

**DECLARATION OF EASEMENT FOR STORM WATER DRAINAGE
AND STORM SEWER MAINTENANCE AGREEMENT**

This Declaration of Easement for Storm Water Drainage and Storm Sewer Maintenance Agreement ("Declaration") is made as of this 10TH day of DECEMBER, 2019 by Shadow Woods Subdivision Association, a Michigan non-profit corporation ("**Subdivision Association**"), whose address is c/o 3128 Walton Boulevard, Suite 102, Rochester Hills, Michigan 48309, Robertson Brewster Village, LLC, a Michigan limited liability company ("**RBV**"), whose address is 6905 Telegraph Road, Suite 200, Bloomfield Hills, Michigan 48301 and City of Rochester Hills, a municipal corporation ("**City**"), whose address is 1000 Rochester Hills Drive, Rochester Hills, Michigan 48309.

The circumstances underlying the execution of this document are as follows:

A. Subdivision Association is the administrator of certain residential subdivisions located in the City of Rochester Hills, Oakland County, Michigan, known as Shadow Woods Subdivision No. 1 according to the Plat thereof as recorded in Liber 160 of Plats, Pages 30-35, Oakland County Records, and Shadow Woods Subdivision No. 2 according to the Plat thereof as recorded in Liber 163 of Plats, Pages 13-16, Oakland County Records (collectively, "**Subdivision**").

B. RBV is the developer of certain property located adjacent to the Subdivision, which property is more particularly described in **Exhibit A** attached hereto ("**RBV Parcel**"), on which RBV is establishing a condominium development to be known as Brewster Village ("**Condominium**").

C. In connection with the development of the Condominium and the RBV Parcel, RBV has requested an easement over a portion of the Subdivision for storm water drainage purposes and the Subdivision Association has agreed to grant the easement, including a right to improve the existing detention basin located in proximity of the RBV Parcel, to accommodate storm water drainage from the RBV Parcel.

NOW, THEREFORE, in consideration of the premises set forth herein and the mutual benefits of the parties hereto, the parties, upon execution of this instrument agree as follows:

The Subdivision Association hereby declares and grants to RBV and the owners of units in the Condominium, their successors and assigns, for the benefit of the RBV Parcel, a non-exclusive perpetual easement for the purpose of storm water storage, retention and drainage over that portion of the Subdivision depicted in **Exhibit B** attached hereto ("**Shared Storm Water System**").

1. The Subdivision Association shall be responsible for undertaking the maintenance, repair and replacement of the Shared Storm Water System and the costs therefor as they relate to the south detention basin shall be proportionately allocated as follows:

Subdivision	78%
Condominium	<u>22%</u>
	100.00%

The above percentages are based on preliminary design plans for the Condominium and, therefore, are based on the estimated volume of use of the Shared Storm Water System. During the development of the Condominium, the estimated volume of use may change. Under such circumstance, the above percentages shall be recalculated based on the as-built volumes, using the same formula to initially calculate the above percentages. This Declaration may also, but is not required, to be amended for the purpose of reflecting the modified percentages. For clarification purposes, the portion of the Shared Storm Water System for which the costs are to be shared relate to the south detention basin only and not to any of the up-stream pipes or facilities.

RBV, until such time as the Condominium is established by recording of its Master Deed and then upon such event the non-profit corporation established to administer the Condominium ("Condominium Association"), shall be obligated to reimburse the Subdivision Association no later than 30 days after receipt of written notice of such expense, which notice shall be accompanied by the invoice(s) for such work as required to be undertaken by the Subdivision Association under this paragraph 2.

The Subdivision Association shall not be obligated to obtain insurance in connection with the use of the Share Storm Water System; rather, the Subdivision Association and the Condominium Association shall be individually responsible for reviewing the nature of its interest in the easement and the need to obtain insurance in light of its interest and use of the easement.

For clarification purposes, the storm drainage improvements located within the portion of the above easement that benefits solely the RBV Parcel (collectively, "**BV Storm Improvements**") shall be maintained, repaired and replaced solely by RBV, its successor or assigns (or the Condominium Association upon establishment the Condominium) and the Subdivision Association grants an additional easement over the Subdivision for the purpose of enabling such maintenance, repair and replacement. RBV's proper maintenance shall include, to the extent appropriate, the same maintenance obligations listed in paragraph 5 below that apply to the Subdivision Association.

