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3449692

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



WC3449692-024

DOCUMENT TITLE

STORM WATER  
DETENTION BASIN AND  
PLAYGROUND  
MAINTENANCE AGREEMENT

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

## 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 1/4) 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

**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

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 to 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 2006

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

→ signed this 21 <sup>st</sup> day of November, 2006.

Tomich Investments III, LLC

By: 

Carl P. Tomich, Managing Member

State of Wisconsin )

) SS

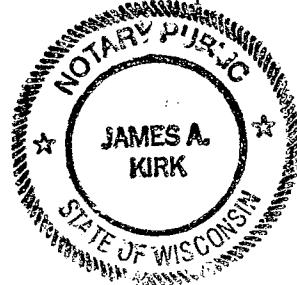
County of Waukesha )

→ Personally came before me this 21 <sup>st</sup> 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.

  
Notary Public

Waukesha County, Wisconsin

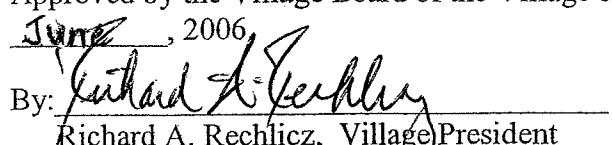
My Commission Expires on 3/29/09

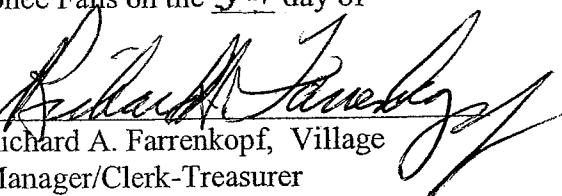


Village of Menomonee Falls

Approved by the Village Board of the Village of Menomonee Falls on the 5<sup>th</sup> day of

June, 2006

By:   
Richard A. Rechlicz, Village President

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

This instrument was drafted by:

Jonathan Bretl  
Civil Engineer  
May 31, 2006



0000012 JAN 125

**Exhibit "A"**

3 JAN 125

**VICINITY SKETCH**  
SECTION 29, T8N, R20E

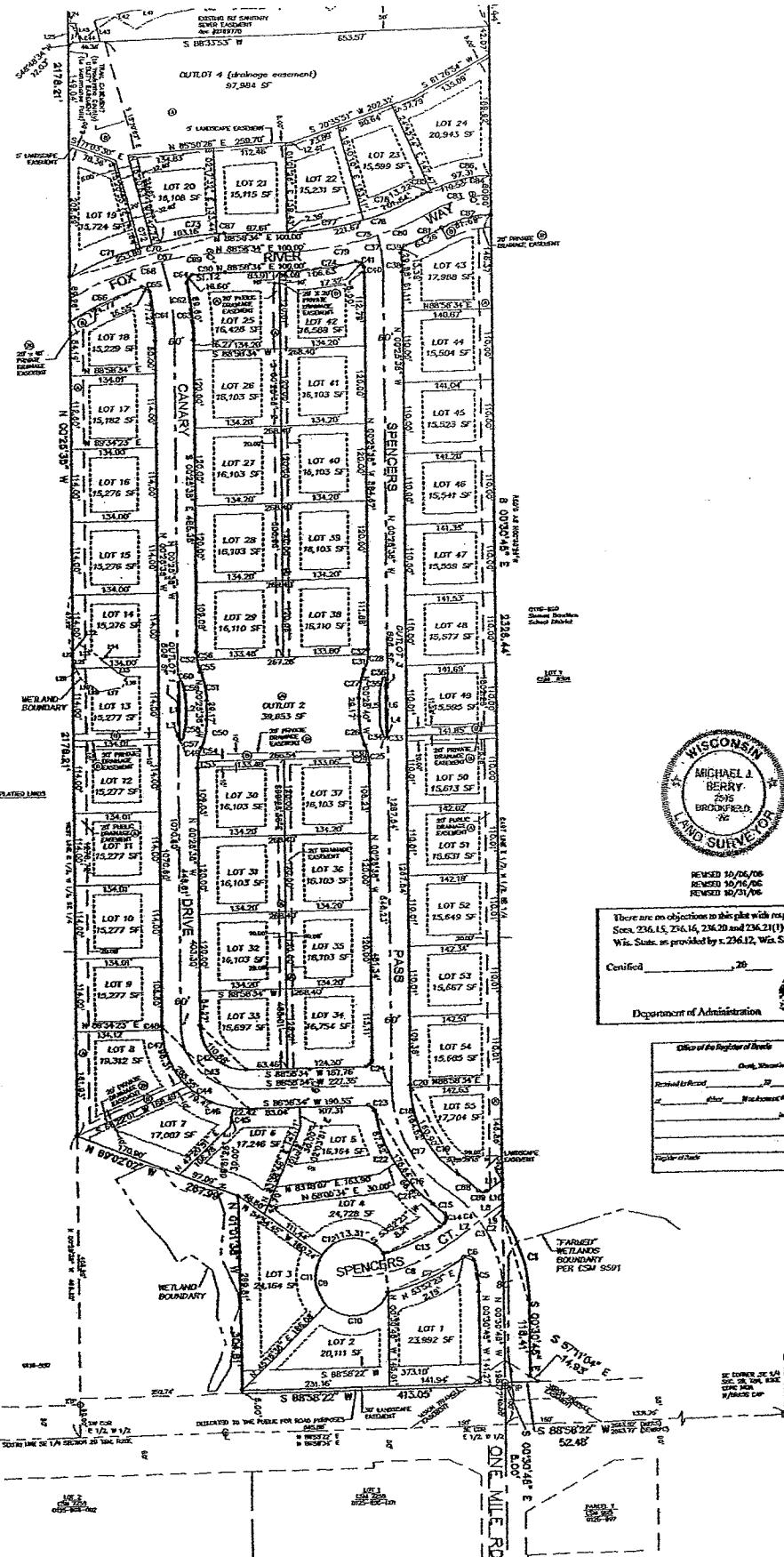
SECTION 29, T8N, R20E

## SPENCER'S PASS EAST

BEING PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 6691 AND LAND IN THE  
NORTHWEST 1/4, SOUTHWEST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF  
SECTION 29, TOWN 8, NORTH, RANGE 20, EAST, IN THE VILLAGE OF MELBOURNE  
FALLS, WISCONSIN COUNTY, WISCONSIN.

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

- o - INDICATES A 2.375"X16" IRON PIPE WEIGHING 3.65 LBS/FT, SET
- o - INDICATES IRON PIPE FOUND ALL OTHER CORNERS ARE MONUMENTED BY A 1"X16" IRON PIPE WEIGHING 1.68 LBS/FT.



THIS INSTRUMENT DRAFTED BY MICHAEL J. BERRY, RLS S-2545

SHEET 1 OF 3





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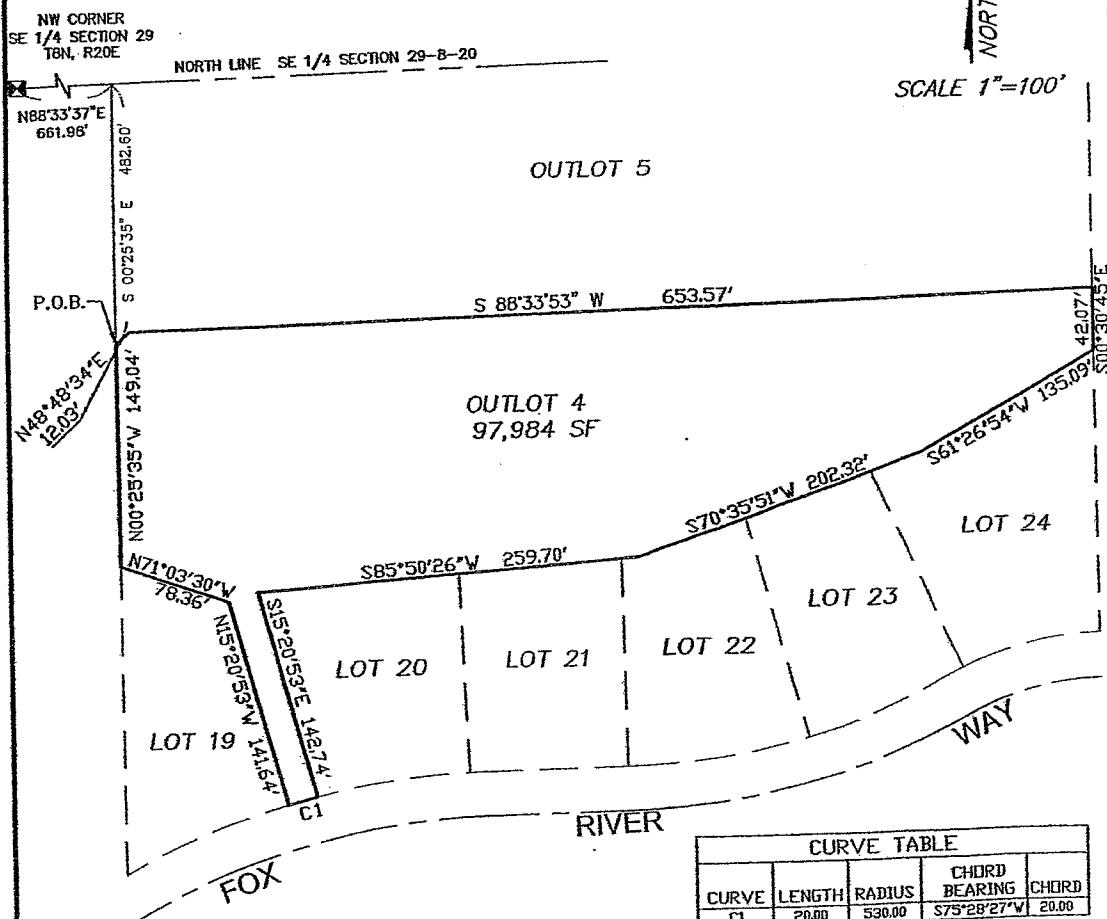
# EASEMENT EXHIBIT "B"

