

0011465 OCT-85

SW 1/4 SEC 12
3518661



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STORMWATER INSPECTION AND
MAINTENANCE AGREEMENT

DOCUMENT NO.

DOCUMENT TITLE

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

10-08-2007 1:19 PM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 26.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 12

Recording Data

Return to:

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

Fairway Village

Tax Key No. MNFV 47.972

001466 OCT-85

STORMWATER INSPECTION AND MAINTENANCE AGREEMENT

This Agreement, made and entered into this 25 day of September, 2007, by and between **Preserve JBJ, L.P.**, here-in-after referred to as "DEVELOPER", and the **VILLAGE OF MENOMONEE FALLS**, a Municipal Corporation, located in the County of Waukesha and the State of Wisconsin, here-in-after referred to as "VILLAGE".

WITNESSETH:

WHEREAS, DEVELOPER is the owner of certain lands located in the Southwest Quarter (SW $\frac{1}{4}$) of Section 12, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin identified as Outlot 1 and part of Lot 5 in Fairway Village, a recorded subdivision, and further shown in Exhibit "A" attached hereto, and which is here-in-after referred to as the "PROPERTY"; and

WHEREAS, the VILLAGE has approved the plat of Fairway Village and the construction of storm water detention basins on the PROPERTY; and

WHEREAS, the DEVELOPER acknowledges that the stormwater detention facilities to be constructed and maintained under this agreement are for the benefit of the properties comprising Fairway Village; and

WHEREAS, the DEVELOPER warrants and represents that it is the owner in fee of the PROPERTY, and that this real estate is free and clear of all liens and encumbrances; and

WHEREAS the DEVELOPER together with its respective heirs, personal representatives, and assigns, by separate document granted the VILLAGE and its assigns, certain permanent and perpetual easements for storm water detention basins and related facilities, including storm sewer inlets and manholes.

These easement rights include the right to build, construct, operate, inspect, maintain, repair, reconstruct and enlarge any and all presently existing and hereinafter constructed facilities, and the right of entry in, across, beneath, and above the real estate here-in-after more particularly described in Exhibit "B" and Exhibit "C"; and

WHEREAS, DEVELOPER as a part of the development of the Fairway Village Subdivision, has granted an easement for the storm water detention areas and has constructed storm water detention basins within the said easements on the PROPERTY; and

WHEREAS, the hydraulic volume design calculations of the said detention basins includes the easement areas, and requires the establishment of certain elevations and slopes in the easement areas of the PROPERTY; and

WHEREAS, the VILLAGE finds it necessary to insure that the design volume of the detention basins is not reduced by changes in the established elevations and slopes in the easement areas on the PROPERTY; and

WHEREAS, the DEVELOPER intends to establish a Homeowner's Association which is primarily responsible for the maintenance of the landscaping thereon, and the maintenance of the

stormwater detention basins within the **PROPERTY**; and

WHEREAS, the **VILLAGE** intends to reserve the right to enforce the requirement that the stormwater detention basin areas within said easements are maintained in a manner consistent with the lands maintained by the individual residents of **Fairway Village**.

NOW THEREFORE, in consideration of the mutual covenants and agreements,
IT IS AGREED, as follows:

1. Lots 1-5 in **Fairway Village** subdivision shall have attached to it an equal and undividable ownership in Outlot 1, and Lot 5 shall have attached to it an equal and undividable ownership in the storm water easement area which is part of Lot 5 within the **PROPERTY** and each and every lot owner shall be considered the "**OWNER**" of the stormwater detention basin in Outlot 1, and Lot 5 shall be considered the "**OWNER**" of the stormwater detention basin in the storm water easement area which is part of Lot 5 within the **PROPERTY**. Subject to the other terms of the agreement, the Homeowner's Association shall, as the agent of the **OWNER**, thereafter be primarily responsible for the landscaping, maintenance, and inspection of the stormwater detention basins located on the **PROPERTY**. If the Homeowner's Association is never created, is not responsive, or is dissolved, then the **OWNER** shall be responsible for all obligations in this agreement.
2. The elevations and slopes that have been established in the storm water detention easements on the **PROPERTY**, as identified on **Exhibit "D"**, shall not be altered from those designed, established and constructed, without the specific written approval of the **VILLAGE**.
3. No Structure of any type will be allowed within the aforesaid easements.
4. Before either may plant trees or shrubs in the aforesaid easements, the **OWNER** or Homeowner's Association must obtain a permit from the Village of Menomonee Falls Department of Public Works. The Department of Public Works shall have the right to determine which species of trees and shrubs are or are not appropriate for planting within the aforesaid easements. Neither the **OWNER** nor Homeowner's Association may plant shrubs or trees in the easements, unless approved by the **VILLAGE**.
5. The easement areas shall be maintained in a manner consistent with the lands maintained by the individual residents of **Fairway Village**. This includes the obligation to maintain the slopes and elevations at the originally designed, established and constructed elevations and slopes within the easement areas; to make all the necessary repairs and/or improvements to correct damages, both natural and man made; and to resolve any complaints.
6. Every five (5) years from the date of this agreement, the Homeowner's Association shall hire a licensed professional engineer to inspect and certify the storm water detention basins on the **PROPERTY** and submit an inspection report to the **VILLAGE** as proof of compliance. The Inspection Report form provided by the **VILLAGE** shall be used to determine the condition of the storm water detention basins. The purpose of the

