

000700 JUN 24 2004

SW24

3178268

Document No.



WC3178268-009

STORM WATER  
DETENTION BASIN  
AGREEMENT

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

06-24-2004 12:39 PM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

REC. FEE: 20.00  
REC. FEE-CD: 5.00  
REC. FEE-ST: 2.00  
TRAN. FEE:  
TRAN. FEE-STATE:  
PAGES: 9

Recording Data

Return to:

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

8/21/04

Lilly Creek Highlands III

Tax Key No. MNFV 0096.980.003

## AGREEMENT

This Agreement, made and entered into this 19<sup>th</sup> day of April, 2004, by and between **LILLY CREEK LLC**, 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 (SW1/4) and Southeast Quarter (SE1/4) of Section 24, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin identified as Outlot 7 in the **LILLY CREEK HIGHLANDS III**, a recorded subdivision, and further shown in **Exhibit "A"** attached hereto, and which subdivision is here-in-after referred to as the "PROPERTY"; and

**WHEREAS**, the VILLAGE has approved the plat of **LILLY CREEK HIGHLANDS III** and the construction of storm water detention basins on the PROPERTY; and

**WHEREAS**, the DEVELOPER hereby warrants and represents that it is the owner in fee of the real estate hereinafter described and that said real estate is free and clear of all liens and encumbrances. The DEVELOPER together with its respective heirs, personal representatives, and assigns, by separate document has granted unto the said Village of Menomonee Falls and its assigns, permanent and perpetual easements for storm water detention basins and related facilities, including storm sewer inlets and manholes.

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

**WHEREAS**, DEVELOPER as a part of the development of the **LILLY CREEK HIGHLANDS III**, has granted an easement for the storm water detention areas and has constructed storm water detention basins within the said easement on the PROPERTY; and

**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, landscape easements, including Outlot 6 and Outlot 7 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 **LILLY CREEK HIGHLANDS III**.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements,

**IT IS AGREED**, as follows:

1. Each lot in **LILLY CREEK HIGHLANDS III** subdivision shall have attached to it an equal and undividable ownership in Outlot 6, Outlot 7 and Outlot 8 within the **PROPERTY** and each and every lot owner shall be considered the "**OWNER**" of the stormwater detention basins in Outlot 7, as well as Outlot 6 and Outlot 8 within **PROPERTY**.
2. 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 and the maintenance of Outlot 6, Outlot 7, outlot 8, and all landscape easements located on the **PROPERTY**. If the Homeowners Association is never created, is not responsive, or is dissolved, then the **OWNER** shall be responsible for all obligations in this agreement.
3. The elevations and slopes that have been established in the stormwater detention basin on the **PROPERTY**, as identified on **Exhibit "C"**, shall not be altered from those designed, established and constructed, without the specific written approval of the **VILLAGE**.
4. No Structure of any type will be allowed within the aforesaid easements.
5. The **OWNER** or Homeowner's Association shall obtain a permit from the Village of Menomonee Falls Department of Public Works prior to planting trees or shrubs in the aforesaid easements. The Department of Public Works shall have the right to determine which species of trees and shrubs are or are not appropriate for planting within the aforesaid easements. Neither the **OWNER** nor Homeowners Association may plant shrubs or trees in the easements, unless approved by the **VILLAGE**.
6. The landscape easement areas, stormwater detention ponds, and all outlots shall be maintained in a manner consistent with the lands maintained by the individual residents of **LILLY CREEK HIGHLANDS III**. 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 and make all the necessary repairs and/or improvements to correct damages, both natural and man made; and to resolve any complaints.
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 landscape easement areas, stormwater detention basins, or Outlot 6 and Outlot 8 are not being maintained in a manner consistent with the lands maintained by the individual residents of **LILLY CREEK HIGHLANDS III**, 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 Outlot 6, Outlot 7, Outlot 8, and all landscape easements in a manner consistent with the lands maintained by the individual residents of **LILLY CREEK HIGHLANDS III**.

8. If the Homeowner's Association does not return the slopes and elevations to the originally designed, established and constructed elevations and slopes; or remove structures or inappropriate shrubs or trees, or maintain the landscape easement areas, Outlot 6, Outlot 7, and Outlot 8 in a manner consistent with the lands maintained by the individual residents of **LILLY CREEK HIGHLANDS III**, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's 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 **LILLY CREEK HIGHLANDS III**, payable with the next succeeding tax roll.
9. Each and every lot owner within **LILLY CREEK HIGHLANDS III** shall be jointly and severally liable for any expense or cost incurred by the **VILLAGE** to preserve, maintain, or restore Outlot 6, Outlot 7, Outlot 8, and all landscape easements, or landscaping thereon. The **VILLAGE** shall be empowered, without notice of hearing, to levy a special assessment against each lot owner within **LILLY CREEK HIGHLANDS III**, and each and every lot owner agrees to pay for any such special assessment for expenses incurred by the **VILLAGE**.
10. **DEVELOPER, OWNER** and Homeowner's Association agree to indemnify and hold harmless the **VILLAGE**, its board members, employees, agents, and officers from any costs, damages, loss, claim, suit, liability or award which may arise, come, be brought or incurred or assessed because of the existence of, any action or failure to act with respect to the storm water detention basins and the storm water easements on the **PROPERTY** or because of any adverse effect upon any person or property related or alleged to be related to the storm water detention basins and storm water easements. The **VILLAGE** shall have the right to defend any such claim and **DEVELOPER, OWNER**, and Homeowner's Association shall reimburse the **VILLAGE** for any and all cost and/or expenses, including but not limited to attorney's fees, which the **VILLAGE** may incur as a result of such claims.
11. The rights and obligations created by this Agreement shall be covenants running with All Lots within **LILLY CREEK HIGHLANDS III** and shall inure to the benefit of, and be binding upon, the parties, their heirs, personal representatives, successors and assigns.

