



**PLAT OF KENNEDY HILLS,
TOWN OF COTTAGE GROVE,
DANE COUNTY, WISCONSIN:**

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND
OTHER MATTERS RELATING TO
PLAT OF KENNEDY HILLS
("Development Agreement")**

Legal Description of Affected Property:

Lots 1-16, Outlot 1 and Outlot 2,
Plat of Kennedy Hills, Town of Cottage Grove,
Dane County, Wisconsin.

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

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THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:
Kim Banigan, Town Clerk
Town of Cottage Grove
4058 County Road N
Cottage Grove, WI 53527

PARCEL IDENTIFICATION NUMBERS:
0711-101-8501-0

THIS AGREEMENT (the "**Agreement**" or "**Development Agreement**") is made and entered into by and between Kennedy Hills, LLC, a Wisconsin limited liability company, with its principal business office located at 306 W. Quarry Street, Deerfield, WI 53531 ("**Developer**" and/or "**Owner**"), and the Town of Cottage Grove ("**Town**"), a body corporate and politic, with its principal business office located at 4058 CTH N, Cottage Grove, WI 53527.

RECITALS

WHEREAS, the Developer has received approval from the Town as set forth in Town Board Resolution No. 2019-07-01, of a residential development to be known as Kennedy Hills (the "**Development**") and located on the Plat of Kennedy Hills, in the Town of Cottage Grove, Dane County, Wisconsin ("**Plat**"), and Developer wishes to enter this Agreement to satisfy one of the conditions of the Town Board's approval and shall thereafter promptly proceed with recording of the Plat;

WHEREAS, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Development and thereby to limit the harmful effects of substandard developments, including premature development which leaves property undeveloped and unproductive;

WHEREAS, the Town Subdivision Ordinance requires, among other things, that provisions be made for the dedication and grading of lands dedicated to the public, payments for and/or initial improvements to parkland such as trails and parking areas, installation of erosion and stormwater runoff controls and stormwater management facilities, stormwater and drainage conveyances, street and related improvements and approvals for water and sanitary/septic required to serve the Developer's Development;

WHEREAS, the Developer now wishes to proceed with the public improvements needed to serve the entire Plat (Lots 1-16, and Outlots 1-2 of the Development), which will be developed in a single phase;

WHEREAS, the purpose of this Agreement includes, but is not limited to, the avoidance of harmful consequences of land development prior to satisfactory completion of improvements, or prior to the payment of improvement costs and related fees;

WHEREAS, this Agreement is made for the mutual benefit of the Developer and the Town in order to assure compliance with Town Ordinances and standards for public improvements;

WHEREAS, the Developer acknowledges that the Town will be injured in the event of the Developer's failure to fully and completely perform the requirements of this Agreement; and

WHEREAS, the parties acknowledge and agree that the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the Town Ordinances, waive the right to contest the terms of the Agreement and agree to be bound hereto, all as set forth in the Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated herein by reference, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town and Developer agree as follows:

1. PLANS FOR REQUIRED PUBLIC IMPROVEMENTS.

- 1.1. At a minimum, the Developer shall construct and install, at its expense, those on-site and off-site general public improvements required by Town Ordinances and this Agreement (the "**Improvements**"). The term "Improvements" is used generally as a reference to: (a) all of the general public improvements located within the Plat; (b) the Stormwater Management Facilities on Outlot 1; and, (c) the public improvements to the intersection of CTH BB and Kennedy Road (the "**CTH BB Intersection Improvements**"). Where the context so states, certain sections of this Agreement may apply to one or more of these subsets of

Improvements and exclude others.

- 1.2. Developer shall be required to connect the Development to existing utilities, which may include facilities outside of the boundaries of the Development.
- 1.3. Following consultation with Town staff, the Developer shall present plans for the Improvements, which plans shall be prepared under the seal of Developer's Engineer (the "**Plans**"). Those Plans for which the Town Engineer has "no objection" other than satisfaction of the requirements set forth in the Town Engineer's Review Letter dated June 19, 2020 are described on Exhibit 1, which is attached and incorporated by reference. The Plans shall set forth the required Improvements with particularity and shall include, at a minimum, the following: Stormwater Management Facilities (in Outlot 1 in accordance with County-approved plans and see separate agreements entitled *Agreement for Maintenance of Stormwater Management Measures* and *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1*); blanket drainageways between Lots on the Plat (see Plat and separate agreement entitled *Perpetual Stormwater Drainage Easements*); public streets (see Plat and separate agreement entitled *Temporary Turnaround Easements*); CTH BB Intersection Improvements (as required by Dane County Highway Department for the intersection of CTH BB and Kennedy Road); and, utilities including gas, electric, and telephone/internet (located in utility easements; no utility pedestals in drainageways). The Improvements shall meet Town construction standards, as established by the Town Ordinances and the Town standards provided to Developer/Owner by the Town Engineer, and in accordance with generally acceptable industry standards. The Town Engineer shall have the authority to interpret and apply the ordinances, Town standards and generally accepted industry standards as to the Improvements.
- 1.4. The Town Engineer shall be given an adequate opportunity to review the Plans and may request such additional information from the Developer as desired. Following the Town Engineer's written statement of "no objection" to the Plans, and subject to the other requirements and conditions set forth herein, the Developer shall proceed with construction in accordance with the Plans and on the timetable represented to the Town by the Developer, which timeline has been reasonably relied upon by the Town. As of the Effective Date of this Development Agreement, the Town Engineer has no objections to the Plans identified on Exhibit 1, except as noted in the Town Engineer's review letter dated June 19, 2020, which is incorporated herein by reference.

2. **REQUIRED IMPROVEMENTS: PLANS, STANDARDS AND SPECIFICATIONS.**

Developer's construction of the Improvements and performance of this Agreement shall

be in accordance with the following: the Town Ordinances, whether or not specifically referenced in this Agreement; the Town's standard specifications for public improvements, as determined by the Town Engineer and highway superintendent; and, the Plans.

Construction of the required Improvements expressly includes, but is not limited to, the following:

2.1. During Construction: Grading, Erosion Control and Barricading:

The Developer shall furnish, install and maintain during construction and until the Improvements are accepted by the Town, all barricades and signs as are prudent and necessary for public safety, particularly where new rights-of-way extend or intersect existing streets and all street ends. The Town Engineer may also require Developer to furnish, install and maintain additional barricades and signs. Developer shall maintain "road closed" barrier(s) in place to prevent non-emergency access until such time as the binder layer of asphalt is installed on all of the streets under construction. Notwithstanding the foregoing, access for marketing by Wisconsin Real Estate Licensees and their clients is allowed.

The Developer shall furnish, and install prior to grading, all utility installation or any other land disturbance activity, and maintain during construction and until the Improvements are accepted by the Town such stormwater runoff and erosion control measures as are required by law and best management practices. The Town Engineer may also require Developer to furnish, install and maintain additional erosion control and stormwater runoff measures, as the Town Engineer deems appropriate given current conditions. The Developer shall adhere to the requirements for erosion control and stormwater runoff as set forth in the Dane County Erosion Control Permit and the Dane County Stormwater Management Permit, both of which are incorporated herein by reference as if set forth in full herein, and expressly grants the right-of-entry to the Plat to Dane County and the Town Engineer, or designee, to observe the erosion control and stormwater runoff and enforce the Dane County Erosion Control Permit and the Dane County Stormwater Management Permit.