10011468 OCT-86

inspection is to assure safe and proper functioning of the storm water detention basins. The inspection shall cover the entire facility such as berms, outlet structures, pond areas, access roads, etc.. The conditions shall be noted in the inspection report.

7. Should the **VILLAGE** find that the aforesaid elevations and slopes have been altered, changed or for any reason deviate from those designed, established and constructed; or, if structures are found in the aforesaid easements; or, if shrubs or trees which have not been approved by the **VILLAGE** have been planted in the aforesaid easements; or, if the easement areas are not being maintained in a manner consistent with the lands maintained by the individual residents of **Fairway Village**, the Homeowner's Association shall be responsible for the cost and expense of returning the slopes and elevations to the originally designed, established and constructed elevations and slopes; removing structures; removing inappropriate shrubs or trees; and maintaining ~~Gravel 1 and the~~ storm water easement area which is part of Lot 5 in a manner consistent with the lands maintained by the individual residents of **Fairway Village**.
8. If the Homeowner's Association fails to conduct or submit an inspection certifying the basins; or, fails to return the slopes and elevations to the originally designed, established and constructed elevations and slopes, and make all the necessary repairs and/or improvements to correct damages, both natural and man made; or remove structures or inappropriate shrubs or trees, or maintain the easement area in a manner consistent with the lands maintained by the individual residents of **Fairway Village**, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete said work as described above. In addition, the **VILLAGE** shall be empowered without notice of public hearing, to impose a special assessment for the cost of said work upon each and every lot within **Fairway Village**, payable with the next succeeding tax roll.
9. Each and every lot owner within **Fairway Village** shall be jointly and severally liable for any expense or cost incurred by the **VILLAGE** to inspect, preserve, maintain, or restore the aforesaid easement areas on the **PROPERTY**, or landscaping thereon. The **VILLAGE** shall be empowered, without notice of hearing, to levy a special assessment against each lot owner within **Fairway Village**, and each and every lot owner agrees to pay for any such special assessment for expenses incurred by the **VILLAGE**.
10. **OWNER** and Homeowner's Association agree to indemnify and hold harmless the **VILLAGE**, its board members, employees, agents, and officers from any costs, damages, loss, claim, suit, liability or award which may arise, come, be brought or incurred or assessed because of the existence of, any action or failure to act with respect to the storm water detention basins, and the storm water easements on the **PROPERTY** or because of any adverse effect upon any person or property related or alleged to be related to the storm water detention basins and storm water easements. The **VILLAGE** shall have the right to defend any such claim and the **OWNER** and Homeowner's Association shall reimburse the **VILLAGE** for any and all costs and/or expenses, including but not limited to attorney's fees, which the **VILLAGE** may incur as a result of such claims.
11. As long as the **DEVELOPER** possesses any interest in any property in **Fairway Village**,

001469 OCT-85

the **DEVELOPER** shall be considered an **OWNER** as that term is used in this Agreement, and shall be subject to all the obligations of an **OWNER** under this Agreement

12. The rights and obligations created by this Agreement shall be covenants running with All Lots within Fairway Village and shall inure to the benefit of, and be binding upon, the parties, their heirs, personal representatives, successors and assigns.

