

RESOLUTION NO. 2021-05

RESOLUTION OF THE VILLAGE BOARD OF THE VILLAGE OF CALEDONIA TO APPROVE A DEVELOPMENT AGREEMENT FOR THE FINAL PHASE OF AUBURN HILLS SUBDIVISION; AUBURN HILLS III, LLC, OWNER / NANCY WASHBURN, AGENT

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

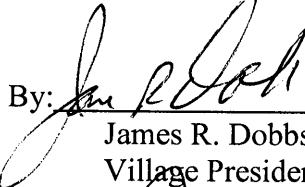
WHEREAS, the Village previously approved a plat for Auburn Hills Subdivision;

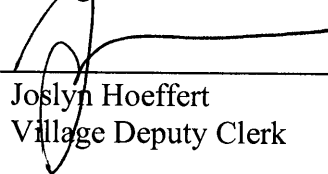
WHEREAS, the subdivision has been developed in phases and this phase includes 26 lots in the subdivision and will be the final phase of the subdivision.

NOW, THEREFORE, BE IT RESOLVED by the Caledonia Village Board that the 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 Auburn Hills III, 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 Deputy Clerk are authorized to execute said agreement and Village staff are authorized to take all such actions necessary in furtherance of the Development Agreement.

1st Adopted by the Village Board of the Village of Caledonia, Racine County, Wisconsin, this day of February, 2021.

VILLAGE OF CALEDONIA

By: 
James R. Dobbs
Village President

Attest: 
Joslyn Hoeffert
Village Deputy Clerk

DEVELOPMENT AGREEMENT

26 LOT Final PHASE OF AUBURN HILLS 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 **AUBURN HILLS III, 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” although more than one), 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 26 parcels of real property previously platted in the “Auburn Hills” subdivision (hereinafter referred to as the "Property") located in the Village of Caledonia, Racine County, Wisconsin, and which is legally described and depicted on the attached **Exhibit**

A.

C. The Village has previously approved, subject to conditions, the final plat of “Auburn Hills,”

being a subdivision that includes the Property ("the Subdivision"), including 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.

D. As a part of the creation of the Property, 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 with regard to the Project 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 this Agreement shall survive any foreclosure of the Mortgagee's mortgage.

I. This final phase of the Subdivision is comprised of 26 lots and does not include any other phases or lots in the Subdivision.

J. The Developer desires to complete improvements and development of the Property located

in the Village in the manner described herein, and for that purpose cause the installation of certain Public Improvements, hereinafter defined.

K. Wisconsin Statutes 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 to make and install or have made and installed, any new Public Improvement, including the Subdivision System, reasonably necessary to the Property, and the Developer may provide an irrevocable letter of credit or other security approved by the Village guaranteeing that the Developer will make and install or have made and installed those improvements to the Property within a reasonable time.

L. The Village believes that the orderly planned development of the Property 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 Property, 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 the municipal water system operated by the Utility District.

Public Improvements shall mean all public improvements to be constructed on the Property pursuant to this Agreement and in accordance with the Plans, 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 to be built on the Property, including any required curb and gutter.

Property shall mean this final 26 lot phase of Auburn Hills Subdivision as set forth on **Exhibit A**.

Storm Water Utilities shall mean the storm sewer utilities to be constructed on the Property under this Agreement and in accordance with the Plans.

Subdivision System shall mean the sanitary sewerage system and the watermain system in the Subdivision to be constructed on the Property under this Agreement and in accordance with the Plans.

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 Property 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 construction of Public Improvements on the Property shall be undertaken and done by Contractor, and Developer shall be solely responsible for the payment of all costs and expenses for the construction of the Public Improvements on the Property. 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 construction of the Public Improvements on the Property.

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 the construction of an individual home on the Property shall

be paid at the time a building permit for the construction of said home is obtained.

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

(a) **Property 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 Property's Public Improvements, including Plans 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 **Exhibit A** to this Agreement. The Village and the Utility District have previously approved the plans for the Public Improvements prepared by SEH, Inc. and dated and stamped by a professional engineer on February 19, 2019 which are incorporated herein by reference (the "Plans"). The design and Plans of the Public Improvements, Public Roads, Subdivision System and Storm Water Utilities 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 the Public Improvements.

(b) **Storm Water Utilities and Subdivision System Construction.** Developer's design engineer shall stake the location of 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 the 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 recorded Subdivision Plat is conditioned upon (i) the Village's acceptance of the

Subdivision's Public Improvements, (ii) the Property (and the lots therein) being serviced with public sewer and water services by the Utility District, and (iii) the Developer entering into agreements to grant the Utility District, as appropriate, all easements, if applicable and deemed necessary for the furnishing of public sewer and water services to the lots in said Property.

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 for the portion of the Public Roads constructed by the Developer 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 reasonably necessary to protect the Village in the event that there is an identified deficiency in the construction that warrants a longer guarantee time period. It is anticipated that the construction of the Public Roads as described herein, except for surface asphaltting, shall be completed during 2021. If the construction thereof is delayed, the Developer and Contractor shall be responsible for the maintenance, plowing, regrading and reshaping of the Property's Public Roads at the Developer's expense prior to the asphaltting work being done in accordance with Village's duly-bid public road work (annual paving program) contract. After the Developer's construction of the base course of the Public Roads is approved and accepted by the Village, the Village's asphaltting contractor shall

fine grade the stone base and install four and one-half (4 ½) inches of binder asphalt, in two (2) layers per the specifications of the Village Director of Public Works, on all the Public Roads within the Property that 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 necessary to complete the Public Roads shall not be done until after the Property has been at least 95% developed, meaning 95% of the lots located on the Property have received occupancy permits and all required Public Improvements have been installed and approved by the Village. Provided, however, if the Property is not 95% developed within two (2) years after installation and acceptance of the binder course of asphalt, then the surface course of asphalt and the final work necessary to complete the Public Roads shall be installed and completed in accordance with the following schedule and upon authorization to proceed from the Village Director of Public Works:

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

Prior to installation of the surface course of asphalt, the Village Director of Public Work shall inspect the Public Roads to determine whether any patching and repairs of the previously completed construction of the Public Roads is necessary. When authorized to install the surface course of asphalt by the Village's Director of Public Works, the Village's asphaltting contractor shall perform any patching and repairs deemed necessary by the Village Director of Public Works, sweep the binder course prior to placing any tack coat

and install one and one-half (1-1/2) inches of surface asphalt. Thereafter the Developer and Contractor shall complete the final work necessary to complete the construction of the Public Roads except for manhole and water box adjustments on the Public Roads. Developer agrees that it is financially responsible for the cost of installation and construction of the asphalt binder and surface courses, but the Village shall be responsible to perform such work, either directly or through contracted third parties, in accordance with the Village Ordinances. 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, 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. The Work Schedule shall (i) 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 the District's engineers with 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 that work on the Subdivision System is being performed and as deemed by the Village and/or District to be 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, (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 after the date on which the Village and District accept ownership of the Subdivision System in writing 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 requires the remedied work to be done sooner 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 Public Roads and upon the Village and the District then accepting the same in writing, the ownership of the Subdivision System and Public Roads 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 and Public Road 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 Public Roads and the portion of the Subdivision System located in the dedicated Village rights-of-way, and if necessary, any easements described below in Section 7(g); 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).