All Construction Site Erosion Control and Storm Water Runoff shall be the Developer's responsibility and shall be completed in accordance with the Wis. Adm. Code NR 216 WPDES General Permit No. WI-S067831-05 for the site identified therein as Kennedy Hills Plat Phase 1 (FIN: 71435) ("WPDES permit"), which WPDES permit is incorporated herein by reference as if set forth fully herein. The WPDES permit for the site has a start date of May 06, 2020 and the maximum period of permit coverage is 3 years from the start date. Developer shall be responsible for obtaining any needed extensions of the WPDES permit.

- 2.2. **Outlot 1: Stormwater Management Facilities and Erosion Control:** The Developer shall install adequate stormwater management facilities in Outlot 1 (collectively, **Stormwater Management Facilities**) as required by the Land and Water Resources Department ("LWRD") of Dane County.

The Developer's Engineer shall provide necessary background data, including stormwater calculations, to the Town Engineer along with a proposed plan for Stormwater Management Facilities certified by the Developer's Engineer. The Town Engineer may rely on the background data and stormwater calculations provided by the Developer's Engineer when reviewing the proposed plans.

The Developer has obtained approval of the proposed plans from LWRD at Dane County, shall provide a letter of credit to Dane County naming the Town as a secondary beneficiary in the amount of \$195,833.00, and shall obtain the permits required by LWRD for erosion control and stormwater management. The Developer shall provide copies of the issued erosion control and stormwater management permits to the Town Engineer and the Town Clerk prior to commencement of construction. The Developer shall thereafter install and construct the Stormwater Management Facilities in accordance with the approved plans and the permits.

At the conclusion of construction, Developer shall provide the Town with a professional engineer's certification that the following conditions are met: (a) the as-built stormwater management facilities were constructed in accordance with the County-approved plans and specifications and are operating as designed; (b) any required plantings are adequate, well-established, and reasonably free of invasive species; and, (c) any necessary maintenance, including removal of construction sediment, has been properly performed. This certification shall be to the Town and is in addition to the certification required and accepted by Dane County. Developer shall provide the Town with a copy of the certification to Dane County, as well as Dane County's acceptance of same. The certification to the Town, and the Town's acceptance thereof, is required before the Town will accept dedication of the Stormwater Management Facilities. The Town Engineer shall review the certification to determine that it meets the requirements of this paragraph. The Developer shall continue to be responsible for operation and maintenance of the Stormwater Management Facilities and Outlot1 until the Town accepts the dedication of the Stormwater Maintenance Facilities. (*See also* Section 5.2.)

- 2.3. **Streets:** Streets shall be installed and constructed to Town standards in accordance with the Plans.
- 2.4. **Street Lighting:** Street lighting is not required for this Plat, but may be required

for future additions based on determinations to be made when approvals of future additions are requested.

- 2.5. Sidewalk: No sidewalk shall be required in the Plat.
- 2.6. Trails: Developer shall install trails on Outlot 2, which is being dedicated to the public for parkland. Unless otherwise approved by the Town Board, the trails shall be built to the specifications set forth in the "Typical Gravel Access Path Cross Section" included on the Kennedy Hills Plat Grading and Erosion Control Details Exhibit #5 page 1 of 2 and dated March 18, 2020, which is incorporated herein by reference as if set forth fully herein. The location for the trails shall be as set forth in Exhibit 2, which is attached hereto and incorporated by reference as if set forth fully herein. The value of the trails (as determined on a time & materials basis) shall be a setoff against the fee for initial improvement of parklands. (See Section 14. of this Agreement.)
- 2.7. Signage:
- The entry sign for the Development shall be as required to meet Dane County signage requirements and shall be subject to prior approval by the Town Board, or designee.
 - Fire numbers/addresses shall be as required by the County, with notice of same provided to the Fire Department and EMS, and shall be provided and installed by the Developer at Developer's cost.
 - Street and traffic signs shall be as required by the County Surveyor and approved by the Town, and shall be provided and installed by the Developer at Developer's cost.
- 2.8. Public Drainageways: There shall be blanket 12-foot drainage easements on the lot lines between Lots throughout the Plat, and the drainage easements shall be subject to a separate agreement entitled "Perpetual Stormwater Drainage Easements" which shall be recorded concurrent with the Plat.
- 2.9. Grading and Elevations:
The lowest exposed building elevation on any lot within the Property shall in all cases be a minimum of two (2) feet above the lowest lot corner elevation at time of initial development, which grade is established in the approved grading plans. The Grading and Erosion Control Plan applicable to this Plat overall is included in the Kennedy Hills Plat Grading and Erosion Control Details Exhibit #4 page 1 of 1 and dated June 23, 2020, which is incorporated herein by reference as if set forth fully herein. The elevation of a lot shall not be changed so as to materially affect the projected stormwater flows per the approved grading and stormwater plans, or the drainage of the surrounding lots.

Following substantial completion of the public improvements within this Plat, Developer shall promptly prepare a final as-built grading plan and submit same to the Town Engineer and the Town Clerk. This as-built grading plan is required prior to issuance of building permits. Following the Town Engineer's confirmation of "no objection" to the as-built grading plan, said as-built grading plan shall be used to make the determinations required by this Development Agreement and shall be incorporated by reference as if fully set forth herein. A copy of all site, grading and landscaping plans shall be kept by the Developer or the Architectural Control Committee (the "Committee") established pursuant to the Declaration of Covenants, Restrictions, Conditions and Easements ("Declaration") recorded concurrently herewith and benefitting both the Lot owner planning individual Lot elevations as well as other owners within the Plat.

Following construction of a residence on a Lot, the current owner of record shall provide the Town building inspector with as-built grading documents certifying that grading as-built on the Lot is consistent with the grade established by the approved as-built grading and stormwater plans for the Plat described in Exhibit 2. The Town building inspector shall neither sign-off on the final inspections required under the building permit nor issue an occupancy permit until the current owner of record provides certification by a qualified consultant that the as-builts for the Lot comply with the approved as-built grading and stormwater plans for the Plat. If the as-builts for the Lot do not comply with approved as-built grading and stormwater plans, then the current owner of record shall be obligated to bring the Lot into compliance before occupancy is permitted.

Violations of the approved grading and stormwater plans shall give the Town of Cottage Grove a cause of action against the owner of record as of the date the violation occurs and others violating the approved grading and stormwater plan. The cause of action shall be for injunctive relief or damages as appropriate.

THE ABOVE SECTION 2.9 IS A COVENANT THAT RUNS WITH THE LAND AND SHALL SURVIVE DEVELOPER'S COMPLETION OF CONSTRUCTION OF THE IMPROVEMENTS. IT IS NOT ONLY BINDING ON THE CURRENT OWNER OF RECORD, BUT SHALL BE BINDING ON THE OWNER'S HEIRS, SUCCESSORS AND ASSIGNS.

- 2.10. CTH BB and Kennedy Road Intersection. Developer shall construct Type B Intersection Improvements ("CTH BB Intersection Improvements") within the existing right-of-way at Kennedy Road and County Highway BB. Construction shall be in accordance with Dane County's standards and plans approved by the Dane County Highway Department ("County Highways"). Copies of all information Developer and Developer's Engineer provides to County Highways regarding the CTH BB Intersection Improvements shall be simultaneously provided to both the Town Engineer (ttebeest@tcengineers.net) and the Town Clerk (clerk@towncgr.net).

