

TOWN OF COTTAGE GROVE  
TOWN BOARD MEETING  
JULY 6, 2020

I. ADMINISTRATIVE

- A. Notice of the meeting was properly posted at the Town Hall and on the Town's web site. Due to the COVID-19 pandemic, in-person attendance was limited and participants were able to join using gotomeeting.com. Town Chair Kris Hampton, Supervisors Mike Fonger, Steve Anders, Kristi Williams and Mike DuPlayee were present, as well as Clerk Kim Banigan, Treasurer Deb Abel, and Highway Superintendent Dan Dresen. Special Counsel Connie Anderson and Town Engineer Thomas TeBeest attended virtually.

NOTE: THERE WERE TECHNICAL DIFFICULTIES WITH THE AUDIO FOR VIRTUAL PARTICIPANTS THROUGH ITEM II. A BELOW, WITH A BREAK IN THE MEETING OCCURRING WHILE THE DIFFICULTIES WERE RECTIFIED.

- B. Hampton called the meeting to order at 7:00 P.M.
- C. Minutes of previous meeting(s): **MOTION** by Williams/DuPlayee to approve the minutes from the June 15, 2020 Town Board meeting as printed. **MOTION CARRIED 5-0.**
- D. Finance Report and Approval of Bills:
1. **MOTION** by DuPlayee/Anders to approve payment of bills corresponding to checks #33946-33974 from Monona Bank as presented. **MOTION CARRIED 5-0.**
  2. **MOTION** by Anders/DuPlayee to approve payment of June per diems as presented. **MOTION CARRIED 5-0.**
- E. Public Concerns: None.
- F. Road Right of Way Permits: None.

II. BUSINESS:

- A. Plan Commission Recommendations:
1. Discuss/Consider approval of a certified survey map to divide parcel# 0711-284-9755-0 at 3447 North Star Road into two lots with no change to zoning (General Commercial): Mr. Banovetz was present, but there were no questions for him. **MOTION** by Anders/Fonger to accept the Plan Commission's recommendation to approve the CSM as presented. **MOTION CARRIED 5-0.**
- B. Discuss/Consider approval of a proposed concept plan for an 11-lot subdivision between Wittewood Ln. and Hope Road (parcel # 0711-292-8500-0): Bob, Kathy, Dave and Andrew Witte were present, along with Rachel Holloway and Dave Gersick from Vierbicher.
- Dave Witte began by saying that they had considered several concept options that were denser than the one proposed, but felt this was the best fit for the Town. He said they have no plans to develop on their remaining land north of Hope Road.
  - Holloway gave an overview of the concept and offered to answer questions.
  - Hampton pointed out that lots 5, 10, and 11 are actually outside of the planned neighborhood development area, and said that unless the County would allow them to develop outside of that, those lots could not be developed without an amendment to the future land use map.
  - Fonger questioned how much of the area is actually developable due to drainage issues. Holloway responded that they know the stormwater basin will need to be expanded and drainage ways will be needed between lots, all to requirements of Dane County. No perk

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tests or water testing have been done yet, but will be a next step if the concept plan is approved.

- Hampton noted that the Board had the minutes from the June Plan Commission meeting in their packets. The Clerk added that Board members also have an email from Linda Wilson, 2889 Wittewood Lane, expressing her questions and concerns over the proposed concept plan (Appendix A). Hampton noted that her concerns included water quality and stormwater management, which all has yet to be designed and will have to pass Dane County standards. Wilson was also concerned about traffic on Hope Road, which Hampton said has been addressed somewhat by discussion of shared driveways. She questioned what the development timeline would look like, Hampton said that would be up to the developer.
- Kathryn Kersels, 2881 Wittewood Lane, submitted a petition signed by 11 residents on Wittewood Lane, Hope Road and S. Hope Road protesting against the concept plan and any change that would detrimentally affect the peaceful environment of their homes. (Appendix B). Dave Witte took offense that the petition was not shared with the Witte family prior to the meeting. Holloway added that she had not heard any concerns that they couldn't work through.
- Anders brought up the recommendation of the Plan Commission to re-configure the intersection of Hope and S. Hope Roads into a 90° angle. Holloway acknowledged that they would take that into consideration, and that it will impact the stormwater area.
- Doreen Burton, 2867 Wittewood Lane, didn't understand how the concept can be approved without further analysis of stormwater management. Hampton explained that approval of the concept is simply permission for the developer to move forward with that type of analysis. Without DNR and Dane County approval of stormwater management, the project would not be able to go any further.

**MOTION** by DuPlayee/Williams to approve the concept plan for lots 1, 2, 3, 4, 6, 7, 8, 9 on the area planned for neighborhood development, NOT lots 5, 10 and 11 that fall outside of that area.

**MOTION CARRIED 5-0.**

Dave Witte asked if the board would consider a concept to put 11 lots within the neighborhood development area. Anders went on record saying he would be 100% opposed to that, and DuPlayee and Williams agreed.

- C. Consider/Approve Town of Cottage Grove Board Resolution 2020-07-06: Approval of Final Plat of Kennedy Hills And Related Legal Documents Including Development Agreement, Easements and Declaration of Restrictions & Covenants: Atty. Anderson presented the resolution and related documents (Appendix C). Developer David Riesop and Realtor David Dinkel were present in person. Highlights included:
- Resolution 2020-07-06: Page one outlines the history of the development process, page 2 includes a breakdown of the items required before the Town can sign the final plat. Items that must be completed prior to the commencement of construction begin on page 2 and continue to page 3, which also includes continuing obligations of the developer.
  - Exhibit 1: Developer's Agreement: This document is the agreement between the developer and Town regarding public improvements and other matters relating to the plat.

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- Mr. Riesop questioned where utility boxes should be placed in light of the 12' drainage easements centered over lot lines throughout the plat as identified in section 2.8. TeBeest said that where drainage easements coincide with utility easements, the underground utilities should be kept to the upper portions of the easements. Utility boxes (pedestals) should not be placed within the drainage easements, but rather on the lot just inside from the drainage easements.
- Item 2.10 (d) states that a stop work order may be issued if the developer fails to submit a full set of construction plans for the CTH BB/Kennedy Road intersection to the Town Engineer and Dane County Highway Department on or before noon on July 31, 2020. It was noted that July 31<sup>st</sup> is a Friday, and since County staff does not work on Fridays in the summer, the developer should plan on submitting the plans by the County's close of business on July 30, 2020.
- Mr. Riesop asked for more time under item 2.10 (e) which mandates a stop work order if the County does not approve the final construction plans for the CTH BB/Kennedy Road intersection by September 1<sup>st</sup>, stating that how quickly the County completes their review is not within his control. Anders suggested that Riesop come to the Town in the event that the County indicates it will not be able to meet that deadline. Atty. Anderson said there is no basis to believe that the County will hold things up, but there is nothing wrong with extending the deadline to October 1<sup>st</sup>. **MOTION** by Hampton/DuPlayee to change the dates in item 2.10 (e) from September 1 and 4, 2020 to October 1 and 5, 2020. **MOTION CARRIED 5-0.**
- Exhibit 2: Perpetual Stormwater Drainage Easements: This easement includes the blanket easements between lots as well as the CTH BB Drainage Easement. There was discussion about the 30-foot buffer strip along lots 2-6, half reserved for drainage and half reserved for a berm with plantings. TeBeest envisioned the berm at the south or outer edge of the buffer strip, with the north or inner portion reserved for drainage to the Outlot 1. Riesop said that is what is intended, although Atty. Anderson did not think this was clear on the plat map. Building setbacks would be from the inside edge of the buffer strip.
- Exhibit 3: Temporary Turnaround Easement: This document grants temporary easements for temporary turnarounds at the dead ends of Scenic Oak Drive and Wood Ridge Trail that fall outside the limits of the plat. Once the road is extended through a future addition to Kennedy Hills, the temporary easement ends.
- Exhibit 4: Agreement for Maintenance of Stormwater Management Measures: This agreement is between the developer and the County, and was drafted by Dane County. Hampton asked who is supposed to perform the semi-annual inspections? Atty. Anderson said that the homeowner's association should make sure that the homeowners conduct the inspections (Exhibit 6). If it does not occur, the Town is authorized to do it at the lot owner's expense (Exhibit 5).
- Exhibit 5: Dedication and Supplemental Agreement regarding Stormwater management of Outlot 1: This agreement is between the developer and the Town, and gives the Town an independent right to meet the requirements of the County's stormwater maintenance requirements (Exhibit 4) should the homeowner's association fail to do so, and charge the cost back to the lot owners.

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- Exhibit 6: Declaration of Covenants, Restrictions, Conditions and Easements:
  - Williams questioned section 3.18 prohibiting solar panels. Hampton said they could be allowed if permitted by the homeowner's association.
  - Atty. Anderson noted that these restrictions can be pre-empted by State law or Town Ordinance.
  - Anders questioned whether US Flags would be considered signage under section 3.23. TeBeest found that Wis. Stats. 710.17 prohibits a homeowner's association from restricting the display of the American flag. Atty. Anderson also noted that State law says political signs cannot be prohibited, although they cannot be left out year around.
  - Hampton questioned why section 3.31 identified a 30-year term followed by successive 5-year terms rather than running into perpetuity. Atty. Anderson said this is standard language to get around the rule against perpetuity. In effect it continues until the process to cancel it is followed.
  - Atty. Anderson noted that the right to farm is included, as well as all the information about the Homeowner's Association. Hampton asked if section 4.5 should include a requirement to notify the Clerk of changes to the Board of Directors. There was general agreement that this is a good idea.
  - Atty. Anderson noted that a reference to section 3.28 needs to be corrected.
- Exhibit 7: Dane County Transfer of Development Rights Documents: These documents were put together by the County to execute the transfer of the development rights and the conservation easement (restriction against development) on the sending property. Atty. Anderson noted that the Clerk should sign as a cooperative entity, not as a grantor where her name was filled in.

**MOTION** by DuPlayee/Fonger to adopt Resolution 2020-07-06: Approval of Final Plat of Kennedy Hills And Related Legal Documents Including Development Agreement, Easements and Declaration of Restrictions & Covenants with the changes discussed tonight. **MOTION CARRIED 5-0.**

- D. Discuss/Consider speed bumps on Sandpiper Trail: **MOTION** by Williams/DuPlayee to table until after speed bumps are discussed at the Annual meeting on July 13th. **MOTION CARRIED 5-0.**
- E. Update on repairs to 2983 County Road BB: an email received earlier this evening from the property owner requested more time. He said he plans to have everything complete by the end of July. Consensus was to have an update on the August 3<sup>rd</sup> agenda, and strongly encourage the owner to attend the meeting.
- F. Discuss/Consider approval of a Parade or Race Permit for The Ride to use portions of the following Town roads: Deerfield, S. and W. Jargo, Nora, Uphoff, W. Ridge, Vilas and Gaston for a bike ride fundraiser on Sunday, September 27<sup>th</sup>: Due to COVID-19, organizers will not be present and riders are on their own this year. The Clerk said organizers are working with Deer-Grove EMS for contracted coverage. **MOTION** by Williams/Fonger to approve the permit. **MOTION CARRIED 5-0.**

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- G. Discuss/Consider quote for new air conditioner for Flynn Hall.: Hampton said the 20-year-old A/C unit has sprung a leak. A quote High Tech Heating & A/C Inc. proposed to install a new Daikin DX135A060 A/C unit and remove old equipment for \$3,675. **MOTION** by Fonger/DuPlayee to accept the quote, cost not to exceed \$3,800. **MOTION CARRIED 5-0.**
- III. Discuss/Consider quote and other options to install playground equipment at Capitol View Park: The resident who requested the new equipment has indicated she is unable to organize its installation. Dresen spent 3.5 hours with a representative of the vendor to mark out the post hole locations. The representative estimated installation would take 4 days for the Town's 4-person crew. Discussion was that if residents of Capitol View do not step forward to install it, the equipment should be offered to another subdivision with a park. **MOTION** by DuPlayee/Fonger directing the Clerk to send a letter to all Capitol View residences asking for volunteers to install the equipment, with responses in time for the August 3<sup>rd</sup> meeting. **MOTION CARRIED 5-0.**
- IV. Discuss/Consider Approval of Contract for Revaluation Assessment Services.
- V. Discuss/Consider Approval of Contract for Maintenance Assessment Services  
**MOTION** by Anders/Williams to approve both the contract for revaluation and the contract for maintenance as presented. **MOTION CARRIED 5-0.**
- VI. Discuss/Consider hiring process for Public Works Employee vacancy: Andrew Perry resigned his position. **MOTION** by Hampton/DuPlayee to allow Dresen to handle the hiring process on his own. **MOTION CARRIED 5-0.**
- VII. CLERK'S OFFICE UPDATE: Over 600 absentee ballots for the August 11<sup>th</sup> Partisan Primary were mailed out on June 25<sup>th</sup>. The new bar code tracking system on the ballots is not working perfectly, she has been in communication with the elections commission on this. The WEC put out advice regarding a recent Supreme Court ruling that affects absentee voting, but then rescinded the advice when they learned the ruling is not yet in effect. A mandate is expected on or about July 21<sup>st</sup>.
- VIII. PUBLIC WORKS DEPARTMENT ACTIVITY UPDATE: Shouldering of the new blacktop is complete, and the Flynn Hall parking lot has been blacktopped. Crews will use a rented striper to stripe parking lots and center lines.
- IX. BOARD REPORTS AND COMMUNICATIONS:
- A. Hampton asked Fonger if he saw that the Village Board is discussing joint Emergency Government options tonight? Fonger is waiting for the Village Emergency Director to call him back about coming to a Town committee meeting to discuss how to split the funds from Hydrite, then he could take that back to the Village committee. The other option would be to have a joint meeting.
- B. Williams urged everyone to complete the Dane County Board survey regarding changing the number of County supervisors. Anders said this has been a topic of the DCTA Executive board, hoping to get a representative on the committee. They heard that if the board is made smaller, the County intends to hire full time administrative assistants for the board members, or make all the County Supervisors full time employees. Fonger also thought there was talk of having the supervisors run at large rather than having districts.
- X. COMMITTEE REPORTS:
- A. Deer-Grove EMS Commission: No report

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XI. Adjournment: **MOTION** by DuPlayee/Williams to adjourn. **MOTION CARRIED 5-0.** The meeting ended at 10:17 P.M.

Kim Banigan, Clerk  
Approved 07-20-2020



## APPENDIX A

Kim Banigan <clerk@towncg.net>

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### Proposed subdivision on Wittewood Lane

1 message

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Linda Wilson <llkwilson63@gmail.com>  
To: townboard@towncg.net

Mon, Jul 6, 2020 at 5:07 PM

Greetings:

I am writing to express my disapproval of the proposed 11-lot subdivision on Wittewood Lane discussed at the June 29th meeting.

I am a 31 year resident of the Village and Town of Cottage Grove. My husband and I chose Cottage Grove because of its unique location, but especially for its respectful combination of agricultural, rural and small town residences. We have been fortunate to have lived in, worked in, served families and raised our own family in the Cottage Grove area. However, during the 31 years living here, my family and I have moved from our home 3 times due to encroachment by property developers. It was heart-breaking to take such a drastic measure, but we felt forced to do so. Despite my husband and I sharing our opinions about property development, using appropriate village/town meeting opportunities, our voices were not heard.

Fast forward to today, and once again, property 50 yards away from our residence, is being considered for development with 11 new homes.

I have a few questions and concerns about this proposal:

1. Has the water quality been tested on the proposed site? It has been farmed for decades and could contain harmful pesticides and fertilizers.

2. Will the development of 11 new residences be sustained by the small retaining pond currently near the site? Is there a plan to study this issue?

During my 9 years living on Wittewood, I have witnessed another nearby pond (off Hope Road) triple in size due to run-off.

My daughters and I have witnessed carp actually swimming in ditches on Femrite Drive where it crosses Door Creek after the Creek overflowed due to flooding. True story!! How much water can this small area absorb?

What will happen to the small retention pond on Wittewood when stressed with 11 new residences?

Currently, our ditch swells to about 6-8" deep during heavy rains due to the neighbor run-off moving down to our residence and into the retention pond.

As a former resident on Southing Grange (in the Village of Cottage Grove), I personally experienced our basement flooding 2 times during heavy rains in the mid 1990's. Cleaning up soggy carpeting and ruined furniture in a basement is not fun.

A nearby swamp should have absorbed the water, but it overflowed and impacted several neighbors living adjacent to it, including ours.

Yet developers added 8 more residences alongside Southing Grange in 2010.

The proposed site/field is a low-lying basin surrounded by three elevated areas.

Flooding issues must be considered.

3. Has a study been done about how the proposed subdivision will impact traffic on Hope Road?

Hope Road currently has a severe curve on which I have seen at least three accidents due to speeding on the 45 degree curve. Adding more traffic could compromise safety further.

Bike riders, walkers and runners use Hope Road to exercise. Their safety could also be compromised by additional traffic.

4. Consider keeping some green space green! It is sad to witness several Madison suburbs swallowing up farmland. Wisconsin needs farmers! Perhaps the Town of Cottage Grove can build a reputation as a leader in maintaining agricultural property and limiting land development?

5. What is the timeline for development to begin, if the proposal is passed?

Thank you for your public service to the residents of the Town of Cottage Grove.  
I appreciate your time and careful consideration.

7/10/2020

Town of Cottage Grove Mail - Proposed subdivision on Wittewood Lane

Sincerely,

Linda L. Wilson  
2889 Wittewood Lane  
Cottage Grove, WI 53527



To: Town of Cottage Grove Town Board  
July 6, 2020

Property Subject to Petition: Concept Plan for an 11-Lot subdivision between Wittewood Lane and Hope Road (parcel #0711-292-8500-0)

We, the undersigned owners of property affected by the requested plan for an 11-Lot subdivision described in the above-referenced address do hereby protest against the proposed concept plan and any change that would detrimentally affect the peaceful environment of our homes. This property directly adjoins residential and agricultural property and we oppose any development plan that will change the character of our neighborhood, change current view sheds, and increase the noise pollution and traffic. We also feel that the current development plan of this property would negatively affect the value of our homes, safety of children and aesthetics of the environment and wildlife.

Specific concerns include:

1. Safety of egress on Hope Road
2. Number of driveways on Hope and Wittewood Road
3. Current view shed and maintenance of existing homeowner privacy (how will this be protected?)
4. Environmental impact on watershed and migration corridors
5. Storm water management
6. Public green space
7. Traffic safety on Wittewood, Hope Road and South Hope Road
8. Zoning discrepancy between proposed concept plan and Revised Comprehensive Plan  
The Stormwater outlot and lots 5, 10 and 11 on proposed Concept Plan are not zoned as Neighborhood Development Areas on the Town of Cottage Grove Comprehensive plan. They are zoned Agricultural Preservation Area.

We are not opposed to development and understand the property owner(s) wants and needs. We do believe the proposed concept plan is very dense and will not protect the current living environment and rights of existing homeowners. A reduction of lots should be considered.

We would like the Town Board to carefully review the research that has been completed so far to document that the proper environmental, traffic and pollution protections are in place for the community and homeowners who will be affected by developing the parcel. We believe that these huge variables were glossed over in the presentation of the concept plan to the Town of Cottage Grove Planning Commission and that full visibility is needed for an educated decision to be made. As homeowners and affected parties we also have the right to review this research and documentation and request that it is made available to us.

We are homeowners who have chosen to live in a rural setting. Overdeveloping the proposed parcel will destroy what we moved to this area for as well as negatively impact the safety and

ecology of the land, lots, and roads surrounding the parcel. We want the best for the area and environment. We do not believe as current and long-term homeowners our concerns and rights are being protected by the Town of Cottage Grove Planning Commission and Town Board. We are in the process of securing representation by an attorney to protect our interests and ensure any development is being carefully considered and is aligned with the comprehensive plan of Cottage Grove.

Additionally, we have engaged the Board of Directors of the Clean Lakes Alliance to further investigate what impact overdeveloping the parcel would have on Door Creek and Lake Waubesa to which it drains.

It is our sincere hope that the Town of Cottage Grove Town Board will thoughtfully consider our concerns and active involvement to maintain the sanctity and safety of our community and ecology before voting to move forward with the proposed concept plan.

Signatures/Comments:

Don Houston - 2867 Wittewood Lane, Cottage Grove, WI 53527

Kathryn Kersch (Kathryn Kerschs) 2881 Wittewood Ln Cottage Grove

Leah Q Rhodes (Leah Rhodes) 2859 Wittewood Lane

Jeff Rhodes (Jeffery Rhodes) 2859 Wittewood Lane

Deb Gonsmann (Deb Gonsmann) 2827 Hope Rd

Linda J Wilson (Linda L. Wilson) 2889 Wittewood Ln.

Jeff P. Wilson (JEFF P. WILSON) 2889 WITTEWOOD LN.

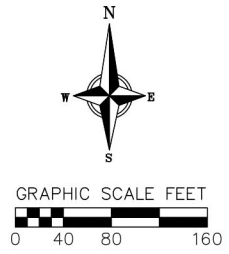
Rachel C Wilson (Rachel C. Wilson) 2889 Wittewood Ln.

Teri Dummer Teri Dummer 3701 S. Hope Rd

Don Dummer Don Dummer 3701 S. Hope Rd.

Mike Kersch 2881 Wittewood Ln.

©2019 Vierbicher Associates, Inc. 29 May 2020 - 10:30a M:\White Family (FRED H WITTE & SONS INC)\190343 - Witte Family Farmstead T - Cottage Grove Concept Plan\CADD\190343\_Site Plan.dwg by: svfn



**Site Development Summary:**

Total Acreage: 16.5 ac  
 New SF Lots: 11  
 Stormwater Outlet: 2.8 ac  
 Proposed Net Density: 0.7 DUA

**KEY:**

- 100 Year Floodplain
- 500 Year Floodplain
- Wetland
- WRP Area
- Existing and Proposed Outlet Structure
- Existing and Proposed Culvert
- Neighborhood Development Area
- Limits of Shoreland Zoning Restrictions
- Existing Drainage Pattern
- Existing Tree Line

REVISIONS	NO.	DATE	REMARKS				
				REVISIONS	NO.	DATE	REMARKS

SCALE  
 1" = 200'

DATE  
 MAY 29, 2020

DRAFTER  
 SVFN

CHECKED

PROJECT NO.  
 190343

SHEET  
 1 OF 1

DWG. NO.

Appendix C

**PLAT OF KENNEDY HILLS,  
TOWN OF COTTAGE GROVE,  
DANE COUNTY, WISCONSIN:**

**AGREEMENT FOR PUBLIC IMPROVEMENTS AND  
OTHER MATTERS RELATING TO  
PLAT OF KENNEDY HILLS  
("Development Agreement")**

Legal Description of Affected Property:

Lots 1-16, Outlot 1 and Outlot 2,  
Plat of Kennedy Hills, Town of Cottage Grove,  
Dane County, Wisconsin.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:  
Kim Banigan, Town Clerk  
Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527

PARCEL IDENTIFICATION NUMBERS:  
0711-101-8501-0

**THIS AGREEMENT** (the "Agreement" or "Development Agreement") is made and entered into by and between Kennedy Hills, LLC, a Wisconsin limited liability company, with its principal business office located at 306 W. Quarry Street, Deerfield, WI 53531 ("Developer" and/or "Owner"), and the Town of Cottage Grove ("Town"), a body corporate and politic, with its principal business office located at 4058 CTH N, Cottage Grove, WI 53527.

**RECITALS**

**WHEREAS**, the Developer has received approval from the Town as set forth in Town Board Resolution No. 2019-07-01, of a residential development to be known as Kennedy Hills (the "Development") and located on the Plat of Kennedy Hills, in the Town of Cottage Grove, Dane County, Wisconsin ("Plat"), and Developer wishes to enter this Agreement to satisfy one of the conditions of the Town Board's approval and shall thereafter promptly proceed with recording of the Plat;

**WHEREAS**, the Town seeks to protect the health, safety and general welfare of the community by requiring the completion of various improvements in the Development and thereby to limit the harmful effects of substandard developments, including premature development which leaves property undeveloped and unproductive;

**WHEREAS**, the Town Subdivision Ordinance requires, among other things, that provisions be made for the dedication and grading of lands dedicated to the public, payments for and/or initial improvements to parkland such as trails and parking areas, installation of erosion and stormwater runoff controls and stormwater management facilities, stormwater and drainage conveyances, street and related improvements and approvals for water and sanitary/septic required to serve the Developer's Development;

**WHEREAS**, the Developer now wishes to proceed with the public improvements needed to serve the entire Plat (Lots 1-16, and Outlots 1-2 of the Development), which will be developed in a single phase;

**WHEREAS**, the purpose of this Agreement includes, but is not limited to, the avoidance of harmful consequences of land development prior to satisfactory completion of improvements, or prior to the payment of improvement costs and related fees;

**WHEREAS**, this Agreement is made for the mutual benefit of the Developer and the Town in order to assure compliance with Town Ordinances and standards for public improvements;

**WHEREAS**, the Developer acknowledges that the Town will be injured in the event of the Developer's failure to fully and completely perform the requirements of this Agreement; and

**WHEREAS**, the parties acknowledge and agree that the mutual promises, covenants, and obligations contained in this Agreement are authorized by state law and the Town Ordinances, waive the right to contest the terms of the Agreement and agree to be bound hereto, all as set forth in the Agreement.

## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the above recitals, which are incorporated herein by reference, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Town and Developer agree as follows:

### **1. PLANS FOR REQUIRED PUBLIC IMPROVEMENTS.**

- 1.1. At a minimum, the Developer shall construct and install, at its expense, those on-site and off-site general public improvements required by Town Ordinances and this Agreement (the "**Improvements**"). The term "Improvements" is used generally as a reference to: (a) all of the general public improvements located within the Plat; (b) the Stormwater Management Facilities on Outlot 1; and, (c) the public improvements to the intersection of CTH BB and Kennedy Road (the "**CTH BB Intersection Improvements**"). Where the context so states, certain sections of this Agreement may apply to one or more of these subsets of

Improvements and exclude others.