4) The Developer agrees to execute such documents as may be requested by the Village to transfer, convey and/or dedicate ownership of the Subdivision System and Public Roads to the extent necessary to facilitate the Village's ownership thereof as set forth in this Section 7(d).

(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 the Completion Work. This waiver includes, but is not limited to, waiver of 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 Property.

(g) **Grant of Easements.** If for some reason any portion of the Subdivision System is constructed outside of the Village rights-of-way that are transferred to the District under the provisions of above Section 7(d) of this Agreement, the Developer will grant to the Village and the District an easement (the "Easement") on private land located within the Property, as reasonably determined by the Village and the District, of sufficient depth and width to the extent reasonably necessary to enable the Village and the District to access such portion of the Subdivision System for the purpose of installing, operating, using, maintaining, modifying, improving, repairing, and/or replacing the Subdivision System. If an easement is so determined to be reasonably necessary, the Developer will execute and deliver to the Village and 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 sanitary sewer and watermain facilities already located within the easement area, and

(ii) any other portion of Subdivision System located within the easement area. The Easement Agreement shall identify and describe the location of all such sanitary sewer and watermain facilities. When the Construction Project and the final as-built drawings of the new Subdivision System are completed, the said as-built drawings shall be included in the Easement Agreement to identify and describe the land subject to the easement pertaining to sanitary sewer and watermain facilities. (In this fashion, the final as-built easement areas will replace any initial easement areas that were originally based on the Plans, but vary from the final, as-built location of the sewer and watermain facilities.) The Developer shall provide, and no building permits for lots within the Property shall be issued until the Village receives, a master easement exhibit from the Developer showing all easements, including WE Energies and other utility easements located on the Property and the lots in this phase. The Developer shall provide these documents in a format acceptable to the Village Director of Public Works.

(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: (i) 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 (ii) 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 after 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 the outlot located on the Property shall be completed prior to the issuance of any building permits for lots within the Property. 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.** Except as provided below, Developer shall be liable and responsible for the proper maintenance of the storm water easements described on the attached **Exhibit D**, including any detention or retention basins if applicable. Such maintenance shall include the control of weed and algae growth. Each lot in the subdivision is encumbered or subject to certain restrictive covenants (the "Restrictive Covenants") that were previously recorded with the Racine County Register of Deeds. The Restrictive Covenants provide that each lot owner in the Subdivision is a member of the Auburn Hills Homeowner's Association, Inc. (the "Homeowner's Association"), a nonstock Wisconsin corporation, and that as each lot is sold by the Developer, the Homeowner's Association becomes liable and responsible to perform the proper maintenance of the storm water easements that is assigned to each lot owner by the Restrictive Covenants. Accordingly, as to each lot located on the Property, the Developer's liability and responsibility for proper maintenance of the storm water easements shall continue until such time as the lot is conveyed to a third party, and when all lots located on the Property have been so conveyed, the Developer shall have no further liability or responsibility for proper maintenance of the storm water easements (provided, however, that the Developer shall continue to have any remaining obligations relating to the Developer's guarantees under Sections 7(c) and 9(b)). Such maintenance shall be carried out in conformity with applicable Village ordinances, the Restrictive Covenants and any written directive for corrections or maintenance from the

Village.

(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. Said easement agreement shall identify and describe 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 performed and may charge the costs thereof to any of the following parties to the extent that each of the following parties is liable for said costs pursuant to this Agreement or the Restrictive Covenants: (i) the Developer, (ii) any subsequent owner of any lot within the Property, or (iii) the Homeowner's 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 or the lot within the Property that is assigned responsibility for such drainage facility, all as provided in Sections 66.0627 and 66.0703, Wis. Stats., and applicable Village ordinances.

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 the amount of \$1,180,808.46 (the "Security"), which amount equates to 120% of the estimated total cost of the Public Improvements (excluding the cost for asphaltting) as set forth

on **Exhibit B** which is incorporated herein by reference. Developer has opted to post a cash deposit (the “Cash Deposit”) for the cost of the binder and surface course of asphalt plus 10%. The Village shall use the Cash Deposit to pay the costs of the binder and surface course of asphalt to be installed by the Village’s asphaltting contractor. The amount of the Cash Deposit is set forth on **Exhibit B**. Developer shall post the Security and Cash Deposit with the Village prior to commencing the staking that is required of the Developer. After completion satisfactory to the Village as set forth in this Agreement of each of (i) the Storm Water Utilities and Subdivision System, and (ii) the Public Road’s stone course (e.g. installation of the subgrade and preparation for the binder course of asphalt), 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**. Releases of the 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 binder course of asphalt on the Public Road. The Village will pay the asphaltting costs from the Cash Deposit and send a copy of the invoice to Developer for the asphaltting work completed by the Village’s contractor for its records. After the binder course is completed and invoices have been paid for the binder course, 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, if the letter of credit posted for the Security expires prior to the end of the Guaranty Period, the Developer agrees to renew the letter of credit for the remaining Guaranty Period even if the letter of credit extends beyond, and notwithstanding, the fourteen (14) month period set forth in Section 236.13, Wis. Stats. 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 or cash deposit for the remaining amount on the letter of credit for the remaining Public Improvements work, plus 10% of the original Security.

The Cash Deposit 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 such deficiencies not paid by the Developer 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 after initial staking, the Village shall draw on the Security and Cash Deposit 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 Public Roads, shoulders and curb and gutter for a period of one (1) year (the "Road Maintenance and Repair Guaranty Period"). The Village Board may extend the Road Maintenance and Repair Guaranty Period to the extent

necessary to complete any maintenance and repairs that the Village may require during the one (1) year Road Maintenance and Repair Guaranty Period or if reasonably necessary to ensure that the Public Roads, shoulders, and curb and gutter are stable. In the event any defect(s) is discovered in the Public Roads, shoulders or curb and gutter during the one (1) year Road Maintenance and Repair Guaranty 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 remaining length of the Guaranty Period. Notwithstanding the foregoing, the Road Maintenance and Repair Guaranty Period shall include the time period between acceptance of the binder course of asphalt and installation and acceptance of the surface course of asphalt. The Guaranty Period and the Road Maintenance and Repair Guaranty Period shall not in any manner limit, change or amend any applicable statutes of limitation regarding the Public Improvements. The Village may apply any or all retained Security and/or Cash Deposits during the guaranty periods 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 after 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 Sections 66.0627 and 66.0703, Wis. Stats., and applicable Village ordinances.

(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 its work schedule for Public Improvements to the Village prior to any work being undertaken. Such work 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 present 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 Public Improvements whenever they believe that any such work or materials are not in compliance with the approved Plans and Specifications, 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.** Pursuant to the Restrictive Covenants, the original developer of the Subdivision previously agreed to restrict the use of the outlots, and require the maintenance and protection of the outlots. The outlots located on the Property are subject to the Restrictive Covenants and the easement agreement required under Section 8(c) above. Developer shall ensure that the outlots located on the Property comply with the Restrictive Covenants and said easement agreement prior to transferring responsibilities for said 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 to the extent necessary to exercise its easement rights to ensure proper maintenance of any drainage facilities by the Homeowner's Association.

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, Said lights must be approved by the Village and WE Energies. The street lighting plan, including the type of street lights 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 of the street lights shall be the sole responsibility of the Developer until the streets are transferred and conveyed to the Village. 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 Property. 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 created by the Village Director of Public Works, is incorporated herein by reference. The Developer authorizes the Village to install the necessary Public Roads markings and signs and shall reimburse the Village on a time and material basis for the cost thereof.

