

BREWSTER VILLAGE
PLANNED UNIT DEVELOPMENT AGREEMENT

Entered into between:

City of Rochester Hills, a Michigan Municipal Corporation

and

Robertson Brewster Village, LLC, a Michigan limited liability company

Dated: _____, 2019

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BREWSTER VILLAGE PLANNED UNIT DEVELOPMENT AGREEMENT

THIS BREWSTER VILLAGE PLANNED UNIT DEVELOPMENT AGREEMENT (the “Development Agreement”) is made and entered into this ___th day of _____, 2019, by and between THE CITY OF ROCHESTER HILLS (“City”) a Michigan municipal corporation, with offices located at 1000 Rochester Hills Drive, Rochester Hills, MI 48309, and Robertson Brewster Village, LLC, (“Developer”), a Michigan limited liability company, with offices located at 6905 Telegraph Rd, Suite 200, Bloomfield Hills, Michigan 48301.

RECITALS

- a. The purpose and intent of this Development Agreement is to document the agreements between the parties and to regulate the placement of units within the property. This development shall be known as Brewster Village. The proposed community of thirty (30) for-sale detached ranch-style condominium residential units is set on vacant land owned by Lutheran Social Services of Michigan, a Michigan Non Profit Corporation. These improvements will be completed pursuant to a comprehensive development plan known as the “Brewster Village” Planned Unit Development, which is hereinafter be referred to as the “PUD” or “Development”.
- b. Lutheran Social Services of Michigan owns the property and had entered in to a Purchase Agreement with Robertson Brewster Village, LLC. The property is located on the west side of Brewster Road north of Walton Road and is more particularly described in Exhibit A attached to this Development Agreement (“Property”). The Developer, Robertson Brewster Village, LLC, intends to develop the Property as a detached condominium community.
- c. Brewster Village is a unique enclave of detached ranch style homes designed to meet the needs of the aging demographics currently found in Rochester Hills.
- d. The Property is currently underutilize vacant property.
- e. The proposed Development will be a benefit to the community through the redevelopment of an underutilized property. The Development will provide an immediate increase in tax base. The Development will be a for-sale, age-targeted community that will include residents that have pride in ownership and are responsible homeowners.
- f. Prior to execution of this Development Agreement, the Property was split zoned R-1 and R-3 One Family Residential and SP Special Purpose. Upon execution of this Development Agreement the Property shall be rezoned by the City to PUD, Planned Unit Development, which meets the City’s goal of transitional density from apartments and commercial to the single family community to the north.

- g. Subject to execution and recording of this Development Agreement, the Development illustrated and described in this Development Agreement and in the Exhibits attached hereto, is hereby approved in accordance with the authority granted to and vested in the City Board pursuant to Michigan Public Act 110 of 2006, as amended (the Michigan Zoning Enabling Act); Michigan Public Act 33 of 2008, as amended (the Michigan Planning Enabling Act); Michigan Public Act 59 of 1978, as amended (the Michigan Condominium Act); and in accordance with the Zoning Ordinance of the City, as amended, except as modified herein and subject to the terms of this Development Agreement. The approval of the Brewster Village Planned Unit Development does not relieve the Developer from compliance with applicable provisions of the Michigan Condominium Act and the City Zoning Ordinance, except as modified herein, nor shall it be deemed to confer any approval other than required by law.
- h. The City and the Developer now desire to enter into this Agreement which, among other things, shall set forth the mutual and respective covenants, obligations, and undertakings of the City and Developer with respect to the Planned Unit Development. All successors and assigns of Developer shall be bound by the terms of this Agreement.

NOW, THEREFORE, it is hereby agreed as follows:

1. SUMMARY DESCRIPTION OF THE DEVELOPMENT

The Development covers an area comprising 7.3 acres. The Property is located on the west side of Brewster Road north of Walton Road in the City of Rochester Hills. Developer is proposing to construct a detached condominium residential community. The proposed use is as follows:

- a. Thirty (30) for-sale detached condominium residential homes approximately 1,750 square feet in livable area. The homes will be built with attached two-car garages. A homeowner’s association will be responsible for maintenance of all common areas as well as building exterior maintenance.
- b. The project will be built as one phase of development.
- c. Storm water shall adhere to County requirements and will be subject to the executed and recorded agreement between the Shadow Woods HOA and Robertson Brewster Village LLC.
- d. Miscellaneous utility structures exist on the property and will be removed or relocated as part of the development.