END OF TEXT. SIGNATURE PAGES AND EXHIBITS FOLLOW.

091470 OCT-85

J.B.J DEVELOPMENT, INC

IN WITNESS WHEREOF, Preserve JBJ, L.P., has caused this Agreement to be signed this 25 day of September, 2007.

Preserve JBJ, L.P.

By:

Scott J. Bence, G.P. member

Scott J. Bence, J.B.J. RE. L.P.

General Partner, as member

State of Wisconsin)
) SS

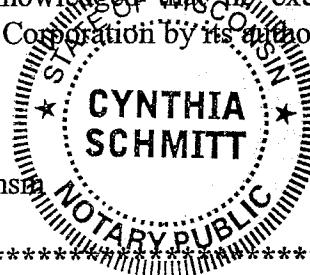
County of Washington)

Personally came before me this 25 day of September, 2007, the above named Scott J. Bence, to me known to be the person who executed the foregoing instrument in his respective official capacity as Owner of said corporation, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said Corporation by its authority.

Cynthia Schmitt

Notary Public

Washington County, State of Wisconsin
My Commission Expires on 4/19/09



VILLAGE OF MENOMONEE FALLS

Approved by the Village Board of the Village of Menomonee Falls on the 4th day of September, 2007.

By:

Richard A. Rechlicz
Richard A. Rechlicz
Village President

Attest:

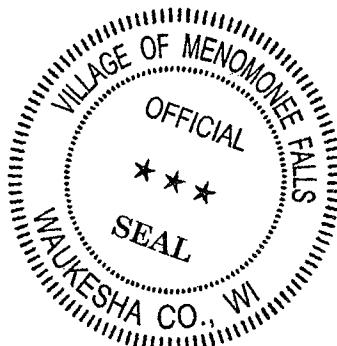
Richard F. Henkels
Richard F. Henkels
/ Village Manager/Clerk-Treasurer/
Clerk

Approved as to Form:

Michael J. Morse
Michael J. Morse, Village Attorney

This instrument was drafted by:

Jason T. Mayer
Associate Civil Engineer
Date: 08/29/2007



001472 OCT-85

LEGAL DESCRIPTION
STORM WATER EASEMENT AREA
LOT 5
OF FAIRWAY VILLAGE
EXHIBIT "B"

Being a part of Lot 5 of Fairway Village, being a subdivision of part of the Southeast 1/4 of the Southwest 1/4 of Section 12, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, more particularly described as follows:

Commencing at the Southeast corner of said Southwest 1/4;
Thence N 89°09'33"W along the south line of said Southwest 1/4, a distance of 493.24 feet;
Thence N 28°43'58"E, a distance of 272.68 feet to the POINT OF BEGINNING;
Thence continuing N 28°43'58"E along said line, a distance of 178.38 feet;
Thence S 61°16'02"E, a distance of 51.13 feet;
Thence S 00°40'58"E, a distance of 112.85 feet;
Thence S 72°49'52"W, a distance of 25.02 feet to the arc of a curve;
Thence westerly, 82.48 feet along the arc of a curve whose center is S 40°58'48"W a radial distance of 56.50 feet and whose chord bears S 89°09'39"W, 75.35 feet to the arc of a curve;
Thence westerly, 30.37 feet along the arc of a curve whose center is N 42°39'29"W a radial distance of 40.00 feet and whose chord bears S 69°05'29"W, 29.64 feet;
Thence N 89°09'33"W, a distance of 4.99 feet to the POINT OF BEGINNING.

Containing 11,239 square feet, 0.2580 acres.