2. Any time the obligated party (being either RBV, its successor or assigns or the Condominium Association upon establishment the Condominium) does not pay any sum payable pursuant to paragraph 2 above within sixty (60) days of the due date, the delinquent party shall pay interest on such amount from the due date to and including the date such payment is received by the party entitled thereto, at the lesser of (i) three percent (3%) per annum plus the prime rate of interest from time to time published by *The Wall Street Journal* (or that of another publication or of financial institution selected by the other Party if *The Wall Street Journal* shall cease to publish a prime rate) or (ii) the highest rate permitted by law to be paid on such type of obligation.

3. Subject to obtaining all requisite permits, RBV hereby reserves the right to install all appropriate improvements needed to service the RBV Parcel, and further agrees to undertake the following: (a) With respect to the southerly located detention pond—at RBV's sole

cost, excavate the pond to remove all cattails/fragmite and restore the bottom of the detention pond to an elevation that matches the as-built elevation of the pond when first constructed as provided by the City of Rochester Hills; to regrade the bottom of the pond to allow for positive drainage to the existing outlet storm pipe; to clean and remove debris from the existing outlet storm pipe entering the pond; and to raise the existing overflow structure by approximately one foot to allow for the additional detention needed for the Condominium, and (b) With respect to the northerly located detention pond—excavate the pond to remove all cattails/fragmite and restore the bottom of the detention pond to an elevation that matches the as-built elevation of the pond when first constructed as provided by the City of Rochester Hills (“Restoration Work”), provided, however that RBV’s cost to undertake the Restoration Work pertaining to the north pond only shall not exceed \$40,000.00, but if the estimate obtained for the Restoration Work pertaining to the north pond only exceeds \$40,000.00, then, without impacting RBV’s obligation as to the southerly pond, RBV agrees to deliver to the Subdivision Association \$40,000.00 upon which event the Subdivision Association shall then have the option of undertaking the Restoration Work and being responsible for the excess cost therefor and RBV shall have no obligation to undertake any of the Restoration Work pertaining to the north pond only (collectively the work described in sub-sections (a) and (b) above are hereafter referred to as the **“Storm System Improvements”**). The Subdivision Association hereby grants all easements needed to accomplish completion of the Storm System Improvements. Further, even though design plans do not contemplate the removal of trees in the Subdivision to install the Storm System Improvements, to the extent installation of the Storm System Improvements results in the removal of any tree(s) located within the Subdivision, RBV agrees to replace the tree(s) with tree(s) of similar type and size at locations mutually agreed upon by the Association and RBV.

4. The Subdivision Association shall be responsible for the proper maintenance, repair and replacement of the Shared Storm Water System. Proper maintenance of the Shared Storm Water System shall include, but is not limited to, (i) keeping the bottom of the detention basin and all inlet pipes free from silt and debris; (ii) removing harmful algae; (iii) managing deleterious vegetative growth; (iv) maintaining the Shared Storm Water System structures, end-sections and safety features; (v) controlling the effects of erosion; (vi) inspection of inlet and outlet pipes for structural integrity; (vii) inspection and replacement of rip-rap at inlet pipes; (viii) inspection and cleaning of storm sewer and catch basins upstream from the detention basin; (ix) inspection and replacement of stone around the outlet pipe; and (x) any other maintenance that is reasonable and necessary to facilitate and continue the proper operation of the Shared Storm Water System. For purposes of clarification, only the portion of the above maintenance, repair and replacement expenses to be shared by the Condominium is the portion that relates solely to the south detention pond.

5. In the event the Subdivision Association fails at any time to maintain the Shared Storm Water System (including without limitation the detention basins) in reasonable order and condition for which the Subdivision Association is responsible under this Declaration, then the City may serve written notice upon the Subdivision Association or upon its members setting forth the manner in which the Subdivision Association has failed to maintain the Shared Storm Water System in a reasonable condition and such notice shall include a demand that deficiencies of maintenance be cured within thirty (30) days thereof. The notice shall further state the date and place of a hearing thereon before the City Council or other such board, body or official to whom the City shall delegate such responsibility, which shall be held at least fourteen (14) days after the date of the notice. At such hearing, the City Council or other designated board, body or official may affirm or modify the list and description of maintenance deficiencies and, for good cause shown, may give an extension of the time within they shall be cured.

