

**EXCHANGE AGREEMENT**

**THIS EXCHANGE AGREEMENT** (this "Agreement") made and entered into this day of \_\_\_\_\_, 2022 by and between **VENTURE COMMUNITIES, LLC**, a limited liability company, whose mailing address is 5500 Interstate North Parkway Suite 150, Atlanta, Georgia 30328 (hereinafter referred to as "Venture") and **COBB COUNTY, GEORGIA**, a political subdivision of the State of Georgia (hereinafter referred to as "County") (Venture and County sometimes referred to herein as the "Parties").

**WITNESSETH:**  
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**WHEREAS**, Venture is, or by the closing of this transaction shall be, the owner of that certain tract or parcel of real property located in Land Lot 854, of the 17th District, 2nd Section, Cobb County, Georgia, and being depicted as Leland Drive Tract-North" on **Exhibit "A"**, attached hereto and incorporated herein by reference (the "Venture Property"); and

**WHEREAS**, County is the owner of that certain tract or parcel of real property, located in Land Lot 854, of the 17th District, 2nd Section, Cobb County, Georgia, which is depicted as Tract 1, on the Lot Recombination Plat, prepared by Watts & Browning Engineers, Inc., dated September 15, 2021, attached hereto and incorporated herein by reference as **Exhibit "B"**, (the "County Property") (the County Property and Venture Property sometimes referred to individually herein as the "Property" or collectively as "Properties"); and

**WHEREAS**, O.C.G.A. §32-3-3(b) provides that "any state agency, county, or municipality is authorized, for public road purposes, to enter into agreements ... with private persons for the exchange of real property or interests therein for public road purposes. Such exchange shall not be consummated unless the exchange serves the best interest of the public and unless the property or interest to be acquired in exchange is appraised as being of equal value to, or of greater value than, the property or interest to be exchanged."; and

**WHEREAS**, O.C.G.A. § 32-3-1 defines public road purposes as including, in part, "offices, shops, depots, storage yards, buildings and other necessary physical facilities of all types, ... and any and all other purposes which may be reasonably related to the development, growth, or enhancement of the public roads of Georgia."; and

**WHEREAS**, the County, to better serve the public, desires to construct a Department of Transportation satellite maintenance facility on the Venture Property; and

**WHEREAS**, the Cobb County Board of Commissioners at a public meeting on \_\_ determined that the exchange of the County Property for the Venture Property would serve the best interests of the public; and

**WHEREAS**, Venture has determined that the County Property is suitable for its proposed residential condominium (as defined in Section 5.0 herein) development; and

**WHEREAS**, the Venture Property to be exchanged for the County Property has been appraised as being of equal value to, or greater value than, the County Property to be exchanged; and

**WHEREAS**, County desires to exchange, transfer and convey the County Property to Venture, its successors or assigns; and

**WHEREAS**, Venture desires to exchange, transfer and convey the Venture Property to County, its successors or assigns.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual representations, warranties, covenants and agreements contained in this Agreement, Ten and No/100 Dollars (\$10.00), and other good and valuable consideration, and intending to be legally bound hereby, County and Venture do hereby agree as follows:

## **1.0 Property Exchange**

1.1. Venture Property. Subject to the terms and conditions of this Agreement and pursuant to O.C.G.A. §§ 32-3-1, 32-3-3, and 36-9-3, Venture shall, at the consummation of the exchange contemplated by this Agreement, transfer, grant, assign, deliver, and convey to County, and County shall acquire, accept, and assume from Venture all right, title, and interest of Venture in and to the Venture Property.

1.2. County Property. Subject to the terms and conditions of this Agreement and pursuant to O.C.G.A. §§ 32-3-1, 32-3-3, and 36-9-3, County shall, at the consummation of the exchange contemplated by this Agreement, transfer, grant, assign, deliver, and convey to Venture, and Venture shall acquire, accept, and assume from County all right, title, and interest of County in and to the County Property.

1.3. Property Value. The parties acknowledge and agree that the value of the Venture Property being acquired by the County is equal to or greater in value than the County Property being exchanged by the County, as determined by an independent appraisal of both properties, and as required by O.C.G.A. §§ 36-9-3(a)(3)(D) and 32-3-3(b).

## **2.0 Due Diligence**

2.1 Inspections. County and Venture, and their respective agents, employees, contractors and representatives shall have a period of sixty (60) days after the Effective Date of the Agreement (the "Due Diligence Period") to conduct such tests, inspections, studies, environmental assessments, or examinations ("Inspections") of the Properties as each Party desires, in its sole discretion. During the Due Diligence Period, each Party shall have free access to the Property of the other Party (with prior notice) to conduct such Inspections and such Parties' records relating to its property. Each Party shall, within five (5) business days of the Effective Date, provide to the other Party copies of all records, reports, plans, specifications, correspondence, title opinions and policies, surveys, utility bills, warranties, life safety reports and all other documentation in the possession of that party related to the transaction and its Property. Each Party shall repair any damage caused by such Party, its contractors or agents in performing any Inspections of the other Party's Property and shall restore that Property to substantially the condition as existed prior to the exercise of such rights.

2.2 Environmental Assessment. Each Party shall have the right prior to expiration of the Due Diligence Period, to conduct environmental assessments as necessary to identify the existence of actual or potential sources of liability in the environment of the Property of the other Party ("Environmental Assessments"). Each Party herein authorizes the other Party, its agents and contractors to enter its property for the purpose of conducting said Environmental Assessments and agrees to provide that Party with all information in its possession or within its knowledge concerning its Property's prior use(s). Provided however, Phase 2 or other invasive environmental testing shall not be performed by either party without the other party's express written consent, which shall not be unreasonably withheld.

2.3 Termination of Agreement. If, after such Inspections or Environmental Assessments, either party finds the other Party's Property unsuitable for any reason, in that Party's sole discretion, the investigating Party may terminate this Agreement by written notice to the other Party on or

before the expiration of the Due Diligence Period. Upon such timely termination, the Parties shall have no further obligations, rights, or duties under this Agreement, except as expressly provided herein.

2.4 Property Condition. Upon Closing, each Party agrees to accept the exchange, transfer and conveyance of the other Party's property without any warranty or representation concerning the quantity, quality, or condition of such Property (except as expressly set forth in this Agreement) or the other Party's interest therein, the availability of water, water pressure, sewer, sewer capacity, rock, poor soils, endangered species, specimen trees, utilities or necessary governmental authorizations, ingress, egress or access thereto, or any other matter not expressed in this Agreement. Each Party is accepting the Property "AS IS", "WHERE-IS" with all faults. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES GIVEN IN CONNECTION WITH THE EXCHANGE OF THE SUBJECT PROPERTY (EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT).

IT IS UNDERSTOOD AND AGREED THAT EACH PARTY DISCLAIMS ALL WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OR REPRESENTATIONS AS TO MATTERS OF TITLE (OTHER THAN WARRANTY OF TITLE SET FORTH IN THE WARRANTY DEED TO BE DELIVERED AT CLOSING AND AS SPECIFICALLY SET FORTH IN THIS AGREEMENT), ZONING, TAX CONSEQUENCES, PHYSICAL OR ENVIRONMENTAL CONDITIONS, AVAILABILITY OF ACCESS, INGRESS OR EGRESS, PROPERTY VALUE, OPERATING HISTORY, GOVERNMENTAL APPROVALS, GOVERNMENTAL REGULATIONS OR ANY OTHER MATTER OR THING RELATING TO OR AFFECTING THE PROPERTY. EACH PARTY AGREES THAT WITH RESPECT TO THE PROPERTY, IT HAS NOT RELIED UPON AND WILL NOT RELY UPON, EITHER DIRECTLY OR INDIRECTLY, ANY REPRESENTATION OR WARRANTY OF EITHER PARTY OR ITS AGENTS OR EMPLOYEES. EACH PARTY REPRESENTS THAT IT IS KNOWLEDGEABLE OF REAL ESTATE AND THAT IT IS RELYING SOLELY ON ITS OWN EXPERTISE AND THAT OF ITS CONSULTANTS, AND THAT IT WILL CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AND SHALL RELY UPON SAME, AND, UPON CLOSING, SHALL ASSUME THE RISK THAT ADVERSE MATTERS, INCLUDING, BUT NOT LIMITED TO, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, MAY NOT HAVE BEEN REVEALED BY SUCH PARTY'S INSPECTIONS AND INVESTIGATIONS. THE TERMS AND CONDITIONS OF THIS SECTION 4 SHALL EXPRESSLY SURVIVE THE CLOSING.

