

DEVELOPMENT AGREEMENT

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REGISTER'S OFFICE
WAUKESHA COUNTY, WI
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MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 106.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 52

Name and Return Address

ATTY JOHN GRAHAM

SEYFARTH SHAW

55 EAST MONROE, SUITE 4200

CHICAGO, IL 60603

Part of MNFV 0014-992

Parcel Identification Number (PIN)

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is entered into as of the Effective Date (as hereinafter defined) by and between HOME DEPOT U.S.A., INC., a Delaware corporation ("Developer") and the VILLAGE OF MENOMONEE FALLS, WISCONSIN, a municipal corporation of the State of Wisconsin, located in Waukesha County (the "Village").

Preliminary Statements:

A. PJB Falls, LLC ("Seller") is the owner of approximately 51 acres of land in the Village located south of the southwest corner of the intersection of Appleton Avenue and County Line Road legally described on Exhibit A-1 attached hereto. Seller and Developer have entered into an agreement by which Seller seeks to sell a portion of this land to Developer consisting of approximately 13.3 acres of land, more or less (the "Property") legally described on Exhibit A-2 attached hereto.

B. In conjunction with the sale of the Property, Seller agreed to subdivide its land. Seller and Developer have submitted for approval by the Village a preliminary certified survey map ("CSM") for the division of the land into a subdivision, a copy of which preliminary CSM is attached hereto as Exhibit B. The preliminary CSM identifies the Property as Lot 2, the lands to be retained by Seller as Lots 1 and 3 and the New Public Road (as hereinafter defined). For purposes of this Agreement, the lands comprising Lots 1-3 (both inclusive) and the New Public Road on the CSM are sometimes collectively referred to herein as the "Subdivision."

C. Developer desires to acquire the Property to develop it for commercial purposes. The Property is presently zoned C-4, Suburban Retail Business, which zoning classification allows such development.

D. One of the purposes of this Agreement is to avoid the harmful effects of premature land development, which leaves land undeveloped and unproductive, while at the same time making possible the further development of the Property, which cannot be developed under Village Ordinances unless and until the Improvements (as hereinafter defined) are constructed.

E. The Village's budget and public works schedule do not include the installation of improvements that are reasonably necessary and required for the proposed development of the Property. There thus would be a substantial delay in the construction and installation of such improvements but for this Agreement. Also, the proposed development of the Property would impose substantial burdens upon the Village, which can appropriately be mitigated by this Agreement.

F. Section 236.13(2)(a) of the Wisconsin Statutes provides that as a condition of plat or CSM approval, the Village may require a subdivider or developer to make and install or to have made and installed any public improvements that are reasonably necessary or to execute a surety bond or provide other security to ensure that those improvements will be made within a reasonable time.

G. Section 236.13(2)(b) of the Wisconsin Statutes provides that the acceptance of dedication of public streets, alleys or other ways may be conditioned upon the construction of such improvements according to Village Specifications and without cost to the Village.

H. Section 236.45(2) of the Wisconsin Statutes empowers the Village to adopt ordinances governing the development of land that are more restrictive than the provisions of Chapter 236 of the Wisconsin Statutes, and the Village has done so.

I. In addition, Chapter 94 of the Municipal Code of the Village of Menomonee Falls regulates division of land within the Village and provides that approval of a final CSM by the Village Board shall be conditioned upon installation of all applicable improvements required by Chapter 94 or in the alternative upon the execution of a contract between the Developer and the Village with sufficient sureties to ensure the installation of all applicable improvements required by Chapter 94.

J. Developer has agreed to develop the Improvements within the portions of the Subdivision herein described in accordance with the terms of this Agreement. Developer and the Village now desire to enter into this Agreement to fulfill the foregoing statutory and ordinance requirements, upon and subject to the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing Preliminary Statements and the mutual promises and covenants contained herein, Developer and Village hereby agrees as follows:

1. **Definitions.** For purposes of this Agreement, the following terms shall have the meanings set forth below:

A. "CUP" shall mean and refer to the final Conditional Use Permit approved by the Village in connection with the Project;

B. "Governmental Authority" or "Governmental Authorities" shall mean and refer to individually or collectively, as the context requires, all applicable governmental or quasi-governmental boards, commissions, agencies, departments, divisions, bureaus or authorities having jurisdiction over the construction of the Improvements;

C. "Improvements" shall mean, collectively, the Public Improvements and the Private Improvements required under this Agreement and described on **Exhibit C-1** attached hereto;

D. "Legal Requirements" shall collectively refer to all applicable federal, state and local laws, codes, ordinances and statutes issued or adopted by Governmental Authorities related to the construction of the Improvements including, without limitation, the CUP (or any other Village approvals or conditions of development related to the Project) and the Village Standards, all of which are in effect as of the date this Agreement is fully executed by the parties hereto;

E. "New Public Road" shall collectively mean and refer to the new road identified on the attached preliminary CSM as "Thunder Ridge Drive" to be built by Developer and dedicated to the Village as provided herein, together with the extension of Bancroft Drive from its existing terminus to Thunder Ridge Drive;

F. "Plans" shall mean and refer to the final plans and specifications for the Improvements approved by the Village and identified on **Exhibit C-2** attached hereto;

G. "Private Improvements" shall mean and refer to the remainder of the Improvements (exclusive of the Public Improvements) consisting of the storm water management system, erosion control and landscaping to be installed by Developer on or immediately adjacent to the Property in connection with the development of the Project, all as more particularly described in the Plans and this Agreement;

H. "Project" shall mean and refer to the commercial development of the Property contemplated by Developer;

I. "Public Improvements" shall mean and refer to the portion of the Improvements located in the Subdivision (but not on or directly related to the Property) to be built or paid for by Developer and which are to be dedicated to the Village in accordance with the terms of this Agreement (including, without limitation, the New Public Road, Public Sidewalks, Public Street Signs, Public Street Lights, Public Sanitary Sewer, Public Water Main, Public Storm Sewers, Public Erosion Control Measures and Public Landscaping (as those terms are hereinafter defined)), all as more particularly described in the Plans and this Agreement;

J. "Security Provider" shall mean and refer to the surety, issuer or holder of the financial guarantee provided to the Village pursuant to this Agreement; and

K. "Village Standards" shall mean and refer to all of the Village standards, specifications, requirements and guidelines in effect as of the date this Agreement is fully executed by the parties hereto which regulate the design and construction of the Improvements as more particularly identified on Exhibit C-3 attached hereto.

2. Improvements.

A. Pre-Construction Certification. Prior to the start of construction of the Improvements, the Developer shall provide the Village with written certification from the Developer's Engineer, Landscape Architect, Surveyor and/or other consultants that the Plans (or portions thereof prepared by such consultant) conform with all applicable Legal Requirements.

B. New Public Road and Public Sidewalks. The Developer hereby agrees as follows:

1. Developer shall grade and surface the New Public Road including, without limitation, the construction and installation of curb and gutter or such other facilities necessary to provide adequately for surface water drainage and safety of the public as shown on the Plans.

2. Construction of the New Public Road shall include the installation and/or reconstruction of roads, streets, and drainage facilities in adjacent and abutting rights of way as shown on the Plans to accommodate the Subdivision and to provide suitable transitions into such adjacent and abutting rights of way from the Property and from the Subdivision.

3. Developer shall install five foot (5') concrete sidewalks along the New Public Road as shown on the Plans (the "Public Sidewalks").

4. With the exception of the bituminous concrete surface course for the New Public Road, the New Public Road and the Public Sidewalks will be completed in accordance with the terms of this Agreement before any final occupancy permit is issued for the Property. However, notwithstanding the previous sentence (i) in no case shall the New Public Road and the Public Sidewalks be completed later than one year from the date Developer acquires fee title to the Property or the date Developer receives the building permit for the Improvements, whichever is later, and (ii) the finished bituminous concrete surface course for the New Public Road shall be completed no later than twenty-four (24) months from the date this Agreement is fully executed by the parties hereto. For purposes of determining when Improvements to be built by Developer pursuant to this Agreement are completed for purposes of this Agreement, Developer acknowledges that the term "completed" shall mean accepted by the Village Engineering Department as having been completed in accordance with the terms of this Agreement including, without limitation, the Plans and all applicable Legal Requirements (including the Village Standards).

5. Developer shall maintain or cause to be maintained the New Public Road, including snowplowing, until the New Public Road is accepted by formal action of the Village Board.

6. If construction of a building on the Property begins prior to acceptance of the New Public Road by the Village Board, the Developer shall construct and maintain in serviceable condition a gravel access road to the building site. This access road is intended to be used for material deliveries and for emergency vehicle access to the building site.

7. In addition to any obligations imposed by in any other provision of this Agreement, the Developer shall have ultimate responsibility for cleaning up any and all mud, dirt, stone or debris on the New Public Street until such time as the New Public Street is accepted by the Village Board, and shall also clean up any adjacent streets thereto affected by Developer's construction activities. Should it come to the attention of the Village that such streets have not been kept free of mud, dirt stones or debris as required by this section or any other provision of this Agreement, the Village shall notify the Developer in writing. If the Developer thereafter fails to clean up the mud, dirt, stone or debris within twenty four (24) hours (or such lesser time as is appropriate under the circumstances if an emergency situation exists as determined by the Village) following telephonic notice from the Village to Developer's contractor, then the Village shall have the option, at its discretion, to take whatever action it deems necessary to remedy the situation. If Developer fails to reimburse the Village for all costs and expenses incurred by the Village in so cleaning up said streets within thirty (30) days after the Village bills Developer therefor, the Village shall have the right to impose a special charge against the Property under Section 66.0627 of the Wisconsin Statutes in an amount equal to the total amount of any costs so incurred by the Village.

C. Sanitary Sewer.

1. As part of the Public Improvements, Developer shall construct, install, furnish and provide a sanitary sewer through the portion of the Subdivision located within the New Public Road as shown on the Plans (the "Public Sanitary Sewer").

2. The Public Sanitary Sewer shall be designed and installed to the limits of the New Public Road with sizes, slopes and elevations to accommodate the development of adjacent lands as shown on the Plans.

3. Construction of the Public Sanitary Sewer will be completed in accordance with the terms of this Agreement before any final occupancy permit is issued for the Property. However, notwithstanding the previous sentence, in no case shall the Public Sanitary Sewer be completed later than one year from the date Developer acquires fee title to the Property or the date Developer receives the building permit for the Improvements, whichever is later.

4. Upon the Village's inspection, cleaning, televising and acceptance of the Public Sanitary Sewer, Developer shall promptly take all necessary actions to connect and otherwise render the Public Sanitary Sewer usable. The Village will complete the cleaning and televising of the Public Sanitary Sewer at the Developer's cost.

D. Water.

1. Developer shall construct, install, furnish and provide water main and related appurtenances through the portion of the Subdivision located within the New Public Road as shown on the Plans (the "**Public Water Main**").

2. The Public Water Main shall be designed and installed to the limits of the New Public Road with sizes to accommodate the development of adjacent lands as shown on the Plans.

3. Construction of the Public Water Main will be completed in accordance with the terms of this Agreement before any final occupancy permit is issued for the Property. However, notwithstanding the previous sentence, in no case shall the Public Water Main be completed later than one year from the date Developer acquires fee title to the Property or the date Developer receives the building permit for the Improvements, whichever is later.

4. Upon the Village's inspection, water sampling, testing and acceptance of the Public Water Main, Developer shall promptly take all necessary actions to connect and otherwise render the Public Water Main usable. The Village will complete the inspection, testing and sampling of the Public Water Main at Developer's cost.

E. Storm and Surface Water Drainage.

1. The Developer shall construct, install, furnish and provide adequate facilities for storm and surface water drainage throughout the New Public Road and the Property as shown on the Plans. The facilities in the New Public Road (collectively, the "**Public Storm Sewers**") shall consist of a storm sewer within the east-west portion of the New Public Road and a storm sewer within the portion of the New Public Road consisting of the Bancroft Drive extension, all as shown on the Plans. The detention basins located on the Property are referred to herein as the "**Private Detention Basins**", and the storm water management facilities located on the Property (including the Private Detention Basins) are sometimes collectively referred to herein as the "**Private Storm Facilities**" which, together with the Public Storm Sewers is collectively referred to as the "**Storm Water Management Facilities.**"

2. Storm water detention shall be provided in accordance with the MMSD's requirements and with the Village's Storm Water Management Guidelines. Storm water detention facilities must also comply with the Department of Natural Resources requirements for water quality. All storm water retention and detention basins shall be constructed with an impervious liner including bottom and sides to the 100 year high water elevation, all as shown on the Plans.

3. Developer shall enter into an agreement with the Village to provide for the maintenance of the Private Detention Basins substantially in the form of Exhibit D-1 attached hereto (the "**Storm Water Maintenance Agreement**"), and shall grant to the Village an easement (the "**Storm Water Detention Easement**" which, together with the Storm Water Maintenance Agreement is sometimes collectively referred to herein as the "**Detention Agreements**") substantially in the form attached hereto as Exhibit D-2 which shall provide the Village the right to maintain the Private Detention Basins at Developer's cost if Developer fails to so maintain same in accordance with the terms of the Storm Water Maintenance Agreement. The Detention Agreements shall contain Developer's agreement to hold the Village harmless from

costs, damages, losses, claims, suits, liabilities or awards that might arise, come, be brought, incurred or assessed because of the existence of the Private Detention Basins.

4. Construction of the Storm Water Management Facilities will be completed in accordance with the terms of this Agreement before any final occupancy permit is issued for the Property. However, notwithstanding the previous sentence, in no case shall the Public Storm Facilities be completed later than one year from the date Developer acquires fee title to the Property or the date Developer receives the building permit for the Improvements, whichever is later.

