

BLOOMER WOODS
MAINTENANCE AGREEMENT
FOR MAINTENANCE AND REPAIR OF PRIVATE ROAD

This Maintenance Agreement made this ____ day of _____, 2016, by **DIVERSE REAL ESTATE LLC**, a Michigan Limited liability company of **13001 23 Mile Road, Suite 200, Shelby Township, MI 48315** a Michigan Limited liability company (“Developer”) and the **CITY OF ROCHESTER HILLS** (“the City”), whose address is 1000 Rochester Hills Drive, Rochester Hills, MI 48309 with the consent of **S.E. MICHIGAN LAND HOLDING LLC**, a Michigan Limited liability company (“S.E.”) of **13001 23 Mile Road, Suite 200, Shelby Township, MI 48315**.

WHEREAS, S.E. is the owner of certain real property located in the City of Rochester Hills, Oakland County, Michigan, which real property is more particularly described in **Exhibit A** attached hereto and incorporated herein (the “Property”).

WHEREAS, S.E. has granted to Developer certain development rights for the Property.

WHEREAS, with S.E.’s consent, Developer intends to develop the Property as a residential community to be known as Bloomer Woods, a single-family residential condominium development (hereinafter known as the “Development”).

WHEREAS, ingress and egress to the Parcels shall be by a sixty (60) foot private road easement and said parcels may be serviced by utilities by means of an easement in and under the area designated for ingress and egress.

The private road easement is described and depicted in the attached **Exhibit B**.

NOW, THEREFORE, IT IS HEREBY DECLARED, GRANTED AND CONVENATED that the land aforescribed now, and if and when conveyed by subject to and changed with all the protective covenants, restrictions, obligations and conditions hereinafter set forth in this instrument.

I.

INGRESS AND EGRESS AND MAINTENANCE

A. Ingress and egress to and from each of the resulting Parcels from the division shall be by means of a private road easement as is provided on the described survey, and ingress and egress shall be in common. Said private road easement shall be established according to the standards and specifications of the City of Rochester Hills applicable road section. None of the record title owners of various Parcels, by exclusion in any conveyance, may disassociate a particular Parcel’s right to use the private road easement.

B. The owners of each of the Parcels shall be responsible for and shall pay the total cost to maintain the road. Each Parcel shall be responsible for an equal share of the cost of maintenance, with the further provision that once at least two of the Parcels actually have buildings constructed on them, the cost of maintenance shall be the responsibility of only the Parcels which have buildings and are therefore, users of the road.

C. The need for any particular act or item of maintenance of repair shall be determined by two or more of the owners of the Parcels who will be sharing in the cost of maintenance or repair. Each of said Parcels shall have one (1) vote, regardless of the number of owners of any given Parcel. The owners of record of said Parcels comprising the property responsible for the cost of maintenance or repair shall pay the amount determined to be due with thirty (30) days after receipt of written notice of the necessity of a required maintenance project signed by a majority of the Parcel owners.

D. Any new improvement of the road, which shall be defined as more than ordinary maintenance and repair, of the private road easement shall be paid for entirely by those owners of the Parcels who desire to improve the road, unless all of the owners agree to share cost of the improvement.

E. Anything herein to the contrary notwithstanding, each party hereto shall be solely responsible for repairing, or causing to be repaired, at his or her own expense, any extraordinary or unusual damage to the aforementioned roadway or easement occasioned by or resulting from his or her use of such roadway or easement for the ingress and egress of construction equipment, or from such other heavy usual or use thereof.

F. Recognizing that there may presently exist varying views relative to the need for snow plowing of said roadway, or certain portions thereof, it is agreed that plowing of snow shall not, as of the date or dates on which this Agreement is executed, be defined as or considered to be an act or item of maintenance; provided, however, that if a majority of the parties responsible determine that any party hereto is unfairly and unreasonably failing to participate in the cost or effort involved in the plowing or clearing of snow plowing is, in fact, properly an act or item of maintenance and, after due notice in writing of such determination, all affected parties may thereafter be assessed accordingly; and provided further, however, that no party shall be assessed for the cost of snow plowing any portion of roadway not customarily used by him or her, irrespective of the fact that he or she may be the owner thereof.

G. Failure of any owner to pay his or her pro rata share of the cost of maintenance within the time hereinbefore provided shall entitle the other owners to collect it in a Court of competent jurisdiction.

H. Each of the parties hereto shall absolutely desist and refrain from prohibiting, restricting, limiting or in any manner interfering with normal access to and use of the easement and roadway which is the subject matter of this Agreement by any of the other parties hereto it being expressly understood and agreed that such normal access and use shall include use by family, guest, invitees, tradesmen, emergency vehicles and personnel, and other bound for or returning from the premises of any of the said parties.

II.

EASEMENT FOR PUBLIC VEHICLES

Proprietors hereby grant an easement to the public for all reasonable and necessary emergency and public vehicles over the easement described herein and designated on the survey as the private road easement (**exhibit B**). Said easement shall be for the purposes of said emergency and public officials performing whatever emergency and public services which appear reasonably necessary, in their sole discretion, under the circumstances.

III.

EASEMENT FOR UTILITIES

A non-exclusive easement for utilities to serve any of the Parcels is hereby granted over and under the private road easement which is referred to herein.

IV.

SEVERABILITY

The voiding or invalidation of any one or more of the covenants herein by judgment or court order shall in no way affect any of the remaining provisions and all of said covenants shall remain totally and severably enforceable.

V.

APPLICATION

The benefits, covenants obligations and restrictions herein provided, shall run with the land and shall inure to the benefit of and be binding upon the heirs, administrators, executors, personal representatives, assigns, grantees, transferees and successors in title of Proprietors. Every deed, land contract or other document of assignment, transfer, conveyance or sale of any of the aforesaid property shall contain an express reference to this Maintenance Agreement.

VII.

RESERVATION OF RIGHTS

The Proprietors hereby reserve the right at their sole discretion to approve additional tributary properties to use the road easement. Future parties afforded this road easement vested interest shall be obligated, bound to join and become a part of this Maintenance Agreement.

IN WITNESS WHEREOF, the parties have executed this agreement on the date first written above.

Developer:

DIVERSE REAL ESTATE LLC
a Michigan limited liability company

By: _____

Name: _____

Its: _____

STATE OF MICHIGAN
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by _____, the _____ of Diverse Real Estate LLC, a Michigan limited liability company, on behalf of the limited liability company.

_____, Notary Public
State of Michigan, County of _____
My commission expires: _____
Acting in the County of _____

[Signatures and Acknowledgements Continue on Following Pages]

City:

CITY OF ROCHESTER HILLS,
a Michigan municipal corporation

By: _____
Bryan K. Barnett, Mayor

By: _____
Tina Barton, City Clerk

STATE OF MICHIGAN
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Bryan K. Barnett, Mayor, and Tina Barton, Clerk, of the City of Rochester Hills, a Michigan municipal corporation, on behalf of the municipal corporation.

_____, Notary Public
State of Michigan, County of _____
My commission expires: _____
Acting in the County of _____

Drafted by:

Wendy Fuhrman
Lombardo Homes
13001 23 Mile Road, Suite 200
Shelby Township, MI 48315

When recorded return to:

City Clerk
City of Rochester Hills
1000 Rochester Hills Drive
Rochester Hills, MI 48309

CONSENT

The undersigned, being the owner of the Property described in the foregoing Private Road Maintenance Agreement, hereby (a) consents and subjects its interest in the land to the Private Road Maintenance Agreement and all of the terms and conditions contained therein and (b) consents to the recordation of this Private Road Maintenance Agreement in the office of the Oakland County Register of Deeds.

S.E. MICHIGAN LAND HOLDING LLC, a Michigan limited liability company

By: _____

Name: Anthony F. Lombardo

Its: Manager

STATE OF MICHIGAN)
) ss.
COUNTY OF MACOMB)

The foregoing instrument was acknowledged before me this _____ day of _____, 2016, by Anthony F. Lombardo, the manager of S.E. Michigan Land Holding LLC, a Michigan limited liability company, on behalf of the limited liability company.

_____, Notary Public
_____ County, Michigan
My commission expires: _____
Acting in Macomb County

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

BLOOMER WOODS
CITY OF ROCHESTER HILLS
OAKLAND COUNTY, MICHIGAN
SECTION 13

LEGAL DESCRIPTION: PARCEL 15-13-301-058

PART OF THE SOUTHWEST 1/4 OF SECTION 13, T.3N., R.11E., BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS NORTH 344.58' ALONG THE WEST LINE OF SAID SECTION 13 AND THE CENTERLINE OF JOHN R ROAD AND EAST 60.00' FROM THE SOUTHWEST CORNER OF SAID SECTION 13; THENCE NORTH 928.59'; THENCE N89°57'06"E 602.12'; THENCE S00°01'17"E 929.10'; THENCE WEST 602.47' TO THE POINT OF BEGINNING. CONTAINING 559,438 SQUARE FEET - 12.843 ACRES (NET)