2.5 Statutory Notice. Notice required by O.C.G.A. §36-9-3(a)(3)(D) shall take place during the due diligence period. Notice of this contemplated exchange shall be published in the Marietta Daily Journal on the last four (4) Fridays of the due diligence period.

### **3.0 Title**

Each Party shall at Closing convey to the other Party good and marketable fee simple title to the Properties, insurable as such by a title insurance company licensed to do business in the State of Georgia, warranting title as to all matters subject only to the Permitted Title Exceptions (as set forth in Exhibit "C").

Within sixty (60) days from and after the Effective Date, each Party may obtain an owner's title insurance commitment for the other Party's property from a title insurance company of its choice (the "Title Company") and may notify such other Party in writing of any title or survey objections. The encumbrances disclosed by a Party's title examination and/or the survey and not objected to by that Party are also referred to as the "Permitted Exceptions." In addition, if a Party subsequently waives an objection in writing, that encumbrance will be included in the Permitted Exceptions. In the event a Party notifies the other

Party of any title or survey objections prior to the expiration of said sixty (60) day period, the other Party shall notify the objecting Party within five (5) business days of its receipt of a notice as to which objections that Party shall cure or decline to cure. If the other Party fails to give the objecting Party written notice as to which objections it shall cure or decline to cure, the other Party shall be deemed to have declined to cure such objections. The objecting Party shall have ten (10) business days from receipt of the objection notice (or ten (10) business days from the date other Party is deemed to have declined to cure) in which to elect to accept that Property subject to such uncured objections, or to decline to accept that Property, in which event this Agreement shall terminate, and the parties shall have no further obligations hereunder, except as to matters which expressly survive as set forth in this Agreement. If an objecting Party fails to give the other Party written notice of its election by the end of said ten (10) business day period, then the objecting Party shall be deemed to have elected to accept the Property subject to the uncured objections. If the other Party satisfies all such title defects and encumbrances prior to Closing, then the transaction contemplated hereby shall be closed in accordance with its terms. If the other Party does not satisfy all such title defects and encumbrances that it has agreed (or is obligated) to satisfy on or before the Closing, the other Party acknowledges that the objecting Party will have relied on the other Party's agreement to do so and the failure will be a default by such Party.

#### **4.0 Easement**

4.1 Access to Terrell Mill Road. Upon consummation of this transaction, the County will not have direct access to and from the public road through the currently existing curb cut on the County Property to the adjacent property owned by County, shown as Tract 2 on Exhibit "B" (the "Adjacent County Property"). The County reserves an ingress-egress easement, for vehicular and pedestrian traffic, for access to the Adjacent County Property from Terrell Mill Road after closing as shown on the Preliminary Site Plan (defined in Section 5.0 below).

4.2 As a condition precedent of closing this transaction the Parties shall, prior to the expiration of the Due Diligence Period, negotiate a perpetual, non-exclusive, pedestrian and vehicular ingress-egress agreement through the existing curb cut on and across the County Property to and from the Adjacent County Property and Terrell Mill Road ("Easement Agreement") incorporating the provisions of Section 4.1, Section 2.0 of the attached Exhibit "E", and this Section. Whether this easement shall terminate when the roads developed by Venture within the County Property are dedicated to the public shall also be determined. In the event the Easement Agreement is not fully negotiated and agreed upon by the Parties prior to the expiration of the Due Diligence Period, either County or Venture shall have the right to terminate this Agreement upon written notice to the other, whereupon the Parties shall have no further obligations, rights, or duties under this Agreement, except as expressly provided herein.

#### **5.0 Development of Cobb Property**

The Parties acknowledge and agree that the development of the Venture Property was subject to certain zoning stipulations and conditions set forth in Z-11 Zoning matter, filed by Venture and approved by the Cobb County Board of Commissioners on May 18, 2021 (the "Zoning Minutes"), as set forth in the Exhibit "D" attached hereto and by reference incorporated herein. However, the County Property is presently zoned RM-8 for use as condominiums, a use compatible with Venture's product and the Preliminary Site Plan. Venture agrees to develop the County Property after Closing of the transaction contemplated by this Agreement in accordance with the Preliminary Site Plan attached hereto, the current zoning and then current Cobb County building and development requirements. Each party agrees to comply with the matters shown on Exhibit "E".

As used herein, "condominium development", "condominium" and "condominium homes" (hereinafter, a "Unit" or sometimes a "Home") shall mean a structure built in accordance with Section 134-

1 of the Official Code of Cobb County, Georgia and not a development scheme described in O.C.G.A. §44-3-70, *et seq.*;

As used herein, "Preliminary Site Plan" shall mean that certain Preliminary Site Plan prepared by Watts and Browning Engineers, dated \_\_\_\_\_, last revised \_\_\_\_\_, a copy of which is attached as Exhibit "F".

The parties do hereby agree:

- a) Venture shall develop the Cobb Property for thirty-eight (38) Units in accordance with the Preliminary Site Plan;
- b) The County shall cause the Preliminary Site Plan to be approved by all necessary departments as soon as possible;
- c) The Style and Architecture of the condominiums shall be generally in compliance with the photographs shown on Exhibit "G" to this Agreement;
- d) The community to be built on the County Property shall have public streets, developed by Venture and dedicated to the public as part of the final plat. Adequate off-street parking shall be provided in accordance with Cobb County standards. All streets and off-street parking shall be constructed and maintained to Cobb County Department of Transportation ("Cobb DOT") standards, except as specifically provided herein;
- e) Venture shall, at or before recording of the final plat, subject the County Property to an appropriate set of Covenants, Conditions and Restrictions which establishes, among other things, the creation of a mandatory membership Homeowners Association which is financially responsible for the maintenance of the common areas; and
- f) The final plat shall contain a note as follows: "This townhouse development shall not be a condominium development as defined by state law but will be a condominium as defined by Cobb County, which allows for undivided joint ownership of the common property."

The terms and provisions of this Section 5.0 shall survive the Closing of the transaction contemplated by this Agreement and shall not merge with title upon the conveyance of the Properties.

## **6.0 CLOSING**

6.1. Closing. The closing of the transaction contemplated herein shall be held on a mutually agreed upon date on or before the date which is fifteen (15) days after expiration of the due Diligence Period (the "Closing Date" or the "Closing") and following the statutory notice period in accordance with O.C.G.A. §36-9-3. The Closing shall be held at the offices of McMichael & Gray, Atlanta, Georgia ("Closing Attorney"), or at such other location as may be acceptable to the Parties. The Parties agree to cooperate with one another to deliver documents in escrow to the Closing Attorney in order to eliminate the need for representatives of the Parties to attend the Closing.

6.2. Costs. Each Party shall pay its own costs related to the recording of the Warranty Deed to the other Party, the Georgia Transfer Tax, if any, each Party's own attorney's fees, the costs and premiums associated with its obtaining title insurance and surveys desired by that Party, and all other costs

actually incurred by such Party.

6.3 Possession. Possession of the respective Properties shall be delivered to the other Party on the Closing Date.

6.4 Taxes/Assessments/Utilities/Rents. All taxes and assessments, if any, and all water, sewer and other utility charges, if any, shall be prorated between the parties as of the Closing Date.