F. Erosion Control.

1. To reduce the amount of sediment and other pollutants leaving the construction site during the development of the Subdivision, all construction shall be in accordance with applicable Legal Requirements including, without limitation, the Erosion Control Code of the Village of Menomonee Falls, the applicable Village Standards and the *Wisconsin Construction Site Best Management Practice Handbook*, all as shown on the Plans. No construction shall commence prior to the implementation of erosion control measures in accordance with the Plans. The erosion control measures related to the Public Improvements shall be referred to herein as the "Public Erosion Control Measures," and the erosion control measures related to the development of the Project shall be referred to herein as the "Private Erosion Control Measures."

2. Developer shall re-turf all unpaved areas disturbed during construction operations in accordance with the more restrictive requirements of the Plans, or the following minimum requirements:

(a) Topsoil: 2" on all building sites within the Property.

(1) 6" on all storm water detention basins.

(2) 4" on all other non-paved areas within and beyond the Property, including street right-of-ways and easements.

(b) Seed, fertilizer and mulch shall be placed in accordance with the Village Standards as shown on the Plans; provided, however, sod or other approved alternative practice shall be placed on all areas subject to erosion as may be required by the Plans.

All such unpaved areas disturbed during construction operations shall be stabilized with topsoil, seed, fertilizer and mulch or sod as provided above and shown on the Plans prior to the issuance of a final occupancy permit for the Property.

3. All "wetland", "conservation" and "preservation" areas, if any, shall be protected from erosion and deposits of sediment and shall not be disturbed by construction or filling unless specifically permitted by the Wisconsin Department of Natural Resources and the Village.

4. All drainage easements, swales and ditches shown on the Plans shall be stabilized with a minimum of four (4) inches of topsoil, seed, fertilizer and Futera erosion blanket or approved equal along and across the entire easement, swale or ditch. More effective measures

may be required in accordance with the calculations set forth in the Wisconsin Best Management Practice Handbook or if there are reoccurring erosion problems.

5. All drainage easements, swales and ditches shown on the Plans shall be constructed and stabilized prior to the issuance of a final occupancy permit for the Property. Developer shall be responsible for the maintenance and restoration of the drainage easements, swales and ditches shown on the Plans until a vegetative growth has been established to the satisfaction of the Village Director of Engineering Services. The Developer shall also be responsible to ensure that the drainage easements, swales and ditches shown on the Plans are not disturbed, changed, relocated or filled.

6. All slopes and/or berms with slopes greater than or equal to 4:1 shall be stabilized with a minimum of four (4) inches of topsoil, seed, fertilizer and Futera erosion blanket or approved equal. Developer shall be responsible for the maintenance and restoration of such slopes and/or berms until a vegetative growth has been established to the satisfaction of the Village Director of Engineering Services.

7. The Private Detention Basins shall be constructed and stabilized prior to the issuance of a final occupancy permit for the Property. All Private Detention Basins shall be stabilized with a minimum of six (6) inches of topsoil, seed, fertilizer and Futera erosion blanket or approved equal. Developer shall be responsible for the maintenance and restoration of the Private Detention Basins in accordance with the terms of this Agreement and the Storm Water Detention Easement.

8. All disturbed areas shall be re-turfed no later than October 15th of the year in which construction begins. Areas under construction after October 15th shall be seeded, fertilized and mulched as soon as possible following the end of construction but within 7 days of the end of active disturbance of the soil surface. These areas shall be properly maintained and shall be re-seeded, if necessary, the following spring before June 15th to assure good vegetative growth, all in compliance with the Village Erosion Control Ordinance.

9. On site screening of salvaged topsoil for sale or to be removed from the project site is prohibited unless specifically allowed by Village Zoning Ordinance.

G. Landscaping.

1. Developer shall furnish and install all landscaping shown on the landscape plan portion of the Plans at no cost to the Village. The landscaping shown on the Plans to be installed on the Property (the "**Private Landscaping**") shall be completed in accordance with the Plans prior to the issuance of a final occupancy permit for the Property. The portion of the Landscaping shown on the Plans located off of the Property, if any, is referred to herein as the "**Public Landscaping.**"

2. In connection with the Public Improvements, Developer shall preserve to the maximum extent possible existing trees, shrubbery, vines, and grasses not actually lying in public roadways, drainageways, building foundation sites, private driveways, soil absorption waste disposal areas, paths and trails by use of sound conservation practices.

3. Developer shall remove and lawfully dispose of all destroyed trees, brush, tree trunks, shrubs, and other natural growth and all rubbish.

H. Street Signs and Street Lights.

1. Street signs, stop signs, and other required signs and posts for the New Public Road shall be installed by the Village Department of Public Works with funds to be provided by Developer. Developer shall pay such amounts to the Village within thirty (30) days after the Village bills Developer therefor.

2. Streetlights adjacent to the New Public Road shall be installed in locations to be determined by the Village. The Village shall obtain a proposal from Wisconsin Electric Power Company to install the street lighting units with funds to be provided by the Developer. Developer shall pay such amounts to the Village (or directly to Wisconsin Electric Power Company) within thirty (30) days after the Village bills Developer therefor, which amount shall include a one-time payment from Developer to the Village as shown on Exhibit F attached hereto to reimburse the Village for the monthly surcharge assessed to the Village by Wisconsin Electric Power Company in connection with their provision of utility service to such street lights.

I. Traffic Signals and Off-Site Road Improvements.

1. Developer has delivered a Traffic Impact Analysis ("TIA") to the Village and Waukesha County (the "County"). The County has scheduled reconstruction of County Line Road (a/k/a County Highway Q) in approximately 2005-2006, at which time the County intends to install permanent traffic signals at the intersection of Bancroft Drive and County Line Road (the "Bancroft Intersection"). The County and Village have approved the recommendations of the TIA related to certain temporary signals and necessary pavement and lane modifications at the Bancroft Intersection (collectively, the "Bancroft/Q Intersection Improvements") as more particularly described as "The Home Depot portion" in that certain letter from the County to Developer dated December 3, 2002, a copy of which is attached hereto as Exhibit G (the "County Letter"), which letter has been reviewed by the Village.

2. Developer shall construct, at its sole cost, the Bancroft/Q Intersection Improvements, which shall be performed in accordance with plans therefor to be approved by the County. Developer's agreements herein do not include its agreement to acquire any necessary right-of-way required to perform the Bancroft/Q Intersection Improvements. Developer shall, at its sole cost, cause final plans for the Bancroft/Q Intersection Improvements to be submitted to the County for review and approval not later than February 28, 2003. Developer shall furnish the Village with a copy of the plans and any revisions thereto and keep the Village reasonably informed of Developer's progress with the County. If the County approves the plans by March 28, 2003, then Developer agrees that the Bancroft/Q Intersection Improvements shall be substantially completed and ready for use to the satisfaction of the County not later than July 31, 2003.

3. If the above specified deadlines are not met, Developer shall not be deemed in default under this Agreement; provided, however, the Village, at its sole discretion, shall have the right to elect to takeover the Bancroft/Q Intersection Improvements and may proceed to complete the Bancroft/Q Intersection Improvements in accordance with the terms of this Agreement and all applicable laws, codes, ordinances, legal requirements and the plans and permits therefor. If the Village elects to takeover the Bancroft/Q Intersection Improvements, then the terms of Section 3(B)(3) of this Agreement shall apply with respect to the costs incurred by the Village in connection therewith and Developer's obligation to reimburse the Village for such costs.

4. In addition to the Village's takeover rights in Section 2(I)(3) above, if the Village determines that Developer's failure to meet the deadlines set forth in Section 2(I)(2) above was caused by the failure of Developer to either diligently cause (i) plans to be prepared, processed, revised and submitted to the County, as the case may be, or (ii) perform (or cause to be performed) the Bancroft/Q Intersection Improvements in accordance with the terms of this Agreement (collectively, a "**Developer Cause**"), then subject to the terms of Section 2(I)(4)(b) below, as the Village's sole monetary remedy (without limiting any reimbursement obligation pursuant to Section 2(I)(3) above), Developer shall be responsible for any and all actual costs incurred by the Village which the Village determines to be necessary or required to handle or control the additional traffic generated by Developer's store on the Property on the Village's roads and streets in the vicinity of the Property (the "**Traffic Control Costs**").

a. The Village and Developer agree that the Traffic Control Costs shall include, but are not limited to, any out-of-pocket, personnel or law enforcement costs actually incurred by the Village for any additional traffic control measures deemed necessary by the Village at any intersection or on any street or road which the Village determines to be required as a direct result of Developer's additional traffic generated following the opening of Developer's store. While the Village estimates that Traffic Control Costs can be approximately One Thousand Five Hundred Dollars (\$1,500.00) per day, this is just an estimate, and in no way limits the Village's right to reimbursement of Traffic Control Costs under Section 2(I)(4) hereof. The terms of Section 3(B)(3) of this Agreement shall apply with respect to the costs incurred by the Village in connection herewith and Developer's obligation to reimburse the Village for such Traffic Control Costs.

b. Notwithstanding anything herein to the contrary, Developer shall not be responsible for the reimbursement of Traffic Control Costs incurred (i) prior to the opening of Developer's store, (ii) following the date the Bancroft/Q Intersection Improvements have been substantially completed, or (iii) if the failure to meet the deadlines set forth in Section 2(I)(2) above (including the completion date) is solely the result of any delay caused by the County, the Village (including delays incurred following the Village's takeover of the Bancroft/Q Intersection Improvements pursuant hereto) or other force majeure event as described in Section 10(D) hereof (collectively, a "**Third Party Cause**"). In addition, if the failure to meet the deadlines set forth in Section 2(I)(2) above is in part the result of a Third Party Cause and in part the result of a Developer Cause, then to the extent there is such a shared delay, Developer acknowledges that nothing in this paragraph shall limit Developer's reimbursement obligation to the Village for an equitable portion of the Traffic Control Costs which are allocable to the Developer Cause as opposed to the Third Party Cause.

5. Developer further agrees to bear sole responsibility for all costs and expenses necessary or required to perform signal and intersection modifications at the intersection of Appleton Avenue and Premier Lane necessitated by the development of the Project (collectively, the "**Appleton Intersection Improvements**"); provided, however, Developer's agreement herein does not include its agreement to acquire any necessary right-of-way required to perform the Q Temporary Signal Work.

6. The Village agrees that the completion of the improvements contemplated in this Section 2(I) shall in no event prevent or delay the issuance of any occupancy permits for the Property or otherwise provide the Village with the right to delay or prevent Developer's store from opening, which opening is currently anticipated to occur on July 31, 2003.

J. Survey Monuments. The Developer shall place and install all survey or other monuments required by statute or ordinance prior to final CSM approval but no later than one year from the date of this Agreement, except that the Village agrees that all monumenting interior to the subdivision may be deferred for a reasonable time, not to exceed one (1) year after the recording of the final CSM. The financial guarantee set forth in subsection III H below includes the sum of one hundred dollars (\$100.00) per lot as a financial guarantee that such monuments will be placed within the time required. Notwithstanding anything in this paragraph to the contrary, Developer acknowledges that its building permit will not be issued until all survey monuments for the Property are complete in place.

K. Utilities (Gas, Electric and Telephone). Plans for the installation of public utilities within or through the right-of-way of the New Public Road shall be subject to the approval of the Village, and the installation of such utilities shall be in accordance with all applicable Legal Requirements (including the Village Standards). Developer shall pay for all costs for the installation of such public utilities related to the construction and operation of the Property.

L. Other Jurisdictions. Any portions of the Improvements to be constructed or installed pursuant to this Agreement which are under the jurisdiction of other Governmental Authorities, such as Waukesha County, the Wisconsin Department of Transportation, the Milwaukee Metropolitan Sewage District, the Wisconsin Department of Natural Resources or the U.S. Army Corps of Engineers, shall be developed in conformance with the requirements of those agencies.

M. Quality of Improvements.

1. All of the Improvements performed under or pursuant to the provisions of this Agreement shall be done in (i) a workmanlike manner in accordance with prevailing standards in the construction industry, (ii) accordance with the Plans, (iii) accordance with all applicable permits therefor, (iv) accordance with all applicable Legal Requirements, and (v) in compliance with the terms of this Agreement.

2. With respect to any Improvements that are not being built in accordance with the terms of this Agreement including, without limitation, all applicable Legal Requirements, the Village shall have the right during the course of construction to direct the issuance of contract change orders to be paid by the Developer, and to amend the Plans, to assure that construction will conform to the terms of this Agreement including, without limitation, all applicable Legal Requirements. Village approval shall be required with respect to any contract change orders proposed by Developer which relate to or affect the compliance of the Improvements with the terms of this Agreement including, without limitation, all applicable Legal Requirements.

N. Existing Structures. Developer shall remove and lawfully dispose of all rubbish, homes, barns, outbuildings, structures, driveways, private water or sanitary sewer systems and any related appurtenances and foundations which are located or found on the Property and other portions of the Subdivision affected by the Improvements.

3. Dedication and Acceptance.

A. Upon Completion by Developer.

1. Subject to all of the other provisions of this Agreement and the exhibits referred to herein, Developer shall, without charge to the Village, upon completion of the Public

Improvements, unconditionally give, grant, convey and fully dedicate (or to the extent required, cause Seller to give, grant, convey and fully dedicate, as the case may require) the same to the Village, its successors and assigns, forever, free and clear of all encumbrances whatever, together with all land and improvements located within the New Public Road including, without limitation because of enumeration, all sewers, mains, conduits, pipes, lines and appurtenances which may in any way be a part of or pertain to the Public Improvements. Dedication shall not constitute acceptance of any Public Improvements by the Village until formal acceptance thereof by the Village Board. The Village shall not accept the dedication of any improvements that do not fully comply with the Plans and all applicable Legal Requirements. Claims of financial hardship by Developer shall not be considered a reason for the Village to accept substandard materials or work (i.e., work that is not in compliance with the terms of this Agreement).

