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WC3541495-006

STORMWATER FACILITIES  
OPERATION, INSPECTION &  
MAINTENANCE AGREEMENT

DOCUMENT TITLE

3541495

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

01-25-2008 9:11 AM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

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

Recording Data

Return to:

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

*MNFV  
Svd  
21  
6*

PH Menomonee Falls, LLC  
(Qdoba Mexican Grill)

Tax Key No. MNFV 014.983.001

# STORMWATER FACILITIES OPERATION, INSPECTION, & MAINTENANCE AGREEMENT

Village of Menomonee Falls

THIS AGREEMENT is between **PH MENOMONEE FALLS, LLC** (the "Property Owner"), and the **Village of Menomonee Falls**, (the "Village"). It is based upon the following:

- A. The Property Owner is the owner of certain real property (the "Property") located in the Village of Menomonee Falls and shown in Exhibit "A", which is further described as follows: LOT 1 of CERTIFIED SURVEY MAP NO. 10462 as recorded by deed in the land records of Waukesha County, Document Number 3520788, Volume 99, Pages 312-316.
- B. The Property Owner intends to develop the Property pursuant to a Site Plan approved by the Village and known as Menomonee Falls Retail – N95W18169 & N95W18167 Appleton Ave., Menomonee Falls, WI with final revisions dated 5/23/07, (the "Plan") as shown in Exhibit "B".
- C. The health, safety, and welfare of the residents of Menomonee Falls, Wisconsin, require that on-site Stormwater Management Facilities be provided on the Property.
- D. The Plan provides for the construction of any detention basin, retention basin, outlet structures, inlet structures, storm sewer, underground storage facility, swales, berms or any structure and grading associated with stormwater management (the "Stormwater Management Facilities") within the confines of the Property.
- E. The Village requires that on-site Stormwater Management Facilities as shown on the Plan be constructed, operated and adequately maintained by the Property Owner.

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

1. The on-site Stormwater Management Facilities shall comply with the policy outlined in the Village "Stormwater Management Guidelines", and shall be constructed by the Property Owner in compliance with Village approved plans and specifications identified in the Plan.
2. Upon completion of the project, the Property Owner shall supply the Village with complete set of construction as-built drawings, and in AutoCAD format (\*.DWG) on computer disk or CD of the Stormwater Management Facilities within thirty (30) days of completion of the project. The as-built plan will be used by the Village to determine if the Stormwater Management Facilities are constructed according to the Village approved plans. The Stormwater Management Facilities will be accepted only after the Village approves the as-built plans.
3. Upon completion of the project, the Property Owner shall supply the Village with a *Stormwater Management Facilities Operation and Inspection Report* on the Village approved form for each stormwater detention facility certifying compliance of the facility. The report shall be stamped and signed by a Professional Engineer.
4. 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.
5. 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.

6. 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.
7. The Property Owner shall hire a licensed professional engineer to inspect the Stormwater Management Facilities every (5) five years and submit an inspection report to the Village as proof of compliance. The Village approved Inspection Report form shall be used to determine the condition of the facilities. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facility such as berms, outlet structure, pond areas, access roads, etc. The conditions shall be noted in the inspection report.
8. The Property Owner will perform or otherwise be responsible for any work necessary to keep the Stormwater Management Facilities in good working order. This obligation includes making all the necessary repairs and/or improvements to correct damages, both natural and man made; and to resolve any citizen complaints. If deficiencies or damages are noted in the inspection report provided to the Village under ¶7 or if complaints are reported to the Village, the Property Owner has thirty (30) days from the date of the report or complaint to take appropriate measures to correct any deficiencies or damages and respond to citizen complaints.
9. The Property Owner hereby grants permission to the Village, its authorized agents and employees, to enter upon the Property and to inspect the Stormwater Management Facilities whenever the Village deems necessary.
10. If the Property Owner fails to inspect the Stormwater Management Facilities as required, or maintain the Stormwater Management Facilities in good working condition acceptable to the Village and make all the necessary repairs and/or improvements to correct damages, both natural and man made, and to resolve any complaints, the Village, upon thirty (30) days written notice to the Property Owner, may enter upon the Property and take whatever steps necessary to correct deficiencies. In addition, if the Village performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Village shall be empowered without notice of public hearing, to impose a special charge for the cost of said work upon the Property Owner payable at the next succeeding tax bill.
11. This Agreement imposes no liability of any kind whatsoever on the Village. The Property Owner agrees to hold harmless the Village, its board members, employees, agents, and officers from any costs, damages, loss, claim, suit, liability or award which may arise, come, be brought or incurred or assessed because of the existence of, any action or failure to act with respect to the storm water facilities on the Property or because of any adverse effect upon any person or property related or alleged to be related to the storm water detention basins from any liability if the Stormwater Management Facilities fail to operate properly. The Village shall have the right to defend any such claim and the Property Owner shall reimburse the Village for any and all cost and/or expenses, including but not limited to attorney's fees, which the Village may incur as a result of such claims.
12. This Agreement shall become effective as of the date it is approved by the Village or executed by the Property Owner, whichever is later.
13. By signing below, the person signing on behalf of the Property Owner represents that he has authority to act on behalf of the Property Owner, and has authority to sign this Agreement on the Property Owner's behalf.
14. 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.