Thereafter, if the deficiencies set forth in the original notice, or in the modification thereof, shall not be cured within the time allowed, the City may maintain the same for a period of one (1) year. Such maintenance by the City shall not be construed as a trespass, constitute a taking of the Shared Storm Water System, nor vest in the public any rights to use or enter the Shared Storm Water System. Thereafter, if the Subdivision Association does not properly maintain the Shared Storm Water System, the City may, after providing similar written notice, schedule and hold another hearing to determine whether the City should maintain the Share Storm Water System for another year, and subject to a similar notice, hearing and determination in subsequent years.

In the event the City determines an emergency condition caused by or relating to the Shared Storm Water System threatens the public health, safety or general welfare, the City shall have the right to immediately and without notice enter the Shared Storm Water System and undertake appropriate corrective action.

The cost of any maintenance by the City, plus a ten percent (10%) administrative fee, shall be assessed against the Subdivision Association and, if not timely paid, added to the tax rolls, which charges shall be a lien on the Shared Storm Water System and shall be collectable and enforceable in the same manner general property taxes are collected and enforced. The City shall be, at its option, subrogated to the right of the Subdivision Association against its members to the extent of that cost and administrative charge, if the City shall, by an official resolution, give thirty (30) days written notice to each member of the Subdivision Association of the City's election to be subrogated.

The Subdivision Association members shall bear their prorata share of the total costs of maintaining the Shared Storm Sewer System, which prorata share of the cost shall constitute a lien against each member's lot in the Subdivision and if not paid, the City shall have the right to add it to the tax rolls and collect it in the same manner as provided above. The prorated share of the cost shall be allocated equally to each lot. The cost of maintenance by the City shall be assessed against the Subdivision Association or the Subdivision Association members at the City's discretion.

6. In the event the Condominium Association fails at any time to maintain the BV Storm Improvements (including without limitation the detention basins) in reasonable order and condition for which the Condominium Association is responsible under this Declaration, then the City may serve written notice upon the Condominium Association or upon its members setting forth the manner in which the Condominium Association has failed to maintain the BV Storm Improvements in a reasonable condition and such notice shall include a demand that deficiencies of maintenance be cured within thirty (30) days thereof. The notice shall further state the date and place of a hearing thereon before the City Council or other such board, body or official to whom the City shall delegate such responsibility, which shall be held at least fourteen (14) days after the date of the notice. At such hearing, the City Council or other designated board, body or official may affirm or modify the list and description of maintenance deficiencies and, for good cause shown, may give an extension of the time within they shall be cured.

Thereafter, if the deficiencies set forth in the original notice, or in the modification thereof, shall not be cured within the time allowed, the City may maintain the same for a period of one (1) year. Such maintenance by the City shall not be construed as a trespass, constitute a taking of the BV Storm Improvements, nor vest in the public any rights to use or enter the BV Storm Improvements. Thereafter, if the Condominium Association does not properly maintain the BV Storm Improvements, the City may, after providing similar written notice, schedule and hold another hearing to determine whether the City should maintain the Share Storm Water

System for another year, and subject to a similar notice, hearing and determination in subsequent years.

In the event the City determines an emergency condition caused by or relating to the BV Storm Improvements threatens the public health, safety or general welfare, the City shall have the right to immediately and without notice enter the BV Storm Improvements and undertake appropriate corrective action.

The cost of any maintenance by the City, plus a ten percent (10%) administrative fee, shall be assessed against the Condominium Association and, if not timely paid, added to the tax rolls, which charges shall be a lien on the BV Storm Improvements and shall be collectable and enforceable in the same manner general property taxes are collected and enforced. The City shall be, at its option, subrogated to the right of the Condominium Association against its members to the extent of that cost and administrative charge, if the City shall, by an official resolution, give thirty (30) days written notice to each member of the Condominium Association of the City's election to be subrogated.

The Condominium Association members shall bear their prorata share of the total costs of maintaining the Shared Storm Sewer System, which prorata share of the cost shall constitute a lien against each member's unit in the Condominium and if not paid, the City shall have the right to add it to the tax rolls and collect it in the same manner as provided above. The prorated share of the cost shall be allocated equally to each unit. The cost of maintenance by the City shall be assessed against the Condominium Association or the Condominium Association members at the City's discretion.

