

BREWER MEADOWS PLANNED UNIT DEVELOPMENT AGREEMENT

This Planned Unit Development Agreement (the "Agreement") is entered into this _____ day of _____, 2015, between **Brewer Rd Howell LLC**, a Michigan limited liability company, whose address is 1700 West Big Beaver Road, Suite 120, Troy, MI 48084 (the "Developer"), and the **Township of Howell**, a Michigan municipal corporation, whose address is 3525 Byron Road, Howell, Michigan 48843 (the "Township").

RECITALS

A. Developer has an agreement to purchase 37.15 acres of land owned by the Township located in Howell Township, Livingston County, Michigan, the legal description of which is set forth on Exhibit A attached hereto (the "Property").

B. Developer desires to develop the Property as a type II planned unit development ("PUD") in accordance with Article XXVII, "PUD-Planned Unit Development Projects", of the Howell Township Zoning Ordinance (the "Zoning Ordinance"). The PUD is to be known as "Brewer Meadows" (the "Project").

C. On December 9, 2014 the Township Planning Commission recommended approval of a Preliminary PUD Site Plan for the Property pursuant to Sections 20.06(B), 20.08(J), and 27.06 of the Zoning Ordinance for the development of the Property as a PUD.

D. On January 12, 2015, the Township Board approved the Preliminary PUD Site Plan for the Property in compliance with the Zoning Ordinance.

E. On _____, 2015, the Township Planning Commission recommended approval of a Final PUD Site Plan for the Property and this Agreement pursuant to Sections 20.07 and 27.06 of the Zoning Ordinance.

F. On _____, 2015, the Township Board approved the Final PUD Site Plan for the Property, which is attached hereto as Exhibit B (the "PUD Plan"), and this Agreement pursuant to Sections 20.07 and 27.06 of the Zoning Ordinance and the Michigan Zoning Enabling Act, as amended.

NOW, THEREFORE, Developer and Township, in consideration of the mutual covenants of the Parties described in the Agreement, agree as follows:

ARTICLE I. GENERAL TERMS

- 1.1 The Township and Developer acknowledge and represent that the recitals set forth above are incorporated herein and are true, accurate and binding.
- 1.2 The Township acknowledges and represents that this Agreement may be relied upon for future land use and development of the Property by Developer and Developer's assigns and successors in interest.
- 1.3 The PUD Plan has been approved by the Township Board in accordance with all applicable Township ordinances, and depicts the land uses that shall be permitted and shall be developed on the Property. Approval of the PUD Plan includes approval of the PUD, this Agreement and all Exhibits attached to this Agreement, which take precedence over and supersede any and all prior reports, agreements, plans and other submissions to or approvals by the Township relative to the Property.
- 1.4 The PUD Plan complies with the Zoning Ordinance requirements, except as specifically provided otherwise within this Agreement.
- 1.5 Pursuant to Section 27.03 of the Zoning Ordinance, the location and uses of all buildings, all uses and mixtures thereof, all yards, setbacks, buffer areas and transition strip, and all other information regarding the uses of the Property as shown on or as part of the PUD Plan shall have the full force and permanence of the Zoning Ordinance as though such PUD Plan and supporting information were specifically set forth as requirements in the Zoning Ordinance.
- 1.6 This Agreement, including the uses approved on the PUD Plan, is for the benefit of the Property, and shall run with the land, and shall bind and inure to the benefit of the Parties and the heirs, successors, assigns and transferees of the Parties to this Agreement. No other parties shall have any rights with respect to this Agreement.
- 1.7 The PUD may be developed in phases as shown on the approved PUD Plan and subject to final site plan approval on each phase of the PUD. The Developer has the right, but not the obligation, to create separate condominium associations for the different phases of the PUD and separate master deeds, bylaws and condominium subdivision plans for each phase of the PUD. Site improvements as determined by the Township Zoning Administrator to be reasonably necessary or related to each phase, including without limitation, site amenities, road improvements, storm drainage, sidewalks and landscaping, shall be made at the time of construction of that particular phase. The Township shall timely issue, upon payment of any applicable fees, all building and other permits required for development of the PUD and any improvements to be constructed on the Property, which are in compliance with the PUD, this Agreement and all other applicable Township requirements.