- e. The development will include amenities along Brewster Road and common landscaping throughout.
- f. A landscape easement on the adjacent Shadow Woods open space parcel for a portion of the north and west perimeters of the Brewster Village development, as agreed to with the Shadow Woods Board under separate recorded document.

2. ADHERENCE TO REQUIREMENTS FOR DEVELOPMENT

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

- a. The Code of Ordinances for the City of Rochester Hills.
- b. The Final Plan for Brewster Village prepared by Nowak & Fraus Engineering dated and signed by the Planning Commission Chairman on _____. The Final Plan is attached as **Exhibit B**, and is otherwise referred to as the General Development Plan (“GDP”). The GDP shall correlate to the Exhibit B condominium subdivision plan attached to the condominium master deed.
- c. Conditions imposed on the Development by the City Planning Commission in its _____ recommendation to the City Council, including the conditions recommended by the City’s Planner and Engineer, and any other reasonable conditions which may be subsequently imposed by the City Council with respect to Brewster Village PUD approval and the Planning Commission with respect to the Site Plan or other required approvals.
- d. The City of Rochester Hills Engineering Design Standards and any other reasonable conditions which might be required by the City’s Engineer.
- e. The recorded Declaration of Easement for Storm Water Drainage with the Shadow Woods HOA.
- e. This Development Agreement and any conditions imposed herein.

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 City Ordinances, and shall also be subject to and in accordance with all other approvals and permits required under applicable City 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 City Ordinances, this Development Agreement shall apply. In the event the Development Agreement is silent on any matters otherwise covered by the GDP or City Ordinances and regulations, the GDP and City Ordinances and regulations shall apply.

The Developer and City acknowledge and agree that rezoning of the Property to PUD constitutes approval of the GDP as the plans for general configuration, road layout, location and amount of land occupied by permitted uses, building separation and setbacks, subject to final site plan review and condominium approval.

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 provide notice of these requirements to all future owner(s) of the Property. The Homeowner's Association shall accept responsibility for maintenance of the private storm improvements, internal streets, the shared street, landscaping and amenities.

3. INTENT OF DEVELOPMENT

Brewster Village will be a quality residential community designed to appeal to prospective Rochester Hills home buyers looking for maintenance free living in their own brand new home. It is the Project Developer's intent to construct quality units that will be targeted toward downsizing buyers seeking a housing product that is severely lacking in the area. The Developer has constructed many similar developments in the region with great success over the past several decades, including Hills of Oxford in Oxford Township, Orion Village in Orion Township, and The Garden Villas at Cherry Hill in Canton Township. Homeowners who are looking to have a sense of community will find the offering to be an attractive housing option. This project will provide a vibrant diverse community that builds off our success over the years.

4. ADHERENCE TO ORDINANCES

Developer shall comply with the Zoning Ordinance of the City in effect at the time of development, except where modified by this Development Agreement. Developer acknowledges that certain provisions of this Development Agreement may exceed the requirements of the Zoning Ordinance, and the City 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 construction of the Development, unless superseded or otherwise covered in this Development Agreement and the GDP. Permitted uses shall be limited to single family and condominium residences and all accessory uses thereof as regulated by the City of Rochester Hills Zoning Ordinance.

Development standards will generally conform to the GDP as shown on **Exhibit B** and established per the Schedule of Regulations and Modifications within the City of Rochester Hills PUD Ordinance. Specific waivers being sought from the PUD provisions are as follows:

1. Maximum density as follows:
 - a. 4.1 dwelling units per acre
2. Front setback as follows:
 - a. 20' to back of curb
3. Building separation as follows:
 - a. 20' between units
4. Rear setback as follows:
 - a. 15' to property line
5. Maximum building height as follows:
 - a. 1.5 stories and 30' to the midpoint of the roof
6. Shared stormwater conveyance and offsite stormwater retention