7. The easements granted herein shall run with land that comprises the Subdivision and the Condominium, and shall be binding upon, and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns, except as otherwise provided herein.

8. This Declaration may be amended, modified or terminated by the parties hereto by written instrument signed by all parties, except as otherwise provided herein.

9. This Declaration shall be governed by, and construed in accordance with the laws of the State of Michigan.

10. In any proceeding arising because of an alleged default by any party, any party, if successful, shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees (not limited to statutory fees) as may be determined by the court.

11. This Agreement may be executed in any number of counterparts, all of which shall constitute a single Agreement.

(SIGNATURES APPEAR ON THE FOLLOWING PAGES)

SHADOW WOODS SUBDIVISION ASSOCIATION,
a Michigan non-profit corporation

By: Terry Lanker
Its: President

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

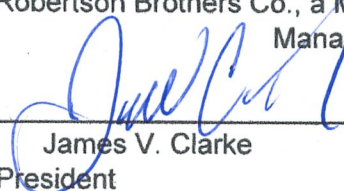
On this 10TH day of DECEMBER, 2019, the foregoing instrument was acknowledged before me in the County of Oakland, Michigan, by TERRY LANKER, the President of Shadow Woods Subdivision Association, a Michigan non-profit corporation, on behalf of the corporation.

A. J. Lagoe Jr.

OAKLAND, Notary Public
County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 7-18-24

A.J. Lagoe Jr.
Notary Public, State of Michigan
County of Oakland
My Commission Expires July 18, 2024

ROBERTSON BREWSTER VILLAGE, LLC,
Michigan limited liability company
By: Robertson Brothers Co., a Michigan corporation,
Manager

By: 
James V. Clarke
Its: President

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

The foregoing instrument was acknowledged before me this 12th day of December, 2019 in the County of Oakland, Michigan, by James V. Clarke the President of Robertson Brothers C., a Michigan corporation, Manager of Robertson Brewster Village, LLC, a Michigan limited liability company, on behalf of the company.

JENIFER PETTITT
Notary Public - State of Michigan
County of Oakland
My Commission Expires Dec 7, 2024
Acting in the County of Oakland


Jenifer Pettitt, Notary Public
Oakland County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: 12-07-2024

THE CITY OF ROCHESTER HILLS,
a municipal corporation

By: _____
Bryan K. Barnett
Its: Mayor _____

STATE OF MICHIGAN)
) ss.
COUNTY OF OAKLAND)

Acknowledged before me in Oakland County, State of Michigan on this _____ day of _____, 2020, by Bryan K. Barnett, the Mayor of the City of Rochester Hills, a municipal corporation, on behalf of the corporation.

_____, Notary Public
_____, County, Michigan
Acting in Oakland County, Michigan
My Commission Expires: _____

Drafted by:
C. Kim Shierk
Williams, Williams, Rattner & Plunkett, P.C.
380 N. Old Woodward Avenue, Suite 300
Birmingham, MI 48009
(248) 642-0333

When recorded return to:
City of Rochester Hills Clerk's Department
1000 Rochester Hills Drive
Rochester Hills, MI 48309

John Staran
Approved 1/6/2020

EXHIBIT A

LEGAL DESCRIPTION OF CONDOMINIUM PARCEL

Land in the City of Rochester Hills, Oakland County, Michigan, described as follows:

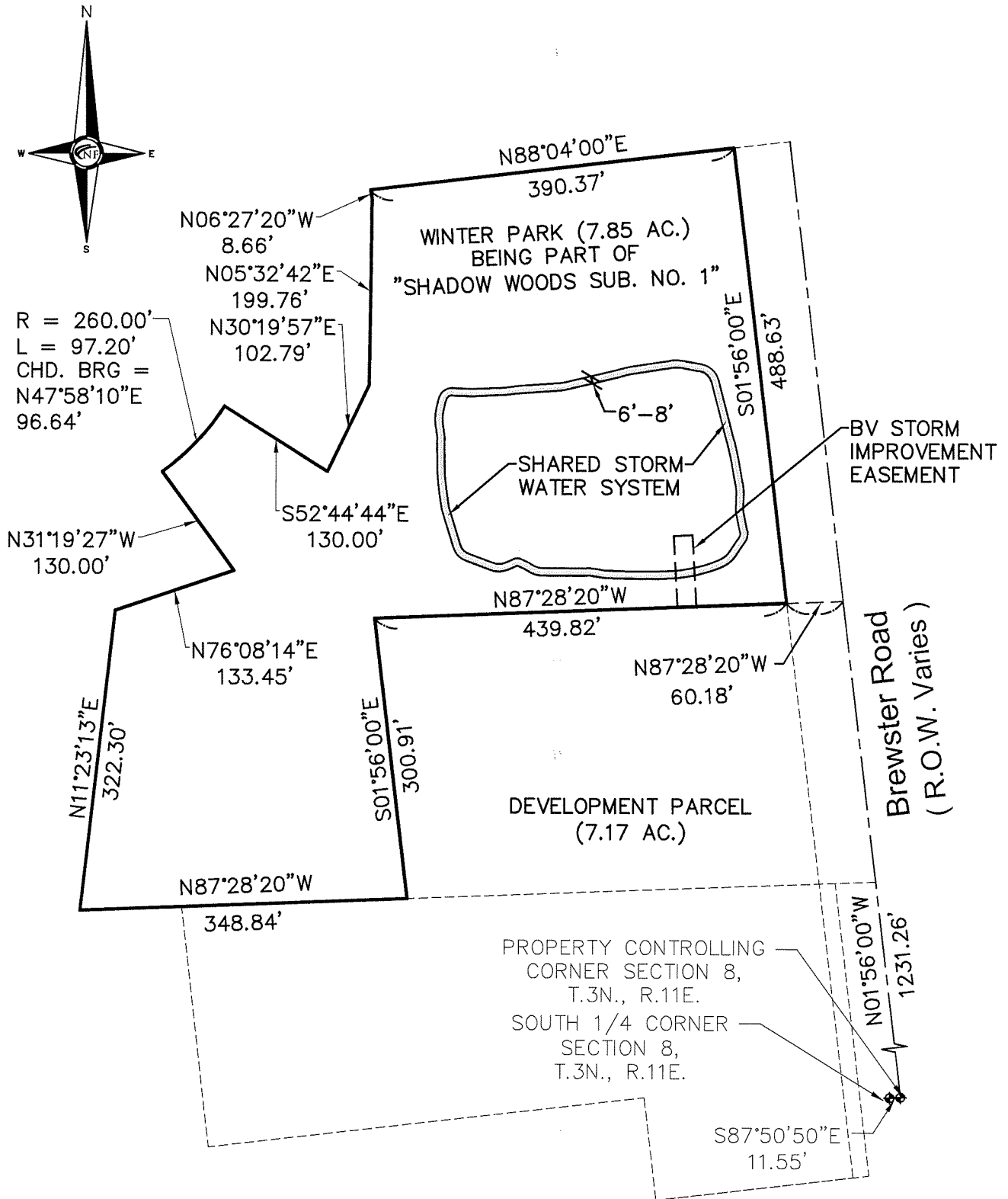
PART OF THE SOUTHWEST 1/4 OF SECTION 8, TOWN 3 NORTH, RANGE 11 EAST, CITY OF ROCHESTER HILLS, OAKLAND COUNTY, MICHIGAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 8; THENCE SOUTH 89 DEGREES 57 MINUTES 18 SECONDS EAST, 11.55 FEET TO THE PROPERTY CONTROLLING CORNER; THENCE NORTH 04 DEGREES 03 MINUTES 10 SECONDS WEST ALONG THE PROPERTY CONTROLLING LINE BETWEEN THE SAID PROPERTY CONTROLLING CORNER AND THE CENTER POST OF SAID SECTION 8, 930.35 FEET TO THE POINT OF BEGINNING; THENCE NORTH 89 DEGREES 34 MINUTES 48 SECONDS WEST, 43.14 FEET TO A POINT ON THE WEST LINE OF BREWSTER ROAD (WIDTH VARIES); THENCE SOUTH 04 DEGREES 03 MINUTES 10 SECONDS EAST ALONG SAID WEST LINE OF BREWSTER ROAD, ALSO BEING 43 FEET WEST OF AND PARALLEL TO SAID PROPERTY CONTROLLING LINE, 313.47 FEET; THENCE SOUTH 85 DEGREES 56 MINUTES 50 SECONDS WEST, 228.50 FEET; THENCE NORTH 04 DEGREES 03 MINUTES 10 SECONDS WEST, 110.00 FEET; THENCE SOUTH 85 DEGREES 56 MINUTES 50 SECONDS WEST, 467.95 FEET; THENCE NORTH 03 DEGREES 47 MINUTES 21 SECONDS WEST, 257.86 FEET TO A POINT ON THE SOUTH LINE OF SHADOW WOODS SUBDIVISION No. 1, AS RECORDED IN LIBER 160 OF PLATS, ON PAGES 30 THROUGH 35, OAKLAND COUNTY RECORDS; THENCE THE FOLLOWING THREE (3) COURSES ALONG THE SOUTH AND EAST LINES OF SAID SHADOW WOODS SUBDIVISION No. 1: 1) SOUTH 89 DEGREES 34 MINUTES 48 SECONDS EAST, 240.52 FEET, 2) NORTH 04 DEGREES 03 MINUTES 10 SECONDS WEST, 300.91 FEET AND 3) SOUTH 89 DEGREES 34 MINUTES 48 SECONDS EAST, 500.00 FEET TO A POINT ON SAID PROPERTY CONTROLLING LINE; THENCE SOUTH 04 DEGREES 03 MINUTES 10 SECONDS EAST ALONG SAID PROPERTY CONTROLLING LINE, 300.91 FEET TO THE POINT OF BEGINNING.