- 1.2. Developer shall be required to connect the Development to existing utilities, which may include facilities outside of the boundaries of the Development.
- 1.3. Following consultation with Town staff, the Developer shall present plans for the Improvements, which plans shall be prepared under the seal of Developer's Engineer (the "**Plans**"). Those Plans for which the Town Engineer has "no objection" other than satisfaction of the requirements set forth in the Town Engineer's Review Letter dated June 19, 2020 are described on Exhibit 1, which is attached and incorporated by reference. The Plans shall set forth the required Improvements with particularity and shall include, at a minimum, the following: Stormwater Management Facilities (in Outlot 1 in accordance with County-approved plans and see separate agreements entitled *Agreement for Maintenance of Stormwater Management Measures* and *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1*); blanket drainageways between Lots on the Plat (see Plat and separate agreement entitled *Perpetual Stormwater Drainage Easements*); public streets (see Plat and separate agreement entitled *Temporary Turnaround Easements*); CTH BB Intersection Improvements (as required by Dane County Highway Department for the intersection of CTH BB and Kennedy Road); and, utilities including gas, electric, and telephone/internet (located in utility easements; no utility pedestals in drainageways). The Improvements shall meet Town construction standards, as established by the Town Ordinances and the Town standards provided to Developer/Owner by the Town Engineer, and in accordance with generally acceptable industry standards. The Town Engineer shall have the authority to interpret and apply the ordinances, Town standards and generally accepted industry standards as to the Improvements.
- 1.4. The Town Engineer shall be given an adequate opportunity to review the Plans and may request such additional information from the Developer as desired. Following the Town Engineer's written statement of "no objection" to the Plans, and subject to the other requirements and conditions set forth herein, the Developer shall proceed with construction in accordance with the Plans and on the timetable represented to the Town by the Developer, which timeline has been reasonably relied upon by the Town. As of the Effective Date of this Development Agreement, the Town Engineer has no objections to the Plans identified on Exhibit 1, except as noted in the Town Engineer's review letter dated June 19, 2020, which is incorporated herein by reference.

2. **REQUIRED IMPROVEMENTS: PLANS, STANDARDS AND SPECIFICATIONS.**

Developer's construction of the Improvements and performance of this Agreement shall

be in accordance with the following: the Town Ordinances, whether or not specifically referenced in this Agreement; the Town's standard specifications for public improvements, as determined by the Town Engineer and highway superintendent; and, the Plans.

Construction of the required Improvements expressly includes, but is not limited to, the following:

**2.1. During Construction: Grading, Erosion Control and Barricading:**

The Developer shall furnish, install and maintain during construction and until the Improvements are accepted by the Town, all barricades and signs as are prudent and necessary for public safety, particularly where new rights-of-way extend or intersect existing streets and all street ends. The Town Engineer may also require Developer to furnish, install and maintain additional barricades and signs. Developer shall maintain "road closed" barrier(s) in place to prevent non-emergency access until such time as the binder layer of asphalt is installed on all of the streets under construction. Notwithstanding the foregoing, access for marketing by Wisconsin Real Estate Licensees and their clients is allowed.

The Developer shall furnish, and install prior to grading, all utility installation or any other land disturbance activity, and maintain during construction and until the Improvements are accepted by the Town such stormwater runoff and erosion control measures as are required by law and best management practices. The Town Engineer may also require Developer to furnish, install and maintain additional erosion control and stormwater runoff measures, as the Town Engineer deems appropriate given current conditions. The Developer shall adhere to the requirements for erosion control and stormwater runoff as set forth in the Dane County Erosion Control Permit and the Dane County Stormwater Management Permit, both of which are incorporated herein by reference as if set forth in full herein, and expressly grants the right-of-entry to the Plat to Dane County and the Town Engineer, or designee, to observe the erosion control and stormwater runoff and enforce the Dane County Erosion Control Permit and the Dane County Stormwater Management Permit.

All Construction Site Erosion Control and Storm Water Runoff shall be the Developer's responsibility and shall be completed in accordance with the Wis. Adm. Code NR 216 WPDES General Permit No. WI-S067831-05 for the site identified therein as Kennedy Hills Plat Phase 1 (FIN: 71435) ("WPDES permit"), which WPDES permit is incorporated herein by reference as if set forth fully herein. The WPDES permit for the site has a start date of May 06, 2020 and the maximum period of permit coverage is 3 years from the start date. Developer shall be responsible for obtaining any needed extensions of the WPDES permit.

- 2.2. **Outlot 1: Stormwater Management Facilities and Erosion Control:** The Developer shall install adequate stormwater management facilities in Outlot 1 (collectively, **Stormwater Management Facilities**) as required by the Land and Water Resources Department (“LWRD”) of Dane County.

The Developer’s Engineer shall provide necessary background data, including stormwater calculations, to the Town Engineer along with a proposed plan for Stormwater Management Facilities certified by the Developer’s Engineer. The Town Engineer may rely on the background data and stormwater calculations provided by the Developer’s Engineer when reviewing the proposed plans.

The Developer has obtained approval of the proposed plans from LWRD at Dane County, shall provide a letter of credit to Dane County naming the Town as a secondary beneficiary in the amount of \$195,833.00, and shall obtain the permits required by LWRD for erosion control and stormwater management. The Developer shall provide copies of the issued erosion control and stormwater management permits to the Town Engineer and the Town Clerk prior to commencement of construction. The Developer shall thereafter install and construct the Stormwater Management Facilities in accordance with the approved plans and the permits.

At the conclusion of construction, Developer shall provide the Town with a professional engineer’s certification that the following conditions are met: (a) the as-built stormwater management facilities were constructed in accordance with the County-approved plans and specifications and are operating as designed; (b) any required plantings are adequate, well-established, and reasonably free of invasive species; and, (c) any necessary maintenance, including removal of construction sediment, has been properly performed. This certification shall be to the Town and is in addition to the certification required and accepted by Dane County. Developer shall provide the Town with a copy of the certification to Dane County, as well as Dane County’s acceptance of same. The certification to the Town, and the Town’s acceptance thereof, is required before the Town will accept dedication of the Stormwater Management Facilities. The Town Engineer shall review the certification to determine that it meets the requirements of this paragraph. The Developer shall continue to be responsible for operation and maintenance of the Stormwater Management Facilities and Outlot 1 until the Town accepts the dedication of the Stormwater Maintenance Facilities. (*See also* Section 5.2.)

- 2.3. **Streets:** Streets shall be installed and constructed to Town standards in accordance with the Plans.
- 2.4. **Street Lighting:** Street lighting is not required for this Plat, but may be required



for future additions based on determinations to be made when approvals of future additions are requested.

- 2.5. Sidewalk: No sidewalk shall be required in the Plat.
- 2.6. Trails: Developer shall install trails on Outlot 2, which is being dedicated to the public for parkland. Unless otherwise approved by the Town Board, the trails shall be built to the specifications set forth in the “Typical Gravel Access Path Cross Section” included on the Kennedy Hills Plat Grading and Erosion Control Details Exhibit #5 page 1 of 2 and dated March 18, 2020, which is incorporated herein by reference as if set forth fully herein. The location for the trails shall be as set forth in **Exhibit 2**, which is attached hereto and incorporated by reference as if set forth fully herein. The value of the trails (as determined on a time & materials basis) shall be a setoff against the fee for initial improvement of parklands. (See Section 14. of this Agreement.)
- 2.7. Signage:
- The entry sign for the Development shall be as required to meet Dane County signage requirements and shall be subject to prior approval by the Town Board, or designee.
  - Fire numbers/addresses shall be as required by the County, with notice of same provided to the Fire Department and EMS, and shall be provided and installed by the Developer at Developer’s cost.
  - Street and traffic signs shall be as required by the County Surveyor and approved by the Town, and shall be provided and installed by the Developer at Developer’s cost.
- 2.8. Public Drainageways: There shall be blanket 12-foot drainage easements on the lot lines between Lots throughout the Plat, and the drainage easements shall be subject to a separate agreement entitled “Perpetual Stormwater Drainage Easements” which shall be recorded concurrent with the Plat.
- 2.9. Grading and Elevations:  
The lowest exposed building elevation on any lot within the Property shall in all cases be a minimum of two (2) feet above the lowest lot corner elevation at time of initial development, which grade is established in the approved grading plans. The Grading and Erosion Control Plan applicable to this Plat overall is included in the Kennedy Hills Plat Grading and Erosion Control Details Exhibit #4 page 1 of 1 and dated June 23, 2020, which is incorporated herein by reference as if set forth fully herein. The elevation of a lot shall not be changed so as to materially affect the projected stormwater flows per the approved grading and stormwater plans, or the drainage of the surrounding lots.

Following substantial completion of the public improvements within this Plat, Developer shall promptly prepare a final as-built grading plan and submit same to the Town Engineer and the Town Clerk. This as-built grading plan is required prior to issuance of building permits. Following the Town Engineer's confirmation of "no objection" to the as-built grading plan, said as-built grading plan shall be used to make the determinations required by this Development Agreement and shall be incorporated by reference as if fully set forth herein. A copy of all site, grading and landscaping plans shall be kept by the Developer or the Architectural Control Committee (the "Committee") established pursuant to the Declaration of Covenants, Restrictions, Conditions and Easements ("Declaration") recorded concurrently herewith and benefitting both the Lot owner planning individual Lot elevations as well as other owners within the Plat.

Following construction of a residence on a Lot, the current owner of record shall provide the Town building inspector with as-built grading documents certifying that grading as-built on the Lot is consistent with the grade established by the approved as-built grading and stormwater plans for the Plat described in Exhibit 2. The Town building inspector shall neither sign-off on the final inspections required under the building permit nor issue an occupancy permit until the current owner of record provides certification by a qualified consultant that the as-builts for the Lot comply with the approved as-built grading and stormwater plans for the Plat. If the as-builts for the Lot do not comply with approved as-built grading and stormwater plans, then the current owner of record shall be obligated to bring the Lot into compliance before occupancy is permitted.

Violations of the approved grading and stormwater plans shall give the Town of Cottage Grove a cause of action against the owner of record as of the date the violation occurs and others violating the approved grading and stormwater plan. The cause of action shall be for injunctive relief or damages as appropriate.

**THE ABOVE SECTION 2.9 IS A COVENANT THAT RUNS WITH THE LAND AND SHALL SURVIVE DEVELOPER'S COMPLETION OF CONSTRUCTION OF THE IMPROVEMENTS. IT IS NOT ONLY BINDING ON THE CURRENT OWNER OF RECORD, BUT SHALL BE BINDING ON THE OWNER'S HEIRS, SUCCESSORS AND ASSIGNS.**

- 2.10. CTH BB and Kennedy Road Intersection. Developer shall construct Type B Intersection Improvements ("CTH BB Intersection Improvements") within the existing right-of-way at Kennedy Road and County Highway BB. Construction shall be in accordance with Dane County's standards and plans approved by the Dane County Highway Department ("County Highways"). Copies of all information Developer and Developer's Engineer provides to County Highways regarding the CTH BB Intersection Improvements shall be simultaneously provided to both the Town Engineer ([ttebeest@tcengineers.net](mailto:ttebeest@tcengineers.net)) and the Town Clerk ([clerk@towncng.net](mailto:clerk@towncng.net)).

(a) Adequacy of Right-of-Way. It is Developer's responsibility to establish that the CTH BB Intersection Improvements as-built will fit within the existing right-of-way at the intersection and that no additional right-of-way will be required.<sup>1</sup>

The Town advises the Developer to have Developer's Engineer follow County Highways' recommendations when determining the adequacy of the right-of-way. Developer's Engineer shall provide a plan view of the CTH BB and Kennedy Road intersection that is fully dimensioned so that the geometrics of the intersection can be agreed upon, and such other information as is reasonable and necessary for a professional engineer to determine the adequacy of the right-of-way for the CTH BB Intersection Improvements. *It is essential that the information provided to County Highways and the Town be complete enough and thorough enough to confirm Developer's assertion that the CTH BB Intersection Improvements fall within the existing right-of-way and that no additional right-of-way will need to be acquired to install the CTH BB Intersection Improvements.* Such confirmation shall be provided by a professional engineer to the Town Clerk. It may take the form of written confirmation from County Highways or a certification of adequacy by the Developer's Engineer. The Town Engineer shall thereafter review the confirmation or certification. If the Town Engineer has "no objection" to same, this requirement shall be deemed satisfied.

(b) Early Start Possible. When requirement regarding the adequacy of the right-of-way has been deemed satisfied by the Town, the Developer may apply for an early start permit. Following receipt of the Developer's application for same, the Town will consider issuance of an early start permit for the Developer.

(c) Construction Plans for CTH BB Intersection Improvements. The Developer shall provide a full set of construction plans in a form acceptable to County Highways to both the Town Engineer and County Highways on or before noon on July 31, 2020. Time is of the essence.

For these purposes, a "full set of construction plans" shall, in addition to the fully dimensioned plan view of the intersection and related items described in Section 2.10(a) above, include all of the items set forth in this Section 2.10(c). Developer's Engineer shall provide County Highways with fully dimensioned plan/profile sheets, construction details, pavement and curb grades, cross section sheets, typical section sheets, traffic control, pavement marking sheets and signing sheets. Plans for bicycle facilities shall be

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<sup>1</sup> Developer's Engineer's schematic plans and profiles produced and submitted to the County Highways on or about 8/18/2019 were inadequate for this purpose. On or about 4/28/20, County Highways provided some comments; however, those comments are incomplete because the Developer's Engineer's submission to County Highways was incomplete. The updates made by the Developer's Engineer on 6/19/2020 and the corresponding cross-sections updated on or about 6/19/20 continue to be inadequate for County Highways to determine that the CTH BB Intersection Improvements fall within the existing right-of-way. This was most recently confirmed via 6/24/20 email from Matthew Rice, P.E. of County Highways to Developer's Engineer.

included because bicycle facilities will be required on the northerly westbound side of CTH BB. Plans shall also include all work to Kennedy Road and Buckley Ridge that is within the CTH BB right-of-way.

(d) Time is of the Essence as to Submission of Full Set of Construction Plans to County Highways. If Developer fails to submit a full set of construction plans to both the Town Engineer and the Dane County Highway Department on or before noon on July 31, 2020, then the Town Chair, following consultation with the Town Engineer, Town Clerk and Town Attorney, as needed, may direct the Town Clerk, or her designee, to issue a stop work order for all construction in the entire Plat or all construction in the entire Plat except for the Stormwater Management Facilities, all as determined in the reasonable discretion of the Town Chair. Any stop work order shall be effective as stated in the stop work order.

(e) Time is of the Essence as to County Highways' Approval of Final Construction Plans. If Developer fails to obtain approval of a full set of final construction plans from County Highways on or before noon on September 1, 2020, then a stop work order for all construction in the entire Plat shall be issued automatically and without further notice and shall be effective at noon on September 4, 2020. Written confirmation of the County Highways' approval shall be provided to the Town Engineer and Town Clerk.

(f) Permits and Commencement of Construction. In addition to obtaining final approval of construction plans, Developer shall provide erosion control and stormwater sheets to County Highways and the Town for informational purposes. Prior to commencement of construction, Developer shall obtain separate permitting through the Dane County Land and Water Resources Department ("LWRD"), the Town, County Highways and WDNR, as applicable and required for the CTH BB Intersection Improvements. Developer shall also obtain the Dane County Permit to Work in County Trunk Highway Right-of-Way, which will not be approved based on preliminary plans. Final approved plans are required for issuance of the Right-of-Way Permit. Copies of issued permits shall be provided to the Town Engineer and the Town Clerk.

Developer shall commence construction of the CTH BB Intersection Improvements at its earliest opportunity in the 2021 construction season so that construction is completed in accordance with the schedule required by County Highways.

(g) Time is of the Essence as to Completion of CTH BB Intersection Improvements. *The Developer shall complete installation of the CTH BB Intersection Improvements to the satisfaction of County Highways no later than 5:00 p.m. on August 1, 2021. Time is of the essence.* If, on or before August 1, 2021 at 5:00 p.m., the Town has not received adequate confirmation that the CTH BB Intersection Improvements have been substantially completed to the satisfaction of the Dane County Highway Department, then Developer shall be in default and the Town may draw against the letter of credit<sup>2</sup> and take over construction of the CTH BB Intersection Improvements to completion. Developer and Developer's Engineer shall assign the full set of construction plans to the Town for

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<sup>2</sup> See Section 10 of this Agreement for additional information on required surety. See the Town Engineer's letters dated June 19, 2020 for the amounts required in the letters of credit Developer shall provide to the Town.

its use in completing the CTH BB Intersection Improvements, all at no cost to the Town. Thereafter, all of the costs that the Town incurs to complete the CTH BB Intersection Improvements, including legal and engineering costs, shall be borne by the Developer.

(h) Surety. The estimated cost of the CTH BB Intersection Improvements shall be included in the surety to the Town that is required for this Plat.<sup>3</sup> The surety shall not be released until County Highways verifies that the CTH BB Intersection Improvements have been substantially completed to the satisfaction of the Dane County Highway Department and the Town accepts the same. The Developer and/or County Highways shall provide a copy of County Highways' verification to the Town Clerk and Town Engineer prior to the surety release. (*See also* Section 5.4.)

2.11. Stormwater Discharge into County Highway BB Right-of-Way. Developer has obtained written authorization via email from the Dane County Highway Department to discharge stormwater into the County Highway BB right-of-way. Developer shall provide a copy of such authorization to the Town Engineer and Town Clerk.

2.12. Special Provisions: Additional special provisions regarding Improvements may be set forth in Exhibit 2, which is attached and incorporated by reference. As with other work specified in this Agreement, all special provisions set forth on Exhibit 2 shall be constructed and installed in accordance with plans prepared under the seal of the Developer's Engineer and for which the Town Engineer has issued a written statement of "no objection."

### **3. CONTRACTORS ENGAGED BY DEVELOPER FOR PROJECT; INDEMNIFICATION AND INSURANCE.**

3.1. Approval of Contractor(s). The Developer agrees to engage contractors for all construction, who shall first be approved for such work by the Town Engineer and who shall qualify with every applicable requirement of the Town and any Ordinance, rule or regulation thereof. Prior to the commencement of construction of the Improvements, the Developer shall furnish to the Town Engineer the names of all contractors and subcontractors, together with a classification of the work performed by each and copies of all construction documents relating to the construction of the Improvements. Such submittal shall be prior to the commencement of construction of any of the Improvements. All construction documents for the Improvements are subject to the prior review of the Town.

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<sup>3</sup> See Section 10 of this Agreement for additional information on required surety. See the Town Engineer's letters dated June 19, 2020 for the amounts required in the letters of credit Developer shall provide to the Town.

- 3.2. Indemnification by Contractor(s). The Developer shall require all contractors engaged in the construction of the Improvements to indemnify and hold the Town and its engineers and consultants harmless from and against any and all claims, losses, damages, costs and expenses which such contractors may or might incur in connection with the construction of the Improvements. Such indemnification and hold harmless clause shall be in form and content acceptable to the Town Attorney and shall be included in each contract which the Developer has with a contractor.
- 3.3. Indemnification by Developer. For a period of time commencing with the execution of this Agreement and expiring fourteen (14) months from the date of substantial completion<sup>4</sup>, the Developer hereby expressly agrees to indemnify, save and hold harmless the Town, Town & Country Engineering, Inc., consultants, employees, officers and agents from and against all claims, costs, suits, causes of actions, demands and liability of every kind and nature, for injury or damage received or sustained by any person or persons or property, whomsoever and whatsoever, in connection with, or on account of the performance of the work contemplated hereby and the construction of the Improvements, except where such claim is the exclusive result of the willful or negligent acts of the Town.<sup>5</sup> As requested by the Town, the Developer further agrees to aid and defend the Town with legal counsel acceptable to the Town in the event the Town is named as a defendant in any action concerning the performance of the work pursuant to this Agreement, except where such suit is brought by the Developer. The provision is not intended to and shall not be interpreted to limit insurance coverage that may be available to the Town or governmental immunity or other defenses that may be available to the Town, each and all of which are expressly reserved by the Town. It is hereby agreed that the Developer is not an agent or employee of the Town, and neither Developer nor its contractors shall represent itself as an agent or employee of the Town.
- 3.4. Insurance by Contractor(s). The Developer shall also require all contractors engaged in the construction of the Improvements to maintain such reasonable insurance as shall be required by the Town Attorney and Engineer; and upon demand, furnish to the Town Attorney and Engineer, a current certificate of insurance to evidence such insurance. All such insurance shall comply with the

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<sup>4</sup> See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, “substantial completion” is defined as follows: “(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed.”

<sup>5</sup> The Town does not by this provision, or by any other provision in this Agreement, waive, reduce or in any way limit any governmental immunity (whether absolute, qualified, as to intentional torts or discretionary acts or other immunity) to which it may be entitled, and hereby expressly reaffirms its right to any and all such immunity, notice of injury, notice of claim and limitation as to damages to the full extent provided by law.

Town's contract requirements pertaining to damage claims, indemnification of the Town and insurance. The Contractor(s) so engaged are required to furnish comprehensive general liability insurance of not less than \$1,000,000.00 aggregate for any such damage sustained by two or more persons in any one accident. The Developer is responsible for confirming that such insurance is in place and that the Town and Town & Country Engineering, Inc. is named as an additional insured on such insurance.

#### 4. CONSTRUCTION RELATED ACTIVITIES FOR IMPROVEMENTS.

In connection with the construction of the Improvements, it is hereby agreed as follows:

- 4.1. Scheduling. The Developer agrees that no work shall be scheduled for construction of the Improvements without the Town Engineer's approval of the starting date(s) and construction schedule. The construction of the Improvements shall be completed on or before the completion date(s) set forth in the schedule, unless otherwise extended in writing by the Town.
- 4.2. Commencement. The final plans and specifications, signed by the Developer's Engineer, shall be submitted to the Town Engineer prior to any land disturbance or commencement of work. A starting date will not be approved until (1) a written statement of "no objection" with respect to the final plans and specifications for the Improvements has been issued by the Town Engineer, and (2) the Letter of Credit or other security required by this Agreement has been furnished to the Town.
- 4.3. Completion. All work specified herein shall be completed within twelve (12) months after the date of commencement, and time is of the essence as to completion. The deadline for completion may be extended as to the laying of the final layer of asphalt paving on streets in accordance with Town policy, as recommended by the Town Engineer. Town policy also requires that Developer furnish appropriate surety for the completion of such work as recommended by the Town Engineer, and approved by resolution of the Town Board.
- 4.4. Costs. The Developer agrees that the Town shall not be responsible for any costs or charges related to the construction of the Improvements, and that the Developer is responsible for all such costs, except as otherwise expressly provided for in the Agreement.
- 4.5. Construction Related Activities; Inspection and Certification; Lien Waivers. The Town may periodically review construction progress, conduct inspections and/or complete material testing of the Improvements, and is granted access to the site for such purposes. The Developer shall have the obligation to provide such on-

site inspection as is necessary to obtain written certification from Developer's Engineer that the Improvements, as and when they are completed, are in compliance with the standards and specifications of the Town and this Agreement. The Developer's Engineer's written certification shall be provided to the Town Engineer before the Town Engineer recommends acceptance of the Improvements to the Town Board. In addition, and also prior to recommendation of acceptance of the Improvements, the Developer shall present to the Town valid lien waivers from all persons providing materials and/or performing work on the Improvements for which certification is sought. The Developer agrees that, with the sole exception of the required final course of asphalt, no occupancy permits will be issued by the Town until all of the Improvements have been recommended for acceptance by the Town Engineer; and until all outstanding engineering, inspection and fees related to the Plat (including engineering and inspection charges of the Town) have been paid in full, and affidavits and lien waivers are received by the Town indicating that the contractors, suppliers and subcontractors have been paid in full for all work and materials furnished in order to construct the Improvements.

- 4.6. Maintenance and Repair. The Developer agrees to provide for maintenance and repair of all Improvements until the Improvements are accepted by the Town, and acknowledges that this obligation runs with the land. The Town will endeavor to provide timely notice to the Developer whenever the Town Engineer is not able to recommend acceptance of an Improvement, or otherwise determines that an Improvement does not conform to the Town's adopted standards and specifications or is otherwise defective. The Developer shall have thirty (30) days from the issuance of such notice to correct or substantially correct the defect. It is agreed that the Town shall not declare a default under the Agreement during the aforesaid thirty (30)-day correction period on account of any such defect unless it is clear that the Developer does not intend to correct the defect or unless the Town determines that immediate action is required in order to remedy a situation which poses an imminent health or safety threat.
- 4.7. Cost Breakdown. The Developer shall, upon substantial completion of the Improvements, provide to the Town a final cost for all of the costs associated with the construction thereof. Such final cost breakdown shall be in such form and content as the Town may reasonably require.



**5. DEDICATION OF IMPROVEMENTS, STORMWATER MANAGEMENT FACILITIES, FINE GRADING AND SEEDING OF PARKLAND AND CTH BB INTERSECTION IMPROVEMENTS.**

- 5.1. After substantial completion<sup>6</sup> of the construction of the Improvements in accordance with the Town's standards and specifications, as certified by the Developer's Engineer, and provided there is a written statement of "no objection" from the Town Engineer, the Developer shall dedicate the Improvements to the Town.
- 5.2. With respect to the Stormwater Management Facilities, and as stated in Section 2.2 above, Developer shall provide the Town with a professional engineer's certification that the following conditions are met: (a) the as-built stormwater management facilities were constructed in accordance with the County-approved plans and specifications and are operating as designed; (b) any required plantings are adequate, well-established, and reasonably free of invasive species; and, (c) any necessary maintenance, including removal of construction sediment, has been properly performed. This certification shall be to the Town and is in addition to the certification required and accepted by Dane County. Developer shall provide the Town with a copy of the certification to Dane County, as well as Dane County's acceptance of same. The certification to the Town, and the Town's acceptance thereof, is required before the Town will accept dedication of the Stormwater Management Facilities. The Town Engineer shall review the certification to determine that it meets the requirements of this paragraph. The Developer shall continue to be responsible for operation and maintenance of the Stormwater Management Facilities and Outlot 1 until the Town accepts the dedication of the Stormwater Maintenance Facilities. (*See also* Section 2.2.)
- 5.3. As indicated on the Plat, Developer has dedicated Outlot 2 to the public for parkland purposes and shall fine grade and seed the parkland at Developer's expense and in accordance with the approved grading plans. At such time as fine grading and seeding is completed to the satisfaction of the Town Engineer, the Town Engineer shall recommend that the Town accept dedication of the fine grading and seeding work.
- 5.4. Acceptance of the CTH BB Intersection Improvements shall require verification that the CTH BB Intersection Improvements have been substantially completed to

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<sup>6</sup> See Wis. Stat. §236.13, as amended, which applies to all preliminary and final plats as of August 1, 2014. Pursuant thereto, "substantial completion" is defined as follows: "(P)ublic improvements reasonably necessary for a project or a phase of a project are considered to be substantially completed at the time the binder course is installed on roads to be dedicated or, if the required public improvements do not include a road to be dedicated, at the time that 90% of the public improvements by costs are completed."

the satisfaction of the Dane County Highway Department as well as a letter of “no objection” from the Town Engineer. (*See also* Section 2.9.)

