

**TAX INCREMENTAL DISTRICT NO. 1  
DEVELOPMENT AGREEMENT  
BETWEEN THE VILLAGE OF RIVER HILLS AND  
CORNERSTONE DEVELOPMENT OF S.E. WISCONSIN, LLC  
FOR THE GROVE IN RIVER HILLS**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is entered into as of December 8, 2021 by and between **CORNERSTONE DEVELOPMENT OF S.E. WISCONSIN, LLC**, a Wisconsin limited liability company, its successors and/or assigns ("Developer"), and the **VILLAGE OF RIVER HILLS, WISCONSIN**, a Wisconsin municipal corporation ("Village"), collectively the "Parties".

**RECITALS**

Village and Developer acknowledge the following:

A. Village is the Owner of that certain real property legally described in Exhibit A, attached hereto (the "Property").

B. The Property is located within the boundaries of Tax Incremental District No. 1, Village of River Hills, Wisconsin (the "District"). Pursuant to Wis. Stat. § 66.1105 (the "Tax Increment Law"), the Village adopted a project plan for redevelopment within the District on October 21, 2020, (the "Project Plan").

C. Developer plans to construct 51 single family homes in a single condominium on the Property, with an estimated value of not less than \$40,500,000 (the "Project"). It is acknowledged that development of the Project as described in this recital is consistent with the Project Plan.

D. The development of the Project would not occur without the financial participation of the Village as set forth in this Agreement. The Village has performed a sensitivity analysis with respect to Developer's financial pro forma for the Project (the "Pro-Forma"), and has confirmed that Developer's assumptions are reasonable and that the Village's financial participation is necessary to provide a market-rate return and to attract private investment consistent with the Project Plan.

E. The Village, pursuant to Village Board action dated December 8, 2021, has approved this Agreement and authorized its execution by the proper Village officials on the Village's behalf.

F. Developer has approved this Agreement and authorized its execution by an appropriate representative on its behalf.

**AGREEMENTS**

In consideration of the RECITALS and the terms and conditions set forth herein, the Parties agree and covenant as follows:

## **ARTICLE I DEFINITIONS**

All capitalized terms used and not otherwise defined herein shall have the following meanings unless a different meaning clearly appears from the context:

1. "Adjoining Village Property" means the approximate 28.4 acre parcel abutting the Property;
2. "Agreement" means this Development Agreement, as the same may hereinafter be from time to time modified, amended or supplemented in accordance with its terms;
3. "Commencement Date" means January 1, 2023;
4. "Completion Date" means January 1, 2029;
5. "Developer" means Cornerstone Development of S.E. Wisconsin, LLC, a Wisconsin limited liability company, or a controlled affiliated entity;
6. "District" means Tax Incremental District No. 1, Village of River Hills, Wisconsin;
7. "Fees" means all fees due to the Village for the Project under applicable Village ordinances (other than fees described under Section IV(F) below) which Fees shall be determined consistent with the Village's published schedule of fees;
8. "Make Up Payment" shall have the meaning under Article IV below;
9. "Minimum Guaranteed Assessed Value" shall have the meaning under Article IV below;
10. "Pro-Forma" means Developer's financial pro-forma for the Project provided by Developer dated December 7, 2021, which is deemed a trade secret exempt from public records requirements;
11. "Project" means construction of 51 single family homes in a single condominium on the Property, pursuant to the plans to be approved by Village, a preliminary depiction of which is attached hereto as Exhibit B (the "Plans") with a value creation of at least \$40.5 million;
12. "Project Base Value" means the equalized value of the Property on the date on which the District was created, which is \$0;
13. "Project Plan" means the project plan adopted by the Village on October 21, 2020;
14. "Property" means that certain real property to be described in a Certified Survey Map ("CSM"), and which is currently described in Exhibit A, attached hereto, containing

approximately 25.18 acres. When the CSM is recorded, Exhibit A will be substituted with the CSM description.

15. "Tax Increment" means tax increments (as defined by the Tax Increment Law) collected from the Property and paid to the Village;

16. "Tax Increment Law" means Wis. Stats. sec. 66.1105;

17. "Term" means the term of this Agreement, which shall continue from the date of full execution of this Agreement until the date when the District is terminated; and

18. "Village" means the Village of River Hills, Wisconsin.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

A. Representations and Warranties of Village. The Village makes the following representations and warranties:

1. The Village is a municipal corporation of the State of Wisconsin and has the power to enter into this Agreement and carry out its obligations hereunder.

2. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any law, ordinance, charter, contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Village is now a party or by which it is bound, or constitutes a default under any of the foregoing.

3. The execution, delivery and the consummation of the transactions contemplated hereby have been duly authorized and approved by the Village and no other or further acts or proceedings of the Village are required for its enforcement. This Agreement constitutes the legal, valid and binding agreement and obligations of the Village, enforceable against it in accordance with its respective terms, except as enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally and by general principals of equity.

B. Representations and Warranties of Developer. The Developer makes the following representations and warranties:

1. Developer is a Wisconsin limited liability company and has the power to enter into this Agreement and carry out its obligations hereunder and is in good standing under the laws of the State of Wisconsin.

2. The implementation of the Project would not be undertaken by Developer, and, in the opinion of Developer, would not be economically feasible within the reasonably foreseeable future, without the assistance to Developer provided for in this Agreement.

3. Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, nor the fulfillment of or compliance with the terms and conditions of this Agreement by Developer is prevented, limited by or conflicts with or results in the breach of, the terms, conditions or provision of any law, ordinance, charter, contractual restriction, evidence of indebtedness, agreement or instrument of whatever nature to which the Developer is now a party or by which it is bound, or constitutes a default under any of the foregoing.

4. The execution, delivery and the consummation of the transactions contemplated hereby have been duly authorized and approved by the Developer and no other or further acts or proceedings of the Developer are required with respect thereto. This Agreement constitutes the legal, valid and binding agreement and obligations of the Developer, enforceable against it in accordance with its respective terms, except as enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally and by general principals of equity.