*Jenny M. Approved
2/27/20*

EXHIBIT B

SHARED STORM WATER SYSTEM



LEGAL DESCRIPTION - SHARED STORM WATER SYSTEM

WINTER PARK (PRIVATE PARK) OF SHADOW WOODS SUBDIVISION NO. 1 OF PART OF THE WEST 1/2 OF SECTION 8, T.3N., R.11E., AVON TOWNSHIP (NOW CITY OF ROCHESTER HILLS), OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER 160 OF PLATS, ON PAGES 30 THROUGH 35, OAKLAND COUNTY RECORDS.

Parcel #15-08-331-040



ENGINEERS

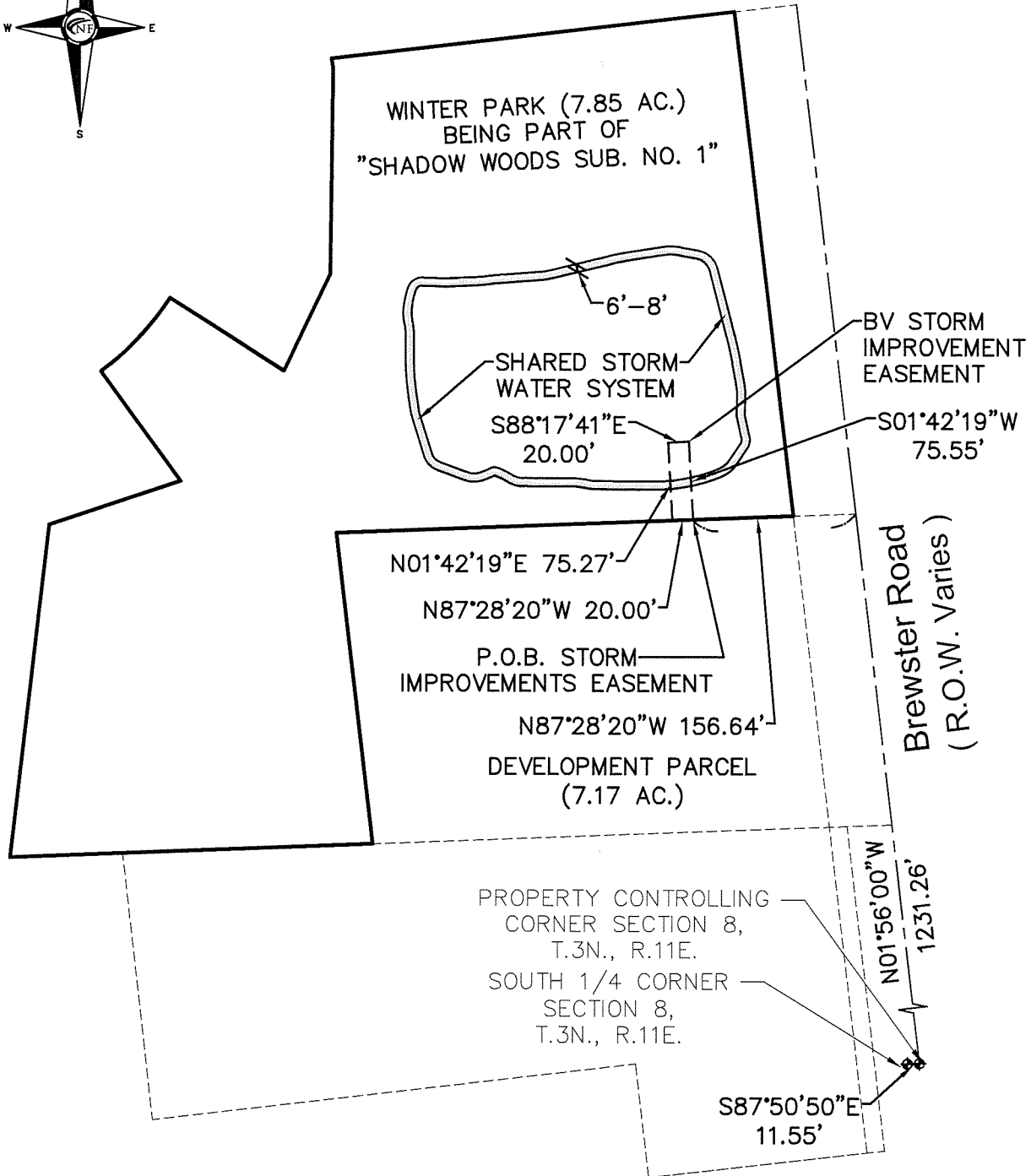
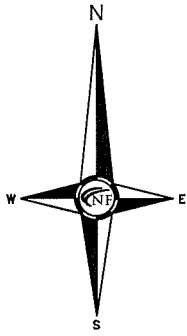
NOWAK & FRAUS ENGINEERS
 46777 WOODWARD AVE.
 PONTIAC, MI 48342-5032
 TEL. (248) 332-7931
 WWW.NOWAKFRAUS.COM