(a) Adequacy of Right-of-Way. It is Developer's responsibility to establish that the CTH BB Intersection Improvements as-built will fit within the existing right-of-way at the intersection and that no additional right-of-way will be required.

The Town advises the Developer to have Developer's Engineer follow County Highways' recommendations when determining the adequacy of the right-of-way. Developer's Engineer shall provide a plan view of the CTH BB and Kennedy Road intersection that is fully dimensioned so that the geometrics of the intersection can be agreed upon, and such other information as is reasonable and necessary for a professional engineer to determine the adequacy of the right-of-way for the CTH BB Intersection Improvements. It is essential that the information provided to County Highways and the Town be complete enough and thorough enough to confirm Developer's assertion that the CTH BB Intersection Improvements fall within the existing right-of-way and that no additional right-of-way will need to be acquired to install the CTH BB Intersection Improvements. Such confirmation shall be provided by a professional engineer to the Town Clerk. It may take the form of written confirmation from County Highways or a certification of adequacy by the Developer's Engineer. The Town Engineer shall thereafter review the confirmation or certification. If the Town Engineer has "no objection" to same, this requirement shall be deemed satisfied.

(b) Early Start Possible. When requirement regarding the adequacy of the right-of-way has been deemed satisfied by the Town, the Developer may apply for an early start permit. Following receipt of the Developer's application for same, the Town will consider issuance of an early start permit for the Developer.

(c) Construction Plans for CTH BB Intersection Improvements. The Developer shall provide a full set of construction plans in a form acceptable to County Highways to both the Town Engineer and County Highways on or before noon on July 31, 2020. Time is of the essence.

For these purposes, a "full set of construction plans" shall, in addition to the fully dimensioned plan view of the intersection and related items described in Section 2.10(a) above, include all of the items set forth in this Section 2.10(c). Developer's Engineer shall provide County Highways with fully dimensioned plan/profile sheets, construction details, pavement and curb grades, cross section sheets, typical section sheets, traffic control, pavement marking sheets and signing sheets. Plans for appropriate bicycle facilities shall be included because bike lanes will be required on the northerly westbound side of CTH BB. Plans shall also include all work to Kennedy Road and Buckley Ridge that is within the CTH BB right-of-way.

(d) Time is of the Essence as to Submission of Full Set of Construction Plans to County Highways. If Developer fails to submit a full set of construction plans to both the Town Engineer and the Dane County Highway Department on or before noon on July 31, 2020, then the Town Chair, following consultation with the Town Engineer, Town Clerk and Town Attorney, as needed, may direct the Town Clerk, or her designee, to issue a stop work order for all construction in the entire Plat or all construction in the entire Plat

except for the Stormwater Management Facilities, all as determined in the reasonable discretion of the Town Chair. Any stop work order shall be effective as stated in the stop work order.

(e) Time is of the Essence as to County Highways' Approval of Final Construction Plans. If Developer fails to obtain approval of a full set of final construction plans from County Highways on or before noon on October 1, 2020, then a stop work order for all construction in the entire Plat shall be issued automatically and without further notice and shall be effective at noon on October 5, 2020. Written confirmation of the County Highways' approval shall be provided to the Town Engineer and Town Clerk.

(f) Permits and Commencement of Construction. In addition to obtaining final approval of construction plans, Developer shall provide erosion control and stormwater sheets to County Highways and the Town for informational purposes. Prior to commencement of construction, Developer shall obtain separate permitting through the Dane County Land and Water Resources Department ("LWRD"), the Town, County Highways and WDNR, as applicable and required for the CTH BB Intersection Improvements. Developer shall also obtain the Dane County Permit to Work in County Trunk Highway Right-of-Way, which will not be approved based on preliminary plans. Final approved plans are required for issuance of the Right-of-Way Permit. Copies of issued permits shall be provided to the Town Engineer and the Town Clerk.

Developer shall commence construction of the CTH BB Intersection Improvements at its earliest opportunity in the 2021 construction season so that construction is completed in accordance with the schedule required by County Highways.

(g) Time is of the Essence as to Completion of CTH BB Intersection Improvements. *The Developer shall complete installation of the CTH BB Intersection Improvements to the satisfaction of County Highways no later than 5:00 p.m. on August 1, 2021. Time is of the essence.* If, on or before August 1, 2021 at 5:00 p.m., the Town has not received adequate confirmation that the CTH BB Intersection Improvements have been substantially completed to the satisfaction of the Dane County Highway Department, then Developer shall be in default and the Town may draw against the letter of credit¹ and take over construction of the CTH BB Intersection Improvements to completion. Developer and Developer's Engineer shall assign the full set of construction plans to the Town for its use in completing the CTH BB Intersection Improvements, all at no cost to the Town. Thereafter, all of the costs that the Town incurs to complete the CTH BB Intersection Improvements, including legal and engineering costs, shall be borne by the Developer.

(h) Surety. The estimated cost of the CTH BB Intersection Improvements shall be included in the surety to the Town that is required for this Plat.² The surety shall not be released until County Highways verifies that the CTH BB Intersection Improvements

¹ See Section 10 of this Agreement for additional information on required surety. See the Town Engineer's letters dated June 19, 2020 for the amounts required in the letters of credit Developer shall provide to the Town.

² See Section 10 of this Agreement for additional information on required surety. See the Town Engineer's letters dated June 19, 2020 for the amounts required in the letters of credit Developer shall provide to the Town.

have been substantially completed to the satisfaction of the Dane County Highway Department and the Town accepts the same. The Developer and/or County Highways shall provide a copy of County Highways' verification to the Town Clerk and Town Engineer prior to the surety release. (*See also* Section 5.4.)

- 2.11. Stormwater Discharge into County Highway BB Right-of-Way. Developer has obtained written authorization via email from the Dane County Highway Department to discharge stormwater into the County Highway BB right-of-way. Developer shall provide a copy of such authorization to the Town Engineer and Town Clerk.
- 2.12. Special Provisions: Additional special provisions regarding Improvements may be set forth in Exhibit 2, which is attached and incorporated by reference. As with other work specified in this Agreement, all special provisions set forth on Exhibit 2 shall be constructed and installed in accordance with plans prepared under the seal of the Developer's Engineer and for which the Town Engineer has issued a written statement of "no objection."

3. **CONTRACTORS ENGAGED BY DEVELOPER FOR PROJECT; INDEMNIFICATION AND INSURANCE.**

- 3.1. Approval of Contractor(s). The Developer agrees to engage contractors for all construction, who shall first be approved for such work by the Town Engineer and who shall qualify with every applicable requirement of the Town and any Ordinance, rule or regulation thereof. Prior to the commencement of construction of the Improvements, the Developer shall furnish to the Town Engineer the names of all contractors and subcontractors, together with a classification of the work performed by each and copies of all construction documents relating to the construction of the Improvements. Such submittal shall be prior to the commencement of construction of any of the Improvements. All construction documents for the Improvements are subject to the prior review of the Town.
- 3.2. Indemnification by Contractor(s). The Developer shall require all contractors engaged in the construction of the Improvements to indemnify and hold the Town and its engineers and consultants harmless from and against any and all claims, losses, damages, costs and expenses which such contractors may or might incur in connection with the construction of the Improvements. Such indemnification and hold harmless clause shall be in form and content acceptable to the Town Attorney and shall be included in each contract which the Developer has with a contractor.
- 3.3. Indemnification by Developer. For a period of time commencing with the execution of this Agreement and expiring fourteen (14) months from the date of

substantial completion³, the Developer hereby expressly agrees to indemnify, save and hold harmless the Town, Town & Country Engineering, Inc., consultants, employees, officers and agents from and against all claims, costs, suits, causes of actions, demands and liability of every kind and nature, for injury or damage received or sustained by any person or persons or property, whomsoever and whatsoever, in connection with, or on account of the performance of the work contemplated hereby and the construction of the Improvements, except where such claim is the exclusive result of the willful or negligent acts of the Town.⁴ As requested by the Town, the Developer further agrees to aid and defend the Town with legal counsel acceptable to the Town in the event the Town is named as a defendant in any action concerning the performance of the work pursuant to this Agreement, except where such suit is brought by the Developer. The provision is not intended to and shall not be interpreted to limit insurance coverage that may be available to the Town or governmental immunity or other defenses that may be available to the Town, each and all of which are expressly reserved by the Town. It is hereby agreed that the Developer is not an agent or employee of the Town, and neither Developer nor its contractors shall represent itself as an agent or employee of the Town.

