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WC3449692-024

STORM WATER
DETENTION BASIN AND
PLAYGROUND
MAINTENANCE AGREEMENT

DOCUMENT TITLE

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

01-12-2007 12:45 PM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 50.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 24

Recording Data

Return to:

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

Spencer's Pass East Subdivision

Tax Key No. MNFV 00116.998

57/24

MAINTENANCE AGREEMENT

This Agreement is between **Tomich Investments III, LLC ("DEVELOPER")**, and the **VILLAGE OF MENOMONEE FALLS**, a Municipal Corporation, located in the County of Waukesha and the State of Wisconsin ("**VILLAGE**"). It is based upon the following:

RECITALS:

- A. The **DEVELOPER** is the owner of certain lands located in the Southeast Quarter (SE ¼) of Section 29, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin identified as SPENCERS PASS EAST, a recorded subdivision, and further shown in Exhibit "A" attached hereto, and which subdivision is here-in-after referred to as the "PROPERTY"; and
- B. The **VILLAGE** has approved the plat of **SPENCERS PASS EAST** and the construction of a storm water detention basin in Outlot 4 and playground in Outlot 2 further shown in **Exhibit "B"** on the **PROPERTY**; and
- C. The **DEVELOPER** as a part of the development of the **SPENCERS PASS EAST** has granted an easement for the storm water detention areas and has constructed storm water detention basins within the said easement on the **PROPERTY**; and
- D. The hydraulic volume design calculations of the said detention basins includes the easement areas, and requires the establishment of certain elevations and slopes in the easement areas of the **PROPERTY**; and
- E. The **VILLAGE** finds it necessary to insure that the design volume of the detention basin is not reduced by changes in the established elevations and slopes in the easement areas on the **PROPERTY**; and
- F. The **VILLAGE** intends to reserve the right to enforce the requirement that the Outlot 4, Outlot 2, and the median areas in Spencers Pass and Canary Drive adjacent to Outlot 2 within the **PROPERTY** are maintained in a manner consistent with the lands maintained by the individual residents of **SPENCERS PASS EAST**.
- G. The **DEVELOPER** also intends to enter into a Butler's Garter Snake Conservation Plan with the Wisconsin Department of Natural Resources. To assist the Wisconsin Department of Natural Resources in enforcing the **DEVELOPER'S** obligations under that Plan, the **VILLAGE** and the **DEVELOPER** intend to grant to the Wisconsin Department of Natural Resources certain rights under this agreement.

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

1. Interests and Obligations of Individual Lot Owners.

- a. Interests of Individual Lot Owners. Each lot in **SPENCERS PASS EAST** subdivision shall have attached to it an equal and undivided ownership interest in Outlot 4 and Outlot 2 within the **PROPERTY**. Each and every lot owner shall be considered the "**OWNER**" of Outlot 4, and Outlot 2 within the **PROPERTY**.
- b. Obligations of Individual Lot Owners. Each and every lot owner within **SPENCERS PASS EAST** shall be jointly and severally liable for any expense or cost incurred by the

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VILLAGE to inspect, preserve, maintain, or restore the stormwater detention facilities on Outlot 4; and any Village actions regarding Outlot 2, and the median areas in Spencers Pass and Canary Drive adjacent to Outlot 2. The **VILLAGE** shall be empowered, without notice or hearing, to levy a special assessment against each lot owner within **SPENCERS PASS EAST**, and each and every lot owner agrees to pay for any such special assessment for expenses incurred by the **VILLAGE**.

c. Agreement of Developer and Lot Owners to Indemnify Village.

- (i) **DEVELOPER, OWNER** and Homeowner's Association agree to indemnify and 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 detention basins, and the storm water easements 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 and storm water easement.
- (ii) **DEVELOPER, OWNER** and Homeowner's Association also agree to indemnify and 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 Outlot 2, or the median areas in the subdivision; or because of any adverse effect upon any person or property related or alleged to be related to any conditions on Outlot 2 or the median areas in the subdivision.
- (iii) The **VILLAGE** shall have the right to defend any such claims and **DEVELOPER, OWNER** and Homeowner's Association 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.

2. Obligation to Maintain Vegetation and Implement Butler's Garter Snake Conservation Plan.

- a. Attached as **Exhibit "E"** to this Agreement is a copy of the Butler's Garter Snake Conservation Plan (the "Garter Snake Conservation Plan") approved by the Wisconsin Department of Natural Resources ("WDNR") and accepted by the **OWNER**.
- b. The **Owner** or **Homeowners Association** shall plant and maintain vegetation in those parts of Outlot 4 subject to the Garter Snake Conservation Plan in the manner outlined in that plan. It is understood that the **WDNR** is authorized to enter the site and ensure compliance with the requirements of the Garter Snake Conservation Plan in order to bring the site into compliance with the plan.
- c. To minimize the impact on the Butler Garter Snake, the **OWNER** and **Homeowner's Association** shall only conduct any construction and maintenance activities in Outlot 6 between November 5 and March 15 in accordance with the Garter Snake Conservation Plan.
- d. No activities shall occur in Outlot 4, except those allowed in conjunction with the authorized activities outlined in this agreement or in the Garter Snake Conservation Plan, or those activities approved by the **Village** and **WDNR**.

e. The parties recognize the WDNR as a third party beneficiary of obligations of the Owner and Home Owner's Association set out in this ¶2.

(i) So long as this ¶2 is in effect, the **WDNR** shall have the sole right to enforce vegetation requirements in Outlot 4 as outlined by the Garter Snake Conservation Plan.

(ii) The **WDNR** shall relinquish any rights or duties under this agreement at such time as the Butler's Garter Snake is no longer considered a distinct species and is no longer listed as a threatened or endangered species, or at such other times as the WDNR deems appropriate. At such time, the Garter Snake Conservation Plan and this ¶2 shall be null and void, and the Village shall have sole responsibility to enforce vegetation maintenance and requirements in Outlot 4.

3. Obligations Related to Storm Water Detention Facilities on Outlot 4.

a. Grant of Stormwater Easement to Village.

(i) The **DEVELOPER** hereby warrants and represents that it is the owner in fee of the real estate described above, and that this real estate is free and clear of all liens and encumbrances.

(ii) The **DEVELOPER** together with its respective heirs, personal representatives, and assigns, by separate document has granted unto the said Village of Menomonee Falls and its assigns, permanent and perpetual easement for storm water detention basin and related facilities, including storm sewer inlets and manholes in Outlot 4.

(iii) The easement rights granted herewith include the right to build, construct, operate, inspect, maintain, repair, reconstruct and enlarge any and all presently existing and hereinafter constructed facilities, and the right of entry in, across, beneath, and above Outlot 4 here-in-after more particularly described in **Exhibit "C"**; and

b. The elevations and slopes that have been established in the storm water detention easement on the **PROPERTY**, as identified on **Exhibit "D"**, shall not be altered from those designed, established and constructed, without the specific written approval of the **VILLAGE**.

c. No Structure of any type will be allowed within the aforesaid easements.

d. Before either may plant trees or shrubs in the aforesaid easements, the **OWNER** or Homeowner's Association must obtain a permit from the Village of Menomonee Falls Department of Public Works.

(i) The Department of Public Works shall have the right to determine which species of trees and shrubs are or are not appropriate for planting within the aforesaid easements. Neither the **OWNER** nor Homeowners Association may plant shrubs or trees in the easements, unless approved by the **VILLAGE and the WDNR**

(ii) This ¶3.d shall not be effective so long as ¶2 is in effect. Should ¶2 become void or legally ineffective for any reason, then this paragraph ¶3.d shall go into effect.

e. Every five (5) years from the date of this agreement, the Homeowners Association shall hire a licensed professional engineer to inspect and certify the storm water detention basin on the **PROPERTY** and submit an inspection report to the **VILLAGE** as proof of

compliance. The Inspection Report form provided by the **VILLAGE** shall be used to determine the condition of the storm water detention basins. The purpose of the inspection is to assure safe and proper functioning of the storm water detention basins. 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. The **OWNER** or Homeowner's Association must maintain the slopes and elevations at the originally designed, established and constructed elevations and slopes within the easement areas; to and make all the necessary repairs and/or improvements to correct damages, both natural and man made; and to resolve any complaints.

- f. Should the **VILLAGE** find that the aforesaid elevations and slopes have been altered, changed or for any reason deviate from those designed, established and constructed; or, if structures are found in the aforesaid easements; or, if shrubs or trees which have not been approved by the **VILLAGE** have been planted in the aforesaid easements; or, if the easement areas are not being maintained, the Homeowner's Association shall be responsible for the cost and expense of returning the slopes and elevations to the originally designed, established and constructed elevations and slopes; removing structures; removing and replacing shrubs and trees; and maintaining stormwater detention basin area.
- g. If the **OWNER** or Homeowners Association fails to conduct or submit an inspection certifying the basins; or, fails to return the slopes and elevations to the originally designed, established and constructed elevations and slopes, and make all the necessary repairs and/or improvements to correct damages, both natural and man made; removing and replacing shrubs and trees; or remove structures, or maintain stormwater detention basin area in a manner outlined in this document, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete said work as described above. In addition, the **VILLAGE** shall be empowered without notice of public hearing, to impose a special assessment for the cost of said work upon each and every lot within **SPENCERS PASS EAST**, payable with the next succeeding tax roll.

4. Obligations Related to Median Areas

- a. The median areas in Spencers Pass and Canary Drive adjacent to Outlot 2 shall be maintained in a manner consistent with the lands maintained by the individual residents of **SPENCERS PASS EAST**. This includes the obligation to maintain landscaping originally approved by the Village, and to make all the necessary improvements to correct damages, both natural and man made; and to resolve any complaints.
- b. If the **OWNER** or Homeowners Association fails to maintain landscaping originally approved by the Village, and to make all the necessary improvements to correct damages, both natural and man made; and to resolve any complaints, or maintain the median areas in Spencers Pass and Canary Drive adjacent to Outlot 2 in a manner consistent with the lands maintained by the individual residents of **SPENCERS PASS EAST**, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete said work as described above. In addition, the **VILLAGE** shall be empowered without notice of public hearing, to impose a special assessment for the cost of said work upon each and every lot within **SPENCERS PASS EAST**, payable with the next succeeding tax roll.

c. Village Utilities in the Median areas.

- (i) The median areas in Spencers Pass and Canary Drive adjacent to Outlot 2 in **SPENCERS PASS EAST** contain municipal facilities.
- (ii) 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 utilities in the Right-of-way.
 - (a) Whenever the **VILLAGE** takes any action under this paragraph 4, the **VILLAGE** will complete the necessary work and backfill all trenches to the appropriate grade of the adjacent ground surface.
 - (b) 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.
- (iii) If the **VILLAGE** enters the median to construct, operate, inspect, maintain, repair, reconstruct and enlarge any and all presently existing and hereinafter constructed municipal facilities, the **OWNER** shall provide surface restoration of all areas disturbed within the median during the construction and/or reconstruction process. This includes but is not limited to the restoration of landscaping and lawns in the median areas in Spencers Pass and Canary Drive adjacent to Outlot 2.