### **ARTICLE III CLOSING**

The Parties agree that the closing of the sale (the "Closing") of the Property to Developer by Village shall take place within 30 days of the last to occur of the following:

1. Amendment of the Village comprehensive plan, approval of a Certified Survey Map of the Property and plan approval of the Condominium Plat, so as to allow construction of the Project.

2. Amendment of the Village zoning, so as to allow construction of the Project.

3. Final resolution of any litigation against the Village or Village and Developer, so as to allow construction of the Project.

4. Confirmation of approved plans and specifications to construct sanitary sewer facilities, water facilities and public road access to enable and serve the Project, so as to allow construction of the Project.

5. Issuance of all permits and approvals to construct the Project from all relevant authorities, so as to allow construction of the Project.

Should the Closing not occur by December 31, 2022, the Parties acknowledge that the dates specified in Article IV below shall each be advanced by one year.

### **ARTICLE IV DEVELOPER ACTIVITIES AND OBLIGATIONS**

A. Developer shall purchase the Property at closing, for \$2,500,000.

B. Following the Closing, Developer shall construct the Project in accordance with all applicable Village zoning and building codes, ordinances and regulations. Developer warrants and represents to the Village that the Project will contain 51 single family homes, full development value creation on the Project shall be not less than \$40.5 million and that the development will generate a full fair market value of the Project in the following amounts:

1. not less than \$2.5 million by January 1, 2023;
2. not less than \$5.0 million by January 1, 2024;
3. not less than \$11.0 million by January 1, 2025;
4. not less than \$17.0 million by January 1, 2026;
5. not less than \$23.0 million by January 1, 2027;
6. not less than \$34.0 million by January 1, 2028; and
7. not less than \$40.5 million by January 1, 2029 (the "Completion Date") and thereafter during the Term of this Agreement.

The amounts set forth above are defined as "Minimum Guaranteed Values" as of the dates set forth above, unless deferred pursuant to Article III, above.

C. For the year 2023 and thereafter ending at the end of the year in which the full fair market value reaches \$40.5 million, Developer guarantees that the ad valorem property taxes assessed against the Property shall be based on not less than the Minimum Guaranteed Value as set forth in Article IV(B) above, multiplied by the relevant assessment ratio. Developer agrees that, in the event that the property taxes to be paid with respect to the Property for any year covered by this Agreement are based on a value less than the amount of the relevant Guaranteed Minimum Value, the Village may submit a bill to Developer for the difference (a "Make Up Payment"). Such billing shall be submitted to Developer by the Village Treasurer by March 1 of the relevant year and, shall be paid in full by Developer, without interest thereon, by March 31 of that year. By way of example, should the assessment ratio be 98% and the mill rate be \$21.07 per \$1,000 of assessed value for tax year 2023, the amount of ad valorem property taxes required under this Agreement for tax year 2023 would be \$51,621.50. If the value for tax year 2023 instead be \$2,000,000, the assessment ratio be 98%, and the mill rate be \$21.07 per \$1,000 of assessed value, the amount of ad valorem real estate taxes for tax year 2023 would be \$41,297.20 and the Make Up Payment would be \$10,384.30, billable by March 1, 2024 and fully payable by March 31, 2024.

The foregoing shall not prohibit the Developer from contesting, in good faith, the assessed value of any portion of the Property, provided that the assessed value of the Property exceeds the amount specified in Article IV(B) above, as determined as required in Article IV(C), above.

D. In the event Developer has made any Make Up Payments during the period in which annual Minimum Guaranteed Values are required and, in the further event Village

subsequently receives one or more annual tax collections based on Project values in excess of \$40.5 million, such excess shall be paid to Developer, without interest, annually, until Developer's Make Up Payments have been reimbursed. Village shall not terminate the District before expiration of its 27 year Term if Developer has previously made any Make Up Payment that has not been fully reimbursed.

E. Developer shall obtain a building permit and commence construction of at least five buildings in the Project by not later than July 1, 2023 and substantially complete construction of the Project in accordance with all zoning approvals and the Plans, on or before the Completion Date. Copies of the Village-approved Plans will be retained at the offices of the Village. If landscaping cannot be completed due to seasonality, certificates of occupancy shall be issued, with landscaping to be finished during the following growing season. The Village Building Inspector shall not issue a certificate of occupancy for a building if the building does not conform to the Plans, subject to any changes to the Plans that may have been approved by the Village. Representative architecture for buildings in the Project is included in Exhibit C, attached hereto.

F. For improvements that will be dedicated to the public as provided below (the "Public Improvements"), Developer will complete the installation of the Public Improvements in accordance with Village plans and specifications, and will offer to dedicate same to the Village in accordance with Village inspection and acceptance procedures. The Public Improvements shall at all times be subject to Village inspection and approval and the Village or other relevant public entity shall not be required to accept conveyance of the Public Improvements unless the Public Improvements have been constructed in a good and workmanlike manner, in accordance with the Village-approved plans and specifications for the Public Improvements. Following approval by the Village or other relevant public entity of the completed Public Improvements, the Public Improvements shall be conveyed to the Village or other relevant public entity, to the extent appropriate. The Developer shall provide to the Village, or other relevant public entity, from the Developer and all contractors and consultants involved in connection with the construction and installation of the Public Improvements, a one-year warranty against defects in construction, materials and workmanship, in a form reasonably acceptable to the Village or other relevant public entity.

1. Village shall promptly prepare and provide to Developer Plans and Specifications for the following infrastructure, to be owned and maintained by Village following installation by Developer and dedication by Developer to the Village.

- a) Extension of North River Road, to provide a public entrance to the Project.
- b) Providing public water service to the Project perimeter.
- c) Providing public sanitary sewer service to the Project perimeter.

Following obtaining all required approvals and Closing, the Developer will obtain costs to install the infrastructure described above and submit to Village for approval. Following approval, Developer will install the infrastructure described above, and shall be reimbursed by Village as work progresses. Reimbursable expenses shall consist of all hard and soft costs (engineering, inspection, fees or other customary municipal charges). Developer reimbursement

shall be not more frequent than monthly and any request shall be accompanied by evidence of paid invoices and lien waivers from contractors performing such work. Payment will be subject to a five percent (5%) retainage until fully completed and accepted for dedication to the Village or other relevant authority, as applicable.