6.5 Closing Documents. Each Party shall deliver to the other party at Closing appropriate evidence to establish the authority of such Party to enter into and close the transactions contemplated by this Agreement, including (a) warranty deeds; (b) affidavits of title with respect to each Property sufficient to obtain desired title insurance; and (c) reasonable evidence that each Party is not a foreign person against whom withholding is required under the Internal Revenue Code; and (c) a closing statement. The parties shall also deliver at Closing any other documents as may be necessary or reasonably required by such parties' counsel and the Title Company to complete and evidence the transactions contemplated hereby.

## **7.0 Default and Remedies**

7.1 Remedies. County and Venture hereby acknowledge and agree that if, for any reason, County or Venture shall fail or refuse to convey their respective Property when obligated to do so under this Agreement at the time and in the manner required herein, the non-defaulting party may, upon written notice to the defaulting party, (i) terminate this Agreement, or (ii) seek specific performance of this Agreement, or (iii) seek any and all other rights and remedies available at law or in equity.

7.2 Survival. The provisions of this Section 7 shall survive Closing.

## **8.0 Representations and Warranties**

Each Party represents and warrants to the other Party that it has the lawful right, power and authority to enter into this Agreement and to perform its obligations in accordance with the terms and conditions of this Agreement; that the execution and delivery of this Agreement and the consummation of the transaction contemplated herein shall not and do not constitute a violation or breach by each Party of any provision of any agreement or other instrument to which such Party is a party or to which it may be subject although not a party, nor result in or constitute a violation or breach of any judgment, order, writ, injunction or decree issued against the other Party; that there are no actions, suits or proceedings of any kind or nature whatsoever, legal or equitable, affecting each Party's ability to fully perform under this Agreement in any court or before or by any Federal, state, county or municipal department, commission, board, bureau or agency or other governmental instrumentality; that each and every one of the foregoing representations and warranties is true and correct as of the date hereof; will remain true and correct throughout the term of this Agreement, and will be true and correct as of the date of Closing.

## **9.0 Publication**

In accordance with O.C.G.A. §36-9-3(a)(3)(D), within six (6) weeks prior to the Closing Date, County shall publish a notice of the exchange of Properties contemplated by this Agreement in the official organ of County, Georgia once a week for four (4) weeks. The Parties acknowledge that Closing cannot occur until completion of this statutory publication requirement.

## **10.0 Consent**

No consent, approval, order or authorization of any person or entity not a party to this Agreement is required in connection with the execution and delivery of this Agreement or the consummation of the Exchange contemplated.

### **11.0 Notices**

All notices, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served if in writing and delivered personally against receipt, or sent by registered, certified mail, receipted overnight service, postage prepaid or by telefax delivery to:

If to County: Cobb County Department of Transportation  
1890 County Services Parkway  
Marietta, Georgia 30008-4014  
Attn: Drew Raessler, Director  
Telephone: (770) 528-1607  
Telecopier: (770) 528-1620

If to Venture: Venture Communities, LLC  
Attn.: Bob White  
5500 Interstate N01th Parkway  
Suite 150  
Atlanta, GA. 30328  
(770) 955-8300

or to such other addresses as either party hereto may from time to time designate in writing and deliver to the other party in a like manner. Notices, consents, approvals and communications given by mail or delivery service shall be deemed delivered as of the date of postmark, or deposit with an overnight delivery service, provided, however, that time frames for responding to any such notice, if any, shall commence on the date of actual receipt of same.

### **12.0 General**

12.1 Time of the Essence. Time is of the essence in the performance of the obligations in this Agreement. If the last day of the time period for giving any notice or taking any action required under this Agreement falls on a day which is not a business day, the time period for giving such notice or taking such action shall be extended through the next business day following the original expiration date of such period.

12.2 Successors and Assigns. Except as otherwise provided herein, this Agreement and all of the terms and provisions hereof shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties hereto. This Agreement shall not be assigned by either party without the prior written consent of the other party, provided that either party may assign this Agreement to an affiliate without the approval of the other party. Any assignment of this Agreement must be in writing and shall include an assumption by such assignee of the assignor's obligations hereunder.

12.3 Entire Agreement. This Agreement, together with all exhibits attached hereto,

represents the entire Agreement between the parties covering everything agreed upon or understood in this transaction and supersedes all other agreements and understandings between the parties and their respective officers, directors, employees and/or representatives. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution hereof or in effect between the parties. No change or addition can be made to this Agreement except by a written agreement executed by the parties.

12.4 Jurisdiction. This Agreement is intended to be performed in the State of Georgia and shall be governed and construed in all respects in accordance with the laws of, applicable to, the State of Georgia. Any dispute arising out of or under this Agreement, including the Exhibits annexed hereto shall be litigated in the courts of Cobb County, Georgia, and the parties agree to submit to the exclusive jurisdiction thereof.

12.5 Scope of Agreement. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other arrangement between County and Venture.

12.6 Waiver. No failure of either party to exercise any power given hereunder to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any party's right to demand except compliance with the terms hereof; provided, however, that any party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such party without affecting any of the other provisions of this Agreement.

12.7 Headings. The descriptive headings of the Articles and Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

12.8 Construction. Each Party hereto acknowledges that all Parties hereto participated in the drafting of this agreement and consulted with its own legal counsel in connection therewith. Accordingly, this Agreement shall not be construed more strictly against any one Party.

12.9 Counterparts. This Agreement may be executed simultaneously in two or more identical counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.10 Number and Gender. As used in this Agreement, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

[Signatures on next page]



**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as a sealed instrument by their respective duly authorized officers or representative as of the day and year first written above.

Signed, Sealed and Delivered  
in the presence of:

COBB COUNTY, a Political  
Subdivision of the State of Georgia

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Lisa N. Cupid, Chairwoman  
Cobb County Board of Commissioners

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_

(Seal)

Attest: \_\_\_\_\_  
County Clerk

Signed, Scaled and Delivered  
in the presence of:

VENTURE COMMUNITIES, LLC

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Robert C. White, its Manager

\_\_\_\_\_  
Notary Public

Date: \_\_\_\_\_

(SEAL)

(SEAL)

**EXHIBIT "A"**  
**DESCRIPTION OF VENTURE PROPERTY**

**EXHIBIT "B"**  
**DESCRIPTION OF COUNTY PROPERTY**  
(Insert Recombination Plat)

**EXHIBIT "C"**  
**PERMITTED TITLE EXCEPTIONS**

1. Taxes and assessments not yet due and payable
2. Zoning ordinances affecting the Property
3. Utility, sewer and drainage easements of record
4. Right of ways of all public roads

**EXHIBIT "D"**  
**ZONING CONDITIONS AND STIPULATIONS**

**MINUTES OF ZONING HEARING  
COBB COUNTY BOARD OF COMMISSIONERS  
MAY 18, 2021  
PAGE 11**

**REGULAR AGENDA**

**Z-11 VENTURE COMMUNITIES, LLC (SHH Partners, L.P., owner) requesting rezoning from GC to RM-12 for condominiums in Parcel lot 854 of the 17<sup>th</sup> district. Property is located on the east side of I-75, at the terminus of Leland Drive (no address). *(Held by the Planning Commission (PC) from the March 2, 2021, PC hearing until the April 6, 2021, PC hearing; continued by the Board of Commissioners (BOC) from the April 20, 2021, BOC Zoning hearing until the May 18, 2021, BOC Zoning hearing).***

The public hearing was opened; Parks Huff, Mitchell Cooke, and Jay Thomas addressed the Board. Following the presentation and discussion, the following motion was made:

MOTION: Motion by Richardson, second by Sheffield, to **delete** Z-1 J to the RM-8 zoning district, subject to:

- 1. Letter of agreeable conditions from Parks Huff dated February 23, 2021 (attached and made a part of these minutes)**
- 2. Include the following aviation limitations', as suggested:**
  - A. Permissibility to make low and frequent flights over the area ,**
  - B. Regulate or prohibit the release into the air of any substance that would impair visibility or otherwise interfere with the operations of aircraft, that includes, but not limited to, dust, steam, or smoke**
  - C. Regulate or prohibit light emissions, either direct or indirect (reflective), that might interfere with pilot vision**
  - D. Prohibit electrical emissions that would interfere with aircraft and Air Force communication systems**
  - E. Regulate or prohibit land uses which would attract birds or waterfowl, including but not limited to, operation of sanitary landfills, maintenance of feeding stations, or the growing of certain vegetation**
  - F. Top and/or cut to ground level and remove trees, remove buildings or other structures and clear the area of obstructions (outside the Site Plan)**
  - G. Post signs on the land indicating the nature and extent of the Dobbins Air Force Base.**
- 3. Discuss a continuing contribution towards a "sidewalk" fund that would help facilitate the reduction of crime and improve the overall nature of that area "**
- 4. Staff comments and recommendations, *not otherwise in conflict with this motion***

VOTE: **ADOPTED** 3-2, Birrell and Gambrill opposed

*Clerk's Note: During the hearing the Applicant agreed to RM-8 zoning*



PLANNING DEPARTMENT  
Cobb County, Georgia  
Zoning Division - 8

GARVIS L. SAMS, JR.  
JOELL LARKIN  
PARKSF. HUFF

**SAMS, LARKIN & HUFF**  
A LIMITED LIABILITY PARTNERSHIP  
SUNBELT CO  
376 POWDER SPRINGS STREET  
MARIETTA, GEORGIA 30064-3448

770-422-7016  
TELEPHONE  
770-426-6583  
FACSIMILE

February 23, 2021

**VIA EMAIL & HAND-DELIVERY**

Ms. Jeannie Peyton, Senior Planner  
Cobb County Community Development Agency  
Zoning Division  
1150 Powder Springs Road  
Suite 400  
Marietta, GA 30064

RE: Application of Venture Communities, LLC for Rezoning from GC to RM-12 for a 4.04+/- acre tract of land located on the west side of Leland Drive in Land Lot 854 of the 17th District, Cobb County, Georgia (Z-11 of 2021 )

Dear Jeanie:

Venture Communities, LLC, the Applicant (hereinafter "Applicant") in the Application for Rezoning with regard to approximately 4.04 acres, more or less, located on the west side of Leland Drive (as proposed to be extended north of existing pavement and right-of-way); Land Lot 854, 17th District, Cobb County, Georgia (hereinafter the "Property" or the "Subject Property") is pleased to present the following information for your consideration. After the Planning Commission hearing on October 6, 2020, meeting with Cobb County Representatives, reviewing the preliminary Staff Comments and Recommendations, and reviewing the uses of surrounding properties, we are submitting this revised letter of agreeable stipulations and conditions which, if the Application for Rezoning is approved, as submitted, shall become a part of the grant of the requested zoning and shall be binding upon the Subject Property.

The proposed stipulations are as follows:

1. Applicant seeks rezoning of the Subject Property from the existing zoning category of GC, General Commercial to the proposed zoning category of RM-12, for the construction of fee simple condominiums, specific to the revised site plan prepared by Daryl Cook of Watts and Browning Engineering, dated November 13, 2020. A reduced copy of the site plan is attached hereto as Exhibit "A" and incorporated herein by reference.



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(7)

**VIA EMAIL & HAND-DELIVERY**

February 23, 2021  
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2. The Subject Property shall be developed for a residential community consisting of a maximum of thirty-eight (38) condominiums\
3. Applicant agrees that the minimum house size for the homes in the proposed development shall be 1,250 square feet of heated and cooled living space. It is anticipated that the typical product constructed will range from 1,300 to 2,100+ square feet of heated and cooled living space.
4. Homes wiihin the proposed community shall be substantially similar in style and architecture to the color renderings, both front and rear elevations, attached hereto as Exhibit "B". The actual photos of similar units constructed here in the Atlanta market are merely shown as a reference. All homes will have similar front and rear elevations as the color renderings and shall, as a general rule, use a combination of masonry (i.e. brick, stone or stacked stone or any combination thereof) and stucco, cement fiber board & batten, cement lap siding, cement shake or cedar shake shingles or combination thereof. Side and rear elevations may also utilize masonry (i.e. brick, stone, stacked stone or any combination thereof) as well as stucco, cement fiber board & batten, cement lap siding, cement shake or cedar shake shingles or combination thereof.
5. The proposed community shall have private streets to be maintained by the homeowners' association ("HOA") and the Applicant shall have the option, but not the obligation, of installing vehicular gates at the entrance if so desired by Applicant in accordance with all County ordinances and regulations. All driveways shall be constructed in such a manner as to minimize parking in rear of homes and homeowners will be instructed to use designated off-street parking when driveways are foll of vehicles. Adequate off-street parking shall be provided in accordance with Cobb County standards. All streets and off-street parking shall be constructed and maintained to Cobb County Department of Transportation ("Cobb DOT") standards.
6. Applicant agrees to the creation of a mandatory HOA. The HOA shall be solely responsible for the upkeep and maintenance of all front, rear and side yards of all homes, common areas, amenities, and amenity areas; including the entrance areas, open space, mail kiosk, boundary bu fers, fencing, the private streets, if any, off-street parking and other items so constructed by the Applicant.



VIA EMAIL & HAND-DELIVERY

February 23, 2021

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7. Additionally, and in conjunction with the creation of the mandatory HOA, the Applicant agrees to the recording and enforcement of protective covenants which will contain covenants, rules, and regulations applicable to the proposed community.
8. All homes shall have a minimum of a one car garage with a one car driveway apron. Garages shall be primarily used for the parking of vehicles and shall not be converted to other uses. The Applicant shall include this restriction in the covenants to be enforced by the HOA. In addition, the HOA shall be empowered by the covenants to discourage any parking in front of homes (except in designated off-street parking areas) and to encourage, whenever possible, that homeowners park cars in the garage and the one car driveway apron. The HOA shall have authority to issue monetary fines to homeowners for violations of these covenants. It is further understood; the Applicant shall be permitted to utilize the garage of the model home as the sales office for the community. Prior to the issuance of a permanent Certificate of Occupancy for the model home, the sales office will be converted to garage space.
9. The entrance signage for the proposed community shall be ground-based, monument-style signage and shall consist of brick, stone, stacked stone, or a combination thereof, with accents architecturally consistent with the proposed homes.
10. Landscaping of the entrance areas as well as the frontage of the proposed community along all public streets, shall be professionally designed and implemented, which shall include the installation of an irrigation system, where appropriate. Maintenance of the entrance area and public street frontage at the entrance shall be by the mandatory HOA as set forth in the declaration of covenants, easements, and restrictions. All detention ponds shall be professionally landscaped in accordance with any applicable Cobb County standards.
11. Any streetlights installed within the proposed community shall have down lighting and shall be environmentally sensitive.
12. All utilities' servicing the residences within the proposed community shall be underground.



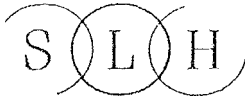
VIA EMAIL & BAND-DELIVERY

February 23, 2021

Page 4

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13. Applicant agrees that the stormwater management facilities and system shall be constructed and installed consistent with all requirements of Cobb County Stormwater Division ("Stormwater"). Current discussions with Stormwater involve eliminating the traditional detention pond in favor of water quality device(s) and channel protection for Rottenwood Creek.
14. The District Commissioner shall have the authority to approve minor modifications to these stipulations and conditions and the zoning plan as the development proposal proceeds through the Plan Review process and thereafter. For purposes of this paragraph, any modifications that increase density or reduce the size or composition of an approved buffer area or landscape strip to adjacent property will come back through the public hearing process as an "Other Business" Application agenda.
15. All landscaping referenced herein to be installed by the Applicant shall be approved by the Cobb County Arborist as part of the Plan Review process and incorporated into the overall landscape plan for the proposed community; and shall be irrigated, as necessary.
16. Applicant agrees to the protection of all required stream buffers affecting the Subject Property and shall utilize such areas as a passive amenity for the proposed community; including, but not limited to, such amenities as may be deemed appropriate by the Applicant.
17. Applicant agrees to comply with all Cobb County development standards and ordinances relating to project improvements, except as approved by the Board of Commissioners or by the Department of Transportation or Community Development Agency, as their authority may allow.
18. All setbacks shall be as shown on the referenced Site Plan.
19. Applicant agrees to the installation of interior sidewalks along all interior streets and the fronts of buildings as per the attached Site Plan.
20. All construction vehicles will be parked on-site on the property at all times. No construction vehicles shall be parked on Leland Drive or other surrounding streets to the proposed development.