- 5.5. Acceptance of the dedication of the general public improvements within the Plat, the Stormwater Management Facilities, the fine grading and seeding of Outlot 2 and the CTH BB Intersection Improvements requires the approval of a motion by the Town Board.
6. **GUARANTEE OF THE WORK.** The Developer agrees to guarantee and warrant all work performed under this Agreement against defects in workmanship or materials for a period of *fourteen (14) months from the date of substantial completion*<sup>7</sup> of the Improvements. If any defect should appear during the guarantee period, as determined in the reasonable discretion of the Town Engineer, the Developer agrees to make required replacement or acceptable repairs of the defective work at the Developer’s own expense. Furthermore, following such notice to and repair by the Developer, the guarantee period shall be extended for an additional fourteen (14) month period from the date of Developer’s completion of the repair. All guaranties or warranties for materials or workmanship which extend beyond the guarantee period are hereby assigned by the Developer to the Town, and confirmation of same shall be provided to the Town Engineer.
7. **COMPLIANCE WITH LAW.** When performing its obligations under this Agreement, the Developer shall comply with all terms of this Agreement, relevant laws, ordinances and regulations in effect, as promulgated by all governmental bodies having jurisdiction thereover. In the event of a conflict among the requirements, the stricter provisions shall control.
8. **FEES PAYABLE PRIOR TO CONSTRUCTION.** The Developer agrees to pay the Town for all outstanding fees and assessments levied against the Property prior to the start of construction of the Improvements.
9. **DEVELOPER TO REIMBURSE THE TOWN FOR COSTS SUSTAINED.** In addition to any escrow arrangement required by the Town pursuant to its customary practice for administering development projects, the Developer shall reimburse the Town for its actual cost of design, inspection, testing, construction, and associated legal and other fees associated with the Development. The Town’s costs shall be determined as follows:
  - 9.1. The cost of Town employees’ time engaged in any way with the required Improvements based on the hourly rate paid to the employee multiplied by a factor determined by the Town representing the Town’s cost for expenses,

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<sup>7</sup> See *Id.*

- benefits, insurance, sick leave, holidays, overtime, vacation and similar benefits.
- 9.2. The cost of Town equipment employed.
  - 9.3. The cost of mileage reimbursed to Town employees and consultants that is attributable to the Development.
  - 9.4. The actual costs of Town materials incorporated into the work, including transportation costs, plus a restocking and/or handling fee not to exceed 10% of the cost of the materials.
  - 9.5. All costs and expenses incurred by Town in connection with the Development, including, but not limited to, the cost of professional services incurred by the Town for the review and preparation of required documents, attendance at meetings or other related professional services.
  - 9.6. Unless the amount totals less than \$50.00, the Town shall bill the Developer monthly for expenses incurred by the Town. Bills outstanding for more than thirty (30) days may accrue interest at the rate of 1% per month.

## 10. SURETY.

- 10.1. The Developer agrees to furnish the Town, prior to the commencement of any work under this Agreement, with surety in the form of one or more irrevocable Letters of Credit<sup>89</sup>, in a form deemed acceptable by the Town Attorney, in the amount to be approved by the Town Engineer, to secure performance of this contract in accordance with the Town Subdivision Ordinance. The Letter of Credit shall be payable at sight to the Town and will bear an expiration date not earlier than twelve (12) months after the date of delivery to the Town. The Letter of Credit shall include a provision requiring that the Town be given written notice not less than forty-five (45) days and not more than sixty (60) days prior to the expiration of the letter. Developer shall provide a new Letter of Credit satisfactory to the Town not less than ten (10) days prior to the expiration of any earlier Letter of Credit sufficient to cover the balance of any work to be performed by Developer hereunder and any sum required to secure the guarantee of work required by this Agreement. The Letter of Credit will be payable to the Town at any time upon presentation of: (i) a sight draft on the issuing Bank in the amount to which the Town is entitled to draw pursuant to the terms of this Agreement; (ii) an affidavit executed by an authorized Town official stating that the Developer is in default under this Agreement; and (iii) the original of the

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<sup>8</sup> If the Developer prefers to provide a form of security other than a letter of credit, the Developer must contact the Town Attorney prior to executing this Development Agreement so that appropriate language can be incorporated in the Development Agreement. Please see Wis. Stat. § 236.13 for additional details. The language for letters of credit is in the template because it is the most common form of security provided by Developers in the Town.

<sup>9</sup> The Town Engineer issued letters dated June 19, 2020 as to the required amounts for the CTH BB-Kennedy Road Intersection and Improvements other than the Stormwater Management Facilities, which letters are incorporated herein by reference. Dane County determined the amount required for the letter of credit for the Stormwater Management Facilities.

Letter of Credit.

- 10.2. As work progresses on installation of Improvements constructed as part of this contract, the Town Engineer, upon written request from the Developer from time to time, is authorized to recommend a reduction in the amount of surety as hereinafter provided. When portions of construction (street, stormwater or other improvements) are completed by the Developer, the Town Engineer is authorized, upon submission of lien waivers by the Developer's contractors, to recommend reduction in the amount of surety. Any reduction shall require approval by motion of the Town Board.
- 10.3. Following the Town's acceptance of the Improvements, as indicated by motion of the Town Board, the Town agrees to reduce the surety to an amount which does not exceed ten percent (10%) of the cost of the Improvements, as estimated by the Town Engineer, to secure performance of the guarantee described in this Agreement.
- 10.4. Developer agrees to provide written notice of the expiration of any Letter of Credit (or replacement Letter of Credit) provided for herein not less than forty-five (45) days nor more than sixty (60) days prior to its expiration, by sending notice to the following address:

Town Clerk  
Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527  
Phone: 608-839-5021  
Fax: 608-839-4432  
[www.tn.cottagegrove.wi.gov](http://www.tn.cottagegrove.wi.gov)

11. **COVENANTS AND RESTRICTIONS; STORMWATER MANAGEMENT AGREEMENT; DRAINAGE EASEMENTS; AND, OTHER LEGAL DOCUMENTS.**

- 11.1. Declaration of Covenants, Restrictions, Conditions and Easements. Prior to commencement of construction of Improvements under this Agreement, Developer shall submit the *Declaration of Covenants, Restrictions, Conditions and Easements* ("Declaration") to the Town Attorney and Town Board for review and approval as to conformity with the Town Subdivision Ordinance and any conditions of approval. The Declaration shall contain provisions which provide for site plan and architectural review procedures for any Lots to ensure that the represented quality of the Plat and related improvements is maintained. The

foregoing instrument shall be recorded concurrent with recording of the Plat and shall run with the land.

- 11.2. Stormwater Management and Maintenance Agreements. Developer shall also enter into the County's *Agreement for Maintenance of Stormwater Management Measures* and the Town's *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1*, which are in recordable form and satisfactory to the Town Engineer and Town Attorney, prior to the commencement of construction. The Developer shall maintain the Stormwater Management Facilities, at the expense of Developer, until the Town accepts the Improvements, and after acceptance of the Improvements by the Town, the homeowner association formed by Developer shall maintain the Stormwater Management Facilities at the expense of the association. In the event the association fails to properly maintain the Stormwater Management Facilities, then the Town's *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1* shall apply, which provides that the Town may enter the Property and maintain the Stormwater Management Facilities, with the cost thereof to be charged back as a special charge to the owners of Lots within the Development. The foregoing instruments shall be recorded concurrent with recording of the Plat and shall run with the land.
  - 11.3. Drainage Easements. The Plat shall be subject to blanket drainage easements subject to an easement agreement entitled *Perpetual Stormwater Drainage Easements* and shall be depicted on the Plat, all in a manner acceptable to the Town Attorney and Town Engineer. The foregoing instrument shall be recorded concurrent with recording of the Plat and shall run with the land.
  - 11.4. Temporary Turnaround Easement. Temporary circular easements for vehicle turnaround purposes shall be granted at the north limits of Scenic Oaks Drive and Wooded Ridge Trail, all as further described in the *Temporary Turnaround Easement*. The Developer shall install a TEE at the end of Scenic Oaks Drive and a circular cul de sac at the end of Wooded Ridge Trail, all in accordance with Plans approved by the Town Engineer. Both turnarounds shall be paved with 2 inches of asphalt. The foregoing instrument shall be recorded concurrent with recording of the Plat and shall run with the land.
  - 11.5. Other legal documents and related special provisions required for this Plat shall be as specified on **Exhibit 2**.
12. **SURVEY MONUMENTS.** Temporary survey points may be utilized until construction is complete, with Developer to set final irons/monuments after construction is completed and provide a written certification from a registered surveyor that all corners were set as required by law. Developer agrees to install all survey monuments for the final Plat in

the manner required by law and Town Ordinance, except that pursuant to the provisions of Wis. Stat. § 236.15(1)(h), Developer shall have a period of up to five (5) years after the date of execution of this Agreement by all parties within which to complete installation of all required monuments in the entire Development as required by law and Town Ordinance. Notwithstanding the foregoing, Developer agrees to complete all such survey work for the Plat by the time of completion of Improvements for the Plat. Developer will provide security in the amount and manner reasonably required by the Town Engineer at the time of commencement of construction of the Plat based on estimates from responsible surveying firms, to secure the full costs of such survey monumentation work within such time period. Said amount shall be included in the Surety required by this Agreement. If not specifically enumerated in the surety provided to the Town that is required for this Plat, then the Town Engineer shall require that a reasonable portion of the surety required for this Plat, as determined by the Town Engineer, be maintained to assure that final irons and monuments have been set. Because Wisconsin Statutes give Developer an extended period of time to complete installation of survey monuments, the Developer may be required to renew a Letter of Credit to the Town solely for this purpose.

13. **PARKLAND DEDICATION OR FEE IN LIEU OF DEDICATION.** The Town acknowledges that Developer has fully satisfied the Town Ordinances with regard to the dedication of parklands or the payment of fees in lieu of dedication of parklands for the Development upon recording the Plat. As indicated on the Plat, Developer has dedicated Outlot 2 to the public for parkland purposes and shall fine grade and seed the parkland at Developer's expense and in accordance with the approved grading plans. At such time as fine grading and seeding is completed to the satisfaction of the Town Engineer, the Town Engineer shall recommend that the Town accept dedication of the fine grading and seeding work. Acceptance shall be by motion of the Town Board.

Following the Town's acceptance of the dedication, the agreement set forth in this paragraph shall take effect. The Town and Developer agree that the Town Ordinances require the dedication of 2,000 square feet of parkland per Lot within the Plat (or payment in lieu of dedication, which is not being required by the Town). Dedication to the public for stormwater management purposes does not satisfy this requirement. To meet the parkland dedication requirements for the Plat, the Developer is dedicating Outlot 2 to the Town. Outlot 2 is 2.228 acres, and the Town's dedication requirement for 16 Lots is 0.73 acres. Developer and the Town agree that the excess acreage dedicated in the amount of 1.498 acres may be applied as a credit against the dedication requirements for the first addition to Kennedy Hills, at such time as the plat for the first addition is submitted to the Town. The dedication requirements for the first and second additions to the Plat shall be those requirements in effect at the time that the plat for each addition is submitted to the Town.

14. **FEE FOR INITIAL IMPROVEMENTS TO PARKLAND.** The Town acknowledges

that Developer shall satisfy a portion of the fee for initial improvements to parkland by installing the trails described on **Exhibit 2**, which is attached hereto and incorporated by reference. The Developer estimates that the cost for installation of the trails (on a time and materials basis) is \$15,000.00, and that Developer will track actual costs as the project proceeds and installation is complete. At that time, the Developer and Town Engineer shall confirm the value of the trail as-built, which amount shall serve as a credit or setoff against the total fee for initial improvements to parkland.

The Town and Developer agree that the total fee for initial improvements to parkland is \$2000.00 per Lot x 16 Lots, or \$32,000.00. This fee is due and payable on a per Lot basis at the time that building permits are pulled for a particular Lot. If the as-built value of the trails is \$15,000.00, then the per lot amount of the fee would be:

$\$32,000.00 - \$15,000.00 = \$17,000.00 / 16$ , which is estimated as \$1062.50 per Lot.

The calculation above is an estimate. The actual amount per Lot will be calculated using the as-built value agreed to by the Town Engineer and Developer. As a matter of fairness to all concerned, the Town requests that the Developer disclose this fee for initial improvements to parkland to prospects and buyers of lots based on the actual calculations and the balance due. The Developer may also prepay the fee to the Town at any time.

15. **ANNEXATION.** Developer agrees that at no time will the Developer petition to annex or attach all or any part of the Property to any city or village under applicable annexation or boundary agreement laws, without the consent of the Town. Developer further acknowledges that any such annexation shall result in damages to the Town, which damages shall be substantial and difficult to quantify. Developer and Town agree to quantify such damages by applying to this Development the terms and calculations used to calculate Tax Increment in Tax Increment Districts formed under Wis. Stat. § 66.1105. The Town's liquidated damages shall be equal to the Tax Increment that would be calculated and paid to the Town over a 5 year build-out at a present value which is the anticipated value of the Development as represented by the Developer, and paid to the Town annually over a 27 year period. Generally speaking, the Tax Increment is the combined mil rate multiplied by the Tax Incremental Base reduced by the Value Increment.

16. **GENERAL CONDITIONS.**

16.1. No Vested Rights Granted. Except as provided by law, or as expressly provided in this Agreement, no vested right in connection with this project shall inure to the Developer. Furthermore, the Town does not by this Agreement assure the Developer or any third-parties that the Developer or Owner is entitled to any other required approvals for the Plat or for subsequent additions to the Plat.

16.2. No Waiver. No waiver of any provision of this Agreement shall be deemed or

constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both Town and Developer; nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement.

- 16.3. Town Rights Retained. The Town does not hereby waive, and expressly retains, its right to governmental immunity and other defenses that may be available to the Town. The obligations set forth herein are not intended to, and shall not be interpreted to, limit the Town's insurance coverage or other similar protections. To the extent not expressly contracted in this Agreement, the Town retains and expressly reserves its legislative discretion.
- 16.4. Amendment/Modification. This Agreement may be amended or modified only by a written amendment approved and executed by the Town and the Developer.
- 16.5. Default. A default is defined herein as the Developer's breach of, or failure to comply with, the terms of this Agreement. The Town reserves to itself all remedies available at law or equity as necessary to cure any default. The Town also reserves to itself the right to draw on a Letter of Credit or other surety provided hereunder in addition to pursuing any other available remedies. Remedies shall include, but not be limited to, stopping all construction in the approved final Plat and prohibiting the transfer or sale of Lots. Remedies shall be cumulative, and the exercise of one shall not preclude the exercise of others.
- 16.6. Entire Agreement. This written Agreement, and written amendments, and any referenced attachments thereto, shall constitute the entire Agreement between the Developer and the Town.
- 16.7. Attorney Fees. If the Town is required to resort to litigation or arbitration to enforce the terms of this Agreement, and if the Town prevails in the litigation or arbitration, the Developer shall pay all Town costs, including reasonable attorney fees and expert witness fees. If the court or arbitrator awards relief to both parties, each will bear its own costs in their entirety.
- 16.8. Time. For the purpose of computing the commencement, abandonment and completion periods, and time periods for Town or Developer action, such times in which war, civil disasters, acts of God, or extreme weather conditions occur or exist shall not be included if such times prevent the Developer or Town from performing their/its obligations under the Agreement.



- 16.9. Severability. If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision, and the rights of the parties will be construed as if the part, term or provision was never part of the Agreement.
- 16.10. Benefits; No Assignment Without Prior Approval. The benefits of this Agreement to the Developer are personal and shall not be assigned without the express written approval of the Town. Such approval may not be unreasonably withheld, but any unapproved assignment is void. Notwithstanding the foregoing, the burdens of this Agreement are personal obligations of the Developer and also shall be binding on the heirs, successors and assigns of the Developer.
- 16.11. Notice. Any notice or offer or demand given hereunder, except notices to the Town Clerk regarding surety (*see* Section 10.4), shall be sent: (a) by electronic mail to the known email address of the persons identified below, with delivery presumed within five (5) minutes during the Town of Cottage Grove's normal Town Hall business hours, unless an automatic reply indicates that said person is absent; (b) by United States mail, postage pre-paid, to the Parties' respective addresses set forth below, with delivery presumed three (3) business days following mailing; (c) by registered or certified United States mail; (d) by commercial delivery service with the tracked delivery date serving as confirmation of actual delivery; or, (e) by personal delivery, with delivery on the date personally delivered. Either party may unilaterally change its representative, address and email by giving notice of the change to the other party.

If to Developer:

David C. Riesop  
Kennedy Hills, LLC  
306 W. Quarry Street  
Deerfield, WI 53531  
Phone: 608-764-5602  
Email: [wismapping@charter.net](mailto:wismapping@charter.net)

If to Town:

Town of Cottage Grove  
Attn: Town Clerk  
4058 County Road N  
Cottage Grove, WI 53527  
Phone: 608-839-5021  
Fax: 608-839-4432  
Email: [clerk@towncg.net](mailto:clerk@towncg.net)

- 16.12. Recordation. The Town may record this Agreement or a memorandum of this Agreement in the Register of Deeds Office. All costs of recording shall be paid

by the Developer.

16.13. Effective Date. This Agreement shall be effective as of the date and year executed by both parties.

16.14. Exhibits. The following are attached hereto and fully incorporated by reference:  
Exhibit 1: Identification of Plans  
Exhibit 2: Special Provisions

Executed in Dane County, Wisconsin, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**TOWN OF COTTAGE GROVE**

By: \_\_\_\_\_  
Kris Hampton, Town Chair

Attest: \_\_\_\_\_  
Kim Banigan, Town Clerk

**ACKNOWLEDGMENT**

STATE OF WISCONSIN    )  
                                          )  
COUNTY OF DANE        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named Kris Hampton and Kim Banigan, Chairperson and Clerk of the Town of Cottage Grove, respectively, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same as such officers by the Town’s authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

Executed in Dane County, Wisconsin, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**DEVELOPER/OWNER:  
KENNEDY HILLS, LLC**

\_\_\_\_\_  
By: David C. Riesop  
Its: Sole Member and Authorized  
Representative

**ACKNOWLEDGMENT**

STATE OF WISCONSIN    )  
                                          )  
COUNTY OF DANE        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named David C. Riesop, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of Kennedy Hills, LLC.

\_\_\_\_\_  
Print name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

**MARITAL PROPERTY STATEMENT**

I am married and am entering this Agreement in the interest of my marriage and family.

Date: \_\_\_\_\_

\_\_\_\_\_  
By: David C. Riesop, Individually and on behalf  
of Kennedy Hills, LLC

***This instrument drafted for the Town by:***

Constance L. Anderson, Special Counsel  
Anderson Consults, LLC  
PO Box 3004  
Madison, WI 53704  
[connie@andersonconsultswi.com](mailto:connie@andersonconsultswi.com)  
608-249-1865  
[www.andersonconsultswi.com](http://www.andersonconsultswi.com)

**EXHIBIT 1**  
**IDENTIFICATION OF PLANS**

**PLANS:** The Town Engineer has reviewed the following Plans and prepared a review letter dated June 19, 2020, which is incorporated by reference. Developer shall make all of the corrections noted in the Town Engineer's review letter dated June 19, 2020. The following items were included in the Town Engineer's review and may be referred to generally herein on the basis of his review of the following:

- An Erosion Control and Storm Water Management Report for Kennedy Hill Plat-Phase I dated March 31, 2020
- A revised preliminary plat containing 16 lots and 2 outlots on 22.090 acres dated 5/14/2020 and received from the Town on May 28, 2020.
- A final plat containing 16 lots and 2 outlots on 22.090 acres received from the Town on May 28, 2020.
- The following documents received from the Developer's engineer on June 1, 2020:
  - A revised grading and erosion control plan dated May 31, 2020
  - Revised plan and profile sheets for Wooded Ridge Trail and Fields Road dated May 31, 2020
  - Kennedy Road Sight Distance Report dated 5/4/2020
- An email dated 5/26/20 from the Dane County Highway Department with CTH BB intersection plans dated 4/10/20 from the Developer's Engineer
- An email dated 5/27/20 from Dane County Highway Department which authorizes construction of the CTH BB/Kennedy Road intersection to be constructed by August 1, 2021 with conditions
- An email dated 6/2/20 from Dane County Highway Department which includes:
  - Approval of stormwater discharge into CTH BB right of way
  - Statement from County with conditions for a Permit to Work in County Trunk Highway Right of Way
  - Applicant must resubmit plans that address previous County comments dated April 28, 2020
  - Provide copy of Dane County Stormwater & Erosion Control Permit
- An email from the soil tester dated June 2, 2020 that states that a majority of the land is suitable for conventional septic systems and a few lots may require mound systems
- The following documents received from Developer's engineer on June 8, 2020:
  - CTH BB correspondence with Dane County Highway Dept.
  - CTH BB intersection improvement plans
  - CTH BB plan and profiles
  - Kennedy Road plan and profiles
- The following documents received from Developer's engineer on June 10, 2020:
  - Engineer's Estimates for Probable Construction Costs
    - Erosion Control and Stormwater Management Items = \$178,030
    - Kennedy Hills Plat Phase I Items less above items = \$374,042

- CTH BB/Kennedy Road Intersection Improvements = \$309,684
  - Grading and Erosion Control Plan dated 5/31/20
  - Grading and Erosion Control Details dated March 18, 2020
  - Southeast Storm Pond Plan dated March 31, 2020
  - Road Plans and Profiles for Fields Road, Wooded Ridge Trail and Scenic Oak Drive revised 5/31/20
- Kennedy Hills Phase I Specifications Book dated June 10, 2020

**THE PLANS IDENTIFIED ABOVE MAY BE UPDATED WHEN DEVELOPER MEETS THE REVIEW LETTER REQUIREMENTS OR OTHER REQUIREMENTS. FOR THE CONVENIENCE OF ALL CONCERNED, THIS EXHIBIT 1 MAY BE AMENDED TO REFLECT SUCH CHANGES; HOWEVER, SAID AMENDMENT(S) SHALL ONLY BE EFFECTIVE WHEN THE PLAN(S) IDENTIFIED ARE: (1) SET FORTH IN A WRITTEN NOTICE FROM THE TOWN ENGINEER TO THE TOWN CLERK THAT IDENTIFIES THE UPDATED PLAN(S); AND, (2) THE WRITTEN NOTICE IS SIMULTANEOUSLY PROVIDED TO THE DEVELOPER AND DEVELOPER'S ENGINEER. AN APPROPRIATE EMAIL MAY SERVE THIS PURPOSE.**

Plans updated prior to final approval of the Development Agreement by the Town Board include:

- Kennedy Hills Plat Grading and Erosion Control Details as Exhibit #4, page 1 of 1 and dated June 23, 2020

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## EXHIBIT 2 SPECIAL PROVISIONS

1. **CARPC Requirements.** CARPC recommendations are hereby made requirements of the Town.
2. **Final Plat.** Developer shall make all changes to the Plat requested by the Town Engineer in his review letter dated June 19, 2020, which is incorporated herein by reference. A separate sheet shall be included in the final plat that shows the building envelope for each lot in the Plat as well as the blanket easements described in the document entitled *Perpetual Stormwater Drainage Easements*.
3. **Location of Trails on Outlot 2.** The trails on Outlot 2 shall be located as indicated on the map included in the Kennedy Hills Plat Grading and Erosion Control Details Exhibit #4, page 1 of 1 and dated June 23, 2020, and which is incorporated herein by reference as if set forth fully herein.
4. **Final As-Built Grading Plan Required.** The Grading Plan approved for this Plat overall is included in the Kennedy Hills Plat Grading and Erosion Control Details as Exhibit #4, page 1 of 1 and dated June 23, 2020, and which is incorporated herein by reference as if set forth fully herein. Following substantial completion of construction of the Improvements, Developer shall promptly prepare a final as-built grading plan (“Final As-Built Grading Plan”). The Final As-Built Grading Plan shall be submitted to the Town Engineer and the Town Clerk both electronically and as hard copy. No building permits for residences shall be issued until the Town Engineer confirms that he has “no objection” to the Final As-Built Grading Plan. The Final As-Built Grading Plan shall be used to make the determination required by this Development Agreement and shall be incorporated by reference as if fully set forth herein.

**CONSENT OF LIENHOLDERS**

The undersigned mortgagees or other lienholders, having an interest in the real estate subject to the Development Agreement described herein, do hereby consent to the foregoing, and join in the execution hereof solely as a lienholder and hereby agree that in the event of the foreclosure of the interest in said real estate or other sale of the real estate under judicial or non-judicial proceedings, the real estate shall be sold subject to the Development Agreement.

Dated: \_\_\_\_\_, 2020.

**BANK OF DEERFIELD**

Lienholder Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ACKNOWLEDGMENT**

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named \_\_\_\_\_ and \_\_\_\_\_, of Deerfield, WI, to me known to be the \_\_\_\_\_ and \_\_\_\_\_ of the Bank of Deerfield who executed the foregoing instrument as such officers of the corporation.