Developer may also prepare plans and specifications for enhancement of the Adjoining Village Property and may submit same to Village for approvals. If approved by Village, Developer may install such enhancements at Developer's expense. Any such enhancements shall be owned by Village upon installation.

Developer may also prepare a contract for maintenance by Developer of the Adjoining Village Property and may submit same to Village for approval. If approved by Village, Developer shall maintain the Adjoining Village Property, which shall be funded annually by Village.

G. The Developer shall arrange for funding for all non-reimbursable costs of the Project. Developer will provide evidence to the reasonable satisfaction of the Village that Developer has secured sufficient debt and equity financing commitments to enable the Project to proceed to completion.

H. The Developer shall pay the Village a per unit fee consistent with the Village's currently published schedule of fees as a condition to the Village's issuance of each building permit and to provide for inspections for each building in the Project. Upon reasonable notice to Developer, such fee may be reasonably and uniformly adjusted, from time to time, to account for the Village's actual anticipated costs to process the building permit and provide inspections.

I. The Developer shall pay, at the time of conveyance of the Property to Developer by Village, all reasonable and actual third-party fees incurred by the Village to review and approve infrastructure for the Project, including professional fees, as specified in Exhibit D, attached hereto.

J. Developer shall not transfer ownership or use of any portion of the Property to any entity which would render that portion of the Property exempt from ad valorem taxes, without the prior written consent of the Village. The provision in the previous sentence shall run with the Property in perpetuity.

## **ARTICLE V VILLAGE ACTIVITIES AND OBLIGATIONS**

A. The Village shall, within 30 days of execution of this Agreement, provide to Developer a standard title commitment for the Property, in the amount of \$2,500,000. Said commitment shall be brought up to the date of Closing, by Village. Within 10 days of receipt of any title commitment from Village, Developer shall notify Village of any objection it has to the status of title and Village shall have 30 days thereafter to cure any objection.

B. The Village shall convey the Property to Developer, prior to January 1, 2023, for \$2,500,000, and in consideration of the Agreement, to facilitate the Project. Prior to conveyance, Village shall consult with Developer and prepare and record a Certified Survey Map placing the

Property into a single parcel and placing the Adjoining Village Property into a separate single adjoining parcel. Village shall permanently dedicate the Adjoining Village Property for park and conservation purposes and shall coordinate the construction of a wetland feature within such retained property under the auspices of the MMSD approved program.

C. The Village shall cooperate with Developer throughout the development and construction of the Project and the Term of this Agreement and shall reasonably and promptly review and/or process all submissions, applications and inspections in accordance with applicable Village ordinances.

D. The Parties have agreed that all fees for the Project (collectively, the "Fees") due to the Village under applicable Village ordinances (other than the fees described in Subsection IV(E) above) shall be determined consistent with the Village's published schedule of fees.

## **ARTICLE VI NO PARTNERSHIP OR VENTURE**

Developer, and its successors and/or assigns and/or owners of the Property and their contractors or subcontractors shall be solely responsible for the completion of the Project by Developer. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between the Village and Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor employed by Developer, its successors and/or assigns and/or owners of the Property, in the construction of the Project.

## **ARTICLE VII CONFLICT OF INTEREST**

No member, officer or employee of the Village, during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect in this Agreement or any proceeds thereof, unless such member or officer abstained from any participation in the Village review and process of the Project and the Agreement from the point of time when a potential conflict of interest arose and thereafter.

## **ARTICLE VIII WRITTEN NOTICES**

All notices required or permitted by this Agreement shall be in writing and shall be deemed to have been given (i) upon delivery to an officer or designated representative of the person entitled to such notice, if hand delivered, or (ii) two business days following deposit in the United States mail, postage prepaid, or with a nationally recognized overnight commercial carrier that will certify as to the date and time of delivery, air bill prepaid, or (iii) upon transmission if by facsimile or email, and each such communication or notice shall be addressed as follows, unless and until any of such Parties notifies the other in accordance with this Article of a change of address:

If to the Village: Village of River Hills  
7650 North Pheasant Lane  
River Hills, WI 53217  
Attention: Village Manager and Village Clerk  
Email: as noted on Village's website

With a copy to: William P. Dineen  
Village Attorney  
Village of River Hills  
710 North Plankinton Avenue, Suite 500  
Milwaukee, WI 53203  
Email: wdineen@crivellocarlson.com

If to the Developer: Cornerstone Development of S.E. Wisconsin, LLC,  
or its permitted assignee  
N63 W23849 Main Street  
Sussex, WI 53089  
Email: jw@cornerstonedevelopment.com

Any email notice will be effective only when a hard copy of the notice is sent by mail, e-mail, messenger or personal delivery, as noted above.

## **ARTICLE IX DEFAULT**

A. The occurrence of any one or more of the following events shall constitute a default by Developer hereunder ("Default"):

1. Developer fails to pay any amounts when due under this Agreement and further fails to pay such amount on or before ten days following written notice of such failure; or

2. Any material representation or warranty made by Developer pursuant to this Agreement proves to have been false in any material respect as of the time when made or given; or

3. Developer materially breaches or fails to perform timely or observe timely any of its covenants or obligations under this Agreement (other than relating to the payment of money), and such failure shall continue for thirty (30) days following notice therefrom the Village (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the Developer has commenced the cure of the default within the thirty (30) day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred twenty (120) days following the notice thereof from the Village or such longer period of time as is reasonably agreed to by the Village); or

4. Developer:

- a) makes a general assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of its/his assets; or
- b) becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code, or files a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors; or
- c) has a petition or application filed against it in bankruptcy or any similar proceeding, or has such a proceeding commenced against it and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or Developer shall file an answer to such a petition or application, admitting the material allegations thereof; or
- d) applies to a court for the appointment of a receiver or custodian for any of its/his assets or properties, with or without consent, and such receiver shall not be discharged within ninety days after his appointment; or
- e) adopts a plan of complete liquidation of its/his assets; or
- f) shall cease to exist.