- 3.4. Insurance by Contractor(s). The Developer shall also require all contractors engaged in the construction of the Improvements to maintain such reasonable insurance as shall be required by the Town Attorney and Engineer; and upon demand, furnish to the Town Attorney and Engineer, a current certificate of insurance to evidence such insurance. All such insurance shall comply with the Town's contract requirements pertaining to damage claims, indemnification of the Town and insurance. The Contractor(s) so engaged are required to furnish comprehensive general liability insurance of not less than \$1,000,000.00 aggregate for any such damage sustained by two or more persons in any one accident. The Developer is responsible for confirming that such insurance is in place and that the Town and Town & Country Engineering, Inc. is named as an additional insured on such insurance.

4. CONSTRUCTION RELATED ACTIVITIES FOR IMPROVEMENTS.

In connection with the construction of the Improvements, it is hereby agreed as follows:

³ See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

⁴ The Town does not by this provision, or by any other provision in this Agreement, waive, reduce or in any way limit any governmental immunity (whether absolute, qualified, as to intentional torts or discretionary acts or other immunity) to which it may be entitled, and hereby expressly reaffirms its right to any and all such immunity, notice of injury, notice of claim and limitation as to damages to the full extent provided by law.

- 4.1. Scheduling. The Developer agrees that no work shall be scheduled for construction of the Improvements without the Town Engineer's approval of the starting date(s) and construction schedule. The construction of the Improvements shall be completed on or before the completion date(s) set forth in the schedule, unless otherwise extended in writing by the Town.
- 4.2. Commencement. The final plans and specifications, signed by the Developer's Engineer, shall be submitted to the Town Engineer prior to any land disturbance or commencement of work. A starting date will not be approved until (1) a written statement of "no objection" with respect to the final plans and specifications for the Improvements has been issued by the Town Engineer, and (2) the Letter of Credit or other security required by this Agreement has been furnished to the Town.
- 4.3. Completion. All work specified herein shall be completed within twelve (12) months after the date of commencement, and time is of the essence as to completion. The deadline for completion may be extended as to the laying of the final layer of asphalt paving on streets in accordance with Town policy, as recommended by the Town Engineer. Town policy also requires that Developer furnish appropriate surety for the completion of such work as recommended by the Town Engineer, and approved by resolution of the Town Board.
- 4.4. Costs. The Developer agrees that the Town shall not be responsible for any costs or charges related to the construction of the Improvements, and that the Developer is responsible for all such costs, except as otherwise expressly provided for in the Agreement.
- 4.5. Construction Related Activities; Inspection and Certification; Lien Waivers. The Town may periodically review construction progress, conduct inspections and/or complete material testing of the Improvements, and is granted access to the site for such purposes. The Developer shall have the obligation to provide such on-site inspection as is necessary to obtain written certification from Developer's Engineer that the Improvements, as and when they are completed, are in compliance with the standards and specifications of the Town and this Agreement. The Developer's Engineer's written certification shall be provided to the Town Engineer before the Town Engineer recommends acceptance of the Improvements to the Town Board. In addition, and also prior to recommendation of acceptance of the Improvements, the Developer shall present to the Town valid lien waivers from all persons providing materials and/or performing work on the Improvements for which certification is sought. The Developer agrees that, with the sole exception of the required final course of asphalt, no occupancy permits will be issued by the Town until all of the Improvements have been recommended

for acceptance by the Town Engineer; and until all outstanding engineering, inspection and fees related to the Plat (including engineering and inspection charges of the Town) have been paid in full, and affidavits and lien waivers are received by the Town indicating that the contractors, suppliers and subcontractors have been paid in full for all work and materials furnished in order to construct the Improvements.

4.6. Maintenance and Repair. The Developer agrees to provide for maintenance and repair of all Improvements until the Improvements are accepted by the Town, and acknowledges that this obligation runs with the land. The Town will endeavor to provide timely notice to the Developer whenever the Town Engineer is not able to recommend acceptance of an Improvement, or otherwise determines that an Improvement does not conform to the Town's adopted standards and specifications or is otherwise defective. The Developer shall have thirty (30) days from the issuance of such notice to correct or substantially correct the defect. It is agreed that the Town shall not declare a default under the Agreement during the aforesaid thirty (30)-day correction period on account of any such defect unless it is clear that the Developer does not intend to correct the defect or unless the Town determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.

4.7. Cost Breakdown. The Developer shall, upon substantial completion of the Improvements, provide to the Town a final cost for all of the costs associated with the construction thereof. Such final cost breakdown shall be in such form and content as the Town may reasonably require.

5. DEDICATION OF IMPROVEMENTS, STORMWATER MANAGEMENT FACILITIES, FINE GRADING AND SEEDING OF PARKLAND AND CTH BB INTERSECTION IMPROVEMENTS.

5.1. After substantial completion⁵ of the construction of the Improvements in accordance with the Town's standards and specifications, as certified by the Developer's Engineer, and provided there is a written statement of "no objection" from the Town Engineer, the Developer shall dedicate the Improvements to the Town.

5.2. With respect to the Stormwater Management Facilities, and as stated in Section 2.2 above, Developer shall provide the Town with a professional engineer's

⁵ See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

certification that the following conditions are met: (a) the as-built stormwater management facilities were constructed in accordance with the County-approved plans and specifications and are operating as designed; (b) any required plantings are adequate, well-established, and reasonably free of invasive species; and, (c) any necessary maintenance, including removal of construction sediment, has been properly performed. This certification shall be to the Town and is in addition to the certification required and accepted by Dane County. Developer shall provide the Town with a copy of the certification to Dane County, as well as Dane County's acceptance of same. The certification to the Town, and the Town's acceptance thereof, is required before the Town will accept dedication of the Stormwater Management Facilities. The Town Engineer shall review the certification to determine that it meets the requirements of this paragraph. The Developer shall continue to be responsible for operation and maintenance of the Stormwater Management Facilities and Outlot1 until the Town accepts the dedication of the Stormwater Maintenance Facilities. (See also Section 2.2.)

- 5.3. As indicated on the Plat, Developer has dedicated Outlot 2 to the public for parkland purposes and shall fine grade and seed the parkland at Developer's expense and in accordance with the approved grading plans. At such time as fine grading and seeding is completed to the satisfaction of the Town Engineer, the Town Engineer shall recommend that the Town accept dedication of the fine grading and seeding work.
- 5.4. Acceptance of the CTH BB Intersection Improvements shall require verification that the CTH BB Intersection Improvements have been substantially completed to the satisfaction of the Dane County Highway Department as well as a letter of "no objection" from the Town Engineer. (See also Section 2.9.)
- 5.5. Acceptance of the dedication of the general public improvements within the Plat, the Stormwater Management Facilities, the fine grading and seeding of Outlot 2 and the CTH BB Intersection Improvements requires the approval of a motion by the Town Board.