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP B NORTH, RANGE 20 EAST IN THE 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



CAPITAL SURVEY & ENGINEERING  
11430 W BLACKHOUND ROAD, SUITE 11  
WAUWATOSA, WISCONSIN 53226  
TEL: (414) 302-4590  
FAX: (414) 302-5905  
WWW.CAPITOLSURVEY.COM



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

**EASEMENT EXHIBIT "B"**

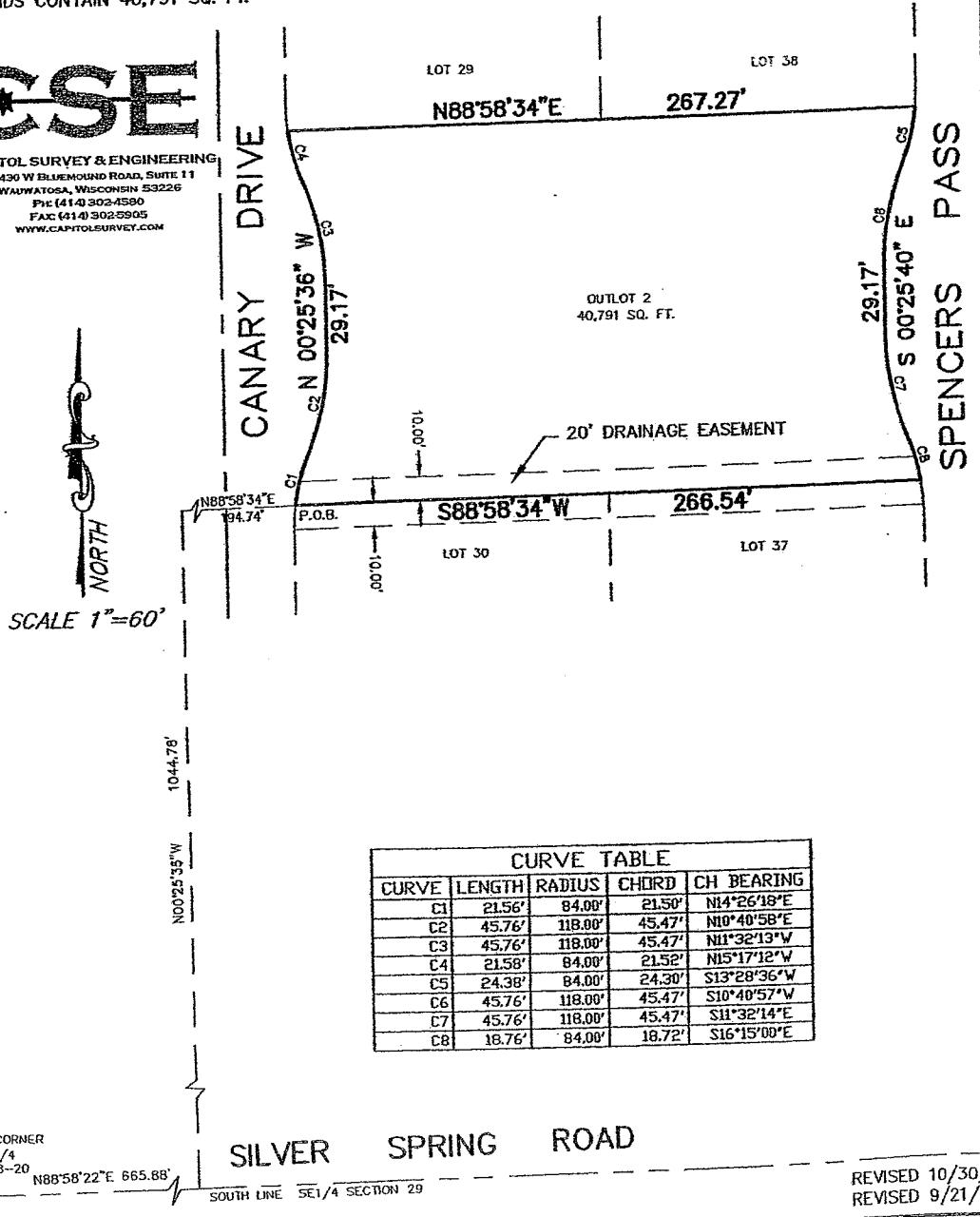
PART OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 29, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONIE FALLS, WAUKESHA COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS;

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.



**CAPITAL SURVEY & ENGINEERING**  
11430 W BLUEMOUND ROAD, SUITE 11  
WAUWATOSA, WISCONSIN 53226  
PH: (414) 302-4580  
FAX: (414) 302-5905  
[WWW.CAPITOLSURVEY.COM](http://WWW.CAPITOLSURVEY.COM)



CURVE TABLE				
CURVE	LENGTH	RADIUS	CH'DRD	CH BEARING
C1	21.56'	84.00'	21.56'	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	21.56'	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'

SILVER SPRING ROAD

SOUTH LINE SE1/4 SECTION 29

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

8 JAN 126

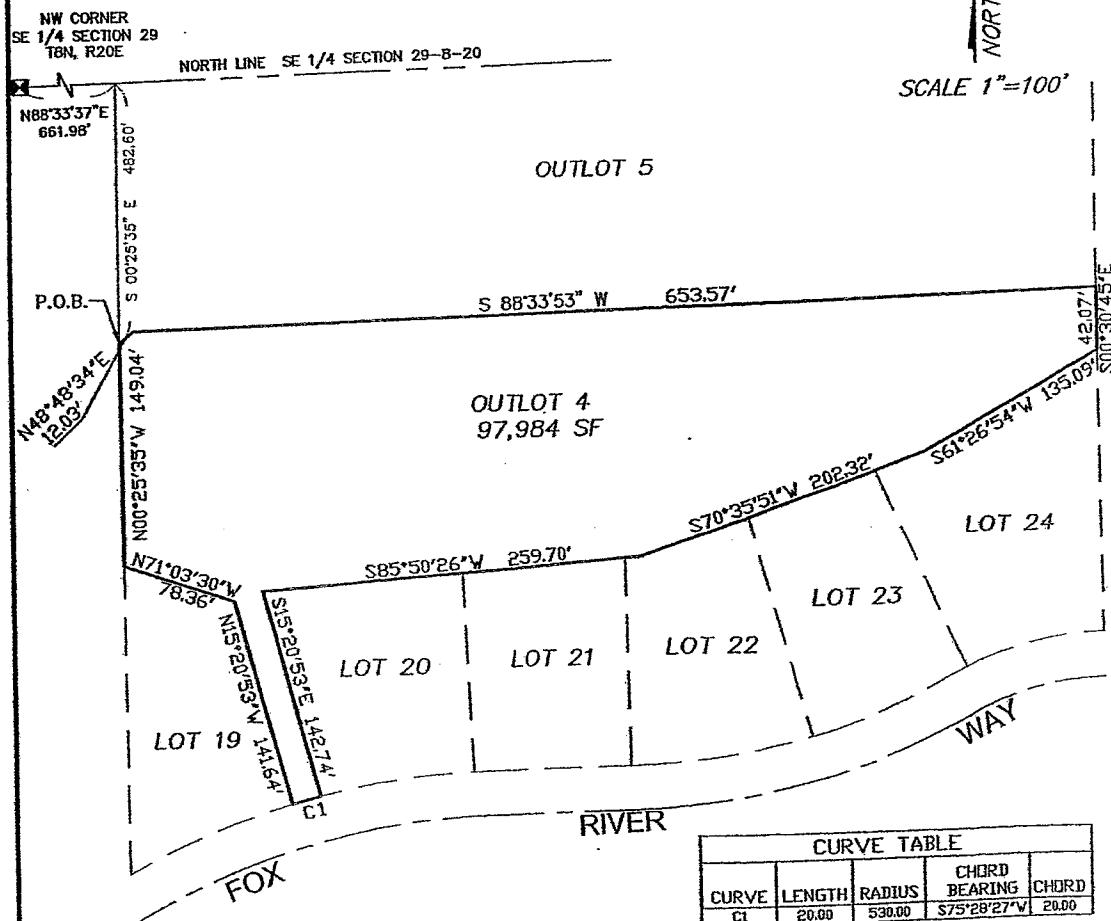
# EASEMENT EXHIBIT "C"

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.