5. Obligations Related to Outlot 2.

- a. The parties understand that Outlot 2 was created to provide green space and recreation space for the subdivision residents.
- b. Outlot 2 shall be maintained in a manner consistent with both the purpose for which it was created, and the lands maintained by the individual residents of **SPENCERS PASS EAST**.
- c. If the **OWNER** or Homeowners Association fails to maintain landscaping originally approved by the Village, and to make all the necessary improvements to correct damages, both natural and man made; and to resolve any complaints, or maintain Outlot 2 in a manner consistent with the lands maintained by the individual residents of **SPENCERS PASS EAST**, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete said work as described above. In addition, the **VILLAGE** shall be empowered without notice of public hearing, to impose a special assessment for the cost of said work upon each and every lot within **SPENCERS PASS EAST**, payable with the next succeeding tax roll.

6. Homeowners Association.

- a. The **DEVELOPER** intends to establish a Homeowner's Association, which will be primarily responsible for the maintenance of the landscaping and the other obligations relating to Outlot 4, Outlot 2, and the median areas in Spencers Pass and Canary Drive adjacent to Outlot 2 within the **PROPERTY**.
- b. Upon its creation, and subject to the other terms of this agreement, the Homeowner's Association shall, as the agent of the **OWNER**, thereafter be primarily responsible for the obligations of the individual lot owners of Spencers Pass East under this agreement. If the

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Homeowners Association is never created, is not responsive, or is dissolved, then the **OWNER** shall be responsible for all obligations in this agreement.

- c. If the **OWNER** or Homeowners Association fails perform any obligation required under this agreement regarding Outlot 4, Outlot 2, and the median areas in Spencers Pass and Canary Drive adjacent to Outlot 2, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete such work. In addition, the **VILLAGE** shall be empowered without notice of public hearing, to impose a special assessment for the cost of said work upon each and every lot within **SPENCERS PASS EAST**, payable with the next succeeding tax roll.
7. **Obligations and Rights to Run with the land.** The rights and obligations created by this Agreement shall be covenants running with All Lots within **SPENCERS PASS EAST** and shall inure to the benefit of, and be binding upon, the parties, their heirs, personal representatives, successors and assigns.
8. **Effective Date.** This agreement shall become effective on the date it is signed by the **DEVELOPER** or approved by the **VILLAGE**, whichever is later.

END OF TEXT. SIGNATURE PAGE FOLLOWS

TOMICH INVESTMENTS III, LLC

JAN 12 5

IN WITNESS WHEREOF, Tomich Investments III, LLC has caused this Agreement to be

→ signed this 21st day of November, 2006.

Tomich Investments III, LLC

By: [Signature]

Carl P. Tomich, Managing Member

State of Wisconsin)

) SS

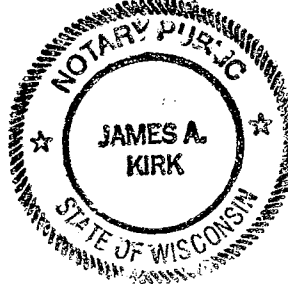
County of Waukesha)

→ Personally came before me this 21st day of November, 2006, the above named Carl P. Tomich, 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.

[Signature]
Notary Public

Waukesha County, Wisconsin

My Commission Expires on 3/29/09



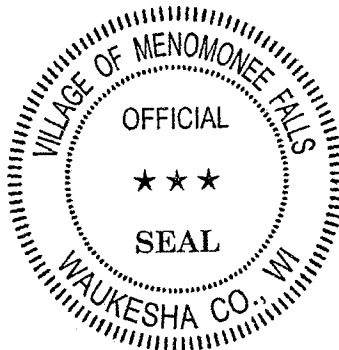
Village of Menomonee Falls

Approved by the Village Board of the Village of Menomonee Falls on the 5th day of June, 2006.

By: [Signature]
Richard A. Rechlicz, Village President

Attest: [Signature]
Richard A. Farrenkopf, Village
Manager/Clerk-Treasurer

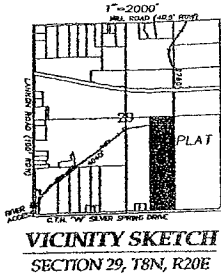
This instrument was drafted by:
Jonathan Bretl
Civil Engineer
May 31, 2006



000001 2 JAN 12 5

Exhibit "A"

3 JAN 12 6

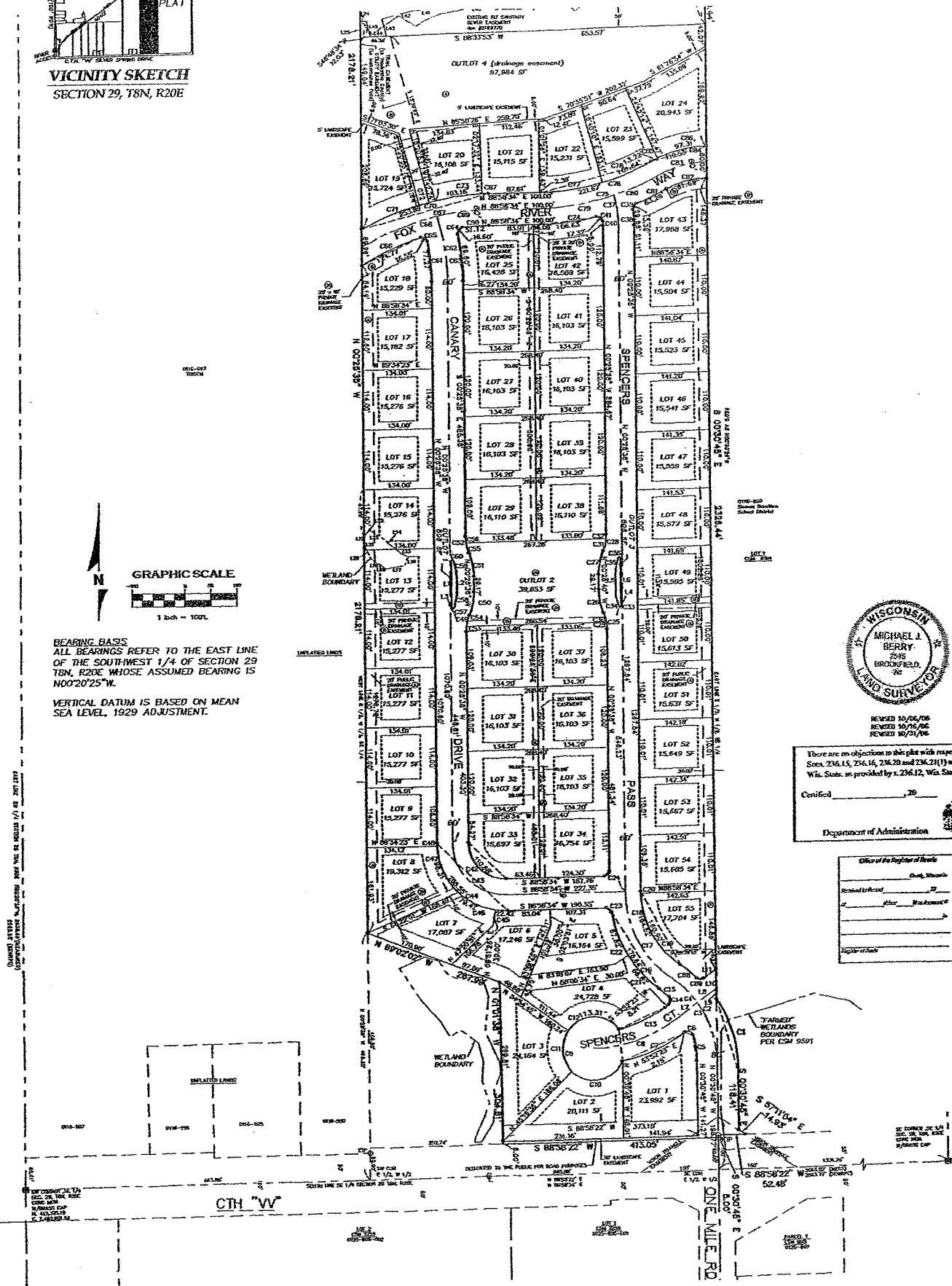


SPENCER'S PASS EAST

BEING PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 6061 AND LAND IN THE
NORTHWEST 1/4, SOUTHWEST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF
SECTION 29, T8N R20E, EAST, IN THE VILLAGE OF MIDWINTER
TOWN, WATKINS COUNTY, WISCONSIN.

SEE SHEET 2 OF 3 FOR LINE AND CURVE TABLES
270,142 SQ. FT. DEDICATED TO THE PUBLIC FOR ROAD PURPOSES

- LEGEND
- INDICATES A 2.375"Ø IRON PIPE
WEIGHING 3.65 LBS/FT. SET
 - INDICATES IRON PIPE FOUND
 - ALL OTHER CORNERS ARE
MONUMENTED BY A 1"Ø IRON PIPE
WEIGHING 1.68 LBS/FT.



REVISED 10/06/08
REVISED 10/16/08
REVISED 10/21/08

There are no objections to this plat with respect to
Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2),
Wis. Stats. as provided by s. 236.12, Wis. Stats.

Certified _____, 20____

Department of Administration

Office of the Register of Deeds

Check, Record	_____
Return to Office	_____
File	_____
Register of Deeds	_____

4 JAN 12 6

SPENCER'S PASS EAST

HEING PART OF LOT 1 OF CERTIFIED BUREAU MAP NO. 9561 AND L&SD IN THE
SOUTHWEST 1/4, SOUTHWEST 1/4 AND SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF
SECTION 28, TOWNSHIP 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MONOMONIE
FALLS, WAUKESHA COUNTY, WISCONSIN.

NOTES:

WETLAND LOCATIONS SHOWN BASED ON FIELD WETLAND DELINEATION PER ALICE
THOMPSON DATED MAY, 2005 AND MAY, 2006 AND ARE SUPPORTED BY FIELD
COLLECTED DIGITAL WETLAND LOCATIONS. SEE SHEET 2 OF 3.

FLOODPLAIN ELEVATION DATA PER SEMCO HEC-RAS STUDY PREPARED FOR THE
VILLAGE OF MONOMONIE FALLS.

NO DIRECT VEHICULAR ACCESS TO SILVER SPRING DRIVE C.T.H. "V" FROM LOTS OR OUTLOTS WITHIN THIS PLAT. NO ACCESS TO ANY ROADWAY SHALL BE PERMITTED OVER THE VISION CORNER EASEMENT OF THE ADJACENT LOTS.