6. **GUARANTEE OF THE WORK.** The Developer agrees to guarantee and warrant all work performed under this Agreement against defects in workmanship or materials for a period of fourteen (14) months from the date of substantial completion⁶ of the Improvements. If any defect should appear during the guarantee period, as determined in the reasonable discretion of the Town Engineer, the Developer agrees to make required replacement or acceptable repairs of the defective work at the Developer's own expense. Furthermore, following such notice to and repair by the Developer, the guarantee period shall be extended for an additional fourteen (14) month period from the date of Developer's completion of the repair. All guaranties or warranties for materials or

⁶ See *Id.*

workmanship which extend beyond the guarantee period are hereby assigned by the Developer to the Town, and confirmation of same shall be provided to the Town Engineer.

7. **COMPLIANCE WITH LAW.** When performing its obligations under this Agreement, the Developer shall comply with all terms of this Agreement, relevant laws, ordinances and regulations in effect, as promulgated by all governmental bodies having jurisdiction thereover. In the event of a conflict among the requirements, the stricter provisions shall control.
8. **FEES PAYABLE PRIOR TO CONSTRUCTION.** The Developer agrees to pay the Town for all outstanding fees and assessments levied against the Property prior to the start of construction of the Improvements.
9. **DEVELOPER TO REIMBURSE THE TOWN FOR COSTS SUSTAINED.** In addition to any escrow arrangement required by the Town pursuant to its customary practice for administering development projects, the Developer shall reimburse the Town for its actual cost of design, inspection, testing, construction, and associated legal and other fees associated with the Development. The Town's costs shall be determined as follows:
 - 9.1. The cost of Town employees' time engaged in any way with the required Improvements based on the hourly rate paid to the employee multiplied by a factor determined by the Town representing the Town's cost for expenses, benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.
 - 9.2. The cost of Town equipment employed.
 - 9.3. The cost of mileage reimbursed to Town employees and consultants that is attributable to the Development.
 - 9.4. The actual costs of Town materials incorporated into the work, including transportation costs, plus a restocking and/or handling fee not to exceed 10% of the cost of the materials.
 - 9.5. All costs and expenses incurred by Town in connection with the Development, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services.
 - 9.6. Unless the amount totals less than \$50.00, the Town shall bill the Developer monthly for expenses incurred by the Town. Bills outstanding for more than thirty (30) days may accrue interest at the rate of 1% per month.

10. SURETY.

- 10.1. The Developer agrees to furnish the Town, prior to the commencement of any work under this Agreement, with surety in the form of one or more irrevocable

Letters of Credit⁷, in a form deemed acceptable by the Town Attorney, in the amount to be approved by the Town Engineer, to secure performance of this contract in accordance with the Town Subdivision Ordinance. The Letter of Credit shall be payable at sight to the Town and will bear an expiration date not earlier than twelve (12) months after the date of delivery to the Town. The Letter of Credit shall include a provision requiring that the Town be given written notice not less than forty-five (45) days and not more than sixty (60) days prior to the expiration of the letter. Developer shall provide a new Letter of Credit satisfactory to the Town not less than ten (10) days prior to the expiration of any earlier Letter of Credit sufficient to cover the balance of any work to be performed by Developer hereunder and any sum required to secure the guarantee of work required by this Agreement. The Letter of Credit will be payable to the Town at any time upon presentation of: (i) a sight draft on the issuing Bank in the amount to which the Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Town official stating that the Developer is in default under this Agreement; and (iii) the original of the Letter of Credit.

- 10.2. As work progresses on installation of Improvements constructed as part of this contract, the Town Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of surety as hereinafter provided. When portions of construction (street, stormwater or other improvements) are completed by the Developer, the Town Engineer is authorized, upon submission of lien waivers by the Developer's contractors, to recommend reduction in the amount of surety. Any reduction shall require approval by motion of the Town Board.
- 10.3. Following the Town's acceptance of the Improvements, as indicated by motion of the Town Board, the Town agrees to reduce the surety to an amount which does not exceed ten percent (10%) of the cost of the Improvements, as estimated by the Town Engineer, to secure performance of the guarantee described in this Agreement.
- 10.4. Developer agrees to provide written notice of the expiration of any Letter of Credit (or replacement Letter of Credit) provided for herein not less than forty-five (45) days nor more than sixty (60) days prior to its expiration, by sending

⁷ If the Developer prefers to provide a form of security other than a letter of credit, the Developer must contact the Town Attorney prior to executing this Development Agreement so that appropriate language can be incorporated in the Development Agreement. Please see Wis. Stat. § 236.13 for additional details. The language for letters of credit is in the template because it is the most common form of security provided by Developers in the Town.

⁸ The Town Engineer issued letters dated June 19, 2020 as to the required amounts for the CTH BB-Kennedy Road Intersection and Improvements other than the Stormwater Management Facilities, which letters are incorporated herein by reference. Dane County determined the amount required for the letter of credit for the Stormwater Management Facilities.

notice to the following address:

Town Clerk
Town of Cottage Grove
4058 County Road N
Cottage Grove, WI 53527
Phone: 608-839-5021
Fax: 608-839-4432
www.tn.cottagegrove.wi.gov

11. **COVENANTS AND RESTRICTIONS; STORMWATER MANAGEMENT AGREEMENT; DRAINAGE EASEMENTS; AND, OTHER LEGAL DOCUMENTS.**

- 11.1. Declaration of Covenants, Restrictions, Conditions and Easements. Prior to commencement of construction of Improvements under this Agreement, Developer shall submit the *Declaration of Covenants, Restrictions, Conditions and Easements* ("Declaration") to the Town Attorney and Town Board for review and approval as to conformity with the Town Subdivision Ordinance and any conditions of approval. The Declaration shall contain provisions which provide for site plan and architectural review procedures for any Lots to ensure that the represented quality of the Plat and related improvements is maintained. The foregoing instrument shall be recorded concurrent with recording of the Plat and shall run with the land.
- 11.2. Stormwater Management and Maintenance Agreements. Developer shall also enter into the County's *Agreement for Maintenance of Stormwater Management Measures* and the Town's *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1*, which are in recordable form and satisfactory to the Town Engineer and Town Attorney, prior to the commencement of construction. The Developer shall maintain the Stormwater Management Facilities, at the expense of Developer, until the Town accepts the Improvements, and after acceptance of the Improvements by the Town, the homeowner association formed by Developer shall maintain the Stormwater Management Facilities at the expense of the association. In the event the association fails to properly maintain the Stormwater Management Facilities, then the Town's *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1* shall apply, which provides that the Town may enter the Property and maintain the Stormwater Management Facilities, with the cost thereof to be charged back as a special charge to the owners of Lots within the Development. The foregoing instruments shall be recorded concurrent with recording of the Plat and shall run with the land.

11.3. Drainage Easements. The Plat shall be subject to blanket drainage easements subject to an easement agreement entitled *Perpetual Stormwater Drainage Easements* and shall be depicted on the Plat, all in a manner acceptable to the Town Attorney and Town Engineer. The foregoing instrument shall be recorded concurrent with recording of the Plat and shall run with the land.