B. The Village shall be deemed to be in default in the event it materially breaches or fails to perform timely or observe timely any of its covenants or obligations under this Agreement, and such failure shall continue for thirty (30) days following notice therefrom from Developer (or such longer period of time as is otherwise expressly set forth herein or as is reasonably necessary to cure the default as long as the Village has commenced the cure of the default within the thirty (30) day period, is diligently pursuing the cure of the default and as long as the default is cured not later than one hundred twenty (120) days following the notice thereof from Developer or such longer period of time as is reasonably agreed to by the Developer).

C. Upon the occurrence of any Default by either party, upon ten (10) days' notice, without further demand or action of any kind by the nondefaulting party and except as expressly set forth below, the nondefaulting party may, at its option, pursue any or all rights and remedies available at law or in equity. The Village's rights shall include, but not be limited to temporary suspension of any payment of any Village payments under this Agreement during the continuance of any Default by Developer, or Village performance of any Developer obligation under this Agreement. Upon the cure of any such Default on the part of Developer, then, if and to the extent the Village suspended any payments, the Village shall promptly distribute to Developer any payments so suspended and promptly resume payments of amounts due under this Agreement and continue such payments as provided in this Agreement.

No remedy shall be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement, and/or now or hereafter existing at law or in equity. No failure or delay on the part of any party in exercising any right or remedy shall operate as a waiver thereof nor shall any single or partial exercise of any right preclude other or further exercise thereof or the exercise of any other right or remedy.

Notwithstanding the foregoing, the Village shall not terminate this Agreement or pursue, exercise or claim any rights or remedies arising out of a Default by Developer hereunder, except injunctive relief, specific performance or the temporary suspension of Village payments unless Developer, its mortgage lender or their designees have not commenced commercially reasonable efforts to cure any such Default within 60 days after receipt of written notice from the Village to Developer and its mortgage lender that if such efforts to cure such Default are not so commenced, then the Village intends to pursue its other rights and remedies hereunder, including, without limitation, the right to terminate this Agreement.

D. In the event of a Default by either party, all reasonable fees, costs and expenses incurred in furtherance of this Project by the nondefaulting party, including reasonable attorney's fees, in connection with the enforcement of this Agreement shall be paid by the defaulting party, including without limitation the enforcement of the nondefaulting party's rights in any bankruptcy, reorganization or insolvency proceeding.

E. Prior to litigation, as a condition precedent to bringing litigation, any party deeming itself aggrieved under this Agreement shall be obligated to request nonbinding mediation of the dispute. Mediation shall proceed before a single mediator. The Parties shall agree upon a mediator and, if they fail to do so within 30 days, either party may apply to Circuit Court for Milwaukee County for the designation of a mediator. In the event the Parties do not accept the mediator's recommendation, the aggrieved party may then commence an action. However, the Parties shall agree to alternative dispute resolution if ordered by the County.

## **ARTICLE X MISCELLANEOUS**

A. Developer shall have in effect at all times, all permits, approvals and licenses as may be required by any governmental authority or, to the extent reasonably prudent or customary for similarly situated business operations, any non-governmental entity in connection with the development, construction, management and operation of the Project.

B. Developer shall maintain the following insurance policies issued by insurers licensed in the State of Wisconsin, with Best's A ratings and in the financial size category as insurers of similar projects, with such policies (the "Insurance Policies") covering loss by perils, hazards, liabilities and other risks and casualties and in such amounts as may be reasonably required by the Village:

(i) Following completion of construction of the Project, "all risks" property insurance insuring against such risks as are insured against by Developers of similar projects, in amounts equal to 100% replacement cost of all buildings, improvements, fixtures, equipment and other real and personal property constituting the Project with an extended replacement cost endorsement; and

(ii) During the construction of the Project, builder's risk insurance in form and amounts reasonably satisfactory to the Village; and

(iii) During the term of this Agreement, commercial general liability insurance covered under a comprehensive general liability policy including contractual liability in amounts maintained by Developers of similar projects, and insuring against bodily injury, including personal injury, death and property damage; and

(iv) Such other insurance as may be reasonably requested by the Village.

Each Insurance Policy shall require the insurer to provide at least thirty (30) days prior written notice to the Village of any material change or cancellation of such policy. The Village shall be named as an additional insured/loss payee on all policies of insurance except worker's compensation insurance.

C. The prevailing party shall be entitled to collect all costs and expenses associated with the enforcement of its rights against the other under this Agreement, including without limitation the enforcement of such rights in any bankruptcy, reorganization or insolvency proceeding involving Developer. Any and all such fees, costs and expenses incurred by the prevailing party which are to be paid by the other, shall be paid by on demand.

D. Developer hereby indemnifies, defends, covenants not to sue and holds the Village harmless from and against all loss, liability, damage and expense, including attorneys' fees, suffered or incurred by the Village in any way in connection with the Project, including without limitation: (a) the failure of Developer or its contractors, subcontractors, agents, employees, or invitees (while under control of Developer) to comply with any environmental law, rule, regulation or ordinance, or any order of any regulatory or administrative authority with respect thereto; (b) any release by Developer or its contractors, subcontractors, agents, employees, or invitees (while under control of Developer) of petroleum products or hazardous materials or hazardous substances on, upon or into the Project; (c) any and all damage to natural resources or real property or harm or injury to persons resulting from any failure by the Developer and/or its contractors, subcontractors and/or agents to comply with any law, rule, regulation or ordinance or any release of petroleum products or hazardous materials or hazardous substances as described in clauses (a) and (b) above; (d) any violation by Developer at the Project of any environmental law, rule, regulation or ordinance; (e) claims arising under the Americans With Disabilities Act or similar laws, rules, regulations or ordinances; (f) the failure by Developer to comply with any term or condition of this Agreement; (g) injury to or death of any person at the Project; injury to any property caused by or at the Project; and (h) the failure of Developer to maintain, repair or replace, as needed, any portion of the Project; except, in each of the foregoing instances described in (a) through (h) above, to the extent negligently or willfully and wrongfully caused by the Village or its agents, employees, contractors or representatives.