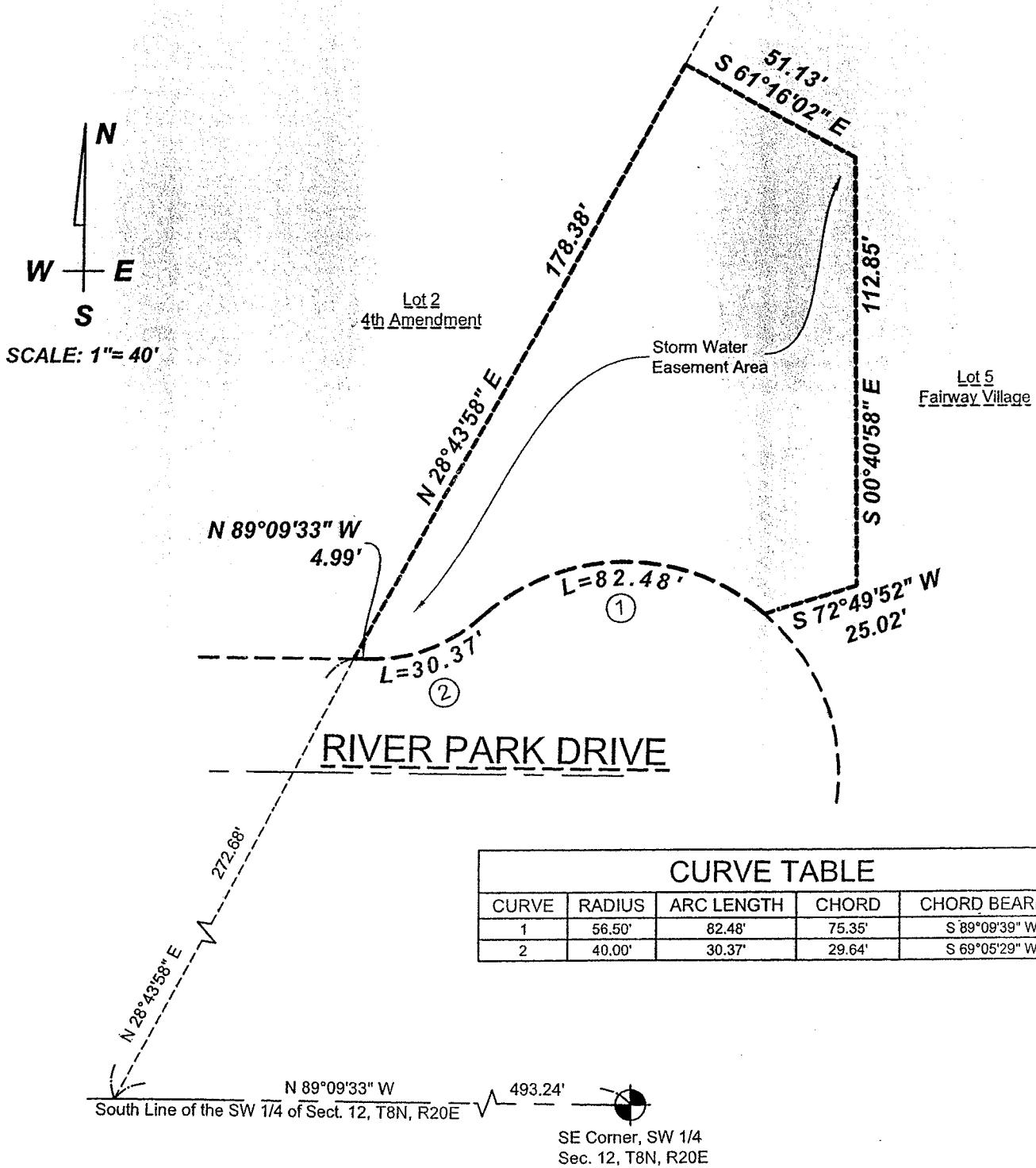
001473 OCT-05
August 13, 2007

EXHIBIT "B" (cont....)
STORM WATER
EASEMENT AREA

Survey No. 050120X

LEGAL DESCRIPTION:

Being a part of Lot 5 of **FAIRWAY VILLAGE**, Being a part of the Southeast 1/4 of the Southwest 1/4 of Section 12, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin



0011474 OCT-86

LEGAL DESCRIPTION
OUTLOT 1
OF FAIRWAY VILLAGE
EXHIBIT "C"

C

Outlot 1 of Fairway Village, being a subdivision of part of the Southeast 1/4 of the Southwest 1/4 of Section 12, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, more particularly described as follows:

Commencing at the Southeast corner of said Southwest 1/4 and the POINT OF BEGINNING; Thence N 89°09'33"W along the south line of said Southwest 1/4, a distance of 355.53 feet to the POINT OF BEGINNING; Thence continuing N 89°09'33"W along said line, a distance of 137.71 feet; Thence N 28°43'58"E, a distance of 201.91 feet; Thence S 12°47'06"E, a distance of 183.62 feet to the south line of said Southwest 1/4 and the POINT OF BEGINNING.