11.4. Temporary Turnaround Easement. Temporary circular easements for vehicle turnaround purposes shall be granted at the north limits of Scenic Oaks Drive and Wooded Ridge Trail, all as further described in the *Temporary Turnaround Easement*. The Developer shall install a TEE at the end of Scenic Oaks Drive and a circular cul de sac at the end of Wooded Ridge Trail, all in accordance with Plans approved by the Town Engineer. Both turnarounds shall be paved with 2 inches of asphalt. The foregoing instrument shall be recorded concurrent with recording of the Plat and shall run with the land.

11.5. Other legal documents and related special provisions required for this Plat shall be as specified on Exhibit 2.

12. **SURVEY MONUMENTS**. Temporary survey points may be utilized until construction is complete, with Developer to set final irons/monuments after construction is completed and provide a written certification from a registered surveyor that all corners were set as required by law. Developer agrees to install all survey monuments for the final Plat in the manner required by law and Town Ordinance, except that pursuant to the provisions of Wis. Stat. § 236.15(1)(h), Developer shall have a period of up to five (5) years after the date of execution of this Agreement by all parties within which to complete installation of all required monuments in the entire Development as required by law and Town Ordinance. Notwithstanding the foregoing, Developer agrees to complete all such survey work for the Plat by the time of completion of Improvements for the Plat. Developer will provide security in the amount and manner reasonably required by the Town Engineer at the time of commencement of construction of the Plat based on estimates from responsible surveying firms, to secure the full costs of such survey monumentation work within such time period. Said amount shall be included in the Surety required by this Agreement. If not specifically enumerated in the surety provided to the Town that is required for this Plat, then the Town Engineer shall require that a reasonable portion of the surety required for this Plat, as determined by the Town Engineer, be maintained to assure that final irons and monuments have been set. Because Wisconsin Statutes give Developer an extended period of time to complete installation of survey monuments, the Developer may be required to renew a Letter of Credit to the Town solely for this purpose.

13. **PARKLAND DEDICATION OR FEE IN LIEU OF DEDICATION**. The Town acknowledges that Developer has fully satisfied the Town Ordinances with regard to the

dedication of parklands or the payment of fees in lieu of dedication of parklands for the Development upon recording the Plat. As indicated on the Plat, Developer has dedicated Outlot 2 to the public for parkland purposes and shall fine grade and seed the parkland at Developer's expense and in accordance with the approved grading plans. At such time as fine grading and seeding is completed to the satisfaction of the Town Engineer, the Town Engineer shall recommend that the Town accept dedication of the fine grading and seeding work. Acceptance shall be by motion of the Town Board.

Following the Town's acceptance of the dedication, the agreement set forth in this paragraph shall take effect. The Town and Developer agree that the Town Ordinances require the dedication of 2,000 square feet of parkland per Lot within the Plat (or payment in lieu of dedication, which is not being required by the Town). Dedication to the public for stormwater management purposes does not satisfy this requirement. To meet the parkland dedication requirements for the Plat, the Developer is dedicating Outlot 2 to the Town. Outlot 2 is 2.228 acres, and the Town's dedication requirement for 16 Lots is 0.73 acres. Developer and the Town agree that the excess acreage dedicated in the amount of 1.498 acres may be applied as a credit against the dedication requirements for the first addition to Kennedy Hills, at such time as the plat for the first addition is submitted to the Town. The dedication requirements for the first and second additions to the Plat shall be those requirements in effect at the time that the plat for each addition is submitted to the Town.

14. **FEE FOR INITIAL IMPROVEMENTS TO PARKLAND.** The Town acknowledges that Developer shall satisfy a portion of the fee for initial improvements to parkland by installing the trails described on **Exhibit 2**, which is attached hereto and incorporated by reference. The Developer estimates that the cost for installation of the trails (on a time and materials basis) is \$15,000.00, and that Developer will track actual costs as the project proceeds and installation is complete. *At that time, the Developer and Town Engineer shall confirm the value of the trail as-built, which amount shall serve as a credit or setoff against the total fee for initial improvements to parkland.* The Town and Developer agree that the total fee for initial improvements to parkland is \$2000.00 per Lot x 16 Lots, or \$32,000.00. *This fee is due and payable on a per Lot basis at the time that building permits are pulled for a particular Lot.* If the as-built value of the trails is \$15,000.00, then the per lot amount of the fee would be:

$$\$32,000.00 - \$15,000.00 = \$17,000.00 / 16, \text{ which is } \textit{estimated} \text{ as } \$1062.50 \text{ per Lot.}$$

The calculation above is an estimate. The *actual* amount per Lot will be calculated using the as-built value agreed to by the Town Engineer and Developer. As a matter of fairness to all concerned, the Town requests that the Developer disclose this fee for initial improvements to parkland to prospects and buyers of lots based on the actual calculations and the balance due. The Developer may also prepay the fee to the Town at any time.

15. **ANNEXATION.** Developer agrees that at no time will the Developer petition to annex or attach all or any part of the Property to any city or village under applicable annexation or boundary agreement laws, without the consent of the Town. Developer further acknowledges that any such annexation shall result in damages to the Town, which damages shall be substantial and difficult to quantify. Developer and Town agree to quantify such damages by applying to this Development the terms and calculations used to calculate Tax Increment in Tax Increment Districts formed under Wis. Stat. § 66.1105. The Town's liquidated damages shall be equal to the Tax Increment that would be calculated and paid to the Town over a 5 year build-out at a present value which is the anticipated value of the Development as represented by the Developer, and paid to the Town annually over a 27 year period. Generally speaking, the Tax Increment is the combined mil rate multiplied by the Tax Incremental Base reduced by the Value Increment.
16. **GENERAL CONDITIONS.**
- 16.1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Developer. Furthermore, the Town does not by this Agreement assure the Developer or any third-parties that the Developer or Owner is entitled to any other required approvals for the Plat or for subsequent additions to the Plat.
- 16.2. No Waiver. No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.
- 16.3. Town Rights Retained. The Town does not hereby waive, and expressly retains, its right to governmental immunity and other defenses that may be available to the Town. The obligations set forth herein are not intended to, and shall not be interpreted to, limit the Town's insurance coverage or other similar protections. To the extent not expressly contracted in this Agreement, the Town retains and expressly reserves its legislative discretion.
- 16.4. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the Town and the Developer.
- 16.5. Default. A default is defined herein as the Developer's breach of, or failure to comply with, the terms of this Agreement. The Town reserves to itself all

remedies available at law or equity as necessary to cure any default. The Town also reserves to itself the right to draw on a Letter of Credit or other surety provided hereunder in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved final Plat and prohibiting the transfer or sale of Lots. Remedies shall be cumulative, and the exercise of one shall not preclude the exercise of others.