13. **Sale of Lots.** Developer or its successors in title shall not sell, convey or transfer any portion of the Property abutting upon a street or portion thereof that is depicted on the Subdivision plat until the following have occurred: (1) this Agreement is executed and recorded; 2) all Security has been deposited with the Village (by such time as is herein provided); (3) the Storm Water Utilities and Subdivision System have been installed and accepted by the Village; and (4) 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 was 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 Property 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 Property 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 Property including costs incurred by the Village to review conceptual, preliminary and final plans associated with the Property and to review, revise

and/or draft any agreements, easements, deed restrictions or other documents associated with the Property. 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 pre-development 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, provided, however, the parties intend that the reimbursement account and process set up by the pre-development 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 additional amounts required by the Village within fifteen (15) days after written demand by the Village. If Developer does not deposit a required additional amount within the time required, the Village may suspend additional work or review of the plans and specifications under consideration until the additional 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 Property. 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 previously made a cash payment to the Village for the Subdivision's land division fees at the time the Auburn Hills Plat was recorded.

17. **Utilities and Utility Laterals.** Developer is responsible for all costs associated with all private utilities servicing the Property 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's engineer, at the Developer's expense, shall provide to the Village one complete set of Grading and Stormwater facilities as-built plans and profile sheets, and the Village's engineer, at the Developer's expense, shall prepare and provide to the Village one complete set of Sanitary Sewer and Water Main plans 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. The Village will be reimbursed by the Developer for the cost of changes to the base and other maps and official drawings not provided by the Developer's as-built drawings, but necessitated by actions of the Developer, whether or not such items are enumerated in this Agreement.

19. **Building Permits and Lot Construction.** Until the Public Improvements, except the surface course of asphalt, provided herein to be installed to service the Property have been installed to the reasonable satisfaction of the Village's Utility Director and Director of Public Works, no building permits shall issue as to lots in the Property; provided, however, that building permits may issue as to lots fronting on streets within the Property if the binder course for the streets has been installed and accepted by the Village. Furthermore, 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 by the Village's paving contractor. If paving delays extend into winter, then the Developer shall be responsible for plowing of the snow through the winter months on the portion of

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 Property, 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's 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. **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 Property specified by the Village.

21. **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 (collectively for the purposes of this Section and Section 22 the "Work"). The Developer and Contractor shall indemnify and hold harmless the Village and its agents, officers and employees, against any claims or liabilities directly arising from or based on the violation of any such Laws with regard to the Work by the Developer or its principals, agents, employees or contractors, except to the extent that such claims or liabilities arise by virtue of the negligence or willful misconduct of the Village or 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.

22. **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.

23. **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.

24. **Street Trees.** In the Restrictive Covenants, the Developer required the planting of one to two trees per lot or building of a species approved by the Village and 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 previously approved by the Village. A mixture of trees shall be chosen from an approved list provided by the Village.

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

26. **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 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.

27. **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.

28. **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, 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.

Provided, however, that the above indemnification and hold harmless obligations of the Developer shall not apply to any claims, judgments, damages, costs, expenses and liability for any injury or damage that may arise directly or indirectly as a result of, in whole or in part, any intentional torts, negligence and/or willful misconduct by the Village, Utility District, or any of their respective elected and appointed officers, employees, engineers, contractors and agents. 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 or due to the negligence, willful neglect or misconduct of the Village, Utility District, or any of their respective elected and appointed officers, employees, engineers, contractors and agents. 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 provisions of this Agreement.

29. **Indemnification for Environmental Contamination.** The Developer, Contractor or Homeowner's 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 reasonable 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, or any third parties, or by the Developer's respective employees, agents or contractors at or under the Property, except as to injury or damage arising, in whole or in part, due to the 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 parcels within the Property that are conveyed to the Village (the "Village Parcels"), whether in the soil, groundwater or air unless its due to the Village's negligence, willful neglect or misconduct.

The Village and Utility District agree that they will immediately deliver written notice to the Developer and Contractor of the Village's or Utility District's discovery of the Substances in or on the Village Parcels. Following delivery to the Developer and Contractor 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 or 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 and Contractor is obligated to indemnify the Village and Utility District against claims arising under this Section, Developer and Contractor 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 and Contractor shall be responsible for any continuing obligation imposed by any appropriate governmental authority as a continuing indemnity for the Village and the Utility District.

30. 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 noncontributory 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 Office of the Commissioner of Insurance. The Village reserves the right to reasonably disapprove any insurance company.

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

Employer's Liability	\$100,000 per occurrence
Comprehensive Motor Vehicle Liability	\$1,500,000 combined single limit for bodily injury and property damage
Comprehensive General Liability for Bodily Injury and Property Damage	\$1,500,000 per occurrence \$2,000,000 general aggregate
Worker's Compensation	Statutory Limits
Builder's Risk (as deemed applicable by the 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 policy.

(c) Contractor and Owner's Protective Liability (Independent Contractor Insurance). The Contractor's Contractor and Owner's Protective Liability Policy shall have the same coverage limits as the Comprehensive General Liability Policy.

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

31. Special Assessments. Developer 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 the Homeowner's 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 rights to any hearings and to challenge any such special assessment.

32. 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 Property, 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 Property construction shall be undertaken and done in full compliance with:

- i. The terms and provisions of this Developers 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.

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, provided, however, that the signatures of the Contractor or Mortgagee shall not be required for any amendment that does not affect the respective rights of the Contractor or Mortgagee.

j. **Agreement Runs with the Land.** This Agreement and the provisions hereof shall be covenants running with the land and shall be binding upon the present owners of the Property for so long as they own the Property or any part thereof and for so long as they have continuing obligations and responsibilities under the express terms of this Agreement, and upon their successors in title and assigns. This Agreement shall be recorded with the Racine County Register of Deeds. 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 any lots in the Property. The Homeowner's Association has been created and is in existence and will assume such obligations hereunder. Attached as **Exhibit C**, and incorporated herein by reference, are the "Restrictive Covenants."

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:

Auburn Hills III, LLC
c/o Raymond Leffler
8338 Corporate Drive
Racine, Wisconsin 53406
Fax: 262-898-1341

To the Village and Utility District:

Village Clerk
Village of Caledonia
5043 Chester Lane
Racine, Wisconsin 53402
Fax: 262-835-2388

And to:

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

To the Mortgagee

Tri City National Bank
2704 Lathrop Avenue
Racine, Wisconsin 53405
Fax: 262-554-5866

To the Contractor:

Reesman's Excavating & Grading, Inc.
28815 Bushnell Road
Burlington, Wisconsin 53105
Fax: 262-539-2665

l. **Successors and Assignment.** This Agreement is binding 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 Property, this Agreement shall survive such foreclosure and the Property shall remain subject to this Agreement.

o. **The Contractor.** Reesman's Excavating & Grading, Inc. is the general contractor for construction of the Project, being hired and retained by Developer to construct the Property. 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. In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any work or act required hereunder by reason of a Force Majeure, then performance of such work or act shall be excused for the period of the delay and the period for the performance of such work or act shall be extended for a period equivalent to the period of such delay.

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 Property 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 relative to that portion of the duties and obligations of the work they are taking over; and
- iv. The 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 they may have with the Developer and Contractor pertaining to this project, 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 reasonable attorneys' fees and costs.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in the day and year set forth below.