2. When the Village Director of Engineering Services confirms that the Public Improvements have been completed in accordance with the terms of this Agreement and all approvals for the completed Public Improvements, if any, have been received from all applicable Governmental Authorities, the Public Improvements will be formally accepted by the Village Board in the due course of business for the Village without unreasonable delay. A document for formal Dedication and Acceptance shall be recorded with the Waukesha County Register of Deeds. After acceptance of the dedication, the Village shall have the right to connect or integrate other sewer, water or other facilities with those utilities provided under this Agreement as part of the Public Improvements as the Village decides, with no payment or award to, or consent required of, the Developer or Seller; provided, however, such connections shall be allowed pursuant to sound engineering practices so as not to diminish the capacity of any such utility which is available and required to serve the Subdivision.

B. Completion by Village Following Developer Default.

1. If Developer does not complete the Public Improvements, or any portion thereof, within the time periods established in this Agreement, and thereafter fails to complete same within thirty (30) days following the date Developer receives written notice of default from the Village (specifying in reasonable detail the corrective actions required to be taken to cure such default), then the Village shall have the authority to complete the Public Improvements in accordance with the terms of this Agreement and to thereafter take such steps as shall be necessary to complete the dedication process to transfer title to the Public Improvements to the Village.

2. If Developer commences the Private Improvements on the Property and thereafter does not complete the Private Improvements, or any portion thereof, within the time periods established in this Agreement, and thereafter fails to complete same within thirty (30) days following the date Developer receives written notice of default from the Village (specifying in reasonable detail the corrective actions required to be taken to cure such default), then the Village shall have the authority to complete the Private Improvements in accordance with the terms of this Agreement.

3. If the Village exercises its self-help rights pursuant to the terms of this Section 3(b), Developer shall reimburse the Village for all costs incurred in connection with the completion of the applicable Improvements including, but not limited to, materials, construction, legal fees, financing costs, engineering, inspection and administrative costs incurred by the Village directly as a result of Developer's default. The foregoing reimbursement shall be paid within thirty (30) days after the Village bills Developer therefor, which bill shall be accompanied by reasonable supporting documentation. If Developer fails to pay any amounts which are due

within said 30-day period, then the Village shall have the right to look to the Security Provider to satisfy such unpaid reimbursement amount without further notice or opportunity to cure; provided, however, if the Security Provider for any reason fails to satisfy such reimbursement in due course, then in addition to its other remedies, the Village at its sole discretion shall be empowered without notice of hearing, to impose a special assessment upon the Property for the amount of the completion costs, payable with the next succeeding tax roll.

C. **Village Responsibility for Improvements.** The Village shall not be responsible to perform repair, maintenance or snow plowing on or with respect to any Public Improvements until the Village Board has formally accepted the dedication of same in accordance with the terms of this Agreement.

4. **Developer Guarantee.**

A. **Satisfactory Financial Guarantee.**

1. The Developer shall file with the Village Clerk a surety bond, irrevocable letter of credit or other satisfactory financial guarantee payable to the Village as assurance for the faithful performance of and payment for any and all work to be performed pursuant to this Agreement (collectively, the "Financial Guarantee"). The Financial Guarantee shall be approved by the Village Attorney and shall be in the amount identified on **Exhibit F** attached hereto. The amount of the Financial Guarantee shall be sufficient to fund all financial guarantees required under this Agreement.

2. If the Financial Guarantee provided by Developer is an irrevocable letter of credit, Developer shall maintain the letter of credit during the term of this Agreement and the failure to maintain the letter of credit as provided herein shall constitute a default under this Agreement.

B. **Reduction and Release of Guarantee.**

1. From time to time, as work on the Improvements is completed and inspected, and as proper invoices are presented for completed work, the Village may authorize reductions in the amount of the Financial Guarantee held by the Village, in accordance with the Village's current procedures for such reductions.

2. Any Financial Guarantee provided by Developer pursuant to this Agreement shall be in full force and effect and shall not expire until the Village Board has approved or accepted in writing all Public Improvements required to be provided by the Developer pursuant to this Agreement.

C. **Village Remedies upon Developer Default.**

1. If Developer or Developer's contractors (of any tier) fail to pay, satisfy, comply with or perform any term, covenant, condition, provision or agreement contained in this Agreement which are to be paid, satisfied, complied with or performed by Developer and its contractors, and thereafter fails to pay, satisfy, comply with or perform such obligation within thirty (30) days following the date Developer receives written notice of default from the Village (specifying in reasonable detail the unpaid amount required to be paid or the corrective actions required to be taken to cure such default, as the case may be), then the Village, upon the

certificate of the Director of Engineering Services that sufficient cause exists to justify such action, shall have all available rights or remedies including, without limitation, the right to (i) immediately draw upon the Financial Guarantee or seek payment from the Security Provider, as the case may require, with respect to any unpaid amounts, (ii) pursue a claim for its monetary damages directly resulting from Developer's default, and/or (iii) enter the portions of the Subdivision where the Improvements are to be performed and finish the work by whatever method the Village may deem expedient.

2. If the Village exercises its self-help rights pursuant to the terms of Section 4(c)(1)(iii) above, Developer shall reimburse the Village for all costs incurred in connection with the completion of the applicable Improvements including, but not limited to, materials, construction, legal fees, financing costs, engineering, inspection and administrative costs incurred by the Village directly as a result of Developer's default. The foregoing reimbursement shall be paid within thirty (30) days after the Village bills Developer therefor, which bill shall be accompanied by reasonable supporting documentation. If Developer fails to pay any amounts which are due within said 30-day period, then the Village shall have the right to look to the Security Provider to satisfy such unpaid reimbursement amount without further notice or opportunity to cure; provided, however, if the Security Provider for any reason fails to satisfy such reimbursement in due course, then in addition to its other remedies, the Village at its sole discretion shall be empowered without notice of hearing, to impose a special assessment upon the Property for the amount of the completion costs, payable with the next succeeding tax roll.

D. Post-Completion Guarantee.

1. The Public Improvements shall be guaranteed for a period of (1) year following the acceptance by the Village Board of such Public Improvements; provided, however, Developer shall not be responsible for damage to the Public Improvements caused by third party construction activities unrelated to the operation of the Project (e.g., if a future developer's contractor damages the New Public Road, such damage would not be covered by the foregoing guarantee under this Agreement).

2. In order to insure the good quality of materials, workmanship and maintenance of the Public Improvements as required by applicable Legal Requirements and this Agreement, Developer shall, prior to acceptance by the Village Board of the dedication of the Public Improvements, provide a Financial Guarantee(s) in a form or forms approved by the Village Attorney in the amount totaling twenty per cent (20%) of the total installation cost of the Public Improvement as determined by the Director of Engineering Services, for a period of one (1) year after acceptance by the Village Board of the dedication of the Public Improvements.

(a) The Developer may, at its option, in lieu of providing its own Financial Guarantee with respect to some or all of said Public Improvements, provide to the Village a Financial Guarantee (in a form approved by the Village Attorney) from its individual contractors.

(b) Subject to the terms of Section 4(C) hereof and subsection (c) below, the Village shall have access to such funds and the right at its sole discretion to call or draw upon such funds to correct or repair any defect or deficiency if the Developer or Security Provider fail to honor this guarantee to the satisfaction of the Village.

(c) The Director of Engineering Services shall give Developer, the contractor (if the Financial Guarantee is provided by the contractor) and the applicable

Security Provider at least thirty (30) days' written notice and opportunity to cure before calling or drawing upon the Financial Guarantee or acting to correct or repair any defect or deficiency, except that nothing shall preclude the Village in the event of an emergency from acting within a lesser period of time, with or without written notice, to correct or repair any defect or deficiency in any improvement provided pursuant to this Agreement. The Developer agrees for itself and for any contractor it retains to do any work in the Subdivision that the Village at its sole discretion shall determine which events constitute an emergency.

5. Method of Improvement.

A. The Developer shall engage contractors for all work included in this Agreement who are qualified to perform the work.

B. The Developer shall use materials and make the various installations in accordance with the Plans and applicable Legal Requirements.

C. Access to or withdrawal by Developer of all or any part of escrowed or secured funds required under Section 4 of this Agreement shall be permitted only with the approval of the Village.

6. Issuance of Building Permits.

A. No final occupancy permit for the Property shall be issued until all of the Public Improvements have been completed with the exception of (i) the bituminous concrete surface course on the New Public Road, and (ii) any of the traffic signal and off-site road improvements, if any, described in Section 2(I) hereof.

B. If an occupancy permit is issued by the Village prior to acceptance of the dedication of all Public Improvements by the Village, it is understood that the Village will assume no liability for any damages which may occur to the Public Improvements prior to such acceptance, and the Developer agrees that any such damages shall be repaired at its sole expense to the satisfaction of the Village; provided, however, Developer shall not be responsible for damage to the Public Improvements caused by third party construction activities unrelated to the operation of the Project (e.g., if a future developer's contractor damages the New Public Road, Developer would not be responsible for such damage).

7. CSM Approval Procedure.

1. The Village will not execute and deliver the final CSM approved by the Village Board for the Project until all of the following have been completed:

(a) Payment by the Developer of all amounts that are due prior to the execution and delivery of the final CSM, consisting of the sewer impact fees, water impact fees and the platting fees identified on Exhibit F attached hereto;

(b) The date this Agreement becomes effective by way of the execution and delivery of this Agreement by the Village and Developer; and

(c) Upon the filing with the Village Clerk and acceptance by the Village of the applicable Financial Guarantee required pursuant to Section 4 hereof.

Nothing in this paragraph is intended to limit the fees payable by Developer as a condition of issuance of building permits as shown on Exhibit F attached hereto.

2. For purposes of this Agreement, the Village acknowledges that the satisfaction of items (a) through (c) both inclusive in this Section 7 may be accomplished in either of the two following ways, either (i) Developer shall deposit the required payments, Financial Guarantee and executed original counterparts of this Agreement signed by Developer into an escrow (the "Closing Escrow") at Wisconsin Title Services (the "Title Company") to be delivered to the Village at the time of Developer's closing with Seller and acquisition of fee title to the Property (the "Closing"), in which case, the Village shall deposit with the Title Company the final CSM signed by the Village and executed original counterparts of this Agreement signed by the Village to be released into the Closing Escrow for recording in conjunction with the instructions provided to Title Company in connection with Developer's Closing, or (ii) Developer shall deliver the required payments, Financial Guarantee and executed original counterparts of this Agreement signed by Developer to the Village Attorney to be held in trust pending Developer's Closing, in which case, the Village shall deliver final CSM signed by the Village and executed original counterparts of this Agreement signed by the Village either to the Title Company for the Closing or directly to Developer to prior to the Closing, and Developer's deliveries to the Village Attorney shall automatically be released to the Village upon the consummation of the Closing.

8. **Developer Responsibility to Indemnify.**

A. **Compliance with Law and Regulations.**

1. Developer shall, in the performance of this Agreement, comply with and give all stipulations and representations required by all applicable Legal Requirements. Developer shall also require such compliance, stipulations and representations with respect to any contract entered into by Developer with others (pertaining to the work covered by this Agreement) as may be required by all applicable Legal Requirements.

B. **Indemnification Agreement.**

1. In addition to, and not to the exclusion or prejudice of, any other provision of this Agreement, Developer shall indemnify and hold harmless the Village, its officers, agents and employees, and shall defend the same, from and against any and all liability, claims, loss, damages, interest, action, suits, judgments, costs, expenses, attorneys' fees and the like, to whomsoever owed and by whomsoever and whenever brought or obtained, which may in any manner result from or arise in the course of or out of the performance of the work and this Agreement, expressly including though not limited to negligence and the breach of any duty whether imposed by statutes, ordinances, regulations, order, decree or law of any other sort or by contract, on the part of Developer, or its officers, employees, agents, workmen, or independent contractors, in carrying out the work and in supervising and safeguarding the same in any respect whatever, and including claims arising under any federal, state or local law including Worker's Compensation laws. Nothing in this Section 8(B)(1) or Section 8(B)(2) below shall be interpreted to include within the foregoing indemnity (and Developer's obligations in connection therewith) any such matters arising out of the negligent or more culpable conduct by the Village, its officers, agents, employees, workmen or independent contractors.

2. If a claim covered by the foregoing indemnity is made against the Village arising out of the work and/or this Agreement, the Village agrees that it shall, within ten (10) days of its notice thereof, notify the Developer and any liability insurance carrier designated by the

Developer. The Developer shall thereafter provide full cooperation in defense of the claim. The Developer shall, at the option of the Village, defend any such covered claim on behalf of the Village in which case the Developer or its insurer is authorized to act on behalf of the Village in responding to any covered claim to the extent of this indemnity. Such authorization includes the right to investigate, negotiate, settle and litigate any such claim and control the defense thereof.

3. Developer shall, at its expense, obtain and carry (or cause its contractors to maintain and carry) commercial general liability insurance with combined single limits of at least \$1 million for one person and at least \$1 million per occurrence, and at least \$1 million property damage. Such policies shall cover both Developer and the Village and its' agents, employees, and officials, and all insurers shall agree not to cancel or change the same without at least ten (10) days' written notice to the Village. A certificate of Developer's insurance evidencing such insurance shall be furnished to Village upon execution of this Agreement. Each such policy shall provide that no act or default of any person other than the Village or its agents shall render the policy void as to the Village or affect the Village's right to recover thereon.

4. In every case, but not as a limitation on the liability of the Developer to the Village, where judgment is recovered against the Village on any claim covered by the indemnity set forth herein, if such notice has been given to Developer, any judgment thereon shall be conclusive upon Developer as to the amount of damages and as to its liability to Village to the extent litigated therein.

