

DRAFT
June 1, 2017

**City of Wisconsin Dells
Tax Increment District No. 3
Development Agreement
(Riverwood Eagle's Nest)**

This Development Agreement is dated May/June ____, 2017 by and between the City of Wisconsin Dells, a Wisconsin Municipal Corporation (City) and Riverwood Eagle's Nest, LLC, a Wisconsin Limited Liability Company (Developer).

RECITALS

City and Developer acknowledge the following:

- A. Developer owns the following described real property located in the City: See Exhibit A attached.
- B. The City has created Tax Increment No. 3 pursuant to Wis. Stat. sec. 66.1105 and approved and amended a plan for the development of the district (District Plan and Amended Plan).
- C. The specific property subject to this agreement, the site of Phase 1A, Tax Parcel #291-2200-1903, is located within the boundaries of the district. (The Property)
- D. Subject to obtaining the financial assistance set forth in this agreement, Developer intends to develop a senior living community that will provide assisted care, memory care and independent living.
- E. Development of the senior living community will enhance the tax base of and provide other benefits to the City and is consistent with the District Plan and Amended Plan.

- F. The City desires to encourage economic development, to expand its tax base and to create new jobs within the City, the district and the property.
- G. The City finds that the development of Developer's property and the fulfillment of the terms and conditions of this Agreement are in the best interests of the City and its residents and serve a public purpose in accordance with state and local law.
- H. The development of the senior living community would not occur without the financial assistance to be provided to the Developer as set forth in this Agreement.
- I. The City, pursuant to Common Council action, has approved this Agreement and authorized its execution by the Mayor and Clerk/Coordinator on the City's behalf.
- J. The Developer has approved this Agreement and authorized its execution by authorized agents on the Developer's behalf.

AGREEMENTS

NOW THEREFORE, in consideration of the recitals, promises and undertakings set forth herein, the parties mutually agree and covenant as follows:

SECTION 1. Project Description.

- 1. Developer will design and construct, in phases, a senior living community in accordance with all applicable State and City zoning, building codes, ordinance regulations and stormwater requirements.
- 2. Owner represents to the City that the development of the senior living community without the benefits provided by the City to the Developer pursuant to this

agreement would not be financially viable and that but for such assistance Developer would not proceed with the development as currently contemplated.

3. The Senior Living Community shall be developed in phases as follows:
See attached Exhibit B.
4. This Agreement covers Phase 1A. It is mutually agreed that future phases 1B, 2 and 3 will use the terms outlined in SECTION 5 of this Agreement.
5. This Agreement covers development on Tax Parcel #11291-2200-1903.
6. Developer shall commence construction of the Phase 1A improvements on or before _____, 2017 and shall complete construction to a condition ready for occupancy on or before _____, 2018.
7. The Phase 1A project and improvements shall be as forth in the site plan attached as Exhibit C and subject to the City conditions and approvals set forth in Exhibit D.
8. The General Site Plan for the Senior Living Community is as depicted in Exhibit E.

SECTION 2. Developer Obligations.

1. Developer shall initiate, or cause to be initiated by third parties, Phase 1A of the project and complete with same in accordance with the Zoning Code and all other applicable City building codes, fire codes, ordinances, regulations and City approvals.
2. All project costs expended by Developer, including costs incurred before the date of this Agreement and which are eligible for funding pursuant to Wis.

Stat. sec. 66.1105, are referred to as “Developer Costs”. Developer costs shall include, without limitation, costs for the acquisition of land, construction of improvements, including hard and soft construction costs, professional fees, architectural fees, construction period interest, civil engineering fees, general contractor fees, infrastructure improvements, environmental remediation costs, demolition, public parking facilities, and the clearing, grading, and construction of the Project, and other costs permitted pursuant to Wis. Stat. sec. 66.1105.

3. The projected tax increment value of Phase 1A, when completed, shall be \$9.5 million.
4. Developer consents and agrees to the following:
 - a. Roads. The roads within the Development shall remain privately owned and maintained.
 - b. Utility Mains. Any water and sanitary sewer mains within the Development will meet City standards, be dedicated to the City, be located within easements approved by the City and be recorded in the Columbia County Register of Deed’s office. The water main will be looped.
 - c. Storm Water Management. The storm water management plan in the Site Plan review must not create adverse effects on the City streets, neighboring properties, or other facilities.

- d. No Destination Commercial Uses. Commercial uses (such as restaurants) shall not be a principal use, or they may be restricted by the City if the City deems them to be creating a nuisance to the existing residential zones, including traffic or parking nuisance, or noise nuisance.
 - e. Buffer. The plans for the Site Plan review must show adequate berming or landscaping buffers between the Development and neighboring properties.
 - f. Nuisances. The Developer shall cooperate with the City to resolve any nuisances that may result from the Development.
5. Not later than June _____, 2017 the Developer shall present to the City an irrevocable, final and unconditional financing commitment from a lender satisfactory to the City which commitment shall be sufficient to cover all of Developer's Phase 1A costs and expenses.

SECTION 3. Emergency Management.

- 1. Developer shall provide to the City and implement an emergency management and evacuation plan for Phase 1A. The plan shall be reviewed and approved by appropriate state agencies, including Department of Health Services, and City agencies, including Kilbourn Fire Department and Dells-Delton EMS. The plan shall include and/or address the emergency evacuation measures set forth in Exhibit F attached.

2. Developer understands and agrees that a similar emergency management and evacuation plan will be required in connection with the Phase 1B approval process.
3. Developer understands and agrees that in connection with City consideration and approval of Phases 2 and 3, the City may require secondary emergency access to the property and that developer may be required to finance or fund all or a portion of the cost and expense of such secondary emergency access.
4. Developer acknowledges and agrees that it has no vested rights to receive City approval for or proceed with Phases 1B, 2 and 3 without satisfaction of the provisions of this section regarding emergency management, evacuation and access.

SECTION 4. City Obligations.

1. The City shall cooperate with the Developer throughout the preconstruction and construction periods and shall promptly review and/or process all submissions and applications.
2. Subject to all of the terms, covenants and conditions of this Agreement and as an inducement by the City to the Developer to construct Phase 1A of the Senior Living Community, the City will provide the financial assistance set forth in Section 5. The same terms, covenants and conditions of this Agreement will be used in an inducement by the City to the Developer to construct future Phases 1B, 2 and 3 of the Senior Living Community and will use the same terms set forth in SECTION 5.

3. The financial assistance is subject to the Developer obtaining City approvals, drawing plan specifications, variances or conditional uses and fulfilling the terms and conditions of the City's approvals.

SECTION 5. Financial Assistance.

1. In this section the following terms have the following meanings. Any undefined words or terms shall have the definitions used in state law.
 - a. Contribution means the Tax Increment Revenue payment made to the Developer.
 - b. Property Base Value means the equalized value of the Property upon the creation of TID #3 as of January 1, 2006 as certified by the State, which was \$243,700.00.
 - c. Tax Increment Value means the equalized value above the Property Base Value established for the Property as determined by the City assessor.
 - d. Tax Increment Revenue means the personal and real property tax revenue [(as defined in Wis. Stat. sec. 66.105(2)(1)] generated by the Tax Increment Value of the Project.
2. The City will provide contributions to the Developer as reimbursement for a portion of the Developer Costs as provided in this Agreement.
3. The City will provide contributions to the Developer solely from future Tax Increment Revenue from the Property as a reimbursement for Developer's costs.

4. The City's total payment of Tax Increment Revenue as a contribution towards development costs shall be fifteen percent (15%) of the Tax Increment Value of Phase 1A which is estimated to be \$1.425 million.
5. For 10 years beginning in the tax year following completion and occupancy of Phase 1A, Tax Increment Revenue contributions will be provided to the Developer as follows: the City will pay the Developer ninety percent (90%) of the Tax Increment Revenue received by the City with respect to the Project in that year.
6. No contributions will be made until the property taxes have been paid on the property.
7. Contributions pursuant to this Agreement shall be made by September 1 each year. The contribution shall be a special and limited obligation of the City and not a general obligation.
8. Developer hereby acknowledges that, as a result of the special and limited nature of the City's obligation to pay the Contribution, Developer's recovery of the full amount of the Contribution depends on factors including, but not limited to, future mill rates, changes in the assessed value of the Project, the failure of the Project to generate the Tax Increment Revenue in the amount expected by Developer, or reduction in Tax Increment Revenue caused by changes in the Tax Increment Law to the extent that they apply retroactively to this Agreement of the District.

9. All debts owed to the City of Wisconsin Dells or Columbia County by the Developer including real estate and personal property taxes must be paid in full and timely to qualify for the incentive payment.
10. Existing TID #3 debt obligations have priority over contributions to Developer. Current TID #3 priority obligations are itemized in Exhibit G attached. All funds in the special fund of TID #3 will be used first to make the principal and interest payments due and only after the debt payments have been paid in full for any particular year shall funds in said special fund be used to pay any other project costs of TID #3.
11. If on any contribution payment date there are insufficient revenues to pay the amount due, the amount not paid shall accumulate and be payable on the next payment date until the contribution balance is paid in full or the agreement has expired or been terminated.
12. The contribution is a special limited revenue obligation and not a general obligation of the City and it payable by the City only from the collected tax increment generated from the project.
13. The contribution is not a general obligation of the City and neither the full faith and credit nor the taxing powers of the City are pledged to the payment of the contribution and no property or other asset of the City except the collected tax increment revenue is or shall be a source of the City's obligations.
14. The City's financial assistance for Phases 1B, 2 and 3 will be modeled on this SECTION 5.

SECTION 6. Tax Status.

As long as the District is in existence, the Developer's land and all buildings and improvements thereon shall be owned and taxable for real estate tax, special assessment purposes and personal property taxes. The City may waive this restriction upon execution of a payment in lieu of taxes (PILOT) agreement, in a form acceptable to the City, made between the City and the owner or lessee of the Property.

SECTION 7. Improvements.

1. The Development will be designed, constructed and installed by Developer at Developer's sole cost and expense. All improvements shall be designed, constructed and installed in accordance with applicable City standards and engineering standards and specifications contained in the applicable City building codes. Where standards and/or specifications have not been expressly established by the City, all work shall be performed in accordance with established engineering practices as designated and approved by the City Engineer.
2. The water and sewer mains within the Development shall be known as the "Public Improvements". During the course of the construction of the Public Improvements, the City Engineer shall make or cause to be made such inspections as the City deems necessary to ensure compliance of the Public Improvements with the approved plans and specifications. After completion of all Public Improvements and prior to final acceptance of the Public Improvements, Developer shall make or cause to be made three copies of record plans showing the actual location of all Public Improvements as the City Engineer may require.

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These plans shall be prepared on the original mylars of the construction plans and shall bear a signature and seal of a professional engineer registered in the State of Wisconsin.

3. After the required Public Improvements have been installed and completed, and within 28 days after receiving written notice that Developer desired the City to inspect such Public Improvements, the City Engineer shall inspect the Public Improvements and, if acceptable to the City Engineer, the Common Council shall by resolution certify such Public Improvements as being in compliance with this Agreement and with the standards and plan and specifications of the City. Before obtaining certification of any such Public Improvements, Developer shall present to the City valid lien waivers from all entities providing materials or performing work on the Public Improvements.
4. Developer agrees to guarantee and warrant all of the Public Improvements for a period of one year from the date of final acceptance by the City of each phase of the Public Improvement completed by Developer. If any defect appears during the guarantee period, Developer agrees to replace the defective work or repair the defective work at its own expense to the standard provided in the approved plans and specifications. All guarantees or warranties for materials or workmanship which extend beyond the above guarantee period shall be assigned by Developer to the City as beneficiary. Other than this construction guaranty, all liability for the Public Improvements, and all obligations to maintain and repair

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such Public Improvements, shall rest with the City, and the recorded easements shall so state.

5. Easements. Developer shall grant and record, prior to the issuance of the first building permit for each Phase of the Development, a recordable easement to the City, over all roadways and paths in the Development, for emergency and municipal services, including garbage collection. Developer shall not construct City improvements in designated easement areas.
6. Fencing. Developer shall have the right to install fencing in appropriate locations in the Development to ensure the safety of residents and the public.
7. Consent to install utilities. To the extent needed, the City hereby consents to the installation of utilities under all road rights of way needed for the installation of utilities as shown on the final approved site plan.
8. Water/Sewer Fee. Developer shall not be required to pay for any water or sewage fees except for the normal usage fees and normal hookup fees which are uniformly charged to other users.
9. Carts. City agrees that the Developer may use, on its private roads, and on Bowman Road and other roads as defined in the future as “golf cart approved” roads, golf carts and other small utility carts, but subject to reasonable restrictions to address safety concerns. Implementation of this section may include, at the City’s direction, appropriate street markings.

10. Inspections. Developer grants the right of entry on the lands within the Development to personnel or agents of the City to conduct inspections and monitor compliance with the provisions of this Development Agreement.

SECTION 8. Miscellaneous Terms.

1. The City will not make any contributions or other payments to Developer related to Phase 1A under this agreement or subsequent agreements after September 2, 2030; and, the City does not contemplate making any contributions or other payments to Developer related to this project after December 31, 2035.
2. Developer will not qualify for commencement of contributions related to Phase 1A unless construction is completed and an occupancy permit issued for the Phase 1A improvements prior to _____, 2018.
3. Amendment. This Agreement may be amended only by a written amendment instrument approved and executed by the City and Developer, or the then owner of the Developer's property.
4. Successors Bound. This Agreement shall be binding upon Developer and its heirs, successors and assigns in ownership to the Developer's Property, but if Developer still owns any portion of the Developer's Property, Developer alone shall be the only party able to sign an amendment, and no other purchasers or owner of part of the Development.
5. Severability. Any illegal or unenforceable provision of this Agreement will be severed and will not render invalid any remaining portions of this Agreement.

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6. Written Notice. Any writing notification required under this Agreement shall be deemed to be served if it is personally delivered or sent by first class mail to the following:

To City: City of Wisconsin Dells
300 La Crosse Street
Wisconsin Dells, Wisconsin 53965
Attn: Karen Terry
608-254-2012

To Developer: Riverwood Eagle's Nest
8001 Terrace Ave., Suite 202
Middleton, Wisconsin 53562
Attn: Steve Cohan
608-826-3450, ext. 622

7. Attorney Fees. If either party commences litigation, arbitration or mediation to enforce the terms of this Agreement, the non-prevailing party shall pay all costs, including reasonable attorney fees and expert witness fees, of the prevailing party. If the court, arbitrator or mediator awards relief to both parties, each will bear its own costs.
8. Default. Upon any default hereunder, either party shall have all remedies available at law or equity as necessary to cure any default, except to the extent provided otherwise in the Developer's Agreement.
9. Benefits. The benefits of this Agreement to Developer are personal and shall not be assigned without the express written consent of the City. 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 Developer and shall be binding on the successors and assigns of

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Developer. There is no prohibition on the right of the City to assign its right under this Agreement.

10. Ownership Warranty. Developer hereby warrants that it is the owner of all of the Developer's Property.
11. Effective Date. This Agreement is entered into as of the day and year first written above.

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CITY OF WISCONSIN DELLS

Dated: _____, 2017.

Brian L. Landers, Mayor

Dated: _____, 2017.

Nancy R. Holzem, Clerk/Administrative
Coordinator

RIVERWOOD EAGLE'S NEST, LLC

Dated: _____, 2017.

By: _____
its: _____

Dated: _____, 2017.

By: _____
its: _____

EXHIBIT B

Senior Living Community Development Phases

<u>Phase</u>	<u>Description</u>	<u>Anticipated Development Costs</u>	<u>Anticipated Year of Completion</u>
1A	52 living units of assisted living, memory care, community nook and telemedicine	\$9.5 Million	2018
1B	38 unit independent living, assisted living RCAC-Flex apartment building	\$8.9 Million	2020
2	Additional assisted living, memory care and commons	\$15 Million	2021
3	Retreat center and two (2) private home sites	\$6.75 Million	2022

Exhibit ~~G~~ **F**

Draft Emergency Plan Outline Contents (additional detail to be added)

- A. Fire in the facility
 - i. Defend in place as described in the Operator's Fire Response Plan and in strict accordance with DHS requirements (see examples below)
 - ii. Transport residents in vans to the Riverwood Clubhouse
 - iii. Transport residents to safe location on Bowman Rd., stay in van or ATV
 - iv. Transport residents to water treatment plant
 - v. (April through November) Transport residents to dock for water evacuation

- B. Medical emergency
 - i. Stabilize medical condition through trained staff involvement
 - ii. Contact emergency physician service through tele-medicine
 - iii. Transport resident over railroad track by using RW ATV
 - iv. (April through November) transport residents to dock for water evacuation
 - v. Transport residents to air evacuation location for Medical evacuation

- C. Catastrophic event involving railroad closure
 - i. Defend in place as described in the Grace Lutheran instructions
 - ii. Transport residents in RW vans to the Riverwood Clubhouse
 - iii. Transport residents to the road, stay in van or ATV
 - iv. Transport residents to Water treatment plant
 - v. (April through November) transport residents to dock for water evacuation
 - vi. Transport residents to air evacuation location for Medical evacuation
 - vii. In the event of a toxic airborne situation (such as railroad tanker truck spill) proceed with steps ii. iii and/or iv, v and vi.

*DHS "defend-in-place" language:

DEFEND-IN-PLACE. A method of emergency response that engages building components and trained staff to provide occupant safety during an emergency. Emergency response involves remaining in place, relocating within the building, or both, without evacuating the building.

Operator's Fire Response Plan Example:

Grace Edgewood Foundation/Grace Edgewood
Emergency Preparedness Manual
Revised 5/17/17

FIRE RESPONSE PLAN

1. THOSE WHO DISCOVER THE FIRE:

- a. **Remove** Remove residents from immediate danger and/or past the first set of fire doors.

Activate Pull alarm handle on nearest fire alarm pull station.

Close Close all doors and clear corridors of all obstacles. Report to front desk.

Evaluate Use proper fire extinguisher or smother a small fire and/or refer to "Evacuation Procedures," if necessary.

b. CHECK DOOR(S) FOR TEMPERATURE

c. IF DOOR IS NOT HOT:

1. Check for people inside of resident room and bathroom and evaluate if necessary.
2. Write an "X" on the door with a piece of chalk (located in the fire extinguisher box).
3. An "X" means that the room has been secured. **DO NOT RE-ENTER.**

d. IF DOOR IS HOT OR SMOKE IS VISIBLE:

1. **DO NOT OPEN DOOR**
2. NOTIFY FIRE DEPARTMENT OF FIRE LOCATION

2. WHEN FIRE ALARM IS ACTIVATED:

a. STAFF IN CHARGE OR DESIGNEE:

Upon notification of fire:

1. Identify location of fire by using code panel at the center of the facility. See "Smoking Control Panel Procedure" for description of code panel.
2. CALL 911 and report "There is a fire/ fire alarm at Grace Edgewood, 2512 Spooner Avenue, Albion.
3. Announce over the page system: "Code RED, (specify wing)" 3 times, slowly and clearly.
4. Meet fire department at the front entrance and help direct to area of fire.
5. Notify the following persons:
 - > Director of Grace Edgewood
 - > Administrator
 - > Director of Environmental Services
 - > Nursing Supervisor
 - > Director of Nursing
 - > Executive Team
- > Refer to "Emergency Telephone List"

B. EACH DEPARTMENT will

- > SHUT ALL DOORS
- > CLEAR HALLWAYS BY PLACING ALL EQUIPMENT IN NEAREST ROOM
- > TURN OFF ALL UNNECESSARY EQUIPMENT
- > POST PERSONS AT ALL EXIT DOORS AS SOON AS POSSIBLE TO SECURE AREA
- > REMAINING STAFF REPORT TO CENTER OF FACILITY
- > KEEP FIRE DOORS CLOSED AT ALL TIMES AND ENSURE THAT DOORS ARE PROPERLY SEALED.
- > WHEN YOU NEED TO SEND A MESSAGE WITHIN THE BUILDING SEND A RUNNER - DO NOT USE THE TELEPHONE
- > IF NEEDED, THE DINING ROOMS WILL BE THE WOUND CARE/TREATMENT AREAS
- > DO NOT ALLOW ANYONE TO RETURN TO THE DANGER ZONE UNTIL "CODE RED, ALL CLEAR" IS HEARD.

FIRE RESPONSE PLAN

1. THOSE WHO DISCOVER THE FIRE:

- a. Remove Remove residents from immediate danger and/or past the first set of fire doors.
- Activate Put alarm handle on nearest fire alarm pull station.
- Close Close all doors and close corridors of all obstacles. Report to front desk.
- Evacuate Use proper fire extinguisher or smother a small fire and/or refer to "Evacuation Procedures," if necessary.

b. CHECK DOOR(S) FOR TEMPERATURE

c. IF DOOR IS NOT HOT:

- 1. Check for people inside of resident room and bathroom and evacuate if necessary
- 2. Write an "X" on the door with a piece of chalk (located in the fire extinguisher box)
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- 1. DO NOT OPEN DOOR
- 2. NOTIFY FIRE DEPARTMENT OF FIRE LOCATION

2. WHEN FIRE ALARM IS ACTIVATED:

a. STAFF IN CHARGE OR DESIGNEE:

Upon notification of fire:

- 1. Identify location of fire by using code panel at the center of the facility. See "Smoke Control Panel Procedure" for description of code panel.
- 2. CALL 911 and report: "There is a fire alarm at Grace Edgewood, 2512 Spencer Avenue, Aurora
- 3. Announce over the page system: "Code RED. (specify wing)" 3 times, slowly and clearly
- 4. Meet fire department at the front entrance and help direct to area of fire
- 5. Notify the following persons:
 - > Director of Grace Edgewood
 - > Administrator
 - > Director of Environmental Services
 - > Nursing Supervisor
 - > Director of Nursing
 - > Executive Team
 - > Refer to "Emergency Telephone List"

b. EACH DEPARTMENT will

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- > WHEN YOU NEED TO SEND A MESSAGE WITHIN THE BUILDING, SEND A RUNNER - DO NOT USE THE TELEPHONE!
- > IF NEEDED, THE DINING ROOMS WILL BE THE WOUND CARE/TREATMENT AREAS.
- > DO NOT ALLOW ANYONE TO RETURN TO THE DANGER ZONE UNTIL "CODE RED: ALL CLEAR" IS HEARD