AUBURN HILLS III, LLC

By: _____
Raymond C. Leffler, Member

STATE OF WISCONSIN)


) SS:

COUNTY OF _____)

Personally came before me this _____ day of _____ 2021,
_____ of Auburn Hills III, LLC, to me known to be the person who executed the
foregoing instrument, and acknowledged the same as the act and deed of said limited liability company.

Notary Public, _____ County, WI
Print Name : _____
My commission: _____

VILLAGE OF CALEDONIA

By: 
James R. Dobbs
Village President

Attest: 
Village Clerk

Personally came before me this 3rd day of February, 2021, James R. Dobbs and
, 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: Diane M. Penzkowski

My Commission: 4-2-2024

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

By: _____
Howard Stacey
President

Attest: _____
Secretary

Personally came before me this _____ day of _____, 2021, Howard Stacey and _____, 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: _____

My Commission: _____

REESMAN'S EXCAVATING & GRADING, INC.

By: _____

President

Attest:

Secretary

Personally came before me this _____ day of _____, 2021, _____ and _____, 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

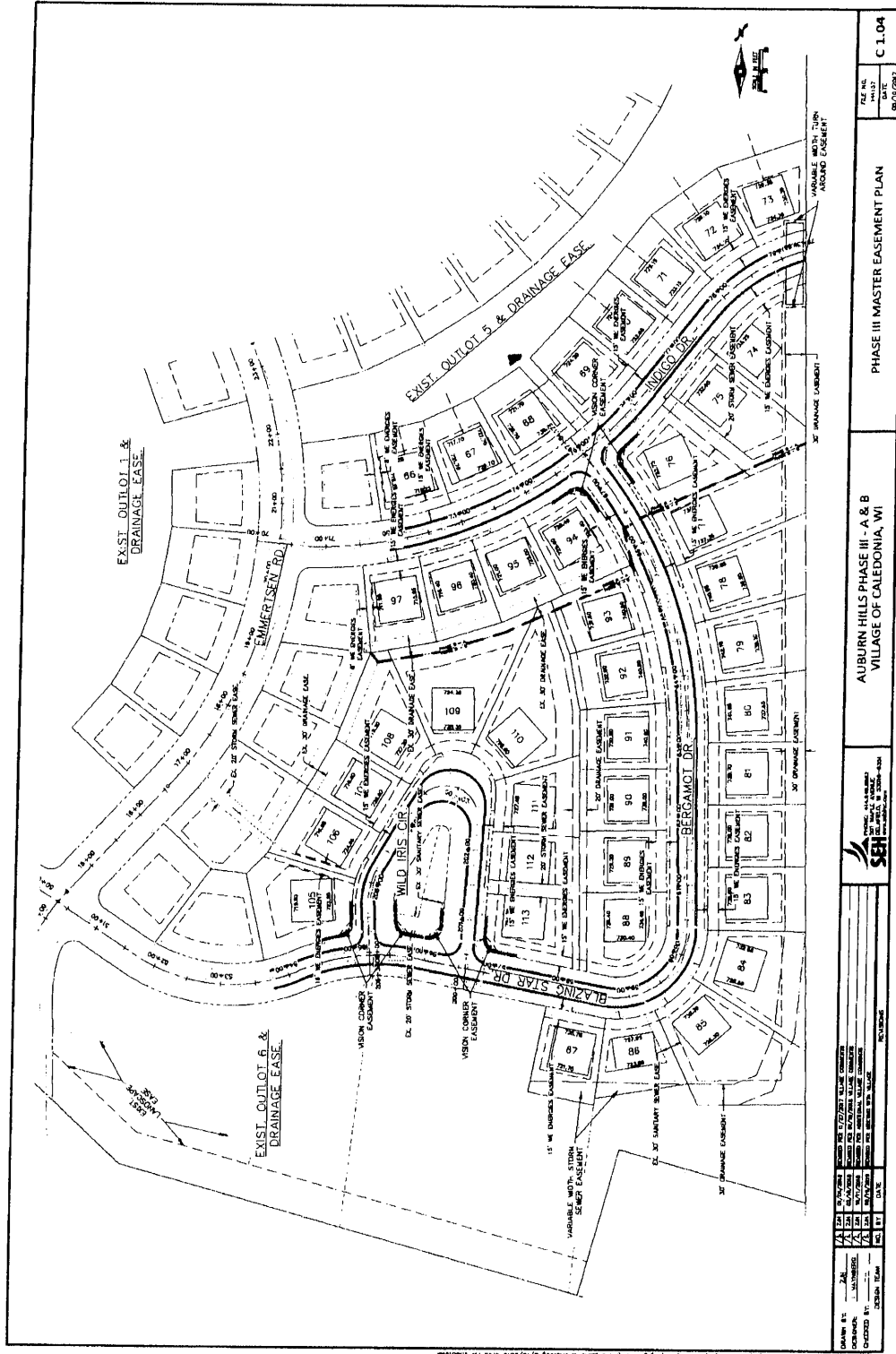
Name: _____

My Commission: _____

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

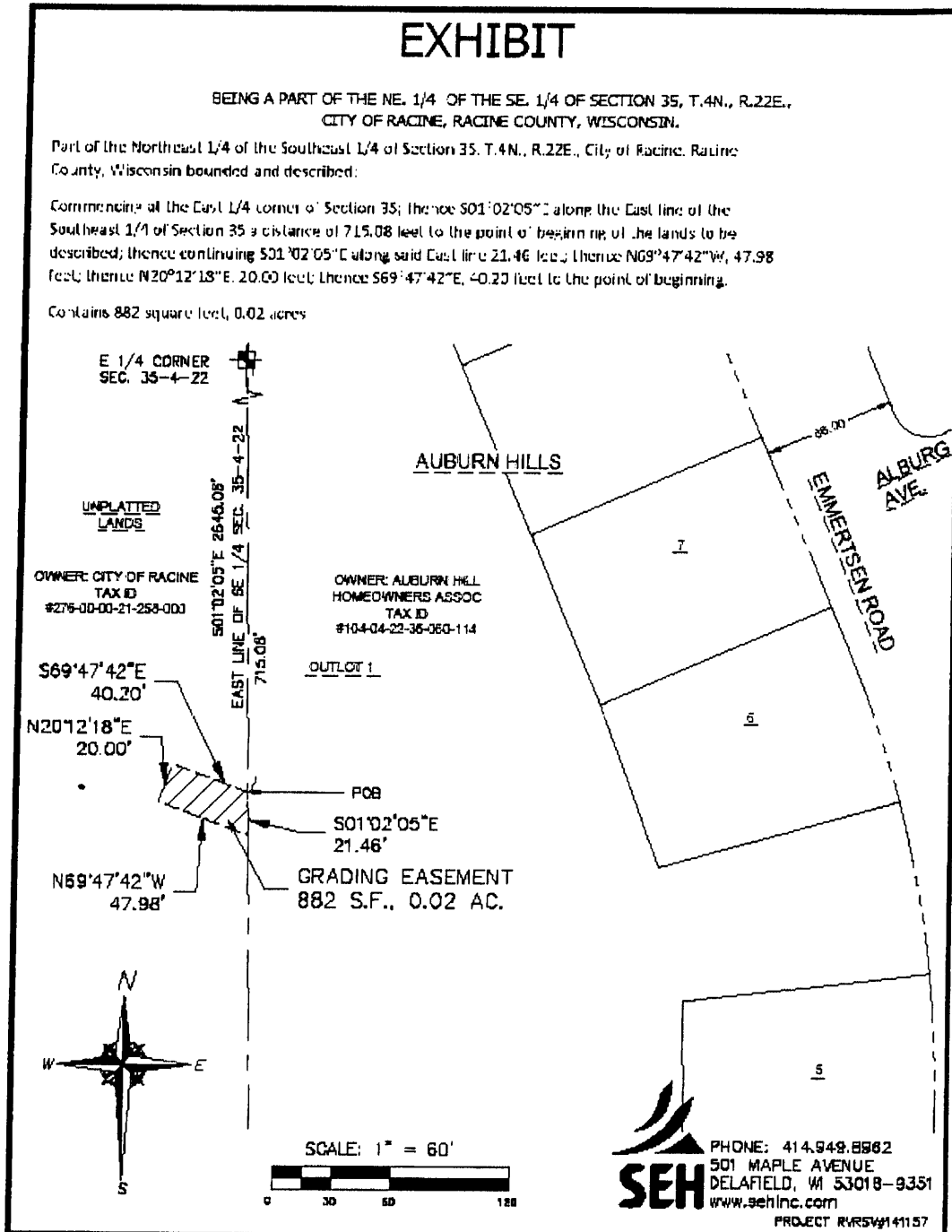
770272.042

Exhibit A – Legal Description
Master Easement Exhibit for Auburn Hills Phase III



DRAWN BY: ZAR CHECKED BY: UNRECORDED DATE: 11/11/2011 PROJECT: PHASE III MASTER EASEMENT PLAN		SHEET NO.: 111-112 DATE: 08/17/2011 C.I. 04
PROJECT: AUBURN HILLS PHASE III - A & B VILLAGE OF CALEDONIA, WI		PHASE III MASTER EASEMENT PLAN
PREPARED BY: SEH 1000 W. WISCONSIN ST., SUITE 200 MILWAUKEE, WI 53233 TEL: 414.224.2200 FAX: 414.224.2201 WWW.SEHINC.COM		

Exhibit A – Legal Description
Off-Site Grading/Drainage Easement Exhibit for Auburn Hills Phase III



Storm Water Management Maintenance Agreement

Document Number

Auburn Hills Homeowners Association, LLC, as "Owner" of the property described below, in accordance with The State and 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 Permit 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.

Auburn Hills III, LLC
8338 Corporate Dr.
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) and drainage easements identified in Exhibit B & C.