5. PERMITS AND AUTHORIZATIONS

- a. The City shall grant to Developer and its contractors and subcontractors all City permits and authorizations necessary to modify the existing utilities including electric, telephone, gas, cable television, water, storm and sanitary sewer to the Property and to otherwise develop and improve the Property in accordance with approved plans, 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 City will be processed in the customary manner. The City 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 GDP, and this Planned Unit Development Agreement.
- b. The Developer may install, occupy, and operate one temporary sales trailer on the Property, subject to Building Inspector approval, in a location to be selected by the Developer. Installation of a sales trailer(s) shall be permitted when the Developer completes general grading of the lot, and has provided gravel access to the trailer. Use and occupancy of the trailer shall terminate thirty (30) days after the certificate of occupancy has been issued for a model home in the development, at which time the trailer(s) shall be removed. One construction trailer shall be permitted at a location determined by Developer and shall be permitted through the duration of the project.
- c. The Developer is permitted to sell units in Brewster Village from an offsite location within the City or the surrounding area in lieu of a temporary sales trailer, if desired by the Developer.
- d. Building Permits: With the exception of the model home as described in this Agreement, building permits shall not be issued until all public site improvements have been accepted and approved by the governmental agency having jurisdiction.

Alternatively, the Developer may post sufficient bonding or a letter of credit to obtain building permits prior to final installation and acceptance of such facilities.

- e. Other governmental approvals: It is understood that construction of some of the improvements included in the Development will require the approval from other governmental agencies.
- f. One model unit shall be permitted at a location to be determined by the Developer. The model unit may be staffed by a licensed real estate agent during normal daytime hours up to seven days a week. One lot may be established as a temporary parking lot to service the model at a location to be determined by the Developer. At the risk to the Developer, construction of the model home shall be permitted prior to the completion and acceptance of land development. The model building permit shall be expeditiously reviewed by the City immediately following final engineering plan approval.

6. DEVELOPMENT SEQUENCE/PHASING

The parties agree and acknowledge that the approved plans represent the current intent of the Developer to develop the Property, with the knowledge and market condition information possessed by the Developer as of the present date. The parties acknowledge that housing market conditions may change over time, which could cause the Developer to change its plans or timing with respect to the development of the Project. The parties further acknowledge that the buildings and improvements as shown on the approved plans may be constructed, if at all, at different dates in the future, and that the Developer may elect to develop such improvements in the order and at such times as it determines necessary and appropriate in its discretion, if at all. Site improvements reasonably necessary or reasonably related to any particular building, including without limitation road improvements, storm drainage facilities, sidewalks and landscaping, will be made at the time of construction of such particular building, as determined through the site plan process. Provided that the Developer is proceeding in good faith and with due diligence to develop the Project in light of existing economic conditions, and is otherwise in compliance with this Agreement and City ordinances, the City will not unreasonably refuse to extend any time periods for Project completion for a reasonable time to enable the Developer to complete the Project. The Developer shall provide City Staff with a written report of the status of the development of the Project on an annual basis commencing one year from the date of this Agreement until project development is completed. Time is of the essence to this Planned Development Agreement. The GDP shall be in effect for a period of 5 years, during which time Developer shall obtain building permits and commence construction of the Development within 18 months following approval of the GDP and substantially complete construction of the Development within 42 months once commenced. The Development shall be completed in one phase.

7. ENGINEERING PLAN

The Developer shall prepare and submit for review and approval detailed engineering plans for improvements. Such plans shall be reviewed by the City Engineer to ensure that they are substantially consistent with the GDP and other applicable requirements. The Developer will make diligent and good faith efforts to obtain all approvals and permits on a timely basis, and the City will, in a timely manner, process all reviews and approvals required of it.

8. WATER, SANITARY AND STORM SEWER SYSTEMS

Developer shall, at its sole expense, construct and install all connections tying into the municipal water and sanitary sewer systems. The Developer shall convey to the City easements necessary for the City's access to sewer and water facilities within the Development or such facilities will be installed in City rights-of-way.

The Developer shall be required to make necessary improvements to the adjacent Shadow Woods association's storm pond in order to accommodate the project stormwater detention requirements and bring the pond to compliance. All necessary governmental permits shall be obtained by the Developer. The Developer shall provide an executed agreement with the Shadow Woods Homeowner's Association for the detention pond in a form acceptable to the City and recorded with the Register of Deeds prior to issuance of a Land Improvement Permit.