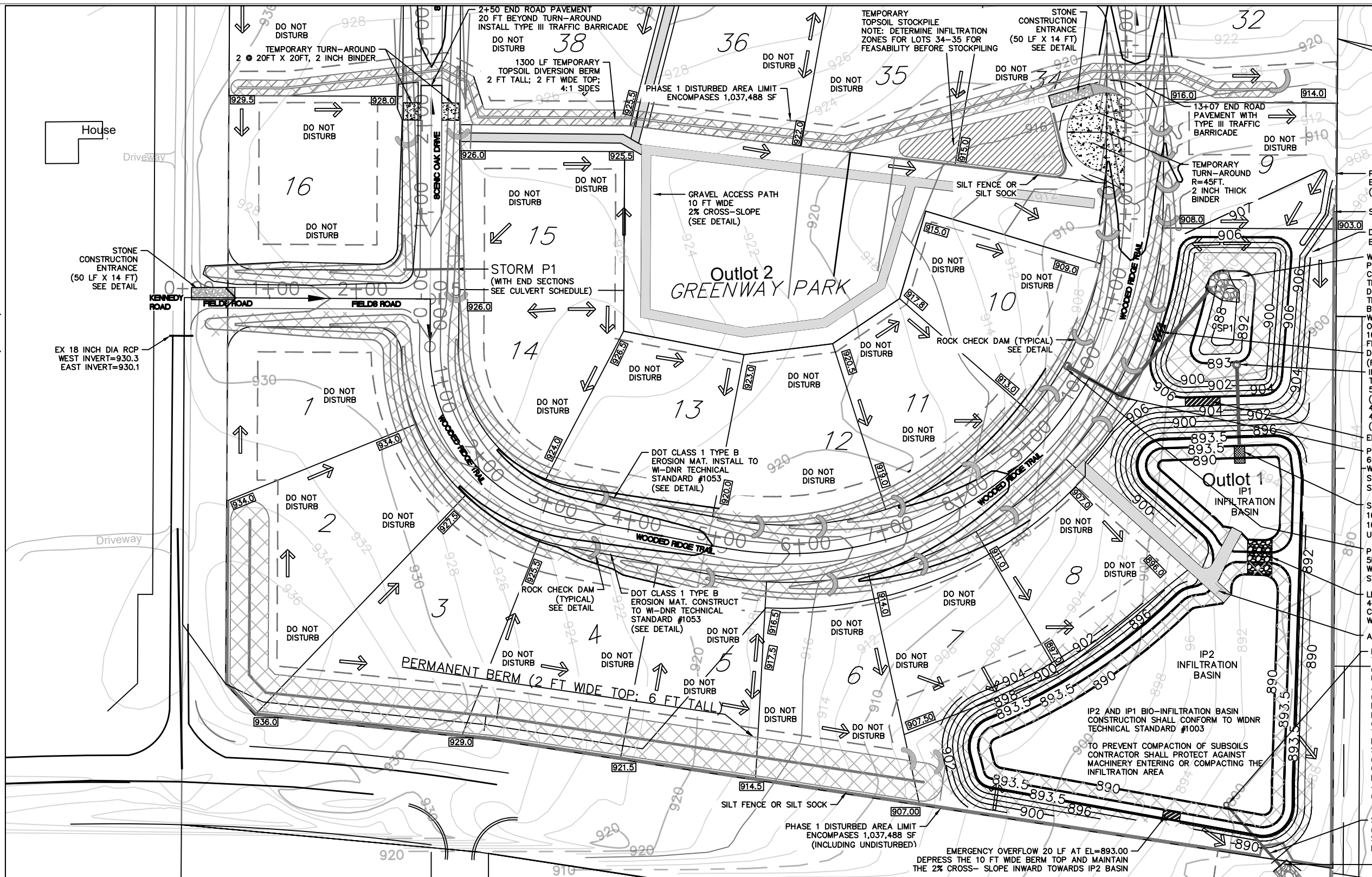
\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My Commission: \_\_\_\_\_

Cleveland F. Gombar PE N157 NAVARINO ROAD, SHIOCTON, WI 54170 (920) 604-1504

TO OBTAIN LOCATION OF PARTICIPANTS' UNDERGROUND FACILITIES BEFORE YOU DIG IN WISCONSIN  
**CALL DIGGERS HOTLINE**  
**1-800-242-8511**  
**TOLL FREE**  
 TDD(FOR THE HEARING IMPAIRED)(800)542-2289  
 WS. STATUTE 182.0175 (1974)  
 REQUIRES MIN. OF 3 WORK DAYS NOTICE BEFORE YOU EXCAVATE



PHASE 1 DISTURBED AREA LIMIT ENCOMPASSES 1,037,488 SF (INCLUDING UNDISTURBED)

SILT FENCE OR SILT SOCK

DOT CLASS 1 TYPE B EROSION MAT (SEE DETAIL)

WET BOTTOM POND PERMANENT POOL TOP EL=893.00 CONSTRUCT TO WISCONSIN DNR TECHNICAL STANDARD # 1001 DURING PLAT CONSTRUCTION USE AS A TEMPORARY SEDIMENT TRAP BOTTOM ELEVATION=888.00 WHEN SEDIMENT DEPTH OVER 2 FEET-CLEAN SUMP 10FT WIDE SAFETY SHELF AT 10:1 FROM EL=893.00 TO EL=892.00 DITCH OVERFLOW INTO SP1- 20 LF AT EL=904.75 (FROM DITCH INTO SP1 FOR LARGE STORM EVENTS) INLET STANDPIPE STRUCTURE TOP ELEVATION= 901.40 5 FT DIA. BASE REDUCED TO 4 FT DIA. TOP (WITH HAALA CG48TM CONE GRATE) 4.50 INCH ORIFICE ELEV.= 893.00 42 INCH PIPE OUT ELEV.= 892.50 (SEE DETAIL AND PIPE SCHEDULE)

EMERGENCY OVERFLOW-40 LF AT EL=904.60

P3E DITCH INLET RIM EL=903.50 6FT DIA. PRE-CAST CONCRETE MANHOLE WITH HAALA CG72TM CONE GRATE STORM P3 (WEST) ENTERS AT EL=899.00 STORM P3 (EAST) EXITS STRUCTURE AT EL=898.50

STORM P4 (SP1) OUTLET EL=890.00 100YR EVENT VELOCITY= 11 FT/S 10YR EVENT VELOCITY= 5 FT/S USE SCOUR STOP (12FT X 24FT)

P3W DITCH INLET RIM EL=905.50 5FT DIA. PRE-CAST CONCRETE MANHOLE WITH HAALA CG60TM CONE GRATE STORM P3 (WEST) EXITS STRUCTURE AT EL=901.00

LEVEL SPREADER-STONE TOP EL=891.00 40 FT WIDE X 38 FT LONG X 1 FT TALL CONSTRUCTION SHALL CONFORM TO WDNR TECHNICAL STANDARD #1003

ACCESS 12FT WIDE GRAVEL (SEE DETAIL)

P5 INLET STANDPIPE STRUCTURE TOP ELEVATION= 890.60 60 INCH DIA. (WITH TRASH RACK) UNDERDRAIN TILE= 10 0.50 FT DIA. AT EL=888.50 (INTER-CONNECT SEVERAL 0.50 FT DIA. TILES AND REGULATE WITH KNIFE GATE VALVE AT STANDPIPE) CONTINUE UNDERDRAIN THROUGHOUT IP1 AND IP2. INSTALL CLEANOUT RISERS TO SURFACE EL=890.00 AND CAP. (IN EMERGENCY USE THE AT-GRADE 6 INCH PVC AT STANDPIPE AND REGULATE WITH KNIFE GATE VALVE) 42 INCH PIPE OUT ELEV.= 886.00 (SEE DETAIL AND PIPE SCHEDULE)

STORM P5 (WITH END SECTION AT RIPRAP - SEE DETAIL AND PIPE SCHEDULE; USE PIPE TIES ON LAST 3 SECTIONS)

RIP-RAP OUTLET PROTECTION TO DANE COUNTY STANDARDS OUTFALL ELEV.=885.50 (SEE DETAIL AND PIPE SCHEDULE)

EMERGENCY OVERFLOW 20 LF AT EL=893.00 DEPRESS THE 10 FT WIDE BERM TOP AND MAINTAIN THE 2% CROSS-SLOPE INWARD TOWARDS IP2 BASIN

890 CONTINUE RIP-RAP INTO DITCH BOTTOM

CULVERT SCHEDULE

PIPE NAME	LENGTH (LF)	DIAMETER (INCHES)	MATERIAL	SLOPE (%)	UP INVERT	DOWN (OUT) INVERT	10 YR STORM FLOW CFS	10 YR STORM VELOCITY FT/S	RIPRAP CUBICAL STONE SIZE D50 (INCHES)	MINIMUM RIPRAP W-WIDTH FT	MINIMUM RIPRAP L-LENGTH FT	MINIMUM RIPRAP W2WIDTH FT	COMMENTS
STORM P1	60	34" X 22"	E-RCP	0.8300	924.50	924.00	18.00	4.40	N/A				SCENIC OAK DRIVE AT FIELDS ROAD
STORM P2	60	24	RCP	0.8300	922.00	921.50	11.50	5.50	4	6.0	23.0	12.0	WOODED RIDGE TRAIL AT WOODLAND CROSSING
STORM P3-WEST	69	42	RCP	0.0290	901.00	899.00	44.58	4.63	N/A				WEST SIDE WOODED RIDGE TRAIL AT SP1
STORM P3-EAST	162	42	RCP	0.0340	898.50	893.00	74.85	7.78	10	10.5	46.0	16.5	WOODED RIDGE TRAIL AT SOUTHEAST POND (EAST SIDE)
STORM P4 (SP1)	96	42	RCP	0.0259	892.50	890.00	49.28	5.12	N/A USE	SCOUR	STOP	0.0	JOINS STORM POND TO INFILTRATION BASIN
STORM P5 (SE IP1-IP2 OUTLET)	105	42	RCP	0.0048	886.00	885.50	23.90	2.48	4	10.5	34.0	13.5	SE IP1-IP2 INFILTRATION BASIN OUTLET

KENNEDY HILLS PLAT  
 TOWN OF COTTAGE GROVE, DANE COUNTY, WI  
 GRADING AND EROSION CONTROL PLAN  
 EXHIBIT #4  
 DATED: JUNE 23, 2020

WISCONSIN MAPPING  
**EX 2 OF DEVELOPMENT AGREEMENT**  
 ENGINEER: CLEVELAND F. GOMBAR PE



**PERPETUAL STORMWATER  
DRAINAGE EASEMENTS**

**(“Easement Agreement”)**

Legal Description of Affected Property:

Lots 1 - 16, Outlot 1,  
Plat of Kennedy Hills, Town of Cottage Grove,  
Dane County, Wisconsin.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Grantor Owner (the "Owner") does hereby convey, grant, transfer and assign to the Grantee Town of Cottage Grove, Dane County, Wisconsin, a Wisconsin body corporate and politic (the "Town"), and its successors and assigns, the perpetual rights and easements hereinafter described.

1. ***Perpetual Accessways and Stormwater Drainage Easements.*** Owner does hereby grant, convey, transfer, and assign to the Town, perpetual accessways and stormwater easements (the “Drainage Easements”) over, under and across the premises shown and described in **Exhibit A** attached hereto and incorporated herein (the "Drainage Easement Areas") for the following purpose: to survey, construct, erect, install, grade, maintain, inspect, operate, repair, move, remove, replace and reconstruct stormwater drainage and/or storm sewer structures or other drainage and stormwater control improvements including, but not limited to, culverts and necessary underground and aboveground associated facilities, accessories and appurtenances (collectively the “Facilities”). The Drainage Easement Areas shall also serve as perpetual accessways that provide the Town and the Town’s agents, officers, employees, and contractors access, ingress and egress to the Drainage Easement Areas by foot, motorized machinery and/or motorized vehicles.
  
2. ***Binding Effect and Assignability.*** The Drainage Easements shall run with the lands described herein, are binding upon the heirs, successors and assigns of the Owner, and shall perpetually benefit the Town, its successors and assigns. The Town shall have the right to assign the easement rights granted hereunder, with or without the consent of the Owner. This Easement Agreement shall be recorded with the Dane County Register of Deeds office concurrent with recording of the

RETURN TO:

Kim Banigan, Town Clerk  
Town of Cottage Grove  
4058 CTH N  
Cottage Grove, WI 53527

P.I.N.

0711-191-8501-0

Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin (the "Plat").

3. **Restrictions on Owner.** Except as restricted by this Easement Agreement, Owner shall retain all of Owner's rights with regard to Owner's property.

a. **Obligations from Declaration Incorporated by Reference.** Owner's obligations are set forth with greater particularity in Article 3 of the Declaration of Covenants, Restrictions, Conditions and Easements for the Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin (the "Declaration") which is recorded in the Dane County Register of Deeds office and incorporated herein by reference. In the event of a conflict between the Declaration and this Easement Agreement, the more restrictive provisions shall apply.

b. **No Act to Interfere with Facilities.** Owner agrees not to perform or permit any act which interferes with the operation or maintenance of the Facilities or otherwise endangers the Facilities.

c. **Obstructions Prohibited in Drainage Easement Areas.** Within the Drainage Easement Areas, Owner shall not: erect, construct, or install any landscaping, building, fence or structure of any kind, utility pedestals, or any other objects, permanent or temporary that impedes or interferes with the flow of water, drainage, or the Facilities; plant any trees or shrubs that impede or interfere with the flow of water, drainage, or the Facilities; or, change or permit changes to the grade.

d. **Removal of Encroachments at Owner's Expense.** If any such structures are built or encroachments occur in violation hereof, and the Town determines, in its sole discretion, that the partial or complete removal or demolition of said structure(s) is necessary to abate the encroachment, then the Town shall have the right to remove or demolish said structure(s) following thirty (30) days notice of its determination to the Owner. Notice of the Town's determination shall be sent to the Owner at the address showing on the Dane County tax roll. Notice to the Town shall be sent to the Town Clerk at the Town Hall. Any notice given hereunder shall be sent: (a) by United States mail, postage pre-paid, with delivery presumed five (5) business days following mailing; (b) by registered or certified United States mail; (c) by commercial delivery service with the tracked delivery date serving as confirmation of actual delivery; or, (d) by personal delivery, with delivery on the date personally delivered. Owner shall be fully responsible for the expense incurred by the Town for such removal or demolition, including legal and professional consulting fees actually incurred by the Town. Expenses incurred by the Town may be placed on the tax roll as a special charge as permitted by law.

Owner shall not be entitled to any reimbursement from the Town for repair or replacement of such structures or encroachments.

- e. ***Owner to Mow, Maintain and Repair.*** Owner shall mow, maintain and repair the Drainage Easement Area, all as set forth with particularity in Article 3 of the Declaration of Covenants, Restrictions, Conditions and Easements for the Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin (the “Declaration”) which is recorded in the Dane County Register of Deeds office and incorporated herein by reference.
4. ***Ownership Warranty.*** Owner represents and warrants to be the sole owner of the Drainage Easement Areas.
5. ***Voluntary Transaction.*** Owner acknowledges and agrees that the conveyance of the easement rights pursuant to this Easement Agreement is voluntary. The transaction is being completed as part of the subdivision plat approval process pursuant to Wis. Stat. ch. 236.
6. ***Governing Law and Interpretation.*** This Easement Agreement shall be governed by laws of the State of Wisconsin. If any provision of this Easement Agreement is held unenforceable, the remainder of these provisions shall be given effect to the maximum extent possible. The parties agree to reform this Easement Agreement to replace any such invalid or unenforceable provisions in a manner that comes as close as possible to the intention of the stricken provision.
7. ***Complete Agreement.*** This Easement Agreement constitutes the complete and entire agreement between the parties and supersedes any previous communications, representations, or agreement, whether oral or written, with respect to the subject matter hereof.
8. ***Captions.*** The captions in this Easement Agreement are for convenience only and do not in any way limit or amplify the provisions of this Easement Agreement.
9. ***Authority to Bind.*** By executing this Easement Agreement as set forth below, each person so acting warrants and represents that he or she is duly authorized to thereby bind the respective party hereto.

**IN WITNESS WHEREOF**, Owner has executed this instrument the day and year written below (“Effective Date”).

Date: \_\_\_\_\_

**OWNER/GRANTOR:**

**KENNEDY HILLS, LLC**

\_\_\_\_\_  
By: David C. Riesop

Its: \_\_\_\_\_

And Authorized Representative

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named \_\_\_\_\_, known to me to be the person who executed the foregoing instrument, and acknowledged the same.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My Commission \_\_\_\_\_

**TOWN/GRANTEE:**

**TOWN OF COTTAGE GROVE**

By: \_\_\_\_\_  
Kris Hampton, Town Chair

By: \_\_\_\_\_  
Kim Banigan, Town Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named Kris Hampton, Town Chair, and Kim Banigan, Town Clerk, of the Town of Cottage Grove, Dane County, Wisconsin, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the Town's authority.

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: is permanent/expires \_\_\_\_\_.

**ATTACHMENT:**

Exhibit A - Description of Drainage Easement Areas

*This instrument was drafted by:*

Constance L. Anderson  
Anderson Consults, LLC  
P.O. Box 3004  
Madison, WI 53704  
608/249-1865  
[connie@andersonconsultswi.com](mailto:connie@andersonconsultswi.com)

**CONSENT OF LIENHOLDERS**

The undersigned mortgagees or other lienholders, having an interest in the real estate subject to the easements described herein, do hereby consent to the foregoing, and join in the execution hereof solely as a lienholder and hereby agrees that in the event of the foreclosure of the interest in said real estate or other sale of the real estate under judicial or non-judicial proceedings, the real estate shall be sold subject to the easements.

Dated: \_\_\_\_\_, 2020.

\_\_\_\_\_  
Lienholder Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named \_\_\_\_\_ and \_\_\_\_\_, of \_\_\_\_\_, to me known to be the \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ who executed the foregoing instrument as such officers of the corporation.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My Commission: \_\_\_\_\_

**Exhibit A**

Legal Description of Drainage Easement Areas  
(also depicted on Plat of Kennedy Hills)

**Blanket Drainage Easements Between Lots**

12 foot easement the center line of which is the lot line between any two lots on the Plat plus a 6 foot easement along the northern boundaries of Lot 9 and Lot 16, all as further depicted on the Plat

**CTH BB Drainage Easement**

15 foot easement along the northern half of the 30 foot buffer strip that runs adjacent to CTH BB and a small part of Kennedy Road and Lots 2, 3, 4, 5, 6 and Outlot 1, all as further depicted on the Plat

**[Note re Buffer Strip:** There is a 30 foot buffer strip depicted on the Plat. Half of the buffer strip is reserved for drainage as described herein, and half is reserved for the planting of trees or shrubs by the lot owner. Maintenance of the buffer strip is the sole responsibility of the lot owner. The buffer strip does not count toward backyard setback requirements. See local ordinances and building requirements for additional information.]

**Temporary Turnaround Easement**

**PROPERTY DESCRIPTION:**

Part of the NW ¼ of the NE ¼ of Section 10, Town & North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin.

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Kennedy Hills LLC, a Wisconsin Limited liability company, hereinafter referred to as "Grantor", and the Township of Cottage Grove, Dane County Wisconsin, hereinafter referred to as "Grantee"

Whereas, the Grantor is owner of and has title to real estate located in the Township of Cottage Grove, Dane County Wisconsin, upon which a circular in shape, temporary turnaround easement is to be granted; and

Whereas, the Grantee desires a temporary easement for vehicle turnaround purposes.

Now, Therefore, it is hereby agreed as follows:

- 1) The Grantor does hereby assign a temporary circular easement for vehicle turnaround purposes at the North limits of Scenic Oaks Drive and Wooded Ridge Trail, as shown on the Plat of Kennedy Hills and as described in attached Exhibit "A" and shown on the attached "Exhibit "B".
- 2) The Grantor and Grantee both acknowledge and agree that the easements are temporary in nature and the land on which the easements exist shall revert to the Grantor by operation of law at such time as the first addition to the Plat of Kennedy Hills is approved and complete, and Scenic Oaks Drive and Wooded Ridge Trail will extend North of the radius points described on the attached Exhibit "A".

In Witness Whereof, the parties hereto have set their hands and seals this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Kennedy Hills LLC by :

\_\_\_\_\_  
David C. Riesop, member

Town of Cottage Grove by:

\_\_\_\_\_  
Kris Hampton, Town Chair

\_\_\_\_\_  
Kim Banigan, Town Clerk

State of Wisconsin)

ss

County of Dane )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above named Grantor and Grantee representatives, to me known to be the persons who executed the foregoing instrument as such.

\_\_\_\_\_  
Notary Public, Dane County, Wisconsin

My commission expires \_\_\_\_\_

This space is reserved for recording data

Return to

Wisconsin Mapping LLC  
306 West Quarry St  
Deerfield, WI 53531

Parcel Identification Number/Tax Key Number

0711-101-8501-0



**EXHIBIT "A"**

Temporary Turnaround Easement "A"

Part of the NW ¼ of the NE ¼ of Section 10, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, the radius point of this 60 foot diameter circle being described as follows:

Commencing at the North ¼ corner of Section 10; thence N88°52'55"E along the North line of the NW ¼ of the NE ¼, 50.02 feet to the East line of Kennedy Road; thence S00°19'30"E along said East line, 290.80 feet; thence S89°40'30"E, 200.39 feet to the Northwesterly end of proposed Scenic Oak Drive; thence N55°05'21"E, 60.00 feet to the radius point of a 60 foot diameter circle. Said circle to extend in all directions from the radius point and to be temporary in nature and cease to be in existence at such time Scenic Oaks Drive is extended Northerly of said radius point.

Temporary Turnaround Easement "B"

Part of the NW ¼ of the NE ¼ of Section 10, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, the radius point of this 60 foot diameter circle being described as follows:

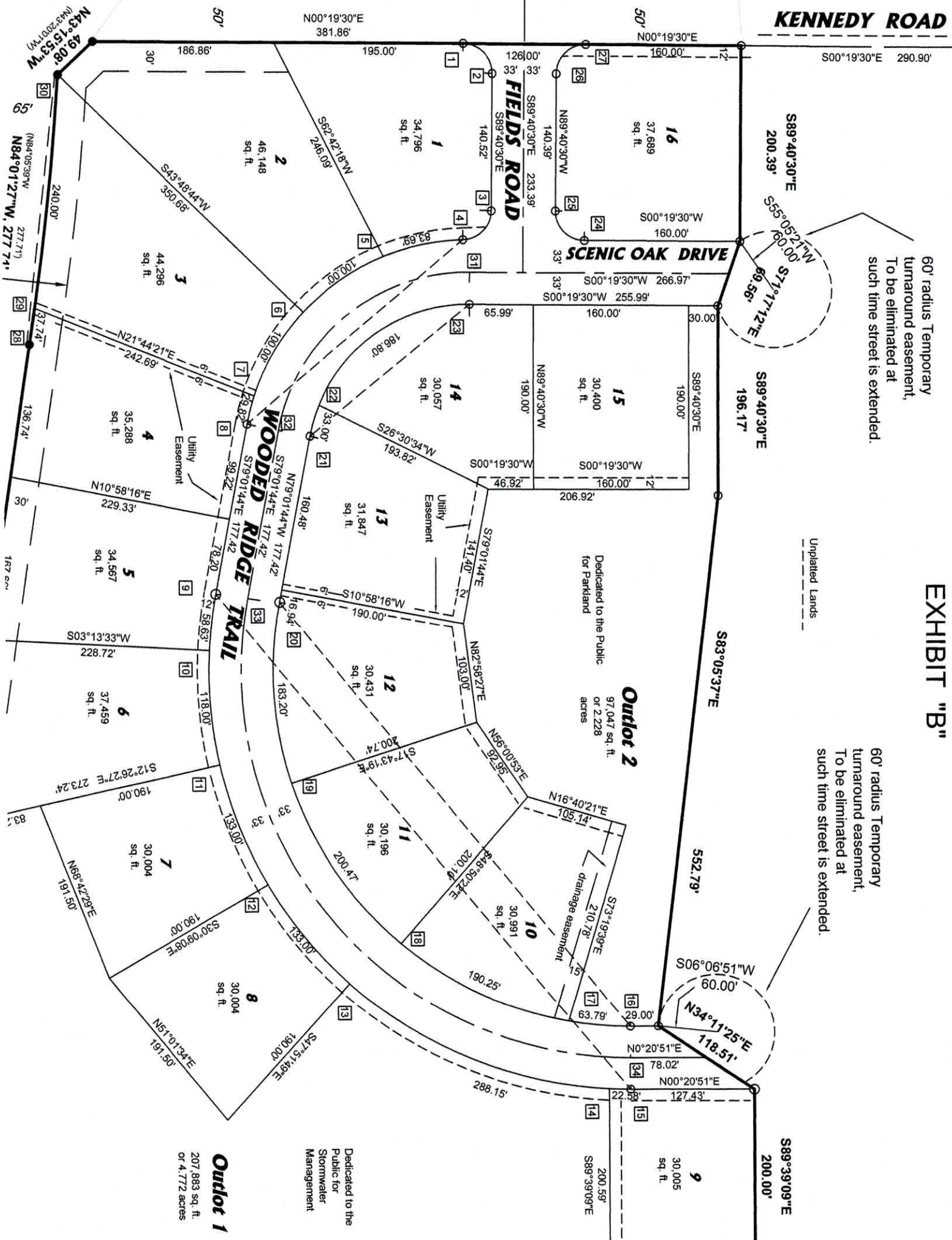
Commencing at the North ¼ corner of Section 10; thence N88°52'55"E along the North line of the NW ¼ of the NE ¼, 50.02 feet to the East line of Kennedy Road; thence S00°19'30"E along said East line, 290.80 feet; thence S89°40'30"E, 200.39 feet; thence S71°17'12"E, 69.56 feet; thence S89°40'30"E, 196.17 feet; thence S83°05'37"E, 552.79 feet to the Northwesterly end of proposed Wooded Ridge Trail; thence N06°06'51"E, 60.00 feet to the radius point of a 60 foot diameter circle. Said circle to extend in all directions from the radius point and to be temporary in nature and cease to be in existence at such time Wooded Ridge Trail is extended Northerly of said radius point.

# KENNEDY ROAD

# EXHIBIT "B"

60' radius Temporary  
turnaround easement,  
To be eliminated at  
such time street is extended.

60' radius Temporary  
turnaround easement,  
To be eliminated at  
such time street is extended.

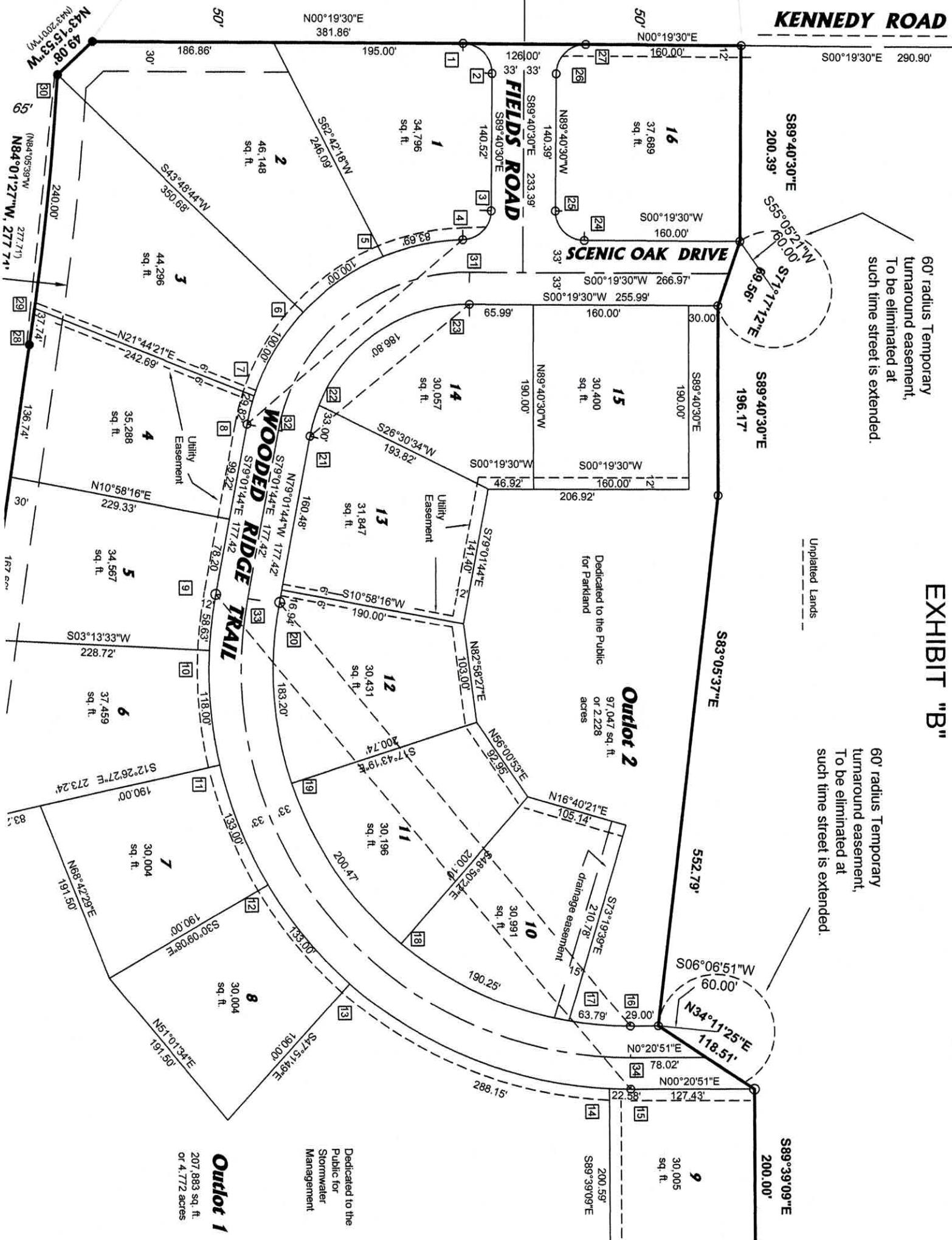


**Outlot 1**  
207,883 sq. ft.  
or 4.772 acres

Dedicated to the  
Public for  
Stormwater  
Management

**Outlot 2**  
97,047 sq. ft.  
or 2.228  
acres

Unplatted Lands



# **APPENDIX E**

## **MAINTENANCE AGREEMENT**

**AGREEMENT FOR MAINTENANCE OF  
STORMWATER MANAGEMENT MEASURES**

**RECITALS:**

- A. KENNEDY HILLS LLC  
\_\_\_\_\_, is(are) the owner(s) of property in the  
Town of COTTAGE GROVE  
\_\_\_\_\_, County of Dane, State of Wisconsin, more particularly  
described on Exhibit A attached hereto (“Property”).
- B. The County requires Owner to record this Agreement regarding maintenance of stormwater management measures to be located on the Property. Owner agrees to maintain the stormwater management measures and to grant to the County the rights set forth below.