- 16.6. Entire Agreement. This written Agreement, and written amendments, and any referenced attachments thereto, shall constitute the entire Agreement between the Developer and the Town.
- 16.7. Attorney Fees. If the Town is required to resort to litigation or arbitration to enforce the terms of this Agreement, and if the Town prevails in the litigation or arbitration, the Developer shall pay all Town costs, including reasonable attorney fees and expert witness fees. If the court or arbitrator awards relief to both parties, each will bear its own costs in their entirety.
- 16.8. Time. For the purpose of computing the commencement, abandonment and completion periods, and time periods for Town or Developer action, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be included if such times prevent the Developer or Town from performing their/its obligations under the Agreement.
- 16.9. Severability. If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.
- 16.10. Benefits; No Assignment Without Prior Approval. The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer.
- 16.11. Notice. Any notice or offer or demand given hereunder, except notices to the Town Clerk regarding surety (*see* Section 10.4), shall be sent: (a) by electronic mail to the known email address of the persons identified below, with delivery presumed within five (5) minutes during the Town of Cottage Grove's normal Town Hall business hours, unless an automatic reply indicates that said person is absent; (b) by United States mail, postage pre-paid, to the Parties' respective addresses set forth below, with delivery presumed three (3) business days

following mailing; (c) by registered or certified United States mail; (d) by commercial delivery service with the tracked delivery date serving as confirmation of actual delivery; or, (e) by personal delivery, with delivery on the date personally delivered. Either party may unilaterally change its representative, address and email by giving notice of the change to the other party.

If to Developer:

David C. Riesop
Kennedy Hills, LLC
306 W. Quarry Street
Deerfield, WI 53531
Phone: 608-764-5602
Email: wismapping@charter.net

If to Town:

Town of Cottage Grove
Attn: Town Clerk
4058 County Road N
Cottage Grove, WI 53527
Phone: 608-839-5021
Fax: 608-839-4432
Email: clerk@towncgr.net

- 16.12. Recordation. The Town may record this Agreement or a memorandum of this Agreement in the Register of Deeds Office. All costs of recording shall be paid by the Developer.
- 16.13. Effective Date. This Agreement shall be effective as of the date and year executed by both parties.
- 16.14. Exhibits. The following are attached hereto and fully incorporated by reference:
Exhibit 1: Identification of Plans
Exhibit 2: Special Provisions

[SIGNATURES ON FOLLOWING TWO PAGES]

Executed in Dane County, Wisconsin, on this 21st day of August, 2020.

TOWN OF COTTAGE GROVE

By: 
Kris Hampton, Town Chair

Attest: 
Kim Banigan, Town Clerk

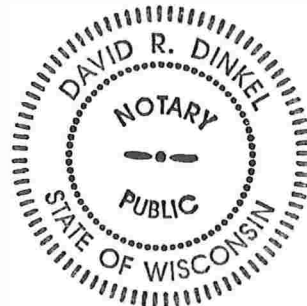
ACKNOWLEDGMENT

STATE OF WISCONSIN)
)
COUNTY OF DANE)

Personally came before me this 21st day of August, 2020, the above-named Kris Hampton and Kim Banigan, Chairperson and Clerk of the Town of Cottage Grove, respectively, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same as such officers by the Town's authority.

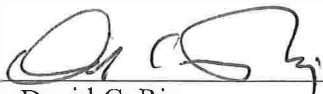


Notary Public, State of Wisconsin
My Commission Expires: 12/5/21



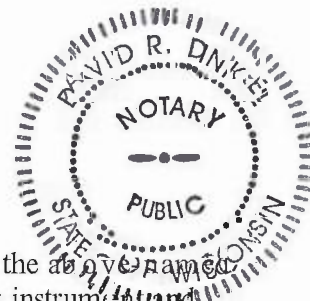
Executed in Dane County, Wisconsin, on this 21st day of August, 2020.

**DEVELOPER/OWNER:
KENNEDY HILLS, LLC**



By: David C. Riesop
Its: Sole Member and Authorized
Representative

ACKNOWLEDGMENT

STATE OF WISCONSIN)
)
COUNTY OF DANE)



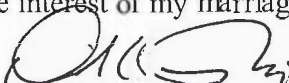
Personally came before me this 21st day of August, 2020, the above named David C. Riesop, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of Kennedy Hills, LLC.


Print name: David R. Dunkel
Notary Public, State of Wisconsin
My Commission Expires: 12/5/2021

MARITAL PROPERTY STATEMENT

I am married and am entering this Agreement in the interest of my marriage and family.

Date: 8/21/2020


By: David C. Riesop, Individually and on behalf
of Kennedy Hills, LLC

This instrument drafted for the Town by:

Constance L. Anderson, Special Counsel
Anderson Consults, LLC
PO Box 3004
Madison, WI 53704
connie@andersonconsultswi.com
608-249-1865
www.andersonconsultswi.com

EXHIBIT 1
IDENTIFICATION OF PLANS

PLANS: The Town Engineer has reviewed the following Plans and prepared a review letter dated June 19, 2020, which is incorporated by reference. Developer shall make all of the corrections noted in the Town Engineer's review letter dated June 19, 2020. The following items were included in the Town Engineer's review and may be referred to generally herein on the basis of his review of the following:

- An Erosion Control and Storm Water Management Report for Kennedy Hill Plat-Phase I dated March 31, 2020
- A revised preliminary plat containing 16 lots and 2 outlots on 22.090 acres dated 5/14/2020 and received from the Town on May 28, 2020.
- A final plat containing 16 lots and 2 outlots on 22.090 acres received from the Town on May 28, 2020.
- The following documents received from the Developer's engineer on June 1, 2020:
 - A revised grading and erosion control plan dated May 31, 2020
 - Revised plan and profile sheets for Wooded Ridge Trail and Fields Road dated May 31, 2020
 - Kennedy Road Sight Distance Report dated 5/4/2020
- An email dated 5/26/20 from the Dane County Highway Department with CTH BB intersection plans dated 4/10/20 from the Developer's Engineer
- An email dated 5/27/20 from Dane County Highway Department which authorizes construction of the CTH BB/Kennedy Road intersection to be constructed by August 1, 2021 with conditions
- An email dated 6/2/20 from Dane County Highway Department which includes:
 - Approval of stormwater discharge into CTH BB right of way
 - Statement from County with conditions for a Permit to Work in County Trunk Highway Right of Way
 - Applicant must resubmit plans that address previous County comments dated April 28, 2020
 - Provide copy of Dane County Stormwater & Erosion Control Permit
- An email from the soil tester dated June 2, 2020 that states that a majority of the land is suitable for conventional septic systems and a few lots may require mound systems
- The following documents received from Developer's engineer on June 8, 2020:
 - CTH BB correspondence with Dane County Highway Dept.
 - CTH BB intersection improvement plans
 - CTH BB plan and profiles
 - Kennedy Road plan and profiles
- The following documents received from Developer's engineer on June 10, 2020:
 - Engineer's Estimates for Probable Construction Costs
 - Erosion Control and Stormwater Management Items= \$178,030
 - Kennedy Hills Plat Phase I Items less above items= \$374,042

- CTH BB/Kennedy Road Intersection Improvements= \$309,684
 - Grading and Erosion Control Plan dated 5/31/20
 - Grading and Erosion Control Details dated March 18, 2020
 - Southeast Storm Pond Plan dated March 31, 2020
 - Road Plans and Profiles for Fields Road, Wooded Ridge Trail and Scenic Oak Drive revised 5/31/20
- Kennedy Hills Phase I Specifications Book dated June 10, 2020

THE PLANS IDENTIFIED ABOVE MAY BE UPDATED WHEN DEVELOPER MEETS THE REVIEW LETTER REQUIREMENTS OR OTHER REQUIREMENTS. FOR THE CONVENIENCE OF ALL CONCERNED, THIS EXHIBIT 1 MAY BE AMENDED TO REFLECT SUCH CHANGES; HOWEVER, SAID AMENDMENT(S) SHALL ONLY BE EFFECTIVE WHEN THE PLAN(S) IDENTIFIED ARE: (1) SET FORTH IN A WRITTEN NOTICE FROM THE TOWN ENGINEER TO THE TOWN CLERK THAT IDENTIFIES THE UPDATED PLAN(S); AND, (2) THE WRITTEN NOTICE IS SIMULTANEOUSLY PROVIDED TO THE DEVELOPER AND DEVELOPER'S ENGINEER. AN APPROPRIATE EMAIL MAY SERVE THIS PURPOSE.