000704 JUN 24 2004

IN WITNESS WHEREOF, **LILLY CREEK LLC** has caused this Agreement to be signed this  
2<sup>nd</sup> day of June, 2004.

By:

P.J. Burbach, President

State of Wisconsin )  
) Ss.  
County of Waukesha)

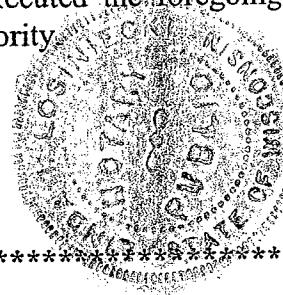
Personally came before me this 2<sup>nd</sup> day of June 2004, the above named P.J. Burbach, to me known to be the person who executed the foregoing instrument in his respective official capacity as President of said corporation, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said Corporation by its authority.

Linda J. Losiniecki

Notary Public

Waukesha County, Wisconsin

My Commission Expires on 12/24/06

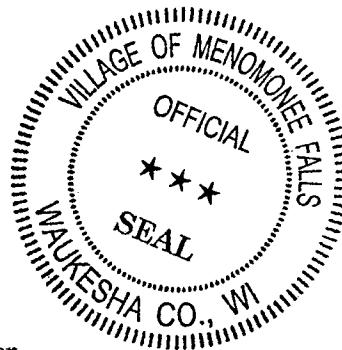


Approved by the Village Board this 19<sup>th</sup> day of April, 2004.

**VILLAGE OF MENOMONEE FALLS**

J. E. D.  
Jefferson E. Davis, Village President

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



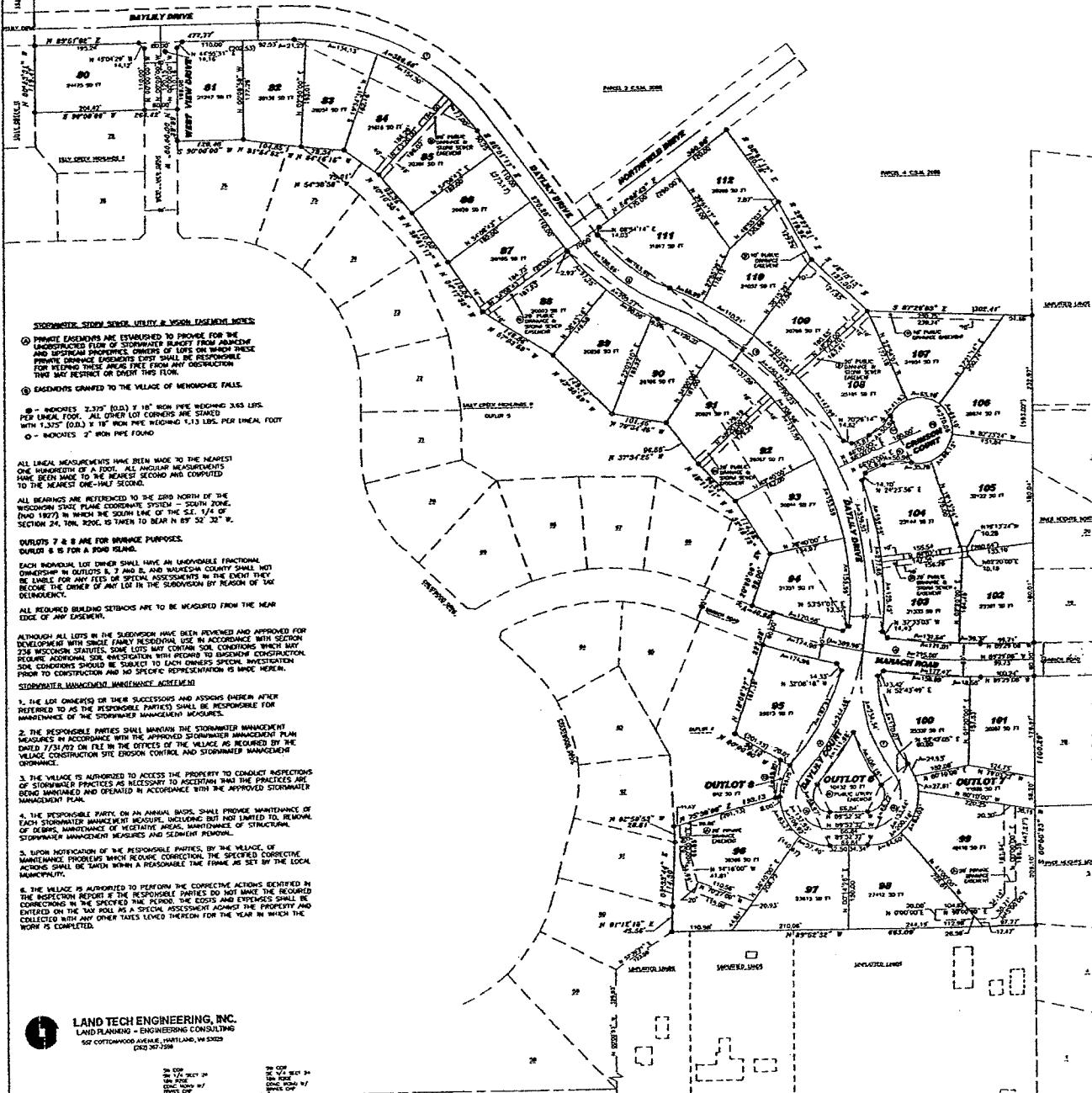
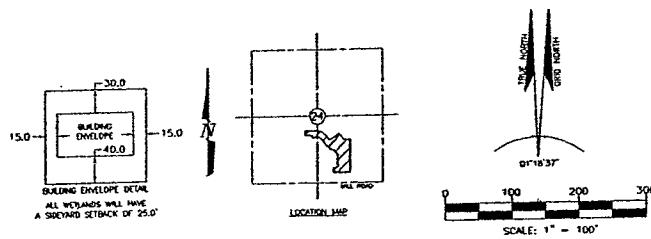
This instrument was drafted by:

Jonathan M. Bretl  
Civil Engineer I

## EXHIBIT "A"

## LILLY CREEK HIGHLANDS III

BEING A PART OF PARCEL 4 OF CERTIFIED SURVEY MAP NO. 2088 AND LANDS BEING A PART OF THE NW 1/4 AND SW 1/4 OF THE SE 1/4 AND THE NE 1/4 OF THE SW 1/4 OF SECTION 24, TOWN 8 NORTH, RANGE 20 EAST, VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN



**LEGAL DESCRIPTION  
OF A PUBLIC DRAINAGE & STORM SEWER EASEMENT  
IN OUTLOT 7 OF  
OF LILLY CREEK HIGHLANDS III**

Being a public storm sewer and drainage easement, being Outlot 7 of Lilly Creek Highlands III, being a parcel 4 of C.S.M. No. 2088 and lands being a part of the Northwest 1/4 and Southwest 1/4 of the Southeast 1/4 and the Northeast 1/4 of the Southwest 1/4 of Section 24, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, Bounded and described as follows:

Commencing at the Southwest corner of the Southeast 1/4 of Section 24, running thence South 89°52'32" East, along the South line of said Section 24, 559.32 feet to the point of the Southeast corner of "Lilly Creek Highlands II", thence North 00°00'53" West along the Easterly line of "Lilly Creek Highlands II", 329.93 feet to a point; thence North 57°39'21" East, along the Easterly line of "Lilly Creek Highlands II", 123.08 feet to a point, Thence South 89°52'32" East, 663.00 feet to a point; thence North 00°00'23" East, 209.10 feet to the point of beginning.

Thence North 80°10'00" West, 220.25 feet to a point on a curve, thence along the arc of said curve 27.61 feet, whose center lies to the west, whose radius is 90.00 feet and whose chord bears North 12°38'14" West, 27.50 feet to a point, thence North 80°10'00" East 102.08 feet to a point, thence South 79°03'22" East, 124.73' to a point, thence South 00°00'23", 58.20 feet to the point of beginning.

W

Contains 0.26 acres more or less

Prepared by Norbert F. Stachowski, RLS # S-1480



SCALE: 1" = 40'

**100**

25337 SQ FT

N 52°42'05" E  
60.00

A=24.93'

102.08'  
N 80°10'00" E

A=27.61'

**OUTLOT 7**

11528 SQ FT

N 80°10'00" W  
220.25'

20.30'

38.19'

(447.27')

N 00°00'00" E  
166.36'

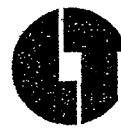
09.10'

S 00°00'23" W

RIVE

**99**

42418 SQ FT

(A) 20' PRIVATE  
DRAINAGE9  
PUBLIC STORMWATER  
EASEMENT

**LAND TECH ENGINEERING, INC.**  
 LAND PLANNING • ENGINEERING CONSULTING  
 557 COTTONWOOD AVENUE, HARTLAND, WI 53029  
 (262) 367-7599

