

**Village of Somers
7511 12th Street
Somers, WI 53171**

**Special Village Board Meeting
Agenda
Tuesday November 7, 2022
Immediately Following Village Work Session**

Special Village Board Meeting:	
Item #	
1	Call to order
2	Pledge of Allegiance
3	Citizen Comments
4	Action on proposed Village Agreement and Consent to TID Pledge and Security Agreement for SCS Pike Creek, LLC (Savannah Project)
5	Adjourn

On November 1, 2023, A Special Board Meeting Request was filed by President Stoner, pursuant to s. 2.02(B) of the Code of Ordinances of the Village of Somers and s. 61.32 of the Wisconsin State Statutes.

I hereby certify that as the designee of the chief elected official of the Village of Somers, I posted this notice of the November 7, 2023 Special Village Board Meeting & Agenda in 1 public place & on the Village website.

Dated this 3rd day of November 2023

Brandi Baker
Clerk/Treasurer

Requests from person with disabilities who need assistance to participate in this meeting should be made to the Clerk's Office at 262-859-2822 with as much notice as possible. **Notice is hereby given that members of the Village Board may participate telephonically. Notice is hereby given that members of the Town Board may be in attendance for the sole purpose of gathering information. A quorum may be present. However, no Board action will be taken**



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**VILLAGE OF SOMERS
SPECIAL VILLAGE BOARD MEETING
ITEM MEMORANDUM**

MEETING DATE: November 7th, 2023

TO: Village President Stoner and Village Trustees

PREPARED BY: Jason J. Peters, Administrator

AGENDA ITEM: #4 Action on proposed Village Agreement and Consent to
TID Pledge and Security Agreement for SCS Pike Creek, LLC
(Savannah Project)

BACKGROUND:

In 2021, the Village entered into a development agreement with SCS Pike Creek, LLC (herein referred to as the “Developer”) for the Savannah at Pike Creek multi-family project on CTH L. The agreement was subsequently amended in 2022. As part of the agreement, incentive payments were pledged from TID 5. The Developers is currently trying to obtain a new construction loan for the project and the proposed lender is requiring them to collaterally assign its interest in said payments for collateral purposes to the lenders. Per the above-mentioned development agreement, The Developer needs to seek written consent from the Village before any transfer of rights are granted. They have submitted their request to Attorney Davison. Attorney Davison has reviewed the attached “Village Agreement and Consent to TID Pledge and Security Agreement” and has no issues with the Village entering into said agreement.

PRIOR ACTION TAKEN:

This item will be reviewed at our Work Session on November 7th.

SUGGESTED ACTION/ACTION REQUESTED/COMMENTS:

Staff would recommend approval of the proposed Village Agreement and Consent to TID Pledge and Security Agreement for SCS Pike Creek, LLC. In the event that the Village Board agrees with the suggested action, a suggested motion to approve would be as follows:

*“Motion to approve proposed Village Agreement and Consent to
TID Pledge and Security Agreement for SCS Pike Creek, LLC.”*

ATTACHMENTS:

Village Agreement and Consent to TID Pledge and Security Agreement

Map of Area

VILLAGE AGREEMENT AND CONSENT TO TID PLEDGE AND SECURITY AGREEMENT

This **VILLAGE AGREEMENT AND CONSENT TO TID PLEDGE AND SECURITY AGREEMENT** (this “Consent”), dated as of November [REDACTED], 2023, is made and entered into by and among the **VILLAGE OF SOMERS, KENOSHA COUNTY, WISCONSIN, THE VILLAGE OF SOMERS UTILITY DISTRICT (“DISTRICT”), AND THE VILLAGE OF SOMERS WATER UTILITY (“UTILITY”)** (the Village of Somers, the Utility and the District are hereinafter collectively referred to as “Village”), **BARRINGTON BANK & TRUST COMPANY, N.A.** as a lender, lead arranger, bookrunner and agent (including its successors and assigns, the “Lender”), and **SCS PIKE CREEK, LLC**, a Wisconsin limited liability company, d/b/a Savannah at Pike Creek Apartments (“Developer”). The following recitals form an integral part of this Consent:

A. The Developer and the Village have entered into that certain Development Agreement dated as of October 28, 2021 recorded with the Kenosha County Register of Deeds on November 21, 2021 as Document Number 1916098 (the “RDA”), and a First Amendment to the RDA dated November 30, 2022 (collectively the RDA and the amendments and restatements listed above are the “Amended RDA”) (as amended from time to time the RDA and the Amended RDA are referred to herein as the “Development Agreement”).

B. Pursuant to the Development Agreement and that certain Project Plan for the Creation of Tax Incremental District No. 5, together with any other documents already existing or to be provided in the future between the Village and Borrower (the “TID Documents”), the Village agreed to issue Incentive Payments subject to the terms of the Development Agreement and the TID Documents, together with any other TID Notes issued by the Village to the Developer pursuant to the Development Agreement (“Incentive Payments”) for the purpose, in part, of providing terms by which Developer may be partially reimbursed for its project costs by means of incremental property taxes in accordance with the Development Agreement and the TID Documents, all as more specifically defined and set forth in the Development Agreement and in the TID Documents.

C. Lender has represented to Village that they and other lenders have agreed to make certain loans in the total amount of up to \$3,100,000.00 (collectively, the “Loan”) to Developer evidenced by those certain Promissory Notes dated the date hereof, and further described in that certain Construction Loan Agreement, dated as of the date hereof, among Developer and Lender (as amended from time to time, the “Loan Agreement”).

D. As security for the Loan, Lender has required, among other documents evidencing the Loan, a TID Pledge and Security Agreement, dated the same date as the Loan Agreement (“Pledge Agreement”), executed and delivered by Developer for the benefit of Lender pledging among other things, the Development Agreement, and any Incentive Payments that may become payable to Developer and any rights or proceeds therefrom.

E. Pursuant to the Pledge Agreement, the Developer has collaterally assigned to Lender all Incentive Payments that may be issued to Developer (“Pledged Obligations”) under the terms of the Development Agreement.

F. The Development Agreement and the Pledged Obligations issued in connection therewith, all ordinances relating thereto, and all other documents and agreements between Village and Developer relating thereto are collectively referred to herein as the “Development Documents”.

G. The Village authorized entry into this Consent.

NOW THEREFORE, in consideration of the foregoing recitals, the agreements herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties to this Consent hereby agree as follows:

1. Consent. Village hereby consents to (a) the assignment by Developer to Lender of Developer's right, title and interest under each of the Development Documents pursuant to the Pledge Agreement, (b) Lender holding the Pledged Obligations for the term of the Loan Agreement, and (c) the pledge by Developer to Lender of the Pledged Obligations.

2. Attornment. Village acknowledges and agrees that it will make full and complete attornment (without the necessity of any other or further attornment or instrument) to, and to accept performance of the Developer's obligations under the Development Documents, from (a) Lender, (or an affiliate of Lender organized to hold title to the Property for which the Village has approved an assignment under the Development Agreement ("Affiliate")), or (b) any receiver which Lender requests be appointed for the Property. Such attornment shall be for the balance of the term of each of the Development Documents, including any extensions thereof, and shall be upon the same terms, covenants and conditions as provided in the Development Documents so as to establish direct privity of estate and contract between Village and Lender (or its Affiliate), with the same force and effect as though the Development Documents were made directly between Village and the person to whom Village shall attorn as aforesaid.

3. Amendment of Development Documents. Developer acknowledges and agrees that, so long as the Loan shall remain outstanding and unpaid, Developer shall not, without the prior written notice to Lender, (a) cancel or terminate any of the Development Documents, or (b) assign any of the Development Documents other than pursuant to the provisions of this Consent.

4. Lender's Right to Cure Developer Default. Developer shall serve Lender with all official notices and demands under the Development Agreement at the address set forth in **Section 10.2** hereof. If any breach or default on the part of the Developer occurs under the Development Documents and the Developer fails to cure the same within any applicable cure or grace period (any such uncured breach or default being referred to herein as a "Developer Default"), Lender shall have the right, but not the obligation, to cure or cause the cure of such Developer Default on the same terms, under the same conditions, and within the same cure or grace period, as Developer under the Development Agreement.

5. Exercise of Remedies for Developer Default. If Lender, or any Affiliate of Lender exercises its rights under the Loan Documents (as defined in the Loan Agreement) and thereby acquires all of the Developer's rights under the Development Documents, then Lender or any Affiliate, shall be liable for the obligations of Developer under the Development Documents only for the period of time that Lender or such Affiliate remains the holder of such rights. Lender and any Affiliate, shall not have any obligations under the Development Documents for any obligations which accrue or arise after its rights thereunder have been assigned or otherwise disposed of thereafter in accordance with the Development Documents.

6. Casualty and Condemnation Proceeds. So long as the Loan remains outstanding, the parties acknowledge and agree that all proceeds from any casualty to or any condemnation (or sale under threat of condemnation) of the Property shall be first paid to Lender.

7. Acknowledgment of Lender's Rights and Interests in Pledged Obligations; Other Payments.

(a) The Village has agreed to issue certain Incentive Payments subject to the terms and conditions of the Development Agreement.

(b) Intentionally Deleted.

(c) Following written notice by Lender to the Village that an Event of Default exists under the Loan Agreement, the Village shall deliver any or all of the Pledged Obligations and Incentive Payments that may become payable under the Development Agreement to or at the order of Lender. The Developer hereby authorizes and directs the Village to take such action and agrees that such authorization is not revocable by Developer until and unless the Loan is repaid in full.

(d) The Village further acknowledges and agrees, and Developer acknowledges and agrees and irrevocably directs, that following written notice by Lender to the Village that an Event of Default exists under the Loan Agreement, (i) all payments of principal, interest or other amounts payable under the Pledged Obligations, including without limitation, any amounts payable in full or partial redemption of the Pledged Obligations, and (ii) all amounts payable from the Village to Developer pursuant to any provision of any of the Development Documents shall be paid to Lender for application in accordance with the Loan Agreement, by electronic wire or account transfer.

(e) Lender and Developer release the Village from any claims, causes of action, costs, expenses, demands, and damages arising from, or related to the Village's performance of its obligations under this Section 7.

8. Indemnification. Developer shall indemnify, defend with counsel of the Village's choosing, and hold the Village harmless from and against any claims, causes of action, costs, expenses, demands, and damages arising from, or related to, a Developer Default, the Pledge Agreement, and the Pledged Obligations.

9. Termination. This Consent shall terminate upon the earliest of (i) the mutual written consent of Lender, the Developer and the Village, or (ii) the payment in full, satisfaction and discharge of all of the principal of and accrued interest on the Loan and such termination shall be automatic and require no further documentation, or (iii) Incentive Payments are no longer payable under the terms of the Development Agreement.

10. Miscellaneous.

10.1 Waiver. No waiver of any breach or default hereunder shall constitute or be construed as a waiver by Village or Lender of any subsequent breach or default or of any breach or default of any other provisions of this Consent. Any waiver by Village or Lender must be in writing and will not be construed as a continuing waiver. No waiver will be implied from any delay or failure to take action on account of any default of Developer.

10.2 Notices. Any notices required or permitted to be given under this Consent shall be in writing and shall be deemed to have been given if and when received if personally delivered, or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

To Lender:

BARRINGTON BANK & TRUST
COMPANY, N.A.
201 S. Hough Street
Barrington, Illinois 60010
Attn: Nick Howard
E-mail: nhoward@wintrust.com

With a copy to:
Thompson Coburn LLP
55 E Monroe Street, 37th Floor
Chicago, Illinois 60603
Attn: Justin M. Newman
E-mail:
jmnewman@thompsoncoburn.com

To Developer:

SCS PIKE CREEK, LLC
c/o Stoneleigh Companies, LLC
760 W. Main Street, Suite 140
Barrington, Illinois 60010
Attn: Richard F. Cavanaugh
E-mail:
rcavanaugh@stoneleighcos.com

With a copy to:

Christine S. Bolger
Firsell Ross & Weis LLC
10 Parkway North Boulevard
Suite 110
Deerfield, Illinois 60015
E-mail: cbolger@firsellross.com

To Village:

VILLAGE OF SOMERS
7511 12th Street
P.O. Box 197
Somers, Wisconsin 53171
Attn: Jason Peters, Village Administrator
E-mail: jpeters@somers.org

With a copy to:

Davison Law Office, Ltd.
1207 55th Street
Kenosha, Wisconsin 53140
Attn: Attorney Jeffrey J. Davison
E-mail: dmltd@sbcglobal.net

or to such other address the party to receive such notice may have theretofore furnished to all other parties by notice in accordance herewith. Except as otherwise specifically required herein, no notice of the exercise of any right or option granted to Lender herein is required to be given.

10.3 Counterparts. This Consent may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same Consent.

10.4 Governing Law and Venue. This Consent and the terms, provisions and conditions herewith shall be governed by and construed and enforced in accordance with the internal laws of the State of Illinois (without giving effect to the conflicts of law provisions thereof). Venue for any litigation arising out of or related to this Consent shall lie exclusively in the Circuit Court of Cook County, Illinois, or the U.S. District Court for the Northern District of Illinois.

10.5 General. This Consent may not be modified or amended except by written agreement of the parties hereto. The headings contained herein have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms and provisions hereof. If any term, covenant or condition of this Consent, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Consent, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each term, covenant and condition of this Consent shall be valid and enforceable to the fullest extent permitted by law. This Consent represents the entire agreement between Lender and the Village and all prior negotiations and communications between the parties concerning the subject hereof are superseded hereby.

[SIGNATURES APPEAR ON THE FOLLOWING PAGE]

SIGNATURE PAGE FOR VILLAGE CONSENT AGREEMENT

IN WITNESS WHEREOF, the parties hereto have caused this Consent to be duly executed as of the year and date first set forth above.

“VILLAGE”
VILLAGE OF SOMERS

By: _____

Name: _____

Title: _____

Attest: _____

Name _____

Title _____

“LENDER”
**BARRINGTON BANK & TRUST
COMPANY, N.A.**

By: _____

Name: _____

Title: _____

“DEVELOPER”
SCS PIKE CREEK, LLC, a Wisconsin limited liability company, d/b/a Savannah at Pike Creek Apartments

By: _____

Name: Richard F. Cavanaugh

Title: President

	Savannah	



1:8.318

 $1'' = 693'$

Date Printed: 11/3/2023



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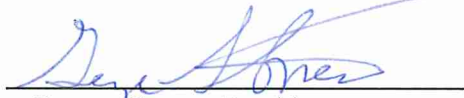
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REQUEST FOR CALL OF SPECIAL VILLAGE BOARD MEETING

I, the undersigned President of the Village of Somers, request the Clerk-Treasurer to call a Special Village Board meeting in accordance with Chapter 2.02 (B) of the Code of Ordinances of the Village of Somers, for the purpose of taking action on the following:

- a) Action on proposed Village Agreement and Consent to TID Pledge and Security Agreement for SCS Pike Creek, LLC (Savannah Project)

The Special Board meeting will be held following the 5:30 p.m. work session meeting on November 7, 2023, at the Somers Village/Town Hall, 7511 12th Street, Somers, WI.


George Stoner, President