2. The Titleholder(s) 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. Upon written notification by Village of Caledonia or their designee, the Titleholder(s) 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 Titleholder(s) shall be liable for the failure to undertake any maintenance or repairs.
4. In addition, and independent of the requirements under paragraph 3 above 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. The Village of Caledonia may require work to be done which differs from the report described in paragraph 3 above, if the Village of Caledonia reasonably concludes that such work is necessary and consistent with the intent of this agreement. Upon notification by the Village of Caledonia of required maintenance or repairs, the Titleholders(s) shall complete the specified maintenance or repairs within a reasonable time frame determined by the Village of Caledonia.
5. If the Titleholder(s) do 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. After the Owner records the addendum noted above, the Village of Caledonia shall have the sole authority to modify this agreement upon a 30-day notice to the current Titleholder(s).

Dated this _____ day of _____, 20__.

Owner(s) – Auburn Hills Homeowners Association, LLC.:

Raymond C. Leffler
(Representative Signature)

Raymond C. Leffler, President
(Representative Typed Name)

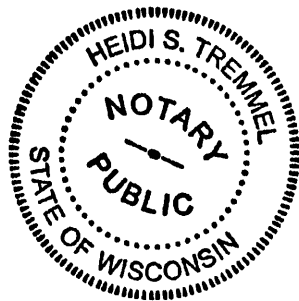
Wolf Korndoerfer
(Representative Signature)

Wolf Korndoerfer, Secretary
(Representative Typed Name)

Acknowledgements

State of Wisconsin:
Village of Caledonia

Personally came before me this 14th day of Sept., 2019, the above named Raymond C. Leffler to me known to be the person who executed the foregoing instrument and acknowledged the same. and Wolf Korndoerfer



Heidi S. Tremmel
[Name] Heidi S. Tremmel
Notary Public, Racine County, WI
My commission expires: 2/7/22

This document was drafted by:

Igor Vaynberg
Short Elliot Hendrickson (SEH)
501 Maple Avenue
Delafield, WI 53018

Exhibit A – Legal Description

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

Project Identifier: **Auburn Hills Phase III**
 Acres: **18.8**
 Date of Recording: **June 19th, 2003**
 Map Produced By: **SEH, 501 Maple Ave, Delafield, WI 53018**
 Legal Description: **Being A Part of the Southwest 1/4 and the Southwest 1/4 and Northwest 1/4 of Section 36, In T. 4 N., R. 22 E., Town of Caledonia, Racine County, Wisconsin**

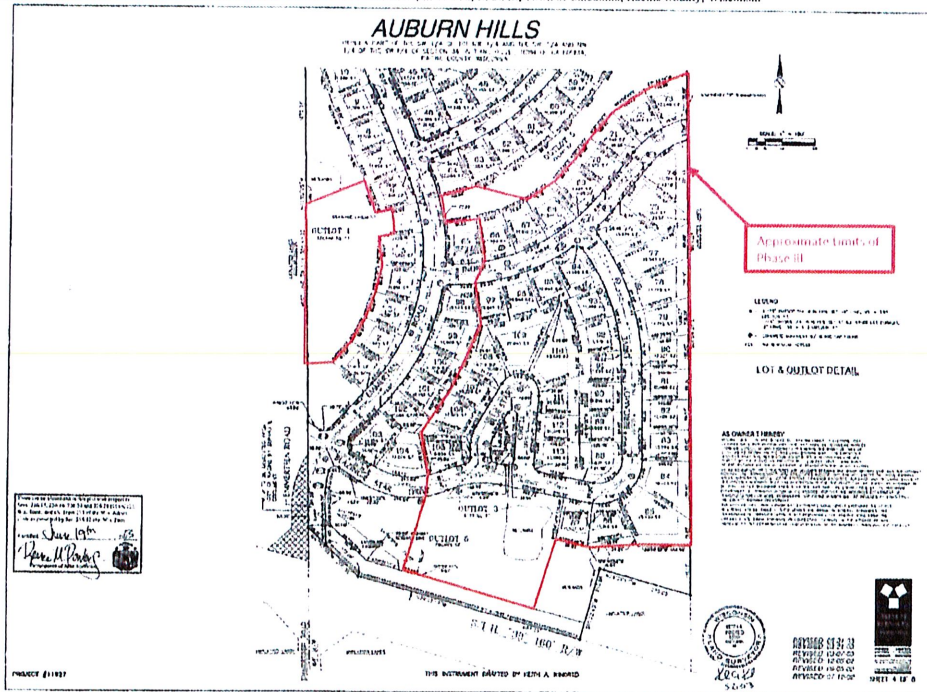


Exhibit A – Legal Description
Off-Site Grading/Drainage Easement Exhibit for Auburn Hills Phase III