- 1.8 The PUD Plan may be amended upon application by Developer and upon approval of the Township Board as set forth in the Zoning Ordinance as permitted by Article XX and Article XXVII, Section 27.09 of the Zoning Ordinance. Notwithstanding the foregoing, the Township Zoning Administrator shall have the authority to review and approve in writing the following minor changes to the PUD Plan that may be requested by Developer, provided that the area and density requirements and the overall character of the PUD Plan are not materially affected: (a) reduction in the height of any building, or the floor area of any building by no more than five percent (5%); (b) increase in the floor area of any building of no more than five percent (5%); (c) relocation of any building in any direction within five feet of its location as designated on the PUD Plan; and (d) internal rearrangement of parking areas, roads, sidewalks, storm drainage facilities and other utilities.
- 1.9 The approvals set forth herein, including the PUD and the PUD Plan, are valid for a period of six (6) years from the date of this Agreement. Any phase of the PUD that has been started during this six (6) year period may be completed, provided that construction on that phase continues without any interruption. Any extension of the approvals beyond the six (6) year period shall be treated as a PUD Plan amendment as permitted by the Zoning Ordinance.

ARTICLE II. LAND USE AUTHORIZATION AND STANDARDS

- 2.1 Township acknowledges and represents that the Property is currently zoned MFR and upon rezoning shall be zoned MFR with a Type-2 PUD.
- 2.2 The PUD as shown on the PUD Plan consists of 111 single family residential home sites, with 10.89 acres of open space. The PUD Plan also includes public sewer, public water and private roadways.
- 2.3 Approved minimum building unit area, open space, setbacks and building footprint and maximum density, lot coverage, and building height for the land uses within the PUD shall be as set forth on the approved PUD Plan.

ARTICLE III. INTERNAL PRIVATE ROADS

- 3.1 An internal system of private vehicular roads shall be constructed by developer at its expense throughout the PUD as shown on the PUD Plan.
- 3.2 The internal roads within the PUD are private roads and shall be maintained by Developer to meet the design Standards (hereinafter defined) until such time as a Condominium Owners Association or Associations has been established for the residential portion of the PUD (collectively, the "Condominium Owner Association") pursuant to a Master Deed recorded with the Livingston County Register of Deeds, at which time the Condominium Owners Association shall maintain such roads to meet the design Standards as provided in the Master Deed. The Condominium Association shall carry liability insurance and any action alleging tort liability related to the roads shall be brought against the Condominium Association, except as otherwise required by the Michigan Condominium Act.

- 3.2.1 The Master Deed shall comply with all applicable requirements of Article XXVI of the Zoning Ordinance.
- 3.2.2 The Master Deed shall provide that each unit owner shall be obligated to participate in the cost of the operation and maintenance of the internal private roads pursuant to a workable method of apportioning the cost of maintaining such roads acceptable to Township as required under Section 26.15(E)(1)(b) of the Zoning Ordinance.
- 3.2.3 In the event that Developer or the Condominium Owners Association shall fail to maintain any of the internal private roads as required hereby, Township may perform such maintenance and assess the owners of the parcels on the private road or those residents who have access to the private road for such work, plus an administrative fee of 25%, as set forth in Section 26.15(E)(1)(c) of the Zoning Ordinance.
- 3.3 No public funds of Township shall be used to build, repair or maintain the private roads in the PUD.
- 3.4 Developer shall grant easements over the private roads in the PUD to the public for the purpose of emergency and other public vehicles for whatever public access or services are necessary in accordance with Article 26.15(E)(1)(e) of the Zoning Ordinance.
- 3.5 The owners of property within the PUD shall refrain for prohibiting, restricting, limiting or in any manner interfering with the normal ingress and egress and use of the private roads within the PUD by any of the other owners of property within the PUD. Normal ingress and egress and use shall include use by family, guest, invitees, tradesman, and others traveling to or returning from any of the properties within the PUD.
- 3.6 The internal private roads shall be at least thirty feet (30') wide measured from back of curb to back of curb, excepting in the area provided with a landscaped boulevard in which the roadways on each side of the boulevard are eighteen feet (18') wide measured from back of curb to back of curb. The internal private roads rights of way shall be as set forth on the approved PUD Plan and shall include the roadway, sanitary sewer, storm sewer, water main, electric, gas, telephone and cable TV.
- 3.7 Other than as set forth herein or in the Zoning Ordinance, the internal private roads in the PUD shall comply with the Livingston County Road Commissions "Specifications for Plat Development" adopted May 24,1991, or such other standards as may be adopted by Township for private roads (the "Design Standards")

ARTICLE IV. SITE IMPROVEMENTS

- 4.1 The site improvements upon the Property shall be created to accomplish the objective of providing accommodations for vehicular traffic, pedestrian traffic and parking as depicted

upon the PUD Plan.