EXISTING BUILDINGS WITHIN PLAT BOUNDARIES TO BE RAZED.

ALL DIMENSIONS MEASURED AND SHOWN TO THE NEAREST ONE HUNDREDTH OF A FOOT.

ALL REQUIRED SETBACKS ARE TO BE MEASURED FROM THE NEAR EDGE OF ANY EASEMENT.

THE ERECTION OF BUILDINGS FOR HUMAN HABITATION AND THE INSTALLATION OF SOIL ABSORPTION SYSTEMS ON THE OUTLOTS ARE PROHIBITED IN THIS SUBDIVISION.

THE SUBDIVISION HOMEOWNERS ASSOCIATION SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL LANDSCAPE EASEMENTS AS PROVIDED IN THE SUBDIVISION REGULATION.

VISION CORNER RESTRICTIONS:

IN THE VISION SETBACK AREA NO STRUCTURE OF ANY KIND SHALL BE PERMITTED WHICH EXCEEDS A HEIGHT OF 20 FEET ABOVE THE ELEVATION OF THE CENTER OF THE INTERSECTION. EXCEPT FOR NECESSARY HIGHWAY AND TRAFFIC SIGNS, PUBLIC UTILITY LINES, AND OPEN FENCES THROUGH WHICH THERE IS CLEAR VISION, NO STRUCTURE SHALL BE PERMITTED WHICH OBSCURES SAFE VISION OF THE APPROACHES TO THE INTERSECTION.

STORM WATER AND STORM SEWER NOTES:

PRIVATE EASEMENTS ARE ESTABLISHED TO PROVIDE PROPERTIES, OWNERS OF LOTS ON WHICH THESE PRIVATE DRAINAGE EASEMENTS EXIST SHALL BE RESPONSIBLE FOR KEEPING THESE AREAS FREE FROM ANY OBSTRUCTION THAT MAY RESTRICT OR DIVERT THIS FLOW.

EASEMENTS GRANTED TO THE VILLAGE OF MONOMONIE FALLS.

WETLAND-PRIMARY ENVIRONMENTAL CORRIDOR-100 YEAR FLOODPLAIN PRESERVATION RESTRICTIONS

THOSE AREAS OF LAND WHICH ARE IDENTIFIED AS A WETLAND-PRIMARY ENVIRONMENTAL CORRIDOR AND/OR 100 YEAR FLOODPLAIN ON PAGE 1 OF 1 ON THIS SUBDIVISION PLAT SHALL BE SUBJECT TO THE FOLLOWING RESTRICTIONS:

GRADING AND FILLING AND THE REMOVAL OF TOPSOIL OR OTHER EARTHEN MATERIALS SHALL BE PROHIBITED UNLESS SPECIALLY AUTHORIZED BY THE MUNICIPALITY IN WHICH THEY ARE LOCATED AND, IF APPLICABLE, THE WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE-PLANNING AND ZONING DIVISION, THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES AND THE ARMY CORPS OF ENGINEERS. THE CONSTRUCTION OF RECREATIONAL TRAILS WITHIN THE DESIGNATED TRAIL EASEMENTS ARE ALLOWED.

THE REMOVAL OR DESTRUCTION OF ANY VEGETATIVE COVER, I.E., TREES, SHRUBS, GRASSES, ETC., SHALL BE PROHIBITED, WITH THE EXCEPTION OF THE REMOVAL OF DEAD, DISEASED OR DYING VEGETATION AT THE DISCRETION OF LANDOWNER, OR SILVICULTURAL THINNING UPON THE RECOMMENDATION OF A FORESTER OR NATURALIST, AND WITH THE APPROVAL OF THE WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE-PLANNING AND ZONING DIVISION, THE CONSTRUCTION OF TRAILS WITHIN THE DESIGNATED TRAIL EASEMENTS ARE ALLOWED.

GRAZING BY DOMESTICATED ANIMALS, I.E., HORSES, COWS, ETC., IS PROHIBITED.

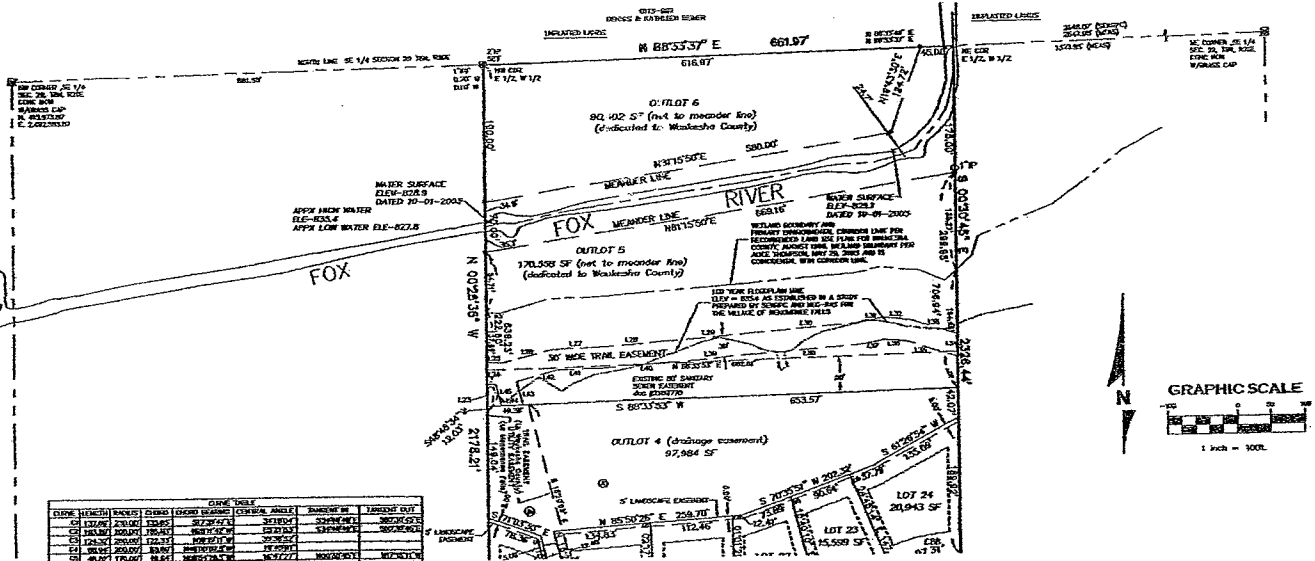
THE INTRODUCTION OF PLANT MATERIAL NOT INDIGENOUS TO THE EXISTING ENVIRONMENT OF THE WETLAND-PRIMARY ENVIRONMENTAL CORRIDOR-100 YEAR FLOODPLAIN AREA(S) SHALL BE PROHIBITED.

FORDS MAY BE PERMITTED SUBJECT TO THE APPROVAL OF THE MUNICIPALITY IN WHICH THEY ARE LOCATED AND, IF APPLICABLE, THE WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE-PLANNING AND ZONING DIVISION, THE WISCONSIN DEPARTMENT OF NATURAL RESOURCES AND THE ARMY CORPS OF ENGINEERS.

CONSTRUCTION OF BUILDINGS IS PROHIBITED.

BASEMENT RESTRICTIONS - GROUNDWATER

ALTHOUGH ALL LOTS IN THE SUBDIVISION HAVE BEEN REMOVED AND APPROVED FOR DEVELOPMENT WITH SINGLE-FAMILY RESIDENTIAL USE IN ACCORDANCE WITH SECTION 236 WISCONSIN STATUTES, SOME LOTS CONTAIN SOIL CONDITIONS THAT, DUE TO THE POSSIBLE PRESENCE OF GROUNDWATER NEAR THE SURFACE, MAY REQUIRE ADDITIONAL SOIL ENGINEERING AND FOUNDATION DESIGN WITH REGARD TO BASEMENT CONSTRUCTION. IT IS RECOMMENDED THAT OTHER A LICENSED PROFESSIONAL ENGINEER OR OTHER SOILS EXPERT DESIGN A BASEMENT AND FOUNDATION THAT WILL BE SUITABLE TO WITHSTAND THE VARIOUS PROBLEMS ASSOCIATED WITH SATURATED SOIL. CONDITIONS ON BASEMENT WALLS OR FLOORS OR THAT OTHER SPECIAL MEASURES BE TAKEN. SOIL CONDITIONS SHOULD BE SUBJECT TO EACH OWNER'S SPECIAL INVESTIGATION PRIOR TO CONSTRUCTION AND NO SPECIFIC REPRESENTATION IS MADE HEREIN.