Plans updated prior to final approval of the Development Agreement by the Town Board include:

- Kennedy Hills Plat Grading and Erosion Control Details as Exhibit #4, page 1 of 1 and dated June 23, 2020

EXHIBIT 2
SPECIAL PROVISIONS

1. **Final Plat.** Developer shall make all changes to the Plat requested by the Town Engineer in his review letter dated June 19, 2020, which is incorporated herein by reference. A separate sheet shall be included in the final plat that shows the building envelope for each lot in the Plat as well as the blanket easements described in the document entitled *Perpetual Stormwater Drainage Easements*.
2. **Location of Trails on Outlot 2.** The trails on Outlot 2 shall be located as indicated on the map included in the Kennedy Hills Plat Grading and Erosion Control Details Exhibit #4, page 1 of 1 and dated June 23, 2020, and which is incorporated herein by reference as if set forth fully herein.
3. **Final As-Built Grading Plan Required.** The Grading Plan approved for this Plat overall is included in the Kennedy Hills Plat Grading and Erosion Control Details as Exhibit #4, page 1 of 1 and dated June 23, 2020, and which is incorporated herein by reference as if set forth fully herein. Following substantial completion of construction of the Improvements, Developer shall promptly prepare a final as-built grading plan ("Final As-Built Grading Plan"). The Final As-Built Grading Plan shall be submitted to the Town Engineer and the Town Clerk both electronically and as hard copy. No building permits for residences shall be issued until the Town Engineer confirms that he has "no objection" to the Final As-Built Grading Plan. The Final As-Built Grading Plan shall be used to make the determination required by this Development Agreement and shall be incorporated by reference as if fully set forth herein.

CONSENT OF LIENHOLDERS

The undersigned mortgagees or other lienholders, having an interest in the real estate subject to the Development Agreement described herein, do hereby consent to the foregoing, and join in the execution hereof solely as a lienholder and hereby agree that in the event of the foreclosure of the interest in said real estate or other sale of the real estate under judicial or non-judicial proceedings, the real estate shall be sold subject to the Development Agreement.

Dated: July 15, 2020.

BANK OF DEERFIELD

Lienholder Name

By: [Signature]

Name: Darren S. Winkler

Title: President

Attest: [Signature]

Name: ~~COMMERCIAL LENDER~~ ANNIE ZELLMER

Title: COMMERCIAL LENDER

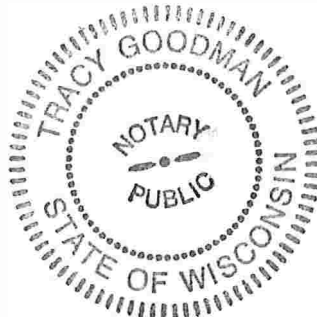
ACKNOWLEDGMENT

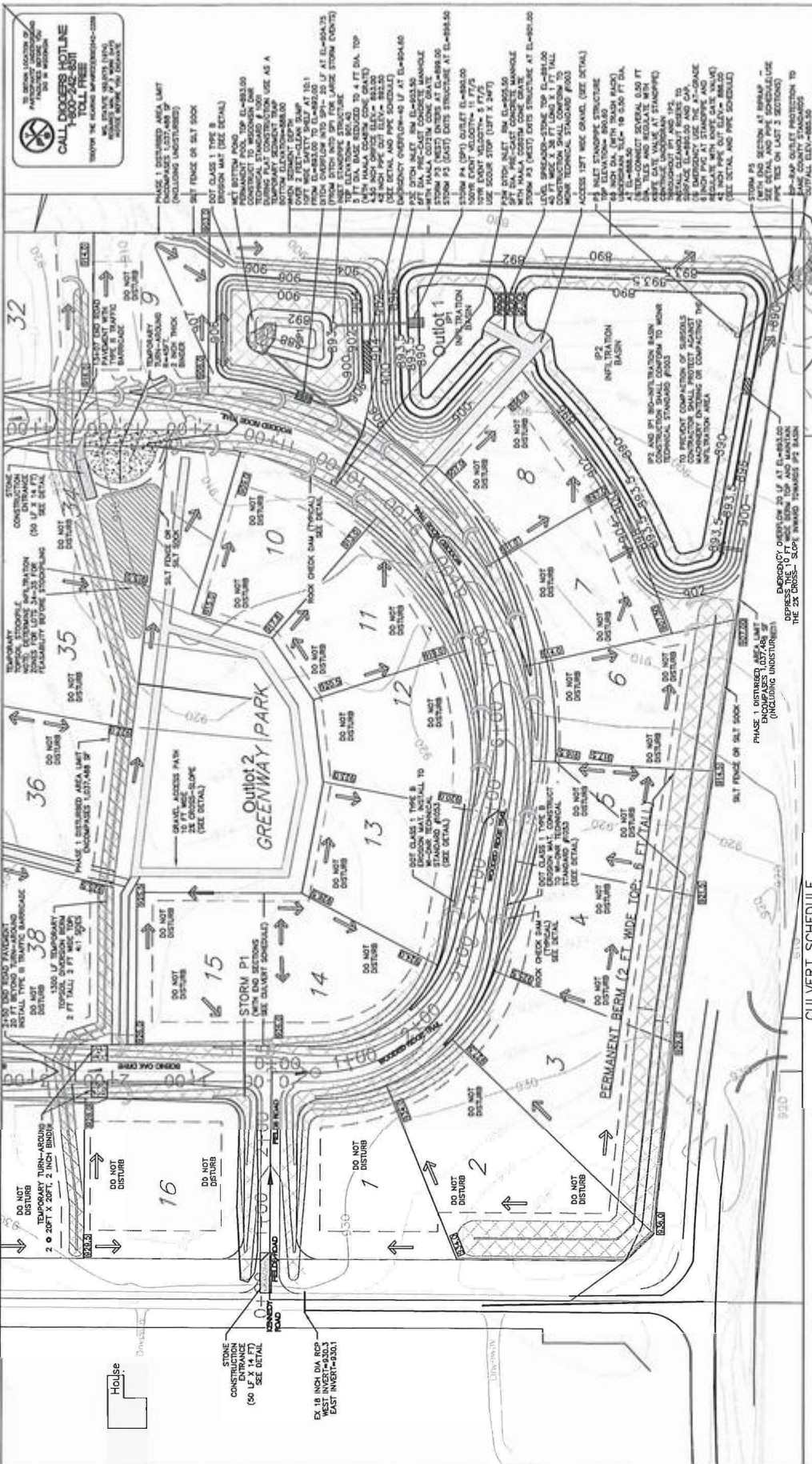
STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this 15th day of July, 2020, the above-named DARREN S. WINKLER and ANNIE ZELLMER, of Deerfield, WI, to me known to be the PRESIDENT and COMMERCIAL LENDER of the Bank of Deerfield who executed the foregoing instrument as such officers of the corporation.

[Signature]
Print Name: Tracy Goodman
Notary Public, State of Wisconsin
My Commission: October 9, 2020





Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.

Authorized by: