

**RESOLUTION NO. 2018-43**

**RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA TO APPROVE A REVISED DEVELOPMENT AGREEMENT FOR CASCADE RIDGE SUBDIVISION FINAL PLAT- PARCEL ID 51-104-04-23-30-089-010 AND 51-104-04-23-30-059-010 / NCS, LLC, OWNER / NANCY WASHBURN, AGENT**

The Village Board for the Village of Caledonia resolves as follows:

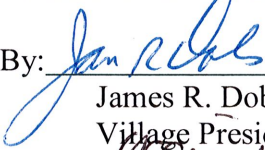
**WHEREAS**, the Village Board approved Resolution No. 2018-42 approving the Development Agreement for Cascade Ridge Subdivision subject to certain revisions on May 7, 2018.


**WHEREAS**, after said approval, Village staff met with the Developer and Developer requested additional revisions beyond the approval that occurred on May 7, 2018.

**NOW, THEREFORE, BE IT RESOLVED** by the Caledonia Village Board that the revised Development Agreement between the Village of Caledonia, Village of Caledonia Sewer Utility District, Village Of Caledonia Water Utility District, Tri City National Bank, Reesman's Excavating and Grading, Inc. and NCS, LLC as set forth in **Exhibit A** attached hereto and incorporated herein (the "Development Agreement"), is hereby authorized and approved, and the Village President and Village Clerk are authorized to execute said agreement and Village staff are authorized to take all such actions necessary in furtherance of the Development Agreement.

Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this 7<sup>th</sup> day of May, 2018.

**VILLAGE OF CALEDONIA**

By:   
James R. Dobbs  
Village President

Attest:   
Karie Torkilsen  
Village Clerk

770272.080 (5-14-18)

**DEVELOPMENT AGREEMENT**  
**CASCADE RIDGE SUBDIVISION**

**THIS DEVELOPMENT AGREEMENT, (the “Agreement”)**, effective as of the date last executed by any Party hereto, is made and entered into by and between **NCS, LLC**, a Wisconsin Limited Liability Company, (the “Developer”), its successors and assigns, **TRI CITY NATIONAL BANK** a Wisconsin financial institution, its successors and assigns, (the “Mortgagee”), the **VILLAGE OF CALEDONIA**, a municipal corporation located in Racine County, Wisconsin, its successors and assigns (the “Village”), the **VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT** and **THE VILLAGE OF CALEDONIA WATER UTILITY DISTRICT**, being two separate utility districts established by the Village of Caledonia under the laws of the State of Wisconsin (herein jointly and severally referred to as the “Utility District” and/or “District” in the singular tense, and **REESMAN’S EXCAVATING & GRADING, INC.**, being a Wisconsin Corporation (the “Contractor”) (Developer, Mortgagee, Village, Utility District and Contractor are collectively referred to as “the Parties”);

**INTRODUCTION**

A. The Village is located in Racine County, Wisconsin. The Utility District (through the respective two utility districts noted above) owns and operates the District System.

B. Developer is the sole record-title owner of the parcel of real property to be platted (hereinafter referred to as the "Property") located in the Village of Caledonia, Racine County, Wisconsin, and which is legally described (prior to platting) on the attached **Exhibit A**. All references to Property shall include the land as legally described prior to platting and after recording of the Subdivision plat, all land included in such recorded plat.

C. The Village has approved, subject to conditions, the final plat of "Cascade Ridge," being a subdivision of the Property ("the Subdivision"), upon compliance with the ordinances of the Village, which require that the Developer enter into a suitable contract with the Village relative to the construction of roads and other improvements on the Property for the Subdivision.

D. As a part of the creation of the Subdivision, the Developer wishes to contract directly with the Contractor for the purpose of constructing the Subdivision System.

E. Once constructed by the Contractor and upon acceptance by the Village and the District, the ownership of the Subdivision System will then be transferred and conveyed by formal action to the Village and the District which may be by Resolution or motion, and become a part of the municipal District System.

F. The ordinances of the Village allow and permit the Developer to directly contract with the Contractor to build and construct the Subdivision System and the Storm Water Utilities (hereinafter collectively referred to as the "Construction Project"), provided that the Construction Project is undertaken and done pursuant to the terms and provisions of this Agreement. The above-named parties are entering into this Agreement for such purposes, and for such other purposes as set forth in this Agreement.

G. Any and all applications, the pre-development agreement, and accompanying plans, schedules, exhibits, and other documents filed with the Village are incorporated by reference herein, as modified by any written or formal approvals of the Village and Utility District.

H. The Mortgagee will hold a mortgage interest in the Property and joins as a party to this Agreement solely for purposes of agreeing that the Agreement shall survive any foreclosure of the Mortgagee's mortgage.

I. The Subdivision is comprised of 7 lots and 3 outlots.

J. The Developer desires to complete improvements and development of the Subdivision located in the Village in a manner as described herein, and for that purpose cause the installation of certain Public Improvements, hereinafter defined.

K. Wisconsin Statute Section 236.13 and the applicable Village Ordinances provide that as a condition for final approval, the governing body of a municipality may require the Developer make and install or have made and installed, any new Public Improvement, including the Subdivision System, reasonably necessary in the Subdivision, and the Developer may provide an irrevocable letter of credit or other surety approved by the Village guaranteeing that the Developer will make and install or have made and installed those improvements in the Subdivision within a reasonable time.

L. The Village believes that the orderly planned development of the Subdivision will best promote the health, benefit, safety and general welfare of the community.

NOW THEREFORE, in consideration of the granting of approval by the Village of the development of the above described Subdivision, and the covenants herein contained, and other good and valuable consideration, the adequacy and sufficiency which is acknowledged by all parties, it is mutually agreed as follows:

1. **Introduction is Correct.** The Parties agree that the foregoing "Introduction" is true and correct and is hereby incorporated into this Agreement by reference.

2. **Definitions.**

*District System* shall mean the Village's municipal sanitary sewerage system and a municipal water system operated by the Utility District.

*Public Improvements* shall mean all public improvements to be constructed under this Agreement, including grading, erosion control, drainage and all requisite public improvements, Public Roads, including any required curb and gutter, Storm Water Utilities and the Subdivision System.

*Public Roads* shall mean all public rights-of-way in the Subdivision, including any required curb and gutter.

*Storm Water Utilities* shall mean the storm sewer utilities.

*Subdivision System* shall mean the sanitary sewerage system and/or the watermain system in the Subdivision.

3. **Consent of the Village and District.** The Village and District hereby grant permission to the Developer and the Contractor to undertake and do the Construction Project for the Subdivision as a private project on private property (as opposed to a Village/District project requiring compliance with the public bidding statutes).

4. **Construction Project.** The Subdivision construction shall be undertaken and done by Contractor, and Developer shall be solely responsible for the payment of all costs and expenses for the Subdivision construction. The Contractor and Developer expressly understand and agree that the Village and the District will not be liable or responsible in any manner for any of the said costs and expenses of the Subdivision construction.

5. **Code of Ordinances Incorporated.** The Code of Ordinances of the Village, as amended from time-to-time, is hereby incorporated into this Agreement, and Developer and

Contractor agree to perform all of the obligations imposed upon Developer and/or Contractor by the terms and provisions of such ordinances, as applicable. Without limitation, Developer specifically acknowledges that it must pay all applicable fees, which include, but are not limited to, applicable impact fees, land division fees, and others. Notwithstanding the foregoing, impact fees for an individual home's construction shall be paid at the time of building permit for said home.

6. **Public Improvements; Dedication, Construction, Guaranty Period.**

(a) **Subdivision Improvements Generally.** Developer shall prepare, at its expense and per applicable Village ordinances and the requirements of this Agreement, complete plans for construction of the Subdivision's Public Improvements, including for the Public Roads, the Subdivision System as further described under Section 7 of this Agreement, and Storm Water Utilities as shown on the approved Subdivision plat attached as **Exhibit A** to this Agreement, and approved plans prepared by Pinnacle Engineering Group and dated May 14, 2018 and professional engineered stamped May 14, 2018 for the Public Improvements which are incorporated herein by reference herein (the "Plans"). The Public Improvements', Public Roads', Subdivision System and Storm Water Utilities' design and plans shall conform to the Village's minimum standards for public utilities and public roads then in effect unless otherwise agreed to in writing by the Developer and the Village, and such plans and specifications shall be submitted to and approved by the Village. In the event of any conflict between the minimum design standards in the Village's Code of Ordinances and the requirements of this Agreement, the more restrictive shall control except as expressly provided for in this Agreement. The Developer acknowledges and agrees that it is solely responsible for all costs of construction and installation of Subdivision improvements and Public Improvements.

(b) **Storm Water Utilities and Subdivision System Construction.** Developer's design engineer shall stake all the Storm Water Utilities and Subdivision System prior to construction. Developer shall be responsible for constructing the Storm Water Utilities and Subdivision System at Developer's expense and per approved Plans. Developer's construction work shall be subject to inspection by the Village, or the Village's designee. Developer shall construct the Storm Water Utilities and the Subdivision System utilizing granular backfill, as set forth in the approved Plans and as required by Village ordinances. The approval of the plat of the Subdivision is conditioned upon the Subdivision (and the lots therein) being serviced with public sewer and water services by the Utility District (the "Utility"), and Developer agrees to enter into agreements to grant said Utility District, as appropriate all easements deemed necessary for the furnishing of public sewer and water services to the lots in said Subdivision.

After the Storm Water Utilities and Subdivision System have passed final inspection and testing, and after all lien waivers for the work completed on the Subdivision System and the Storm Water Utilities have been provided to the Village, the Village shall accept ownership of the Subdivision System and easements for access to the Storm Water Utilities.

(c) **Public Roads Construction.** After acceptance of the Storm Water Utilities and Subdivision System by the Village, the Developer and Contractor shall thereafter construct, at Developer's expense, the Public Roads, except asphaltting, in compliance with applicable Village standards and ordinances for public roads. When such construction, except asphaltting, has been completed by the Developer and Contractor, inspected, tested and approved by the Village Director of Public Works, and after all lien waivers respecting the Public Roads have been provided to the Village, the Village shall accept such construction, subject to maintenance guarantees then provided in the Village ordinances, this Agreement and such other guarantees as

the Village Board may deem necessary to protect the Village in the event that there is an identified deficiency in the construction that warrants a longer guarantee period of time. It is anticipated that the Public Roads construction, except for surface asphalt, as described herein shall be done in 2018. If construction is delayed, the Developer and Contractor shall also be responsible for the maintenance and plowing of the Subdivision Public Roads at its expense prior to the asphalt binder courses having been installed. The Developer and Contractor shall be responsible for regrading and shaping the Public Roads at its expense prior to the asphalt work being done in accordance with Village's duly-bid public road work (annual paving program) contract. After construction of base course of the Public Roads is approved and accepted by the Village, the Village's asphalt contractor shall fine grade the stone base and install four and one-half (4½) inches of binder asphalt, in two (2) layers per Village Director of Public Works specifications, on all such Public Roads or parts thereof within the Subdivision which the Developer and Contractor are required to construct hereunder. The Village Director of Public Works shall inspect such work for compliance with Village ordinances and if such work complies, shall accept such work which shall constitute "substantial completion" in accordance with Sec. 236.13, Wis. Stat.

The surface asphalt and final work shall not be done until after the Subdivision has been at least 95% developed, meaning 95% of the lots have received occupancy permits and all required Subdivision improvements have been installed and approved by the Village. If the Subdivision is not 95% developed within two (2) years of installation and acceptance of the binder course of asphalt, the surface course and final work shall be installed/completed in accordance with the following schedule and upon authorization to proceed from the Village Director of Public Works:



- a. If two (2) years expires in the months of January to May, then no later than November 1st in the year prior to expiration.
- b. If two (2) years expires in the months of June to September, then no later than June 1 in the year of expiration.
- c. If two (2) years expires in the months of September to December, then no later than September 1 in the year of expiration.

When authorized to install the surface course of asphalt by the Village's Director of Public Works, the Village's asphalt contractor shall fine grade the stone base and install one and one-half (1-1/2) inches of surface asphalt and Developer and Contractor shall complete the final work except shouldering and manhole and water box adjustments on such Public Roads in the Subdivision. Developer agrees that it is financially responsible for the costs for all asphalt and installation of the asphalt binder and surface courses and the initial and final shouldering work, but the Village shall be responsible to perform such work, either directly or through contracted third-parties. Developer and Contractor shall also abide by the provisions of Resolution 2000-26, relating to street barricades, which is incorporated herein by reference.

7. **Subdivision System Construction Project.**

(a) **Approval of Construction Project Plans.** Prior to any work being done on the Construction Project, (i) the Developer shall first obtain the written approval from the District's engineers of all of the specifications, drawings, blueprints, diagrams and plans for the Construction Project (hereinafter collectively referred to as the "Plans"), and (ii) the Contractor shall first have a Pre-construction meeting with the District's engineers regarding the Construction Project. The Plans shall be of a type and format, and have such content, as the District's engineers may require. Additionally, the Plans shall also be submitted to the District's

engineers in an electronic format approved by the District's engineers. Developer and Contractor expressly understand and agree that, in the event the Developer does elect to undertake and do the Construction Project, then the Subdivision System shall then be constructed and done in strict compliance with the Plans approved by the District's engineers

(b) **Full Inspections.** The Construction Project shall be inspected by the District's engineers, and all costs of such inspections shall be paid for by Developer. The Contractor shall provide to the District its work schedule (the "Work Schedule") for the Construction Project prior to any work on the Construction Project being undertaken, such Work Schedule (i) to specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the District's engineers. The Work Schedule shall not be increased or expanded in time or scope of work without first providing to the District's engineers at least 48 hours prior written notice of such changes to the Work Schedule. Developer and Contractor understand that it is the intent of the Village and District to have one or more inspectors at the construction site at all times for the work on the Subdivision System and as needed at other times while the work on the Construction Project is being performed. The District Engineers and/or their inspector(s) at the construction site shall have the full right and authority to stop work on the Construction Project whenever they believe that any such work or materials are not in compliance with the approved Plans for the Construction Project, and in such event the Contractor shall then immediately cure any such failure of compliance before proceeding with any other work on the Construction Project. Notwithstanding the foregoing right and authority granted to the District's engineers (to stop the Construction Project in the event of a failure of compliance with the approved Plans), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement,

the Contractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the Construction Project, and (ii) the direction of all laborers and personnel doing the work on the Construction Project (except for the inspector(s) hired by the District's engineers), and (iii) all means and methods required to do the Construction Project.

(c) **One-Year Guarantee.** Developer and Contractor shall, and hereby do, jointly and severally guarantee to the Village and the District that all work and materials furnished and performed on and for construction of the Subdivision System shall be free from defects for a period of One (1) Year from the date on which the Village and District in writing accept ownership of the Subdivision System as described in subsection (d) below. This one-year guarantee, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Developer's and/or Contractor's duties under this Agreement to construct the Subdivision System in strict compliance with the approved Plans for the same. In the event any defect(s) is discovered during such One-year time period, the District and/or Village shall notify the Developer and Contractor in writing, and the Developer and Contractor shall cause such defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and safety so require). If the Developer and/or Contractor shall fail to do so within such 60-day time period (or if the public safety sooner requires the remedied work to be done and the Developer/Contractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and Contractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

(d) **Transfer of Ownership.** Upon the full completion of the Subdivision System and upon the Village and the District then accepting the same in writing, the ownership of the Subdivision System shall, effective as of the date of the said written acceptance by the Village and District, be transferred and conveyed to the Village and the District by Resolution or Motion. With respect to such transfer/conveyance of ownership to the Village and District:

1) The said transfer/conveyance shall be deemed to occur and become effective immediately and automatically at the time of the written acceptance of each completed Subdivision System by both the Village and the District, without any further documents being required;

2) The said transfer/conveyance shall include transfer of ownership of the Subdivision System located in the dedicated Village rights-of-way, and if necessary, easements in private land located within the Subdivision as determined by the Village and the District of a sufficient depth and width to allow the Village and the District to access, maintain and/or replace such Subdivision System, if for some reason it is located outside of Village rights-of-way; and

3) The said transfer/conveyance of ownership, however, shall not include any portion of the sewer laterals and/or water laterals that are located outside of the public right-of-way and/or outside of any Village/District easement area(s).

(e) **Reimbursement for Costs.** The Developer shall, within Thirty (30) Days after receiving a written itemized invoice(s) from the District for the same, reimburse and pay to the Village and/or District all engineering, inspection, administrative and legal costs incurred by the Village and/or District with respect to the Construction Project. This shall expressly include, but not be limited to, (i) all engineering costs incurred in the review of the Plans for the

Construction Project, and (ii) all inspection costs for the Construction Project, and (iii) all legal costs of the District's attorney pertaining to the Construction Project and/or this Agreement.

(f) **Right of Village/District To Complete The Project.** If the Developer commences the Construction Project (by having the Contractor commence actual excavation work and/or construction work on site) but then fails for any reason to complete or finish the Construction Project, then, in addition to any and all other remedies available to the Village and/or the District under the law:

1) The Village and/or District may, at its option, complete and finish the said Construction Project by doing such remaining work (the "Completion Work") as a publicly-bid Village project; and

2) The Developer shall pay to the Village and/or District all costs incurred by the Village/District in doing the Completion Work; and

3) Without in any manner limiting its available remedies under the law, the Village and/or District may obtain payment of all such costs for the Completion Work through a levy of special assessments and/or special charges (collectively referred to as the "Special Assessment") on the Property pursuant to the terms and provisions of Section 66.0703 of the Wisconsin Statutes and/or any other applicable statutes. Developer hereby waives all procedural rights that Developer may have under the laws of the State of Wisconsin with respect to such an imposition of the Special Assessment on the Property for items required of Developer herein. This waiver includes, but is not limited to, the requirement of a written notice and a public hearing as required under Section 66.0703 of the Wisconsin Statutes and/or any other special assessment statutes.

4) Additionally, the "Completion Work" described above may also consist of the following other types of work should the Village and/or District so elect:

(i) Undertaking whatever work may be necessary to protect and maintain the Subdivision System at its then-existing stage of completion; and/or

(ii) Removal of part or all of the Subdivision System and restoration of the disturbed areas of the Subdivision Property.

(g) **Grant of Easements.** The Developer will grant to the Village and the District an easement (the "Easement") for the purpose of installing, operating, using, maintaining, repairing, and/or replacing the Subdivision System, if for some reason any portion of the Subdivision System is constructed outside of the Village rights-of-way, ultimately being transferred to the District under the provisions of above Section 7 of this Agreement. If determined to be necessary, Developer will execute and deliver to the District a separate written easement agreement (the "Easement Agreement") that memorializes and confirms the easement rights of the Village and District to install, operate, use, maintain, modify, improve, repair, and/or replace (i) any presently-existing sanitary sewer and watermain facilities already located on the Property, and (ii) the new Subdivision System that will be constructed on the Property under the terms and provisions of this Agreement. The Easement Agreement shall identify and describe the location of all such sanitary sewer and water facilities. When the Construction Project is completed, however, and the final as-built drawings of the new Subdivision System are completed, the said as-built drawings shall be inserted into and used in the Easement Agreement to identify and describe that portion of the

Easement Agreement pertaining to the Sewer and Water System. (In this fashion, the final as-built easement areas will replace any possible initial easement areas that were originally based on the Plans, but ended up being at a variance with the final, as-built location of the Sewer and Water System.)

(h) **Manhole/Valve Box Adjustment Costs**. In addition to any other monies payable by the Developer to the District under this Agreement, the Developer shall pay to the District the following one-time fees: A fee of Five Hundred Dollars (\$500.00) for each manhole that will be constructed and installed by the Developer and/or Contractor as a part of the Construction Project and a fee of Fifty Dollars (\$50.00) for each valve box that will be constructed and installed by the Developer and/or Contractor as a part of the Construction Project to be finished by the Village's Utility District.

8. **Drainage Facilities**.

(a) **Construction**. Developer and Contractor agree to design, construct, and install, at its expense, all the Storm Water Utilities as specified and set forth in the Village-approved plans and specifications described in Section 6 hereof. In the event the Storm Water Utilities are not completed within two (2) years from the date hereof, the Village Board shall have the right to review the plans in light of conditions then existing or expected in the area and to modify the plans to meet any such conditions. The Developer and Contractor shall construct and complete the Storm Water Utilities pursuant to any such revised plans. All such work shall be subject to approval and acceptance by the Village Board and the Village's Utility Commission. Construction of all drainage facilities within any outlots shall be completed prior to the issuance of any building permits for lots within the Subdivision. Any damage occurring to the Public

Improvements or to any other drainage structures or appurtenances, including drainage tiles, shall be repaired, restored or rerouted by Developer in accordance with this Agreement.

(b) **Maintenance**. Further, Developer shall be liable and responsible for the proper maintenance of the storm water easements described on the approved plat, including any detention or retention basins if applicable. Such maintenance shall include the control of weed and algae growth. Such liability and responsibility shall continue with Developer until such time as the ownership of each lot is transferred and such subsequent owner assumes such obligations through a Maintenance and Easement Agreement which shall be recorded as a separate agreement and such form is attached as **Exhibit D** (the “Maintenance and Easement Agreement”), that sets forth the regular, routine and long-term maintenance requirements that include the control of weed and algae growth. Such responsibility may be delegated to a Subdivision homeowners’ association (the “Homeowner’s Association”) through the Restrictive Covenants. Such maintenance shall be carried out in conformity with applicable Village ordinances and applicable Restrictive Covenants, as amended, governing the Homeowner’s Association and any written directive for corrections or maintenance from the Village. The Restrictive Covenants shall be submitted for review and approval by the Village’s Utility Director, the Village’s Director of Public Works and the Village Attorney prior to recording.

(c) **Grant of Easements**. The Developer will grant to the Village an easement for the purpose of maintaining and repairing the Storm Water Utilities located on the Property. Developer will execute and deliver to the Village a separate written easement agreement that memorializes and confirms the easement rights of the Village to maintain and repair the Storm Water Utilities. The Maintenance and Easement Agreement identifies and describes the



location of all such Storm Water Utilities and shall be recorded with the Racine County Register of Deeds.

(d) **Default.** In the event of any default in the obligations to properly repair damage caused during construction or to maintain the drainage easements, including any retention or detention basins, the Village may cause said maintenance to be provided and may charge the Developer or subsequent owner or Homeowners' Association. In addition, the Village, at its option, may cause all such costs including any engineering, legal, and administrative costs with respect to the same, to be assessed against the Property in the Subdivision or the lot within the Subdivision that is assigned responsibility for such drainage facility, all as provided in Sections 66.0627 and 66.0703, Wis. Stats., and applicable Village ordinance.

9. **Public Improvements Cost, Security, Guaranty Period.**

(a) **Public Improvements Costs and Security.** In order to secure Developer's satisfactory completion of the Public Improvements including but not limited to the Storm Water Utilities, Public Roads and Subdivision System, Developer has opted to post with the Village a letter of credit, in a form and from an issuer satisfactory to the Village, in an amount of **\$448,731.96** (the "Security"), which amount equates to 120% of the Public Improvements' estimated total cost (excluding the cost for asphaltting) as set forth on **Exhibit B** which is incorporated herein by reference. Developer has opted to post a cash bond for the cost of the binder and surface course of asphalt plus 10% which funds the Village shall use to pay the costs of the binder and surface course of asphalt to be installed by the Village's asphaltting contractor (the "Cash Bonds"). Developer shall post the Security and the Cash Bonds with the Village prior to the required staking by the Developer. After completion satisfactory to the Village as set forth

in this Agreement of each of (1) the Storm Water Utilities and Subdivision System, and (2) the Public Road's stone course, the Village shall release that portion of the Security that is attributable to the estimated cost of the completed work upon receipt by the Village of lien waivers, as shown on **Exhibit B** hereto. The release of security shall be accomplished incrementally as portions of the work are completed and accepted by the Village. Thereafter, no additional portion of the Security shall be released until Substantial Completion satisfactory to the Village of the Public Road's binder course of asphalt. The Village will pay costs for asphaltting from the Cash Bonds send a copy of the invoice to Developer for the asphaltting work completed by the Village's contractor for its records. After invoices have been paid for any asphaltting work and the binder course has been accepted, only that portion of the Security necessary to secure completion of the remaining Public Improvements work, excluding the cost for surface asphaltting, plus 10% of the original Security total, shall be retained by the Village as security for an additional fourteen (14) months to secure the Developer's obligations during the Guaranty Period and to ensure completion of the remaining Public Improvements. In consideration for, and to ensure the long term integrity of the binder course of asphalt and to reduce Developer's costs under the Guaranty Period, the Developer offered to renew the letter of credit for the amount remaining if the letter of credit extends beyond 14 months notwithstanding the provisions under Section 236.13, Wis. Stat. In calculating the retention amount of the security, such amount shall not include the original 20% contingency. Developer may, at its option, substitute an additional cash bond for the remaining amount on the letter of credit for the remaining Public Improvements work, plus 10% of the original Security.

The Cash Bonds for the construction of the Public Road, including for the binder and surface asphalt, shall include a 10% contingency amount which the Village may utilize for

repair and maintenance of the Public Roads, as well as for additional amounts needed to complete the asphaltting of the streets if the Developer does not perform, after notice, its repair, maintenance and/or reconstruction responsibilities during the Guaranty Period. In the event any such fund is inadequate to pay for such work, the Developer, upon written demand by the Village, shall pay to the Village any such deficiency. In addition to any other remedies the Village may have, the Village shall be entitled to impose a special assessment against the Property in the Subdivision for any deficiencies not paid in accordance with Section 33 of this Agreement.

If Developer fails to complete the Public Improvements, not including the surface course of asphalt, within six months of initial staking, the Village shall draw on the Security and Cash Bonds without further notice to Developer to complete the remaining Public Improvements.

(b) **Guaranty.** Developer shall warrant and guarantee the Public Improvements (except for the Subdivision System which has a separate guaranty period under Section 7(c) of this Agreement) in good condition and in compliance with the Village's standards and specifications for a minimum period of two (2) years after acceptance of the base course of asphalt or until the installation of the surface course of asphalt, whichever period of time is greater (the "Guaranty Period"). After the surface course is installed and accepted, the Developer shall be liable for all maintenance (except snow plowing) and repair of the Road, shoulders and curb and gutter for a period of at least one (1) year. The Village Board may require a longer guaranty period based upon the site conditions, time when construction is to be carried on, and any other factors affecting the road or its stability. In the event any defect(s) is discovered during such one-year time period, the District and/or Village shall notify the Developer and Contractor in writing, and the Developer and Contractor shall cause such

defect(s) to be corrected within Sixty (60) calendar days (or within such shorter period designated by the Village or District if the public health and safety so require). If the Developer and/or Contractor shall fail to do so within such 60-day time period (or if the public safety sooner requires the remedied work to be done and the Developer/Contractor are not able to timely do so), then the District and/or Village may cause such defect(s) to be corrected, and the Developer and Contractor shall be liable to the District and/or Village for any costs incurred by the District and/or Village in doing so, including any construction, engineering, legal or administrative costs with respect to the said remedial work.

If the Guaranty Period is extended beyond the length of the letter of credit, another letter of credit shall be tendered (or the existing one renewed upon the mutual agreement of the Developer and the Village) to the Village as a replacement for the length of the Guaranty Period. In the case of the asphaltting work for the Public Roads, this Guaranty Period includes the time period between acceptance of the binder course of asphalt and installation and acceptance of the surface course of asphalt. The Guaranty Period, however, shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Public Improvements. The Village shall utilize any or all retained Security and/or Cash Bonds during the Guaranty Period toward the costs of any necessary repairs of the Public Improvements if Developer does not directly or adequately perform, after notice, its repair and maintenance responsibilities under this Agreement. The Parties recognize that the Guaranty Period lasts longer than 14 months and if the Developer does not directly or adequately perform, after notice, its repair and maintenance responsibilities under this Agreement and the Village takes action to perform the repair and maintenance, the Developer shall reimburse the Village for costs incurred in doing so within thirty (30) days of written notice of such costs. If Developer fails to

reimburse the Village for such costs, including but not limited to actual attorney's fees and costs, engineering fees and costs, and administrative costs, in addition to any other remedies the Village may have, the Village shall be entitled to specially assess its costs against the Property in accordance with Section 34 of this Agreement.

(c) **General Inspections**. The Public Improvements shall be inspected by the Village's Director of Public Works, or his designee or the Village's consulting engineers, and all costs of such inspections shall be paid for by Developer. The Contractor shall provide to the Village its work schedule for Public Improvements prior to any work being undertaken, such schedule shall (i) specify the times, dates and type of work to be performed, and (ii) have a format and content satisfactory to the Village's Director of Public Works. Developer and Contractor understand that it is the intent of the Village to have one or more inspectors presents as needed while the work on the Public Improvements is being performed. The designated inspectors at the construction site shall have the full right and authority to stop work on the Subdivision project whenever they believe that any such work or materials are not in compliance with the approved Plans and Specification, and in such event the Contractor shall then immediately cure any such failure of compliance before proceeding with any other work. Notwithstanding the foregoing right and authority granted to the Village's inspectors (to stop the work in the event of a failure of compliance with the approved Plans and Specifications), the parties to this Agreement expressly understand and agree that, as between the parties to this Agreement, the Contractor and/or Developer shall be the sole parties responsible for (i) all safety measures required for the work, and (ii) the direction of all laborers and personnel doing the work (except for the inspector(s) hired by Village), and (iii) all means and methods required to do the work.

10. **Outlot Restrictions.** Developer agrees to restrict the use of the outlots, as identified on the plat, in the Declaration of Restrictive Covenants for Cascade Ridge Subdivision (the “Restrictive Covenants”), to require the maintenance and protection of the outlots. Portions of such outlots may be subject to the Maintenance and Easement Agreement to address Storm Water Utilities. Developer shall submit to the Village a landscape plan for the outlots to the Village Utility Director and Director of Public Works for review and approval. Developer shall implement such plan prior to turning over control of the outlots to the Homeowner’s Association. Thereafter, the Homeowner’s Association shall be responsible for the maintenance and management of the outlots. The Village shall have no ownership interest in, nor any responsibility, for the Outlots except in the case to ensure proper maintenance of any drainage easements by the Homeowner’s Association under Section 8 above.

11. **Street Lights.** The Developer shall be liable for the costs of purchasing and installing ornamental street lights in areas deemed necessary in the judgment of the Village’s Director of Public Works, in addition to standard street lights which shall be placed at the entrances to the Subdivision. Said lights must be approved by the Village and WE Energies. The street lighting plan, including the type of street light to be permitted, shall be submitted to the Village’s Director of Public Works for approval, is incorporated herein by reference. The installation, maintenance, and repair costs for street lights shall be the sole responsibility of the Developer, until the streets are accepted by the Village Board. The Developer shall also be responsible for payment of the applicable street light fee of **\$550.00** per light for each standard light and **\$900.00** per light for each ornamental street light, which fee represents the cost of operating each light for the three year period following the execution of this Agreement per Village of Caledonia Resolution 2007-21.

12. **Street Markings and Signage.** The Developer shall be responsible for the costs of procuring and installing all pavement markings and street signage within or adjacent to the Subdivision. Pavement markings, if any, may include stop lines at intersections, striping for right turn lanes, and any other pavement markings required by the Village's Director of Public Works. Signage shall include all stop signs, street signs and other signs required by the Village's Director of Public Works. The street sign and pavement marking plan, which shall be submitted to the Village Director of Public Works for approval, is incorporated by reference. The Developer authorizes the Village to have the necessary Public Roads markings and signs installed and shall reimburse the Village on a time and material basis.

13. **Sale of Lots.** Developer or its successors in title shall not sell, convey or transfer any land abutting upon a street or portion thereof dedicated by such plat until the following have occurred: (1) this Agreement is executed and recorded; (2) the Subdivision Plat is recorded; (3) the Subdivision's restrictive covenants in a form approved by the Village are recorded; (4) all Security has been deposited with the Village (by such time as is herein provided); (5) the Storm Water Utilities and Subdivision System have been installed and accepted by the Village; and (6) all Public Roads, except asphaltting, have been constructed in accordance with the terms of the Village's subdivision ordinance, the Village standards for construction of streets and highways, other applicable Village ordinances, and this Agreement.

14. **Sewer and Water.** The approval of the plat of the Subdivision is conditioned upon the Subdivision being serviced with public sewer and water service by the Village's Utility Districts. Except as otherwise set forth in this Agreement, the sewer and water system within the Subdivision shall be designed, constructed, and installed at the sole expense of the Developer pursuant to plans submitted to and approved by the Village and the Utility District. All fees

applicable to the connection and service of the Subdivision to the public sewer and water systems shall be borne by Developer or individual lot owners, and any use of such systems shall be subject to all applicable use restrictions. All such work shall be pursuant to plans and specifications approved by the Utilities and the Village.

15. **Reimbursement of Costs.** The Developer acknowledges and agrees that it is solely responsible for all costs related to the installation of Subdivision Public Improvements. In addition, the Developer agrees to reimburse the Village for its costs related to the Subdivision, including costs incurred by the Village to review conceptual, preliminary and final plans including any preliminary or final plats associated with the Subdivision, and to review, revise and/or draft any agreements, easements, deed restrictions or other documents associated with the Subdivision. Such costs shall also include the costs of Village's retained engineers, attorneys, inspectors, agents, and subcontractors. Developer understands that legal, engineering, and all other consultants retained by the Village are acting exclusively on behalf of the Village and not Developer. Developer entered into a predevelopment agreement with the Village and paid to the Village the sum of \$3,000 as a deposit for such reimbursements. This Section supersedes the predevelopment agreement, and the parties intend that the reimbursement account and process set up by the predevelopment agreement shall continue uninterrupted as needed to cover expenses incurred under this Agreement. If at any time said deposit becomes insufficient to pay expenses incurred by the Village, Developer shall deposit required additional amounts within fifteen (15) days of written demand by the Village. If Developer does not deposit the required amount within the time required, the Village may suspend additional work or review as to the plans and specifications under consideration until the deposit is received. Within sixty (60) days after completion of all construction contemplated under this Agreement, the Village shall furnish



Developer with a statement of all such costs incurred by it with respect to such Subdivision. Any excess funds shall be remitted to Developer, and any costs in excess of such deposit shall be paid by Developer upon demand. Any interest earned on said deposit shall remain the property of the Village to partially offset administrative expenses associated with planning and development.

16. **Land Division Fee.** Pursuant to Section 14-3-3(c), the Developer shall be responsible for a land division fee in the amount of **\$1,000** (10 parcels @ \$100 per parcel) to be included as a cash payment to the Village upon execution of this Agreement.

17. **Utilities and Utility Laterals.** Developer is responsible for all costs associated with all private utilities servicing the Subdivision, including, without limitation, the cost of underground installation of cables, wires, pipes, laterals, etc. for electric, gas, telephone, and cable television services, if any. Developer shall fully restore, at its expense, any Village right-of-way that has been disturbed due to its installation of utilities, lighting or landscaping. The Village shall not take ownership of any utility laterals.

18. **As-Built Plans.** Upon written acceptance of all improvements by the Village, the Developer, at its expense, shall provide to the Village one complete set of as-built plans and profile sheets on reproducible mylar or similar material as agreed by the Village Public Works Director, two sets of prints indicating actual constructed locations and elevations, and one set of electronic drawings (PDF) and associated files compatible with a computer-aided design (CAD) system maintained by the Village. The as-built plans shall be prepared by modification of the construction drawings to reflect as-built data for streets, water mains, storm and wastewater collection systems, site grading, and all other relevant public improvements. Changes to base and other maps and official drawings not provided by the Developer's as-built drawings, but necessitated by actions of the Developer, shall be reimbursed to the Village by the Developer

whether or not such items are enumerated in this Agreement. After the final plat has been recorded, Developer shall provide the Village Director of Public Works with four (4) copies of the recorded plat on paper the size of 11" x 17", one (1) copy to scale on paper the size of 24"x36", and one set of electronic drawings (pdf) and associated files compatible with a computer-aided design (CAD) system maintained by the Village.

19. **Building Permits and Lot Construction.** Until the Public Improvements, except surface course of asphalt, provided herein to be installed to service the Subdivision have been installed to the reasonable satisfaction of the Village Utility Director and Director of Public Works, no building permits shall issue as to lots in the Subdivision; provided, however, that building permits may issue as to lots fronting on streets within the Subdivision if the binder course for the streets has been installed and accepted by the Village. In the sole discretion of the Village's Director of Public Works, building permits may issue prior to the installation and acceptance of the binder course if there are any delays that occur in paving after acceptance of the base road construction. The intent of the foregoing provision is to not delay building permits due to unforeseen delays in paving with the Village's paving contractor. If paving delays extend into winter, then the Developer shall be responsible for plowing of the snow through winter months on the Village's rights-of-way that are unpaved. Construction activities related to improvements upon any lot shall not spill over or occur on any outlot within the Subdivision, except for construction activities contemplated or provided for in the landscape plan for the Outlot. Finished yard grades and grading plans must be approved by the Village Director of Public Works before construction may commence and the lot owner shall be responsible for the costs of any review at the time of building permit review.

20. **Entry Landscaping and Monument Sign.** The Developer shall submit a landscaping plan for the entryway to the subdivision for approval by the Village Director of Public Works. The plan shall address the design and location of a permanent, decorative sign that complies with Title 16 of the Village's Code of Ordinances for a sign that identifies the Subdivision if a sign is included in the plan.

21. **Hydrants.** The Developer shall, at its expense, provide pre-painted hydrants of a design and construction satisfactory to Village staff and consistent with the Village's color code system in those areas of the Subdivision specified by the Village.

22. **Laws To Be Observed.** The Developer and Contractor shall at all times observe and comply with all federal, state and local laws, regulations and ordinances (collectively, the "Laws") which are in effect or which may be placed in effect and impact the conduct of the work to be accomplished under this Agreement to construct the Public Improvements and Private Improvements, inclusive of repairs, replacements and alterations (**the "Work"**). The Developer and Contractor shall indemnify and hold harmless the Village and its agents, officers and employees, against any claims or liability directly arising from or based on the violation of any such Laws by the Developer or its principals, agents, employees or contractors, except to the extent that such claims or liability arise by virtue of the negligence or willful misconduct of the Village and any of its agents, contractors, officers or employees. The Developer and Contractor shall procure all permits and licenses and pay all charges and fees and give all notices necessary and incident to the lawful prosecution of the Work to be completed under this Agreement.

23. **Public Protection and Safety.** The Village shall not be responsible for any damage, bodily injury or death arising out of the Work whether from maintaining an "attractive nuisance" or otherwise, except as caused by the negligence or willful misconduct of the Village

or any of its agents, contractors, officers or employees. Where apparent or potential hazards actually known by the Developer and Contractor that occur incident to the conduct of the Work, the Developer and Contractor shall provide reasonable safeguards. Developer shall, however, still be solely responsible for the means and the methods used for the construction of the Work. The Village, Developer and Contractor do not waive, and shall retain, all defenses to third party claims pursuant to applicable law.

24. **Survey Monuments.** The Developer and Contractor shall exercise all reasonable efforts to assure that all survey or other monuments required by statute or ordinance will be properly placed and installed. Any monuments disturbed during construction of improvements shall be restored by Developer and Contractor.

25. **Street Trees.** In the Declaration of Restrictive Covenants, the Developer shall require the planting of one to two trees per lot or building of a species approved by the Village of at least two inches in diameter measured at six inches above the top of the root ball. The trees shall be planted and maintained by the lot owner in the area adjacent to the Village's right-of-way in accordance with a tree planting plan to be approved by the Village Director of Public Works. A mixture of trees shall be chosen from an approved list provided by the Village.

26. **Drain Tile.** Any drain tile or other drainage structure or appurtenance damaged during construction shall be repaired and restored to its condition prior to such construction, or rerouted or replaced, if necessary, by Developer and Contractor in the reasonable opinion of the Village Utility Director or Director of Public Works, and provide a permanent record of such work to the Village.

27. **Erosion Control.** During the course of the development of the Subdivision, the Developer shall be responsible to ensure that reasonable steps are taken to prevent erosion from

lands within the Subdivision and the siltation therefrom being carried into streets rights-of-way, street-side ditches, drainage ditches, easements, culverts, drains, waterways, lakes and streams. To prevent such erosion and siltation the Developer shall conform to the practices as set forth in the erosion control plan located in the Construction Plans and all Construction Site Storm Water Permits issued by the Department of Natural Resources. In the event of any such erosion or siltation, the Developer and Contractor shall be responsible for removing all such siltation from and restoring all such rights-of-way, ditches, easements, culverts, drains, waterways, lakes and streams. All such compliance and work hereunder shall be done without cost to the Village. The Developer shall be responsible for ensuring that its contractors utilize construction means and methods that minimize, to the extent possible, nuisance-type impacts to the surrounding landowners. Prior to the start of construction, the Developer shall obtain a land disturbance permit from the Village.

28. **Use-Value Penalty.** The Developer agrees that upon the recording of the final plat, any previously agricultural land included within the Subdivision that is platted as individual residential lots shall be deemed by the Developer, Village, and Racine County to no longer be used for agricultural purposes, and the Developer shall be responsible for payment of any land-use penalty required by state law.

29. **Personal Liability of Public Officials.** In carrying out any of the provisions of this Agreement or in exercising any power or authority granted to them thereby, there shall be no personal liability of the Village officers, agents or employees, it being understood and agreed that in such matters they act as agents and representatives of the Village.

30. **Indemnification/Hold Harmless Agreement.** The Developer hereby does, jointly and severally, expressly agree to indemnify and hold the Village, Utility District, and

their respective elected and appointed officers, employees, engineers and agents harmless from and against all claims, judgments, damages, costs, expenses and liability of every kind and nature, including but not limited to any reasonable actual fees for attorneys and experts retained by the Village and/or Utility District in conjunction with this Agreement, for any injury or damage received or sustained by any person or entity in connection with, on account of, or in any way relating to the Property, Subdivision, Construction Project, and Subdivision System including Developer's performance of work relating thereto, or this Agreement and any other liability of any nature whatsoever, that may arise, directly or indirectly as a result of:

- a) The Village and District entering into this Agreement; and/or
- b) The Developer and Contractor undertaking and doing the Construction Project(s);  
and/or
- c) The Developer and/or Contractor failing to comply with the terms and provisions of this Agreement and/or the Development Agreement.

Such indemnification, however, shall not apply to any intentional torts and/or acts of negligence on the part of the releases and shall not apply to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, Utility District, or any of their agents, contractors, officers or employees. The Developer further agrees to aid and defend the Village or its agents (at no cost to the Village or its agents) in the event they are named as a defendant in an action concerning or relating in any way to the Property or Subdivision or this Agreement, except where such suit is brought by the Developer. The Developer and Contractor are not agents or employees of the Village. All work or obligations to be performed by the Developer and Contractor pursuant to the terms of this Agreement shall

be done in accordance with (i) all applicable state, federal and local laws, rules, ordinances and regulations; and (ii) the terms and provision of this Agreement.

31. **Indemnification for Environmental Contamination.** The Developer, Contractor or Homeowners' Association, as applicable, shall indemnify, defend, and hold the Village, Utility District, and their respective elected and appointed officers, employees, and agents harmless from any claims, judgments, damages, penalties, fines, costs, or loss (including actual fees for attorneys and consultants) that arise as a result of the presence in or on property owned by the Village or Utility District or any Village right-of-way ("Village Parcels") of any toxic or hazardous substances in excess of the minimum levels allowed by applicable law (collectively, the "Substance") arising from any activity conducted by the Developer, Contractor, Homeowners' Association, or any third parties, or by the Developer's or Homeowners' Association's respective employees, agents or contractors, except as to injury or damage arising, in whole or in part, due to negligence or willful misconduct of the Village, Utility District or any of their agents, contractors, officers or employees. Without limiting the generality of the foregoing, this indemnification shall specifically include any costs incurred by the Village in connection with any remedial, removal, or restoration work required by any local, state, or federal agencies because of the presence of the Substances on or in the Village Parcels, whether in the soil, groundwater or air.

The Village and Utility District agree that they will immediately deliver written notice to the Developer, Contractor and Homeowner's Association of the Village's or Utility District's discovery of the Substances in or on the Village Parcels. Following delivery to the Developer, Contractor and Homeowner's Association of written notice of the Village's or Utility District's claim as required under this Section, the Village and Utility District shall make all

reasonable accommodations to allow the Developer, Contractor and Homeowner's Association to examine the Village Parcels and conduct such clean-up operations as may be required by appropriate local, state, or federal agencies to comply with applicable laws.

In the event the Developer, Contractor and/or Homeowner's Association is obligated to indemnify the Village and Utility District against claims arising under this Section, Developer, Contractor and Homeowner's Association shall take all necessary steps to ensure that the Village and Utility District receive written confirmation from the appropriate governmental authority of the satisfactory completion of the required remediation, removal or restoration work including, without limitation, a no further action letter, final case closure letter or confirmation that the presence of such toxic or hazardous substances affecting the Village Parcels migrated from an offsite source (the "Closure Documents"). The Closure Documents may be predicated upon any contingency or restriction approved by the appropriate governmental authority for groundwater or any use or as a deed restriction or registration in any registry including, without limitation, the GIS Registry. Developer, Contractor and Homeowner's Association shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village and the Utility District.

32. **Insurance Requirements.**

(a) **General:** The Developer and Contractor shall obtain insurance reasonably acceptable to the Village as required under this section and such insurance which shall, by specific endorsement to said policy, name the Village and Utility District, on a primary and non-contributory basis, as an additional insured or loss payee as the Village shall direct. The Developer and Contractor shall maintain all required insurance under this section until the Village has accepted dedication of all Public Improvements and for the duration of the Guaranty



Period. Insurance required under this Agreement shall be carried with an insurer authorized to do business in Wisconsin by the Wisconsin State Insurance Department. The Village reserves the right to reasonably disapprove any insurance company.

(b) **Certificates of Insurance**: Where the Village does not specify other limits for liability insurance, the minimum limits of liability shall be as follows:

Employer's Liability	\$100,000.00 per occurrence
Comprehensive Motor Vehicle Liability,	\$1,500,000.00 per Bodily Injury Accident & Property Damage Combined
Comprehensive General Liability Bodily Injury	\$1,500,000.00 per accident; \$2,000,000 per project General Aggregate
Property Damage Combined	\$1,000,000.00 aggregate; \$2,000,000 per project General Aggregate
Worker's Compensation	Statutory Limits
Builder's Risk (as deemed applicable by Village)	All Risk Type; Total Value of Project
Installation Floater	All Risk Type; Total Value of Project
Umbrella	\$2,000,000 aggregate

The Developer and Contractor may furnish coverage for bodily injury and property damage for Comprehensive Motor Vehicle Liability and Comprehensive General Liability through the use of primary liability policies or in a combination with an umbrella excess third party liability.

(c) **Owner's Protective Liability (Independent Contractor Insurance)**.

The liability limits shall be the same as those of the Comprehensive General Liability Policy.

(d) **Homeowner's Association Insurance.** The Homeowner's Association shall provide liability insurance for the outlots, and any Restrictive Covenants shall contain a restriction governing this requirement.

33. **Special Assessments.** The Developer agrees that it will satisfy any outstanding special assessments levied against the Property, prior to recording the final plat. Developer further agrees, for itself and its successors in interest in the Property, that the Property is specially benefitted by this Agreement and by the Public Improvements provided for by this Agreement. If Developer and/or any Homeowners' Association defaults on any obligations under this Agreement, including but not limited to any financial obligation, Developer agrees, for itself and its successors in interest in the Property, that, in addition to any other remedy at law or in equity that the Village may pursue, the Village shall be entitled to specially assess all its costs relating to such default against the Property, pro rata based on acreage, without need of any procedures that are otherwise required by state statute or village ordinance before a special assessment may be imposed. Developer, for itself and its successors in interest in the Property, hereby waives any and all right to any hearings and to challenge any such special assessment.

34. **Miscellaneous Provisions.**

a. **Incorporation of Attachments.** All exhibits and other documents attached hereto or referred to herein are hereby incorporated in and shall become a part of this Agreement.

b. **Non-waiver of Approvals.** Nothing herein shall be construed or interpreted in any way to waive any obligation or requirement of the Developer to obtain all necessary approvals, licenses, and permits from the Village in accordance with its usual practices and procedures, nor limit or affect in any way the right and authority of the Village to approve or disapprove any plans and specifications, or any part thereof, or to impose reasonable limitations,

restrictions, and requirements on the Subdivision, construction, and use of the Property as a condition of any such approval, license, or permit, including without limitation, requiring any and all other and further development and similar agreements. The Village will act diligently to review all necessary approvals, licenses, and permits duly requested by the Developer.

c. **Compliance with Laws.** The Subdivision construction shall be undertaken and done in full compliance with:

- i. The terms and provisions of this Agreement and the Development Agreement;
- ii. All applicable governmental laws, rules, regulations, statutes and ordinances; and
- iii. All directives, rules and regulations of the Village and District, and its officers, employees and agents (including, but not limited to, the engineers of the District); and
- iv. All drawings, plans, specifications, or diagrams required by and approved by the Village and/or District.

d. **Time of the Essence.** Time is deemed to be of the essence with regard to all dates and time periods set forth herein and incorporated herein.

e. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

f. **Entire Agreement.** This Agreement and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the Village with respect to the matters set forth herein. This Agreement may be modified only in writing signed by all Parties.

g. **Venue and Law Applicable.** This Agreement shall be governed, controlled, interpreted and construed in accordance with the internal laws of the State of Wisconsin. The venue of any legal action arising under and/or pertaining to this Agreement shall solely and exclusively be Racine County Circuit Court in Racine, Wisconsin.

h. **Originals and Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

i. **Amendments to Agreement.** This Agreement shall not be amended orally but only by the written agreement of the Parties signed by the appropriate representatives of each Party and with the actual authority of each Party.

j. **Agreement Runs with the Land.** This Agreement shall be binding upon the Developer, the Subdivision Homeowner's Association, and their successors in title or assigns, and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners and all subsequent owners of the Subdivision or any portion thereof. This Agreement shall be recorded with the Racine County Register of Deeds. The sale of any lot or parcel within the Subdivision shall not relieve any owners of their continuing liability hereunder except as provided herein. Wherever an obligation herein is designated as that of the Developer or Homeowner's Association or others, the obligation shall be joint and several hereunder; provided, however, that Developer shall not be liable hereunder for any defaults occurring after the sale of all of the lots in the Subdivision, provided a Homeowner's Association has been created and is in existence and has assumed such obligations hereunder. Attached as **Exhibit C**, and incorporated herein by reference, are the "Restrictive Covenants." The Restrictive Covenants shall be recorded by the Developer with the Racine County Register of Deeds office as a separate document.

k. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended or a successor designated by a party to this Agreement, or upon facsimile transmission to the fax numbers set forth herein or a successor number or numbers designated by the party, or one business day after deposit with a nationally recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows, or a successor party or address, or both:

To Developer: NCS, LLC  
c/o Raymond Leffler  
8338 Corporate Drive  
Racine, WI 53406  
Fax: (262) 898-1341

To the Village and Utility District: Village Clerk  
Village of Caledonia  
5043 Chester Lane  
Racine, WI 53402  
Fax: (262) 835-2388

and to,

Director of Public Works  
Village of Caledonia  
5043 Chester Lane  
Racine, WI 53402  
Fax: (262) 835-2388

To the Mortgagee: Tri City National Bank  
2704 Lathrop Avenue  
Racine, WI 53405  
Fax: (262) 554-5866

To the Contractor: Reesman's Excavating & Grading, Inc.  
28815 Bushnell Road  
Burlington, WI 53105  
Fax: (262) 539-2665

l. **Successors and Assignment.** This Agreement is binding upon and enforceable against the Parties' respective successors and permitted assigns. The Village and Utility District may assign its interest in this Agreement to any successor entity or entities, including any municipality or municipalities established under Wisconsin law with jurisdiction over part or all of the area now occupied by the Village. The Developer and Contractor may not assign its interest in this Agreement without the express written approval of the Village and Utility District.

m. **Severability.** The provisions of this Agreement are severable. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall be binding on all parties.

n. **Subordination.** The Mortgagee joins in this Agreement for the sole purpose of agreeing that in the event of the foreclosure of its mortgage interest in the lands of the Subdivision, this Agreement shall survive such foreclosure and the lands in the Subdivision shall remain subject to this Agreement.

o. **The Contractor.** Reesman's Excavating & Grading, Inc. is the general contractor for construction of the Development, being hired and retained by Developer to construct the Subdivision. Reesman's Excavating & Grading, Inc., however, as the general contractor, shall be responsible and obligated to the Village and the District to perform all of the duties imposed upon the "Contractor" under this Agreement.

p. **Force Majeure.** For purposes of this Agreement, the term "Force Majeure" means events or circumstances beyond a Party's reasonable control, including, without limitation, "acts of God," fire, flood, other natural calamities, accidents, unusual delays in deliveries, unavoidable casualties, labor disputes, strikes, lockouts or picketing (legal or illegal),

wars, riots, acts of terrorism, changes in or unexpected interpretations of applicable statutes, laws, ordinances or regulations, adverse weather conditions, condemnation or other actions of governmental authorities or utility companies or shortages of labor, fuel, power or materials.

q. Use of Further Subcontractor. In the event Contractor elects to use a further Subcontractor(s) to do part and/or all of the construction of the Subdivision or Subdivision System, then:

- i. Such further Subcontractor must be pre-approved by the Developer;  
and
- ii. Such further Subcontractor must be pre-approved and pre-qualified by the Village, which approval shall not be unreasonably withheld, conditioned, or delayed; and
- iii. Such further Subcontractor shall agree to perform all of the duties and obligations imposed upon the Contractor in this Agreement; and
- iv. The general contractor shall still remain a party to this Agreement, and still be responsible for fully performing all of the duties and obligations imposed upon any subcontractor(s) under this Agreement.

r. Legal Action. In addition to the provisions set forth in this Agreement, the Village and Utility District may take any and all other appropriate action at law or equity to enforce compliance with the provisions of this or any other agreement it may have with the Developer and Contractor, and in the event of a legal action in which the final determination is in favor of the Village and/or Utility District, the Village and/or Utility District shall be entitled to collect from the Developer and Contractor statutory costs and disbursements, plus its actual attorneys' fees and costs.





TRI CITY NATIONAL BANK

By: [Signature]

JOHN W. KES, SR VICE-PRESIDENT  
Printed name Title

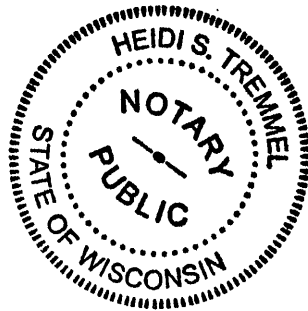
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Printed name Title

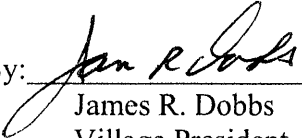
STATE OF WISCONSIN )  
 ) SS:  
COUNTY OF Racine )

Personally came before me this 31st day of October, 2018, the above-named John W. Kes and N/A, to me known to be the individuals who executed the foregoing instrument on behalf of Tri City National Bank and acknowledged the same as the act and deed of said financial institution.

[Signature]  
Notary Public, Racine County, WI  
My commission: 2/7/22




**VILLAGE OF CALEDONIA**

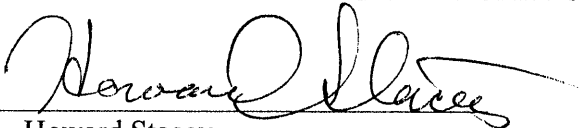
By:   
James R. Dobbs  
Village President

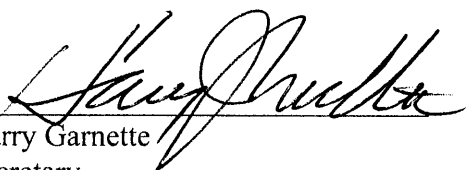
Attest:   
Karie Torkilsen  
Village Clerk

Personally came before me this 19<sup>th</sup> day of November, 2018, James R. Dobbs and Karie Torkilsen, Village President and Village Clerk of the Village of Caledonia, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said Village.

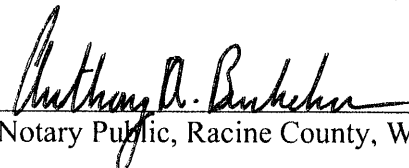
  
Notary Public, Racine County, WI  
Name: Anthony A. Bunkelman  
My Commission: July 26, 2019

**VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT  
and the VILLAGE OF CALEDONIA WATER UTILITY DISTRICT**

By:   
Howard Stacey  
President

Attest:   
Harry Garnette  
Secretary

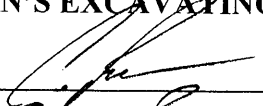
Personally came before me this 7 day of November, 2018, Howard Stacey and Harry Garnette, President and Secretary of the Village of Caledonia Sewer Utility District and the Village of Caledonia Water Utility District, to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said Districts.


  
Notary Public, Racine County, WI

Name: Anthony A. Bunkelman

My Commission: July 26, 2019

**REESMAN'S EXCAVATING & GRADING, INC.**

By:   
Chris Reesman  
President

Attest:   
Secretary

Personally came before me this 25<sup>th</sup> day of June, 2018, Chris Reesman and Eric Reesman President and Secretary of the Reesman's Excavating & Grading, Inc., to me known to be the persons who executed the foregoing instrument, and acknowledged the same as the act and deed of said corporation.

  
Notary Public, Racine County, WI

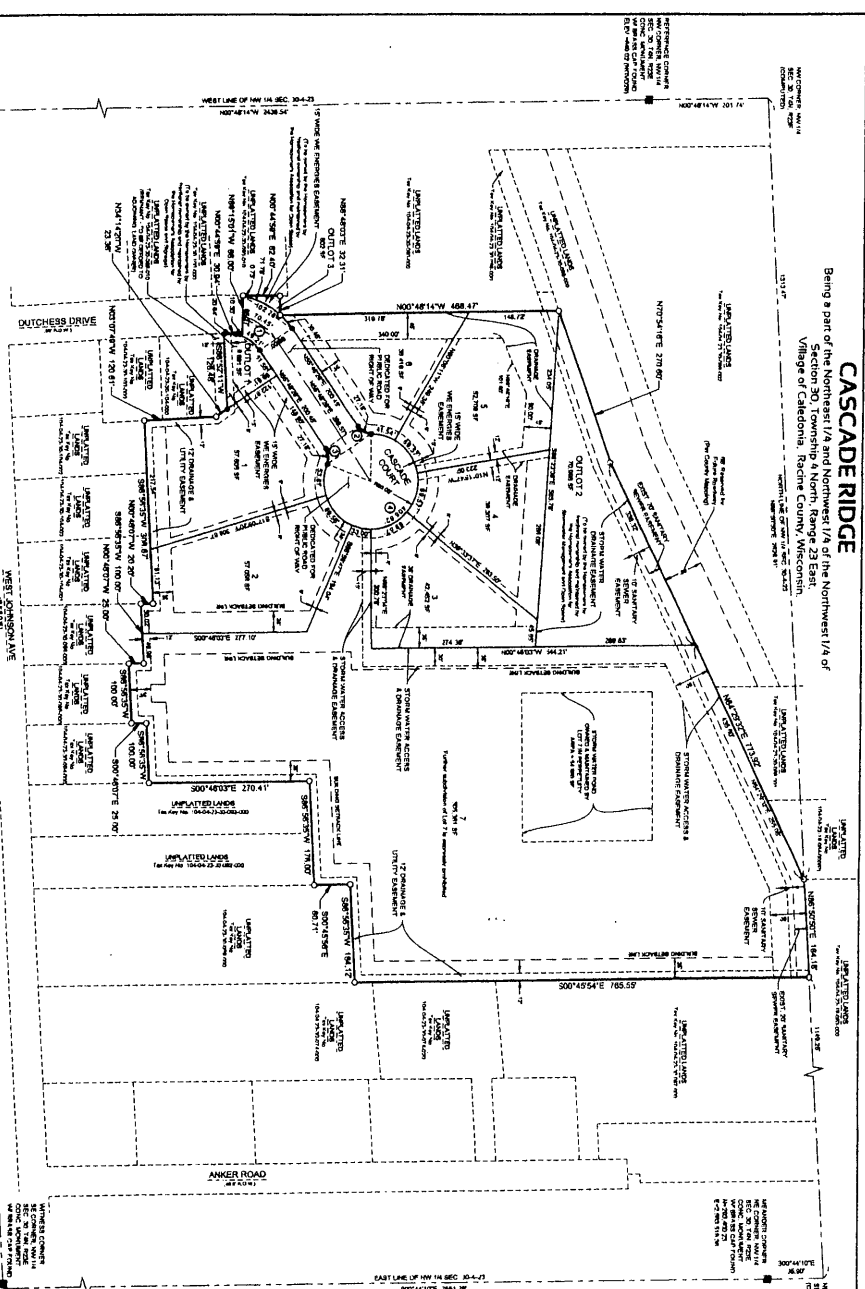
Name: Jonathan Snyder

My Commission: June 29, 2018

- Exhibit A: Legal Description of Property and Subdivision Plat
- Exhibit B: Public Improvements Cost Estimate
- Exhibit C: Restrictive Covenants
- Exhibit D: Storm Water Easement and Maintenance Agreement

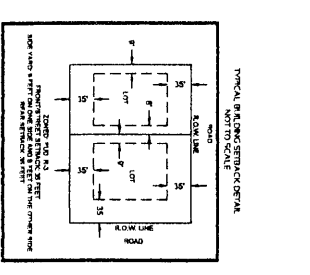
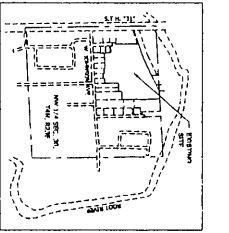
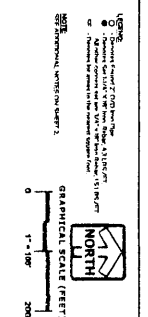
770272.080 (5-14-18)

# Exhibit A to Developers Agreement



Being a part of the Northeast 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 23 East, Village of Caledonia, Racine County, Wisconsin.

RECORDED AS 126222-0001  
 2009-09-15  
 THIS INSTRUMENT IS THE FIRST INSTRUMENT IN THE PUBLIC RECORDS OF RACINE COUNTY, WISCONSIN, TO BE RECORDED IN THE PUBLIC RECORDS OF RACINE COUNTY, WISCONSIN, SHOWING THE LAYOUT OF THE PROJECT AS SHOWN ON SHEET 1 OF 2.  
 REGISTERED PROFESSIONAL ENGINEER  
 JOHN P. KOPPESCH  
 2009-09-15  
 STATE OF WISCONSIN



CURVE #	LOT #	LENGTH	ADIUS	DELTA	CHORD BEARING	CHORD LENGTH	TANGENT IN	TANGENT OUT
1	OUTLOT 1	102.26'	133.00'	44°03'17"	S87°14'44"W	79.31'	S87°06'28"W	511' - 42' 00"W
2	LOT 6	70.65'	120.00'	49°21'50"	S83°55'24"W	89.00'	S89°42'28"W	512' - 24' 34"W
3	LOT 7	27.18'	28.00'	95°38'58"	S47°45'07"E	28.12'	S85°48'29"W	512' - 41' 27"W
4	LOT 8	49.62'	80.00'	28°11'16"	N48°13'24"W	50.37'	S88°28'59"E	517' - 06' 48"W
5	LOT 5	83.57'	80.00'	49°48'35"	S15°27'24"W	41.07'	S74°40'47"E	511' - 10' 00"W
6	LOT 4	85.37'	80.00'	49°48'35"	S15°27'24"W	41.07'	S74°40'47"E	511' - 10' 00"W
7	LOT 3	85.37'	80.00'	49°48'35"	S15°27'24"W	41.07'	S74°40'47"E	511' - 10' 00"W
8	LOT 2	85.37'	80.00'	49°48'35"	S15°27'24"W	41.07'	S74°40'47"E	511' - 10' 00"W
9	LOT 1	51.51'	80.00'	33°22'25"	N17°05'16"W	51.51'	S74°40'47"E	511' - 10' 00"W

**NOTE:**  
 THIS PLAN IS THE PROPERTY OF Pinnacle Engineering Group, Inc. and is not to be used, copied, or reproduced in any form without the written consent of Pinnacle Engineering Group, Inc.  
 Pinnacle Engineering Group, Inc.  
 1500 RAILROAD AVENUE, SUITE 200  
 OFFICE 762/754-9888  
 WWW.PINNACLE-ENGINEERING.COM

**DATE:**  
 09/15/09

**REVISIONS:**  
 1. 09/15/09 - INITIAL DESIGN  
 2. 09/15/09 - REVISED PLAN 28, 2008

**DRAWN BY:**  
 JOHN P. KOPPESCH

**CHECKED BY:**  
 [Signature]

**APPROVED BY:**  
 [Signature]

**STATE OF WISCONSIN**

**Pinnacle Engineering Group**  
 2140 WESTWIND DRIVE, WAUKESHA, WI 53186



**EXHIBIT B – PUBLIC IMPROVEMENTS COST ESTIMATE**

1. Curb and Gutter (190 LF @ \$25)	\$4,750.00
2. Roadway and Site Work	\$127,803.14
3. Erosion Control and Site Preparation	\$36,882.19
4. Sanitary Sewer	\$52,970.42
5. Water Main	\$47,225.66
6. Storm Sewer	\$21,377.23
7. Backfill - granular material & utility dirt placement	\$45,735.81
8. Year 1	\$12,198.85
9. Foth Inspections	<u>\$25,000.00</u>

Total	<u>\$373,943.30</u>
-------	---------------------

<b>120% (for total Letter of Credit)</b>	<b>\$448,731.96</b>
--	---------------------

After acceptance of all public improvements and during the guaranty period after installation of the surface course of asphalt it is anticipated that the letter of credit will be reduced to \$ 37,394.33 (representing 10% of the cost of the Public Improvements).

**CASH DEPOSIT**

1. Asphalt Binder (500 tons @ \$45.93/ton)	\$22,965.00
2. Asphalt Surface (160 tons @ \$56.80/ton)	\$9,088.00
3. Year 2 Improvements	\$2,100.00

<b>Total</b>	<b>\$34,153.00</b>
--------------	--------------------

<b>110% (for total Cash Deposit)</b>	<b>\$37,568.30</b>
--------------------------------------	--------------------

After substantial completion of the public improvements and during the period between the binder installation of the surface course of asphalt it is anticipated that the cash deposit will be reduced to \$14,603.30 representing (10% of the cost of the total Asphalt Cash Deposit amount, Year 2 Improvements & Asphalt Surface)

**AMENDED 9-13-2018**

**EXHIBIT B - PUBLIC IMPROVEMENTS COST ESTIMATE**

1. Curb and Gutter (190 LF @ \$25)	\$4,750.00
2. Roadway and Site Work .50%	\$63,901.57
3. Erosion Control and Site Preparation 50%	\$18,441.10
4. Sanitary Sewer 100%	\$0.00
5. Water Main 100%	\$0.00
6. Storm Sewer 75%	\$5,000.00
7. Backfill - granular material & utility dirt placement	\$0.00
8. Year 1	\$12,198.85
9. Foth Inspections	<u>\$25,000.00</u>

Total \$129,291.52

**120% (for total Letter of Credit) \$155,149.82**

After acceptance of all public improvements and during the guaranty period after installation of the surface course of asphalt it is anticipated that the letter of credit will be reduced to \$ 37,394.33 (representing 10% of the cost of the Public Improvements)

**CASH DEPOSIT**

1. Asphalt Binder (500 tons @ \$45.93/ton)	\$22,965.00
2. Asphalt Surface (160 tons @ \$56.80/ton)	\$9,088.00
3. Year 2 Improvements	<u>\$2,100.00</u>

**Total \$34,153.00**

**110% (for total Cash Deposit) \$37,568.30**

After substantial completion of the public improvements and during the period between the binder and installation of the surface course of asphalt it is anticipated that the cash deposit will be reduced to \$ 13,469.00 representing (10% of the cost of the total Asphalt Cash Deposit amount, Year 2 Improvements & Asphalt Surface)



## **Exhibit C to Developers Agreement**

### **RESTRICTIVE COVENANTS FOR CASCADE RIDGE SUBDIVISION**

Declaration of conditions, covenants, restrictions and easements regarding Cascade Ridge Subdivision, Village of Caledonia, Racine County, Wisconsin (the "Declaration").

This declaration is made by NCS, LLC, hereinafter called "Developer", as owner of certain real property in Racine County, Wisconsin:

WHEREAS, the Developer holds title to certain real estate located in the Village of Caledonia, Racine County, Wisconsin, (the "Village") described in Exhibit A to this Declaration, which lands have been platted as Cascade Ridge Subdivision, said lands being hereinafter referred to as the "Subdivision"; and,

WHEREAS, this Declaration will carry out the aforesaid purposes and will assure each subsequent owner of property in the Subdivision of the continuance of these standards.

NOW, THEREFORE, in consideration of the premises and the mutual promises of the parties to be bound by these restrictive covenants, the Developer hereby imposes upon the lands described in Exhibit A and known as Cascade Ridge Subdivision, the conditions, covenants, restrictions and easements hereinafter set forth which shall inure to the benefit of and pass with all said property and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner thereof.

#### **1. GENERAL PURPOSE**

The general purpose of this declaration is to help assure that the Subdivision will become and remain an attractive development, to insure the best use and most appropriate development and improvement of each building site to protect owners of building sites against use of surrounding building sites in such a manner as will detract from the residential value of the property, to guard against the erection on building sites of poorly designed or proportioned structures, to obtain harmonious use of material and color schemes, to insure the highest and best residential development of said property, to encourage and secure the erection of attractive buildings designed and built in accordance with a harmonious theme, to secure the appropriate locations thereof on building sites, to prevent haphazard and inharmonious improvement of building sites; and to secure and maintain proper setbacks from streets.

## Exhibit D to Developers Agreement

(JMB Draft: 10/26/18)

### MUNICIPAL SANITARY SEWER AND STORMWATER EASEMENT AGREEMENT

This agreement ("Agreement") is made and entered into as of the 30<sup>th</sup> day of October, 2018 (the "Effective Date"), by and between:

- a) NCS, LLC, being a Wisconsin limited liability company with offices located at 8338 Corporate Drive, Suite 300, Mt. Pleasant, Wisconsin 53406 (hereinafter referred to as "Developer"); and
- b) The VILLAGE OF CALEDONIA, being a municipal corporation and village created under the laws of the State of Wisconsin, with its Village Hall located at 5043 Chester Lane, Racine, Wisconsin 53402 (hereinafter referred to as the "Village"); and
- c) The VILLAGE OF CALEDONIA SEWER UTILITY DISTRICT and/or the VILLAGE OF CALEDONIA STORMWATER UTILITY DISTRICT, being two separate utility districts established by the Village of Caledonia under the laws of the State of Wisconsin, with utility district offices located at 333 4½ Mile Road, Racine, Wisconsin 53402 (hereinafter jointly and severally referred to as the "Municipal Utility District" in the singular tense, and/or the "Sewer Utility District" or the "Stormwater Utility District", as may be appropriate).

## Introduction

The Village is located in Racine County, Wisconsin. The Village, through the Municipal Utility District, owns and operates a municipal sanitary sewerage system and a stormwater system (hereinafter collectively referred to as the “District System” and/or separately as the “District Sewer System” or “District Stormwater System”).

Developer is the sole record-title owner of the parcel of real property (hereinafter referred to as the “Property”) located in the Village of Caledonia, Racine County, Wisconsin, that is described in attached Exhibit W.

Developer is creating a subdivision (the “Subdivision”) on the Property. The Subdivision is being developed by Developer under and pursuant to a separate written agreement entitled “Development Agreement Cascade Ridge Subdivision” (the “Development Agreement”), dated \_\_\_\_\_, 2018, entered into by the Village and Developer.

This present Agreement is being entered into by the above-named parties pursuant to the terms and provisions of the Development Agreement, to provide to the Village and the Municipal Utility District easements for the (i) municipal sanitary sewer mains, (ii) stormwater facilities, and (iii) related infrastructure (collectively, the “Subdivision System”) on the Property.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES HEREINAFTER DESCRIBED, THE ABOVE-NAMED PARTIES HEREBY AGREE AS FOLLOWS:

1. Introduction is Correct. The foregoing “Introduction” is true and correct, and is hereby incorporated into this Agreement by reference.

2. Easements Granted. Developer hereby grants to the Village and the Municipal Utility District the below-described sanitary sewer easement and stormwater easement on its Property, to operate, maintain, repair, and/or replace sanitary sewer mains (“Sanitary Sewer Mains”), stormwater facilities (“Stormwater Facilities”), and the related infrastructure to the same, in, on, and under the easement areas hereafter described on the Property. SPECIAL NOTE: Under the Development Agreement previously entered into by the parties hereto, Developer is, through its own private contractor, installing Stormwater Facilities in the below-described Stormwater Easement Area, and once that private project is completed and the said privately-constructed facilities are accepted by the Village and the Municipal Utility District, then this present Agreement shall apply to those Stormwater Facilities.

3. Sanitary Sewer Easement. Attached hereto as Exhibit X is a legal description and diagram showing the Sanitary Sewer Easement Area granted by Developer on the Property to the Village and the Sewer Utility District.

4. Access to Sanitary Sewer Easement Area. The Village, the Sewer Utility District, and/or their officials, officers, employees, contractors, engineers, consultants, and agents are hereby given the permanent non-exclusive right to go upon and enter the Sanitary Sewer Easement Area, at such times as the Village and/or the Sewer Utility District may see fit, for the purpose of exercising the easement rights granted herein.

5. Restrictions on Owner. Developer shall not construct (nor allow any third party to construct) any type of structure and/or place any type of object or materials in, over, under, on, or upon the Sanitary Sewer Easement Area, and shall not materially impede or obstruct the exercise of the easement rights granted hereunder. Notwithstanding the foregoing, however, Developer (and/or its assignee, successor(s) in title, or tenant) may construct, install, and

maintain pedestrian pathways, landscaping, driveways, parking lots, and/or roadways over the Sanitary Sewer Easement Area, provided that such construction and use does not damage the Sanitary Sewer Main located in the Sanitary Sewer Easement Area.

6. Stormwater Easement. Attached hereto as Exhibit Y is (i) a diagram showing the Stormwater Easement Area granted by Developer on the Property to the Village and the Stormwater Utility District, and (ii) the legal description of such Stormwater Easement Area.

7. Access to Stormwater Easement Area. The Village, the Stormwater Utility District, and/or their officials, officers, employees, contractors, engineers, consultants, and agents are hereby given the permanent non-exclusive right to go upon and enter the Stormwater Easement Area, at such times as the Village and/or the Stormwater Utility District may see fit, for the purpose of exercising the easement rights granted herein.

8. Restrictions on Owner. Developer shall not (i) change the grade elevations, (ii) construct (nor allow any third party to construct) any type of structure, and/or (iii) place any type of object or materials in, over, under, on, or upon the Stormwater Easement Area, and shall not materially impede or obstruct the exercise of the easement rights granted hereunder.

9. Restoration of Disturbed Areas. To the extent the Village and/or the Municipal Utility District, in its reasonable discretion, deems it necessary for the exercise of its easement rights granted hereunder, the Village/Municipal Utility District may remove from the Easement Areas any structure, object, material, or any other obstructions, and/or any plants, shrubs, bushes, trees, or other vegetation, and the Village/Municipal Utility District shall not be required to restore or replace such items, except, however, the Village/Municipal Utility District shall (i) restore any disturbed portion of the natural vegetation and/or landscaping of such Easement Areas by seeding the same with grass seed, and (ii) repair and restore any pedestrian pathways,

driveways, parking lots, and/or roadways (to its previously existing condition) located in the Sanitary Sewer Easement Area that may be damaged during the course of the exercise of these present easement rights by the Village/Municipal Utility District.

10. Runs with the Land. This Agreement shall run with the land of the Property described herein, and shall inure to the benefit of, and be binding upon, the parties to this Agreement and their respective successors and assigns; provided, however, that in the event that Developer wishes to convey or lease a portion of the Property on which no Sanitary Sewer Easement Area or Stormwater Easement Area is located, and if a partial release of this Agreement is required by the applicable title insurer, Developer shall notify the Village/Municipal Utility District of the same, and the Village/Municipal Utility District shall, within forty-five (45) days after such notice, provide Developer with an executed original release, in recordable form, of such portion of the Property from the terms and conditions of this Agreement (and thereafter Developer may record such release with the Racine County Register of Deeds).

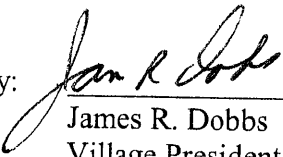
11. Governing Law. This Agreement shall be governed, controlled, construed, and interpreted by and under the laws of the State of Wisconsin. The venue for any legal action pertaining to and/or arising under this Agreement shall solely and exclusively be Racine County Circuit Court in Racine County, Wisconsin.

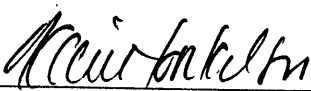
12. Stormwater Maintenance. Attached hereto as Exhibit Z is a document entitled "Cascade Ridge Storm Water Management Practice Maintenance Agreement". This document shall be, and through this Agreement, hereby is, a restrictive covenant (the "Restrictive Covenant") on the Developer's Property (and on all future subdivided lots and parcels of the Property), imposing duties and obligations on Developer, and its successors and/or assigns in

title, for the future operation, care, maintenance, repair, and/or replacement of the Stormwater Facilities.

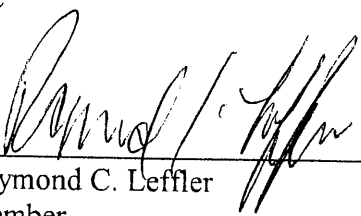
13. Conflicting Provisions. This Agreement, the above-noted Restrictive Covenants, and the Development Agreement shall be read and interpreted in conformity with each other, giving effect to all of their respective terms and provisions to the fullest extent reasonably feasible. In the event of any conflict between the said terms and provisions of the three documents, however, then the terms and provisions that are (i) more restrictive to Developer (and/or Developer's successors and/or assigns in title), and/or (ii) impose additional duties and obligations on Developer (and/or Developer's successors and/or assigns in title) shall apply and control.

VILLAGE:  
Village of Caledonia

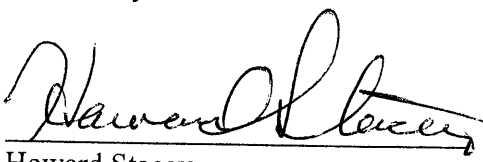
By:   
James R. Dobbs  
Village President

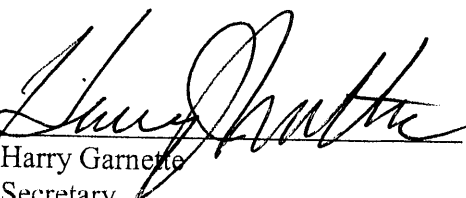
Attest:   
Karie Torkilsen  
Village Clerk

DEVELOPER:  
NCS, LLC

By:   
Raymond C. Leffler  
Member

MUNICIPAL UTILITY DISTRICT:  
The Village of Caledonia Sewer Utility  
District and the Village of Caledonia  
Stormwater Utility District

By:   
Howard Stacey  
President

Attest:   
Harry Garnette  
Secretary

AUTHENTICATION

Signatures of Raymond C. Leffler, on behalf of Developer, and James R. Dobbs and Karie Torkilsen, Village President and Village Clerk, respectively, of the Village of Caledonia; and Howard Stacey, President, and Harry Garnette, Secretary, of the Village of Caledonia Sewer Utility District and the Village of Caledonia Stormwater Utility District, authenticated this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

---

John M. Bjelajac  
Member: State Bar of Wisconsin  
State Bar No. 1015325

This Agreement drafted by  
Attorney John M. Bjelajac  
601 Lake Avenue  
Post Office Box 38  
Racine, Wisconsin 53401-0038  
Phone: (262)633-9800  
FAX: (262)633-1209  
(Attorney for the Village of Caledonia,  
and the Village of Caledonia Sewer Utility  
District and Stormwater Utility District)



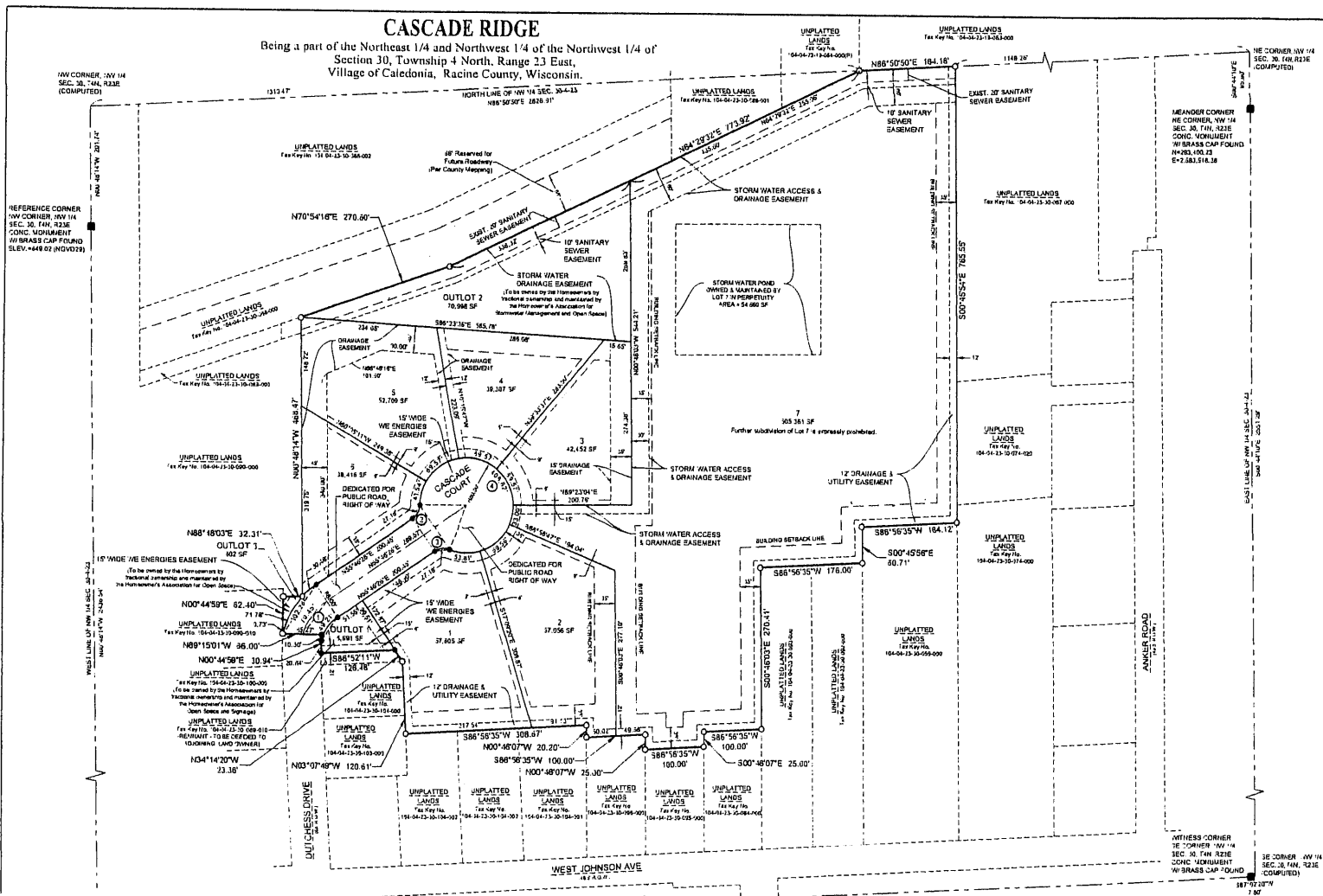
# Exhibit W – Legal Description

The following description and reduced copy map identifies the land parcel(s) affected by this Plan. For a larger scale view of the referenced document, contact the Village of Caledonia.

Project Name: **Cascade Ridge**

Map Produced By: **Pinnacle Engineering Group**

Location: **Being part of the Northeast 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 23 East, Village of Caledonia, Racine County, Wisconsin.**



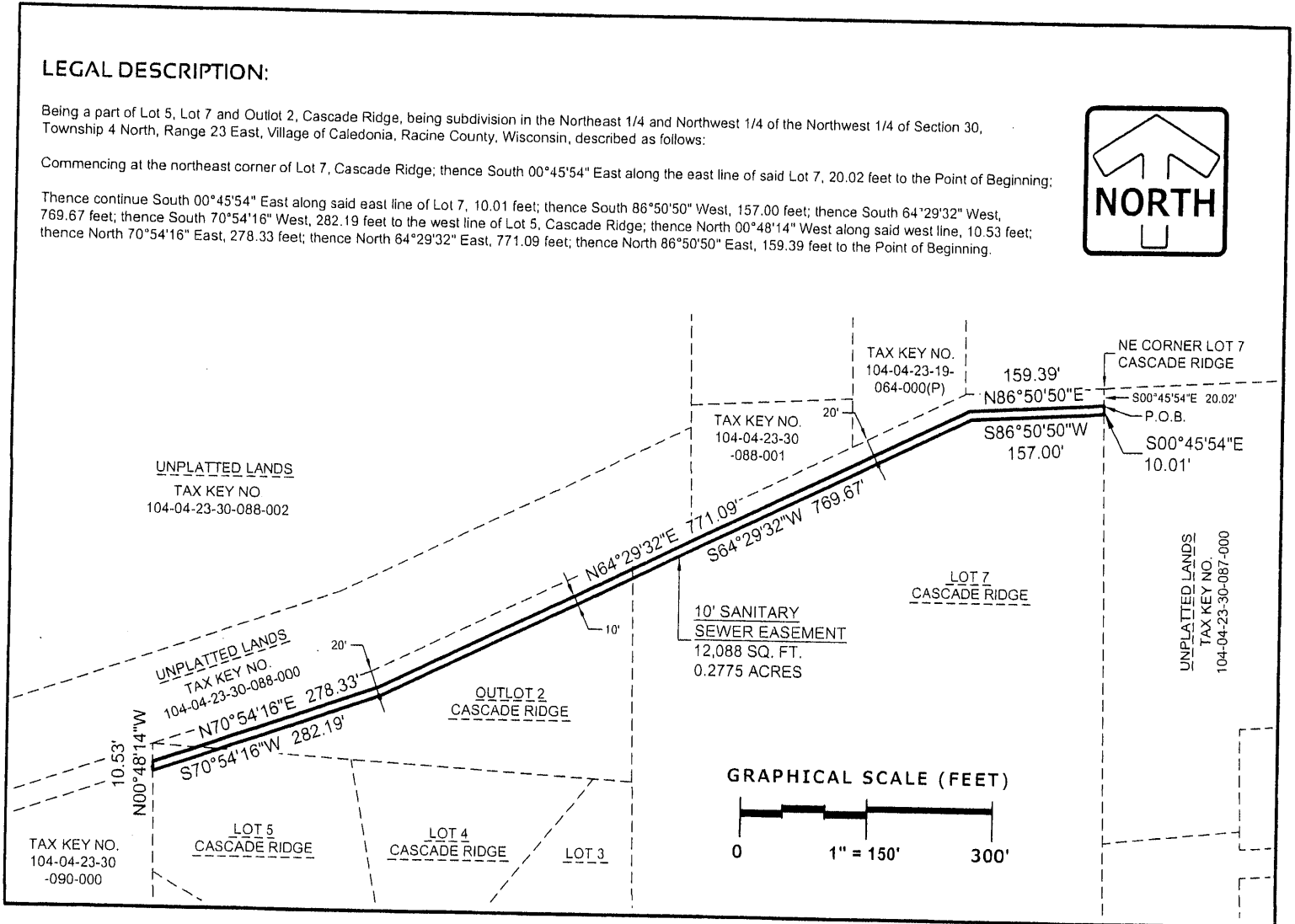
# Exhibit X – Sanitary System Easement

**LEGAL DESCRIPTION:**

Being a part of Lot 5, Lot 7 and Outlot 2, Cascade Ridge, being subdivision in the Northeast 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 23 East, Village of Caledonia, Racine County, Wisconsin, described as follows:

Commencing at the northeast corner of Lot 7, Cascade Ridge; thence South 00°45'54" East along the east line of said Lot 7, 20.02 feet to the Point of Beginning;

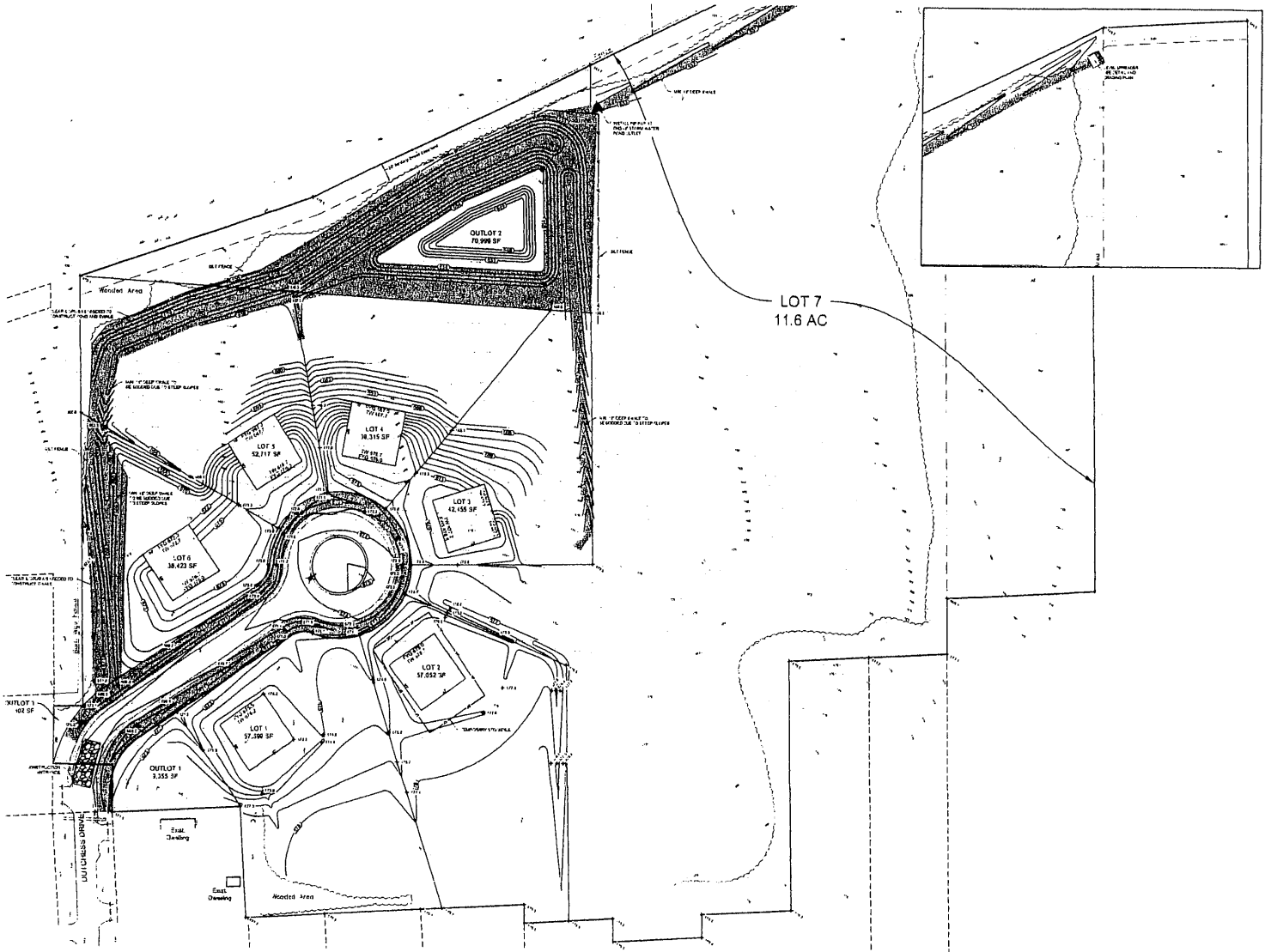
Thence continue South 00°45'54" East along said east line of Lot 7, 10.01 feet; thence South 86°50'50" West, 157.00 feet; thence South 64°29'32" West, 769.67 feet; thence South 70°54'16" West, 282.19 feet to the west line of Lot 5, Cascade Ridge; thence North 00°48'14" West along said west line, 10.53 feet; thence North 70°54'16" East, 278.33 feet; thence North 64°29'32" East, 771.09 feet; thence North 86°50'50" East, 159.39 feet to the Point of Beginning.



# Exhibit Y – Wet Pond Overall Drainage & Grading Plan

The storm water management practices covered by this Plan are depicted in the reduced copy of the construction plans, as shown below. The practices include water quality basins, spillways, earthen berms and other components of these practices.

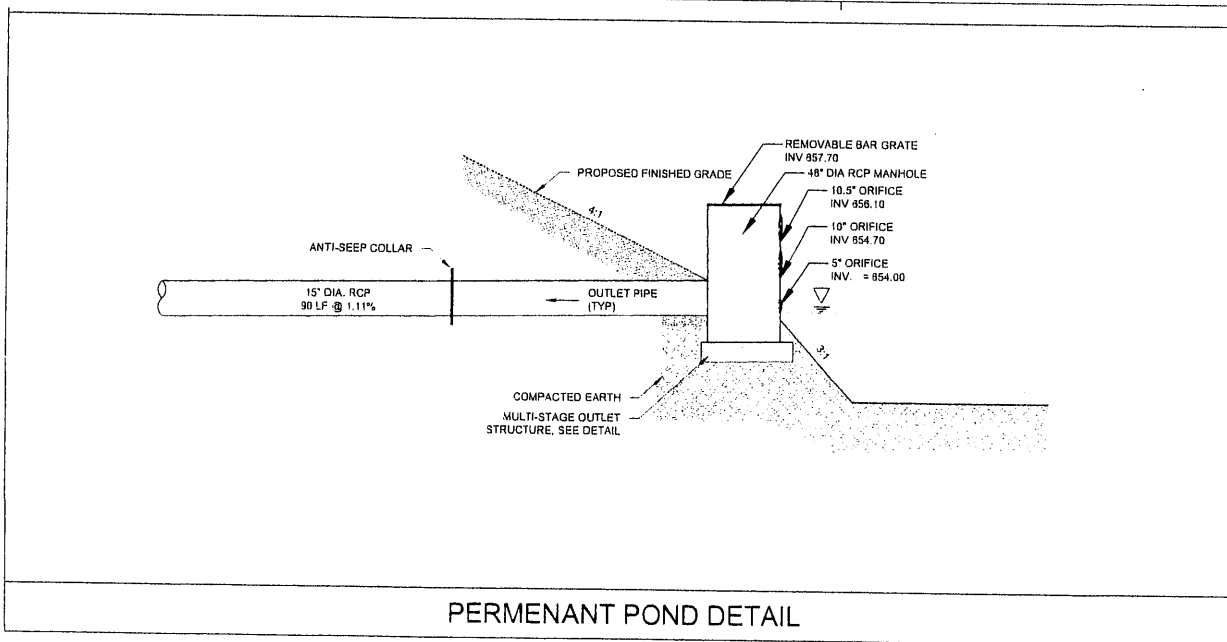
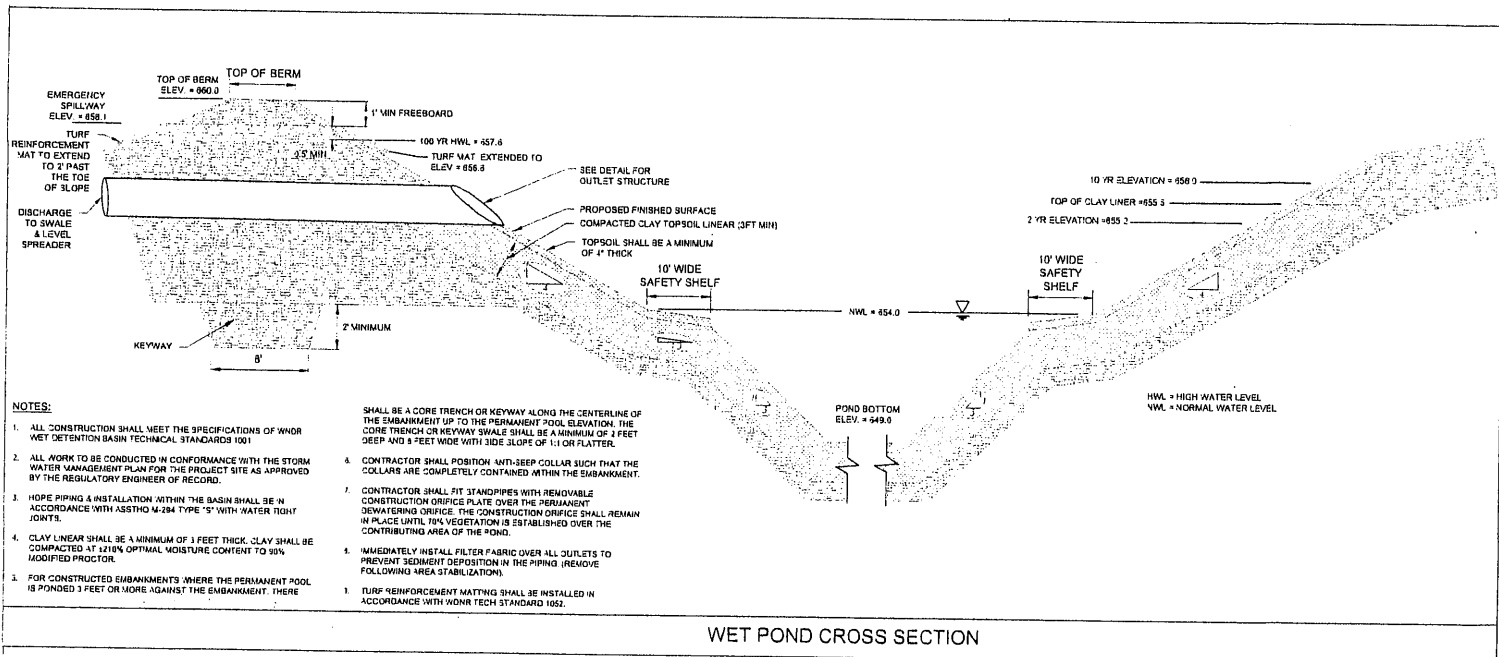
Project Name: Cascade Ridge  
Storm water Practices: Wet Pond  
Location of Practices: North Portion of Site



## Exhibit Y – Wet Pond Outlet Structure

The storm water management practices covered by this Plan are depicted in the reduced copy of the construction plans, as shown below. The practices include water quality basins, spillways, earthen berms and other components of these practices.

**Project Name:** Cascade Ridge  
**Storm water Practices:** Wet Pond  
**Location of Practices:** North Portion of Site



Cascade Ridge  
Storm Water Management Practice  
Maintenance Agreement

Document Number

NCS, LLC as "Owner" of the property described below, in accordance with State and the Village of Caledonia Code of Ordinances agrees to install and maintain storm water management practice(s) on the subject property in accordance with approved plans and Storm Water Management Plan conditions. The owner further agrees to the terms stated in this document to ensure that the storm water management practice(s) continues serving the intended functions in perpetuity. This Agreement includes the following exhibits:

**Exhibit A:** Legal Description of the real estate for which this Agreement applies ("Property").

**Exhibit B:** Location Map(s) – shows an accurate location of each storm water management practice affected by this Agreement.

**Exhibit C:** Maintenance Plan – prescribes those activities that must be carried out to maintain compliance with this Agreement.

Name and Return Address

NCS, LLC  
8338 Corporate Drive  
Mount Pleasant, WI 53406

Through this Agreement, the Owner hereby subjects the Property to the following covenants, conditions and restrictions:

1. The Owner shall be responsible for the routine and extraordinary maintenance and repair of the storm water management practice(s) identified in Exhibit B.
2. The Owner shall be solely responsible for maintenance and repair of the storm water management practices and drainage easements in accordance with the maintenance plan contained in Exhibit C.
3. The Village of Caledonia, or its designee, is authorized to access the property as necessary to conduct inspections of the storm water management practices or drainage easements to ascertain compliance with the intent of this Agreement and the activities prescribed in Exhibit C. Upon written notification by Village of Caledonia or their designee, the Owner shall, at their own cost and within a reasonable time period determined by the Village of Caledonia, have an inspection of the storm water management practice conducted by a qualified professional, file a report with the Village of Caledonia and complete any maintenance or repair work recommended in the report. The Owner shall be liable for the failure to undertake any maintenance or repairs.
4. Upon notification by the Village of Caledonia of required maintenance or repairs, the Owner shall complete the specified maintenance or repairs within a reasonable time frame determined by the Village of Caledonia.
5. If the Responsible Party does not complete an inspection under 3. above or required maintenance or repairs under 4. above within the specified time period, the Village of Caledonia is authorized, but not required, to perform the specified inspections, maintenance or repairs. In the case of an emergency situation, as determined by the Village of Caledonia, no notice shall be required prior to the Village of Caledonia performing emergency maintenance or repairs. The Village of Caledonia may levy the costs and expenses of such inspections, maintenance or repair related actions as a special charge against the Property and collected as such in accordance with the procedures under s. 66.0627 Wis. Stats. or subch. VII of ch. 66 Wis. Stats.
6. This Agreement shall run with the Property and be binding upon all heirs, successors and assigns.

**104-04-23-300-89-010**

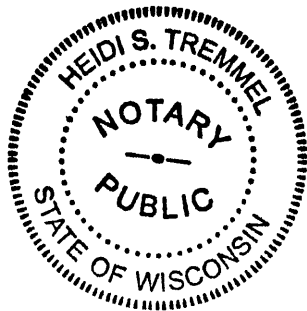
Parcel Identification Number(s) – (PIN)

Owner: NCS, LLC

Raymond C. Laffer  
By: mcmbr

STATE OF WISCONSIN )  
 ) ss.  
RACINE COUNTY )

Personally came before me this 30th day of October, 2018, the above named Raymond C. Laffer to me known to be the person who executed the foregoing instrument and acknowledged the same.



Heidi Tremmel  
Notary Public, State of Wisconsin  
My Commission expires 2/7/22

Village of Caledonia:

Jan R. Jobs

STATE OF WISCONSIN )  
 ) ss.  
RACINE COUNTY )

Personally came before me this 19 day of November, 2018, the above named James R. Dobbs to me known to be the person who executed the foregoing instrument and acknowledged the same.

Anthony A. Beckelmann  
Notary Public, State of Wisconsin  
My Commission July 26, 2019

This document was drafted by:

**Pinnacle Engineering Group  
15850 West Bluemound Road  
Suite 210  
Brookfield, WI 53005**

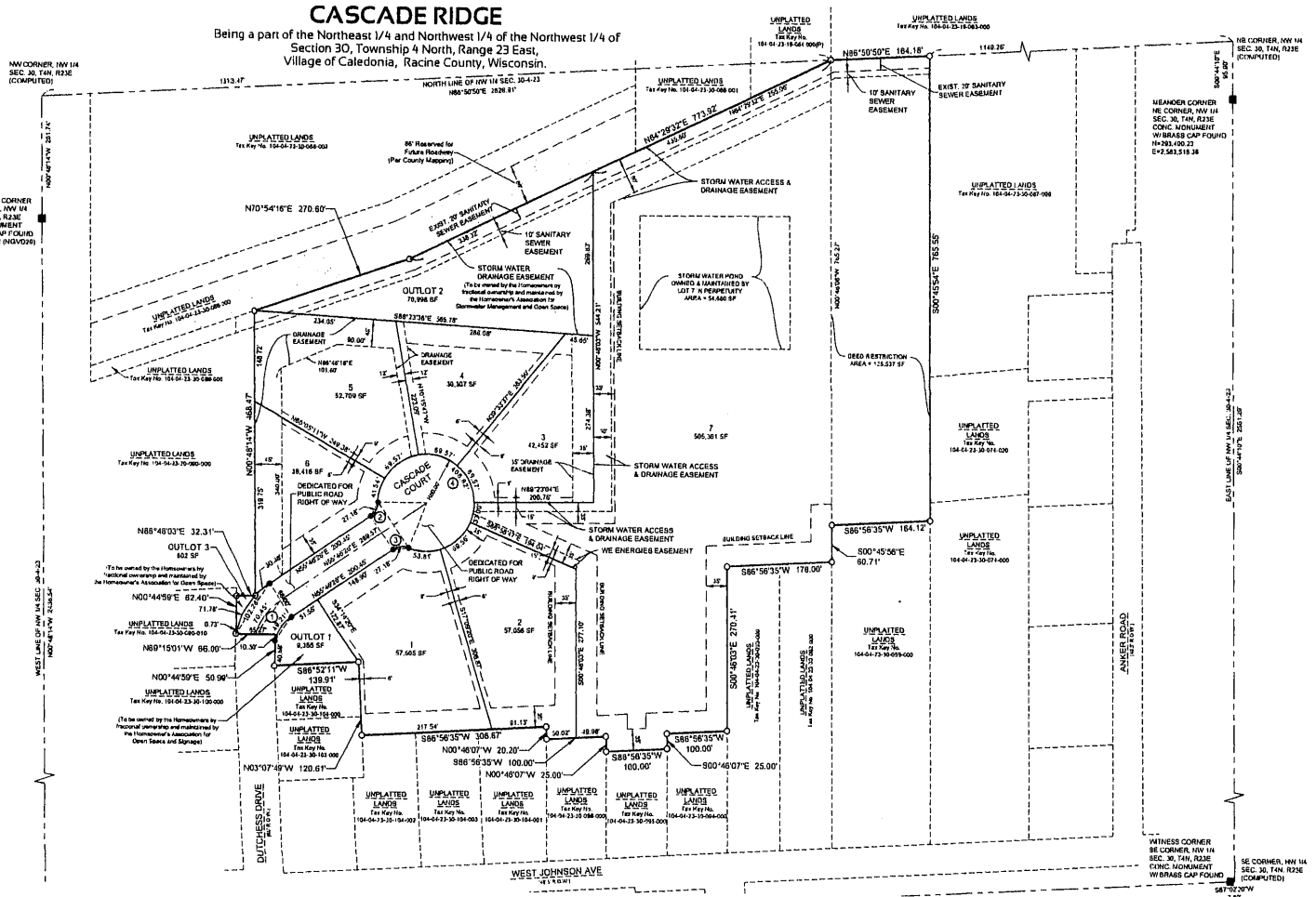
# Exhibit A – Legal Description

The following description and reduced copy map identifies the land parcel(s) affected by this Plan. For a larger scale view of the referenced document, contact the Village of Caledonia.

Project Name: **Cascade Ridge**

Map Produced By: **Pinnacle Engineering Group**

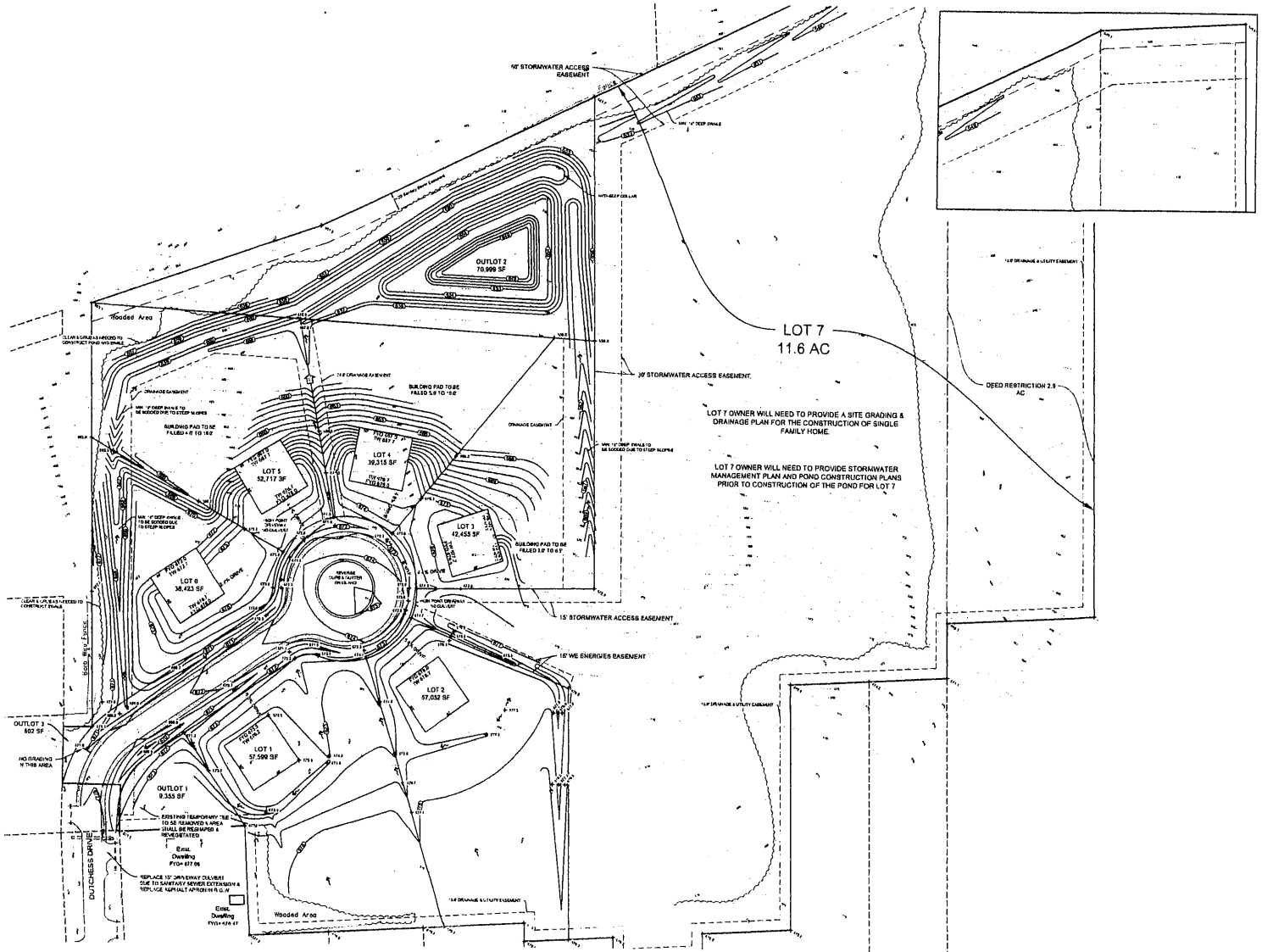
Location: **Being part of the Northeast 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 30, Township 4 North, Range 23 East, Village of Caledonia, Racine County, Wisconsin.**



## Exhibit B – Wet Pond Overall Drainage & Grading Plan

The storm water management practices covered by this Plan are depicted in the reduced copy of the construction plans, as shown below. The practices include water quality basins, spillways, earthen berms and other components of these practices.

Project Name: Cascade Ridge  
Storm water Practices: Wet Pond  
Location of Practices: North Portion of Site

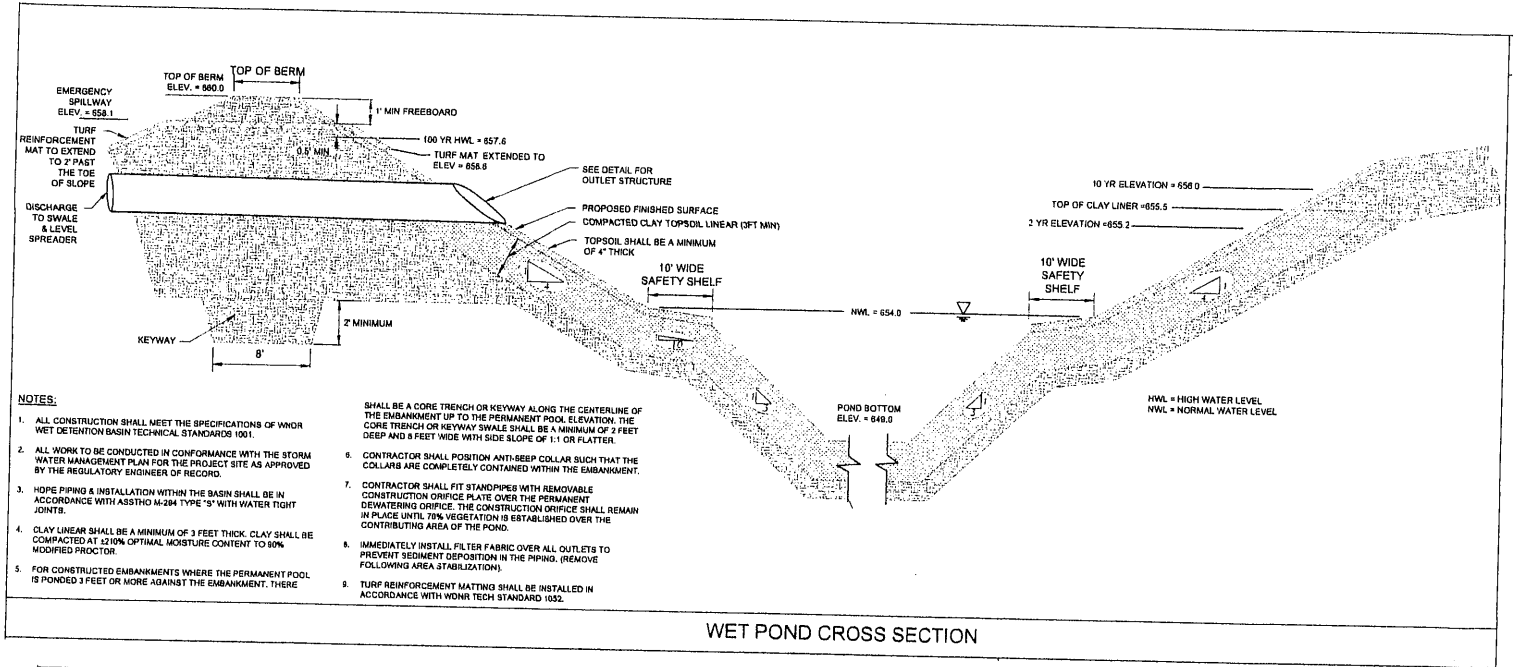




## Exhibit B – Wet Pond Outlet Structure

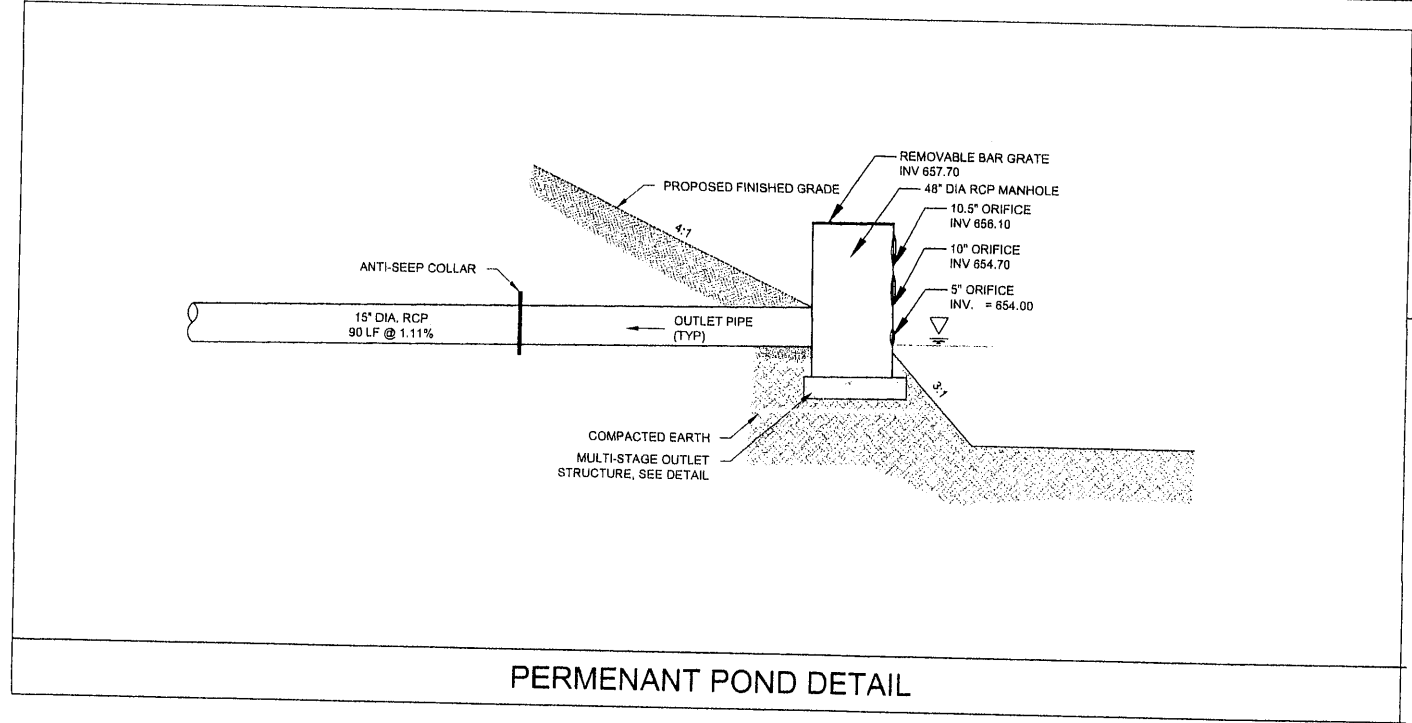
The storm water management practices covered by this Plan are depicted in the reduced copy of the construction plans, as shown below. The practices include water quality basins, spillways, earthen berms and other components of these practices.

**Project Name:** Cascade Ridge  
**Storm water Practices:** Wet Pond  
**Location of Practices:** North Portion of Site



**NOTES:**

1. ALL CONSTRUCTION SHALL MEET THE SPECIFICATIONS OF WQOR WET DETENTION BASIN TECHNICAL STANDARDS 1001.
2. ALL WORK TO BE CONDUCTED IN CONFORMANCE WITH THE STORM WATER MANAGEMENT PLAN FOR THE PROJECT SITE AS APPROVED BY THE REGULATORY ENGINEER OF RECORD.
3. HDPE PIPING & INSTALLATION WITHIN THE BASIN SHALL BE IN ACCORDANCE WITH ASSTHO M-284 TYPE 'S' WITH WATER TIGHT JOINTS.
4. CLAY LINER SHALL BE A MINIMUM OF 3 FEET THICK. CLAY SHALL BE COMPACTED AT 2% OR OPTIMAL MOISTURE CONTENT TO 90% MODIFIED PROCTOR.
5. FOR CONSTRUCTED EMBANKMENTS WHERE THE PERMANENT POOL IS PONDED 3 FEET OR MORE AGAINST THE EMBANKMENT, THERE SHALL BE A CORE TRENCH OR KEYWAY ALONG THE CENTERLINE OF THE EMBANKMENT UP TO THE PERMANENT POOL ELEVATION. THE CORE TRENCH OR KEYWAY SWALE SHALL BE A MINIMUM OF 2 FEET DEEP AND 8 FEET WIDE WITH SIDE SLOPE OF 1:1 OR FLATTER.
6. CONTRACTOR SHALL POSITION ANTI-SEEP COLLAR SUCH THAT THE COLLARS ARE COMPLETELY CONTAINED WITHIN THE EMBANKMENT.
7. CONTRACTOR SHALL FIT STANDPIPES WITH REMOVABLE CONSTRUCTION ORIFICE PLATE OVER THE PERMANENT DEWATERING ORIFICE. THE CONSTRUCTION ORIFICE SHALL REMAIN IN PLACE UNTIL 70% VEGETATION IS ESTABLISHED OVER THE CONTRIBUTING AREA OF THE POND.
8. IMMEDIATELY INSTALL FILTER FABRIC OVER ALL OUTLETS TO PREVENT SEDIMENT DEPOSITION IN THE PIPING. (REMOVE FOLLOWING AREA STABILIZATION)
9. TURF REINFORCEMENT MATTING SHALL BE INSTALLED IN ACCORDANCE WITH WQOR TECH STANDARD 1032.



## **Exhibit C**

### **Minimum Storm Water Practice Maintenance Requirements**

This exhibit explains the basic function of each of the storm water practices listed in Exhibits B through D and prescribes the minimum maintenance requirements to remain compliant with this Plan. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all-inclusive, but rather indicates the minimum type of maintenance that can be expected for this particular site.

#### **WET DETENTION BASINS**

##### **System Description:**

The wet pond is designed to remove at least 80% of the Total Suspended Solids (TSS) in the site runoff and to reduce pre-development downstream peak flows. To function correctly, the pond size, water level and outlet structures must be maintained as specified in this Plan (see Exhibits B through E).

Cascade Ridge is a proposed subdivision development. The project is located on Dutchess Drive in the Village of Caledonia, Racine County, Wisconsin.

##### **Minimum Maintenance Requirements:**

To ensure the proper function of the storm water management practices described above, the following activities must be completed:

1. All outlet structures and pipes must be checked monthly to ensure there is no blockage from floating debris or ice, especially the washed stone in front of the orifices and the trash rack on the risers in the main part of the wet pond. Any blockage must be removed immediately. The washed stone must be replaced when it becomes clogged.
2. Grass swales shall be preserved to allow free flowing of surface runoff in accordance with approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt flows in any way.
3. Grass swales, inlets and outlets must be checked at least twice yearly (spring and fall) and after heavy rains for signs of erosion. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the basin. Erosion matting is recommended for repairing grassed areas.
4. NO trees are to be planted or allowed to grow on the earthen berms. Tree root systems can reduce soil compaction and cause berm failure. The berms must be inspected annually and any woody vegetation removed.
5. If floating algae or weed growth becomes a nuisance (decay odors, etc.), it must be removed from the basin and deposited where it cannot drain back into the basin. Removal of the vegetation from the water reduces re-growth the following season (by harvesting the nutrients). Wetland vegetation must be maintained along the waters edge for safety and pollutant removal purposes.
6. The wet pond is to be cleaned out prior to the depth of sediment reaching the dewatering hole. All removed sediment must be placed in an appropriate upland disposal site and stabilized (grass cover) to prevent sediment from washing back into the basin.
7. No grading or filling of the wet pond or berms other than for sediment removal is allowed, unless otherwise approved by the Village of Caledonia.
8. To promote more effective infiltration, mowing in the drainage ways, detention basins, and wetland fringe areas should be minimized. If mowing is deemed necessary, the mowing heights should be no shorter than six (6) inches. Restricting any mowing to late summer or autumn will minimize mortality to ground nesting birds. To discourage the presence of nuisance waterfowl (i.e. Canada Geese), a minimum 30-foot wide no-mow fringe shall be maintained around all detention basins, where possible.
9. After Vegetation is 70% established, the use of herbicides/pesticides is to be discontinued along the swales & basins.