The terms "hazardous substances" means any flammable explosives, radioactive materials, hazardous wastes, toxic substances, or related materials, including without limitation, any substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "toxic substances" under any applicable federal or state or local laws or regulations.

Except as caused, in whole or in part, by negligence or wrongful act or omission of the Village, if the persons or property of others sustain loss, damage or injury resulting directly or indirectly from the negligence or wrongful act or omission of Developer or its contractors, subcontractors or materialmen in their performance of this Agreement or from Developer's failure to comply with any of the provisions of this Agreement or of law, Developer shall indemnify and hold the Village harmless from any and all claims and judgments for damages, and from costs and expenses to which the Village may be subjected or which it may suffer or incur by reason thereof, provided; however, that the Village shall provide to Developer promptly, in writing, notice of the alleged loss, damage or injury.

Developer, its successors and/or assigns and/or owners of the Property, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, shall indemnify and save harmless the Village, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, actions, suits, judgments, costs, expenses, and attorneys' fees, to whomsoever owed and by whomsoever and whenever brought or obtained, which in any manner results from or arises in connection with:

(i) The negligent or willfully wrongful performance of this Agreement by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property;

(ii) The negligent or willfully wrongful construction of Developer Improvements by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property;

(iii) The negligent or willfully wrongful operation of Developer Improvements by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, during construction of the Project;

(iv) The violation by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, of any law, rule, regulation, order or ordinance; or

(v) The infringement by Developer, its successors and/or assigns and/or owners of the Property, or any contractor or subcontractor retained by Developer, its successors and/or assigns and/or owners of the Property, of any patent, trademark, trade name or copyright.

E. As used herein, the term "Force Majeure" shall mean any accident, breakage, war, insurrection, civil commotion, riot, pandemic, act of terror, act of God or the elements, governmental action (except for governmental action by the Village with respect to obligations of the Village under this Agreement), alteration, strike or lockout, picketing (whether legal or illegal), inability of a party or its agents or contractors, as applicable, to obtain fuel or supplies, unusual weather conditions, or any other cause or causes beyond the reasonable control of such party or its agents or contractors, as applicable. No party to this Agreement shall be in Default

hereunder for so long as such party or its agents or contractors, if applicable, are prevented from performing any of its obligations hereunder due to a "Force Majeure" occurrence.

F. Nothing contained in this Agreement is intended to or has the effect of releasing Developer, its successors and/or assigns and/or owners of the Property, from compliance with all applicable laws, rules, regulations and ordinances in addition to compliance with all terms, conditions and covenants contained in this Agreement.

G. Prior to substantial completion of the Project, this Agreement may not be assigned by the Developer without the Village's consent, which may be granted or withheld in the Village's sole discretion, provided, however, Developer may assign this Agreement to an entity that controls, is controlled by, or is under common control with, Developer without the consent of the Village, in which event Developer will continue to be bound by this Agreement. Notwithstanding the foregoing, the Developer may collaterally assign this Agreement to the Developer's lender for the Project without the consent of the Village. In the event that any such lender forecloses on its collateral and proceeds to develop the Property, the Village shall fulfill its obligations hereunder, provided that such lender, or the party purchasing the Property at a foreclosure sale, assumes in writing all of the obligations of the Developer hereunder.

H. In the event of fire, damage or any other casualty to any part of the Project, Developer agrees, at its cost and expense, to rebuild, repair and replace the Project to substantially the condition or better than existed immediately prior to the casualty. The fair market value of the Project following reconstruction and/or repair by Developer must be substantially similar to the fair market value of the Project immediately prior to the casualty. Developer shall not be relieved of any of its obligations under the terms of this Agreement as a result of any fire, damage or any other casualty or during the period of repair or rebuilding or replacement of the Project. This obligation to repair, rebuild or replace shall remain in effect for a period expiring upon the date of the expiration and closure of the District.

I. If the State laws regarding ad valorem taxation are amended or modified during the term of this Agreement such that the projected Tax Increments from the Property are materially reduced, i.e., seven percent (7%) or more, and there are no corresponding amendments or modifications to the Tax Increment Law to compensate for such reduction, the Parties agree to work in good faith to consider amendments to this Agreement toward the end of rendering the respective positions of the Parties generally equivalent to the positions set forth herein.

J. In the event that any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, then the other terms and provisions of this Agreement shall not be affected thereby and said terms and provisions shall remain in full force and effect.

K. A Memorandum of Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County, Wisconsin, prior to the recording of any mortgages securing any construction loan, or any other mortgage on the Project, it being understood by the Parties that this Agreement will run with the land and will be binding upon the Project and any owner of all or any portions of the Project and their successors and assigns in a form in substantial conformance with the attached Exhibit E.

L. This Agreement shall be construed pursuant to the laws of the State of Wisconsin. Except as otherwise specifically and expressly set forth in this Agreement, the venue for any disputes arising under this Agreement shall be the Circuit Court for Milwaukee County. The prevailing party shall be entitled to its costs, including its reasonable attorneys' fees, incurred in any litigation.

M. The Term of this Agreement shall continue from the date of full execution of this Agreement until the earlier to occur of (a) the date when all required payments to Developer have been paid by the Village in full, or (b) the date when the District, as it may be extended, is terminated.

N. This Agreement constitutes the entire Agreement between the Parties, and all provisions of this Agreement shall be deemed to be covenants running with the Property and shall be binding upon successors and assigns for the Term of this Agreement.

O. The Project will require additional submittals by Developer and consideration and approval by the Village Board, upon recommendation of the Plan Commission, of the Project plans and specifications, including comprehensive plan amendment and rezoning to a planned unit development, and Developer agrees to timely make all submittals necessary in accordance with the Village's Code of Ordinances.