9. **Village Right to Inspect.**

A. **Village Right of Access to Property.**

1. Agents and employees of Village shall at all times have access to the work wherever it is in preparation or progress.

2. If any work is covered up without the inspection, approval or consent of the Village, Developer will, if required by the Village, uncover the work at Developer's expense for examination by the Village. After the examination under this section is complete, Developer will pay costs of replacement.

3. Re-examination of questioned work not falling under the previous paragraph may be ordered by the Village. If the Village orders such re-examination under this section, the Developer shall uncover the work. If such work is found to be in accordance with the applicable plans, specifications and regulations, Village shall pay the cost of re-examination and replacement. If such work is found not to be in accordance with such plans, specifications and regulations, Developer shall pay such cost.

B. **Approval by Village.** All work shall be done subject to the approval of the Village's representatives as to Developer's compliance with the terms of this Agreement. They shall decide all questions which arise under this Agreement as to the amount, quality, and acceptability to materials furnished, work performed, manner of performance, rate of progress of the work, interpretation of plans, specifications and regulations and acceptable fulfillment of this Agreement. Materials shall be furnished and work shall be performed in conformity with the terms of this Agreement, including the Village Standards, with the Plans received by the Director of Engineering Services and on file in the Village and with construction industry standards in the Village and the Greater Milwaukee Area. Without in any manner limiting the Village representatives' authority to determine Developer's compliance with the Agreement and the compliance of the Improvements with the Plans and all applicable Legal

Requirements, this paragraph shall in no event serve to limit or modify any of the terms of this Agreement or to give the Village the right or power to increase the scope of work of the Improvements contemplated hereunder.

C. **Disclaimer of Liability.** The Village disclaims any and all liability arising from inspection or any failure to inspect any Improvements constructed by Developer and Developer shall release the Village from any claim arising from any actions of the Village or its agents in relation thereto.

10. **Miscellaneous Provisions.**

A. **Covenants to Run with the Land.** Subject to the terms of Section 10(C) hereof, the terms of this Agreement are covenants running with the land (comprising the Property and the portions of the Subdivision on which the Public Improvements will be installed) and binding on the Village and the Developer and any and all successors and assigns.

B. **Assignments.** Developer shall not assign this Agreement or obligations arising hereunder without the prior written consent of the Village.

C. **Recording.** Developer shall be responsible for recording this Agreement with the Waukesha County Register of Deeds at the Closing, but not later than December 31, 2002 and promptly provide Village written proof of such recording. Upon the expiration of the "guaranty period" applicable to the Improvements required under this Agreement as provided in Section 4 hereof, this Agreement shall terminate and be of no further force and effect (except with respect to those matters set forth in this Agreement which are intended to survive the termination and release of this Agreement and, upon Developer's request, the Village shall execute and deliver to Developer a release in recordable form to release this Agreement from the public records in Waukesha County.

D. **Force Majeure.** The deadlines for performance of the Improvements (but not the payment of money) under this Agreement shall be extended for periods of time during which such performance is prevented due to causes which are outside the control of Developer and which cannot be avoided by the exercise of due care by the Developer, including industry wide strikes or labor troubles, casualty, shortage of materials, weather conditions and other acts of God.

E. **Plans and Documents.** The Developer shall provide the Village the plans and documents identified as **Exhibit E** attached hereto prior to acceptance by the Village Board of the Public Improvements.

F. **Public Sites, Open Spaces and Special Environmental Areas.** Developer shall pay a fee to the Village for environmental land needs of the Subdivision in the amount of \$600 for each lot created by the Subdivision in excess of the number of existing buildable parcels completely eliminated by the Subdivision. Such payment shall be in full and shall be received by the Village prior to recording of the final CSM.

G. **Impact Fees.** Those portions of the sewer and water impact fees identified in §7 of this Agreement shall be paid in full prior to recording of the final CSM. The remainder of the sewer and water impact fees to be determined as provided in Chapter 42 of the Village Municipal Code, shall be paid prior to issuance of the building permit, as noted on **Exhibit F** attached hereto.

H. **Property Taxes and Special Assessment.** All outstanding property taxes and special assessments shall be paid in full prior to recording of the final CSM.

I. Payment Village Engineering, Inspection, Administrative, and Fees by Developer.

1. Developer acknowledges that the Financial Guaranty provided pursuant to Section 4 hereof is intended to secure Developer's obligation to pay the Village all applicable engineering, administration and miscellaneous costs related to this Agreement as identified on Exhibit F attached hereto.

2. The Developer agrees that the Village shall bill the Developer periodically for amounts due to the Village under this Agreement. The Developer agrees to pay such amounts to the Village within thirty (30) calendar days after the Village bills Developer therefor. Any unpaid amount due hereunder and not received by the Village within this 30-day period shall accrue interest at the rate of 18 percent per annum commencing on the date of billing through the date payment is received by the Village.

3. If the Village bill is based upon an estimate and the actual costs exceed such amount, then Developer shall pay any deficiency within thirty (30) calendar days after the Village bills Developer therefor. In addition to any other right or remedy available to the Village hereunder, if Developer fails to timely pay any amount due hereunder, then the Village at its sole discretion shall be empowered without notice of hearing, to impose a special assessment for the amount of said deficiency (including interest thereon), upon the Property. This assessment shall be payable with the next succeeding tax roll. If the actual cost is less than estimated amounts paid by Developer, then the Village will promptly return the excess provided that Developer is not then in default under this Agreement which is not cured within any applicable cure period. Notwithstanding any of the foregoing payments by Developer for inspection services, any and all inspectors who provide such services shall be under the supervision, direction and control of the Village.

J. Pollution Representation.

1. Developer warrants to the Village that there are no hazardous substances, pollution or contamination in excess of quantities or amounts permitted by applicable Legal Requirements on or in the portion of the Subdivision in which the Public Improvements are to be installed or the groundwater within or beneath such dedicated property. Such representation and warranty shall survive this Agreement, the dedication by Seller or Developer of any land or interest in land provided for by this Agreement and the acceptance by the Village of any such dedication.

2. Upon written demand from the Village, the Developer shall promptly indemnify the Village or and hold the Village harmless against any and all claims, liability, damages and the costs of litigation resulting from or arising out of the presence of any such substance, pollution or contamination which (i) exist as of the date of the Village's acceptance of the dedication of the Public Improvements and are in excess of quantities or amounts permitted by applicable Legal Requirements, or (ii) are caused by Developer's actions, including, without limitation, any actual attorneys' fees and expert witness fees.

K. No Third Party Beneficiaries. This Agreement is not intended to benefit or to be enforceable by any person other than the Village or the Developer and their respective successors and assigns, which shall not include, for the purposes of this paragraph, any person who has not assumed all of the benefits and obligations of this Agreement.

L. Amendment of Agreement. The Village and the Developer may, by mutual written agreement, and after approval of the Village Board, amend this Agreement at any time. The Village Board shall not, however, approve an amendment without having first considered the recommendations of the Village staff on the proposed amendment.

M. **Severability.** If a court of competent jurisdiction adjudges any section, clause, provision or portion of this Agreement invalid, such part shall be severed from the Agreement, and the remainder of the Agreement shall survive and shall not be affected thereby.

N. **No Threat to Public Health or Safety.** Notwithstanding any language in this Agreement to the contrary, the Developer shall neither do nor permit any other person within its control to do anything in connection with the performance of the Developer's obligations under this Agreement that poses a threat to the public health or safety.

O. **No Rule of Construction Against Drafter.** The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual consent, and no rule of construction shall be applied against any party as the drafter of this Agreement.

P. **Effective Date.** This Agreement shall become effective from and after the last to occur of the following events: (i) the Village Board's approval of this Agreement; (ii) the execution of this Agreement by Developer; and (iii) the execution of this Agreement by the Village.

Q. **Entire Agreement.** This Agreement is the entire agreement of the parties. All prior agreements, commitments, promises, offers, representation and statements made by or on behalf of the parties with respect to the subject matter of this Agreement are hereby terminated and shall have no further effect.

R. **Governing Law.** The law of the State of Wisconsin shall govern all issues relating to this Agreement.

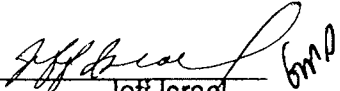
S. **Incorporation into this Agreement of Conditions Imposed by Village Bodies.** If the Village Board imposes any conditions upon the Seller or Developer as part of the approval of the issuance of a conditional use permit for the Property, or if the Architectural Control Board imposes any conditions or requirements as part of any approval given by it to the Developer for the Project, these conditions or requirements are incorporated herein by this reference and made a part of this Agreement, and may be enforced under this Agreement in addition to any other method or remedy available to the enforcing party. The terms of this paragraph shall survive the termination of this Agreement.

TEXT OF AGREEMENT ENDS HERE. SIGNATURE PAGES AND EXHIBITS FOLLOW.

SIGNATURE PAGE

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

Developer: **HOME DEPOT U.S.A., INC.,**
a Delaware corporation

By: 
Print Name: Jeff Israel
Title: Senior Corporate Counsel - Real Estate

Village: **VILLAGE OF MENOMONEE FALLS, WISCONSIN,**
a municipal corporation of the State of Wisconsin

DEC 11 2002

Approved by the Village Board of the Village of Menomonee Falls
on the _____, of December, 2002.

By: _____
Joseph J. Greco, Village President

Attest: _____
Richard A. Farrenkopf
Village Manager \Clerk-Treasurer

Approved as to Form:

Michael J. Morse, Village Attorney

This instrument was drafted by Thomas M. Hoffman.

SIGNATURE PAGE

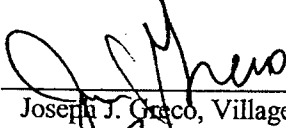
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

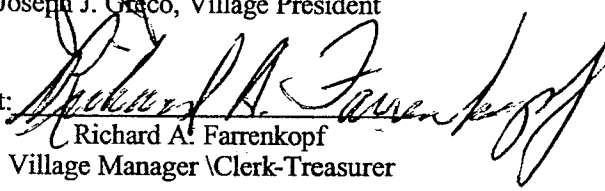
Developer: **HOME DEPOT U.S.A., INC.,**
a Delaware corporation

By: _____
Print Name: _____
Title: _____

Village: **VILLAGE OF MENOMONEE FALLS, WISCONSIN,**
a municipal corporation of the State of Wisconsin

Approved by the Village Board of the Village of Menomonee Falls
on the 2nd, of December, 2002.

By: 
Joseph J. Greco, Village President

Attest: 
Richard A. Farrenkopf
Village Manager \Clerk-Treasurer

Approved as to Form:


Michael J. Morse, Village Attorney

This instrument was drafted by Thomas M. Hoffman.

ACKNOWLEDGMENT

STATE OF GEORGIA)

COUNTY OF COBB)

) SS
)

On this 11th day of DECEMBER, 2002, before me personally came Jeff Israel, ~~Senior Corporate Counsel - Real Estate~~, known to me to be the person whose name is subscribed to the foregoing instrument as an authorized signatory for **HOME DEPOT U.S.A., INC.**, a Delaware corporation, the corporation described in and which executed the foregoing instrument, and who acknowledged to me that: the instrument was executed for the purposes and consideration therein expressed as the act of the corporation, and the instrument was signed by the authorized signatory, all by authority of the board of directors of said corporation.

Clenda H. Wiggins
Notary Public

My Commission Expires: 12-27-03

EXHIBIT A-1

Legal Description of the Subdivision

PART OF PARCEL 2 OF CERTIFIED SURVEY MAP NO. 2026 AND LANDS ALL BEING PART OF THE NORTHWEST 1/4, SOUTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN, WHICH IS BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID 1/4 SECTION; THENCE NORTH 87°19'42" EAST ALONG THE SOUTH LINE OF SAID 1/4 SECTION 661.97 FEET TO THE POINT OF BEGINNING OF THE LANDS TO BE DESCRIBED; THENCE NORTH 00°28'31" EAST 1328.23 FEET TO A POINT; THENCE SOUTH 87°23'02" WEST 44.24 FEET TO A POINT; THENCE NORTH 00°32'58" EAST 349.82 FEET TO A POINT; THENCE SOUTH 89°03'45" EAST 686.39 FEET TO A POINT; THENCE NORTH 00°32'58" EAST 75.00 FEET TO A POINT ON THE SOUTH LINE OF LOT 200 OF CERTIFIED SURVEY MAP NO. 7648; THENCE SOUTH 89°03'45" EAST ALONG SAID SOUTH LINE 674.90 FEET TO A POINT ON THE WEST LINE OF CERTIFIED SURVEY MAP NO. 8238; THENCE SOUTH 00°19'36" WEST ALONG SAID WEST LINE 1667.22 FEET TO A POINT ON THE SOUTH LINE OF SAID 1/4 SECTION; THENCE SOUTH 87°20'16" WEST ALONG SAID SOUTH LINE 1323.93 FEET TO A POINT.

SAID LANDS CONTAIN 2,222,370 SQUARE FEET OR 51.0186 ACRES.

THE ABOVE DESCRIBED LANDS ARE NOW KNOWN AS:

Lots One (1), Two (2) and Three (3) of CERTIFIED SURVEY MAP NO. 9492, part of Parcel Two (2) of Certified Survey Map No. 2026 and lands, all being part of the Northwest One-quarter (1/4), Southwest One-quarter (1/4), Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Northwest One-quarter (1/4) of Section Four (4), in Township Eight (8) North, Range Twenty (20) East, in the Village of Menomonee Falls, County of Waukesha, State of Wisconsin, recorded in the Office of the Register of Deeds for Waukesha County on December 23, 2002 in Volume 86 of Certified Survey Maps at Pages 342 to 348 inclusive, as Document No. 2898882.

EXHIBIT A-2

Legal Description of the Property

PART OF PARCEL 2 OF CERTIFIED SURVEY MAP NO. 2026 AND LANDS, ALL BEING A PART OF THE NORTHWEST 1/4, NORTHEAST 1/4, SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, 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 NORTH 87°20'16" EAST ALONG THE SOUTH LINE OF SAID 1/4 SECTION 661.97 FEET TO A POINT; THENCE NORTH 00°28'31" EAST 1328.23 FEET TO A POINT; THENCE NORTH 87°23'02" EAST 273.98 FEET TO A POINT; THENCE NORTHEASTERLY 230.43 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 400.00 FEET AND WHOSE CHORD BEARS NORTH 70°52'49.5" EAST 227.26 FEET TO A POINT; THENCE NORTH 54°22'37" EAST 13.59 FEET TO THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE CONTINUING NORTH 54°22'37" EAST 161.37 FEET TO A POINT; THENCE NORTHEASTERLY 377.81 FEET ALONG THE ARC OF A CURVE WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 540.00 FEET AND WHOSE CHORD BEARS NORTH 74°25'13.5" EAST 370.15 FEET TO A POINT; THENCE SOUTH 85°32'10" EAST 178.48 FEET TO A POINT; THENCE SOUTH 03°32'34" EAST 753.93 FEET TO A POINT; THENCE SOUTH 27°27'13" WEST 152.78 FEET TO A POINT; THENCE SOUTH 87°19'31" WEST 315.70 FEET TO A POINT; THENCE NORTH 45°01'27" WEST 275.61 FEET TO A POINT; THENCE NORTH 58°00'47" WEST 157.94 FEET TO A POINT; THENCE NORTH 45°01'27" WEST 217.52 FEET TO A POINT; THENCE NORTH 00°01'27" WEST 62.54 FEET TO A POINT; THENCE NORTH 44°58'33" EAST 272.18 FEET TO A POINT; THENCE NORTH 45°01'27" WEST 50.91 FEET TO THE POINT OF BEGINNING. CONTAINING 579,482 SQUARE FEET OR 13.3031 ACRES OF LAND.

THE ABOVE DESCRIBED LANDS ARE NOW KNOWN AS:

Lot Two (2) of CERTIFIED SURVEY MAP NO. 9492, part of Parcel Two (2) of Certified Survey Map No. 2026 and lands, all being part of the Northwest One-quarter (1/4), Southwest One-quarter (1/4), Northeast One-quarter (1/4) and Southeast One-quarter (1/4) of the Northwest One-quarter (1/4) of Section Four (4), in Township Eight (8) North, Range Twenty (20) East, in the Village of Menomonee Falls, County of Waukesha, State of Wisconsin, recorded in the Office of the Register of Deeds for Waukesha County on December 23, 2002 in Volume 86 of Certified Survey Maps at Pages 342 to 348 inclusive, as Document No. 2898882.

EXHIBIT B

CSM

(See following pages)

CERTIFIED SURVEY MAP NO.

PART OF PARCEL 2 OF CERTIFIED SURVEY MAP NO. 2026 AND LANDS, ALL BEING PART OF THE NORTHWEST 1/4, SOUTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

- - 1" IRON PIPE, FOUND (UNLESS OTHERWISE NOTED)
- - 1" BY 24" IRON PIPE, WT. 1.68 LBS./L.F., SET
- ① - DEDICATED TO THE VILLAGE OF MENOMONEE FALLS FOR PUBLIC STREET PURPOSES.

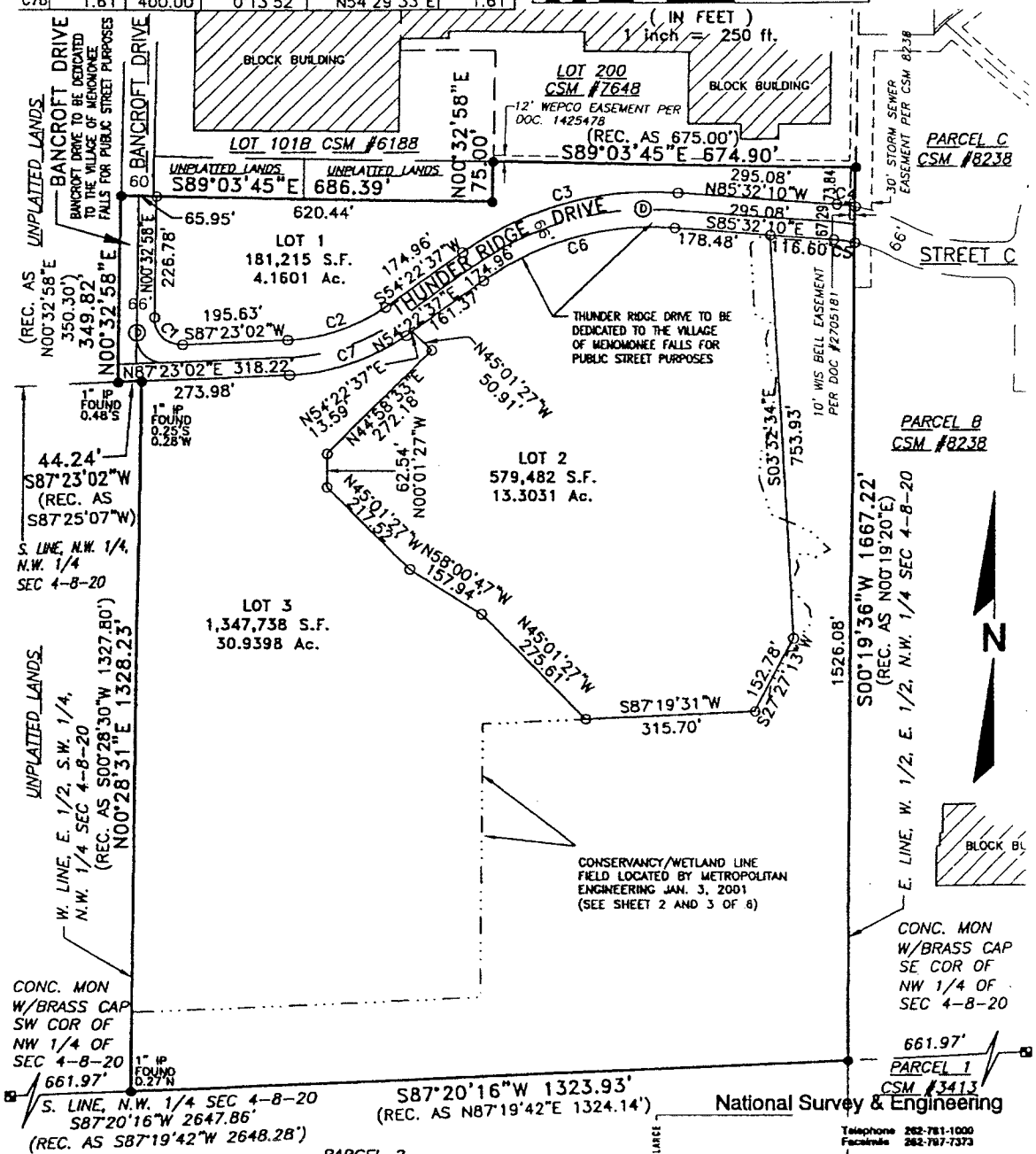
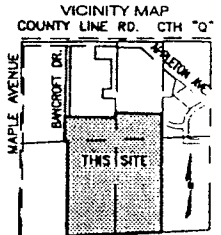
#	ARC	RADIUS	CENTRAL <	CH. BEARING	CHORD
C1	81.30'	50.00'	93°09'56"	S46°02'00"E	72.64'
C2	192.41'	334.00'	33°00'25"	N70°52'49.5"E	189.76'
C3	423.99'	606.00'	40°05'13"	S74°25'13.5"W	415.39'
C4	34.36'	333.00'	5°54'42"	N82°34'49"W	34.34'
C5	39.29'	267.00'	8°25'56"	N81°19'12"W	39.26'
C6	377.81'	540.00'	40°05'13"	S74°25'13.5"W	370.15'
C7	230.43'	400.00'	33°00'25"	N70°52'49.5"E	227.26'
C7A	228.82'	400.00'	32°46'32"	N70°59'46"E	225.71'
C7B	1.61'	400.00'	0°13'52"	N54°29'33"E	1.61'

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

-BEARINGS REFERENCED TO THE WISCONSIN
STATE PLANE COORDINATE SYSTEM (SOUTH
ZONE).

-ALL ELECTRIC, TELEPHONE, AND COMMUNICATION DISTRIBUTION LINES AND LATERALS INCLUDING CATV CABLES, CONSTRUCTED AFTER THE RECORDING OF THIS CERTIFIED SURVEY MAP SHALL BE PLACED UNDERGROUND.

GRAPHIC SCALE



CS101L25, 11/13/02 03:05:40 P.M. DBW

THIS INSTRUMENT DRAFTED BY : ERIC R. STURM

National Survey & Engineering

Telephone 262-781-1000

18745 W. Bluemound Road
Suite 200
Brookfield, WI 53005-5938
www.nraa.com

\ 2180521 \ 65101225 \ LMC

Sheet 1 of 6 Sheets

CERTIFIED SURVEY MAP NO.

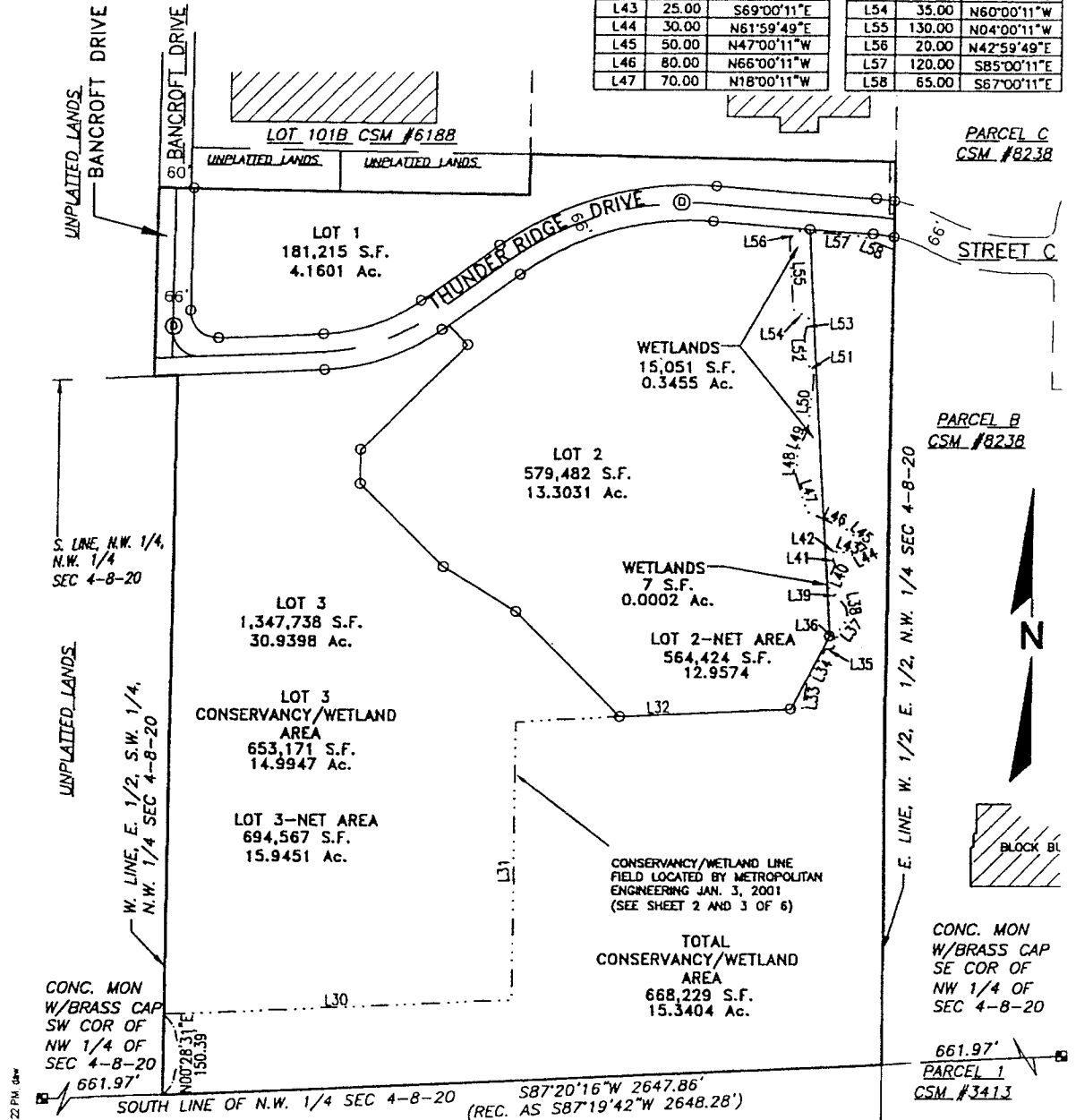
PART OF PARCEL 2 OF CERTIFIED SURVEY MAP NO. 2026 AND LANDS, ALL BEING PART OF THE NORTHWEST 1/4, SOUTHWEST 1/4, NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 4, TOWN 8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN.

LINE	LENGTH	BEARING
L30	639.99	N87°19'31"E
L31	510.00	N00°28'19"E
L32	530.00	N87°19'31"E

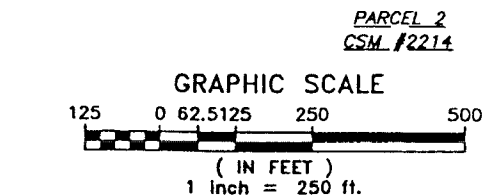
L33	50.00	N08°40'48"E
L34	70.00	N28°07'10"E
L35	15.00	N84°59'49"E
L36	35.00	N16°59'49"E

L37	25.00	N39°59'49"E
L38	25.00	N10°00'11"W
L39	55.00	N42°00'11"W
L40	40.00	N22°59'49"E
L41	20.00	N15°00'11"W
L42	15.00	N57°59'49"E
L43	25.00	S69°00'11"E
L44	30.00	N61°59'49"E
L45	50.00	N47°00'11"W
L46	80.00	N66°00'11"W
L47	70.00	N18°00'11"W

L48	45.00	N02°59'49"E
L49	45.00	N23°59'49"E
L50	100.00	N05°59'49"E
L51	30.00	N31°00'11"W
L52	50.00	N04°00'11"W
L53	30.00	N16°59'49"E
L54	35.00	N60°00'11"W
L55	130.00	N04°00'11"W
L56	20.00	N42°59'49"E
L57	120.00	S85°00'11"E
L58	65.00	S67°00'11"E



21Aug03CS101L3M.dwg CS102L24 11/13/02 03:06:22 PM dwg



THIS INSTRUMENT DRAFTED BY - ERIC D. STIDUM

National Survey & Engineering

Telephone 262-781-1000
Facsimile 262-787-7373

16745 W. Blumensound Road
Suite 200
Brookfield, WI 53005-5638
www.nse.com

5/16/02 CS101L25.DWG

Sheet 2 of 6 Sheets

CERTIFIED SURVEY MAP NO. _____

Part of Parcel 2 of Certified Survey Map No. 2026 and lands all being part of the Northwest 1/4, Southwest 1/4, Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 4, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

CONSERVANCY/WETLAND LINE

Commencing at the Southwest corner of said 1/4 Section; thence North 87°19'42" East along the South line of said 1/4 Section 661.97 feet to the point of beginning of the wetland line to be described; thence North 00°28'31" East 150.39 feet to a point; thence North 87°19'31" East 639.99 feet to a point; thence North 00°28'19" East 510.00 feet to a point; thence North 87°19'31" East 530.00 feet to a point; thence North 08°40'48" East 50.00 feet to a point; thence North 28°07'10" East 70.00 feet to a point; thence North 84°59'49" East 15.00 feet to a point; thence North 16°59'49" East 35.00 feet to a point; thence North 39°59'49" East 25.00 feet to a point; thence North 10°00'11" West 25.00 feet to a point; thence North 42°00'11" West 55.00 feet to a point; thence North 22°59'49" East 40.00 feet to a point; thence North 15°00'11" West 20.00 feet to a point; thence North 57°59'49" East 15.00 feet to a point; thence South 69°00'11" East 25.00 feet to a point; thence North 61°59'49" East 30.00 feet to a point; thence North 47°00'11" West 50.00 feet to a point; thence North 66°00'11" West 80.00 feet to a point; thence North 18°00'11" West 70.00 feet to a point; thence North 02°59'49" East 45.00 feet to a point; thence North 23°59'49" East 45.00 feet to a point; thence North 05°59'49" East 100.00 feet to a point; thence North 31°00'11" West 30.00 feet to a point; thence North 04°00'11" West 50.00 feet to a point; thence North 16°59'49" East 30.00 feet to a point; thence North 60°00'11" West 35.00 feet to a point; thence North 04°00'11" West 130.00 feet to a point; thence North 42°59'49" East 20.00 feet to a point; thence South 85°00'11" East 120.00 feet to a point; thence South 67°00'11" East 65.00 feet to the end of said line.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN }
 :SS
 WAUKESHA COUNTY }

I, **ERIC R. STURM**, Registered Land Surveyor, do hereby certify:

THAT I have surveyed, divided and mapped a part of Parcel 2 of Certified Survey Map No. 2026 and lands all being part of the Northwest 1/4, Southwest 1/4, Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 4, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin., which is bounded and described as follows:

COMMENCING at the Southwest corner of said 1/4 Section; thence North 87°19'42" East along the South line of said 1/4 Section 661.97 feet to the point of beginning of the lands to be described; thence North 00°28'31" East 1328.23 feet to a point; thence South 87°23'02" West 44.24 feet to a point; thence North 00°32'58" East 349.82 feet to a point; thence South 89°03'45" East 686.39 feet to a point; thence North 00°32'58" East 75.00 feet to a point on the South line of Lot 200 of Certified Survey Map No. 7648; thence South 89°03'45" East along said South line 674.90 feet to a point on the West line of Certified Survey Map No. 8238; thence South 00°19'36" West along said West line 1667.22 feet to a point on the South line of said 1/4 Section; thence South 87°20'16" West along said South line 1323.93 feet to a point. Said lands contain 2,222,370 square feet or 51.0186 acres.

THAT I have made the survey, land division and map by the direction of PJB FALLS, LLC, a Wisconsin limited liability company, owner.

THAT the map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

THAT I have fully complied with Chapter 236 of the Wisconsin Statutes and Chapter 18 of the Village Code of the Village of Menomonee Falls in surveying, dividing, dedicating and mapping the same.

DATE _____

_____(SEAL)
ERIC R. STURM,
REGISTERED LAND SURVEYOR S-2309

CERTIFIED SURVEY MAP NO. _____

Part of Parcel 2 of Certified Survey Map No. 2026 and lands all being part of the Northwest 1/4, Southwest 1/4, Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 4, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

OWNER'S CERTIFICATE

PJB FALLS, LLC, a Wisconsin limited liability company, duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, certifies that said limited partnership caused the land described on this map to be surveyed, divided, dedicated and mapped as represented on this map in accordance with Chapter 18 of the Village Code of the Village of Menomonee Falls.

PJB FALLS, LLC, a Wisconsin limited liability company, as owner, does further certify that this map is required by S.236.10 or 236.12 of the Wisconsin Statutes to be submitted to the following for approval or objection:

Village of Menomonee Falls

IN Witness Whereof, PJB FALLS, LLC, a Wisconsin limited liability company has caused these presents to be signed by PAUL J. BURBACH, its _____, this _____ day of _____, 2002.

PJB FALLS, LLC
A Wisconsin limited liability company

PAUL J. BURBACH

STATE OF WISCONSIN)
:SS
WAUKESHA COUNTY)

PERSONALLY came before me this _____ day of _____, 2002,
PAUL J. BURBACH, _____ of the above named PJB FALLS, LLC, to me known as
the persons who executed the foregoing instrument, and to me known to be the _____
of said PJB FALLS, LLC, and acknowledged that he executed the foregoing instrument as such officer as
the deed of the limited liability company, by its authority.

_____(SEAL)
Notary Public, State of Wisconsin
My Commission expires _____
My Commission is permanent.

CERTIFIED SURVEY MAP NO. _____

Part of Parcel 2 of Certified Survey Map No. 2026 and lands all being part of the Northwest 1/4, Southwest 1/4, Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 4, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

CONSENT OF CORPORATE MORTGAGEE

STATE FINANCIAL BANK, a corporation duly organized and existing under and by virtue of the laws of the State of _____, mortgagee of the above-described land, does hereby consent to the surveying, dividing, mapping, and dedication of the land described on this plat, and does hereby consent to the above certificate of PJB FALLS, LLC, owner.

IN WITNESS WHEREOF, the said STATE FINANCIAL BANK, has caused these presents to be signed by _____, its President, and countersigned by _____, its Secretary, at _____, and its corporate seal to be hereunto affixed this _____ day of _____, 2002.

President

Secretary

STATE OF _____ }
 _____ COUNTY } :SS

PERSONALLY came before me this _____ day of _____, 2002, _____, President, and _____, Secretary of the above-named corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such President and Secretary of said Corporation, and acknowledged that they executed the foregoing instrument as such officer as the deed of said corporation, by its authority.

_____(SEAL)
Notary Public, State of _____
My Commission expires _____
My Commission is permanent.

CERTIFIED SURVEY MAP NO. _____

Part of Parcel 2 of Certified Survey Map No. 2026 and lands all being part of the Northwest 1/4, Southwest 1/4, Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 4, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin.

PLAN COMMISSION APPROVALS

Preliminary Approval _____

SECRETARY

Final Approval _____

SECRETARY

VILLAGE BOARD APPROVAL

RESOLVED that the Certified Survey Map of PJB FALLS, LLC, a Wisconsin limited liability company, owner of said lands, Part of Parcel 2 of Certified Survey Map No. 2026 and lands all being part of the Northwest 1/4, Southwest 1/4, Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 4, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, having been approved by the Plan Commission and the same is hereby approved and the dedication contained herein accepted by the Village of Board of Trustees of the Village of Menomonee Falls on _____, 2002.

JOSEPH J. GRECO, VILLAGE PRESIDENT

RICHARD A. FARRENKOPF,
VILLAGE MANAGER/CLERK-TREASURER

CERTIFIED SURVEY MAP _____

DOCUMENT NO. _____

DATE _____

VOLUME _____

SHEETS _____

THIS INSTRUMENT WAS DRAFTED BY ERIC R. STURM,
REGISTERED LAND SURVEYOR S-2309

EXHIBIT C-1

Description of Improvements

I. Public Improvements

1. Dedication of 66-foot wide public right-of-way (Thunder Ridge Drive) from the eastern property boundary of the Burbach parcel (existing Street "C" terminus) to the western property boundary.
2. Dedication of a 66-foot wide public right-of-way on the Burbach parcel from the southern terminus of Bancroft Drive to Thunder Ridge Drive extended.
3. Construction of a 36-foot wide (measured to face of curbs) asphalt road with curb and gutter, within the public right-of-ways described in Items 1 and 2 above.
4. Construction of a 5-foot concrete sidewalk on the south side and within the described proposed public right-of-ways (Thunder Ridge Drive), extended from the existing Street "C" terminus to 20-feet beyond the proposed western Home Depot entrance drive.
5. Extension of public utilities within the proposed right-of-ways of Thunder Ridge and Bancroft Drives extended from existing utilities as identified on the Plans.

II. Private Improvements

The Private Improvements shall consist of the following items to be installed on the Property:

1. Construction of storm water management facilities, including two private detention basins, storm water pipes and associated inlets as depicted on the plans described on Exhibit C-2 of the Agreement.
2. The implementation of private erosion control measures in accordance with the Erosion Control Code of the Village of Menomonee Falls, the applicable Village Standards, the Wisconsin Site Best Management Practice Handbook and as depicted on the plans described on Exhibit C-2 of the Agreement.
3. The installation of landscaping improvements, as depicted on the landscape plans described on Exhibit C-2 of the Agreement.

EXHIBIT C-2

Description of Plans

I. Public Improvements

Sheet No.	Title	Prepared By	Project No.	Original Date	Submittal and/or Revision Dates
1/6	Proposed Sanitary Sewer and Water Main Plan and Profile Sheet	R.A. Smith & Associates	0210	08/19/02	10/10/02 10/14/02 -
2/6	Proposed Sanitary Sewer and Water Main Plan and Profile Sheet	R.A. Smith & Associates	0210	08/19/02	10/10/02 10/14/02 11/14/02
3/6	Proposed Water Main Plan and Profile Sheet	R.A. Smith & Associates	0210	08/19/02	10/10/02 10/14/02
4/6	Proposed Paving and Storm Sewer Plan and Profile Sheet	R.A. Smith & Associates	0210	08/19/02	10/10/02 10/14/02 11/14/02
5/6	Proposed Paving and Storm Sewer Plan and Profile Sheet	R.A. Smith & Associates	0210	08/19/02	10/10/02 10/14/02 11/14/02
6/6	Proposed Paving & Storm Sewer Plan and Profile Sheet	R.A. Smith & Associates	0210	08/19/02	10/10/02 10/14/02 11/14/02

II. Private Improvements

Sheet No.	Title	Prepared By	Project No.	Original Date	Submittal and/or Revision Dates
L - 1	Landscape Plan	Greenberg Farrow Architecture	20000962.2	07/02/02	07/16/02 08/15/02 10/14/02 10/18/02 11/14/02
L - 2	Landscape Plan	Greenberg Farrow Architecture	20000962.2	07/02/02	07/16/02 08/15/02 10/14/02 10/18/02
L - 3	Irrigation Plan	Greenberg Farrow Architecture	20000962.2	10/11/02	10/14/02 10/18/02
C - 1	Engineering Site Plan	R.A. Smith & Associates	1020001	06/11/02	07/03/02 07/15/02 08/19/02 10/10/02 10/14/02 11/14/02

EXHIBIT C-2**Description of Plans - continued**

C-2	Grading Plan	R.A. Smith & Associates	1020001	06/11/02	07/03/02 07/15/02 08/19/02 10/10/02 10/14/02 11/14/02
C - 3	Utility Plan	R.A. Smith & Associates	1020001	06/11/02	07/03/02 07/15/02 08/19/02 10/10/02 10/14/02 11/14/02
C - 4	Erosion Control Plan	R.A. Smith & Associates	1020001	06/11/02	07/03/02 07/15/02 08/19/02 10/10/02 10/14/02 11/14/02
C - 5	Utility Detail Sheet	R.A. Smith & Associates	1020001	06/11/02	07/03/02 07/15/02 08/19/02 10/10/02 10/14/02 11/14/02
C - 6	Pond Outlet Detail Sheet	R.A. Smith & Associates	1020001	10/14/02	None