NOW, THEREFORE, in consideration of the agreement herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the owner agrees as follows:

- 1. Maintenance. Owner and its successors and assigns shall be responsible to repair and maintain the stormwater management measures located on the Property in good condition and in working order and such that the measures comply with approved plans on file with Dane County. Said maintenance shall be at the Owner’s sole cost and expense. Owner will conduct such maintenance or repair work in accordance with all applicable laws, codes, regulations, and similar requirements. Specific maintenance task are more particularly described on Exhibit A.
- 2. Easement to County. If Owner fails to maintain the stormwater management measures as required in Section 1, then County shall have the right, after providing Owner with written notice of the maintenance issue (“Maintenance Notice”) and thirty (30) days to comply with the County’s maintenance request, to enter the Property in order to conduct the maintenance specified in the Maintenance Notice. County will conduct such maintenance work in accordance with all applicable laws, codes, regulations, and similar requirements and will not unreasonably interfere with Owner’s use of the Property. All costs and expenses incurred by the County in conducting such maintenance may be charged to the owner of the Property by placing the amount on the tax roll for the Property as a special assessment in accordance with Section 66.0703, Wis. Stats. and applicable portions of the Dane County Ordinances.
- 3. Term/Termination. The term of this Agreement shall commence on the date that this Agreement is recorded with the Register of Deeds Office for Dane County, Wisconsin, and except as otherwise herein specifically provided, shall continue in perpetuity. Notwithstanding the foregoing, this Agreement may be terminated by recording with the Register of Deeds Office for Dane County, Wisconsin, a written instrument of termination signed by the County and all of the then-owners of the Property.
- 4. Miscellaneous.
  - (a) Notices. Any notice, request or demand required or permitted under this Agreement shall be in writing and shall be deemed given when personally served or three (3) days after the same has been deposited with the United States Post Office, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Owner: KENNEDY HILLS LLC  
306 WEST QUARRY STREET  
DEERFIELD, WI 53531

This space is reserved for recording data

Return to:  
Dane County Land & Water Resources  
5201 Fen Oak Dr., Rm. 208  
Madison, Wisconsin 53718

Parcel Number(s):  
0711-101-8501-0

If to County: Dane County Land & Water Resources Department  
Water Resource Engineering Division  
5201 Fen Oak Drive, Room 208  
Madison, WI 53718

Any party may change its address for the receipt of notice by written notice to the other.

- (b) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.
- (c) Amendments or Further Agreements to be in Writing. This Agreement may not be modified in whole or in part unless such agreement is in writing and signed by all parties bound hereby.
- (d) Covenants Running with the Land. All of the easements, restrictions, covenants and agreements set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the parties hereto and their respective successors and assigns.
- (e) Partial Invalidity. If any provisions, or portions thereof, of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

X \_\_\_\_\_  
Water Resource Engineering Division Staff Signature

\_\_\_\_\_  
Print or type name

**State of WI**, County of \_\_\_\_\_; Subscribed and sworn  
before me on \_\_\_\_\_ by  
the above named person(s).

\_\_\_\_\_  
Notary Public

Print or type name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

X \_\_\_\_\_  
Owner Signature

\_\_\_\_\_  
Print or type name

**State of WI**, County of \_\_\_\_\_; Subscribed and sworn  
before me on \_\_\_\_\_ by  
the above named person(s).

\_\_\_\_\_  
Notary Public

Print or type name: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

**DRAFTED BY: CLEVELAND F. GOMBAR PE**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## EXHIBIT A

### **LEGAL DESCRIPTION OF PROPERTY:**

Part of the NW 1/4 of the NE 1/4 of Section 10, T.7N.,R.11E. Town of Cottage Grove, Dane County, Wisconsin, described as follows:

Commencing at the North 1/4 corner of Section 10; thence N88°52'55"E, 50.02 feet to the East line of Kennedy Road; thence S00°19'30"E, 280.71 feet along said East line to the point of beginning; thence 589°40'30"E, 200.40 feet; thence S63°43'03"E, 73.41 feet; thence S89°40'30"E, 196.17 feet; thence S80°03'41"E, 378.54 feet; thence S89°39'13"E, 175.92 feet; thence S51°54'07"E, 83.47 feet; thence S89°39'13"E, 200.00 feet to the East line of the NW 1/4 of the NE 1/4; thence S00°20'50"W along said line, 736.58 feet to the North line of County Trunk Highway BB; thence N81°18'28"W along said line, 977.61 feet to the point of curvature of a curve to the left, said curve having a radius of 2930.00 feet and a delta angle of 5°25'57", the long chord of which bears N84°01'27"W, 277.71 feet; thence Northwesterly along the arc of said curve and North line, 277.81 feet; thence N43°15'49"W, 49.08 feet to the East line of Kennedy Road; thence N00°19'30"E along said line, 678.04 feet to the point of beginning. The above described containing 924,275 square feet or 21.22 acres.

PN#'s 0711-101-8501-0

### **INSPECTION, MAINTENANCE, & PROHIBITIONS**

All components of the storm water system shall be inspected at least semi-annually in early Spring and early Autumn. Repairs will be made whenever the performance of a storm water control device is compromised as described below. Owner shall maintain records of all inspection and maintenance activities.

#### **Wet Detention Pond**

- The Owner shall visually inspect the pond outlet structure and pond perimeter annually. The pond perimeter area shall be mowed a minimum of twice per year.
- Mowing shall maintain a minimum grass height of 6 to 8 inches. All undesirable vegetation and volunteer tree growth shall be removed, including close proximity to the outlet structure.
- No plantings or structures of any kind are permitted within the detention pond area, without prior written approval of the Approving Agency.
- Siltation in the pond shall be dredged and disposed offsite in accordance with NR 347.
- Dredging shall be required on a frequency as described in WIDNR Wet Detention Pond Standard 1001 or at a minimum when pond wet-storage depth is decreased by 2 feet or as required by the Approving Agency.
- The Owner shall maintain records of inspections.

#### **Culverts and Storm Sewer:**

- Visual inspection of components shall be performed and debris removed from inlets and storm sewer manholes.
- Repair inlet/outlet areas that are damaged or show signs of erosion.
- Repairs must restore the component to the specifications of the original plan.

#### **Riprap**

- Riprap should be inspected after all storm events for displaced stones and erosion. All necessary repairs should be made immediately. Accumulated sediment should be removed periodically.

### **Grassed Swales:**

- Swales should be inspected periodically during the first year of use and after all major storm events in perpetuity for possible erosion to the channel.
- Trash and other debris should be removed seasonally.
- Gabion Dams and Rock Check Dams should be inspected for evidence of bypassing and 2" washed stone shall be removed and replaced if accumulated biomass prevents drainage.
- Channelization, barren areas, and low spots within the channel should be repaired and reseeded.
- Accumulated biomass should be removed periodically.
- All undesirable vegetation and volunteer tree growth shall be removed.
- Mowing shall maintain a minimum grass height of 6 to 8 inches.

### **Earth Diversion Berm**

- A 2 foot high vegetated earth diversion berm shall be maintained at the locations shown on the approved Erosion Control and Stormwater Management Plan.
- The berm should be inspected annually and after storm events greater than 0.5 inches to ensure it is operating properly and to check for any potential problems, such as the formation of rills and gullies, bare spots, and sediment accumulation.
- Mowing should be performed during dry periods using lightweight equipment to prevent soil compaction and damage to vegetation.

### **Bio-Infiltration Devices (Includes Infiltration Basins and Infiltration Pond)**

- Infiltration ponds should be inspected periodically during the first year of use and after all major storm events in perpetuity for possible erosion and/or clogging.
- Trash and other debris should be removed regularly to prevent clogging of the overflow pipe and infiltration area.
- Bio-Infiltration devices and ponds should be inspected at least twice a year to ensure they are operating properly and to check for any potential problems, such as: subsidence, erosion, and sediment accumulation.
- Accumulated sediment should be removed from the basin as necessary.
- The ponding times of the infiltration/bioretenion systems should be monitored annually for excessive ponding times. If the ponding time exceeds 24 hours the surface should be tilled. If tilling does not reduce ponding time to below 24 hours than the top 3 inches of the basin should be removed and replaced with fresh soil and replanted.
- Perform soil pH testing every 5 years or if the bio-infiltration device is failing to function properly and if vegetation fails to thrive. Adjust soil pH and replant those areas if required.
- No plantings or structures of any kind are permitted within the detention pond area, without prior written approval of the Approving Agency.
- Channelization, barren areas, and low spots within the basin should be repaired and reseeded.
- Accumulated biomass should be removed periodically.
- All undesirable vegetation and volunteer tree growth shall be removed.
- Inspect observation wells, underdrains, inlets and outlets and exercise emergency drawdown devices and valves at least twice a year to ensure they are operating properly. Ensure that all cleanouts, caps, vents and animal guards are in good condition and functioning as designed.
- Inspect and maintain the site access drive to the bio-infiltration devices regularly.

**DEDICATION AND  
SUPPLEMENTAL AGREEMENT REGARDING  
STORMWATER MANAGEMENT OF OUTLOT 1  
("Supplemental Agreement")**

Legal Description of Affected Property:  
Lots 1-16 and Outlot 1,  
Plat of Kennedy Hills, Town of Cottage Grove,  
Dane County, Wisconsin.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Owner ("Owner") does hereby dedicate to the Town of Cottage Grove, Dane County, Wisconsin, a Wisconsin body corporate and politic (the "Town"), and its successors and assigns, the area described as Outlot 1, Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin (hereinafter "Outlot 1") as a dedication to the public for stormwater management.

Owner and Town (collectively herein, the "Parties") further agree as follows:

1. ***Independent Rights for the Town.*** The Parties agree that this Supplemental Agreement establishes independent rights for the Town, and does not create obligations for the Town. The Town may, but is not obligated to, proceed pursuant to this Supplemental Agreement regardless of other enforcement rights that may be available to the Town, the Owner(s), the Association or the County.
2. ***Agreement for Maintenance of Stormwater Management Measures.*** Outlot 1 is subject to an ***Agreement for Maintenance of Stormwater Management Measures*** (the "County Agreement") that is by and between Owner and Dane County (the "County"), and which is incorporated herein by reference. The County Agreement is or shall be recorded in the Dane County Register of Deeds office concurrent with recording of this Supplemental Agreement. Among other things, the County Agreement establishes the maintenance standards for the stormwater management measures on Outlot 1. The Parties agree that these standards apply to the Supplemental Agreement.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:

Kim Banigan, Town Clerk  
Town of Cottage Grove  
4058 CTH N  
Cottage Grove, WI. 53527

P.I.N.

0711-101-8501-0



3. ***Declaration of Covenants, Restrictions, Conditions and Easements.*** The Plat of Kennedy Hills in the Town of Cottage Grove, Dane County, Wisconsin (the “Plat”) is subject to a ***Declaration of Covenants, Restrictions, Conditions and Easements*** (the “Declaration”). The Declaration is or shall be recorded in the Dane County Register of Deeds office concurrent with recording of this Supplemental Agreement. Among other things, the Declaration provides that the Kennedy Hills Homeowners Association, Inc. (the “Association”) shall maintain all stormwater management measures in Outlot 1 in accordance with the maintenance standards set forth in the County Agreement.

3.1. In the event that the Association fails to act in the manner set forth in the Declaration, the Town shall have the right, but not the obligation, to undertake all or such portion of the maintenance that the Town deems prudent and necessary. Except where an emergency presents, the Town will give reasonable notice to the Association and the Owner(s) prior to undertaking maintenance. Where the Town does undertake maintenance, the full cost incurred by the Town, including associated engineering and legal fees, shall be invoiced to the Association. If the Association fails to remit full payment to the Town within thirty (30) days of demand therefor, the Town may place a special charge or assessment against each lot within the Plat (that is, Lots 1-16) on an equally prorated per lot basis. The special charge or assessment may be recovered in the manner provided by law for special charges and/or assessments, may be included in the real estate tax bill for each of the lots and may become a lien against each lot where the special charge and/or assessment goes unpaid. If the Town finds it necessary to engage in collection efforts, the Owner(s) who has failed to pay the amount due shall be responsible for the actual costs of collection, including engineering and legal fees, in connection with any such collection action.

3.2. As an alternative to the Town undertaking all or a portion of the maintenance as permitted by section 3.1, the Town may seek injunctive relief against the Association and/or the Owner(s) of the lots in the Plat (Lots 1-16) requiring that the Association and/or the Owner(s) perform the maintenance required by the County Agreement, damages, and the actual costs incurred by the Town, including engineering and legal fees, in connection with any such action.

4. ***Binding Effect and Assignability.*** The Supplemental Agreement shall run with the lands described herein, is binding upon the heirs, successors and assigns of the Owner, and shall perpetually benefit the Town, its successors and assigns.

5. ***Ownership Warranty.*** Owner represents and warrants that Owner is the sole owner of Outlot 1, and is authorized to dedicate Outlot 1 to the Town for stormwater management purposes.
6. ***Conflict Among Agreements.*** If there is a conflict among the interpretations of the Declaration, the County Agreement and the Supplemental Agreement, the Parties agree to reform the conflicting provisions so that the most restrictive provision applies, thereby assuring compliance with all of the documents identified herein.
7. ***Governing Law and Interpretation.*** The Supplemental Agreement shall be governed by laws of the State of Wisconsin. If any provision of this Supplemental Agreement is held unenforceable, the remainder of the provisions shall be given effect to the maximum extent possible. The Parties agree to reform this Supplemental Agreement to replace any such invalid or unenforceable provisions in a manner that comes as close as possible to the intention of the stricken provision.
8. ***Complete Agreement.*** This Supplemental Agreement constitutes the complete and entire agreement between the parties with respect to the subject matter herein and supersedes any previous communications, representations, or agreement, whether oral or written, with respect to the subject matter herein.
9. ***Captions.*** The captions in this Supplemental Agreement are for convenience only and do not in any way limit or amplify the provisions of this Supplemental Agreement.
10. ***Authority to Bind.*** By executing this Supplemental Agreement as set forth below, each person so acting warrants and represents that he or she is duly authorized to thereby bind the respective party hereto.

*INTENTIONALLY LEFT BLANK  
SIGNATURES ON FOLLOWING PAGES*

**IN WITNESS WHEREOF**, Owner has executed this instrument the day and year written below (“Effective Date”).

Date: \_\_\_\_\_

**OWNER:**

**KENNEDY HILLS, LLC**

\_\_\_\_\_  
By: David C. Riesop

Its: \_\_\_\_\_

And Authorized Representative

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named David C. Riesop, known to me to be the person who executed the foregoing instrument, and acknowledged the same.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My Commission \_\_\_\_\_

**TOWN OF COTTAGE GROVE**

By: \_\_\_\_\_  
Kris Hampton, Town Chair

By: \_\_\_\_\_  
Kim Banigan, Town Clerk

STATE OF WISCONSIN

COUNTY OF DANE

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named Kris Hampton, Town Chair, and Kim Banigan, Town Clerk, of the Town of Cottage Grove, Dane County, Wisconsin, to me known to be the persons and officers who executed the foregoing instrument and acknowledged that they executed the same as such officers by the Town's authority.

\_\_\_\_\_  
Print Name \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission: is permanent/expires \_\_\_\_\_.

*This instrument was drafted by:*

Constance L. Anderson  
Anderson Consults, LLC  
P.O. Box 3004  
Madison, WI 53704  
608/249-1865  
[connie@andersonconsultswi.com](mailto:connie@andersonconsultswi.com)

**CONSENT OF LIENHOLDERS**

The undersigned mortgagees or other lienholders, having an interest in the real estate subject to the easements described herein, do hereby consent to the foregoing, and join in the execution hereof solely as a lienholder and hereby agrees that in the event of the foreclosure of the interest in said real estate or other sale of the real estate under judicial or non-judicial proceedings, the real estate shall be sold subject to the easements.

Dated: \_\_\_\_\_, 2020.

\_\_\_\_\_  
Lienholder Name

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Attest: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named \_\_\_\_\_ and \_\_\_\_\_, of \_\_\_\_\_, to me known to be the \_\_\_\_\_ and \_\_\_\_\_ of \_\_\_\_\_ who executed the foregoing instrument as such officers of the corporation.

\_\_\_\_\_  
Print Name: \_\_\_\_\_

Notary Public, State of Wisconsin

My Commission: \_\_\_\_\_

**PLAT OF KENNEDY HILLS,  
TOWN OF COTTAGE GROVE,  
DANE COUNTY, WISCONSIN:**

**DECLARATION OF COVENANTS, RESTRICTIONS,  
CONDITIONS AND EASEMENTS**

(“Declaration”)

Legal Description of Affected Property:  
Lots 1-16, Outlot 1 and Outlot 2,  
Plat of Kennedy Hills, Town of Cottage Grove,  
Dane County, Wisconsin.

THIS SPACE RESERVED FOR RECORDING DATA

RETURN TO:  
Kim Banigan, Town Clerk  
Town of Cottage Grove  
4058 County Road N  
Cottage Grove, WI 53527

PARCEL IDENTIFICATION NUMBERS:

0711-101-8501-0

Kennedy Hills, LLC, is a Wisconsin limited liability company, and is the owner and developer of property in the Town of Cottage Grove, County of Dane, State of Wisconsin, platted as Lots 1 through 16 (inclusive), Outlot 1, and Outlot 2, Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin (the "Property") and hereby declares that the Property is and shall remain subject to the following restrictions, covenants, conditions and easements, and that all of such lots are and shall be held, sold, occupied, conveyed and transferred subject to the covenants, restrictions, conditions and easements set forth in this Declaration.

This Declaration is subject to amendment to include future additions to the Plat of Kennedy Hills, which are anticipated. Future additions are on lands adjacent to the Property and under the Developer's control.

**PLEASE NOTE:** This Declaration creates certain private rights and obligations among the parties identified herein that may be enforced in a court of law or equity. (See, for example, Article 3, paragraph 3.28). State law, County ordinances and/or Town ordinances also establish requirements with respect to the subject matter of this Declaration. Governmental authorities are not obligated to enforce this Declaration even where public rights are implicated, and may not have jurisdiction to the extent that the Declaration creates a private rights or obligations between private parties.

## ARTICLE 1

### Definitions

For purposes of this Declaration, the following terms shall be defined in the following manner:

1.1. "Developer" shall refer collectively to Kennedy Hills, LLC, a Wisconsin limited liability company, and its representatives, successors and assigns.

1.2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to a platted lot (exclusive of outlots) within the Property, except that as to any such lot which is the subject of a land contract wherein the purchaser is in possession, the term "Owner" shall refer to said purchaser instead of the land contract vendor.

1.3. "Property" shall mean and refer to the Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin.

1.4. "Town" shall mean the Town of Cottage Grove, Dane County, Wisconsin, or its successor in interest.

1.5. "County" shall mean Dane County, Wisconsin.

1.6. "Lot" shall refer to a platted lot on the Property, and does not include Outlots 1 and 2 unless said outlot(s) are expressly included.

## ARTICLE 2

### Property Subject to This Declaration

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the Town of Cottage Grove, Dane County, Wisconsin, and is known as the Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin. The real property includes Lots 1-16, Outlot 1 and Outlot 2 (collectively, the "Property").

## ARTICLE 3

### Architectural Control and Protective Covenants and Restrictions

3.1. Plan Review Required for all Buildings and Structures. For all buildings and structures to be erected or placed on any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans for all such buildings or structures must be submitted to the Developer or the Architectural Control Committee, whichever is then applicable, for written approval as to appearance, the quality of workmanship and materials, harmony of exterior design, including exterior colors, size, location with respect to topography and finish grade elevation, site layout, roof pitch, location of improvements and amount, quality and nature of landscaping, prior to commencement of any construction on any lot.

The roof pitch must be a minimum of 5/12 for gable roofs and 4.5/12 for hip roofs, provided however, that the Developer may approve roofs having a minimum of 4/12 roof pitch if the Developer determines, in its sole judgment and discretion, that the overall architecture of the subject building will

be attractive and will not adversely affect other lots within the Property. 30-year (or more) architectural dimensional shingles are required, provided however, that the Developer may approve the use of other roofing materials, if the Developer determines, in its sole judgment and discretion, that the use of other roofing materials will be attractive and will not adversely affect other lots within the Property. Vinyl and aluminum siding are restricted to the rear and side elevations and up to 80% of the front elevation of the residence (garage openings shall be excluded from this calculation). Materials that may be used on the front elevation of the residence in the portion of such elevation that is not vinyl or metal siding shall include, but not be limited to, the following: brick, stone, stucco, EIFS, glass, natural wood, engineered wood siding, horizontal lap concrete siding or any other materials that have the same effect or appearance. Brick, stucco, stone or other materials shall be required to terminate at an interior corner of the front facade, or other significant architectural transition, where a change in materials is logical and aesthetically appropriate. For purposes of this Declaration, the term "structure" shall include play structures, fences, patios, decks and swimming pools.

3.2. Architectural Control Committee. After the Developer and its representatives, successors and assigns, cease to have any title to any lot subject to this Declaration, the plans, specifications, site, grading and landscaping plans, and all other matters to be submitted to the Developer under this Declaration, must be submitted to the Architectural Control Committee ("Committee") for approval in writing by a majority of the members of said Committee. The Committee shall consist of the members of the Board of Directors of the Kennedy Hills Homeowners Association, Inc., or in the alternative, if the Directors of the Association so elect, three persons elected by a majority of the members of the Board of Directors of the Association. A copy of all site, grading and landscaping plans shall be kept by the Developer or the Committee for the benefit of other Owners and enforcement of this Declaration.

3.3. Contractor Approval Required. For each building erected or placed on any lot subject to this Declaration, the prime contractor or builder to be hired for construction of such building shall be approved in writing by the Developer or the Committee, whichever is then applicable, prior to commencement of construction. The approval of the Developer or the Committee shall not be unreasonably withheld. Such approval may be withheld for reasons such as the proposed contractor's or builder's financial status, business history and prospects, building reputation or any other reason which would be similarly relied upon by a reasonably prudent businessperson then developing a neighborhood of quality single family residences.

3.4. Alterations of Exterior Appearance Require Approval. No alteration in the exterior appearance of existing buildings or structures, including but not limited to, exterior remodeling and the construction of play structures, fences, patios, decks, and swimming pools, shall be made without the prior written approval of the Developer or the Committee, whichever is then applicable.

3.5. Best Efforts Required for Preservation of Trees and Vegetation; Approval Required for Removal. The existing vegetation of each lot subject to this Declaration, including trees with a diameter of three (3) inches or greater, shall not be destroyed or removed except where essential and approved in writing by the Developer or the Committee, whichever is then applicable. The Owner shall also use best efforts to preserve the mature trees on its lot. If trees with a diameter of three (3) inches or greater, or vegetation, is removed or destroyed without approval, the Developer or Committee may require the replanting or replacement of same, the cost thereof to be borne by the Owner. This paragraph does not apply to the Developer.

3.6. Building Elevations Set; Certified As-Built Grading and Stormwater Plans Required; Violations and Enforcement. The lowest exposed building elevation on any lot within the Property shall in all cases be a minimum of two (2) feet above the lowest lot corner elevation



at time of initial development, which grade is established in the approved grading plans. The Grading Plan applicable to this Plat overall is described on Exhibit A, which is incorporated herein by reference as if set forth fully herein. The elevation of a lot shall not be changed so as to materially affect the surface elevation, the projected stormwater flows per the approved grading plans, or the grade of the surrounding lots. A copy of all site, grading and stormwater plans shall be kept by the Developer or the Committee to benefit both the Lot owner planning individual Lot elevations as well as other owners within the Plat.

FOLLOWING CONSTRUCTION OF A RESIDENCE ON A LOT, THE CURRENT OWNER OF RECORD SHALL PROVIDE THE TOWN BUILDING INSPECTOR WITH AS-BUILT GRADING DOCUMENTS CERTIFYING THAT GRADING AS-BUILT ON THE LOT IS CONSISTENT WITH THE GRADE ESTABLISHED BY THE APPROVED AS-BUILT GRADING AND STORMWATER PLANS FOR THE PLAT DESCRIBED IN EXHIBIT A. THE TOWN BUILDING INSPECTOR SHALL NEITHER SIGN-OFF ON THE FINAL INSPECTIONS REQUIRED UNDER THE BUILDING PERMIT NOR ISSUE AN OCCUPANCY PERMIT UNTIL THE CURRENT OWNER OF RECORD PROVIDES CERTIFICATION BY A QUALIFIED CONSULTANT THAT THE AS-BUILTS FOR THE LOT COMPLY WITH THE APPROVED AS-BUILT GRADING AND STORMWATER PLANS FOR THE PLAT. IF THE AS-BUILTS FOR THE LOT DO NOT COMPLY WITH APPROVED AS-BUILT GRADING AND STORMWATER PLANS, THEN THE CURRENT OWNER OF RECORD SHALL BE OBLIGATED TO BRING THE LOT INTO COMPLIANCE BEFORE OCCUPANCY IS PERMITTED.

No earth, rock, gravel, or clay shall be excavated or removed from any Lot within the Property without the approval of the Developer or the Committee, whichever is then applicable.

Violations of the approved grading and stormwater plans shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action for injunctive relief or damages as appropriate against the Owner and others violating such grading and stormwater plan.

3.7. Single Family Residential Only; Square Footage Requirements. All lots within the Property (other than outlots) shall be used only for single family residential purposes, except that, prior to commencement of construction of public improvements on the Property, Developer may continue to use lands owned by Developer for existing agricultural purposes and uses.

The following minimum floor area requirements shall apply to all single family residential buildings erected on any lots subject to this Declaration:

- (a) No single-story building shall have less than 1,500 square feet.
- (b) No two-story building shall have less than 1,600 square feet.
- (c) No raised ranch, bi-level, or trilevel building, or other building style not covered by paragraphs (a) or (b), or this paragraph (c), shall have less than 1,600 square feet on the main two floors.