*[Signature pages to follow]*

IN WITNESS WHEREOF, this Agreement is executed as of the date first above written.

**DEVELOPER:**  
**CORNERSTONE DEVELOPMENT OF S.E.**  
**WISCONSIN, LLC**

By: John J. Wahlen  
Name: JOHN J. WAHLEN  
Its: MEMBER  
Dated: 1/4/2022

STATE OF WISCONSIN }  
                                  } ss.  
MILWAUKEE COUNTY }

Personally appeared before me this 4<sup>th</sup> day of January, 2022, the above-named John Wahlen, the member of Cornerstone Development of S.E. Wisconsin, LLC, to me known to be the person who executed the foregoing agreement on behalf of Cornerstone Development of S.E. Wisconsin, LLC and by its authority.

Tammy LaBorde  
Notary Public, State of Wisconsin  
My Commission is permanent. 7-8-2022  
expires:



VILLAGE OF RIVER HILLS

By: J. Stephen Anderson  
J. Stephen Anderson, Village President

By: Tammy LaBorde  
Tammy LaBorde, Village Clerk

STATE OF WISCONSIN     }  
                                      }ss.  
MILWAUKEE COUNTY     }

Personally appeared before me this 30th day of December, 2021, the above-named J. Stephen Anderson and Tammy LaBorde, the Village President and Village Clerk, respectively, of the Village of River Hills, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the Village and by its authority.

Alan Marcuvitz  
Notary Public, State of Wisconsin  
My Commission is permanent.



37209737\_5 (12/9/21)