CHINESE					
FROM	TO	BEARING	DISTANCE	AREA	REMARKS
C1	C2	N 89°33'37"	661.97'		
C2	C3	S 89°33'37"	661.97'		
C3	C4	N 89°33'37"	661.97'		
C4	C5	S 89°33'37"	661.97'		
C5	C6	N 89°33'37"	661.97'		
C6	C7	S 89°33'37"	661.97'		
C7	C8	N 89°33'37"	661.97'		
C8	C9	S 89°33'37"	661.97'		
C9	C10	N 89°33'37"	661.97'		
C10	C11	S 89°33'37"	661.97'		
C11	C12	N 89°33'37"	661.97'		
C12	C13	S 89°33'37"	661.97'		
C13	C14	N 89°33'37"	661.97'		
C14	C15	S 89°33'37"	661.97'		
C15	C16	N 89°33'37"	661.97'		
C16	C17	S 89°33'37"	661.97'		
C17	C18	N 89°33'37"	661.97'		
C18	C19	S 89°33'37"	661.97'		
C19	C20	N 89°33'37"	661.97'		
C20	C21	S 89°33'37"	661.97'		
C21	C22	N 89°33'37"	661.97'		
C22	C23	S 89°33'37"	661.97'		
C23	C24	N 89°33'37"	661.97'		
C24	C25	S 89°33'37"	661.97'		
C25	C26	N 89°33'37"	661.97'		
C26	C27	S 89°33'37"	661.97'		
C27	C28	N 89°33'37"	661.97'		
C28	C29	S 89°33'37"	661.97'		
C29	C30	N 89°33'37"	661.97'		
C30	C31	S 89°33'37"	661.97'		
C31	C32	N 89°33'37"	661.97'		
C32	C33	S 89°33'37"	661.97'		
C33	C34	N 89°33'37"	661.97'		
C34	C35	S 89°33'37"	661.97'		
C35	C36	N 89°33'37"	661.97'		
C36	C37	S 89°33'37"	661.97'		
C37	C38	N 89°33'37"	661.97'		
C38	C39	S 89°33'37"	661.97'		
C39	C40	N 89°33'37"	661.97'		
C40	C41	S 89°33'37"	661.97'		
C41	C42	N 89°33'37"	661.97'		
C42	C43	S 89°33'37"	661.97'		
C43	C44	N 89°33'37"	661.97'		
C44	C45	S 89°33'37"	661.97'		
C45	C46	N 89°33'37"	661.97'		
C46	C47	S 89°33'37"	661.97'		
C47	C48	N 89°33'37"	661.97'		
C48	C49	S 89°33'37"	661.97'		
C49	C50	N 89°33'37"	661.97'		
C50	C51	S 89°33'37"	661.97'		
C51	C52	N 89°33'37"	661.97'		
C52	C53	S 89°33'37"	661.97'		
C53	C54	N 89°33'37"	661.97'		
C54	C55	S 89°33'37"	661.97'		
C55	C56	N 89°33'37"	661.97'		
C56	C57	S 89°33'37"	661.97'		
C57	C58	N 89°33'37"	661.97'		
C58	C59	S 89°33'37"	661.97'		
C59	C60	N 89°33'37"	661.97'		
C60	C61	S 89°33'37"	661.97'		
C61	C62	N 89°33'37"	661.97'		
C62	C63	S 89°33'37"	661.97'		
C63	C64	N 89°33'37"	661.97'		
C64	C65	S 89°33'37"	661.97'		
C65	C66	N 89°33'37"	661.97'		
C66	C67	S 89°33'37"	661.97'		
C67	C68	N 89°33'37"	661.97'		
C68	C69	S 89°33'37"	661.97'		
C69	C70	N 89°33'37"	661.97'		
C70	C71	S 89°33'37"	661.97'		
C71	C72	N 89°33'37"	661.97'		
C72	C73	S 89°33'37"	661.97'		
C73	C74	N 89°33'37"	661.97'		
C74	C75	S 89°33'37"	661.97'		
C75	C76	N 89°33'37"	661.97'		
C76	C77	S 89°33'37"	661.97'		
C77	C78	N 89°33'37"	661.97'		
C78	C79	S 89°33'37"	661.97'		
C79	C80	N 89°33'37"	661.97'		
C80	C81	S 89°33'37"	661.97'		
C81	C82	N 89°33'37"	661.97'		
C82	C83	S 89°33'37"	661.97'		
C83	C84	N 89°33'37"	661.97'		
C84	C85	S 89°33'37"	661.97'		
C85	C86	N 89°33'37"	661.97'		
C86	C87	S 89°33'37"	661.97'		
C87	C88	N 89°33'37"	661.97'		
C88	C89	S 89°33'37"	661.97'		
C89	C90	N 89°33'37"	661.97'		
C90	C91	S 89°33'37"	661.97'		
C91	C92	N 89°33'37"	661.97'		
C92	C93	S 89°33'37"	661.97'		
C93	C94	N 89°33'37"	661.97'		
C94	C95	S 89°33'37"	661.97'		
C95	C96	N 89°33'37"	661.97'		
C96	C97	S 89°33'37"	661.97'		
C97	C98	N 89°33'37"	661.97'		
C98	C99	S 89°33'37"	661.97'		
C99	C100	N 89°33'37"	661.97'		
C100	C101	S 89°33'37"	661.97'		
C101	C102	N 89°33'37"	661.97'		
C102	C103	S 89°33'37"	661.97'		
C103	C104	N 89°33'37"	661.97'		
C104	C105	S 89°33'37"	661.97'		
C105	C106	N 89°33'37"	661.97'		
C106	C107	S 89°33'37"	661.97'		
C107	C108	N 89°33'37"	661.97'		
C108	C109	S 89°33'37"	661.97'		
C109	C110	N 89°33'37"	661.97'		
C110	C111	S 89°33'37"	661.97'		
C111	C112	N 89°33'37"	661.97'		
C112	C113	S 89°33'37"	661.97'		
C113	C114	N 89°33'37"	661.97'		
C114	C115	S 89°33'37"	661.97'		
C115	C116	N 89°33'37"	661.97'		
C116	C117	S 89°33'37"	661.97'		
C117	C118	N 89°33'37"	661.97'		
C118	C119	S 89°33'37"	661.97'		
C119	C120	N 89°33'37"	661.97'		
C120	C121	S 89°33'37"	661.97'		
C121	C122	N 89°33'37"	661.97'		
C122	C123	S 89°33'37"	661.97'		
C123	C124	N 89°33'37"	661.97'		
C124	C125	S 89°33'37"	661.97'		
C125	C126	N 89°33'37"	661.97'		
C126	C127	S 89°33'37"	661.97'		
C127	C128	N 89°33'37"	661.97'		
C128	C129	S 89°33'37"	661.97'		
C129	C130	N 89°33'37"	661.97'		
C130	C131	S 89°33'37"	661.97'		
C131	C132	N 89°33'37"	661.97'		
C132	C133	S 89°33'37"	661.97'		
C133	C134	N 89°33'37"	661.97'		
C134	C135	S 89°33'37"	661.97'		
C135	C136	N 89°33'37"	661.97'		
C136	C137	S 89°33'37"	661.97'		
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C139	C140	N 89°33'37"	661.97'		
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C145	C146	N 89°33'37"	661.97'		
C146	C147	S 89°33'37"	661.97'		
C147	C148	N 89°33'37"	661.97'		
C148	C149	S 89°33'37"	661.97'		
C149	C150	N 89°33'37"	661.97'		
C150	C151	S 89°33'37"	661.97'		
C151	C152	N 89°33'37"	661.97'		
C152	C153	S 89°33'37"	661.97'		
C153	C154	N 89°33'37"	661.97'		
C154	C155	S 89°33'37"	661.97'		
C155	C156	N 89°33'37"	661.97'		
C156	C157	S 89°33'37"	661.97'		
C157	C158	N 89°33'37"	661.97'		
C158	C159	S 89°33'37"	661.97'		
C159	C160	N 89°33'37"	661.97'		
C160	C161	S 89°33'37"	661.97'		
C161	C162	N 89°33'37"	661.97'		
C162	C163	S 89°33'37"	661.97'		
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C165	C166	N 89°33'37"	661.97'		
C166	C167	S 89°33'37"	661.97'		
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C168	C169	S 89°33'37"	661.97'		
C169	C170	N 89°33'37"	661.97'		
C170	C171	S 89°33'37"	661.97'		
C171	C172	N 89°33'37"	661.97'		
C172	C173	S 89°33'37"	661.97'		
C173	C174	N 89°33'37"	661.97'		
C174	C175	S 89°33'37"	661.97'		
C175	C176	N 89°33'37"	661.97'		
C176	C177	S 89°33'37"	661.97'		
C177	C178	N 89°33'37"	661.97'		
C178	C179	S 89°33'37"	661.97'		
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C180	C181	S 89°33'37"	661.97'		
C181	C182	N 89°33'37"	661.97'		
C182	C183	S 89°33'37"	661.97'		
C183	C184	N 89°33'37"	661.97'		
C184	C185	S 89°33'37"	661.97'		
C185	C186	N 89°33'37"	661.97'		
C186	C187	S 89°33'37"	661.97'		
C187	C188	N 89°33'37"	661.97'		
C188	C189	S 89°33'37"	661.97'		
C189	C190	N 89°33'37"	661.97'		
C190	C19				

SPENCER'S PASS EAST

BEING PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 9501 AND LAND IN THE
NORTHWEST 1/4, SOUTHWEST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF
SECTION 23, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS,
WISCONSIN, WAUKESHA COUNTY, WISCONSIN.

00000015 JAN 12 2006

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN) SS
WAUKESHA COUNTY)

I, MICHAEL J. BERRY, A REGISTERED LAND SURVEYOR, HEREBY CERTIFY

THAT I HAVE SURVEYED, DIVIDED AND MAPPED SPENCER'S PASS EAST, BEING PART OF THE NORTHWEST 1/4, SOUTHWEST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 23, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF THE SOUTHEAST 1/4 OF SAID SECTION, THENCE N 89°50'22" E ALONG THE SOUTH LINE OF SAID 1/4 SECTION 60.00 FEET TO THE SOUTHWEST CORNER OF THE EAST 1/2 OF THE WEST 1/2 OF SAID 1/4 SECTION, THENCE N 00°25'33" W FEET ALONG THE WEST LINE OF SAID EAST 1/2 ALONG SAID WEST LINE TO THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED, THENCE CONTINUING ALONG SAID WEST LINE N 00°25'33" W 277.21 FEET TO THE NORTHWEST CORNER OF SAID EAST 1/2, THENCE N 89°50'22" E ALONG THE NORTH LINE OF SAID 1/4 SECTION 86.97 FEET TO THE NORTHEAST CORNER OF SAID EAST 1/2, THENCE S 00°30'45" E ALONG THE EAST LINE OF SAID WEST 1/2 2326.44 FEET, THENCE SOUTHEAST 153.85 FEET ALONG THE ARC OF A CURVE TO THE POINT, WHOSE CENTER LIES TO THE SOUTHWEST, WHOSE RADIUS IS 230.00 FEET AND WHOSE CHORD BEARS S 17°30'47" E 135.45 FEET, THENCE S 00°30'45" E 118.41 FEET, THENCE S 07°10'04" E 14.53 FEET TO A POINT ON THE NORTH LINE OF C-119, "W", THENCE S 89°50'22" W ALONG SAID NORTH LINE AND PARALLEL WITH THE SOUTH LINE OF SAID 1/4 SECTION 52.48 FEET, THENCE S 00°30'45" E 5.00 FEET, THENCE S 89°50'22" W ALONG SAID NORTH LINE 415.03 FEET, THENCE N 01°01'30" W 30.49 FEET, THENCE N 89°50'22" W 267.39 FEET TO THE POINT OF BEGINNING.

LANDS CONTAINING 1,630,062 SQ. FT. OR 37.2588 AC

THAT SUCH A PLAT IS A CORRECT REPRESENTATION OF ALL EXTERIOR BOUNDARIES OF LAND SURVEYED AND THE SUBDIVISION THEREOF MADE.

THAT I HAVE MADE SUCH SURVEY, LAND DIVISION AND PLAT AT THE DIRECTION OF TOWNCH INVESTMENTS II, LLC, OWNERS OF SAID LAND.

THAT I HAVE FULLY COMPLIED WITH PROVISIONS OF CHAPTER 236 OF THE WISCONSIN STATE STATUTES IN SURVEYING, DIVIDING AND MAPPING THE SAME.

AUGUST 31, 2006
DATE

MICHAEL J. BERRY
REGISTERED LAND SURVEYOR S-2545



REVISED 10/06/06
REVISED 10/18/06
REVISED 10/31/06

CORPORATE OWNERS CERTIFICATE OF DEDICATION

TOWNCH INVESTMENTS II, LLC, A CORPORATION DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF WISCONSIN, AS OWNER CERTIFIES THAT SAID CORPORATION CAUSED THE LAND DESCRIBED ON THIS MAP TO BE SURVEYED, DIVIDED, MAPPED AND DEDICATED AS REPRESENTED ON THIS MAP IN ACCORDANCE WITH THE ORDINANCES OF THE VILLAGE OF MENOMONEE FALLS.

TOWNCH INVESTMENTS II, LLC, DOES FURTHER CERTIFY THAT THIS PLAT IS REQUIRED BY S.236.10 OR S.236.12 TO BE SUBMITTED TO THE FOLLOWING FOR APPROVAL OR DEDICATION:

1. STATE OF WISCONSIN DEPARTMENT OF ADMINISTRATION
2. VILLAGE OF MENOMONEE FALLS
3. WAUKESHA COUNTY DEPARTMENT OF PARKS AND LAND USE

IN WITNESS WHEREOF, TOWNCH INVESTMENTS II, LLC HAS CAUSED THESE PRESENTS TO BE SIGNED BY CARL TOWNCH, PRESIDENT AT _____, WISCONSIN, THIS _____ DAY OF _____, 2006.

(WITNESS)

CARL TOWNCH, PRESIDENT

STATE OF WISCONSIN) SS
WAUKESHA COUNTY)

PERSONALLY CAME BEFORE ME THIS _____ DAY OF _____, 2006, THE ABOVE NAMED CARL TOWNCH, TO ME KNOWN AS THE PERSON WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAME.

NOTARY PUBLIC
STATE OF WISCONSIN
MY COMMISSION EXPIRES _____

There are no objections to this plat with respect to
Secs. 236.15, 236.16, 236.20 and 236.21(1) and (2),
Wis. Stats. as provided by s. 236.12, Wis. Stats.

Certified _____, 20

Department of Administration

Office of the Register of Deeds	
County:	Waushara
Recorder for Return:	_____
At _____	_____
Signature of Deed:	_____

CONSENT OF SPENCER'S PASS EAST

TOWN BANK, A CORPORATION DULY ORGANIZED AND EXISTING UNDER AND BY VIRTUE OF THE LAWS OF THE STATE OF WISCONSIN, AS MORTGAGEE OF THE ABOVE DESCRIBED LAND, DOES HEREBY CONSENT TO THE ABOVE CERTIFICATION OF _____ AS OWNER OF SAID LAND.

IN WITNESS WHEREOF, THE SAID TOWN BANK HAS CAUSED THESE PRESENTS TO BE SIGNED AND ITS CORPORATE SEAL HEREUNTO AFFIXED, THIS _____ DAY OF _____, 2006.

(WITNESS)

STATE OF WISCONSIN)
COUNTY) SS

PERSONALLY CAME BEFORE ME THIS _____ DAY OF _____, 2006, THE ABOVE NAMED _____ TO ME KNOWN AS THE PERSON WHO EXECUTED THE FOREGOING INSTRUMENT AND ACKNOWLEDGED THE SAME.

NOTARY PUBLIC
STATE OF WISCONSIN
MY COMMISSION EXPIRES _____

VILLAGE BOARD APPROVAL

RESOLVED, THAT THE PLAT OF "SPENCER'S PASS EAST" IN THE VILLAGE OF MENOMONEE FALLS, TOWNCH INVESTMENTS II, LLC, OWNERS HAVING BEEN RECOMMENDED BY THE PLAT COMMISSION, AND BEING THE SAME, IS HEREBY APPROVED AND THE DEDICATION HEREIN ACCEPTED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF MENOMONEE FALLS ON THIS _____ DAY OF _____, 2006.

RICHARD A. RECHUTZ, VILLAGE PRESIDENT

I HEREBY CERTIFY THAT THE FOREGOING IS A COPY OF A RESOLUTION ADOPTED BY THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF MENOMONEE FALLS.

RICHARD A. FARRINGTON, VILLAGE CLERK

VILLAGE TREASURER'S CERTIFICATE

I, RICHARD A. FARRINGTON, BEING DULY APPOINTED, QUALIFIED AND ACTING TREASURER OF THE VILLAGE OF MENOMONEE FALLS, DO HEREBY CERTIFY THAT IN ACCORDANCE WITH THE RECORDS IN MY OFFICE, THERE ARE NO UNPAID TAXES OR SPECIAL ASSESSMENTS AS OF _____, 2006, ON LANDS INCLUDED IN THE PLAT OF "SPENCER'S PASS EAST".

DATE

RICHARD A. FARRINGTON, VILLAGE TREASURER

COUNTY TREASURER'S CERTIFICATE

STATE OF WISCONSIN)
WAUKESHA COUNTY) SS

I, PAMELA F. REEVES, BEING THE DULY Elected, QUALIFIED AND ACTING TREASURER OF THE COUNTY OF WAUKESHA, WISCONSIN, DO HEREBY CERTIFY THAT THE RECORDS IN MY OFFICE SHOW NO UNREDEEMED TAX SALES AND NO UNPAID TAXES OR SPECIAL ASSESSMENTS AS OF _____, 2006, ON ANY OF THE LANDS INCLUDED IN THE PLAT OF "SPENCER'S PASS EAST".

DATE

PAMELA F. REEVES
COUNTY TREASURER

CONSENT OF THE MUNICIPALITY FOR IMPROVEMENTS

THE VILLAGE OF MENOMONEE FALLS, A MUNICIPALITY IN WHICH THE SUBDIVISION LIES WHICH WILL FURNISH CERTAIN IMPROVEMENTS TO IT DOES HEREBY CONSENT TO THE SURVEYING, DIVIDING, MAPPING AND DEDICATION OF THE LAND DESCRIBED ON THE PLAT AND DOES HEREBY CONSENT TO THE ABOVE CERTIFICATE OF TOWNCH INVESTMENTS II, LLC, OWNERS.

IN WITNESS WHEREOF, THE SAID VILLAGE OF MENOMONEE FALLS HAS CAUSED THESE PRESENTS TO BE SIGNED BY RICHARD A. RECHUTZ, ITS VILLAGE PRESIDENT AND RICHARD A. FARRINGTON, VILLAGE CLERK OF MENOMONEE FALLS, WISCONSIN, AND ITS CORPORATE SEAL, AFFIXED THIS _____ DAY OF _____, 2006.

IN THE PRESENCE OF:

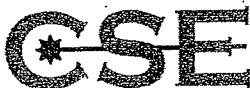
RICHARD A. RECHUTZ, VILLAGE PRESIDENT

RICHARD A. FARRINGTON, VILLAGE CLERK

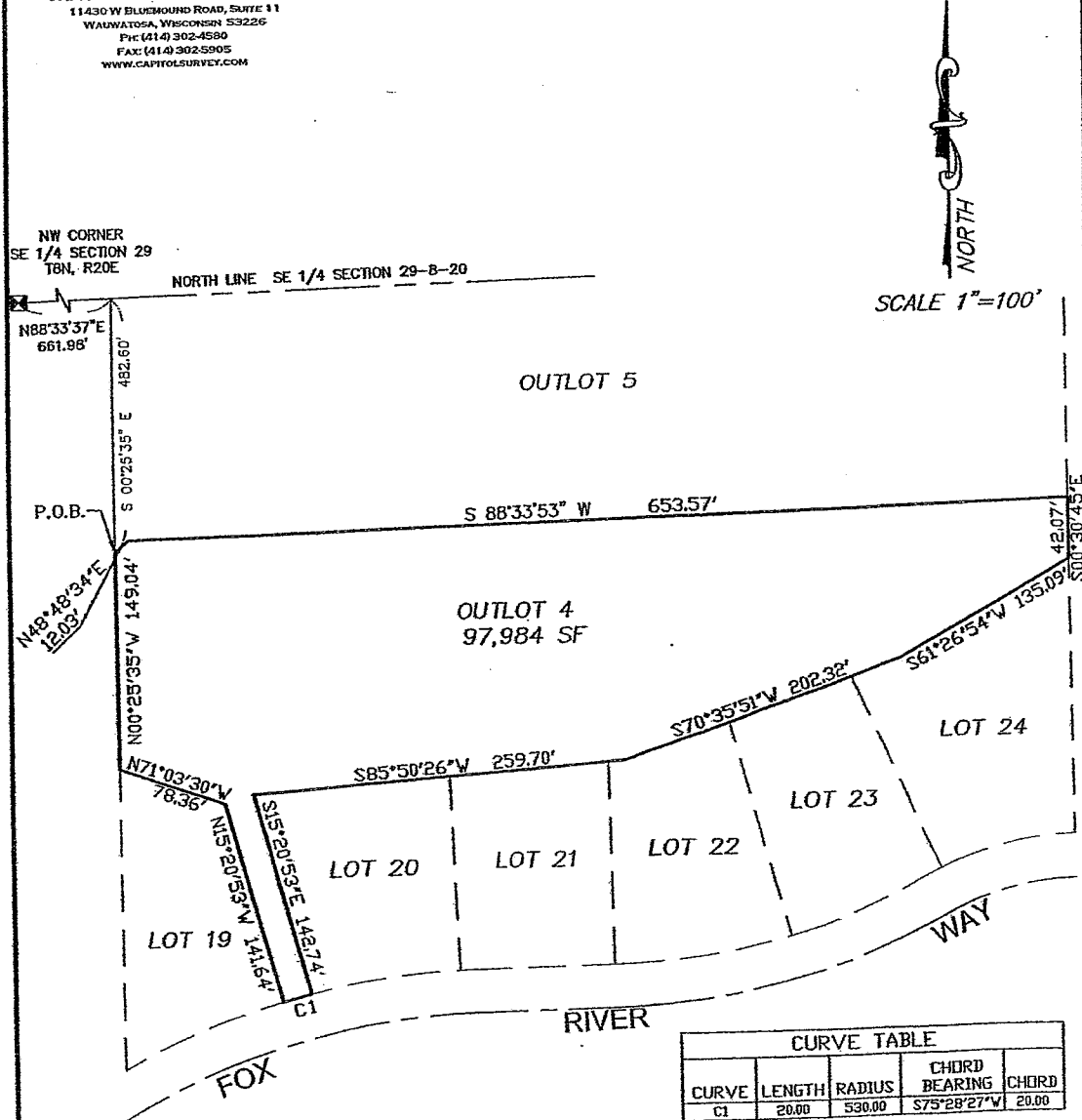
EASEMENT EXHIBIT "B"

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 8 NORTH, RANGE 20 EAST IN THE OF VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY WISCONSIN; THENCE N 88°33'37" E, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 661.98 FEET; THENCE S 00°25'35" E 482.60 FEET TO THE POINT OF BEGINNING; THENCE N 48°48'34" E 12.03 FEET; THENCE N 88°33'53" E 653.57 FEET; THENCE S 00°30'45" E 42.07 FEET; THENCE S 61°26'54" W 135.09 FEET; THENCE S 70°35'51" W 202.32 FEET; THENCE S 85°50'26" W 259.70 FEET; THENCE S 15°20'53" E 142.74 FEET; THENCE SOUTHWESTERLY 20.00 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 530.00 FEET AND WHOSE CHORD BEARS S 76°16'28" W 20.00 FEET; THENCE N 15°20'53" W 141.64 FEET; THENCE N 71°03'30" W, 78.36 FEET; THENCE N 00°25'35" W, 149.04 FEET TO THE POINT OF BEGINNING.