VIA EMAIL & HAND-DELIVERY

February 23, 2021

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planning commission  
cobb county, georgia  
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21. Applicant will address the following items raised previously by the Planning Commission as follows:
  - a. Applicant will install a minimum ten (10) foot landscape buffer along the entire south property line to screen the commercial neighbor to the south. This landscape buffer shall comply with all the landscaping guidelines as specified in Item No. 15 above.
  - b. The future Leland Drive 50' right-of-way (approximately .66 +/- acres), as previously conveyed to Cobb County by the property owner will be reacquired by the Applicant to be used in the proposed development. Based on Applicant's conversation with Cobb DOT, the Applicant and Cobb County concur that given the severe grade, topography and expense of a bridge, it is doubtful Leland Drive will ever be extended to or cross Rottenwood Creek. If Applicant is unable to reacquire the future Leland Drive right-of-way from Cobb County DOT, the site plan shall be redrawn in such a manner as to provide at least two (2) off-street, parking spaces for each unit, even if this results in a decrease in the total number of units:-
  - c. Garbage cans and recycling cans located between the driveway aprons on the back side of the buildings shall have attractive screening utilizing the same exterior materials and designs as the buildings themselves. See new color renderings for screening concepts between the driveway aprons.
  - d. There was a concern expressed that the Detention Pond may be in the "wrong location". Please see revised comments in Item No. 13 above to address the Detention Pond issue.
  - e. Driveway aprons as measured from the garage doors to either the back sidewalk or the back of curb (if there is no sidewalk in that area) shall be no less than twenty-two (22') feet. Thus, each unit shall have at least two (2) dedicated and usable parking spaces off-street at any time, i.e. one space in the garage and one space in the garage apron for a total of seventy-six (76) spaces.



**VIA EMAIL & HAND-DELIVERY**

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Page 6

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- f. Our understanding is that the current Cobb County guidelines from the Fire Marshall for off-street parking is two (2) parking spaces for each unit. The Site Plan has 76 off-street parking spaces in addition to the 76 spaces dedicated to the owners themselves for a total of total of 152 parking spaces. Specifically, our community has the following features:
  - i. Every unit will be sprinklered. A central sprinkler control room will be on one side of each building in the storage closet under the stairs and landing for the corner units.
  - ii. We will paint the curb in front of each building as designated "No Parking" zones. In conversations with the Fire Department, the off-street parking requirements are the result of desiring easy and unencumbered access to a building for fire and emergency access. The first responders do not want to have to "weave around" parked cars on the street in front of buildings.
  - iii. Each building will have a bicycle parking and repair area in the storage closet on the opposite side of the sprinkler control room. This community will emphasize alternative transportation modes, other than automobiles - very pedestrian and bicycle friendly.
  - iv. In addition to a sprinkler system, each home will feature one-hour fire rated drywall separating each unit from its neighbor.
  - v. Special alarm systems in each unit will alert homeowners in case of fire anywhere in the entire building so that families will get ample time to respond in an emergency.
  
- g. Our engineer, Daryl Cook is working with Dave Breaden, Stormwater Management and Frank Gipson, Erosion & Sediment Control Division on modifying the current 100' stream buffer requirement along Roltenwood Creek. We believe a "buffer averaging" approach as approved by the County will work for this site. Again, Applicant will comply with all Cobb County requirements. Please see revised Site Plan drawing.



VIA EIVIAL & HAND-DE:LIVERY

February 23, 2021

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Petition No. 7-11  
Meeting Date 5-18-21  
Continued

- h. New architectural features have been added to the elevations as depicted in the color renderings attached such as:
  - i. Additional stone and/or brick added to the front and rear elevations.
  - ii. Additional "banding" between the floors on the front, sides and rear elevations.
  - iii. New color and exterior materials schemes for a more "upscale" look.
  - iv. Decorative corbels in the gables on the front and rear elevations.
  - v. Screening for trash and recycling receptacles between the driveway aprons.
- i. The revised site plan features a 14' wide x 16' deep pavilion with an adjacent fire pit near the mail kiosk. See attached photos for pavilions as constructed by the Applicant at other Cobb County developments. Per the revised site plan, there is also a flat "lawn area" with greenspace near the pavilion. In addition, we have planned a pervious walking trail looping around the northern property adjacent to Rottenwood Creek.
- j. Per the current building design, approximately 50% of the unites will be 2-bedroom & 2.5 bath homes with the other 50% being 3-bedroom & 3.5 bath homes. We do believe the demographics of this potential buyer will be skewed much younger than average and many homeowners may convert bedroom #3 to a home office in response to the Coronavirus Pandemic.
- k. Applicant will include in the HOA covenants a restriction to limit the number of units which can be leased at any one time to be no more than ten (10%) percent of the total approved units in the proposed development.



VIA EVIAJL & HAND-DELIVERY

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We believe the requested zoning, together with the site plan and the stipulations set forth herein, is an appropriate use of the Subject Property while taking into consideration the area and existing neighborhoods and residents surrounding the proposed development. The proposed residential community shall be a quality development, shall be compatible with surrounding neighborhoods, and shall be an enhancement to the Subject Property and the community as a whole. The staff report concurs with their recommendation for approval. Thank you in advance for your consideration of this project.

Sincerely,

SAMS, LARKIN & HUFF, LLP

A handwritten signature in black ink, appearing to read "Parks F. Huff".

Parks F. Huff  
[phuff@samslarkinhuff.com](mailto:phuff@samslarkinhuff.com)

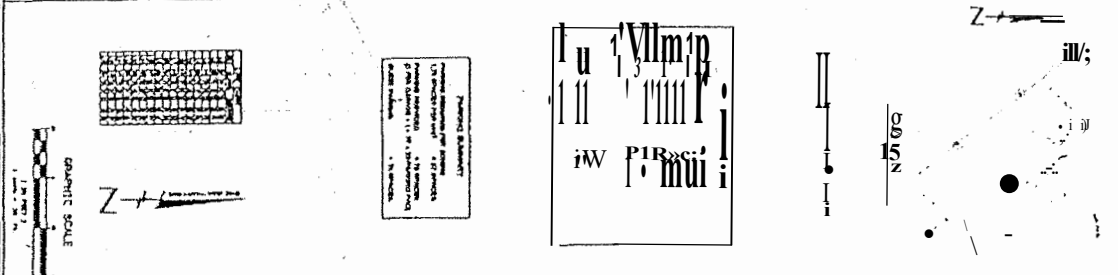
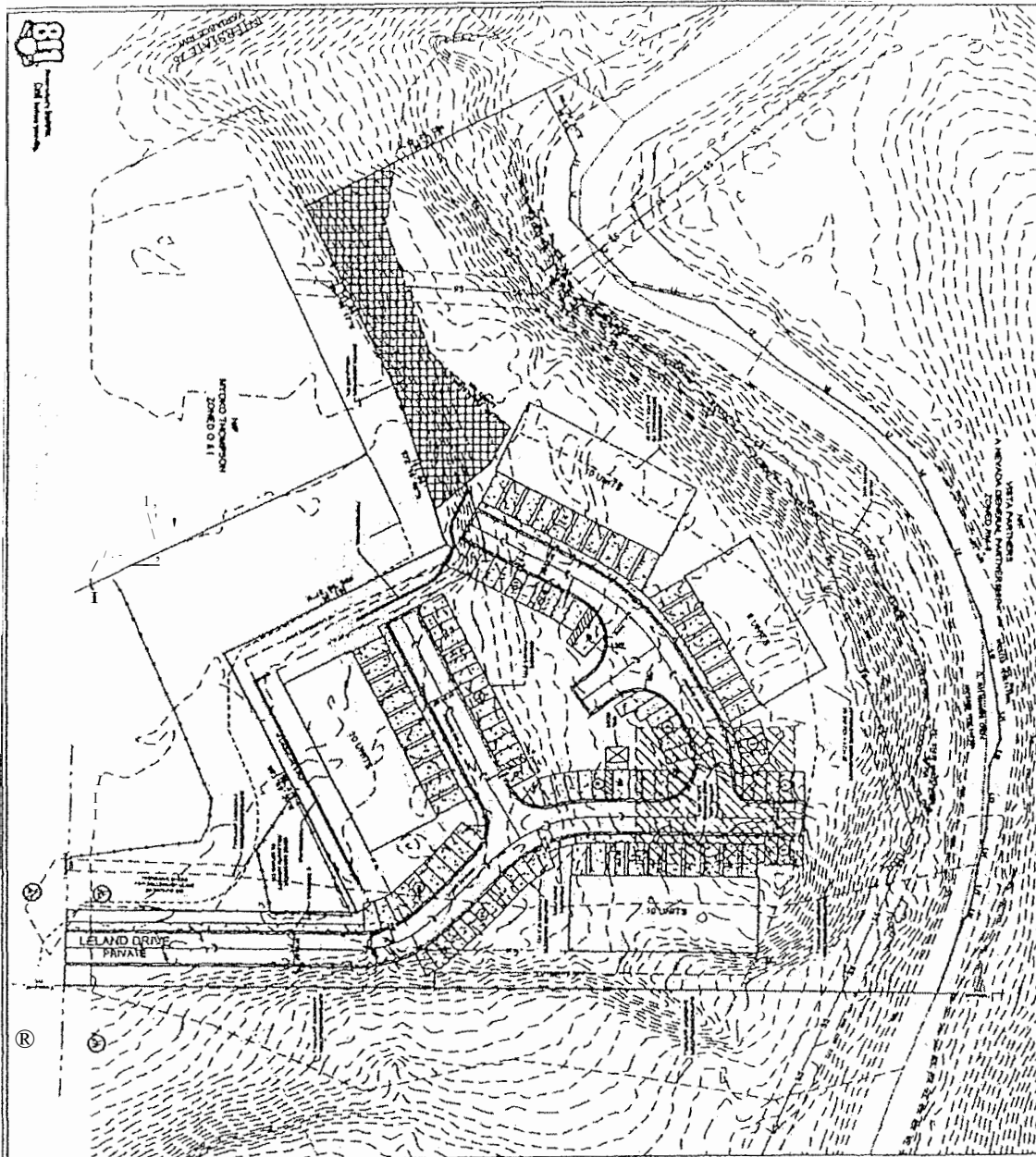
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Enclosures

- cc: Members, Cobb County Board of Commissioners (via email w/attachments)  
Members, Cobb County Planning Commission (via email w/attachments)  
Mr. John Pederson, Zoning Division Manager (via email w/ attachments)  
Mr. Terry Martin, Planner III (via email w/attachments)  
Mr. Donald Wells, Planner I (via email w/attachments)  
Ms. Tannesha Bates, Planner I (via email w/attachments)  
Ms. Margie Vazques, Planner (via email w/ attachments)  
Ms. Pamela Mabry, County Clerk (via email w/attachments)  
Ms. Robin Stone, Deputy County Clerk (via email w/attachments)  
Mls Leila Washington, Deputy County Clerk (via email w/attachments)

Exhibit "A"

Public Use "b-1  
 Missing Data S-IB-ii  
 Continued



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| <p>1-2</p> |  |  |
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ZONING EXHIBIT  
 FOR  
 LELAND DRIVE TRACT  
 LAND LOT 654 - DISTRICT 17 n-j - m o SECTION  
 G03B COUNTY, GEORGIA





**EXHIBIT "E"**  
**RIDER & SPECIAL STIPULATIONS**

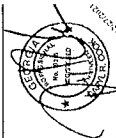
1. The County recognizes that Venture has the Leland Drive property under contract but has not yet closed on the acquisition of the Leland Drive property. Accordingly:
  - a. In the event that Venture is unable, after using its best commercially reasonable efforts, to obtain title as required by this Agreement, then Venture shall have the right to terminate this Agreement upon written Notice to the County.
  - b. To the maximum extent possible, the parties agree to use their best efforts to close the Exchange contemplated herein simultaneously with Venture's acquisition closing of the Leland Drive property.
  
2. During the site plan review process, County agrees to negotiate for the following easements to facilitate Venture's development of the County Property:
  - a. A water and sewer easement across property owned by Cobb County adjacent to the Exchange Property (the "Cobb Retained Property");
  - b. Grading and slope easements across the Cobb Retained Property;
  - c. A temporary construction easement along the perimeter of the County parcel to facilitate development of the County Property by Venture;
  - d. The existing slope easement along Terrill Mill Road onto the County property shall be abandoned or partially abandoned upon at the request of Venture;
  - e. The easement in favor of the County shall include a requirement that the County provide (i) a locked gate onto its property; (ii) appropriate parking on its property; and (iii) landscaping in front of the fence, in any.
  
3. County agrees to facilitate Venture's development of the County Property by:
  - a. Allowing Venture to disturb the buffers located on the East side of the Property, if any, and upon the completion of development, to replace the existing buffer with trees planted in that area;
  - b. Causing CDOT to grant Venture's request for a curb cut onto Terrill Mill Road as shown on Venture's Preliminary Site Plan.
  - c. County recognizes that an important part of the valuation of the Leland Drive property for Venture is the favorable topography, which allows for the development of 38 homes, and County agrees that 38 homes can be built by Venture on the County Property as shown on the Preliminary Site Plan.
  - d. Each party shall provide the other with an ALTA survey of the Property during the due diligence period. The cost of the survey of the Terrill Mill property, previously undertaken by the County and prepared by Watts and Browning, shall be paid for by the County. The cost of the Leland Drive survey shall be paid for by Venture. As used in this

subsection, "survey" includes ancillary services provided by the surveyor in connection with its work.

**EXHIBIT "F"**  
**PRELIMINARY SITE PLAN**

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 e001

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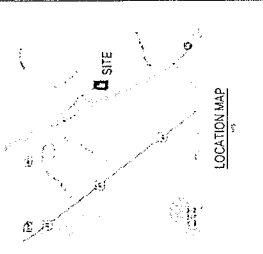


STATE OF VIRGINIA  
 PROFESSIONAL ENGINEER  
 JAMES H. SMITH  
 LICENSE NO. 10000  
 EXPIRES 12/31/2022



WATTS & ASSOCIATES ENGINEERS, INC.  
 1300 SOUTH MAIN STREET, SUITE 200  
 FARMINGTON, ARIZONA 85201  
 PHONE: (480) 841-1111  
 FAX: (480) 841-1112  
 WWW.WATTS-INC.COM

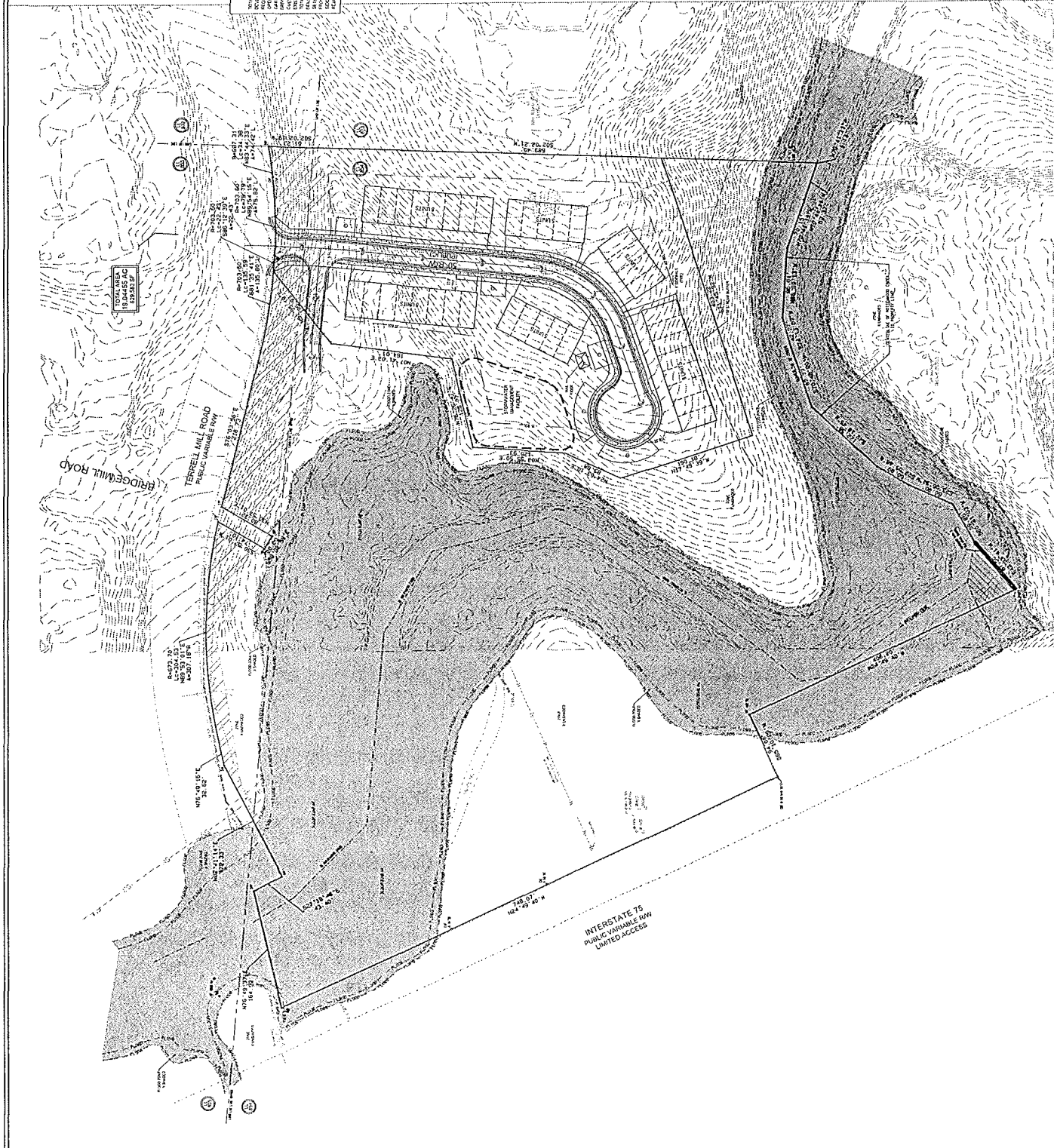
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| CHECKED BY   | JHS                                    |
| PROJECT NO.  | 181H3                                  |
| PROJECT NAME | BRIDGEMILL ROAD                        |
| CLIENT       | TERRELL HILL                           |
| LOCATION     | BRIDGEMILL ROAD, TERRELL HILL, ARIZONA |



| DEVELOPMENT DATA        |       |
|-------------------------|-------|
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| TOTAL DEVELOPABLE ACRES | 10.00 |
| TOTAL IMPROVEMENTS      | 10.00 |
| TOTAL PAVED             | 10.00 |
| TOTAL UNPAVED           | 0.00  |
| TOTAL IMPROVEMENTS      | 10.00 |
| TOTAL PAVED             | 10.00 |
| TOTAL UNPAVED           | 0.00  |

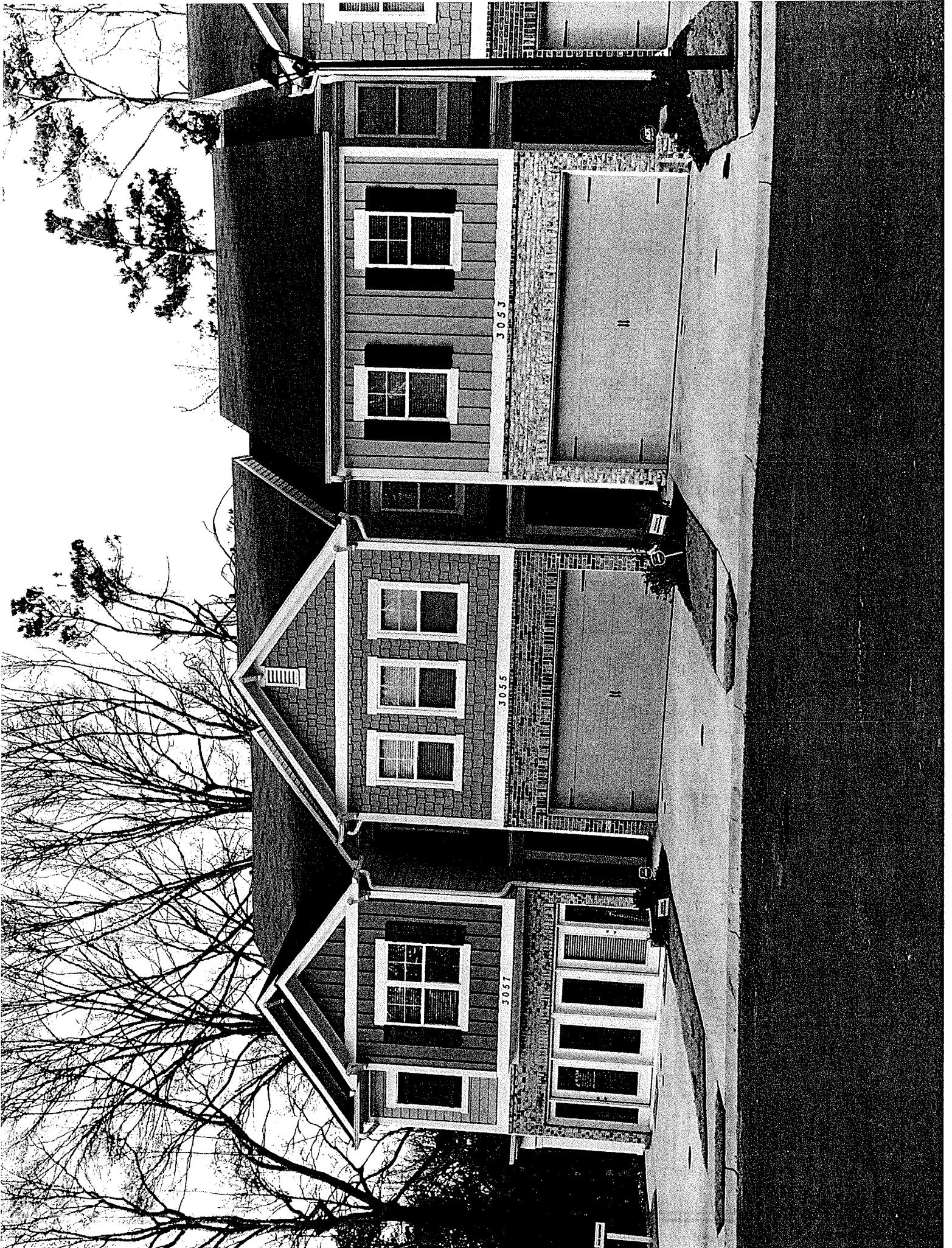
GRAPHIC SCALE  
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 1" = 100'  
 1" = 200'