## **EXHIBIT A**

## **EXHIBIT B**

# SITE SUMMARY

53.40 ACRES SUBJECT AREA

25.18 ACRES ALLOCATED FOR DEVELOPMENT WITH AND CONTAINING 17-8.0 ACRES OPENSPACE/AMENITY AREAS

28.22 ACRES DEDICATED FOR CONSERVATION

51 SINGLE FAMILY HOMES



## THE GROVE IN RIVER HILLS

CONCEPT SITE PLAN

River Hills, Wisconsin



**CORNERSTONE**  
ARCHITECTURAL  
DESIGN  
CORPORATION

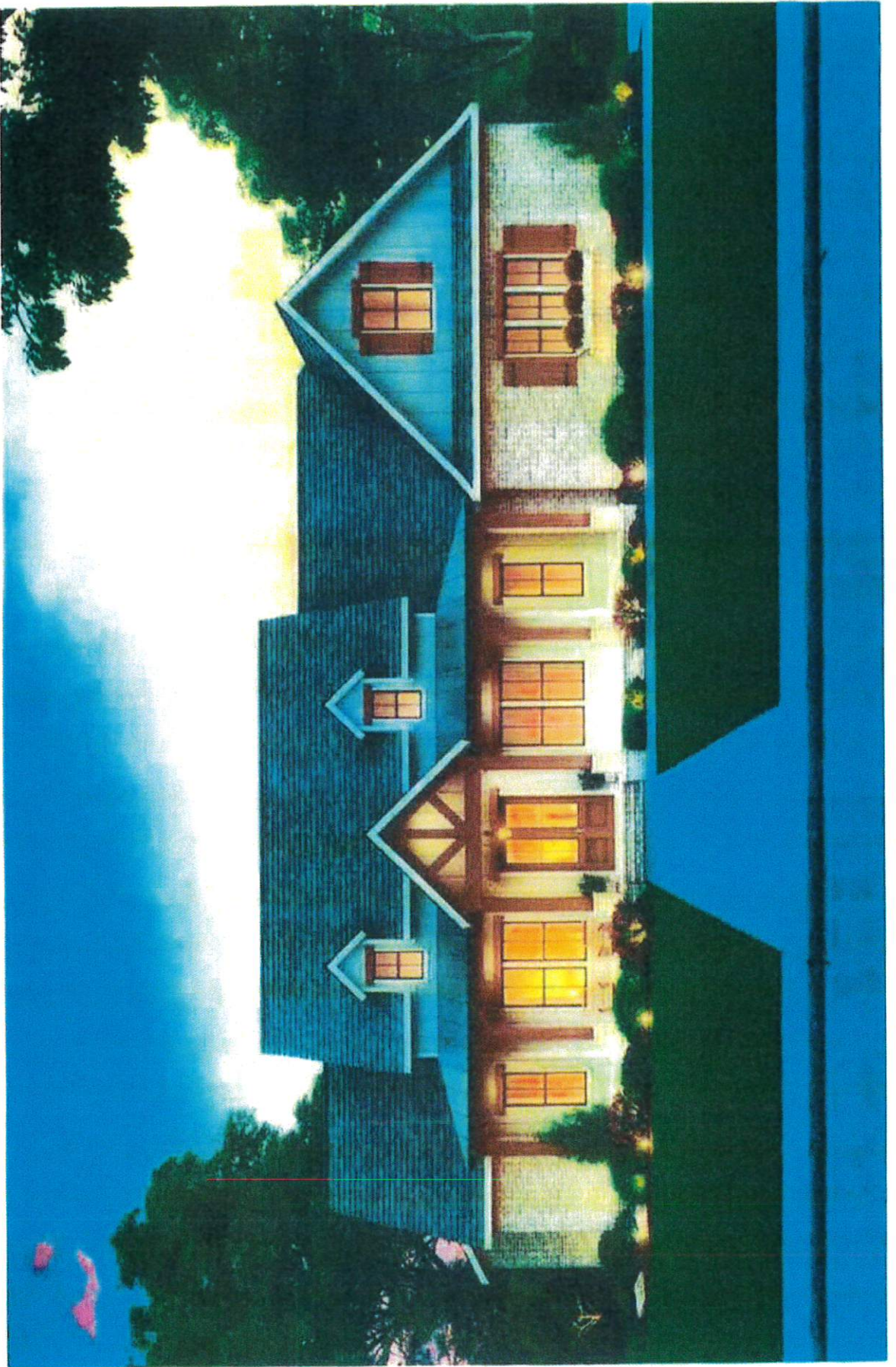


1000 N. CALHOUN RD.  
SUITE 200  
JANESVILLE, WI 53405  
TEL: 608.785.1111  
WWW.TESTA.COM

LAND PLANNER  
LANDMARK ARCHITECTURE

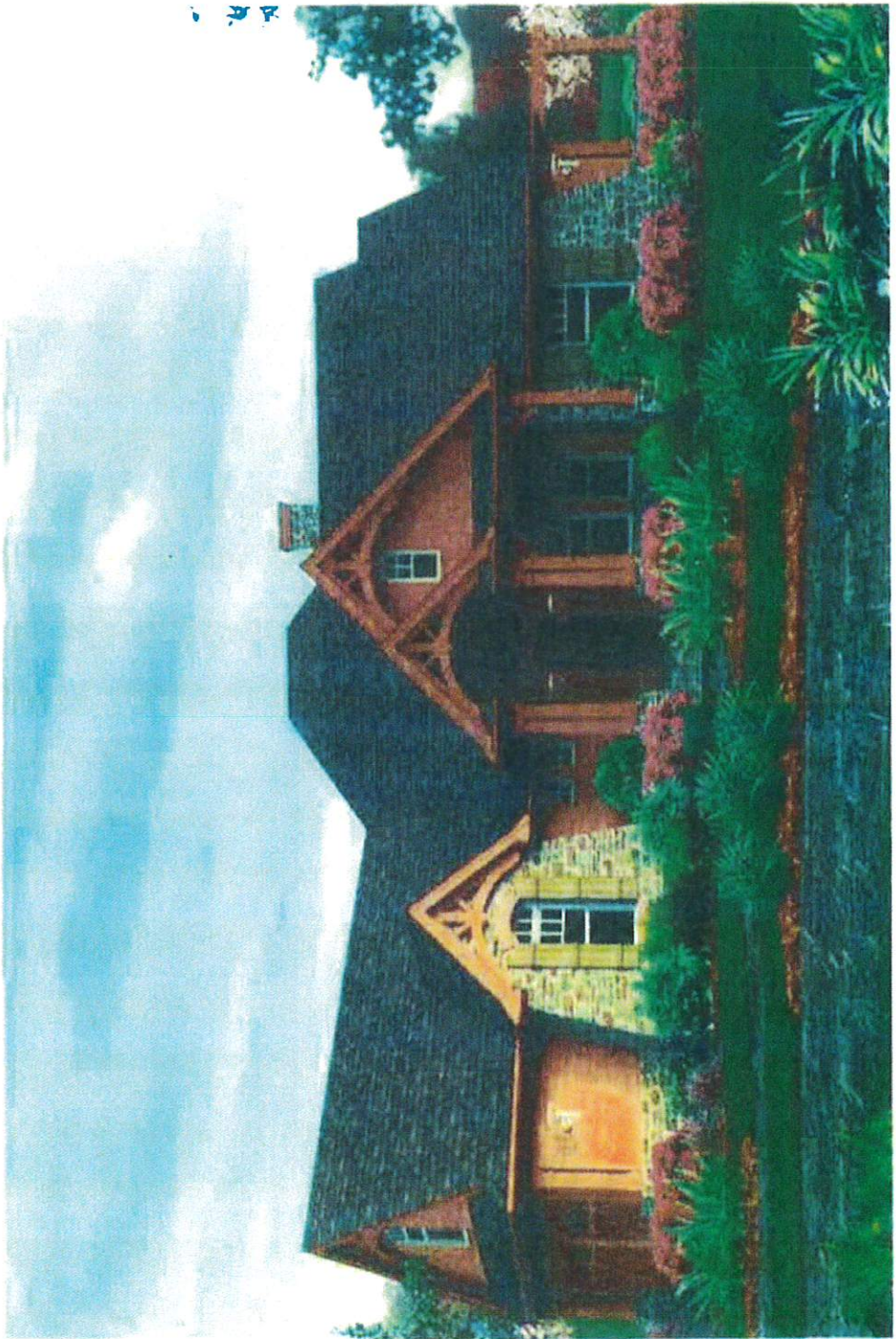
December 8th, 2021

**EXHIBIT C**





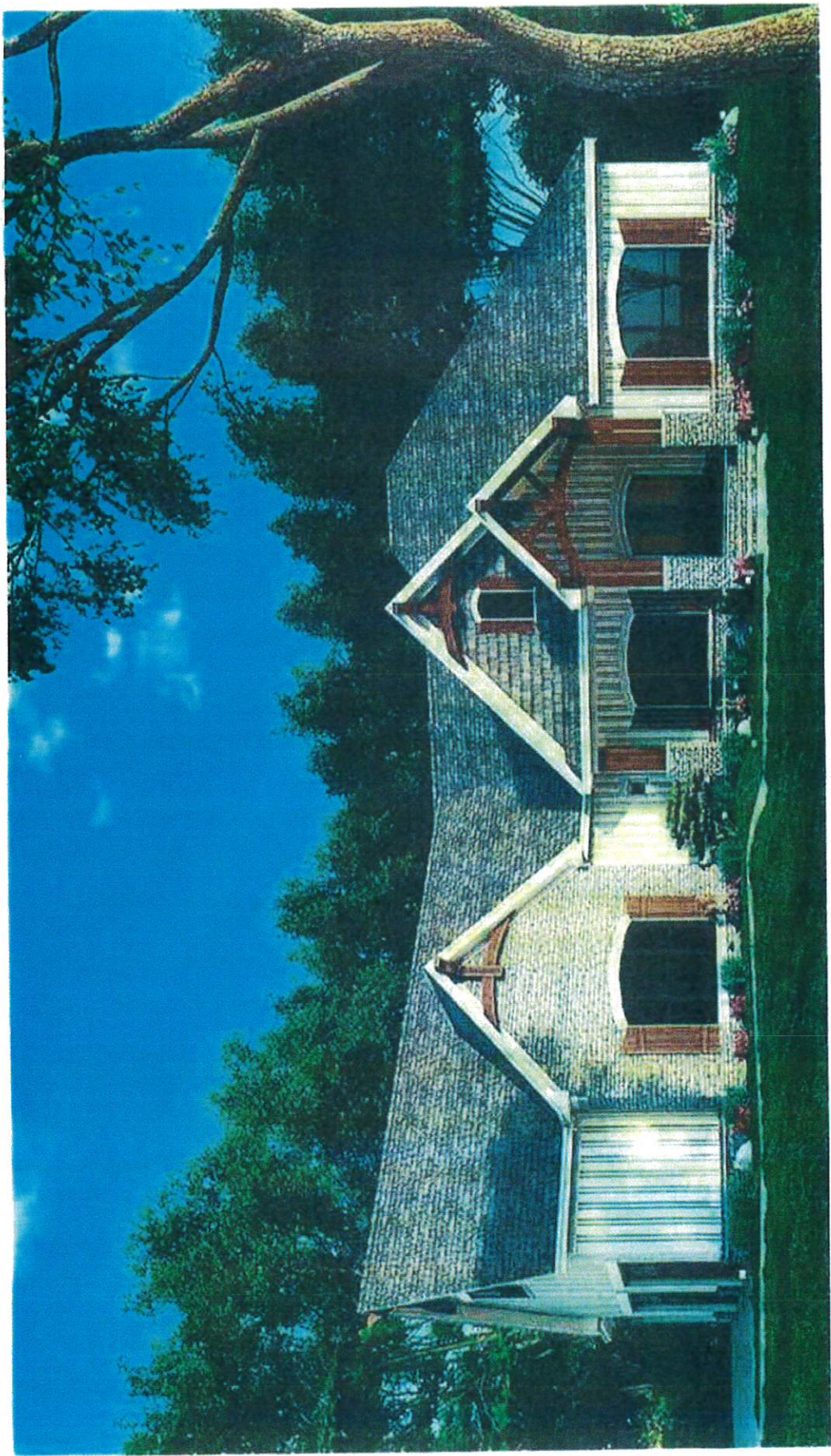














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**EXHIBIT D**

## **EXHIBIT E**

**MEMORANDUM OF  
DEVELOPMENT AGREEMENT**

**THIS MEMORANDUM OF DEVELOPMENT AGREEMENT** ("Memorandum") is made effective as of the 8<sup>th</sup> day of December, 2021, by and between **CORNERSTONE DEVELOPMENT OF S.E. WISCONSIN, LLC** ("Developer") and the **VILLAGE OF RIVER HILLS**, a municipal Corporation ("Village").

**WITNESSETH:**

**WHEREAS**, Developer and the Village entered into that certain Development Agreement dated as of December 8, 2021 ("Development Agreement"). The full Development Agreement is available for inspection and copies can be obtained at the Village of River Hills Village Hall; and

**WHEREAS**, this Memorandum is being executed for the purpose of Providing notice of the Development Agreement and certain terms thereof in the Office of the Register of Deeds for Milwaukee County, State of Wisconsin in order to place third parties on notice of the Development Agreement and Developer's and the Village's rights and obligations thereunder, some of which are hereinafter summarized.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained in the Development Agreement, Developer and the Village hereby acknowledge as follows:

1. **PROPERTY.** The "Property" is land located in the Village of River Hills, Milwaukee County, State of Wisconsin, legally described on Exhibit A, attached hereto.
2. **TERM.** The Development Agreement shall run with the land pursuant to its terms unless terminated pursuant to its terms.
3. **NO EXEMPT USE.** Developer shall not transfer ownership or use of any portion of the Property to any entity which would render that parcel exempt from ad valorem taxes, without prior written consent of the Village. This provision runs with the land in perpetuity.