CONTAINING 97,984 SF OR 2.25 ACRES



CAPITOL SURVEY & ENGINEERING
11430 W BLUEMOUND ROAD, SUITE 11
WAUKESHA, WISCONSIN 53226
PH: (414) 302-4580
FAX: (414) 302-5905
WWW.CAPITOLSURVEY.COM



0000007 JAN 12 6

EASEMENT EXHIBIT 'B'

PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS;

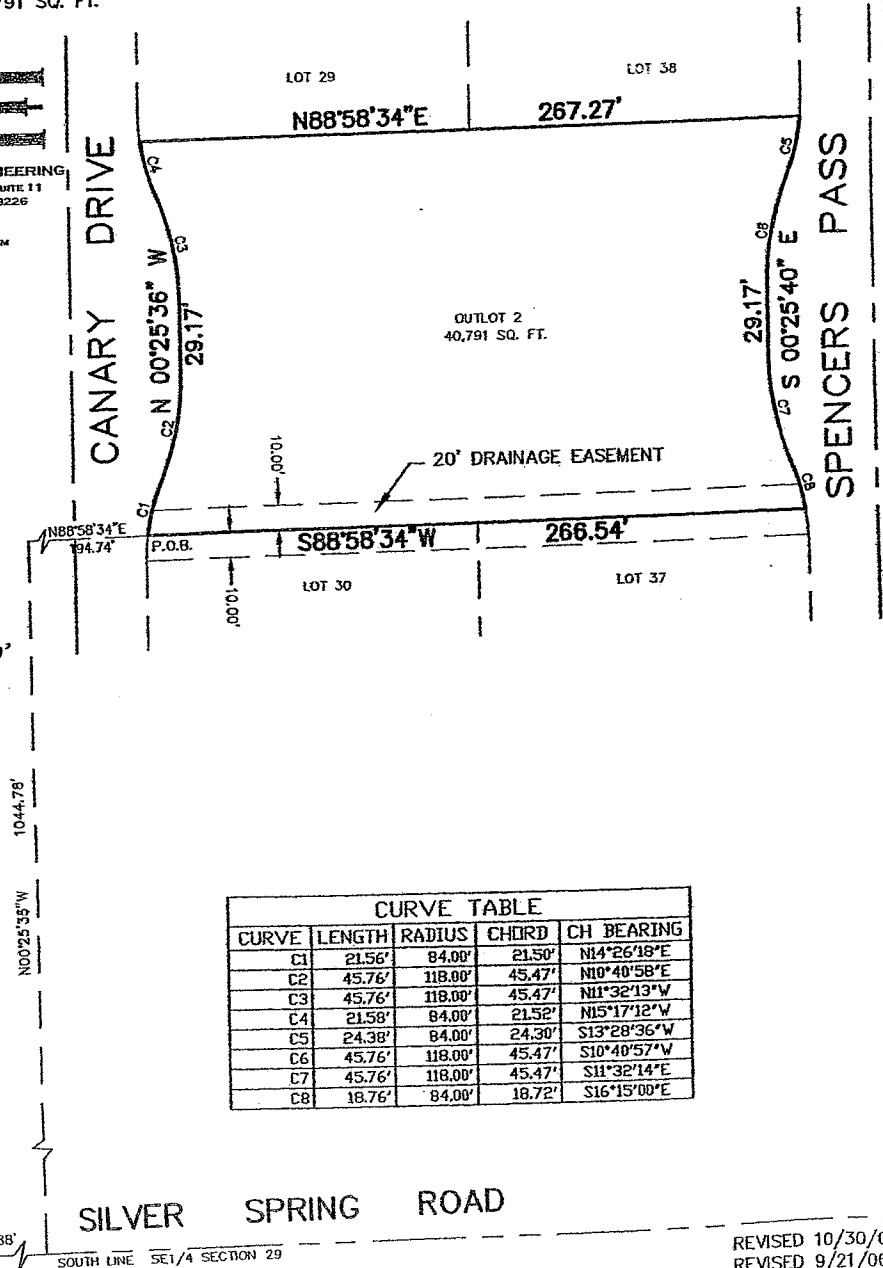
COMMENCING AT THE SOUTHWEST CORNER OF SAID 1/4 SECTION; THENCE N 88°58'22" E ALONG THE SOUTH LINE OF SAID 1/4 SECTION AND THE CENTERLINE OF SILVER SPRING ROAD 665.88 FEET; THENCE N 25°35' W 1044.78 FEET; THENCE N 88°58'34" E 194.74 FEET TO THE SOUTHWEST CORNER OF OUTLOT 2 AND THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE NORTHEASTERLY 21.56 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 84.00 FEET AND WHOSE CHORD BEARS N 14°26'18" E 21.50 FEET; THENCE NORTHEASTERLY 45.76 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 118.00 FEET AND WHOSE CHORD BEARS N 10°40'58" E 45.47'; THENCE N 00°25'36" W 29.17 FEET; THENCE NORTHWESTERLY 45.76 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHWEST, WHOSE RADIUS IS 118.00 FEET AND WHOSE CHORD BEARS N 11°32'13" W 45.47 FEET; THENCE NORTHWESTERLY 21.58 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTHEAST, WHOSE RADIUS IS 84.00 FEET AND WHOSE CHORD BEARS N 15°17'12" W 21.52 FEET TO THE NORTHWEST CORNER OF SAID OUTLOT; THENCE N 88°58'34" E ALONG THE NORTH LINE OF SAID OUTLOT 267.27 FEET TO THE NORTHEAST CORNER OF SAID OUTLOT; THENCE SOUTHWESTERLY 24.38 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 84.00 FEET AND WHOSE CHORD BEARS S 13°28'36" W 24.30 FEET; THENCE SOUTHWESTERLY 45.76 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 118.00 FEET AND WHOSE CHORD BEARS S 10°40'57" W 45.47 FEET; THENCE S 00°25'40" E 29.17 FEET; THENCE SOUTHEASTERLY 45.76 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTHEAST, WHOSE RADIUS IS 118.00 FEET AND WHOSE CHORD BEARS S 11°32'14" E 45.47 FEET; THENCE SOUTHEASTERLY 18.76 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHWEST, WHOSE RADIUS IS 84.00 FEET AND WHOSE CHORD BEARS S 16°15'00" E 18.72 FEET TO THE SOUTHEAST CORNER OF SAID OUTLOT; THENCE S 88°58'34" W ALONG THE SOUTH LINE OF SAID OUTLOT 266.54 FEET TO THE POINT OF BEGINNING.

LANDS CONTAIN 40,791 SQ. FT.

CSE

CAPITOL SURVEY & ENGINEERING
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WAUKESHA, WISCONSIN 53226
PH: (414) 302-4580
FAX: (414) 302-5905
WWW.CAPITOLSURVEY.COM

SCALE 1"=60'



CURVE TABLE				
CURVE	LENGTH	RADIUS	CHORD	CH BEARING
C1	21.56'	84.00'	21.50'	N14°26'18"E
C2	45.76'	118.00'	45.47'	N10°40'58"E
C3	45.76'	118.00'	45.47'	N11°32'13"W
C4	21.58'	84.00'	21.52'	N15°17'12"W
C5	24.38'	84.00'	24.30'	S13°28'36"W
C6	45.76'	118.00'	45.47'	S10°40'57"W
C7	45.76'	118.00'	45.47'	S11°32'14"E
C8	18.76'	84.00'	18.72'	S16°15'00"E

SW CORNER
SE 1/4
29-8-20

N88°58'22"E 665.88'

SOUTH LINE SE 1/4 SECTION 29

SILVER SPRING ROAD

REVISED 10/30/06
REVISED 9/21/06

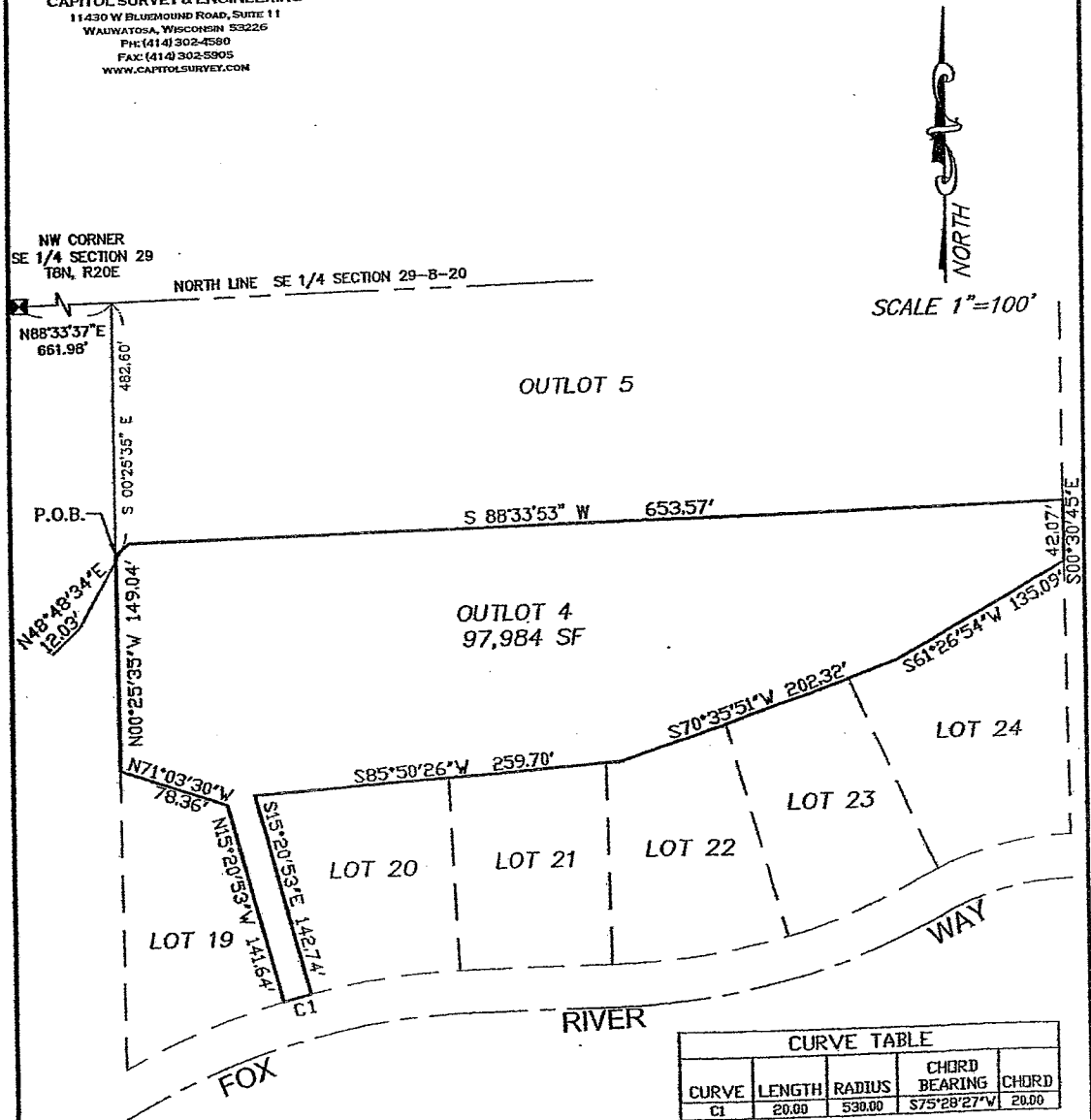
EASEMENT EXHIBIT "C"