For the purposes of determining floor area, stair openings shall be included, but open porches, screened porches, attached garages, and basements, even if the basements are finished, shall be excluded.

The above minimum requirements may not be waived by the Developer or the Committee, whichever is then applicable, without approval of the Town.

Violations of the approved square footage requirements shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action for injunctive relief or damages as appropriate against the Owner and others for violating such square footage requirements.

3.8. Attached Garage; Requirements. All single-family residential buildings must have an attached garage and such garage must contain not less than two (2) nor more than four (4) garage stalls for automobiles or other vehicles (tandem stalls are encouraged), and must be enclosed. Garages shall be directly attached or connected to the residence. Carports, which are defined as garages not enclosed on all four (4) sides, are prohibited. Side load garages are allowable and encouraged throughout the Property. Except for side loading garages which shall not be limited by this sentence, the width of the garage facing a public street shall be limited to no more than 50% of the overall width of the front facade, unless one or more garage stalls is recessed behind the front facade by at least 4 feet.

3.9. Buildings Not to be Moved to or Relocated to a Lot. No building previously erected elsewhere may be moved onto any lot subject to this Declaration, unless approved by the Developer or the Committee, whichever is then applicable, in their discretion.

3.10. Driveway and Culvert Requirements. All driveways must be concrete, except where otherwise required by the Town of Cottage Grove. There shall be at least three feet of a two-inch thick bituminous mixture (hot mix) of asphalt placed between the end of the concrete driveway (or over the concrete) so that the end of the driveway matches street grade in the main traveled portion of the road. The Owner shall be responsible for selection of an appropriately sized culvert and proper installation and maintenance of the driveway culvert in a manner that does not interfere with the approved drainage plans for the Property. The Owner shall be responsible for obtaining a driveway, culvert or right-of-way permit from the Town of Cottage Grove, as required by Town ordinances.

Violations of the approved driveway and culvert requirements shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action for injunctive relief and/or damages as appropriate against the Owner and others violating such driveway and culvert requirements.

3.11. Accessory Buildings and Structures. Accessory buildings or structures, including, but not limited to, storage sheds, detached garages and above ground swimming pools, are expressly prohibited within the Property except where approved in writing in advance by the Developer or Committee, whichever is then applicable.

Violations of the accessory buildings and structures requirements shall give either the Developer or Committee, whichever is then applicable, any adjacent or affected Owner, and/or the Town of Cottage Grove a cause of action against the Owner and others violating such accessory buildings and structures requirements for injunctive relief and/or damages as appropriate.

3.12. Public Sidewalk. Where public sidewalks exist, it is the responsibility of the abutting lot owner to maintain same in a safe and passable condition, reasonably free from snow, ice or obstruction.

3.13. Limitations on Certain Structures as Residence. No trailer, basement, tent, shack, garage, barn, or any part thereof, shall ever be used as a residence, temporary or permanent, nor shall any residence be of a temporary character.

3.14. Parking and Storage. Parking of commercial or service vehicles owned or operated by residents within the Property is prohibited unless such vehicles are kept in garages. Parking or storage of boats, travel trailers, mobile homes, campers, and other recreational vehicles within the Property is prohibited unless kept inside garages. Parking of more than three (3) vehicles in the driveway or on the street within the Property of any size, by the residents or owners of any one lot in the Property, shall be prohibited, except for vehicles of guests, invitees or contractors of the residents or owners of such lot. This section shall not prohibit the temporary parking of any vehicles otherwise prohibited, if such parking is for the sole purpose of loading or unloading such vehicles at the lot at which parked, or for a period not to exceed twenty-four (24) hours. No cars or other vehicles shall be parked on lawns, yards or ditch areas at any time. All garage doors shall be closed when the garage is not being actively used. Trash or recycling containers may not be located, stored or placed in the front yard of the residence, except during the period of 12 hours before or after the time of collection of trash or recyclables by the Town of Cottage Grove or a trash collection contractor.

3.15. Mowing and Yard Maintenance Required. All areas of lots (excluding outlots) not used as a building site or lawn or under cultivation as a garden shall have a cover crop and be kept free from noxious weeds. All lawns and unoccupied lots are to be mowed to grass length of 6" or less and maintained in a manner consistent with neighboring lots on the Property. The Owner shall keep each lot (excluding outlots), and all improvements, in good order and repair and free of debris, including, but not limited to, the mowing of all lawns, the pruning of all trees and shrubbery and the painting (or other external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with good property management. This paragraph shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in the back yards, and shall be located no closer than ten (10') feet from the lot line, and the garden area on any lot may not exceed twenty (20%) percent of the lot area not covered by residence, garage and driveway.

3.16. Land Contracts. On any lot conveyed by land contract or deed from the Developer, construction shall be commenced within three (3) years from the date of such land contract or deed. Upon violation of this restriction, the Developer shall have the option, exercisable by written notice to the lot owner within ninety (90) days after the expiration of such three (3) year period, to have said lot conveyed to the Developer at the original sales price, free and clear of any liens and encumbrances created by act or default of the Owner of such lot, with taxes and installments on assessments for the year in which conveyance occurs being prorated as of date of such conveyance. Developer may waive its rights under this section in writing, in its discretion.

3.17. Time for Completion of Construction. Construction of all buildings shall be completed within eight (8) months after issuance of a building permit for the respective building. Landscaping (including grading, sodding, and seeding) and pouring of driveway shall be completed within one hundred eighty (180) days of completion of construction, provided weather conditions so allow. If such construction or landscaping is delayed due to matters beyond the control of the lot owner, the time for completion shall be extended by the period of such delay. **NOTE:** State law, County ordinances and/or Town ordinances may provide a different time period for completion of construction and/or include other requirements with respect to construction. The Owner is required to meet the more restrictive requirements.

3.18. Limits on Antennas and Satellite Dishes. Except to the extent preempted by federal or state law, no exterior antennas, satellite dishes over one (1) meter in diameter, solar panels, wind mills, walls or fences of any kind shall be permitted within the Property unless approved in writing in

advance by the Developer or the Committee, whichever is then applicable, including approval of the location, material, height and color thereof. Satellite dishes of one (1) meter or less in diameter shall be permitted, but shall be installed so that they are not visible from the street unless such requirement is preempted by federal law.

3.19. No Noxious or Offensive Trade. No noxious or offensive trade or activity shall be carried on, nor shall anything be done which may be or will become a nuisance to the neighborhood. This shall not be construed to prevent a family garden or orchard, provided that all family gardens and orchards shall be located in backyards, and shall be located no closer than ten (10') feet from the lot line, and the garden area on any lot may not exceed twenty (20%) percent of the lot area not covered by the residence, garage and driveway. No burning barrels shall be allowed on any lot.

3.20. Limits on Domestic Animals; No Commercial Animal Boarding. No more than three (3) domestic animals may be kept on any lot subject to this Declaration. Commercial animal boarding, kenneling or treatment is expressly prohibited, whether for free or not, within the Property. Outdoor kennels are not allowed except with written approval from Developer or Association.

3.21. No Change in Elevations. The Owner of any lot subject to this Declaration shall not change the elevation of any public utility or drainage easement, as shown on the final plat or otherwise recorded, in excess of six (6) inches without the permission of the Town and all of the applicable utilities and shall be responsible for any damages caused to underground utilities based on any changes in grade of more than six (6) inches. Costs associated with obtaining permission from the Town (such as the costs the Town incurs for engineering and legal review) shall be paid by the Owner.

3.22. No Re-Subdivision. No lot or outlot as platted shall be re-subdivided. No boundary line within the Property shall be changed, except with the approval of the Developer or the Committee, whichever is then applicable, and approval of governmental authorities. This paragraph shall not be construed to prevent the use of one lot and part or all of another lot or lots as one building site.

3.23. Signage. No signs of any type shall be displayed to public view on any lot without the prior written consent of the Developer or the Committee, whichever is then applicable, except for lawn signs of not more than eight (8) square feet in size advertising the property where located for sale, and (b) signs erected by Developer, or its agents, advertising lots within the Property for sale.

3.24. Local Requirements. All buildings constructed on any lots subject to this Declaration shall conform to all governmental zoning requirements and all front-yard, side-yard and setback requirements imposed by local ordinance and the recorded final plat, whichever is more restrictive.

3.25. Interference with Drainage and Stormwater Prohibited. No Owner of any lot shall regrade or obstruct any swale, drainage way, drainage ditches or stormwater detention area, whether established by easement or not, which is in existence at the time of development on such lot, so as to impede the flow of surface water across such swale, ditches or drainage way, or interfere with the proper functioning of any such swale, ditches, drainage way or stormwater detention area, and no structure, planting or other materials shall be placed or permitted to remain within any such swale, ditches, drainage way or stormwater detention area. The road ditch area directly adjacent to an Owner's lot shall be maintained and mowed as lawn by the Owner. An Owner who violates this provision may be liable for damages that said violation causes to third parties. **NOTE:** For additional information, the Owner is directed to the *Agreement for Maintenance of Stormwater Management Measures* between the Owner and Dane County, the *Dedication and Supplemental*

Agreement regarding Stormwater Management of Outlot 1 between the Owner and the Town, and the Perpetual Stormwater Drainage Easements between the Owner and the Town. Each of the aforementioned documents has been recorded in the Dane County Register of Deeds office and runs with the land.

3.26. Landscaping Requirements. The following landscaping requirements apply to all lots (other than outlots) within the Property:

(a) All yards must be either (i) sodded or (ii) or seeded, fertilized and crimp mulched or covered with an erosion mat, including street terraces. The lot Owner shall comply with all Town and Dane County erosion control requirements.

(b) Landscape plantings and maintenance of the premises and adjoining street terrace shall be the responsibility of the lot Owner. Complete visual screening of the front, rear and side boundaries of the premises is prohibited without approval of the Developer or the Committee, whichever is then applicable.

(c) The landscaping plan for each lot shall achieve a minimum of 500 landscaping points as determined by the following point schedule:

Landscaping Element	Point Value
Canopy Tree (2"-3" caliper at 18 inches above root ball)	125
Canopy Tree (3"-4" caliper at 18 inches above root ball)	150
Canopy Tree (greater than 4" at 18 inches above root ball)	200
Canopy Tree or Small Tree (1"-1-1/2" caliper at 18 inches above root ball, i.e., Crab, Hawthorn)	100
Evergreen Tree (4 to 6 feet in height)	100
Large Deciduous Shrub (3-yr. transplant, 36" min.)	20
Small Deciduous Shrub (3-yr. transplant, 18" min.)	10
Decorative Wall (per face foot)	5

3.27. Committee's Right to Review Plans. The Developer, after a period of ten (10) years from the date of recording the final Plat or after the Developer and its representatives, successors and assigns, cease to have any title to any lot subject to this Declaration, whichever comes first, hereby assigns to the Committee all of Developer's rights to approve the plans, specifications, site, grading and landscaping plans, and all of the items set forth in Article 3 hereof.

3.28. Review of Plans. In the event the Developer or the Committee, whichever is then applicable, does not affirmatively approve or reject the plans, specifications and site, grading and landscaping plans, the prime contractor or builder, alterations, or any other matters which must be submitted to the Developer or Committee, within thirty (30) calendar days after the same have been submitted to the approving authority in writing, then such approval shall not be required in that instance. However, even though approval shall not be required, the standards established by this Article 3 shall continue to apply.

3.29. Maintenance of Stormwater Management Facilities. The Kennedy Hills Homeowners Association, Inc. shall maintain all stormwater management facilities on Outlot 1 on the Plat in

accordance with best management practices, the terms of the Dane County stormwater management permit and erosion control permits issued with respect to the Property, the plans for the stormwater management facilities approved by Dane County and the *Agreement for Maintenance of Stormwater Management Measures* recorded in the Dane County Register of Deeds Office and applicable to the Property. Best management practices include: protection and maintenance of bio-retention areas and the underdrain outlet pipe; regular cleaning and removal of sediment buildup in bio-retention areas and detention ponds; mowing of drainageways (by the Kennedy Hills Homeowners Association, Inc. or the Owner on which public drainage easements are located); keeping public drainage easements free of structures and debris; and, removal of noxious weeds to maintain the health of planting within the bio-retention areas.

3.30. Town Rights (Not Obligations) for Maintenance of Stormwater Management Facilities and Public Drainage Easements. The Town of Cottage Grove may enter such public stormwater drainage easement areas, bio-retention areas and Outlot 1 and perform such maintenance as is required hereunder at the expense of the Association and the Owners of the lots with the Property, and the cost to the Town of Cottage Grove thereof, if not paid in full by the Association, or the Owners within 30 days after written demand by the Town, shall be a special charge against the Lots (other than the outlots) within the Property, on a pro rata basis, and may be recovered in the manner provided by law for special charges, be included in the real estate tax bill for the Lots (other than outlots) within the Property on a pro rata basis, and become a lien on each such Lot on such pro rata basis. The rights of the Town of Cottage Grove to enter such lands as provided herein and to enforce the obligations specified herein shall constitute a perpetual easement for the benefit of the public in favor of the Town of Cottage Grove. Interest shall accrue on any obligation if past due at the rate of 12% per annum (or the highest rate then permitted by law) and such interest shall be included in the special charge and lien. The Town of Cottage Grove may seek injunctive relief against the Association requiring the Association to perform the maintenance with respect to such stormwater management areas as required above, and the Association shall be liable for the actual attorney fees and costs of the Town in connection with any such action or any action to recover the special charge provided above. The provisions in this section may not be amended nor the covenants or easements provided herein waived or terminated without the consent of the Town of Cottage Grove and Dane County and the written consent of either (a) the Developer or (b) the Owners of a majority of lots (other than the outlots) within the Plat. (See also, the *Dedication and Supplemental Agreement regarding Stormwater Management of Outlot 1* between the Owner and the Town, and the *Perpetual Stormwater Drainage Easements* between the Owner and the Town. These instruments are recorded in the Dane County Register of Deeds Office and applicable to the Property.)

3.31. Binding; Run with the Land. Article 3 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat is recorded, after which time Article 3 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided herein. If any person, or his/her heirs, successors or assigns, shall violate or attempt to violate any of the covenants and restrictions contained in Article 3 hereof while Article 3 hereof is effective, the Developer, the Committee or any person or persons owning any lot or lots within the Property, shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate any such covenants or restrictions, and the prevailing party shall be awarded reasonable attorney fees and costs, and any person violating any of these covenants or restrictions shall be liable for all costs of removing any such violation.

3.32. General Standards. In exercising any authority under Article 3 of this Declaration, the Developer or Committee, as appropriate, shall act in accordance with the following standards:

- (a) to assure the most appropriate development and improvement of the Property;
- (b) to protect each Owner of a lot against improper uses by other lot owners;
- (c) to preserve the beauty of the Property;
- (d) to guard against the erection of poorly designed or poorly proportioned structures, or structures built of improper or unsuitable material;
- (e) to encourage and secure the erection of attractive, adequate sized homes, which conform and harmonize in external design with other structures within the Property and which are properly located upon the lot in accordance with its topography and finished grade elevation; and
- (f) to provide for high quality improvements which will protect the investments of purchasers of lots on the Property and on adjacent lands.

3.33. Severability. Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

3.34. Limits on Liability. The Developer and the Committee shall not be liable for any loss suffered by any person on the basis of the approval or disapproval of any proposed use, plans, specifications, site, grading or landscaping plan or other matter, including any loss arising out of the negligence of the Developer or Committee.

3.35. Violations; Standing. If any Owner shall violate or attempt to violate any covenant or restriction with regard to drainage swales, ditches, drainage ways or easements, stormwater detention areas, use of public outlots or rights-of-way, or maintenance or landscaping, or if any lot Owner responsible for specific duties with regard thereto shall fail to perform such duties, the Developer, the Committee, other Owners of Lots within the Plat and/or the Association (see Article 4) shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable attorney fees and costs, to remedy said violation.

With respect to violations of any covenant or restriction contained in sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37 or if any person responsible for specific duties with regard thereto shall fail to perform such duties, the Town of Cottage Grove shall have standing to bring proceedings at law or in equity against the person or persons violating or attempting to violate such covenant or restriction or failing to perform such duties, and shall be awarded appropriate relief, including reasonable attorney fees and costs, to remedy said violation.

3.36. Cancellation, Release, Amendment and/or Waiver of Article 3. Article 3 hereof, or any part thereof, may be cancelled, released, amended, or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer and the Owners of a majority of the lots (other than outlots) subject to this Declaration, or if the Developer has released or assigned the Developer's rights under Article 3 of this Declaration as provided, then by an instrument in writing signed by the Owners of a majority of the lots (other than outlots) subject to this Declaration. Notwithstanding the foregoing, sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37 hereof may not be cancelled, released, amended, or waived without the consent of the Town of Cottage Grove.

3.37. Notice of Right to Farm. NOTICE IS HEREBY GIVEN TO ALL OWNERS OF LOTS

WITHIN THE SUBDIVISION THAT THE SUBDIVISION IS IN THE VICINITY OF LANDS WHICH ARE USED FOR AGRICULTURAL PURPOSES, WHICH MAY INVOLVE CROP AND ANIMAL PRODUCTION ACTIVITIES, THE USE OF MACHINERY AND EQUIPMENT, AND THE USE OF AGRICULTURAL FERTILIZERS AND PESTICIDES. AGRICULTURAL ACTIVITIES MAY INVOLVE THE CREATION OF DUST AND NOISE, AND THE PRESENCE OF STRONG ODORS. THE SUBDIVISION IS LOCATED IN AN AGRICULTURAL AREA AND RESIDENTS MUST EXPECT THAT CONDITIONS WHICH OCCUR IN AGRICULTURAL AREAS MAY OCCUR IN OR NEAR THE SUBDIVISION. WISCONSIN HAS ADOPTED A "RIGHT TO FARM" LAW WHICH PROVIDES LEGAL PROTECTION FOR AGRICULTURAL ACTIVITIES AGAINST LEGAL ACTIONS CLAIMING NUISANCE. ALL LOT BUYERS BY PURCHASING A LOT ACKNOWLEDGE THIS NOTICE AND CONSENT TO SUCH ACTIVITIES.

#### ARTICLE 4

#### **Kennedy Hills Homeowners Association, Inc.**

#### **Definitions**

For purposes of Article 4 of this Declaration, the following terms shall be defined in the following manner:

4.1. "Association" shall mean and refer to Kennedy Hills Homeowners Association, Inc., its successors and assigns.

4.2. "Board" shall mean and refer to the Board of Directors of the Association.

4.3. "Declaration" shall mean the Declaration of Covenants, Restrictions, Conditions and Easements for the Plat of Kennedy Hills, as it may from time to time be amended.

#### **Association Membership and Board of Directors**

4.4. Members. The Owner of each platted lot (exclusive of outlots) within the Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin, shall be a member of the Association. Where more than one person holds an ownership interest in any lot, all persons holding such interest shall be members. The members shall have such rights as are set forth herein, in the Articles and By-Laws of the Association, as amended from time to time, and as may be provided by the laws of the State of Wisconsin. At such time as there are future additions to the Plat of Kennedy Hills on the land under the control of the Developer, the number of lots, and therefore, the number of members in this Association may increase at the Developer's discretion. (It is noted that an increase in lots and members should decrease any costs per member of the ongoing maintenance of Outlot 1.)

4.5. Board of Directors. The affairs of the Association shall be managed by the Board. The Board shall be selected in the manner, and shall have such duties, powers and responsibilities as are set forth herein, in the Articles and Bylaws of the Association, as amended from time to time, and as may be provided by the laws of the State of Wisconsin, subject to the rights of Developer as set forth in such instruments.

#### **Common Areas**

4.6. Acquisition of Common Areas. The Association may take title from time to time to real



property within the Plat of Kennedy Hills, Town of Cottage Grove, Dane County, Wisconsin, for the purpose of providing common areas for the use and benefit of the members. The Association shall have the right to exclusive management and control of all such common areas and all improvements thereon.

4.7. Obligations of Association. The Association shall have the duty to maintain common areas, and all stormwater management areas in good, clean, attractive and sanitary condition, order and repair, and to make such improvements and perform such maintenance as shall further the interests of the members. In addition, the Association shall have the duty to maintain the stormwater management areas within the Property at its expense, including Outlot 1, and to assess the costs thereof to the Lots (other than outlots) within the Property. (Outlot 2 shown on the Plat is to be maintained by the Town of Cottage Grove.)

4.8. Easement of Enjoyment. Subject to the provisions of this Declaration, all common areas shall be held by the Association for the benefit of the members. Each of said members shall have an equal, undivided right to use and enjoyment of such common areas, subject to the right of the Association to manage such lands for the benefit of the members of the Association and to establish reasonable rules for the use of such common areas.

4.9. Entrance Sign. The Developer intends to install an entrance sign for the Development. All signage will be subject to review and approval by the Town of Cottage Grove and subject to Dane County's signage requirements, as applicable.

### **Association Assessments**

4.10. Creation of Lien and Personal Obligation of Assessments. The Developer hereby covenants, and each Owner of any lot within the Property (other than outlots) by acceptance of a deed thereof, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association all assessments in the amount and manner hereinafter provided. All such assessments, together with interest thereon and costs of collection thereof as hereinafter provided, shall be a charge on the land and a continuing lien upon the lot (but not any outlot) against which each such assessment is made. Each such assessment, together with interest thereon and costs of collection thereof, shall also be the personal obligation of the person who was the Owner of such lot (other than outlots) at the time when the assessment became due and payable.

4.11. Creation of Assessments. Assessments shall be determined, established and collected each year, starting with calendar year 2023 in the following manner:

(a) Budget. In December of each year starting in December 2022, the Board shall determine a budget for the following calendar year, which shall include the costs to be incurred by the Association in connection with the maintenance, improvement and operation of common areas, payment of taxes and insurance, and other costs connected therewith, including a reasonable reserve for depreciation. Such budget shall be approved by a vote of two thirds (2/3) of the Board on or before the last day of December each year. For the calendar year of 2021 and 2022, the Developer shall be responsible for all typical costs.

(b) Limitation on Assessments. The maximum annual assessment which may be authorized under this Article shall be \$100.00 for each lot to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlots), until the actual annual costs of maintenance, improvement and operation of common areas and

stormwater management areas, and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, shall exceed the annual revenue generated by an assessment of \$100.00 per lot, in which event the maximum assessment per lot shall be such actual costs of maintenance, improvement and operation of common areas and stormwater management areas, and payment of taxes, insurance and other costs associated therewith, including a reasonable reserve for depreciation, divided equally among all lots as to which the Association has the power to make assessments hereunder or under other comparable instruments (excluding outlots). In determining the annual costs of maintenance, improvement and operation of common areas and stormwater management areas, the Board shall review competing bids for the cost of such work prior to determining the budget and level of assessments.

(c) Declaration of Assessments. The Board shall declare assessments so levied due and payable thirty (30) days from the date of such levy. The Board shall notify each Owner of the action taken by the Board, the amount of the assessment against the lot owned by such Owner and the date such assessment becomes due and payable. Such notice shall be mailed to the Owner at the last known post office address by United States mail, with postage prepaid, or be personally delivered to the Owner.

(d) Collection of Assessments. In the event any assessment levied against any lot remains unpaid for a period of sixty (60) days from the date of the levy, the Board may, in its discretion, file a claim for a maintenance lien against the lot for which payment is not made, and upon compliance with the provisions of Section 779.70, Wisconsin Statutes, or other applicable authority, such claim shall be and become a lien against such lot. The claim shall thereafter accrue interest at the rate of interest payable upon legal judgments in the State of Wisconsin, and the Board may exercise such remedies to collect such claim as may be afforded by law. The Owner of the subject lot shall be responsible for all costs of collection incurred by the Association in connection therewith. No Owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of any common areas or abandonment of his or her lot.

(e) Joint and Several Liability of Grantor and Grantee. Upon a voluntary conveyance, the grantee of a lot shall be jointly and severally liable with the grantor for all unpaid assessments as provided in this Article up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Association setting forth the amount of such unpaid assessments and any such grantee shall not be liable for, nor shall the lot conveyed be subject to a lien for, any unpaid assessment against the grantor pursuant to this Article in excess of the amount therein set forth. If the Association does not provide such a statement within ten (10) business days after the grantee's request, it is barred from claiming any lien which is not filed prior to the request for assessments owed by the grantor.

4.12. Term. Article 4 hereof shall run with the land and shall be binding upon and inure to the benefit of all persons having an interest in the Property for a period of thirty (30) years after the Plat of Kennedy Hills is recorded, after which Article 4 of this Declaration shall automatically stand renewed for successive five (5) year periods unless the same is cancelled as provided in Section 4.13 below.

4.13. Cancellation, Release, Amendment or Waiver. Article 4 hereof, or any part thereof, may be cancelled, released, amended or waived in writing as to some or all of the lots subject to this Declaration by an instrument signed by the Developer and the Owners of a majority of the lots (other than outlots) subject to this Declaration, or if the Developer has released or assigned the Developer's rights under Article 3 of this Declaration as provided herein, then by an instrument in writing signed by both (a) the Owners of a majority of the lots (other than outlots) subject to this Declaration, and (b) a majority of the Board of the Association. Notwithstanding the foregoing,

sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37 hereof may not be cancelled, released, amended, or waived without the consent of the Town of Cottage Grove.

4.14. Severability. Invalidation of any one of these covenants or any severable part of any covenant, by judgment or court order, shall not affect any of the other provisions, which shall remain in full force and effect.

Executed in Dane County, Wisconsin, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**DEVELOPER/OWNER:  
KENNEDY HILLS, LLC**

\_\_\_\_\_  
By: David C. Riesop  
Its: Sole Member and Authorized  
Representative

**ACKNOWLEDGMENT**

STATE OF WISCONSIN    )  
                                          )  
COUNTY OF DANE        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named David C. Riesop, to me known to be the person who executed the foregoing instrument and acknowledged the same on behalf of Kennedy Hills, LLC.

\_\_\_\_\_  
Print name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

Approved by the Town Board of the Town of Cottage Grove on the \_\_\_\_\_ day of \_\_\_\_\_, 2020 and hereby acknowledged as to sections 3.6, 3.7, 3.10, 3.21, 3.24, 3.25, 3.28, 3.29, 3.30, 3.35, 3.36 and 3.37, which shall not be cancelled, released, amended, or waived without the consent of the Town of Cottage Grove.

Executed in Dane County, Wisconsin, on this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**TOWN OF COTTAGE GROVE**

By: \_\_\_\_\_

Kris Hampton, Town Chair

Attest: \_\_\_\_\_

Kim Banigan, Town Clerk

**ACKNOWLEDGMENT**

STATE OF WISCONSIN        )  
                                          )  
COUNTY OF DANE            )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, the above-named Kris Hampton and Kim Banigan, Chairperson and Clerk of the Town of Cottage Grove, respectively, to me known to be the persons and officers who executed the foregoing instrument and acknowledged the same as such officers by the Town's authority.