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 LIMITED ACCESS

**EXHIBIT "G"**  
**PHOTOGRAPHS**



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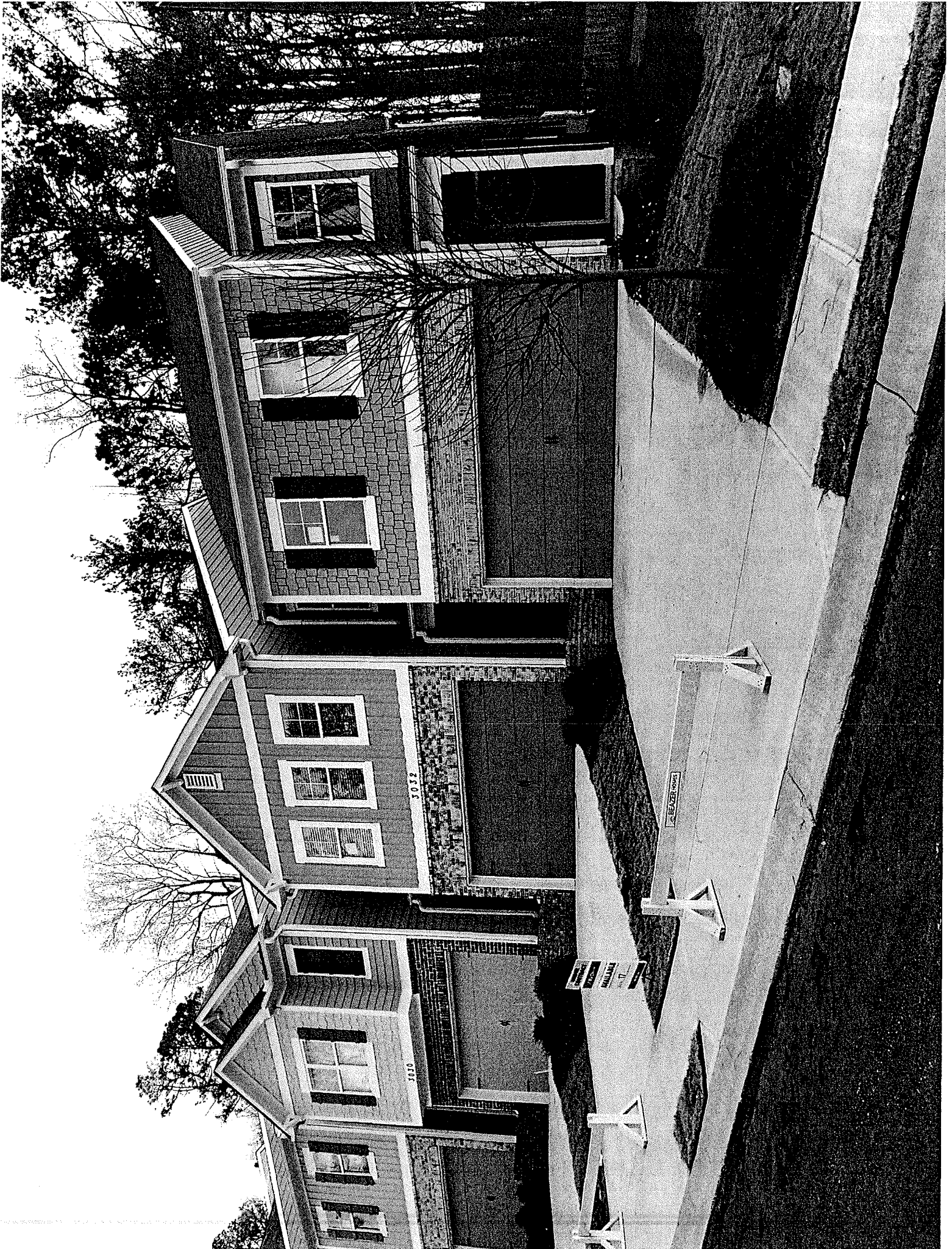
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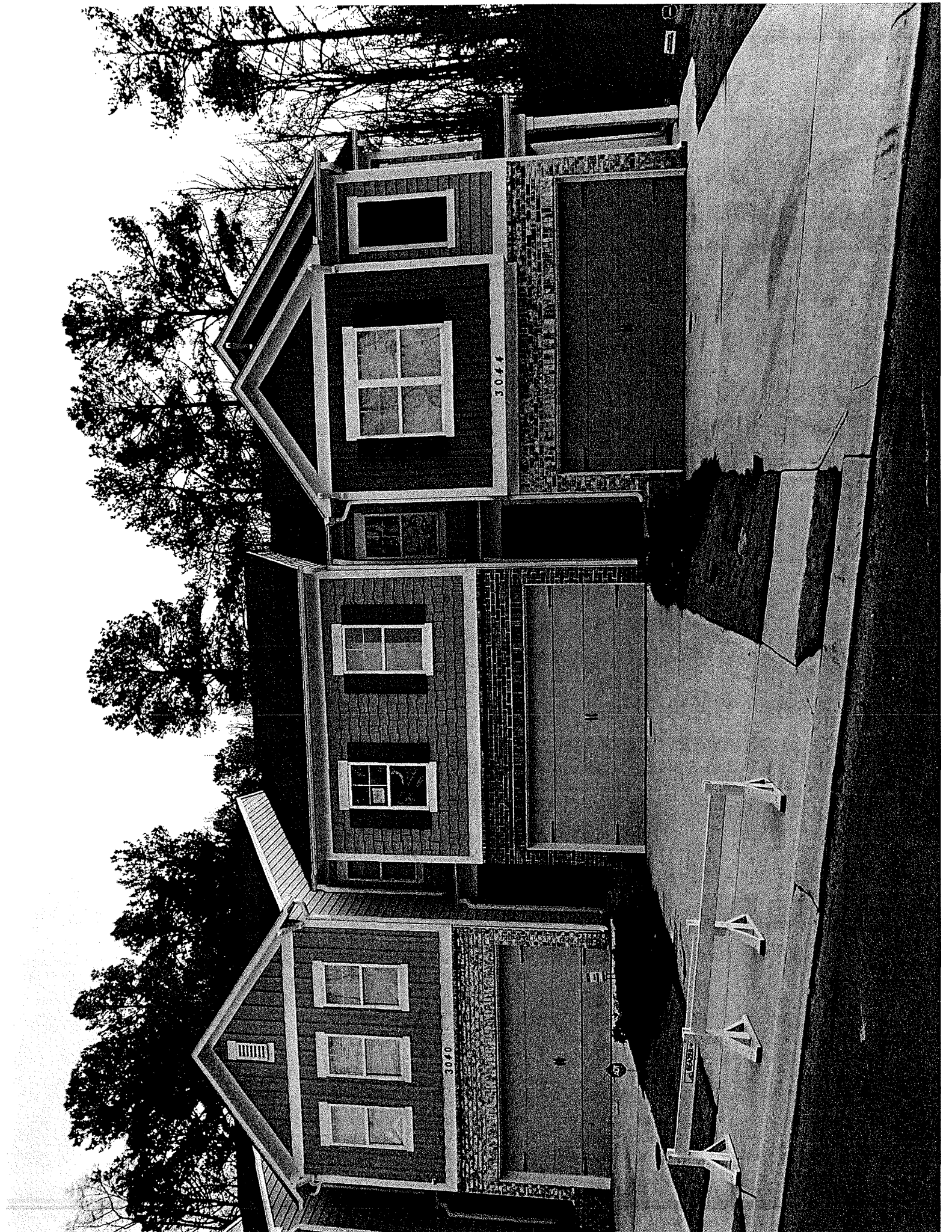
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LAUREN