- 4.2 Pedestrian walkways shall be constructed on both sides of the residential streets within the PUD. The pedestrian walkways shall be five (5') feet in width with a surface of concrete.
- 4.3 Walkways shall be constructed in the location depicted on the PUD Plan in accordance with the construction plans approved by Township.
- 4.4 A paved 20' wide emergency access drive to property adjacent to the East property line shall be constructed as shown on the PUD Plan.
- 4.5 Prior to February 1, 2017 and prior to commencement of any construction on the Property, Developer shall pay the Township the amount of Four Hundred Thousand Dollars (\$400,000), which will be applied by the Township against the cost of paving the entire length of Brewer Road from M-59 to approximately 50 feet north of Henderson Road. Within 12 months of the date of such payment, the Township will complete the paving of the entire length of Brewer Road from M-59 to approximately 50 feet north of Henderson Road, unless the Township is excused by Force Majeure.
- 4.6 For purposes of this Agreement, "Force Majeure" means a cause or event beyond the Township's reasonable control, which through the exercise of due diligence the Township is unable to foresee or overcome, including without limitation any new or expanded county, state or federal statutory, regulatory or ordinance requirements; any adverse weather conditions such as hurricanes, tornadoes, high winds, snow storms or ice storms; any other natural disasters such as earthquakes or floods; or any acts of God, acts of war, terrorism, strikes, lockouts, industrial disturbances or civil disturbances. The term does not include any changes in general economic conditions such as inflation, interest rates, or other factors of frequent occurrence.

ARTICLE V. LANDSCAPING

- 5.1 The landscaping shall be constructed, installed and maintained in accordance with the approved landscaping plans that form a part of the PUD Plan.

ARTICLE VI. UTILITIES

- 6.1 The PUD shall be serviced with underground utilities, including electrical, natural gas, telephone, and cable television, which shall provide utility services to all buildings within the PUD with easements reserved for the utility providers for repair, maintenance and improvements.
- 6.2 The Property and the PUD shall be connected at the outside boundary of the Property to the Township's waste water treatment plant and municipal water supply by improvements constructed by the Township as part of the existing Special Assessment Districts, of which the Property is a part. Public sanitary sewer has been extended to the outside boundary of

the Property by the Township through Special Assessments under Act 188 of the Public Acts of 1954. Developer and Township agree that the current principal amount of the unpaid Special Assessments for sewer against the Property total \$111,720.00. Such principal amount shall be divided into equal annual installments of principal, together with interest at 5.51% per annum from and after the date of this Agreement, as shown on the attached Exhibit C, which shows annual installments through December 31, 2020, and all such installments shall be billed, collected and paid when due. If any Special Assessment installment is not paid when due, then the Special Assessments shall be considered to be delinquent and there shall be collected, in addition to interest, a penalty at the rate of 1% for each month, or fraction of a month, that the Special Assessments remain unpaid before being reported to the Township Board for reassessment upon the Township Tax Roll. If not paid by the due date, the installments shall be subject to collection, fines and penalties in the same manner as for delinquent property taxes. Said Special Assessments levied on the Property shall be secured by a statutory lien on the Property in accordance with Act 188 of the Public Acts of 1954 and other remedies available to the Township under law. Nothing in this Agreement shall be construed to exempt the Developer or the Property from any ad valorem tax liability or assessments which may be authorized by law. Developer agrees to pay said Special Assessments in full as they come due and Developer unconditionally guarantees to Township the current and timely payment of the Special Assessments, plus any interest that accumulates during repayment, until the Special Assessments are paid in full. Developer's personal guarantee shall bind Developer and its successors and assigns. Developer shall also provide an irrevocable Letter of Credit acceptable to the Township in the principal amount of \$111,720.00 as security for the timely payment of the Special Assessments as they come due. The Township shall have the right to draw against the Letter of Credit and to pursue any remedies necessary directly against Developer and its successors and assigns to obtain timely payment of the Special Assessments, including any interest, fees or penalties that may accrue due to the Special Assessments becoming delinquent. Developer's guarantee of the Special Assessments and Letter of Credit shall not be required if Developer pays the entire principal amount of the future Special Assessments at the time of closing, plus interest calculated to the date of closing.

- 6.3 At Developer's request, upon the creation of new tax parcels within the Property for the individual condominium units within the PUD, the Township Assessor shall divide a pro-rata portion of the then remaining Special Assessments among the condominium units within the PUD, and the payment of such divided Special Assessments shall be subject to the same payment requirements as the original Special Assessments discussed above. The Letter of Credit required above shall remain valid, however, until the Special Assessments have been paid in full.
- 6.4 Developer at its expense shall be responsible for the design and construction of water and sanitary sewer facilities within the PUD and for the infrastructure required by Township and the Townships Engineer and the Marion, Howell, Oceola, Genoa Water Authority (MHOG) to connect the water and sewer facilities within the PUD to the public sanitary sewer and water systems at the PUD property line. This shall include, among other

facilities, the Developer's construction at its own cost of a sanitary sewer pump station needed to serve the Property. Upon completion by Developer of the water and sanitary sewer facilities within the PUD and the infrastructure to connect such system to the public water and sewer facilities at the PUD property line, and the inspection and approval of such facilities by Township Engineer during and after completion of such facilities, Developer shall convey to Township and MHOG and Township and MHOG shall accept the components of the PUD water and sewer facilities including, but not limited to, all pipes, connections, hydrants and other collection facilities up to the customers side of the meter with the rest of the line belonging to the customer. Developer shall be responsible to pay the reasonable cost of such inspections, and shall deposit the estimated cost of such inspections with Township and MHOG prior to commencement of construction of such facilities. Developer shall assign all construction warranties Developer has obtained with respect to the PUD water and sanitary sewer system to Township and MHOG. Developer may construct the water and sanitary sewer system within the PUD in phases, to correspond to the phases of development of the PUD. If developer carries out such construction in phases, at Townships and MHOG's request the conveyance of the water and sanitary sewer system shall occur in phases, promptly upon completion of each phase and the review and inspection of the water and sewer facilities within such phase by Townships Engineer and MHOG.

- 6.5 Township shall construct an 8" water line along Brewer Road to connect the Property with the Township's existing water lines as per engineering plans approved by the Township. Prior to the commencement of such water line construction by the Township, Developer shall pay the Township a water benefit charge in the total amount of \$289,373.67. The Township shall complete the construction and installation of the aforementioned water line as soon as reasonable possible, but in no event shall the completion be later than twelve months after the date of Developer's payment, unless the Township is excused by Force Majeure.
- 6.6 Water and sewer rates and charges to the Property and the PUD shall be in accordance with Howell Township's ordinances, as amended from time to time, other than the water benefit charge referenced above. Currently, those applicable ordinances are Ordinance Nos. 21, 54, 181 and 238.
- 6.7 The PUD shall be serviced by private storm water management facilities to be constructed and installed at the sole expense of Developer. The onsite storm water management system shall be maintained by the Developer and then by the Condominium Owners Association in the same manner as provided in paragraph 3.2 hereof. The Master Deed shall provide that each unit owner shall be obligated to participate in the operation and maintenance of the onsite storm water management facilities pursuant to a reasonable method of apportioning the cost of maintaining such system.

ARTICLE VII. OPEN SPACE PRESERVATION

- 7.1 The PUD incorporates open space areas and park areas which are depicted on the PUD

Plan (the "Open Space Areas"). The Open Space Areas shall be irrevocably dedicated to the Condominium Owner's Association either as rights in fee or easement, retained as open space for park, recreation, utility or other common uses and maintained by the Condominium Owners Association. Detention and retention ponds and similar improvements may be permitted within the Open Space Areas if approved by the Township and incorporated into the approved function and/or design of the Open Space Areas through the approval of the final site plan.

- 7.2 Developer shall have the right to reserve, dedicate and/or grant public or private easements within the Open Space Areas for the construction, installation, repair, maintenance and replacements of rights-of-way, walkways, boardwalks, water features, fountains, bicycle paths, water mains, sewers, drains, retention basins, electric lines, telephone lines, gas mains, cable television and other telecommunication lines and other public and private utilities, including all equipment, facilities, and appurtenances relating thereto, as provided in the Master Deed(s).
- 7.3 Developer shall reserve, dedicate and/or grant public or private easements within the Open Space Areas for the permanent preservation of any wetland or open space.

ARTICLE VIII. SIGNS

- 8.1 The Project Entry Sign shown on the PUD Plan shall comply with the requirements of Article XIX of the Zoning Ordinance.

ARTICLE IX. OTHER

- 9.1 This Agreement may not be modified, replaced, amended or terminated without the prior written consent of Developer and the Township or their respective assigns and successors in interest. Developer and Township shall be entitled to modify, replace or amend this Agreement without the consent of any other person or entity, regardless of whether such person or entity now or hereafter has any interest in any part of the Property, including subsequent purchasers, or their tenants, mortgagees or others.
- 9.2 In the event of any direct conflict between the terms and provisions of this Agreement and the provisions of the PUD Plan, Zoning Ordinance, or other township ordinances, rules or regulations, the provisions of this Agreement shall control.
- 9.3 The Condominium Association for any phase of the PUD shall be established before any building or structure in that phase of the PUD is sold by the Developer or occupied.
- 9.4 Developer may assign its rights under this Agreement to any subsequent owner of the Property. Developer may also assign its rights to purchase the Property to a related or affiliated entity and may reacquire such Property, either directly or through a related or affiliated party at a later time. In any such event, the terms and provisions of this Agreement shall remain in effect for the benefit of the Township and the owner, or owners of the Property.

- 9.5 Unless otherwise specifically provided, all notices and other documents to be served or transmitted under this Agreement shall be in writing and addressed to the respective parties at the addresses stated on the first page of this Agreement and may be served or transmitted in person or by ordinary mail properly addressed with sufficient postage.
- 9.6 This Agreement has been executed in the State of Michigan and shall be governed by Michigan law.
- 9.7 If any provision of this Agreement is unenforceable for any reason, the unenforceability thereof shall not impair the remainder of this Agreement, which shall remain in full force and effect.
- 9.8 This Agreement represents the entire understanding and agreement between the parties hereto with regard to the matters addressed herein. All prior oral or written understandings and agreements with regard to the matters addressed herein are specifically merged herein.
- 9.10 This Agreement shall be recorded with the Livingston County Register of Deeds and shall be referenced in the Master Deed for the Property and in the deeds to each individual unit sold in the PUD.

WITNESS the due execution of this Agreement by the parties hereto as of the day and year first above written, which shall be the last day that Developer or Township shall have executed this Agreement below.

Brewer Rd Howell LLC

Township of Howell

By: _____

 Title: Member

By: _____
 Michael Coddington, Supervisor
 By: _____
 Carolyn Eaton, Clerk

ACKNOWLEDGEMENTS

STATE OF MICHIGAN)
) ss.
 COUNTY OF _____)

On this ____ day of _____, 2015, before me, a notary public in and for said County,

personally appeared _____, Member of Brewer Rd Howell LLC, a Michigan limited liability company, who acknowledged that he executed the foregoing instrument with authority on behalf of Brewer Rd Howell LLC.

Notary Public, _____ County, MI
Acting in _____ County, MI
My commission expires: _____

STATE OF MICHIGAN)
) ss.
COUNTY OF LIVINGSTON)

On this ____ day of _____, 2015, before me, a notary public in and for said County, personally appeared Michael Coddington and Carolyn Eaton, the Supervisor and Clerk, respectively, of the Township of Howell, who acknowledged that they executed the foregoing instrument with authority on behalf of the Township of Howell.

Notary Public, Livingston County, MI
Acting in Livingston County, MI
My commission expires: _____

When recorded return to:
Carolyn Eaton
Howell Township Clerk
3525 Byron Road
Howell, Michigan 48843
(517) 546-2817

NOTES:

- 1. Need ownership information confirmed.**
- 2. Need proof of authority of Developer’s representative to sign.**
- 3. What is the involvement of the Applicant “Fairview Companies”?**

4. All the concerns of the Planner Report and the Engineer Reviews must be addressed in the Final PUD Plan prior to final execution of PUD Agreement.

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

A parcel of land situated in Howell Township, Livingston County, Michigan described as:

SEC 27 T3N R4E NE 1/4 OF NE 1/4 EXC N 210 FT OF E 230 FT ALSO EXC BEG 1179.83 FT S FROM NE COR OF SEC TH CONT S 150.27 FT, N 86°35' W 290 FT, N 88°44'30" W 281.57 FT, N 160.90 FT, S 86°35' E 572 FT TO BEG 36.4AC M/L

Also known as Tax Parcel No. 4706-27-200-004

EXHIBIT B

FINAL PUD SITE PLAN

[Must show Phasing – see Section 1.7]

EXHIBIT C

SCHEDULE OF PRINCIPAL AND INTEREST PAYMENTS ON SPECIAL ASSESSMENTS