EXHIBIT C-3

Description of Village Standards

- Milwaukee Metropolitan Sewerage District Rules and Regulations
(All Applicable Chapters)
- Wisconsin Administrative Code – Department of Natural Resources
(All Applicable Chapters)
- Wisconsin Construction Site Best Management Practice Handbook
(Wisconsin Dept. of Natural Resources – April, 1994 and all subsequent revisions)
- Wisconsin Administrative Code – Department of Transportation
(All Applicable Chapters)
- State of Wisconsin – Department of Transportation Standard Specifications for Highway and
Structure Construction
(1996 Edition with Supplements)
- Village of Menomonee Falls Municipal Code
 - Chapter 18 Buildings and Building Regulations
 - Chapter 38 Environment
 - Chapter 42 Fees
 - Chapter 46 Fire Prevention and Protection
 - Chapter 78 Signs
 - Chapter 86 Special Assessments
 - Chapter 90 Streets, Sidewalks and Other Public Places
 - Chapter 94 Subdivision and Other Division of Land
 - Chapter 110 Utilities
 - Chapter 122 Zoning
 - Appendix B Shoreland – Wetland Zoning Ordinance
- Village of Menomonee Falls Stormwater Management Guidelines
(Dated: May 4, 1998; as revised on December 17, 2001)
- Village of Menomonee Falls Standard Specifications
 - Section 100 General Conditions
 - Section 300 Materials
 - Section 400 Sewer Specifications
 - Section 500 Water Specifications
 - Section 600 Pavement Specifications
 - Section 700 Curb and Gutter, Sidewalk Specifications

EXHIBIT C-3 (cont'd)

- Village of Menomonee Falls Project Specifications
 - Section 200 Project Special Conditions
 - Section 440 Sewer Special Conditions
 - Section 540 Water Special Conditions
 - Section 640 Pavement Special Conditions
 - Section 740 Curb and Gutter, Sidewalk, Special Conditions
- Standard Specifications for Sewer and Water Construction in Wisconsin (5th Edition, March 1, 1988 with Addenda #1 & #2)
- Village of Menomonee Falls Street Lighting Requirements (See EXHIBIT F of this Agreement)

EXHIBIT D-1

**STORMWATER FACILITIES OPERATION, INSPECTION, &
MAINTENANCE AGREEMENT**
Village of Menomonee Falls

THIS AGREEMENT is between **HOME DEPOT U.S.A., INC.**, a Delaware corporation (the "Property Owner"), and the Village of Menomonee Falls (the "Village"). It is based upon the following:

- A. The Property Owner is the owner of certain real property (the "Property") located in the Village of Menomonee Falls, and which is further described on Exhibit A attached hereto.
- B. The Property Owner intends to develop the Property pursuant to a Site Plan approved by the Village and known as The Home Depot Project (the "Plan").
- C. The health, safety, and welfare of the residents of Menomonee Falls, Wisconsin, require that on-site Stormwater Management Facilities be provided on the Property.
- D. The Plan provides for the construction of certain stormwater management facilities consisting of detention basins, outlet structures, inlet structures, storm sewer, swales, berms or any structure and grading associated with said stormwater management facilities (collectively, the "Stormwater Management Facilities") within the confines of the Property.
- E. The Village requires that on-site Stormwater Management Facilities as shown on the Plan be constructed, operated and adequately maintained by the Property Owner.
- F. The Village and Property Owner now desire to enter into this Agreement to set forth the rights and obligations of the parties in connection with the maintenance of the Stormwater Management Facilities.
- G. Concurrently herewith, Property Owner is granting an easement (the "**Easement**") to the Village to provide the Village with the access rights to the Stormwater Management Facilities provided to the Village under this Agreement in connection with its inspections thereof and right to cure any defaults by Property Owner hereunder.

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

- 1. The on-site Stormwater Management Facilities shall comply with the policy outlined in the Village "Stormwater Management Guidelines," and with the Milwaukee Metropolitan Sewage District "Stormwater Rules, Chapter 13 of the MMSD Rules and Regulations;" and shall be constructed by the Property Owner in compliance with the final plans and specifications approved by the Village for the project identified in the Plan.

2. The Property Owner shall supply the Village with an as-built plan of the Stormwater Management Facilities within thirty (30) days of completion of the project. As used in this Agreement, "completion" shall mean accepted by the Village Engineering Department as having been completed in accordance with the terms of the Development Agreement Between the Village and the Property Owner. The as-built plan will be used by the Village to determine if the Stormwater Management Facilities are constructed according to the Village approved plans. The Stormwater Management Facilities will be accepted only after the Village approves the as-built plans. The Village agrees that minor items of correction or repair to the Stormwater Management Facilities which are required by the Village shall not prevent the issuance of any occupancy permits for the project.
3. The Property owner shall not construct, place or allow or suffer the construction or placement of structures within the Stormwater Management Facilities that affect the operation of the facilities; or that alter the elevations and slopes from those designed, established and constructed; without the specific written approval of the Village.
4. The Property Owner shall submit a landscape proposal and diagram with vegetation types to the Village prior to planting trees or shrubs in the Stormwater Management Facilities. The Village shall have the right to determine which species of trees and shrubs are appropriate for planting within the Stormwater Management Facilities. The Property Owner shall not plant shrubs or trees in the Stormwater Management Facilities unless approved by the Village.
5. The Property Owner shall adequately maintain the Stormwater Management Facilities. Adequate maintenance is defined as good working condition so that these facilities are performing their design functions. The Property Owner must inspect the Stormwater Management Facilities within 24 hours of any major rain event.
6. The Property Owner shall hire a licensed professional engineer to inspect the Stormwater Management Facilities and submit an inspection report biannually to the Village as proof of compliance. The Village approved Biannual Inspection Report form shall be used to determine the condition of the facilities. The purpose of the inspection is to assure safe and proper functioning of the Stormwater Management Facilities. The inspection shall cover the entire Stormwater Management Facilities such as berms, outlet structure, pond areas, access roads, etc. The conditions shall be noted in the inspection report.
7. The Property Owner will perform or otherwise be responsible for any work necessary to keep the Stormwater Management Facilities in good working order. This obligation includes making all the necessary repairs and/or improvements to correct damages, both natural and man made; and so as to otherwise comply with this Agreement. Property Owner shall make reasonable efforts to respond to citizen complaints referred to Property Owner by the Village, and within a reasonable time, shall inform the Village of any such efforts. If deficiencies or damages are noted in the inspection report provided to the Village under Section 6 or the Village determines that the Stormwater Management Facilities have not been maintained in accordance with this

Agreement, the Property Owner shall have thirty (30) days from the date of the report or the date of written notice thereof from the Village to take appropriate measures to correct any such deficiencies or damages or to respond to citizen complaints.

8. The Property Owner hereby grants permission to the Village, its authorized agents and employees, to enter upon the Stormwater Management Facilities to inspect the Stormwater Management Facilities whenever the Village deems necessary, which right of entry shall be in accordance with and subject to the terms of the Easement.
9. If the Property Owner is in default under this Agreement (whether by reason of its failure to inspect the Stormwater Management Facilities as required, or failure to maintain the Stormwater Management Facilities in good working condition acceptable to the Village and make all the necessary repairs and/or improvements to correct damages, both natural and man made), and thereafter fails to cure such default within thirty (30) days following the date Property Owner receives written notice of default from the Village (specifying in reasonable detail the corrective actions required to be taken to cure such default), then the Village may enter upon the Property and take whatever steps are reasonably necessary to cure such default. Property Owner shall provide the Village with the name, address, phone number, fax number and email address of the Property Owner's representative who should receive the notice provided for in this Section 9. Notice sent by email or by facsimile will be considered received under this section as of the date and time of transmission. If the event placing the Property Owner in default occurs during an emergency, the Village shall make reasonable efforts under the circumstances to make oral or other contact with the representative identified by the Property Owner under this Section. If, despite such reasonable efforts under the circumstances during such emergency, the Village is unable to contact the Property Owner's representative, the Village may enter upon the Property without first giving the thirty day notice provided above, and take whatever steps are reasonably necessary to address the emergency, including if necessary, curing such default. If the Village exercises its self-help rights pursuant to the terms of this Section 9, Developer shall reimburse the Village for all costs and expenses incurred in connection with the cure of such default, including, but not limited to, materials, construction, legal fees, financing costs, engineering, inspection and administrative costs incurred by the Village directly as a result of Property Owner's. The foregoing reimbursement shall be paid within thirty (30) days after the Village bills Developer therefor, which bill shall be accompanied by reasonable supporting documentation. If Developer fails to pay any amounts which are due within said 30-day period, then the Village shall be empowered without notice of public hearing, to impose a special assessment upon the Property for the amount of such unpaid reimbursement, payable with at the next succeeding tax bill.
10. This Agreement imposes no liability of any kind whatsoever on the Village. The Property Owner agrees to hold harmless the Village, its board members, employees, agents, and officers from any costs, damages, loss, claim, suit, liability or award which may arise, come, be brought or incurred or assessed by the Village because of the existence of, any action or failure to act by Property Owner with respect to, the Stormwater Management Facilities, including the failure of the Stormwater

Management Facilities to operate properly. The Village shall have the right to defend any such claim and the Property Owner shall reimburse the Village for any and all cost and/or expenses , including but not limited to attorney's fees, which the Village may incur as a result of such claims. Nothing in this Section 10 shall be interpreted to include within the foregoing indemnity (and Property Owner's obligations in connection therewith) any such matters arising out of the negligent or more culpable conduct by the Village, its officers, agents, employees, workmen or independent contractors.

11. This Agreement shall be recorded With the Register of Deeds Waukesha County, Wisconsin, and shall constitute a covenant running with the land, and shall be binding on both parties, their successors or assigns.
12. The Village hereby accepts the Easement and agrees to be subject to and bound by the terms thereof.

IN WITNESS WHEREOF, Property Owner has caused this Agreement to be signed this ____ day of December, 2002.

HOME DEPOT U.S.A., INC.,
a Delaware corporation

By: _____

Print Name: _____

Title: _____

VILLAGE OF MENOMONEE FALLS

Approved by the Board of Trustees of the Village of Menomonee Falls on the ____ day of December, 2002.

By _____
Joseph J. Greco, Village President

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

EXHIBIT D-2: FORM OF STORM WATER DETENTION EASEMENT

GRANT OF EASEMENT

THIS GRANT OF EASEMENT (this "**Grant**") is made as of this ____ day of December, 2002, by **Home Depot U.S.A., Inc.**, a Delaware corporation (the "**Grantor**"), for the benefit of the **Village of Menomonee Falls**, a Wisconsin Municipal Corporation (the "**Grantee**")

Preliminary Statement:

Grantor and Grantee have concurrently entered into that certain Stormwater Facilities Operation, Inspection & Maintenance Agreement (the "**Maintenance Agreement**") for the inspection and maintenance of certain Stormwater Management Facilities (as defined in the Maintenance Agreement) located on property owned by Grantor within the Village. The Maintenance Agreement provides the Grantee with certain rights of access for inspections of the Stormwater Management Facilities and the right to cure any of Grantor's defaults with respect to the maintenance and operation of the Stormwater Management Facilities pursuant and subject to the terms of the Maintenance Agreement. Grantor now desires to deliver this Grant to the Village to grant the Village access rights over and across the portion of Grantor's property legally described and depicted on **Exhibit A** attached hereto as the "Storm Water Detention Easement."

Easement Grant:

1. Grantor, together with its successors and assigns, hereby grants to Grantee a perpetual, non-exclusive easement for ingress and egress over, across and through the Storm Water Detention Easement as shall be reasonably and temporarily required by the Grantee to enter the Storm Water Detention Easement for the purposes set forth in the Maintenance Agreement, and for no other purpose. Grantee shall also have such reasonable right of access over Grantor's property as may be necessary to exercise or enjoy the easement right being granted herein. Grantor hereby warrants and represents that it is the fee owner of the Storm Water Detention Easement and that Grantor has full authority to grant this easement to Grantee. Notwithstanding anything in this Grant or in the Maintenance Agreement to the contrary notwithstanding, Grantee shall not enter or perform any work in any portion of the Storm Water Detention Easement designated as a "Conservancy/Wetland" area as depicted on Exhibit A, without first obtaining all necessary permits and approvals from all applicable governmental authorities.

2. The Grantor may make any other use of the surface or subsurface of the Storm Water Detention Easement that is allowed by law; provided, however, in no event shall any such use adversely affect the operation of the Stormwater Management Facilities therein or otherwise permanently and adversely affect Grantee's easement rights hereunder. Grantor shall give Grantee reasonable notice in writing before Grantor makes or permits any other use of the surface or subsurface of the Storm Water Detention Easement.

3. In the event Grantee perform excavation in the Storm Water Detention Easement pursuant to the terms of the Maintenance Agreement, Grantee shall restore the easement grade to the proposed grade as shown on the approved grading plan for Grantor's property, and the easement surface will be restored with topsoil, seed, fertilizer and mulch, however, Grantee will

not approve or restore shrubs, trees, pavements or structures of any type (other than structures identified in the Project Plans and Specifications as comprising part of the Stormwater Management Facilities and which are affected by Grantee's work under the Maintenance Agreement). In addition, if Grantee negligently damages any other portion of Grantor's property in connection with its work in the Storm Water Detention Easement, then Grantee shall repair or restore the affected areas to the condition similar to that existing prior to Grantee's entry onto Grantor's property.

4. The rights and obligations created by this Easement shall be covenants running with the land and shall inure to the benefit of, and be binding upon the parties, their heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, this Storm Water Detention Easement has been executed as of the day and year first above written.

GRANTOR: **HOME DEPOT U.S.A., INC.,**
 a Delaware corporation

By: _____

Name: _____

Title: _____

STATE OF GEORGIA)
) SS
COUNTY OF COBB)

On this ____ day of December, 2002, before me personally came the above named _____, known to me to be the person whose name is subscribed to the foregoing instrument as an authorized signatory for **HOME DEPOT U.S.A., INC.**, a Delaware corporation, the corporation described in and which executed the foregoing instrument, and who acknowledged to me that: the instrument was executed for the purposes and consideration therein expressed as the act of the corporation, and the instrument was signed by the authorized signatory, all by authority of the board of directors of said corporation.