IN WITNESS WHEREOF, PH MEMOMONEE FALLS, LLC has caused this Agreement to be signed this 18 day of December, 2007.

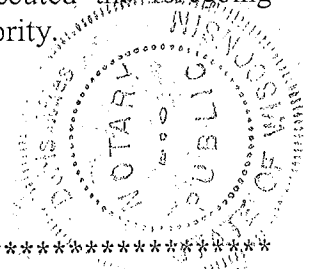
PH MEMOMONEE FALLS, LLC

By: [Signature]  
Officer of PH MEMOMONEE FALLS, LLC

State of Wisconsin )  
  ) Ss.  
County of Milwaukee

Personally came before me this 19<sup>th</sup> day of December 2007, the above named Michael Pranke to me known to be the person who executed the foregoing instrument in his respective official capacity as Officer of said corporation, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said Corporation by its authority.

[Signature]  
Notary Public  
Milwaukee County, Wisconsin  
My Commission Expires on 11/25/2011

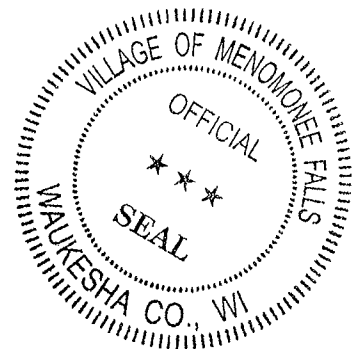


Approved by the Board of Trustees of the **Village of Menomonee Falls** on the 17<sup>th</sup> day of November, 2007.

**VILLAGE OF MEMOMONEE FALLS**

[Signature]  
Richard A Rechlicz, Village President

[Signature]  
Village Clerk



This instrument was drafted by  
The Village of Menomonee Falls  
Brian C. Hornickel, P.E.  
Date: July 19, 2007

AD0153 JAN 25 8

# CERTIFIED SURVEY MAP NO. 10462

BEING A REDIVISION OF PARCEL D OF CERTIFIED SURVEY MAP NO. 8238, RECORDED IN VOLUME 72, PAGES 12-16 OF DOCUMENT NO. 2199742, AND UNPLATTED LANDS LOCATED IN THE NORTHEAST 1/4 OF THE NORTHWEST ONE-QUARTER OF SECTION 4, TOWN 8 NORTH, RANGE 20 EAST, VILLAGE OF MENOMONEE FALLS, COUNTY OF WAUKESHA, STATE OF WISCONSIN

NW COR  
4-8-20  
X=2,495,289.56  
Y=439,984.40  
LOST TO CONST.