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 8 NORTH, RANGE 20 EAST IN THE OF VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY WISCONSIN; THENCE N 88°33'37" E, ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 661.98 FEET; THENCE S 00°25'35" E 482.60 FEET TO THE POINT OF BEGINNING; THENCE N 48°48'34" E 12.03 FEET; THENCE N 88°33'53" E 653.57 FEET; THENCE S 00°30'45" E 42.07 FEET; THENCE S 61°26'54" W 135.09 FEET; THENCE S 70°35'51" W 202.32 FEET; THENCE S 85°50'26" W 259.70 FEET; THENCE S 15°20'53" E 142.74 FEET; THENCE SOUTHWESTERLY 20.00 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 530.00 FEET AND WHOSE CHORD BEARS S 76°16'28" W 20.00 FEET; THENCE N 15°20'53" W 141.64 FEET; THENCE N 71°03'30" W, 78.36 FEET; THENCE N 00°25'35" W, 149.04 FEET TO THE POINT OF BEGINNING.

CONTAINING 97,984 SF OR 2.25 ACRES

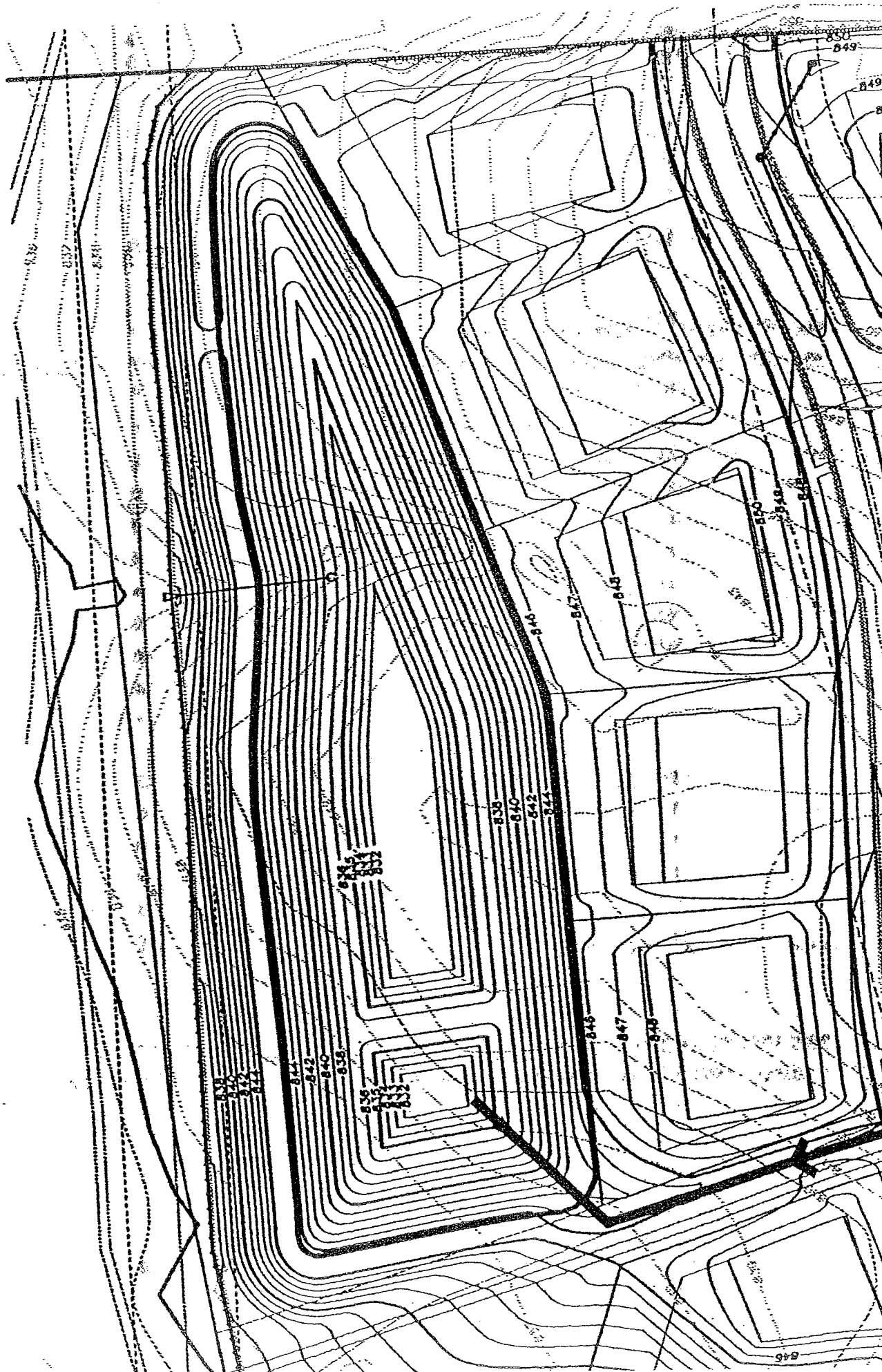


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9 JAN 125

EXHIBIT "D"





APPENDIX B
BUTLER'S GARTERSNAKE CONSERVATION PLAN FOR THE
SPENCER'S PASS RESIDENTIAL DEVELOPMENT

BUTLER'S GARTERSNAKE HABITAT RESTORATION & MANAGEMENT PLAN
CEDARBURG SCIENCE, LLC PROJECT # WRB-0217-05-01

The Spencer's Pass Subdivision is a residential development proposed for two agricultural parcels. Suitable habitat for the state-threatened Butler's Gartersnake has been identified on-site by the Wisconsin Department of Natural Resources (WDNR). Approximately 3.5 acres of habitat will be impacted by the development—1.0 acre of habitat is proposed to be directly impacted by the development of a road and stormwater detention basins, and approximately 2.5 acres of habitat is to be isolated from other snake habitat (and therefore effectively lost) by road development (Figure 2). To mitigate for this loss, approximately 8 acres of habitat (termed 'Preserved Areas' in this report) will be created, restored, and/ or managed in perpetuity in a conservation easement. Of this, approximately 4.3 acres will be created as new suitable snake habitat (New Snake Habitat), approximately 2.4 acres of habitat will be restored (Enhanced Habitat), and approximately 1.3 acres of habitat will be managed for woody invasive species (Managed Habitat; Figure B1). This restoration and management plan includes guidance for restoring and managing the vegetation in the Preserve Areas.

The Preserve Areas largely consist of fallow agricultural land, although a drainageway divides the western New Snake Habitat in two. The agricultural land has lay fallow for approximately one year and is dominated by a variety of weedy annual species. The drainageway contains low quality habitat as it is dominated by the invasive reed canary grass. North of these areas is a riverine fresh (wet) meadow wetland associated with the Fox River. Active agricultural land occurs to the east and west of the Preserve Areas and the proposed development occurs to the south.

There are three defined areas for which this plan outlines restoration and management measures to be conducted. These areas include: (1) the Enhanced Habitat; (2) the New Snake Habitat; and (3) the Managed Habitat.



RESTORATION AND MANAGEMENT RECOMMENDATIONS

With respect to the goal of restoring and managing the subject site for Butler's Gartersnake habitat, a multi-faceted approach is recommended. The components of the recommended plan are: 1) revegetation within the temporarily disturbed Enhanced Habitat; 2) habitat creation within the New Snake Habitat; 3) invasive woody species control within the Managed Habitat; and 4) follow-up monitoring and maintenance.

Planting Plan

The recommended planting plan involves seeding both the New Snake Habitat and the Enhanced Habitat with a native prairie grass seed mix (Table 1; Figure B1). This native mix contains species that occur naturally and thrive with minimal to no long-term management. The seeding areas should be planted with the appropriate seed mix at a rate of 7.0 pounds pure live seed (PLS) per acre; *Carex vulpinoidea* should be seeded only in the wetter areas of the habitats, as determined by an ecologist. The origin of all seed shall be of local genotype (from within a 100-mile radius of the subject site if possible).

Table 1. Recommended Prairie Grass Seed Mix*.

Scientific Name	Common Name
<i>Bouteloua curtipendula</i>	side oats grama
<i>Carex vulpinoidea</i>	brown fox sedge
<i>Elymus canadensis</i>	Canada wild rye
<i>Schizachyrium scoparium</i>	little bluestem
<i>Festuca obtusa (subverticillata)</i>	fescue

* If any of these species are unavailable by the nursery, consult with Cedarburg Science and Bob Hay at WDNR for appropriate substitutions.

These plantings will occur in Spring or Fall 2005, depending upon when grading activities are completed. All seeding efforts should be completed no later than November 15, 2005. No seeding should occur between July 1, 2005 and October 15, 2005.

The seedbed should be prepared properly to insure an adequate planting bed for the native seed. The following steps should be followed:

- A depth of at least 6 inches of organic topsoil should be verified prior to seeding. If areas are found to contain less than the minimum requirement, additional topsoil should be placed over those areas.



- In the areas that are currently fallow agricultural land (i.e., New Snake Habitat), one to two herbicide treatments with a general glyphosate herbicide such as Roundup should be made in order to rid the area of weeds.
- Prior to seeding, the top 4-6 inches of the soil surface should be disked to loosen the soil, break up soil clods, and provide a uniform texture to the soil. All medium to large cobble (greater than 1 inch) and woody debris should be removed from the seeding areas.
- Seeding should occur immediately following the seedbed preparation.

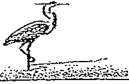
The seed mix should be mixed with moist sand or sawdust at a 10:1 ratio (10 parts sand or sawdust to 1 part seed) to obtain an even distribution of the seed and help to hold it in place. The seed can be mechanically or hand-broadcast and raked lightly (using a leaf rake, or equivalent) to ensure even distribution of the seed and good soil-to-seed contact. However, the seed should not be raked into the soil deeper than ½-inch from the soil surface. Seed should be sown when rain is forecast within 24 hours of the seeding to aid in providing soil-to-seed contact. If not, watering should be considered immediately following the seed application.