9. ROADS, DRIVES AND PARKING

- a) The Developer shall construct the roads as depicted on **Exhibit B**. The roads shall be private and will be maintained by an established homeowner's association.
- b) Parking shall be provided onsite in the designated spaces as shown on **Exhibit B** and on street parking shall be permitted as depicted.
- c) A left turn lane shall be added to Brewster Road as approved by staff and paid for by the Developer, prior to final Engineering approval.

10. ARCHITECTURAL AND SITE DESIGN GUIDELINES

Building elevation materials will consist primarily of brick, stone and hardieboard siding as shown on the conceptual architecture drawings (**Exhibit C**).

Development standards will generally conform to the Site Plan GDP as shown on **Exhibit B** and established per the City of Rochester Hills PUD Ordinance. Unless otherwise described in this Planned Development Agreement, all architectural and site design guidelines shall meet City Ordinances and regulations.

11. LANDSCAPING AND MAILBOXES

- a) Developer shall provide frontage and internal landscaping as depicted on **Exhibit B**.
- b) Mailboxes shall be installed in cluster boxes, as approved by the United States Postal Office.

12. SIGNAGE

- a) Developer shall be permitted to install one monument sign within the development as indicated on the approved Landscape Plan (**Exhibit B**). The sign shall meet the requirements of Section 138-12.306 and Chapter 134 of the City Code of Ordinances.
- b) One temporary onsite marketing sign each up to (72) square feet may be installed on the Brewster Road frontage immediately following approval of this Development Agreement ~~and~~ shall be able to remain to the end of the ~~sales~~ five –year period ~~of~~ the ~~development~~ GDP is in effect. The sign shall be maintained by Developer in good repair during the five-year period.
- c) One temporary offsite marketing sign on the Lutheran Social Services of Michigan owned property located at the Northwest corner of Brewster and Walton Roads during the sales period ~~shall be able to remain to the end of the five –year period the GDP is in effect. The sign shall be maintained by Developer in good repair during the five-year period.~~

13. AMENITY AND IMPROVEMENT COMPLETION

- a) Amenities shall be installed per the Landscape Plan (**Exhibit B**).
- b) In the event of a home closing in a time of year that does not allow for certain exterior items to be completed (i.e. concrete during the winter season) then a temporary certificate of occupancy shall be issued. In the event a bond is required to be posted by the Developer with First American Title Company to secure these incomplete items to facilitate a closing of the home then the evidence of the bond shall be provided by the Developer to the City to serve as security with the City so the Developer is not

posted a bond twice for the same incomplete items. The bond shall not be released until the City issues a certificate of occupancy on the home.

14. CONDOMINIUM ASSOCIATION

The Developer shall have the responsibility to legally organize a condominium associations for all parts of the residential development. The Master Deeds and Bylaws for the condominium shall set forth the restrictions and regulations contained in this Development Agreement; prescribe the responsibilities of the condominium association; set forth the manner, method and timing of transferal of maintenance responsibilities for common areas, and other facilities to the association; provide a feasible method of funding maintenance activities, such as annual dues and/or assessments; and reserve rights to the City to assess private property owners for the cost of maintenance of any common areas and roads.

The Developer shall be responsible initially for maintenance of roads, walkways, landscaped areas, open space areas, and drains over which jurisdiction has not been assumed by the City or other agency, until the Developer assigns such responsibilities to the City or condominium association to be organized. Following the assignment of such maintenance responsibilities to the City or condominium associations, the Developer shall have no further maintenance obligations for such improvements.

15. REIMBURSABLE COSTS

- a. Developer shall reimburse the City for the following costs:
 - i. All reasonable planning, engineering and any consultant fees incurred in connection with the review and approval of the Development, in accordance with the City's Planning Services Fee Schedule.
 - ii. All reasonable planning, engineering 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 City and consideration of all plans and documents associated with the Development, including, but not limited to, site plans, landscaping plans, engineering plans and conveyances on park land, 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 Development, including but not limited to,

petition for any special assessments district, and other similar documents, plans and costs.

16. REMEDIES. In the event that a party believes that the other party is not acting reasonably or in conformity with this Agreement, then the aggrieved party may petition the Oakland County Circuit Court to resolve such dispute and the parties shall make themselves immediately available for a hearing on a date to be set by the Court. In the event that the Court finds that party has not acted in good faith or in conformity with this Agreement, then the Court may order reasonable costs and attorney fees incurred to the prevailing party. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided by law and in equity.

17. 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.

b. Authority

This Development Agreement has been duly authorized by all necessary action of Developer and the City, through the public hearing held on _____, the recommendation of the Planning Commission on _____ and approval of the City Council at the public meeting held _____, 2019 in accordance with the laws of the State of Michigan, and the Ordinances of the City. By the execution of this Development Agreement, the parties each warrant that they have the authority to execute this Development Agreement and bind the Property in its respective entities to its terms and conditions.

c. Amendment

This Development Agreement may not be modified, replaced, amended, or terminated, without the prior written consent of the City Council and the Developer or its successors in title to the Property as of the date of the modification, replacement, amendment, or termination. The City of Rochester Hills Zoning Board of Appeals shall not have any authority to grant any variances for any of the subject matter contained within this PUD Agreement. Modifications to the General Development Plan shall be made in accordance with the requirements and procedures set forth in City zoning ordinance.

The Developer and the City agree to amend this Development Agreement and the Exhibits attached hereto as may be necessary or required to comply with the requirements of any federal, state or county statute, ordinance, rule, regulation, or requirement relating to the Planned Unit Development, and that any such amendment

shall be effective as if originally set forth herein. In addition, the Developer and the City agree to amend this Agreement and the Exhibits attached hereto as may be appropriate, necessary, or required in order to conform to any final surveys and engineering requirements and any final plats or plans that shall have been approved by The City of Rochester Hills from time to time.

d. City Not Responsible for Damages

The Developer agrees that, absent gross negligence or willful misconduct on the part of the City, its employees, agents, representatives or contractors, or by reason of the City's course of conduct resulting in a continuing or material default of its obligations under this Development Agreement, the City shall not be responsible to the Developer for damages arising out of a claimed breach of this Agreement. In such event, the Developer's sole remedy (except in the event of a material defect) shall be a claim for specific performance in the Oakland County Circuit Court. In the event of any litigation relating to this Agreement, the prevailing party (as determined by the trial Court) will be entitled to reimbursement of reasonable attorney fees and costs.

e. Entire Development Agreement: Termination

This Development Agreement constitutes the entire agreement between the parties relating to the subject matter herein and may not be modified replaced or amended, without the prior written consent of the Developer and The City of Rochester Hills.

f. Notice

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

To Owner and Developer

Robertson Brewster Village, LLC
Attention: Tim Loughrin
6905 Telegraph Rd, Suite 200
Bloomfield Hills, MI 48301
Phone: 248-282-1428
Fax: 248-282-1429
Email: tloughrin@robertsonhomes.com

Williams Williams Rattner & Plunkett, PC
Attention: C. Kim Shierk

380 North Old Woodward Avenue, Suite 300
Birmingham, Michigan 48009
Email: cks@wwrplaw.com

To City:

City of Rochester Hills
Attention: Tina Barton, City Clerk
1000 Rochester Hills Drive
Rochester Hills, MI 48309
Email: clerksoffice@rochesterhills.org

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

CITY OF ROCHESTER HILLS
a Michigan municipal corporation

By:
Its: Mayor

By:
Its: Clerk

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged before me by _____, _____ the Mayor and Clerk (respectively) of the City of Rochester Hills, on the ____ day of _____, 2019.

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

(Signatures continued on next page)

ROBERTSON BREWSTER VILLAGE, LLC, a Michigan corporation

By: Robertson Brothers, Co., a Michigan corporation, Manager

By: James V. Clarke
Its: President

ACKNOWLEDGEMENT

STATE OF MICHIGAN)
) ss
COUNTY OF OAKLAND)

The foregoing Agreement was acknowledged before me in Oakland County, Michigan by James V. Clarke, the President of Robertson Brothers Co., a Michigan corporation, the Manager of ROBERTSON BREWSTER VILLAGE, LLC, on the ___ day of _____, 2019.

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

Table of Exhibits

- Exhibit A:** Property Description
- Exhibit B:** Site Plan and Landscape Plan
- Exhibit C:** Conceptual Architecture Drawings
- Exhibit D:** Planning Commission Minutes

Exhibit A

Property Description

Description:

Exhibit B

Final Site Plan

[Following]

Exhibit C

Conceptual Architecture Drawings

[Following]

Exhibit D

Planning Commission Minutes

[Following]