\_\_\_\_\_  
Print name: \_\_\_\_\_  
Notary Public, State of Wisconsin  
My Commission Expires: \_\_\_\_\_

This instrument drafted by:  
David C. Riesop, Deerfield, WI

Exhibit Attached and Incorporated by Reference:  
EXHIBIT A — Approved Grading Plans

**EXHIBIT A**  
**APPROVED GRADING PLANS**

The Grading Plan approved for this Plat overall is included in the Kennedy Hills Plat Grading and Erosion Control Details as Exhibit #4, page 1 of 1 and dated June 23, 2020, and which is incorporated herein by reference as if set forth fully herein.

Following substantial completion of the public improvements within the Plat, Developer shall promptly prepare a final as-built grading plan and submit same to the Town Engineer and the Town Clerk. Following the Town Engineer's confirmation of "no objection" to the as-built grading plan, said as-built grading plan shall be used to make the determinations required by this Declaration.

THE GRADING PLAN IDENTIFIED ABOVE MAY BE UPDATED FOR REASONS SUPPORTED BY GOOD ENGINEERING PRACTICES. FOR THE CONVENIENCE OF ALL CONCERNED, THIS EXHIBIT A MAY BE AMENDED TO REFLECT SUCH CHANGES; HOWEVER, SAID AMENDMENT(S) SHALL ONLY BE EFFECTIVE WHEN THE PLAN(S) IDENTIFIED ARE: (1) SET FORTH IN A WRITTEN NOTICE FROM THE TOWN ENGINEER TO THE TOWN CLERK THAT IDENTIFIES THE UPDATED PLANS; AND, (2) THE WRITTEN NOTICE IS SIMULTANEOUSLY PROVIDED TO THE DEVELOPER AND DEVELOPER'S ENGINEER. AN APPROPRIATE EMAIL MAY SERVE THIS PURPOSE.





Dane County Department of Planning & Development  
 Room 116, 201 Martin Luther King, Jr. Blvd.  
 Madison, WI 53703  
 (608) 266-4266

**TDR AGRICULTURAL CONSERVATION  
 EASEMENT AGREEMENT**

This *AGREEMENT* creates an agricultural conservation *EASEMENT* in accordance with ss. 93.73, 700.40, Wis. Stats. (2009) and s.10.01(75m), Dane County Code.

**A. COVERED LAND**

The *EASEMENT* applies to all of the land that is described in attached Exhibit A (*COVERED LAND*) and mapped in attached Exhibit B. The *COVERED LAND* includes an *agricultural area*. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.

**B. PERPETUAL EASEMENT RUNS WITH THE LAND**

The *EASEMENT* runs with all of the *COVERED LAND* in perpetuity, regardless of any changes in land ownership or control. The *EASEMENT* is binding on all owners, occupiers and users of the *COVERED LAND* as well as those with a mortgage, lien or other interest in the *COVERED LAND*. If an owner grants another person the right to occupy or use the *COVERED LAND*, the owner and the other person are jointly and severally responsible for complying with the *EASEMENT*.

**C. EASEMENT GRANTORS**

The *EASEMENT* is granted by the following persons (*GRANTORS*), who are owners of the *COVERED LAND*:

*SEE ATTACHED EXHIBIT "A"*

**D. EASEMENT HOLDERS AND THIRD PARTY BENEFICIARY**

The *GRANTORS* grant the *EASEMENT* to the following parties (*HOLDERS*):

- (1) *COUNTY OF DANE (COUNTY)*, or its successor in interest. The *COUNTY* is a Wisconsin political subdivision as defined in s. 93.73(1m)(f), Wis. Stats. (2009).
- (2) *TOWN OF COTTAGE GROVE, DANE COUNTY, WISCONSIN*, or its successor in interest. The *TOWN* is a Wisconsin political subdivision as defined in s. 93.73(1m)(f), Wis. Stats. (2009).

**E. EASEMENT GRANTED**

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the *GRANTORS*, the *GRANTORS* hereby grant and convey to the *HOLDERS* a perpetual *EASEMENT* in the *COVERED LAND* as provided in this *EASEMENT AGREEMENT*. The *EASEMENT* takes effect when this *EASEMENT AGREEMENT* is accepted, and signed by the *HOLDERS*, and recorded with the county Register of Deeds in the county where the *COVERED LAND* is located.

This space is reserved for recording data

Return to:

Parcel Identification Number/Tax Key Number

0711-364-9500-1

## F. PURPOSE

The purpose of this Easement is to preserve the availability of the *COVERED LAND* for *agricultural use* by preventing uses or activities on the land that will impair or interfere with the *COVERED LAND*'s agricultural viability and productive capacity.

## G. DEFINITIONS

In this *EASEMENT AGREEMENT*:

- (1) “*Accessory use*” means any of the following land uses, other than a building, structure, *impervious surface* or improvement that is consistent with the purpose of the *EASEMENT*:
  - (a) An activity or business operation that is an integral part of, or incidental to, an *agricultural use* of the *COVERED LAND*.
  - (b) A business, activity or enterprise, not associated with an *agricultural use*, if all of the following apply:
    - (i) It is conducted by a person who resides on and owns or farms the *COVERED LAND*, or by a member of that person’s immediate family.
    - (ii) It requires no new buildings, structures or *impervious surfaces*.
    - (iii) It employs no more than 4 full-time employees annually.
    - (iv) It does not impair or limit current or future *agricultural uses* of the *COVERED LAND* or other *protected farmland*.
- (2) “*Agricultural area*” means that portion of the *COVERED LAND* that is described as an *agricultural area* in attached Exhibit A and mapped as an *agricultural area* in attached Exhibit B, regardless of whether the area is in *agricultural use*. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.
- (3) “*Agricultural use*” means any of the following:
  - (a) Any of the following activities conducted for the purpose of producing an income or livelihood:
    - (i) Crop or forage production.
    - (ii) Keeping *livestock*.
    - (iii) Beekeeping.
    - (iv) Nursery, sod, or Christmas tree production.
    - (v) Floriculture.
    - (vi) Aquaculture.
    - (vii) Fur farming.
    - (viii) Forest management.
    - (ix) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program
  - (b) Any other use that *DATCP* or its successor state agency identifies by rule as an *agricultural use*.
- (4) “*Alteration*” means the act of causing the change to or disturbance of a surface.
- (5) “*Environmental law*” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, or codes of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, *hazardous materials*, hazard communication, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.
- (6) “*Forester*” means a licensed professional forester, a person who has received a bachelor’s or higher degree in forestry from a school of forestry with a curriculum accredited by the Society of American Foresters, or other qualified person as determined by the HOLDERS.
- (7) “*Hazardous materials*” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.



- (8) “*Impervious surface*” means an installed material that prevents rain from falling directly onto the land surface or surface vegetation, or that prevents rain water from percolating directly into the soil. *Impervious surface* includes roofs, containers, pavement and macadam.
- (9) “*Livestock*” means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.
- (10) “*Open space or natural resource use*” means a use, other than an *agricultural use* or an accessory use, that includes no buildings or permanent structures, other than limited structures such as fences or government-approved natural resource conservation practices that do not convert the land to other uses.
- (11) “*Pre-existing structure*” means a building or structure that existed on the date of this *EASEMENT AGREEMENT*, as may be identified in Section H and shown on the map attached as Exhibit C.
- (12) “*Pre-existing use*” means a land use, other than an *agricultural use*, an accessory use, or an *open space or natural resource use*, that existed on the date of this *EASEMENT AGREEMENT*, as identified in Section H and shown on the map attached as Exhibit C
- (13) “*Protected farmland*” means land that is legally protected from nonagricultural development.
- (14) “*Third-party enforcement right*” means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

#### H. USE OF THE COVERED LAND

The *EASEMENT* limits use of the *COVERED LAND* as follows:

- (1) **Land uses in the *agricultural area*.** Land uses in the *agricultural area* are limited to the following:
  - (a) *Pre-existing uses and structures.* The following *pre-existing uses and structures*, if present and documented in Section H and on Exhibit C, that have no material adverse impact on *agricultural use* of the *COVERED LAND*: Silo(s), grain bins, or any other agricultural accessory building(s). These *pre-existing uses and structures* may be repaired and maintained without approval from the *HOLDERS*.
  - (b) *Agricultural uses* not requiring the installation of *impervious surface* or gravel.
  - (c) *Accessory uses* not requiring the installation of *impervious surface* or gravel.
  - (d) *Undeveloped open space and natural resource uses.*
  - (e) Uses for which the *HOLDERS* give prior written approval under section I.
  - (f) Fencing.
  - (g) Natural resource conservation practices implemented in compliance with a state or federal conservation standard.
- (2) **Land division.** The *COVERED LAND* may not be divided, for purposes of sale of less than the entire *COVERED LAND*, except with the prior written approval of the *HOLDERS* under section I. The *HOLDERS* may not approve a division that is inconsistent with the purpose of the *EASEMENT*.
- (3) **Conservation compliance.** All land uses on the *COVERED LAND* shall comply with applicable state laws related to soil and water conservation, nonpoint source pollution and nutrient management, regardless of whether the landowner or land user receives any cost-share payment for compliance. All highly erodible land on the *COVERED LAND* shall be subject to a conservation plan prepared in consultation with the local county land conservation committee. Timber harvested for sale shall be harvested according to a forest management plan prepared or approved by a qualified *forester* that maintains the productivity of the forest resource and is consistent with the purpose of this *EASEMENT AGREEMENT*. A landowner may receive cost-share payments to achieve compliance with environmental laws, including conservation compliance obligations.

**(4) Land surface alteration.** Any alteration to the surface of the *agricultural area* including excavation, removal or filling of the land surface shall be consistent with the purpose of the *EASEMENT*. Permitted alteration under this subsection is limited to any of the following:

**(a)** An alteration that is minimal in scope and impact and does not by itself or in combination with other alterations exceed one (1) acre in size. Any alteration shall be repaired to the maximum extent feasible to restore the land's potential for *agricultural use*.

**(b)** An alteration authorized under paragraph H (1) (b) to (g)

**(5) Residential use:** No residential use is permitted on the *COVERED LAND*.

#### **I. HOLDERS' APPROVAL REQUIRED**

**(1)** An owner of the *COVERED LAND* may not do any of the following without the *HOLDERS* approval:

**(a)** Cover any part of the *agricultural area* with additional *impervious surface* or gravel. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (1) (g).

**(b)** Subdivide the *COVERED LAND*.

**(c)** Separate and sell the *agricultural area*.

**(d)** Alter the land surface in the *agricultural area* in excess of one (1) acre. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (1) (b) to (g).

**(e)** Materially expand or alter any *pre-existing use or structure* in the *agricultural area*. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (1) (g).

**(f)** Petition the county and town boards to rezone the property to another zoning district.

**(2)** A request for approval shall be in writing and shall clearly and accurately describe the proposed action. The description shall include the nature, size, scope, location, design and other material features of the proposed action, and any other information reasonably required by the *HOLDERS*.

**(3)** The *HOLDERS* may approve a proposed action in response to a written request under sub. (1) if all of the following apply:

**(a)** The proposed action and subsequent land use is consistent with the purpose of the *EASEMENT*.

**(b)** The proposed action and subsequent land use will not violate section H.

**(c)** The proposed use will not unnecessarily convert prime farmland or cropland, will not convert the primary use of the *COVERED LAND* to a use other than *agricultural use*, and will not materially impair or limit any surrounding *agricultural uses*.

**(4)** The *HOLDERS* will grant or deny a written request under sub. (1) within 90 days after receiving a complete written request under paragraph I (2). The *HOLDERS* may deny a request in their sole discretion, and are not required to justify any denial. The *HOLDERS* may grant approval subject to conditions specified in the approval. Conditions may include deadlines for the beginning or completion of a proposed action.

**(5)** An approval under sub. (3) is not effective unless given by all of the *HOLDERS*.

#### **J. LANDOWNER RIGHTS RESERVED**

**(1)** Except as provided in this *EASEMENT AGREEMENT*, all rights enjoyed by current or future owners of the *COVERED LAND* are reserved to those owners.

**(2)** This *EASEMENT* does not limit any owner's right to use, improve, transfer, bequeath, lease, restrict access to, grant a mortgage or other interest in, encumber or convey the *COVERED LAND*, except as provided in this *EASEMENT AGREEMENT*.

- (3) The terms, conditions, restrictions and purpose of this *EASEMENT* shall be referenced in any subsequent deed or other legal instrument by which the owners divest themselves of any interest in the *COVERED LAND*.
- (4) The *HOLDERS* shall be notified in writing of the name(s) and address(es) of any party to whom an interest in the *COVERED LAND* is granted, conveyed or otherwise transferred, at or prior to the time said transfer is executed.
- (5) No provision of this *EASEMENT* shall be construed as impairing the ability of the owners to use the premises as collateral for any subsequent loan, provided that any mortgage or lien arising from such a transaction must not be inconsistent with the terms of this *EASEMENT*, and must be subordinate to this *EASEMENT*.

**K. EASEMENT DOES NOT CREATE PUBLIC ACCESS RIGHT**

This *EASEMENT AGREEMENT* does not give the general public any right of access to any portion of the *COVERED LAND*, nor does it limit any right of public access that otherwise exists.

**L. EASEMENT DOES NOT LIMIT LANDOWNER RESPONSIBILITIES**

Except as specifically provided in this *EASEMENT AGREEMENT*:

- (1) This *EASEMENT AGREEMENT* does not relieve the *GRANTORS*, or any subsequent owners, occupiers or users of the *COVERED LAND*, from any responsibility or liability which they currently have or may subsequently incur in connection with the *COVERED LAND*.
- (2) The *HOLDERS* assume no responsibility for the use, management, control, operation, upkeep or maintenance of the *COVERED LAND*, and assume no liability for any action or omission related to the use, management, control, operation, upkeep or maintenance of the *COVERED LAND*.

**M. ENFORCING THE EASEMENT**

- (1) Any or all of the *HOLDERS*, or their authorized agents, may do any of the following:
  - (a) Upon reasonable prior notice and at reasonable times, enter onto the *COVERED LAND* to monitor compliance and collect evidence of noncompliance.
  - (b) Issue notice of apparent *EASEMENT* violations to an alleged violator. The notice may include a demand for timely corrective action. A notice under this subsection is not a prerequisite to court action under sub. (c).
  - (c) Initiate action in court to enjoin an apparent violation of the *EASEMENT*. The action may include a request for an ex parte restraining order or temporary injunction, as circumstances may warrant. The court may enjoin the violation, require appropriate corrective action, award costs, and grant any other relief to which the *HOLDERS* may be entitled.
- (2) No failure on the part of any *HOLDER* to enforce any term of this *EASEMENT* shall discharge or invalidate the term or any other provision of the *EASEMENT* or affect the rights of the *HOLDERS* to enforce the *EASEMENT* in the event of a subsequent breach or default.
- (3) The *GRANTORS* and *HOLDERS* acknowledge and agree that the *COVERED LAND* is in agricultural and open space use as of the recording of this *EASEMENT AGREEMENT*. *GRANTORS* and *HOLDERS* further acknowledge and agree that the condition and use of the *COVERED LAND* is documented in various publicly available records and maps, including the 2010 Dane County Land Use Inventory and 2014 Dane County Orthophotography.

**N. AMENDING THE EASEMENT**

- (1) The terms of the *EASEMENT* may be amended with the written consent of all of the *HOLDERS* and all of the persons who own the *COVERED LAND* at the time of the amendment. An amendment under this subsection does not include an amendment that extinguishes the *EASEMENT*.
- (2) The *HOLDERS* may give their consent under sub. (1) only if the amendment is consistent with the purpose of the *EASEMENT*, does not affect the perpetual duration of the Easement and does not materially weaken the *EASEMENT* to the detriment of the *HOLDERS*.

- (3) The *HOLDERS* may withhold their consent under sub. (1) in their sole discretion, and are not required to justify any withholding of consent.
- (4) An amendment under sub. (1) is not effective unless it is in writing, and signed by all of the persons who are required to give their consent under sub. (1). A signed written amendment takes effect when signed by all parties and recorded with the county Register of Deeds in the county where the *COVERED LAND* is located.

**O. TERMINATING THE EASEMENT**

The *EASEMENT* may be terminated at any time by court order if the following applies:

- (1) The purpose of the *EASEMENT* can no longer be achieved because of a material change in circumstances, or because of a lawful application of eminent domain authority. A change in the value of the *COVERED LAND*, or in an owner's intended use of the *COVERED LAND*, does not constitute a material change in circumstances under this subsection.

**GRANT OF EASEMENT BY LANDOWNERS**

The following GRANTORS hereby sign this EASEMENT AGREEMENT and grant the EASEMENT described herein:

Duane L. Skaar and Dorothy J. Skaar Joint revocable Living Trust

\_\_\_\_\_  
(Signature) (Date)

Duane L. Skaar, Trustee  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature) (Date)

Dorothy J. Skaar, Trustee  
\_\_\_\_\_  
(Print Name)

State of Wisconsin )  
) ss  
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of June .  
2020, by \_\_\_\_\_  
(Name of Grantor)

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print Name)

Notary Public, State of Wisconsin  
My commission expires (is permanent) \_\_\_\_\_.

\_\_\_\_\_  
(Signature) (Date)

Dale L. Skaar  
\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Signature) (Date)

Linda R. Skaar  
\_\_\_\_\_  
(Print Name)

State of Wisconsin )  
) ss  
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_ day of June.  
2020, by \_\_\_\_\_  
(Name of Grantor)

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print Name)

Notary Public, State of Wisconsin  
My commission expires (is permanent) \_\_\_\_\_.

**GRANT OF EASEMENT BY COOPERATING ENTITY (IF ANY)**

\_\_\_\_\_ Kim Banigan \_\_\_\_\_ as \_\_\_\_\_ Clerk \_\_\_\_\_ of \_\_\_\_\_ Town of Cottage Grove  
(Print Name) (Title) (Cooperating Entity)

does hereby accept the EASEMENT described herein:

By: \_\_\_\_\_  
(Signature of Authorized Representative)

\_\_\_\_\_  
(Print Name, Title)

State of Wisconsin )  
) ss  
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_  
(Name)  
as \_\_\_\_\_ of \_\_\_\_\_  
(Title) (Cooperating Entity)

\_\_\_\_\_  
(Signature of Notary)

\_\_\_\_\_  
(Print Name)

Notary Public, State of \_\_\_\_\_  
My commission expires (is permanent) \_\_\_\_\_.

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

Scott McDonell as Clerk of County of Dane
(Print Name) (Title) (Cooperating Entity)

does hereby accept the EASEMENT described herein:

By:
(Signature of Authorized Representative)
(Print Name, Title)

State of Wisconsin )
) ss
County of )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_, 20\_\_\_, by \_\_\_ (Name)
as \_\_\_ of \_\_\_ (Title) (Cooperating Entity)

(Signature of Notary)

(Print Name)

Notary Public, State of \_\_\_
My commission expires (is permanent)\_\_\_

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

as of
(Print Name) (Title) (Cooperating Entity)

does hereby accept the EASEMENT described herein:

By:
(Signature of Authorized Representative)
(Print Name, Title)

State of Wisconsin )
) ss
County of )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_, 20\_\_\_, by \_\_\_ (Name)
as \_\_\_ of \_\_\_ (Title) (Cooperating Entity)

(Signature of Notary)

(Print Name)

Notary Public, State of \_\_\_
My commission expires (is permanent)\_\_\_

ATTACHMENTS

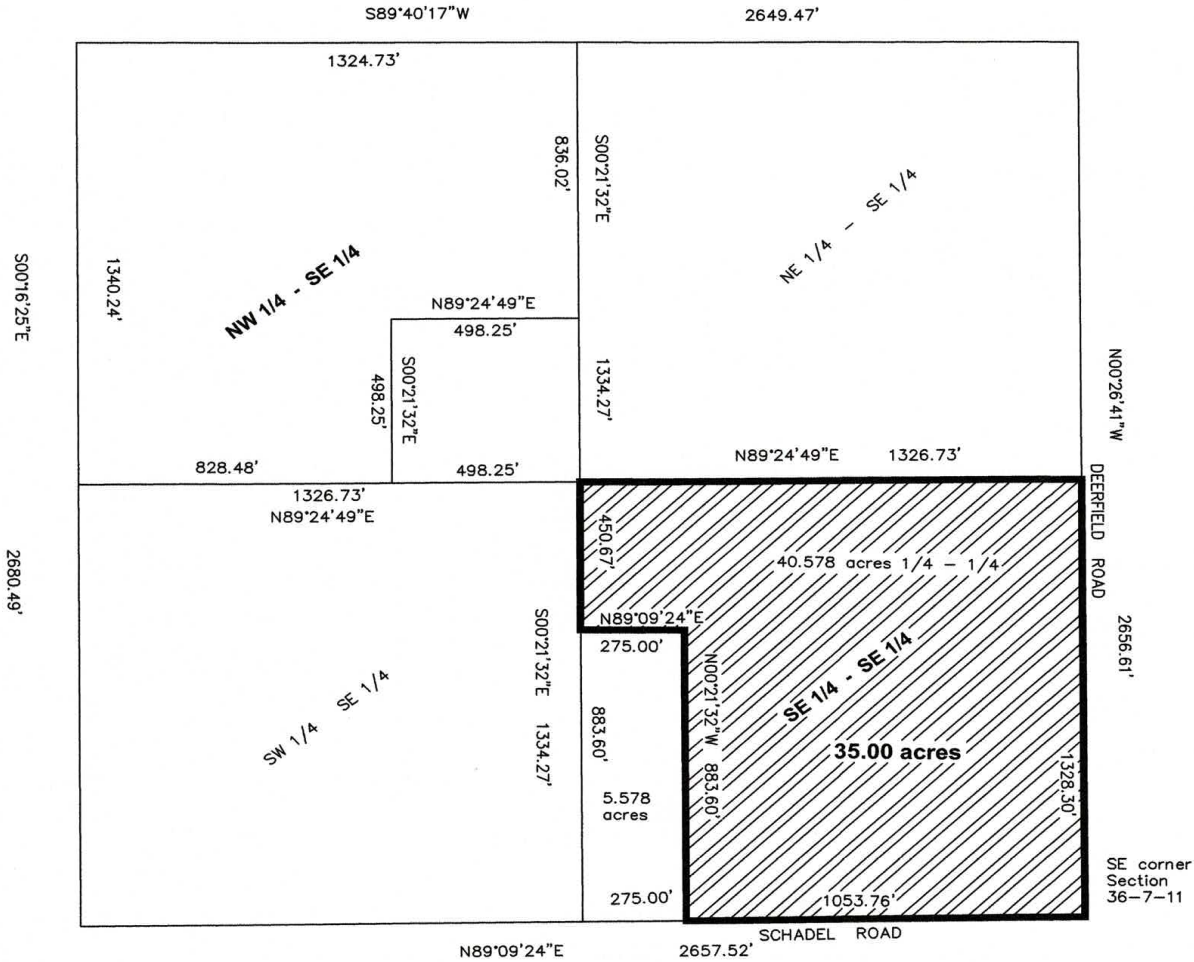
Exhibit A. LEGAL DESCRIPTION OF THE COVERED LAND

SENDING UNIT: Linda R. Skaar, Dale L. Skaar, and the Duane L. Skaar and Dorothy J. Skaar Joint Revocable Living Trust  
(Parcel Number 018/0711-364-9500-1)

Part of the SE ¼ of the SE ¼ of Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, described as follows:

Beginning at the Southeast corner of the SE ¼ of the SE ¼; thence S89°09'24"W along the South line of the ¼ - ¼, 1053.76 feet; thence N00°21'32"W, 883.60 feet; thence S89°09'24"W, 275.00 feet to the West line of said ¼ - ¼; thence N00°21'32"W along said West line, 450.67 feet to the Northwest corner of said ¼ - ¼; thence N89°24'49"E, 1326.73 feet to the Northeast corner of the ¼ - ¼; thence S00°26'41"E, 1328.30 feet to the point of beginning. Containing 35.00 acres.

EXHIBIT B



Section 36, Township 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin



Dane County Department of Planning & Development  
 Room 116, 201 Martin Luther King, Jr. Blvd.  
 Madison, WI 53703  
 (608) 266-4266

**TDR AGRICULTURAL CONSERVATION  
 EASEMENT AGREEMENT**

This *AGREEMENT* creates an agricultural conservation *EASEMENT* in accordance with ss. 93.73, 700.40, Wis. Stats. (2009) and s.10.01(75m), Dane County Code.

**A. COVERED LAND**

The *EASEMENT* applies to all of the land that is described in attached Exhibit A (*COVERED LAND*) and mapped in attached Exhibit B. The *COVERED LAND* includes an *agricultural area*. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.

**B. PERPETUAL EASEMENT RUNS WITH THE LAND**

The *EASEMENT* runs with all of the *COVERED LAND* in perpetuity, regardless of any changes in land ownership or control. The *EASEMENT* is binding on all owners, occupiers and users of the *COVERED LAND* as well as those with a mortgage, lien or other interest in the *COVERED LAND*. If an owner grants another person the right to occupy or use the *COVERED LAND*, the owner and the other person are jointly and severally responsible for complying with the *EASEMENT*.

**C. EASEMENT GRANTORS**

The *EASEMENT* is granted by the following persons (*GRANTORS*), who are owners of the *COVERED LAND*:

*SEE ATTACHED EXHIBIT "A"*

**D. EASEMENT HOLDERS AND THIRD PARTY BENEFICIARY**

The *GRANTORS* grant the *EASEMENT* to the following parties (*HOLDERS*):

- (1) *COUNTY OF DANE (COUNTY)*, or its successor in interest. The *COUNTY* is a Wisconsin political subdivision as defined in s. 93.73(1m)(f), Wis. Stats. (2009).
- (2) *TOWN OF COTTAGE GROVE, DANE COUNTY, WISCONSIN*, or its successor in interest. The *TOWN* is a Wisconsin political subdivision as defined in s. 93.73(1m)(f), Wis. Stats. (2009).

**E. EASEMENT GRANTED**

For good and valuable consideration, the receipt and sufficiency of which are acknowledged by the *GRANTORS*, the *GRANTORS* hereby grant and convey to the *HOLDERS* a perpetual *EASEMENT* in the *COVERED LAND* as provided in this *EASEMENT AGREEMENT*. The *EASEMENT* takes effect when this *EASEMENT AGREEMENT* is accepted, and signed by the *HOLDERS*, and recorded with the county Register of Deeds in the county where the *COVERED LAND* is located.

This space is reserved for recording data

Return to:

Parcel Identification Number/Tax Key Number

0711-364-8500-3



## F. PURPOSE

The purpose of this Easement is to preserve the availability of the *COVERED LAND* for *agricultural use* by preventing uses or activities on the land that will impair or interfere with the *COVERED LAND*'s agricultural viability and productive capacity.