In addition to the proper seed mixes, a cover crop shall also be mechanically or hand-broadcast over the entire seeding areas at a rate of 30.0 pounds per acre. Annual oats (*Avena sativa*) should be used as the cover crop if the site is seeded prior to September 15, 2004. If the seeding occurs after September 15, 2004, winter wheat (*Triticum aestivum*) should be seeded.

The seeded areas should then be covered with erosion control materials—clean straw mulch should be used in areas of gradual grade (greater than 1:6 slopes) and a wildlife-friendly erosion control blanket (such as North American Green products S75BN or S150BN) should be used on slopes with a grade less than 1:6. It is very important that the contractor use clean mulch free of any weed seeds. Any germinating weed seeds (such as Canada thistle) within the straw mulch could out-compete the target species that are planted thus reducing the germination rate of the seeded species. This reduced germination rate would be an indicator of a failed restoration.

Initial Management of Seeded Areas in the Preserve Areas

A crucial component to preserving the subject site involves invasive species control during the first few growing seasons. Annual weeds will likely be the first plants to appear. The New



Snake Habitat and Enhanced Habitat should be mowed with a flail or sickle to cut weeds off before they set seed (late spring - summer). The following steps should be taken in order to minimize snake mortality from mowing:

- 1) Mowing should be done in a patch rotation, with no more than 33% of the available grassland habitat affected in any one year. Since the available grassland habitat extends well beyond the managed area where mowing may be performed, it is likely that the entire managed area may be mowed (where necessary) in any given year. Cedarburg Science, or another qualified restoration ecologist should determine where mowing may be beneficial for weed control each year, and follow the below snake guidelines when used.
- 2) Mowing should be performed when weather conditions are most likely to avoid snake activity (during the hottest period of the day when sunny conditions prevail and air temperatures exceed 80° F, or on very cool, overcast days when temperatures are below 50° F.
- 3) Mower blades should be set at a minimum of 10 inches off the ground, since grasses maintained under 8 inches are less likely to provide useful habitat for this species.

Other control measures, such as herbicide applications, may be needed if mowing does not sufficiently reduce weed coverage. The type and amount of control needed should be determined by Cedarburg Science, or another qualified ecologist, during the annual monitoring, but must comply with the Butlers gartersnake management protocols. As the native grasses grow and spread, thereby reducing the amount of bare soil, weeds should decline significantly.

Fire management is the best method for long term management. It usually takes two-to-three years before enough fuel accumulates to sustain a fire. Burn the plantings as soon as fuel conditions allow, using the directions that follow. If burning is not feasible, mow the plantings each year as described above for the first three years to prevent weed spread and keep the seed bed open to sunlight. After the third year, mowing should only be performed in order to address a weed problem in a specific area, as determined by a qualified ecologist. During the burning/mowing management, alternate seasons when you burn or mow to mimic a natural disturbance regime. This also improves seedling establishment. After several years, the planted areas should be able to manage themselves with an occasional burn or mow every 2-3 years to control weeds and keep the area open to sunlight.



Prescribed burning should be performed within the Butler's Gartersnake habitat only during the hibernation period, which generally runs from November 1 through late March. Warm temperatures in the early spring encourage early snake emergence and warm temperatures in late fall can delay the onset of hibernation; conversely, cool weather can shorten activity periods for snakes in both spring and fall. Therefore, seasonal variations should be considered when making a determination as to whether or not to burn in mid-to-late March or in early November. The following information should be used to determine when burns outside of the recommended window are acceptable:

- Spring: If daytime highs have been regularly below 50° F and/or frost is still evident in the ground, burns in early April may be conducted. To check for frost, insert a metal probe in several places at the wetland/upland interface (just outside the ordinary high water mark, but not in the wetland).
- Fall: If daytime highs have been regularly below 50° F for several consecutive days and the day of the burn has similar temperatures (high in 40's) burns may be conducted in October.

Invasive Species Management in the Preserved Areas

Invasive species management is also vital to preserving and managing Butler's Gartersnake habitat in the Preserved Areas. Invasive species to be targeted for control include *Lonicera* spp. (bush honeysuckle), *Rhamnus cathartica* (common buckthorn) and *Rosa multiflora* (multiflora rose). It should be noted that many of the management techniques described below are based on guidance provided by the Wisconsin Department of Natural Resources (*Wisconsin Manual of Control Recommendations for Ecologically Invasive Plants*, published in May 1997).

Bush Honeysuckle, Common Buckthorn, and Multiflora Rose Management

Common buckthorn, multiflora rose, and bush honeysuckle shrubs are scattered throughout the drainageway in the Preserved Areas. These species are to be removed from the drainageway in fall 2005 - early spring 2006. A professional experienced in identifying these species during the dormant season should locate and mark individual shrubs immediately prior to any cutting activities. While there are several techniques available for controlling these targeted invasive species, we recommend the methods described below as they have been found to be the most effective.



The buckthorn, honeysuckle, and multiflora rose shrubs are to be cut at a height no greater than three inches from the ground surface. The cut stumps are to be immediately treated with a 30% active ingredient solution of triclopyr that is formulated for oil dilution (e.g. Garlon IV). It is important that the herbicide be applied with a small brush or wick applicator to each cut stump within 30 seconds following the cutting of the stump. If more than 30 seconds pass, the stump should be re-cut followed by immediate application of the herbicide. A small brush, sponge applicator, or wick applicator is required to maintain control of the herbicide application and prevent splashing on adjacent vegetation. Spray applicators should not be used for applying herbicide to the stumps.

All shrub cutting and herbicide application should be performed when the air temperature is above freezing (preferably above 40° F). All cut woody vegetation is to be removed from the site and properly disposed of off-site by the contractor.

All remaining stumps are to be left intact and not grubbed out. This will minimize damage to the surface soil and established vegetation. More importantly, as these stumps begin to decompose, they may provide suitable subsurface cavities for Butler's Gartersnake hibernation.

Follow-up Monitoring and Maintenance

Success of the restoration efforts outlined above can only be measured by conducting follow-up monitoring. Restoration and habitat management success will be based on seed germination and success of the invasive species control.

Monitoring Planted Areas

The seeded areas should be monitored annually for 5 years, and a brief letter report should be submitted annually to the Homeowners' Association and the WDNR. Monitoring should occur between June 1 and September 1, although monitoring during the first growing season following the restoration (i.e. 2006) should occur no earlier than July 1, 2006 to allow adequate time for the seeded vegetation to germinate.

Extensive vegetation monitoring is not essential during the annual monitoring; however, some limited quantitative monitoring should be employed to ensure that the plantings did not fail. The



quantitative sampling should yield two parameters: percent cover of represented species and species composition of the seeded areas.

A primary goal of this project is to restore the disturbed areas to a community dominated by native vegetation. The goal of the seeding is therefore to have at least an 80% germination rate of the seeded plant species. This may be difficult to achieve because the seeding area currently contains and is surrounded by, many aggressive, invasive herbaceous species such as Kentucky blue grass and reed canary grass. Kentucky blue grass and reed canary grass are utilized to some extent by Butler's Gartersnakes, however, so the presence of these species should not compromise habitat suitability unless they become dominant and reduce the overall structural diversity of the ground flora community. As such, if it is determined that an 80% germination rate of the seeded species has not been achieved at the end of the 5-year monitoring period, further assessment of the area should be made to determine whether or not suitable Butler Gartersnake habitat has been re-established.

Long Term Management Guidance for Butler's Gartersnake Habitat

(This guidance may be periodically updated by the Wisconsin Department of Natural Resources)

Periodic maintenance is needed for maintaining native wetland, grassland, prairie, or savanna ecosystems as suitable habitat for Butler's Gartersnakes. The management objective is to maintain good ground cover of native grasses and other herbaceous plants, which provide cover for snakes. These plants require relatively open canopy conditions for sufficient sunshine. Therefore, periodic control of excessive growth of woody shrubs and trees must be performed. While such woody growth is in part a natural succession, such open communities were maintained naturally by grazing and fire. In addition, several invasive species can compromise habitat quality, and should not be allowed to form large stands (i.e. reed canary grass, cattail, giant reed grass). These guidelines are meant for maintaining already good quality habitat, rather than as a plan for eradication of large stands of invasive species. If there are major invasive species problems on site, a qualified restoration ecologist should be consulted.

For general maintenance and control of woody vegetation, any of the following methods may be used on a rotation of once every 3-5 years:



1. **Selective Brush/Tree-Cutting:** This is the preferred method for small scale, general maintenance. Selective cutting (i.e. chain saw) may be done without restriction. Herbiciding of cut stems immediately after cutting is recommended as per label instructions (i.e. glyphosate, see also DNR guidelines for herbicide use online).
2. **Burning:**
 - a. If burning will be done between November 6 and March 15, there are no restrictions.
 - b. If burning will be done between March 16 and November 5, then only up to 25% of the available grassland habitat for that site should be burned in any one year.
3. **Mowing/Haying:** Herbaceous mowing and brush-mowing should be done as follows:
 - a. If mowing will be done between November 6 and March 15, there are no restrictions (for brush, this time frame is generally feasible).
 - b. If mowing needs to be performed between March 16 and November 5 in order to address a specific weed problem (as determined by Cedarburg Science or another qualified ecologist), then:
 - i. Conduct mowing in small patches in a rotational pattern, with no more than 33% of the available grassland habitat on the site affected in any one year.
 - ii. Mower blades should be set a minimum of 8 inches off the ground.
 - iii. Conduct when weather conditions are most likely to avoid snake activity:
 1. During the hottest period of the day when sunny conditions prevail and air temperatures exceed 80°F, OR
 2. On very cool, overcast days when temperatures are below 50°F
4. **Grazing:** Light-to-moderate grazing (<1.0 head per acre) may be used in rotations among habitat patches, with no more than 33% of the available habitat on the site grazed in any one year. Grazing should be discontinued in a patch as soon as 50% of the grasses and forbs in a grazed patch are cropped to 8 inches in height.



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

January 31, 2007

Tomich Investments III, LLC
N8 W22520-L Johnson Drive
Waukesha, WI 53186

Attn: Carl Tomich

**Re: Spencer's Pass East Subdivision-
Storm Water Detention & Playground Maintenance and Street Lighting Agreements
Stormwater Detention Basin, Utilities, Storm Sewer, Sanitary and Landscaping
Maintenance Easements
Tax Key No. 00116.998**

Dear Carl,

Please find enclosed original signed copies and a recorded copies of the above mentioned Easements and Agreements for the Spencer's Pass East Subdivision for your records. It contains recording information showing proof of recording by the Waukesha County Register of Deeds.

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
Administrative Assistant III
Engineering Services

Enclosures

Cc: Arlyn R. Johnson, Director of Engineering Services
Jonathan M. Bretl, Civil Engineer I
~~Easement Acquisition File~~
Vault