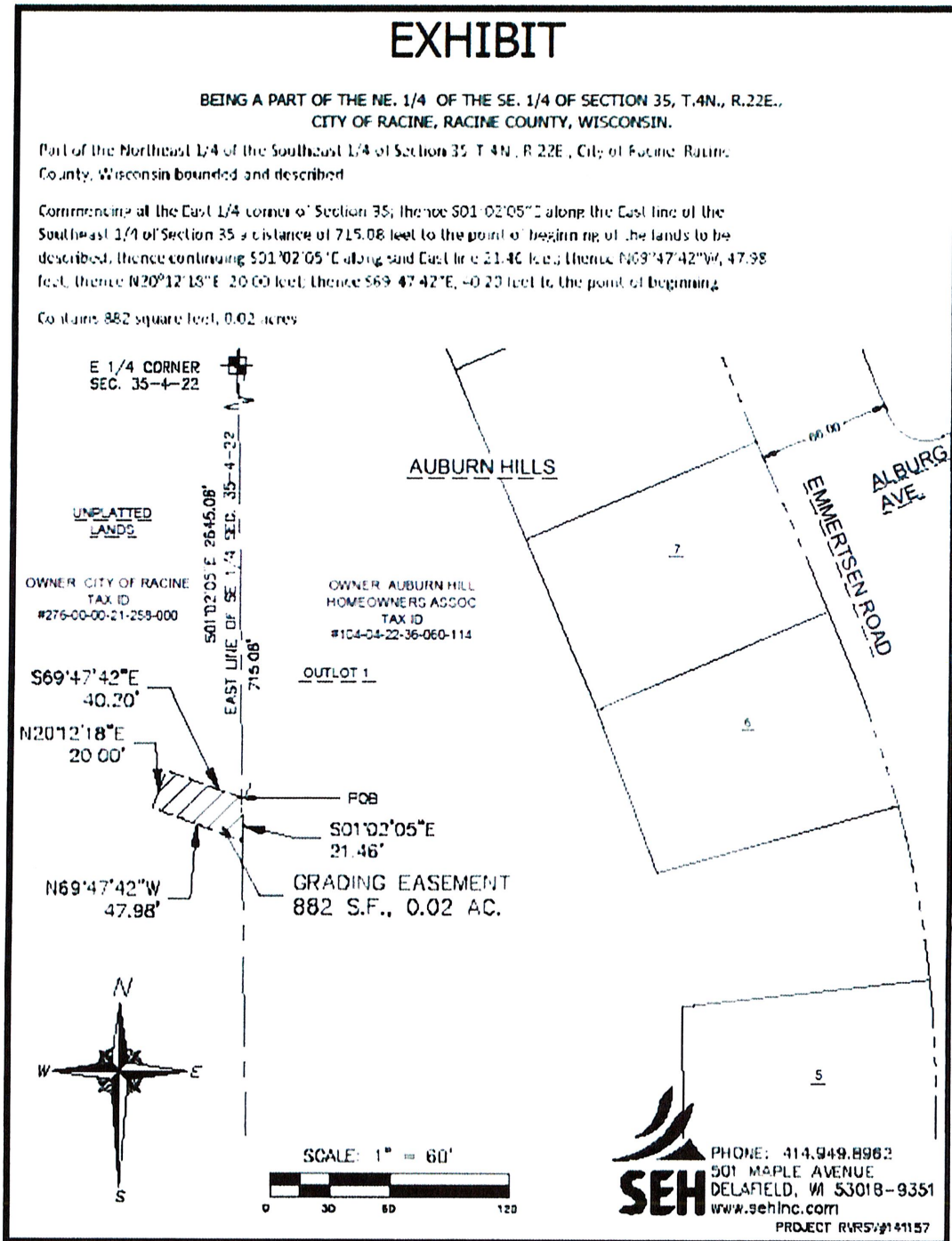


Exhibit B – Location Map
Location Map of Storm Water Management Practices Covered by this Agreement

The storm water management practices covered by this Agreement are depicted in the reduced copy of a portion of the construction plans, as shown below. The practices include two existing Sedimentation/Detention Basins and associated structures/outfalls, earthen berms, rock chutes and other components of these practices. All of the noted storm water management practices are located within a drainage easement located Outlet 7 & 8.

Subdivision/CSM Site Name:	Auburn Hills Phase III
Storm Water Practices:	Existing Basin CD (1), Basin CD (2), Existing Basin B, Basin B1, grass swales, and storm sewers
Location of Practices:	Outlet 1, 5, and 6
Titleholder of:	Lots 1-15, 33-54, and 60-113
Description of Easements:	Multiple storm easements running along the back of Lots 74-113