4. **NO MODIFICATION; DEVELOPMENT AGREEMENT CONTROLLING.** This Memorandum is only a summary of some of the terms and conditions contained in the Development Agreement and this Memorandum is not intended in any way to amend, alter, modify, abrogate, substitute or otherwise affect any of the terms or conditions contained in the Development Agreement, all of which are hereby incorporated herein in full by this reference. It is hereby understood and agreed that, notwithstanding this Memorandum, the terms and conditions contained in the Development Agreement shall in all events control the relationship between Developer and the Village with respect to the subject matter therein contained. This Memorandum is solely for recording and notice purposes.
5. **COUNTERPART SIGNATURES.** This Memorandum may be signed in counterparts, all of which, when taken together, shall constitute one and the same instrument.

Attorney Alan Marcovitz  
von Briesen & Roper, s.c.  
411 E. Wisconsin Ave., #1000  
Milwaukee, WI 53202

Parcel Identification Number (PIN)

This is not homestead property.  
(is) (is not)

IN WITNESS WHEREOF, Developer and the Village have executed this Memorandum effective as of the date first written above.

**DEVELOPER:**

Cornerstone Development of S.E. Wisconsin, LLC

By:   
Name: John Wahlen  
Its: Member


**VILLAGE:**

Village of River Hills

By:   
J. Steven Anderson, Village President  
By:   
Tammy LaBorde, Village Clerk

STATE OF WISCONSIN )  
COUNTY )

Personally appeared this 4<sup>th</sup> day of January, 2022, the above-named John Wahlen, the member of Cornerstone Development of S.E. Wisconsin, LLC, to me known to be the person who executed the foregoing agreement on behalf of Cornerstone Development of S.E. Wisconsin, LLC and by its authority.

  
Notary Public, State of Wisconsin  
My Commission: 7-8-2022



STATE OF WISCONSIN )  
MILWAUKEE COUNTY )

Personally appeared this 30 day of December, 2021, the above-named J> Steven Anderson and Tammy LaBorde, the Village President and Village Clerk, respectively, of the Village of River Hills, Wisconsin, to me known to be the persons who executed the foregoing agreement on behalf of the Village and by its authority.

  
Notary Public, State of Wisconsin  
My Commission:



**EXHIBIT A**  
**LEGAL DESCRIPTION**