Notary Public

My Commission Expires: _____

HOME DEPOT U.S.A., INC., SIGNATURE PAGE

EXHIBIT A

Legal Description and Depiction of Storm Water Detention Easement

EXHIBIT A
Legal Description of Property

Lot 2 of Certified Survey Map No. 9492 as recorded with the Register of Deeds,
Waukesha County, Wisconsin, ~~Reel~~ 86, ~~Image~~ 342-348, Document Number
2898882.
Volume *Page*

EXHIBIT E

List of Developer Deliveries Prior to Village Acceptance of Public Improvements

The following plans and documents shall be provided by the Developer to the Village prior to acceptance of the Public Improvements by the Village Board:

1. Complete set of construction as-built drawings for the Public Improvements in ink on standard size mylar* and AutoCad format (*.DWG) on computer disk. Plan and profile sheets shall indicate as-built data without removing original data from the drawings.** These as-built drawings shall be labeled as "as-builts" within the title block of each sheet and be stamped and signed by a Professional Engineer. The as-built drawings shall include the as-built elevations of all drainage swales and stormwater detention areas included within the Improvements.
2. Subdivision or CSM plat submitted to Village in AutoCad format (*.DWG) on computer disk. The digital data shall be in the interim format and specifications for digital plat maps as approved by Waukesha County Geo Processing Committee. Duplicate Original copies of the Subdivision or CSM plat must be provided utilizing the Film Photo Tracing, Silver Halide process (including all sheets on original scale, all sheets reduced to 1" = 100' scale, and plat face sheets reduced to 1" = 200' scale).
3. Design sheets for each length of Public Sanitary Sewer and Public Storm Sewer on Village forms or on forms approved by the Village. Design computations shall also be provided for all Public Storm Sewers based upon a 10-year storm event and, where applicable, the 100-year storm event.
4. All necessary permits must be obtained from other agencies including but not limited to, the State of Wisconsin, the Department of Natural Resources, the U. S. Army Corps of Engineers, or Waukesha County.
5. The Detention Agreements executed by Developer.

* Mylar shall be double matte 0.004" minimum thickness. Xero-graphic mylar reproductions are not acceptable.

** Sanitary sewer and storm sewer as-builts shall include field measurement from center to center of each structure, and all rim and invert elevations. Lengths, sizes, and distances between all laterals shall also be shown along with depth of lateral below grade.

** Water main as-builts shall include measurements between all valves and fittings, and any variation in elevation from the approved plan.

EXHIBIT F

PJB Falls LLC/Home Depot Subdivision Village Engineering, Inspection, Administrative and Misc. Costs

ESTIMATED AMOUNT	ITEM
\$ 25,225	Village administration and legal expenses.(8%)
\$ 50,450	Village Inspection of sanitary sewer and laterals, surface and storm water drainage facilities, water distribution system and water services, and street grading and construction including curb and gutter (10%)
\$ 3,338	Sewer impact fee (2 Lots x \$1669 per unit)*
\$ 3,426	Water impact fee (2 Lots x \$1713 per unit)*
\$ 1,000	Erosion Control Fee
\$ 1,200	Platting Fee (See Section 10 (F)) (3-1 lots x \$600 per each newly created lot)
\$ 1,500	Street signs, stop signs, etc. (6x\$250 each)
\$ 13,300	Street Lighting (7 Lights)
\$ 10,400	Street Lighting Fee**
\$ 300	Lot pipes Guarantee (\$100 per lot)
<u>\$ 110,139</u>	Total Estimated Village Engineering, Inspection, Administrative and Miscellaneous Costs.

* These Impact Fee amounts are for the year 2002. The impact fees will increase to \$1,765.00 for Sanitary Sewer and \$1,807.00 for Water as of January 1, 2003. Additional Impact Fees will be due at the time of the Building Permit.

** Street Light Fee Formula =

Fiber Glass Pole Total Monthly Charge
<u>- Wood Pole Total Monthly Charge</u>
Difference in Total Monthly Charge
<u>X 12 Months</u>
Total Yearly Difference in Charges
<u>÷ 4.0%</u>
Street Light Fee

EXHIBIT "F" (Continued)

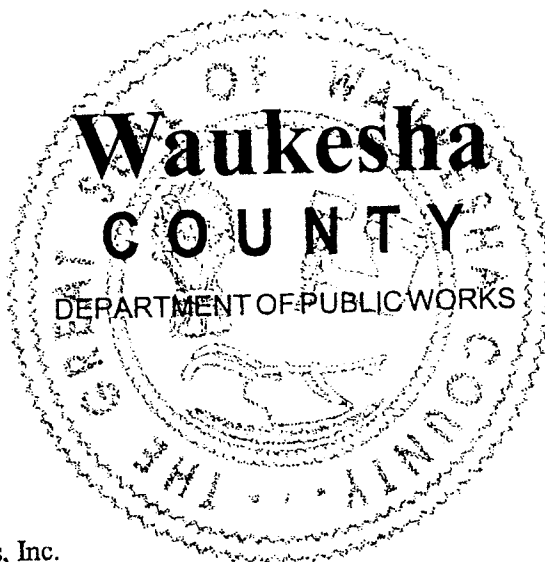
**PJB Falls LLC/Home Depot Subdivision
Village Engineering, Inspection, Administrative and Misc. Costs**

\$ 377,000	Sanitary Sewer Water Main Storm Sewer and Drainage
\$ 127,500	Street Construction
\$ 38,000	Grading and Restoration
\$ 54,250	Construction Contingency (10%)
\$ 20,000	Engineering (non-Village)
<u>\$ 616,750</u>	Total Subdivision Improvement Costs
<u>\$ 726,889</u>	Total Funds Required for Letter of Credit or other Financial Guarantee.

EXHIBIT G

Daniel M. Finley
County Executive

Richard A. Bolte, P.E.
Director of Public Works



December 3, 2002

RECEIVED

DEC 05 2002

GREENBERG FARROW
CHICAGO

Mr. Dave Behrens
Greenberg Farrow Architects, Inc.
3455 South Creek Lane, Suite 100
Arlington Heights, IL 60005

RE: CTH Q - Signalization
Home Depot Development

Dear Mr. Behrens:

Pursuant to our recent meeting concerning the Home Depot development and its access to CTH Q, we wish to confirm our position regarding the upgrades to CTH Q and the signalization of the intersections of CTH Q and Bancroft Road and CTH Q and Maple Avenue.

Waukesha County agrees to the concepts for the additional lanes and signals along CTH Q as shown in the attached diagrams that were prepared by John Bieberitz of Traffic Analysis & Design, Inc. We also agree with the following recommendations that were made by John Bieberitz.

Recommendations for Interim Improvements for CTH Q:

The Home Depot portion:

- Construct a temporary 5-lane section on CTH Q east of Bancroft Drive to provide a 200 foot westbound to southbound left turn lane plus taper.
- Provide pavement marking on Bancroft Drive south of CTH Q with one southbound lane, one shared left-through northbound lane and an exclusive northbound right turn lane from the Pick-N-Save Driveway to CTH Q, which is approximately 175 feet.
- Construct an eastbound 100-foot shared through-right turn lane west of Bancroft Drive on CTH Q.
- Construct a temporary 5-lane section on CTH Q west of Bancroft Drive to provide a 50 foot eastbound to northbound left turn lane plus taper and additional right turn capacity for eastbound to southbound traffic.
- Install temporary signals at the CTH Q intersection with Bancroft Drive with the following:
 - Westbound left turn phasing
 - Video detection
 - Radio interconnection with STH 175 and the Fleet Farm driveway

The Continental Properties portion:

- Construct a temporary 5-lane section on CTH Q east of Maple Avenue to provide a 150 foot westbound to southbound left turn lane plus taper and that ties into the Home Depot 5-lane section.
- Construct a temporary 5-lane section on CTH Q west of Maple Avenue to provide a 100 foot eastbound to northbound left turn lane plus tapers.
- On the north approach, provide a 75 foot southbound exclusive right turn lane and a southbound shared through-left turn lane.
- Install temporary signals at the CTH Q intersection with Maple Road with the following:
 - Westbound left turn phasing
 - Video detection
 - Radio interconnection with Bancroft Drive, STH 175 and the Fleet Farm driveway
 - Flashing Signal Ahead sign

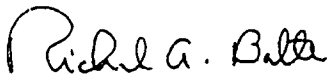
However, Waukesha County only agrees to the concepts. Final plans must be submitted for review and approval prior to the County issuing a permit for this work. No work may be done within the Waukesha County Right of Way without a permit from our office.

Waukesha County is asking the Village of Menomonee Falls to restrict access to STH 175 or not grant occupancy until this work is substantially complete with the signals operating and pavement markings completed.

Waukesha County will require that the developer pay for any temporary signals and interim pavement widening to develop turn lanes plus striping, etc. Waukesha County does understand that there are two different developers and that if either development does not go forward the impacts and concepts will change and will have to be revisited. The signal phasing, timing and required laneage will need to be agreed to by Waukesha County and the developer. The developer will also be required to pay for the new permanent signal at Bancroft Drive which will be installed when Waukesha County rebuilds CTH Q. All other roadway costs will be borne by Waukesha County.

Should you have any questions, please contact our office at 262-548-7740.

Sincerely,



Richard A. Bolte, Director

RAB/PEB/cms

cc: Frank Paulus, Village of Menomonee Falls
John Bieberitz, Traffic Analysis and Design
Pete Chladil
Paul Barthel



NOT TO SCALE

AM CYCLE = 75 SEC
PM CYCLE = 85 SEC
SAT CYCLE = 90 SEC

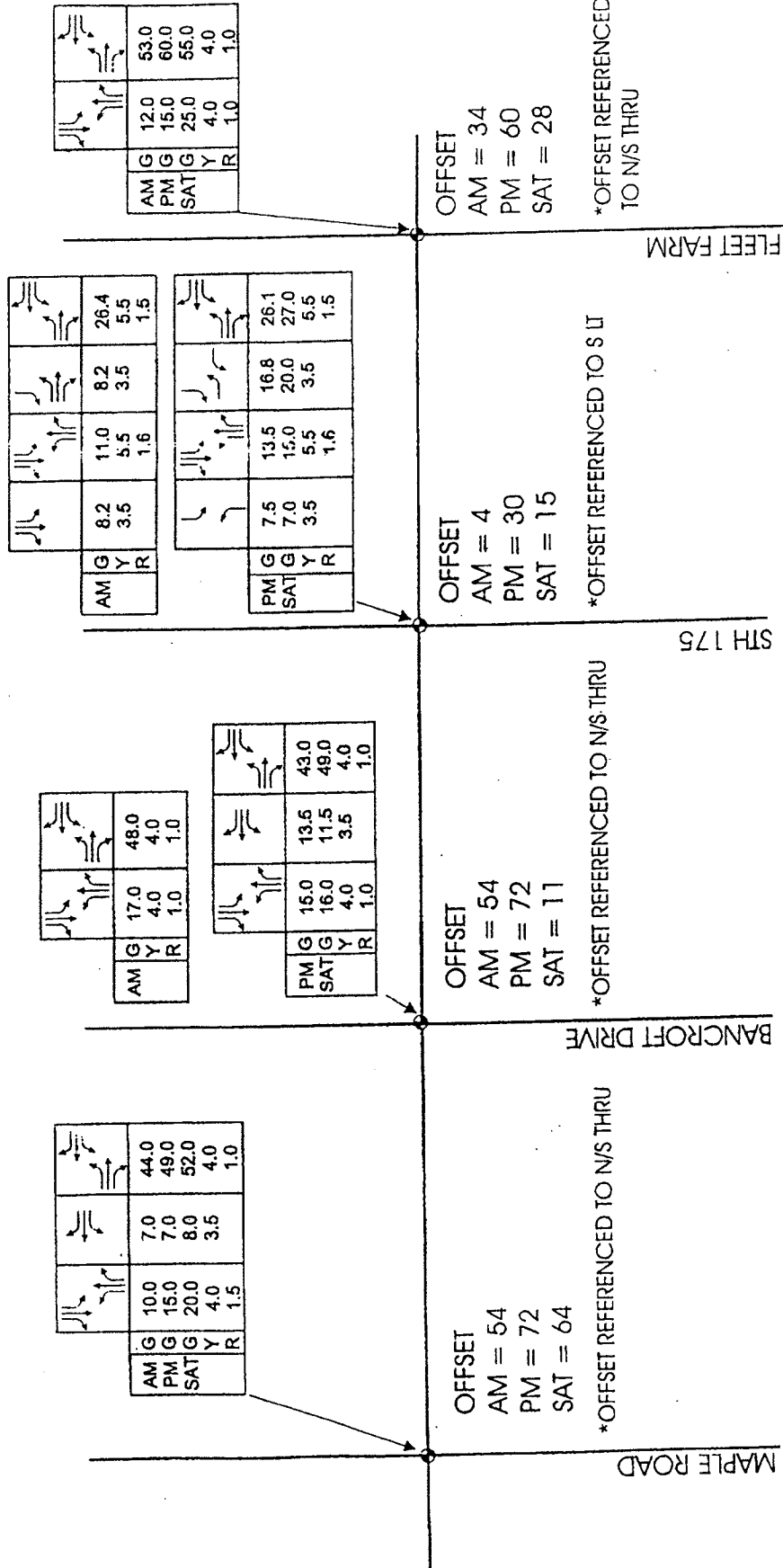


EXHIBIT 2
INTERIM SIGNAL TIMING IMPROVEMENTS
CTH @
WAUKESHA COUNTY, WISCONSIN