N. LINE NW 1/4 4-8-20 S 89°20'37" W 2630.55'

PARCEL 1 CSM 5536

### LEGEND:

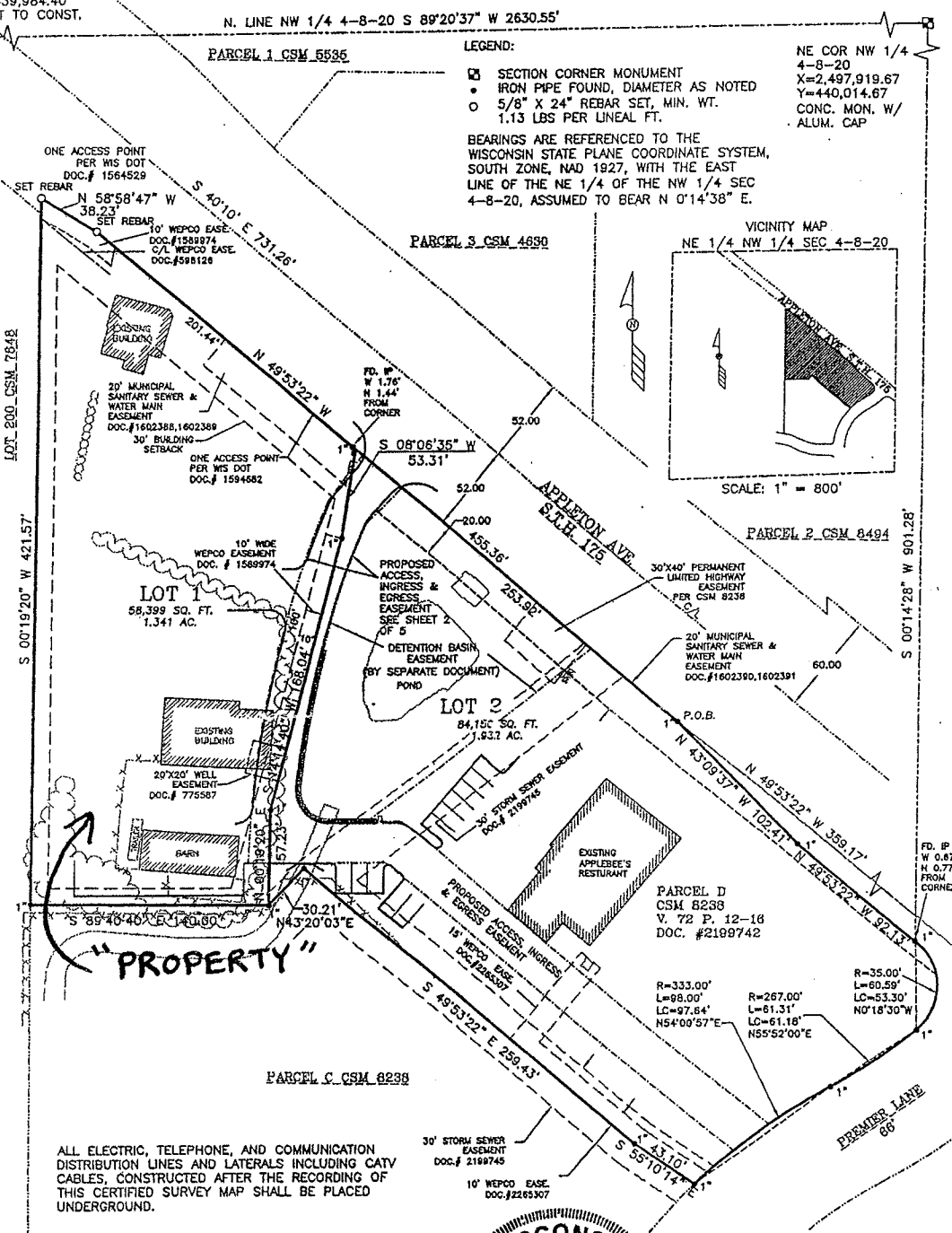
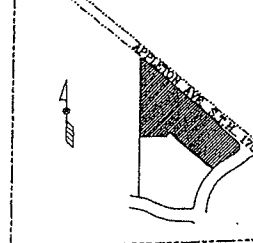
- SECTION CORNER MONUMENT
- IRON PIPE FOUND, DIAMETER AS NOTED
- 5/8" X 24" REBAR SET, MIN. WT. 1.13 LBS PER LINEAL FT.

NE COR NW 1/4  
4-8-20  
X=2,497,919.67  
Y=440,014.67  
CONC. MON. W/  
ALUM. CAP

BEARINGS ARE REFERENCED TO THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE, NAD 1927, WITH THE EAST LINE OF THE NE 1/4 OF THE NW 1/4 SEC 4-8-20, ASSUMED TO BEAR N 0°14'38" E.

### VICINITY MAP

NE 1/4 NW 1/4 SEC 4-8-20



"PROPERTY"

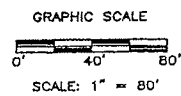
ALL ELECTRIC, TELEPHONE, AND COMMUNICATION DISTRIBUTION LINES AND LATERALS INCLUDING CATV CABLES, CONSTRUCTED AFTER THE RECORDING OF THIS CERTIFIED SURVEY MAP SHALL BE PLACED UNDERGROUND.

**SIGMA**  
DEVELOPMENT, INC.  
1300 WEST CANAL STREET  
MILWAUKEE, WISCONSIN 53233  
PHONE: (414) 643-4200  
FAX: (414) 643-4210

*BMM*  
5-10-2007



OWNERS:  
PH MENOMONEE FALLS, LLC  
WHG REAL ESTATE SOUTH, LLC



1 OF 5 SHEETS

# EXHIBIT "A"

