



**Village of Menomonee Falls**  
W156 N8480 Pilgrim Road  
Menomonee Falls, WI 53051-3140  
Telephone: (262) 532-4200 Fax: (262) 532-4219

July 12, 2004

Radiant Electric Heat  
C/o Bruce 5329 Investment, LLC  
W136 N5239 Campbell Ct.  
Menomonee Falls, WI 53051

Attn: Frank Bruce

**Re: Stormwater Facilities Operation, Inspection & Maintenance Agreement  
Easement Agreement  
Radiant Electric Heat  
Tax Key No. 142.999.011**

Dear Mr. Bruce,

Please find enclosed signed copies and the recorded copies of the Stormwater Facilities Operation, Inspection & Maintenance Agreement and an Easement Agreement for Radiant Electric Heat for your records. They contain recording information showing proof of recording by the Waukesha County Register of Deeds.

Also, please find enclosed Invoice #ES-020 for the recording fees. Please make your check payable to the **Village of Menomonee Falls**.

Should you have any questions or require additional information, please do not hesitate to contact either Jon Bretl at (262) 532-4414 or myself at (262) 532-4418.

Sincerely,  
*VILLAGE OF MENOMONEE FALLS*

*Linda I. Losiniecki*

Linda I. Losiniecki  
Administrative Assistant

**kwiktag®** 012 773 920

Enclosures

Cc: Arlyn R. Johnson, Director of Engineering Services  
Jonathan M. Bretl, Civil Engineer I  
Frank J. Gebauer, Civil Engineer I  
Dave Bate, Financial Services  
Vault

000469 JUN 17 2004

3175776



WC3175776-005

STORMWATER FACILITIES  
OPERATION, INSPECTION &  
MAINTENANCE AGREEMENT

DOCUMENT TITLE

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

06-17-2004 11:21 AM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

REC. FEE: 12.00  
REC. FEE-CO: 5.00  
REC. FEE-ST: 2.00  
TRAN. FEE:  
TRAN. FEE-STATE:  
PAGES: 5

Recording Data

Return to:

Village of Menomonee Falls  
Engineering Services  
W156 N8480 Pilgrim Road  
Menomonee Falls, WI 53051

*Due  
19/5  
MNFV*

Radiant Electric Heat  
C/o Bruce 5329 Investment, LLC

Tax Key No. MNFV 142.999.011

# STORMWATER FACILITIES OPERATION, INSPECTION, & MAINTENANCE AGREEMENT

Village of Menomonee Falls

THIS AGREEMENT is between Bruce 5329 Investments LLC (the "Property Owner"), and the Village of Menomonee Falls, (the "Village"). It is based upon the following:

- A. The PROPERTY OWNER is the owner of certain real property (the "Property") located in the Village of Menomonee Falls, which is further described as: Lot 5 of CSM 6252 as recorded by deed in the land records of Waukesha Document Number 1608846, Vol. 51, Pages 227 to 280.
- B. The Property Owner intends to develop the Property pursuant to a Site Plan approved by the Village and known as Radiant Electric Heat, (the "Plan").
- C. The health, safety, and welfare of the residents of Menomonee Falls, Wisconsin, require that on-site Stormwater Management Facilities be provided on the Property.
- D. The Plan provides for the construction of any detention basin, retention basin, outlet structures, inlet structures, storm sewer, underground storage facility, swales, berms or any structure and grading associated with stormwater management (the "Stormwater Management Facilities") within the confines of the Property.
- E. The Village requires that on-site Stormwater Management Facilities as shown on the Plan be constructed, operated and adequately maintained by the Property Owner.

NOW, THEREFORE, based on the above, the parties agree as follows:

1. The on-site Stormwater Management Facilities shall comply with the policy outlined in the Village "Stormwater Management Guidelines," and with the Milwaukee Metropolitan Sewage District "Stormwater Rules, Chapter 13 of the MMSD Rules and Regulations;" and shall be constructed by the Property Owner in compliance with Village approved plans and specifications identified in the Plan.
2. Upon completion of the project, The Property Owner shall supply the Village with an as-built plan of the Stormwater Management Facilities within thirty (30) days of completion of the project. The as-built plan will be used by the Village to determine if the Stormwater Management Facilities are constructed according to the Village approved plans. The Stormwater Management Facilities will be accepted only after the Village approves the as-built plans.
3. The Property owner shall not construct, place or allow or suffer the construction or placement of structures within the Stormwater Management Facilities that affect the operation of the facilities; or that alter the elevations and slopes from those designed, established and constructed; without the specific written approval of the Village.
4. The Property Owner shall submit a landscape proposal and diagram with vegetation types to the Village prior to planting trees or shrubs in the Stormwater Management Facilities. The Village shall have the right to determine which species of trees and shrubs are appropriate for planting within the Stormwater Management Facilities. The Property Owner shall not plant shrubs or trees in the Stormwater Management Facilities unless approved by the Village.
5. The Property Owner shall adequately maintain the Stormwater Management Facilities. Adequate maintenance is defined as good working condition so that these facilities are performing their design functions. The Property Owner must inspect the Stormwater Management Facilities within 24 hours of any major rain event.

6. The Property Owner shall hire a licensed professional engineer to inspect the Stormwater Management Facilities and submit an inspection report biannually to the Village as proof of compliance. The Village approved Biannual Inspection Report form shall be used to determine the condition of the facilities. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facility such as berms, outlet structure, pond areas, access roads, etc. The conditions shall be noted in the inspection report.
7. The Property Owner will perform or otherwise be responsible for any work necessary to keep the Stormwater Management Facilities in good working order. This obligation includes making all the necessary repairs and/or improvements to correct damages, both natural and man made; and to resolve any citizen complaints. If deficiencies or damages are noted in the inspection report provided to the Village under ¶6 or if complaints are reported to the Village, the Property Owner has thirty (30) days from the date of the report or complaint to take appropriate measures to correct any deficiencies or damages and respond to citizen complaints.
8. The Property Owner hereby grants permission to the Village, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Management Facilities whenever the Village deems necessary.
9. If the Property Owner fails to inspect the Stormwater Management Facilities as required, or maintain the Stormwater Management Facilities in good working condition acceptable to the Village and make all the necessary repairs and/or improvements to correct damages, both natural and man made, and to resolve any complaints, the Village, upon thirty (30) days written notice to the Property Owner, may enter upon the Property and take whatever steps necessary to correct deficiencies. In addition, if the Village performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Village shall be empowered without notice of public hearing, to impose a special charge for the cost of said work upon the Property Owner payable at the next succeeding tax bill.
10. This Agreement imposes no liability of any kind whatsoever on the Village. The Property Owner agrees to hold harmless the Village, its board members, employees, agents, and officers from any costs, damages, loss, claim, suit, liability or award which may arise, come, be brought or incurred or assessed because of the existence of, any action or failure to act with respect to the storm water facilities on the Property or because of any adverse effect upon any person or property related or alleged to be related to the storm water detention basins from any liability if the Stormwater Management Facilities fail to operate properly. The Village shall have the right to defend any such claim and the Property Owner shall reimburse the Village for any and all cost and/or expenses, including but not limited to attorney's fees, which the Village may incur as a result of such claims.
11. This Agreement shall become effective as of the date it is approved by the Village or executed by the Property Owner, whichever is later.
12. By signing below, the person signing on behalf of the Property Owner represents that he has authority to act on behalf of the Property Owner, and has authority to sign this Agreement on the Property Owner's behalf.
13. This Agreement shall be recorded With the Register of Deeds Waukesha County, Wisconsin, and shall constitute a covenant running with the land, and shall be binding on both parties, their successors or assigns.

000472 JUN 17 8

IN WITNESS WHERE OF, BRUCE 5329 INVETSMENT LLC has caused this Agreement to be signed this 1 day of June, 2004.

By: 

Frank Bruce (Managing Member , Bruce 5329 Investment LLC )

State of Wisconsin )  
                         ) Ss.

County of Waukesha)

Personally came before me this 1st day of June, 2004, the above named Frank Bruce to me known to be the person who executed the foregoing instrument in his respective official capacity as Managing Member of said corporation, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said Corporation by its authority.

Linda J. Losiniecki

Notary Public

Waukesha County, Wisconsin

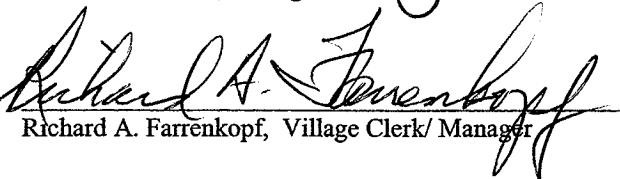
My Commission Expires on 12/24/06

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IN WITNESS WHEREOF, the said **Village of Menomonee Falls**, a Wisconsin Municipal Corporation, has caused these presents to be signed by Jefferson E. Davis, its Village President, and Countersigned by Richard A. Farrenkopf, its Village Clerk at Menomonee Falls, Wisconsin, this 7<sup>th</sup> day of June, 2004.

**VILLAGE OF MENOMONEE FALLS**

  
Jefferson E. Davis, Village President

  
Richard A. Farrenkopf, Village Clerk/ Manager



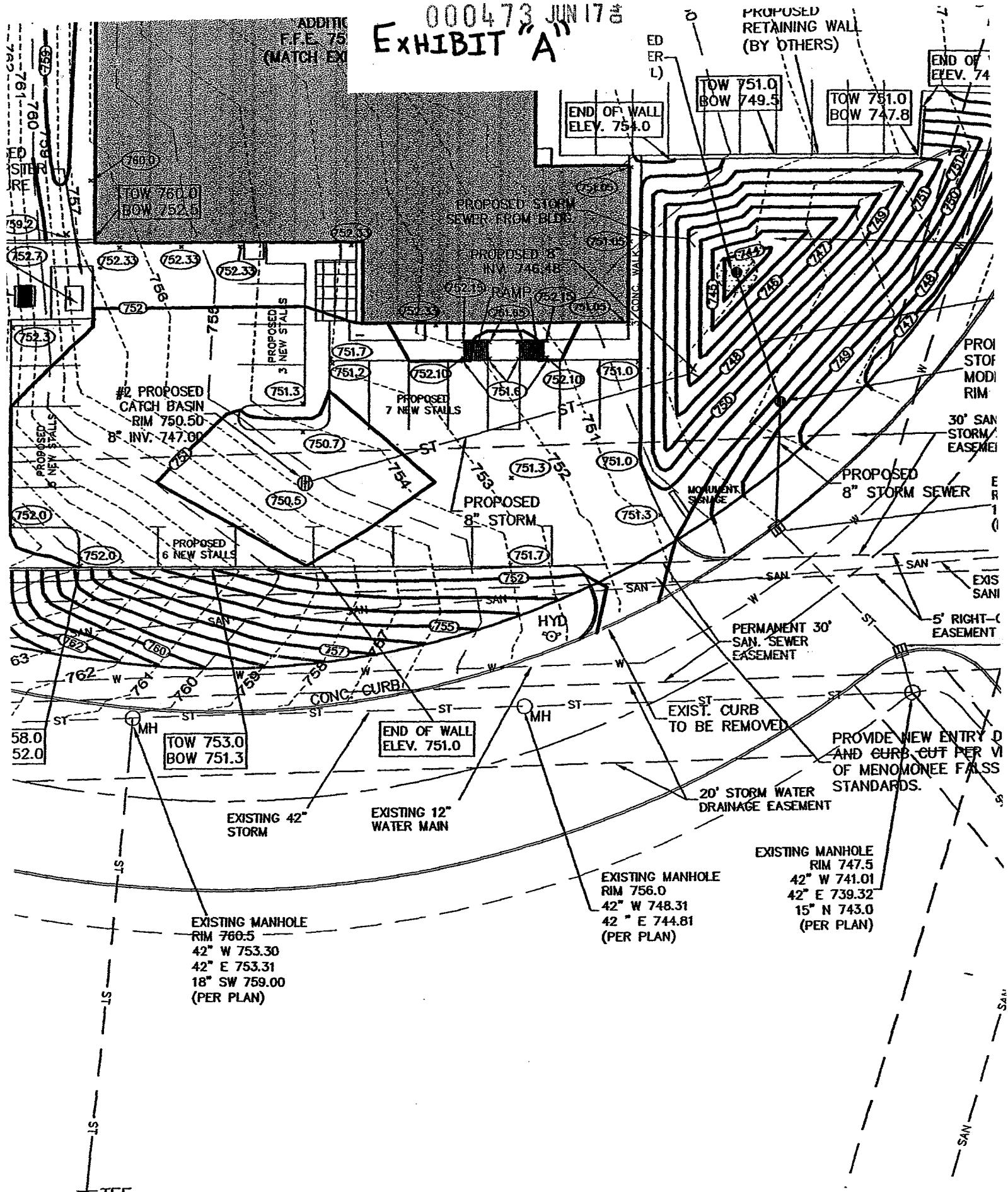
This instrument was drafted by  
The Village of Menomonee Falls  
Jonathan M. Bretl

ADDITION  
FILE 75  
(MATCH E)

000473 JUN 17 1968  
EXHIBIT "A"

**PROPOSED  
RETAINING WALL  
(BY OTHERS)**

END OF  
REV. 74



ECT PROPERTY ADDRESS: W136 N5239 CAMPBELL DRIVE,  
REE FALLS, WISCONSIN.

VG: I-1 - LIGHT INDUSTRIAL

000474 JUN 17 2004



WC3175777-006

EASEMENT AGREEMENT

DOCUMENT TITLE

3175777

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

06-17-2004 11:21 AM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

REC. FEE: 14.00  
REC. FEE-CO: 5.00  
REC. FEE-ST: 2.00  
TRAN. FEE:  
TRAN. FEE-STATE:  
PAGES: 6

Recording Data

Return to:

Village of Menomonee Falls  
Engineering Services  
W156 N8480 Pilgrim Road  
Menomonee Falls, WI 53051

*Doc  
21/6  
MNFV*

Radiant Electric Heat  
C/o Bruce 5329 Investment, LLC

Tax Key No. MNFV 142.999.011

## EASEMENT AGREEMENT

THIS AGREEMENT is between Bruce 5329 Investment LLC (the "PROPERTY OWNER"), and the Village of Menomonee Falls, (the "VILLAGE"). It is based upon the following:

- A. The PROPERTY OWNER is the owner of certain real property (the "Property") located in the Village of Menomonee Falls, which is further described as: Lot 5 of CSM 6252 as recorded by deed in the land records of Waukesha Document Number 1608846, Vol. 51, Pages 227 to 280.
- B. The PROPERTY is subject to existing VILLAGE Water and Sanitary Easements recorded in the Register of Deeds office for Waukesha County as Documents No. 12886083, No. 1206293, and No. 2081676 (the "EASEMENTS") and are further shown on Exhibit "A", attached hereto.
- C. PROPERTY OWNER desires to develop the PROPERTY for industrial purposes and has submitted for the VILLAGE's approval a proposed site plan for development of the PROPERTY. That site plan, PROPERTY OWNER proposes to construct a pond, parking lot, and landscaping over the EASEMENT as shown on Exhibit "B", attached hereto.
- D. The VILLAGE is willing to permit the PROPERTY OWNER to construct a pond, parking lot and landscaping, over the EASEMENT, subject to the conditions set out below.

NOW, THEREFORE, based on the above, the VILLAGE and PROPERTY OWNER agree as follows:

1. Subject to the provisions of this agreement, the VILLAGE grants approval for PROPERTY OWNER to construct a pond, parking lot, landscaping and related improvements over the EASEMENT.
2. The VILLAGE shall, in its complete and sole discretion, determine when and what actions it may deem necessary for the VILLAGE to repair, maintain, construct and/or reconstruct the water main, sanitary sewer main and appurtenances in the EASEMENT.
  - a. Whenever the VILLAGE takes any action under this paragraph, the VILLAGE will complete the necessary work and backfill all trenches to the appropriate grade of the adjacent ground surface.
  - b. The VILLAGE will backfill that portion of any trench which is under or within 5 feet of existing pavements on the PROPERTY with granular material (3/4" crushed limestone TB per Village Specifications) and will backfill all other trenches with excavated spoil material.
  - c. The VILLAGE will not be responsible for any settlement that might occur after the VILLAGE has backfilled all of the trenches to the appropriate grade of the adjacent ground surface.
3. Whenever the VILLAGE takes any actions under ¶2 above, PROPERTY OWNER will be responsible for the following:
  - a. PROPERTY OWNER shall provide surface restoration of all areas disturbed during the construction and/or reconstruction process. This includes but is not limited to the following: restoration of roadways, pavements, curb & gutter, driveways, culverts, headwalls, landscaping, ditches and lawns, which PROPERTY OWNER has constructed and/or placed in the EASEMENT, or any areas which have been disturbed during the construction, reconstruction or maintenance operations undertaken by the VILLAGE under ¶2 above.
  - b. PROPERTY OWNER shall defend, indemnify and hold the VILLAGE harmless for any claims for damages to any surface improvements installed or restored by PROPERTY OWNER within the EASEMENT before, during or after any repair, maintenance, construction or reconstruction operations undertaken by the VILLAGE under ¶2 above.

- c. PROPERTY OWNER shall reimburse the VILLAGE for all material, labor and equipment costs which the VILLAGE may incur as a result of hauling away the excess excavated material and backfilling the trenches with granular material. The VILLAGE must receive this payment within 30 days from the date of the Village's invoice to PROPERTY OWNER. If payment is not received by the VILLAGE within 30 days for the date of the invoice, PROPERTY OWNER waives all special assessment notices and hearings required by 66.0703 of the Wisconsin Statutes and consents to the levy of a special assessment by the VILLAGE for all costs which the VILLAGE may incur as a result of hauling away excavated spoil material and backfilling trenches with granular material. Any such special assessments shall accrue interest at a rate of nine percent (9%) per year commencing from the date of the original invoice through the date that the payment is received by the VILLAGE. PROPERTY OWNER shall pay any such special assessment in full with the current year's property tax bill, together with any accrued interest.
- 4. The rights and obligations created by this agreement shall be covenants running with the land and shall inure to the benefit of, and be binding upon the parties, their heirs, personal representatives, successors and assigns.
- 5. This Agreement shall become effective as of the date it is approved by the VILLAGE or executed by the PROPERTY OWNER, whichever is later.
- 6. By signing below, the person signing on behalf of the PROPERTY OWNER represents that he has authority to act on behalf of the PROPERTY OWNER, and has authority to sign this Agreement on the PROPERTY OWNER's behalf.
- 7. This Agreement shall be recorded With the Register of Deeds Waukesha County, Wisconsin, and shall constitute a covenant running with the land, and shall be binding on both parties, their successors or assigns.

END OF TEXT. SIGNATURE PAGE FOLLOWS.

**SIGNATURE PAGE****PROPERTY OWNER: BRUCE 5329 INVESTMENT LLC**

By:



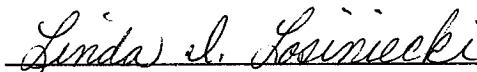

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 Frank Bruce, Managing Member

Witness

 State of Wisconsin )  
 ) Ss.  
 County of Waukesha)

Personally came before me this 1st day of June, 2004, the above named Frank Bruce to me known to be the person who executed the foregoing instrument in his respective official capacity as Managing Member of Bruce 5329 Investment, LLC and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said entity by its authority.




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Notary Public

 Waukesha County, Wisconsin  
 My Commission Expires on 12/24/06

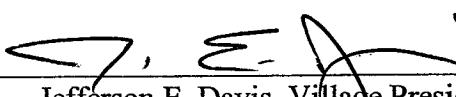

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**VILLAGE OF MENOMONEE FALLS**

Approved by the Board of Trustees of the Village of Menomonee Falls on  
 the 7th day of June, 2004.



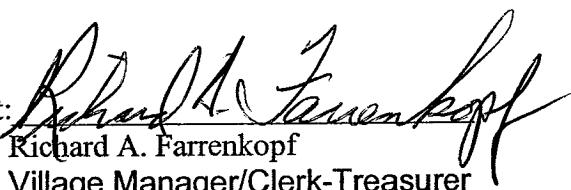
By




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 Jefferson E. Davis, Village President

Attest:




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 Richard A. Farrenkopf  
 Village Manager/Clerk-Treasurer

This instrument was drafted by  
 The Village of Menomonee Falls  
 Jonathan M. Bretl  
 Date: May 24, 2004

**EXHIBIT "A"**

000478 JUN 17 1980

39°50'47" E

339.14

www.gutenberg.org  
P-2

EXISTING  
MASONRY  
BUILDING  
#H 38 N5239  
CSM #6252  
LOT 5

CSN 43878

9 L1 N00 6 L4000

EXHIBIT ("B")