Containing 12,288 square feet or 0.2821 acres, more or less.

001475 OCT-05

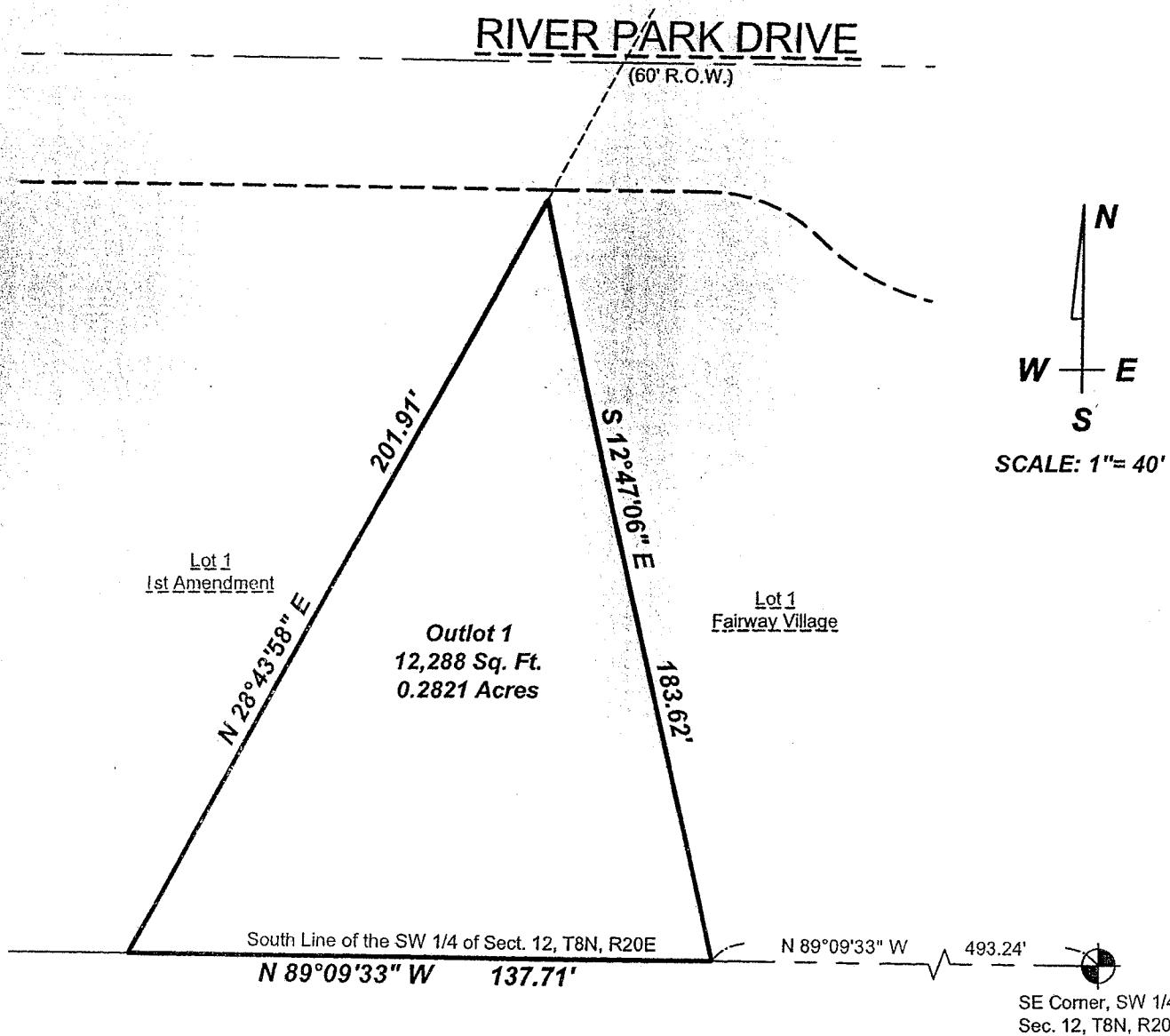
August 13, 2007

EXHIBIT "C" (CANT....)

Survey No. 050120X

LEGAL DESCRIPTION:

Outlot 1 of **FAIRWAY VILLAGE**, Being a part of the Southeast 1/4 of the Southwest 1/4 of Section 12, Township 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin



0011476 OCT-87

Exhibit "D"