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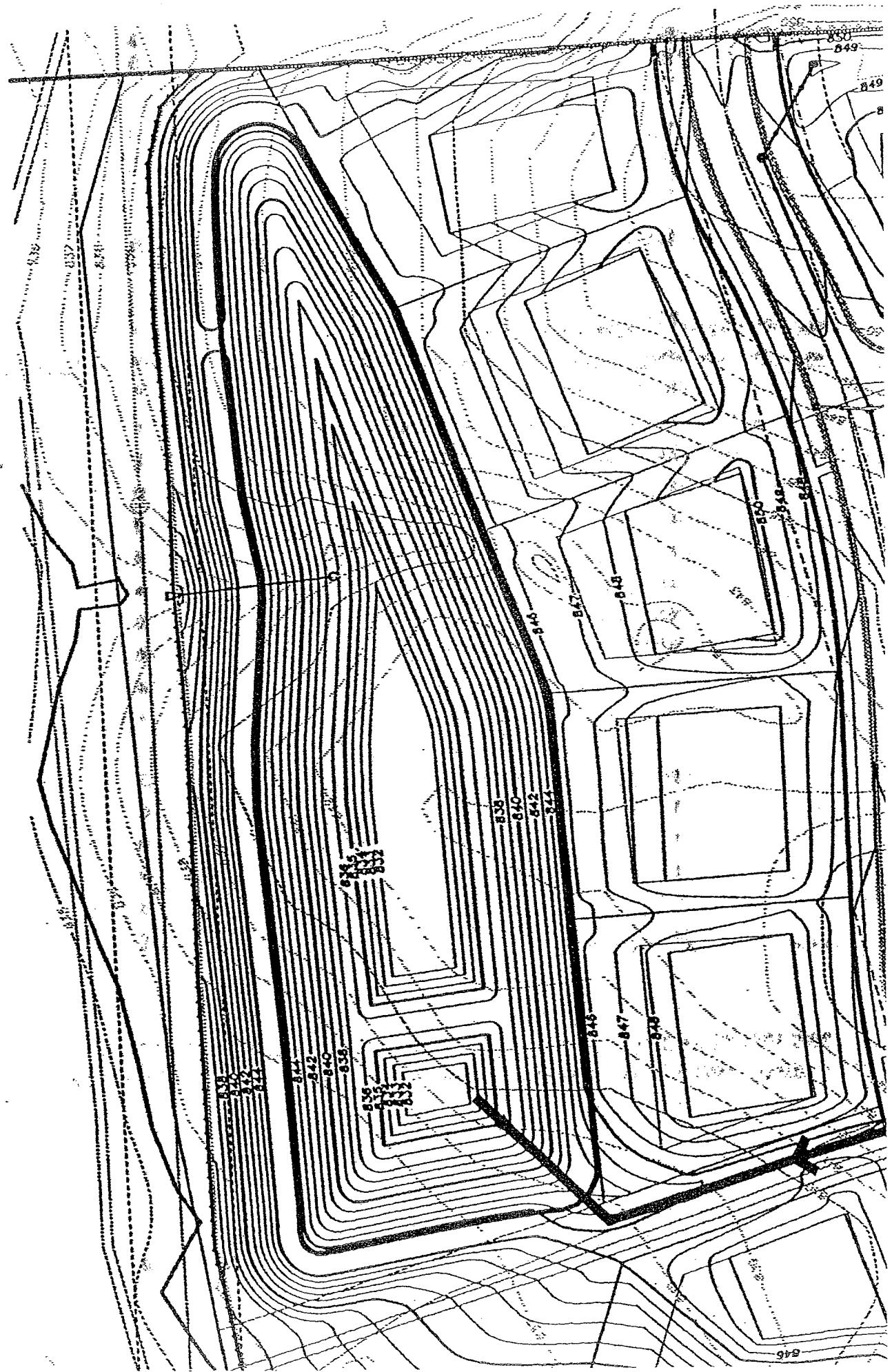
CAPITAL SURVEY & ENGINEERING  
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WAUWATOSA, WISCONSIN 53226  
PH: (414) 302-4580  
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WWW.CAPITOLSURVEY.COM



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

100-1119 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*

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