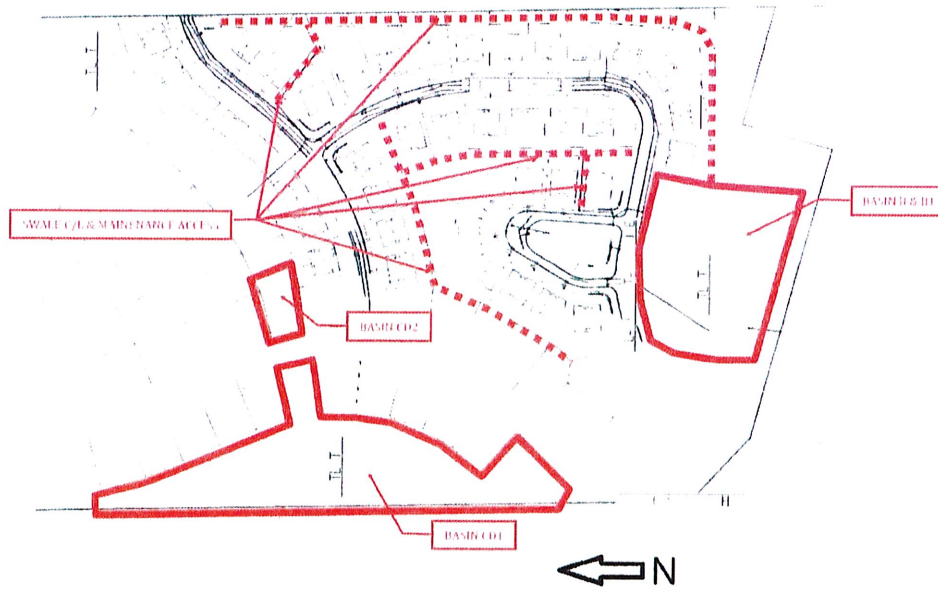


Exhibit B – Basin CD1 & CD2 Detailed Grading Plan

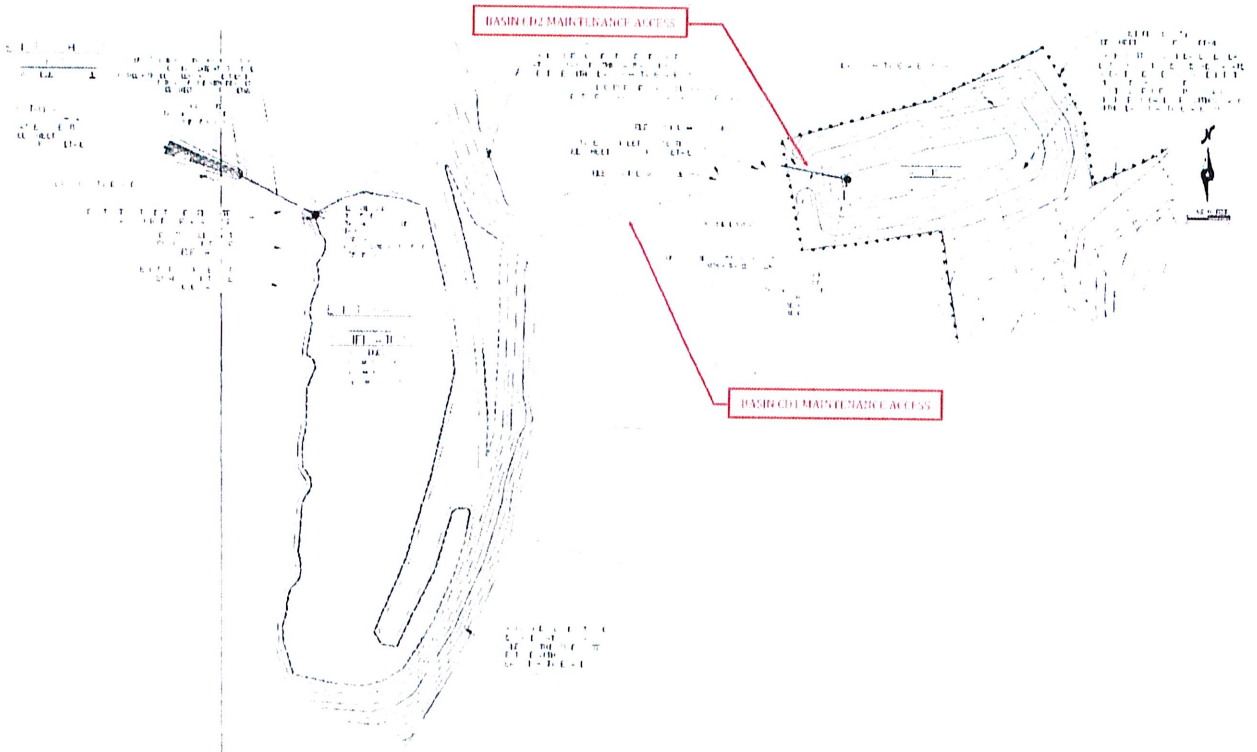
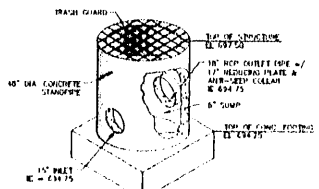
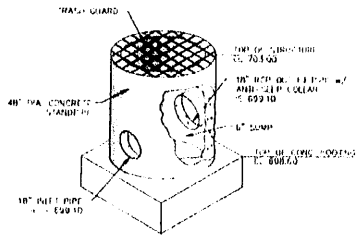


Exhibit B – Basin CD1 & CD2 Details



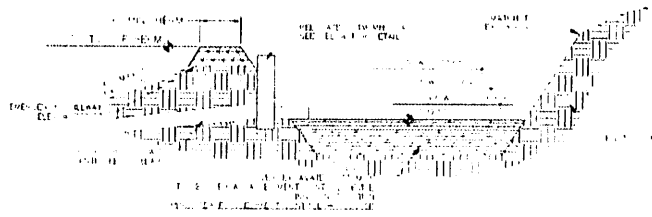
- MINIMIZE CONSTRUCTION NOISES:
1. PLACE RIGID TOP DIRECTLY ON TOP OF SPANSEL BASE
 2. FRONT FACING INSIDE FACE OF STANDPIPE (EL. 698.4" BEYOND PIPE EDGE)
 3. FILL HOLES WITH CONCRETE TO SUMP ELEVATION

EXIST. BASIN CD(1) OUTLET
STRUCTURE DETAIL
(R.T.S.)

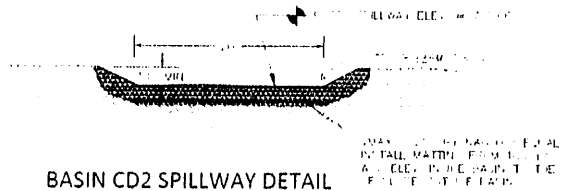


- MINIMIZE CONSTRUCTION NOISES:
1. PLACE RIGID TOP DIRECTLY ON TOP OF DRAWN BASE
 2. FRONT FACING INSIDE FACE OF STRUCTURE (EXTEND 4" BEYOND PIPE EDGE)
 3. FILL HOLES WITH CONCRETE TO SUMP ELEVATION

PROPOSED BASIN CD(2) RISER DETAIL
(R.T.S.)



BASIN CD2 ADDITION CROSS SECTION
(R.T.S.)



BASIN CD2 SPILLWAY DETAIL
(R.T.S.)

Exhibit C

Storm Water Practice Maintenance Requirements

This exhibit explains the basic function of each of the storm water practices listed in Exhibit B and prescribes the minimum maintenance requirements to remain compliant with this Agreement. 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.

System Description:

Basin CD 1 & CD 2

Basin CD2 is an addition to the existing Basin CD (referred to below as Basin CD1). Additionally, Basin CD1 is to be cleaned and the outlet structure is to be modified. By cleaning Basin CD1 and adding Basin CD2, we have achieved current water discharge quantity regulation of the Village of Caledonia.

Basin CD1 receives runoff from a 26.6 AC drainage area (from both existing and proposed lots). The water level and flows from said basin will be controlled by the modified outlet structure (see page 7 for detail) and existing emergency spillway. The proposed 18" pipe, with 17" reducing plate, coming out of the structure directs the outflow to an existing off-site pond.

Basin CD2 receives runoff from a 7.5 AC drainage area (from both existing and proposed lots). The water level and flows from said basin will be controlled by the modified Inlet 29A outlet structure (see page 7 for detail) and proposed emergency spillway. The proposed 18" outlet pipe directs the outflow to Basin CD1.

Basin B & B1

Basin B1 is an addition to the existing Basin B. The combined Basin B & B1 receives runoff from a 10.9 AC drainage area (from both existing and proposed lots). The water level and flows from said basin will be controlled by the outlet structure for Basin B1 and the proposed emergency spillway. The proposed 12" pipe, with 9" reducing plate, coming out of the structure directs the outflow to an existing off-site road-side ditch.

Minimum Maintenance Requirements:

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

I. ROUTINE MAINTENANCE

A. Mowing

1. Side slopes, embankments, and emergency spillways that are not rock lined which have been planted with turf grasses should be mowed at least three times a year to prevent woody growth and control noxious weeds.
2. Adjacent to the residential areas, more frequent mowing, typically once a week during a normal growing season, is recommended for aesthetic and allergy control purposes.
3. Native grasses should be mowed to a height of 6" in mid to late summer or after they have achieved a height of 1-1/2 feet during the first growing season. Further mowing in subsequent growing seasons will not be required.