## G. DEFINITIONS

In this *EASEMENT AGREEMENT*:

- (1) “*Accessory use*” means any of the following land uses, other than a building, structure, *impervious surface* or improvement that is consistent with the purpose of the *EASEMENT*:
  - (a) An activity or business operation that is an integral part of, or incidental to, an *agricultural use* of the *COVERED LAND*.
  - (b) A business, activity or enterprise, not associated with an *agricultural use*, if all of the following apply:
    - (i) It is conducted by a person who resides on and owns or farms the *COVERED LAND*, or by a member of that person’s immediate family.
    - (ii) It requires no new buildings, structures or *impervious surfaces*.
    - (iii) It employs no more than 4 full-time employees annually.
    - (iv) It does not impair or limit current or future *agricultural uses* of the *COVERED LAND* or other *protected farmland*.
- (2) “*Agricultural area*” means that portion of the *COVERED LAND* that is described as an *agricultural area* in attached Exhibit A and mapped as an *agricultural area* in attached Exhibit B, regardless of whether the area is in *agricultural use*. If there is any discrepancy between the description in Exhibit A and the map in Exhibit B, the description in Exhibit A controls.
- (3) “*Agricultural use*” means any of the following:
  - (a) Any of the following activities conducted for the purpose of producing an income or livelihood:
    - (i) Crop or forage production.
    - (ii) Keeping *livestock*.
    - (iii) Beekeeping.
    - (iv) Nursery, sod, or Christmas tree production.
    - (v) Floriculture.
    - (vi) Aquaculture.
    - (vii) Fur farming.
    - (viii) Forest management.
    - (ix) Enrolling land in a federal agricultural commodity payment program or a federal or state agricultural land conservation payment program
  - (b) Any other use that *DATCP* or its successor state agency identifies by rule as an *agricultural use*.
- (4) “*Alteration*” means the act of causing the change to or disturbance of a surface.
- (5) “*Environmental law*” means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, or codes of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, *hazardous materials*, hazard communication, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection, and similar environmental health, safety, building, and land use as may now or at any time hereafter be in effect.
- (6) “*Forester*” means a licensed professional forester, a person who has received a bachelor’s or higher degree in forestry from a school of forestry with a curriculum accredited by the Society of American Foresters, or other qualified person as determined by the HOLDERS.
- (7) “*Hazardous materials*” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

- (8) “*Impervious surface*” means an installed material that prevents rain from falling directly onto the land surface or surface vegetation, or that prevents rain water from percolating directly into the soil. *Impervious surface* includes roofs, containers, pavement and macadam.
- (9) “*Livestock*” means bovine animals, equine animals, goats, poultry, sheep, swine, farm-raised deer, farm-raised game birds, camelids, ratites, and farm-raised fish.
- (10) “*Open space or natural resource use*” means a use, other than an *agricultural use* or an accessory use, that includes no buildings or permanent structures, other than limited structures such as fences or government-approved natural resource conservation practices that do not convert the land to other uses.
- (11) “*Pre-existing structure*” means a building or structure that existed on the date of this *EASEMENT AGREEMENT*, as may be identified in Section H and shown on the map attached as Exhibit C.
- (12) “*Pre-existing use*” means a land use, other than an *agricultural use*, an accessory use, or an *open space or natural resource use*, that existed on the date of this *EASEMENT AGREEMENT*, as identified in Section H and shown on the map attached as Exhibit C
- (13) “*Protected farmland*” means land that is legally protected from nonagricultural development.
- (14) “*Third-party enforcement right*” means a right provided in a conservation easement empowering a governmental body, charitable corporation, charitable association or charitable trust, which, although eligible to be a holder, is not a holder, to enforce any term of the easement.

#### H. USE OF THE COVERED LAND

The *EASEMENT* limits use of the *COVERED LAND* as follows:

- (1) **Land uses in the *agricultural area*.** Land uses in the *agricultural area* are limited to the following:
  - (a) *Pre-existing uses and structures.* The following *pre-existing uses and structures*, if present and documented in Section H and on Exhibit C, that have no material adverse impact on *agricultural use* of the *COVERED LAND*: Silo(s), grain bins, or any other agricultural accessory building(s). These *pre-existing uses and structures* may be repaired and maintained without approval from the *HOLDERS*.
  - (b) *Agricultural uses* not requiring the installation of *impervious surface* or gravel.
  - (c) *Accessory uses* not requiring the installation of *impervious surface* or gravel.
  - (d) *Undeveloped open space and natural resource uses.*
  - (e) Uses for which the *HOLDERS* give prior written approval under section I.
  - (f) Fencing.
  - (g) Natural resource conservation practices implemented in compliance with a state or federal conservation standard.
- (2) **Land division.** The *COVERED LAND* may not be divided, for purposes of sale of less than the entire *COVERED LAND*, except with the prior written approval of the *HOLDERS* under section I. The *HOLDERS* may not approve a division that is inconsistent with the purpose of the *EASEMENT*.
- (3) **Conservation compliance.** All land uses on the *COVERED LAND* shall comply with applicable state laws related to soil and water conservation, nonpoint source pollution and nutrient management, regardless of whether the landowner or land user receives any cost-share payment for compliance. All highly erodible land on the *COVERED LAND* shall be subject to a conservation plan prepared in consultation with the local county land conservation committee. Timber harvested for sale shall be harvested according to a forest management plan prepared or approved by a qualified *forester* that maintains the productivity of the forest resource and is consistent with the purpose of this *EASEMENT AGREEMENT*. A landowner may receive cost-share payments to achieve compliance with environmental laws, including conservation compliance obligations.

**(4) Land surface alteration.** Any alteration to the surface of the *agricultural area* including excavation, removal or filling of the land surface shall be consistent with the purpose of the *EASEMENT*. Permitted alteration under this subsection is limited to any of the following:

**(a)** An alteration that is minimal in scope and impact and does not by itself or in combination with other alterations exceed one (1) acre in size. Any alteration shall be repaired to the maximum extent feasible to restore the land's potential for *agricultural use*.

**(b)** An alteration authorized under paragraph H (1) (b) to (g)

**(5) Residential use:** No residential use is permitted on the *COVERED LAND*.

#### **I. HOLDERS' APPROVAL REQUIRED**

**(1)** An owner of the *COVERED LAND* may not do any of the following without the *HOLDERS* approval:

**(a)** Cover any part of the *agricultural area* with additional *impervious surface* or gravel. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (1) (g).

**(b)** Subdivide the *COVERED LAND*.

**(c)** Separate and sell the *agricultural area*.

**(d)** Alter the land surface in the *agricultural area* in excess of one (1) acre. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (1) (b) to (g).

**(e)** Materially expand or alter any *pre-existing use or structure* in the *agricultural area*. Approval of the *HOLDERS* is not required if the action is permitted under paragraph H (1) (g).

**(f)** Petition the county and town boards to rezone the property to another zoning district.

**(2)** A request for approval shall be in writing and shall clearly and accurately describe the proposed action. The description shall include the nature, size, scope, location, design and other material features of the proposed action, and any other information reasonably required by the *HOLDERS*.

**(3)** The *HOLDERS* may approve a proposed action in response to a written request under sub. (1) if all of the following apply:

**(a)** The proposed action and subsequent land use is consistent with the purpose of the *EASEMENT*.

**(b)** The proposed action and subsequent land use will not violate section H.

**(c)** The proposed use will not unnecessarily convert prime farmland or cropland, will not convert the primary use of the *COVERED LAND* to a use other than *agricultural use*, and will not materially impair or limit any surrounding *agricultural uses*.

**(4)** The *HOLDERS* will grant or deny a written request under sub. (1) within 90 days after receiving a complete written request under paragraph I (2). The *HOLDERS* may deny a request in their sole discretion, and are not required to justify any denial. The *HOLDERS* may grant approval subject to conditions specified in the approval. Conditions may include deadlines for the beginning or completion of a proposed action.

**(5)** An approval under sub. (3) is not effective unless given by all of the *HOLDERS*.

#### **J. LANDOWNER RIGHTS RESERVED**

**(1)** Except as provided in this *EASEMENT AGREEMENT*, all rights enjoyed by current or future owners of the *COVERED LAND* are reserved to those owners.

**(2)** This *EASEMENT* does not limit any owner's right to use, improve, transfer, bequeath, lease, restrict access to, grant a mortgage or other interest in, encumber or convey the *COVERED LAND*, except as provided in this *EASEMENT AGREEMENT*.

- (3) The terms, conditions, restrictions and purpose of this *EASEMENT* shall be referenced in any subsequent deed or other legal instrument by which the owners divest themselves of any interest in the *COVERED LAND*.
- (4) The *HOLDERS* shall be notified in writing of the name(s) and address(es) of any party to whom an interest in the *COVERED LAND* is granted, conveyed or otherwise transferred, at or prior to the time said transfer is executed.
- (5) No provision of this *EASEMENT* shall be construed as impairing the ability of the owners to use the premises as collateral for any subsequent loan, provided that any mortgage or lien arising from such a transaction must not be inconsistent with the terms of this *EASEMENT*, and must be subordinate to this *EASEMENT*.

**K. EASEMENT DOES NOT CREATE PUBLIC ACCESS RIGHT**

This *EASEMENT AGREEMENT* does not give the general public any right of access to any portion of the *COVERED LAND*, nor does it limit any right of public access that otherwise exists.

**L. EASEMENT DOES NOT LIMIT LANDOWNER RESPONSIBILITIES**

Except as specifically provided in this *EASEMENT AGREEMENT*:

- (1) This *EASEMENT AGREEMENT* does not relieve the *GRANTORS*, or any subsequent owners, occupiers or users of the *COVERED LAND*, from any responsibility or liability which they currently have or may subsequently incur in connection with the *COVERED LAND*.
- (2) The *HOLDERS* assume no responsibility for the use, management, control, operation, upkeep or maintenance of the *COVERED LAND*, and assume no liability for any action or omission related to the use, management, control, operation, upkeep or maintenance of the *COVERED LAND*.

**M. ENFORCING THE EASEMENT**

- (1) Any or all of the *HOLDERS*, or their authorized agents, may do any of the following:
  - (a) Upon reasonable prior notice and at reasonable times, enter onto the *COVERED LAND* to monitor compliance and collect evidence of noncompliance.
  - (b) Issue notice of apparent *EASEMENT* violations to an alleged violator. The notice may include a demand for timely corrective action. A notice under this subsection is not a prerequisite to court action under sub. (c).
  - (c) Initiate action in court to enjoin an apparent violation of the *EASEMENT*. The action may include a request for an ex parte restraining order or temporary injunction, as circumstances may warrant. The court may enjoin the violation, require appropriate corrective action, award costs, and grant any other relief to which the *HOLDERS* may be entitled.
- (2) No failure on the part of any *HOLDER* to enforce any term of this *EASEMENT* shall discharge or invalidate the term or any other provision of the *EASEMENT* or affect the rights of the *HOLDERS* to enforce the *EASEMENT* in the event of a subsequent breach or default.
- (3) The *GRANTORS* and *HOLDERS* acknowledge and agree that the *COVERED LAND* is in agricultural and open space use as of the recording of this *EASEMENT AGREEMENT*. *GRANTORS* and *HOLDERS* further acknowledge and agree that the condition and use of the *COVERED LAND* is documented in various publicly available records and maps, including the 2010 Dane County Land Use Inventory and 2014 Dane County Orthophotography.

**N. AMENDING THE EASEMENT**

- (1) The terms of the *EASEMENT* may be amended with the written consent of all of the *HOLDERS* and all of the persons who own the *COVERED LAND* at the time of the amendment. An amendment under this subsection does not include an amendment that extinguishes the *EASEMENT*.
- (2) The *HOLDERS* may give their consent under sub. (1) only if the amendment is consistent with the purpose of the *EASEMENT*, does not affect the perpetual duration of the Easement and does not materially weaken the *EASEMENT* to the detriment of the *HOLDERS*.

- (3) The *HOLDERS* may withhold their consent under sub. (1) in their sole discretion, and are not required to justify any withholding of consent.
- (4) An amendment under sub. (1) is not effective unless it is in writing, and signed by all of the persons who are required to give their consent under sub. (1). A signed written amendment takes effect when signed by all parties and recorded with the county Register of Deeds in the county where the *COVERED LAND* is located.

**O. TERMINATING THE EASEMENT**

The *EASEMENT* may be terminated at any time by court order if the following applies:

- (1) The purpose of the *EASEMENT* can no longer be achieved because of a material change in circumstances, or because of a lawful application of eminent domain authority. A change in the value of the *COVERED LAND*, or in an owner's intended use of the *COVERED LAND*, does not constitute a material change in circumstances under this subsection.

GRANT OF EASEMENT BY LANDOWNERS

The following GRANTORS hereby sign this EASEMENT AGREEMENT and grant the EASEMENT described herein:

Duane L. Skaar and Dorothy J. Skaar Joint Revocable Living Trust

(Signature) (Date)
Duane L. Skaar, Trustee

(Signature) (Date)

(Signature) (Date)
Dorothy J. Skaar, Trustee
(Print Name)

(Signature) (Date)
(Print Name)

State of Wisconsin )
) ss
County of \_\_\_\_\_)

State of Wisconsin )
) ss
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_ June, 2020, by Duane L. Skaar and Dorothy L. Skaar.
(Name of Grantor)

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_, 20\_\_\_, by \_\_\_\_\_.
(Name of Grantor)

(Signature of Notary)
(Print Name)

(Signature of Notary)
(Print Name)

Notary Public, State of Wisconsin
My commission expires (is permanent) \_\_\_\_\_.

Notary Public, State of \_\_\_\_\_
My commission expires (is permanent) \_\_\_\_\_.

GRANT OF EASEMENT BY COOPERATING ENTITY (IF ANY)

Kim Banigan as Clerk of Town of Cottage Grove
(Print Name) (Title) (Cooperating Entity)
does hereby accept the EASEMENT described herein:

By: \_\_\_\_\_
(Signature of Authorized Representative)
(Print Name, Title)

State of Wisconsin )
) ss
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_ June, 2020, by \_\_\_\_\_,
(Name)
as \_\_\_\_\_ of \_\_\_\_\_.
(Print Name) (Cooperating Entity)

(Signature of Notary)
(Print Name)

Notary Public, State of Wisconsin.
My commission expires (is permanent) \_\_\_\_\_.

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

Scott McDonell as Clerk of County of Dane
(Print Name) (Title) (Cooperating Entity)

does hereby accept the EASEMENT described herein:

By: (Signature of Authorized Representative)
(Print Name, Title)

State of Wisconsin )
) ss
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_\_ day of June \_\_\_\_\_, 2020 \_\_\_\_\_, by \_\_\_\_\_
(Name)
as \_\_\_\_\_ of \_\_\_\_\_
(Title) (Cooperating Entity)

(Signature of Notary)

(Print Name)

Notary Public, State of Wisconsin
My commission expires (is permanent) \_\_\_\_\_.

ACCEPTANCE OF EASEMENT BY COOPERATING ENTITY

\_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_
(Print Name) (Title) (Cooperating Entity)

does hereby accept the EASEMENT described herein:

By: (Signature of Authorized Representative)
(Print Name, Title)

State of Wisconsin )
) ss
County of \_\_\_\_\_)

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, by \_\_\_\_\_
(Name)
as \_\_\_\_\_ of \_\_\_\_\_
(Title) (Cooperating Entity)

(Signature of Notary)

(Print Name)

Notary Public, State of \_\_\_\_\_
My commission expires (is permanent) \_\_\_\_\_.

ATTACHMENTS

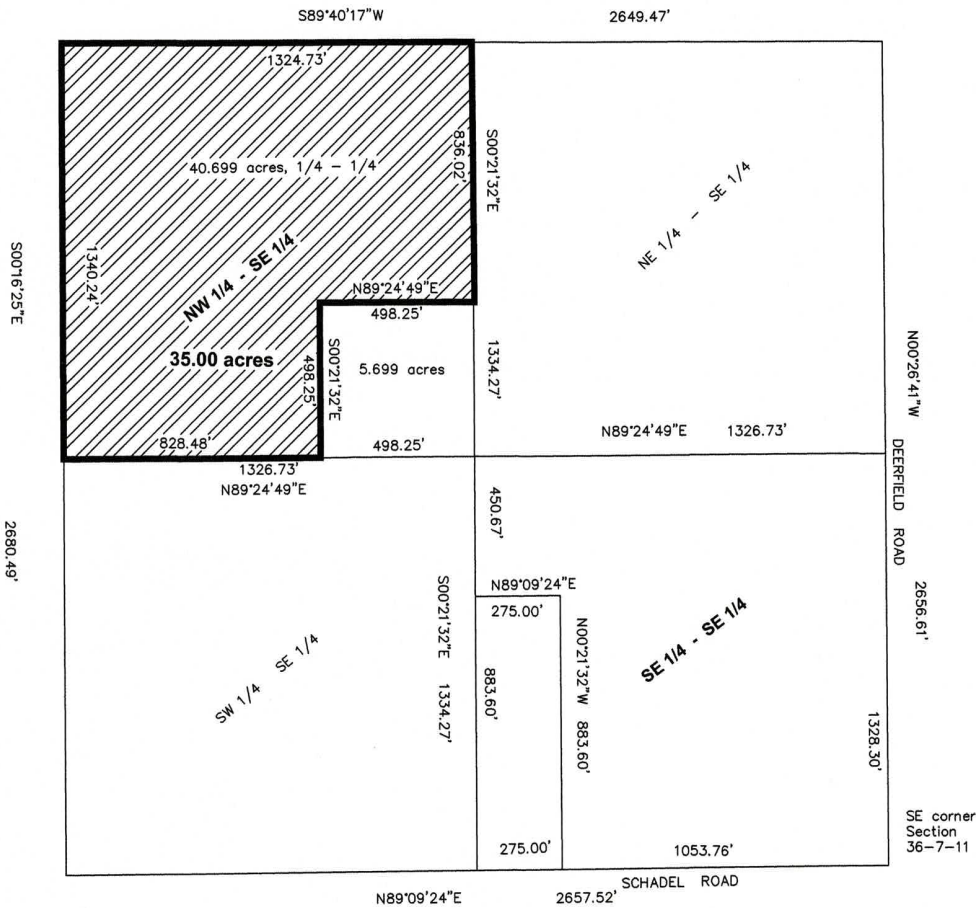
Exhibit A. LEGAL DESCRIPTION OF THE COVERED LAND:

SENDING UNIT: Duane L. Skaar and Dorothy J. Skaar Joint Revocable Living Trust is the present owner.  
 (Parcel Number 018/0711-364-8500-3)

Part of the NW ¼ of the SE ¼ of Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, described as follows:

Beginning at the Northwest corner of the NW ¼ of the SE ¼; thence N89°40'17"E, 1324.73 feet to the Northeast corner of said ¼ - ¼; thence S00°21'32"E along the East line of said ¼ - ¼, 836.02 feet; thence S89°24'49"W, 498.25 feet; thence S00°21'32"E, 498.25 feet to the South line of said ¼ - ¼; thence S89°24'49"W, 828.48 feet to the Southwest corner of said ¼ - ¼; thence N00°16'25"W, 1340.24 feet to the point of beginning. Containing 35.00 acres.

EXHIBIT B



Section 36, Township 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin



Use black ink

# NOTICE

## NOTICE OF TRANSFERRED DEVELOPMENT RIGHTS

Pursuant to approval of rezoning petition #11283 and applicable policies of the Town of Cottage Grove Comprehensive Plan, Dane County hereby provides notice that a transfer of development rights has occurred between properties in Section 10 (receiving property), and Section 36 (sending properties) of the Town of Cottage Grove.

**Development Rights Transferred:** In accordance with the Transfer of Development Rights (TDR) policies of the *Town of Cottage Grove* component of the *Dane County Comprehensive Plan*, the transfer of two (2) development rights from the sending property will allow development of sixteen (16) single family residential lots in a subdivision on the receiving property.

**Receiving Property:** The receiving property described below is eligible to be used for the creation of up to sixteen (16) residential lots or for any other permitted use in the SFR-08 Single Family Residential Zoning District.

- Plat of Kennedy Hills, located in part of the NW 1/4 of the NE 1/4 Section 10, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin.

**Sending Property:** Two (2) development rights have been transferred from the "sending" properties described below. An agricultural conservation easement has been recorded with the Dane County Register of Deeds under Document # \_\_\_\_\_ prohibiting non-farm development on the two 35.00 acre "sending" properties. A map of the two "sending" properties and their full legal descriptions are attached as Exhibit A.

- Part of the SE 1/4 of the SE 1/4 Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, WI
- Part of the NW 1/4 of the SE 1/4 Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, WI

*This Notice provides information regarding a Transfer of Development Rights between properties in accordance with the Dane County Zoning Ordinance, and the policies and programs specified in the Dane County Comprehensive Plan.*

Recording area

Name and return address:

Kennedy Hills, LLC  
306 W QUARRY ST  
DEERFIELD WI 53531

0711-101-8501-0

PARCEL IDENTIFICATION NUMBER(S)

\_\_\_\_\_  
Signature of County official

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name printed

\_\_\_\_\_  
Title

STATE OF WISCONSIN, County of \_\_\_\_\_

This document was drafted by:  
(print or type name below)

Dane County Zoning Administrator

Subscribed and sworn to before me on \_\_\_\_\_ by the above named person(s).

Signature of notary or other person  
authorized to administer an oath  
(as per s. 706.06, 706.07)

Print or type name: \_\_\_\_\_

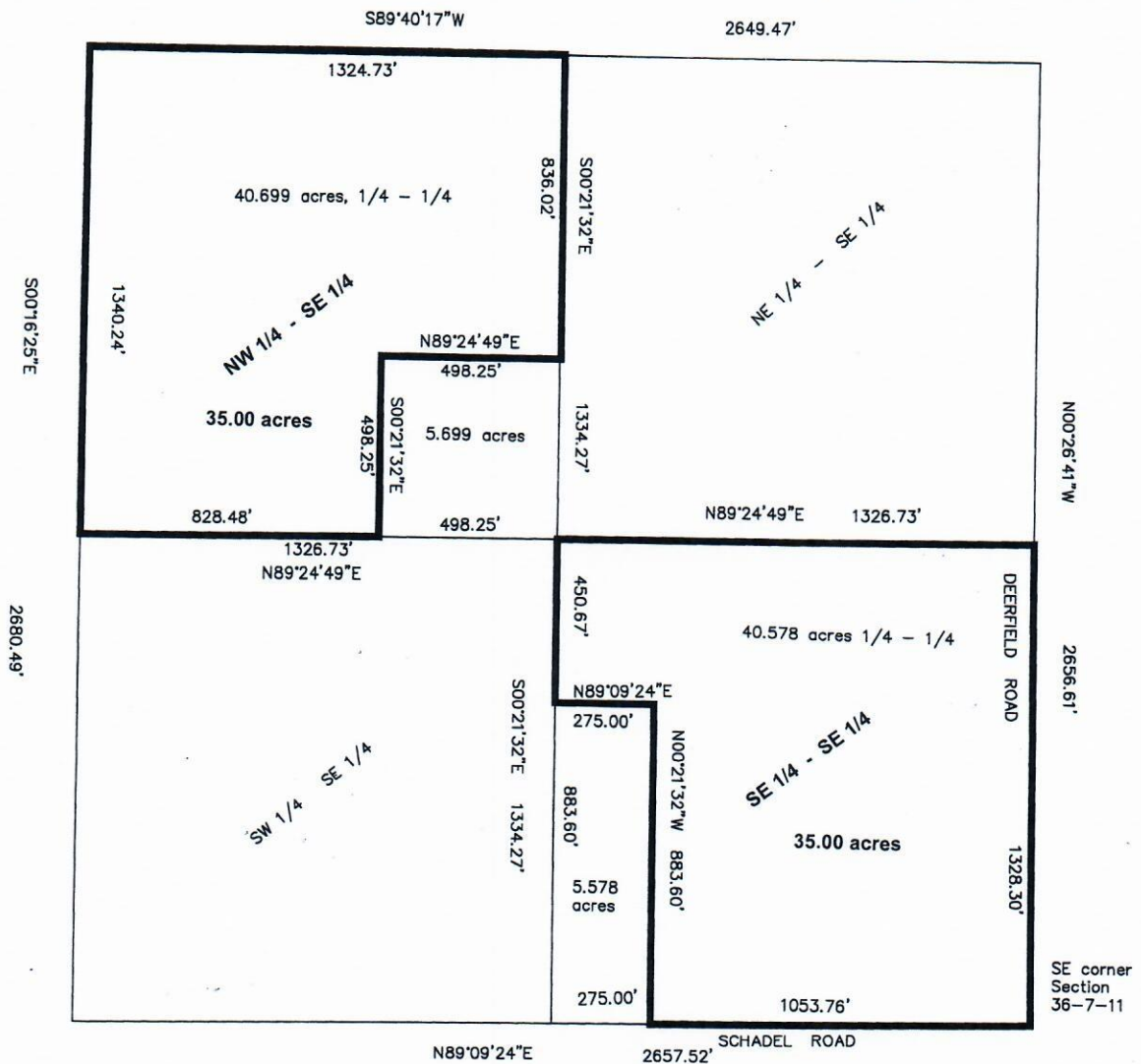
Title \_\_\_\_\_ Date commission expires: \_\_\_\_\_

\*Names of persons signing in any capacity must be typed or printed below their signature.  
P&D form 2/20/2001

# EXHIBIT A

1. Map showing two 35.00 acre TDR "sending" properties located in the SE 1/4 of the SE 1/4, and in the NW 1/4 of SE 1/4 Section 36, Town of Cottage Grove:
2. Legal descriptions of the two "sending" properties.

The map below shows the two TDR Sending Properties



Section 36, Township 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin

SENDING PROPERTY: (Part of Parcel Number 018/0711-364-8500-3)  
 Part of the NW ¼ of the SE ¼ of Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, described as follows:  
 Beginning at the Northwest corner of the NW ¼ of the SE ¼; thence N89°40'17"E, 1324.73 feet to the Northeast corner of said ¼ - ¼; thence S00°21'32"E along the East line of said ¼ - ¼, 836.02 feet; thence S89°24'49"W, 498.25 feet; thence S00°21'32"E, 498.25 feet to the South line of said ¼ - ¼; thence S89°24'49"W, 828.48 feet to the Southwest corner of said ¼ - ¼; thence N00°16'25"W, 1340.24 feet to the point of beginning. Containing 35.00 acres.

SENDING PROPERTY: (Part of Parcel Number 018/0711-364-9500-1)  
 Part of the SE ¼ of the SE ¼ of Section 36, Town 7 North, Range 11 East, Town of Cottage Grove, Dane County, Wisconsin, described as follows:  
 Beginning at the Southeast corner of the SE ¼ of the SE ¼; thence S89°09'24"W along the South line of the ¼ - ¼, 1053.76 feet; thence N00°21'32"W, 883.60 feet; thence S89°09'24"W, 275.00 feet to the West line of said ¼ - ¼; thence N00°21'32"W along said West line, 450.67 feet to the Northwest corner of said ¼ - ¼; thence N89°24'49"E, 1326.73 feet to the Northeast corner of the ¼ - ¼; thence S00°26'41"E, 1328.30 feet to the point of beginning. Containing 35.00 acres.