*1/21/20
 Jenny M.
 Approved*

SCALE	DATE	REVISED	DRAWN	JOB NO.	SHEET
1" = 150'	09-18-18	01-20-20	M.C.	K342	1 of 2

EXHIBIT B

STORM IMPROVEMENT EASEMENT



LEGAL DESCRIPTION - BV STORM IMPROVEMENT EASEMENT

A TWENTY (20) FOOT WIDE STORM IMPROVEMENT EASEMENT BEING PART OF WINTER PARK (PRIVATE PARK) OF SHADOW WOODS SUBDIVISION NO. 1 OF PART OF THE WEST 1/2 OF SECTION 8, T.3N., R.11E., AVON TOWNSHIP (NOW CITY OF ROCHESTER HILLS), OAKLAND COUNTY, MICHIGAN, AS RECORDED IN LIBER 160 OF PLATS, ON PAGES 30 THROUGH 35, OAKLAND COUNTY RECORDS, BEING DESCRIBED AS: COMMENCING AT THE SOUTH 1/4 CORNER OF SAID SECTION 8 AS RECORDED IN LIBER 34596, PAGE 041, OAKLAND COUNTY RECORDS; THENCE S.87°50'50"E. 11.55 FEET TO THE PROPERTY CONTROLLING CORNER OF SAID SECTION 8; THENCE N.01°56'00"W. 1231.26 FEET ALONG THE PROPERTY CONTROLLING NORTH-SOUTH 1/4 LINE OF SAID SECTION 8; THENCE N.87°28'20"W. 156.64 FEET TO THE POINT OF BEGINNING OF SAID EASEMENT; THENCE N.87°28'20"W. 20.00 FEET; THENCE N.01°42'19"E. 75.27 FEET; THENCE S.88°17'41"E. 20.00 FEET; THENCE S.01°42'19"W. 75.55 FEET TO THE POINT OF BEGINNING.

NOWAK & FRAUS ENGINEERS
 46777 WOODWARD AVE.
 PONTIAC, MI 48342-5032
 TEL. (248) 332-7931
 WWW.NOWAKFRAUS.COM

SCALE	DATE	REVISED	DRAWN	JOB NO.	SHEET
1" = 150'	09-18-18	01-20-20	M.C.	K342	2 of 2