, and grantees shall comply with, any Township ordinance necessary to enforce all City ordinances, rules, regulations and standards relative to preventing infiltration of foreign matter into the water system. The City shall notify the Developer or any Users regarding any non-compliance or need for corrective action. If they fail to remedy the non-compliance or perform the necessary corrective action within a reasonable amount of time, the City may, upon providing written notice to the Developer and any Users, discontinue water service to the User or to the Property until the non-compliance is corrected. Alternatively, the City may itself perform the necessary corrective action and charge the cost thereof in the manner of water bills against the property or properties served by this Agreement allocated among them on a reasonable basis determined by the City.
12. The Parties and all Users shall comply with all rules and regulations promulgated by the Board of Directors of the NOCWA pertaining to control or restrictions as to the use of water from the Great Lakes Water Authority (GLWA) water system. Furthermore, this Agreement is subject to all applicable conditions contained in the existing water service agreement between the NOCWA and the City, including any future amendments thereto.
13. The City reserves the right to temporarily discontinue water service to the Property as may be reasonably necessary to maintain and operate the water service system. Nothing contained herein shall lessen or enlarge the legal responsibility of the City for discontinuance or service or other loss regardless of whether the need for discontinuance is caused by accident, negligence of City officials, employees or agents, acts of God or any other cause whatsoever. However, the City shall perform the necessary repair or maintenance and resume water service as soon as is reasonably possible. It is the parties' intention that the rights of Developer and Township, its successors and assigns, be neither greater nor lesser than the rights of the users of the system generally. The Township and

Developer expressly agree to waive and release any claim for damages against the City or its officials, employees, or agents for any such discontinuance, provided that whenever the City anticipates a temporary discontinuance, as distinguished from an unforeseen or emergency discontinuance, the City shall give the Township, Developer, and any other Users, reasonable advance notice. This waiver and release shall apply to and be binding on the Developer's successors, assigns, and grantees, as well. The City's discontinuance of water service shall not release the Developer, or any other Users from their obligation to pay all amounts due under this Agreement; however, there shall be no charge for water service during any such discontinuance except as permitted by laws and ordinances applicable to the water service users generally.

14. To the extent permitted by law, the City, the Township, and Developer mutually agree to indemnify and hold the other of them harmless for any losses, claims, causes of action or other liabilities, as well as any costs, expenses and attorney fees incurred by the other party which arise from the wrongful or negligent acts or omissions of the other. The indemnifying party shall pay, within 30 days after receiving written notice from the party seeking indemnification, the full amount of any loss, claim, cause of action or other liability as well as any cost, expense and attorney fee incurred. This mutual obligation to indemnify and hold harmless shall apply to and be binding on the parties' successors, assigns, and grantees.
15. The described water connection is intended to service only the proposed Blossom Ridge Development. No additional connections to or extensions from the City's water system may occur without the City's prior written consent, and the City's agreement to allow the water connection and extension described in this Agreement in no way obligates the City to allow further connection or extension of the City's water system to or by other properties in the Township.
16. This Agreement shall remain in effect indefinitely; however, the City reserves the right to discontinue water service and terminate this Agreement, after giving the Township, Developer, and any other Users 90 days advance written notice of the City's intention to do so, if the Township, Developer, or any other User fail to fulfill any obligations or conditions set forth in this Agreement, or if the City, in its sole determination, no longer has sufficient water supply to service the Property due to (i) discontinuation or termination of its water supply contract with NOCWA or such successor or alternate water supplier or source with whom the City may contract with for water supply in the future; (ii) water shortage and/or federal, state or water supplier restrictions on volume of water that may be distributed or used; (iii) public disaster or emergency; or (iv) force majeure. In addition, the Township shall directly service the Property through its own system if the Township is ever

served directly by the GLWA or any other comparable municipal water system, water lines, if needed, have been constructed to connect the Property, and the Township is otherwise able to provide water service to the Property. Upon this occurrence, the Township shall, within 90 days, disconnect from the City's water system, and this Agreement shall be terminated. Discontinuance of water service and/or termination of this Agreement pursuant to this paragraph shall not release the Township, Developer or any other Users from their obligation to pay any utility bills, charges or fees that are due the City under this Agreement.

17. The City and the Township enter into this Agreement to further the public health, safety and welfare of their residents and intend to confer no benefit or privilege upon any party other than themselves and Developer, and Developer's successors, assigns, and grantees.
18. No waiver of any breach of this Agreement shall be construed to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law.
19. This Agreement shall be construed under Michigan law. If any part, term or provision of this Agreement is held to be illegal or in conflict with any state or federal law, the validity of the remaining portion or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
20. This Agreement remains subject to cancellation in the event a court of competent jurisdiction restricts or limits the City's or the Township's right to obtain, sell, approve, contract for or distribute water service.
21. This Agreement shall not become effective until, and is contingent upon, approval by the NOCWA in accordance with the terms of the water service agreement between the City and the NOCWA. NOCWA will then request approval from the Great Lakes Water Authority (GLWA) in accordance with the terms of the water service contract between the NOCWA and the GLWA.
22. This agreement will remain effective if the City elects to leave the NOCWA and contract directly with the GLWA.
23. This Agreement shall be recorded at the Oakland County Register of Deeds and shall bind and inure to the benefit of the parties, and their successors, assignees, and grantees, and shall run with the Property.

24. A water booster station was constructed in 1989 to adequately provide water supply and pressure to the Hills of Oakland, Musson Elementary School and Hills of King's Pointe, as well as areas in the City. The City is in the process of constructing a new water booster station to replace the existing station and meet current demands. The Developer shall pay the City 5.9% of the hard construction and outside professional engineering cost. The City will share bid results. This must be paid prior to construction of the proposed water main. The Township has no responsibility to pay or collect this cost or charge which is the sole responsibility of the Developer.

IN WITNESS WHEREOF, the City and the Township have caused this Agreement to be signed by their duly authorized representatives as of the date first above written.

CHARTER TOWNSHIP OF OAKLAND

CITY OF ROCHESTER HILLS

By: _____
Mike Bailey, Supervisor

By: _____
Bryan K. Barnett, Mayor

By: _____
Karen Reilly, Township Clerk

By: _____
Tina Barton, City Clerk

Blossom Ridge LLC

By: _____

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Mike Bailey, Supervisor, and Karen Reilly, Clerk, of the Charter Township of Oakland, a Michigan municipal corporation, on behalf of the Township.

Subscribed and sworn to before me this _____ day of _____, 2017.

Notary Public

Oakland County, Michigan

My Commission Expires: _____

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by Bryan K. Barnett, Mayor, and Tina Barton, Clerk, of the City of Rochester Hills, a Michigan municipal corporation, on behalf of the City.

Subscribed and sworn to before me this _____ day of _____, 2017.

Notary Public

Oakland County, Michigan

My Commission Expires: _____

STATE OF MICHIGAN
COUNTY OF OAKLAND

The foregoing instrument was acknowledged before me this _____ day of _____, 2017, by _____, Representative for The Mocerri Companies, Inc., a Michigan corporation.

Subscribed and sworn to before me this _____ day of _____, 2017.

Notary Public

Oakland County, Michigan

My Commission Expires: _____

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| Drafted By: Tracey A. Balint, P.E., Public Utilities Engineer Department of Public Services City of Rochester Hills 1000 Rochester Hills Drive Rochester Hills, MI 48309 | When Recorded Return to: Allan E. Schneck, P.E., Director, Department of Public Services City of Rochester Hills 1000 Rochester Hills Drive Rochester Hills, MI 48309 |
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