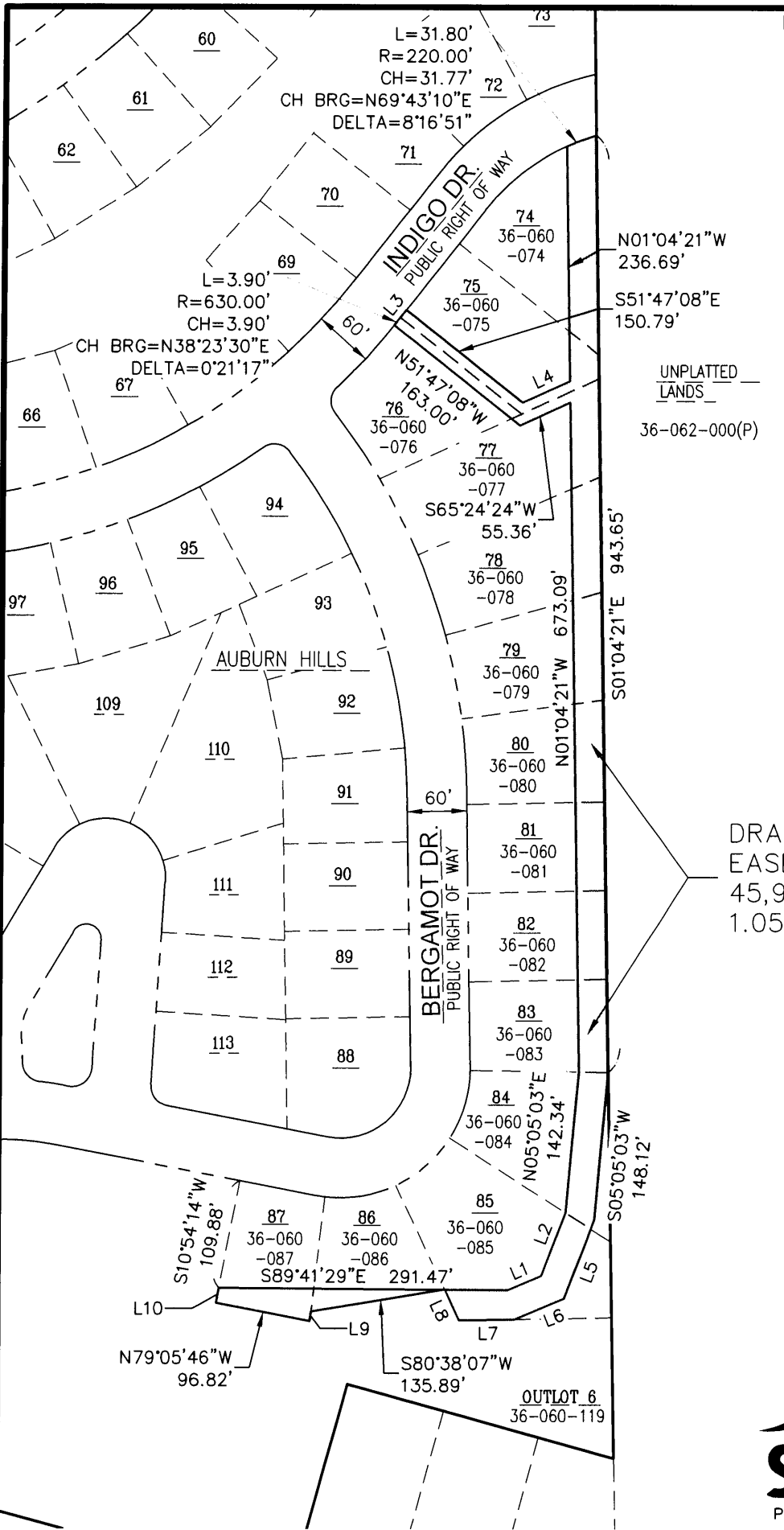
B. Inspections

1. Inspections of the ponds shall be completed on an annual basis or after significant rainfall events.

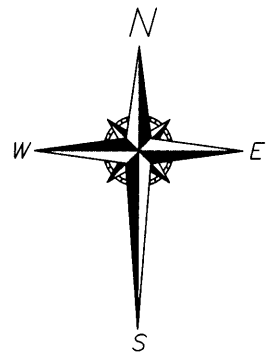
EXHIBIT

BEING A PART LOTS 74-87
OF AUBURN HILLS BEING A
PART OF THE SW 1/4 AND
NW 1/4 OF THE SW 1/4 OF
SECTION 36, T.4N., R.22E.,
VILLAGE OF CALEDONIA,
RACINE COUNTY,
WISCONSIN.

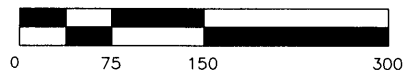
LINE TABLE		
LINE	LENGTH	DIRECTION
L1	36.45'	N67°36'48"E
L2	68.12'	N20°53'37"E
L3	16.10'	N38°12'52"E
L4	51.85'	N65°24'24"E
L5	85.24'	S20°53'37"W
L6	54.10'	S67°36'48"W
L7	56.42'	S88°55'39"W
L8	34.24'	N25°24'42"W
L9	9.90'	S06°40'56"W
L10	15.12'	N10°54'14"E



DRAINAGE
EASEMENT
45,992 S.F.
1.05 AC.



SCALE: 1" = 150'



PHONE: 414.949.8962
501 MAPLE AVENUE
DELAFIELD, WI 53018-9351
www.sehinc.com

PROJECT RVRVSV#141157

SHEET 1 OF 2

EXHIBIT

BEING A PART LOTS 74-87 OF AUBURN HILLS BEING A PART OF THE SW 1/4 AND NW 1/4 OF THE SW 1/4 OF SECTION 36, T.4N., R.22E., VILLAGE OF CALEDONIA, RACINE COUNTY, WISCONSIN.

Drainage Easement

Part of Lot 74 through Lot 87 of Auburn Hills being part of the Southwest 1/4 and Northwest 1/4 of the Southwest 1/4 of Section 36, Town 4 North, Range 22 East, Village of Caledonia, Racine County, Wisconsin bounded and described as follows;

Commencing at the Northwesterly corner of Lot 87; thence S10°54'14"W along the West line of said Lot 87 a distance of 109.88 feet to the point of beginning of the lands to be described; thence S89°41'29"E, 291.47 feet; thence N67°36'48"E, 36.45 feet; thence N20°53'37"E, 68.12 feet; thence N05°05'03"E, 142.34 feet; thence N01°04'21"W, 673.09 feet; thence S65°24'24"W, 55.36 feet; thence N51°47'08"W, 163.00 feet to the Easterly line of Indigo Drive; thence Northeasterly 3.90 feet along said Easterly line and the arc of a curve to the left, whose radius is 630.00 feet and whose chord bears N38°23'30"E, 3.90 feet; thence continuing N38°12'52"E along said Easterly line 16.10 feet; thence S51°47'08"E, 150.79 feet; thence N65°24'24"E, 51.85 feet; thence N01°04'21"W, 236.69 feet to the Southeasterly line of Indigo Drive; thence Northeasterly 31.80 feet along said Southeasterly line and the arc of a curve to the right, whose radius is 220.00 feet and whose chord bears N69°43'10"E, 31.77 feet to the East line of Auburn Hills; thence S01°04'21"E along said East line 943.65 feet; thence S05°05'03"W, 148.12 feet; thence S20°53'37"W, 85.24 feet; thence S67°36'48"W, 54.10 feet; thence S88°55'39"W, 56.42 feet to the Westerly line of Lot 85 of Auburn Hills; thence N25°24'42"W, 34.24 feet; thence S80°38'07"W, 135.89 feet; thence S06°40'56"W along said Westerly line 9.90 feet; thence N79°05'46"W, 96.82 feet to the West line of Lot 87 Auburn Hills; thence N10°54'14"E along said West line 15.12 feet to the point of beginning.

Said lands contain 45,992 sq.ft., 1.05 acres



PHONE: 414.949.8962
501 MAPLE AVENUE
DELAFIELD, WI 53018-9351
www.sehinc.com