

**VILLAGE OF GERMANTOWN
N112 W17001 MEQUON ROAD
GERMANTOWN, WI 53022**

MEETING:	REGULAR MEETING OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE
DATE AND TIME:	Wednesday, June 7, 2023 5:30 PM
LOCATION:	Germantown Village Hall Board Room N112 W17001 Mequon Road

NOTICE: Pursuant to the recommendations of the Centers for Disease Control and Prevention concerning the prevention of COVID-19 infections, any member of the body and/or citizen may also attend the meeting virtually through the WebEx platform, Meeting #: 2559 915 7013 Password: tZkRHB9i634 which can be accessed by phone at 408-418-9388 or by logging on at <https://villageofgermantown.my.webex.com/villageofgermantown.my/j.php?MTID=ma2869f3beb104eee2d49b87d1519c63e> Citizens not wishing to attend the meeting personally or virtually may submit any public comments by sending an email to comments@germantownwi.gov by 4 p.m. on the day of the meeting so that it can be provided to the members of the body for their consideration.

AGENDA

- I. **CALL TO ORDER:** *This meeting has been given public notice in accordance with Section 19.83 and 19.84, Wis. Stats, in such form that will apprise the general public and news media of subject matter that is intended for consideration and action.*
- II. **ROLL CALL:** *Chairman Kaminski, Trustees Hudson, R. Miller and Neureuther*
- III. **APPROVAL OF MINUTES:**
 - A. 5/3/23 Meeting Minutes for approval
- IV. **PUBLIC COMMENT:** *Please be advised per §19.84(2), information will be received from the public. It is the policy of this municipality that there be a three (3) minute period, per person, with time extension per the Chief Presiding Officer's discretion; be further advised that there may be limited discussion on the information received, however, no action will be taken under public comments. Written Public Comments should be directed to comments@germantownwi.gov, by 4 pm on the Friday prior to the meeting.*
- V. **NEW BUSINESS:**
 - A. Resolution Adopting 2022 Compliance & Maintenance Annual Report (CMAR) WIDNR
 - B. Emerald Ash Borer Treatment
 - C. Increased cost for DOT project at Lannon & Maple Rds
 - D. Grading Easement for Holy Hill Rd Reconstruction - Wetterau Easement
 - E. Capstone 41 Development - Public Watermain and Sanitary Sewer Easements
 - F. TDC Willow Creek LLC Development Easement
 - G. Award of Contract for Legend Avenue Culvert Replacement
 - H. Development Agreement - Dickman (Willow Creek)

I. Development Agreement - Keller/F-Street (Town Nine Industrial Park)

J. Amended Development Agreement - Capstone Building #2

VI. PROJECTS UPDATE:

VII. NEXT MEETING DATE: *Set July Meeting Date*

VIII. ANNOUNCEMENTS

IX. ADJOURNMENT

UPON REASONABLE NOTICE, efforts will be made to accommodate the needs of disabled individuals through appropriate aids and services. For Additional information or to request this service please contact the Village Clerk at (262)250-4740 at least 2 days prior to the meeting.

MEETING:	REGULAR MEETING OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE
DATE AND TIME:	Wednesday, May 3, 2023 5:30 PM
LOCATION:	Germantown Village Hall Board Room N112 W17001 Mequon Road

MINUTES

- I. **CALL TO ORDER:** The meeting was called to order by Chairman Kaminski at 5:30pm.
- II. **ROLL CALL:** Chairman Kaminski, Trustees R. Miller, Hudson and Neureuther all present.
- III. **APPROVAL OF MINUTES:**
 - A. April 5th, 2023 Minutes
Motion: Approve
Motioned By: Phil Hudson
Seconded By: Bill Neureuther

Yes: Terri Kaminski, Rick Miller, Bill Neureuther, Phil Hudson
No: None
Abstain: None
- IV. **PUBLIC COMMENT:** No Public Comments on items not on the Agenda.
- V. **NEW BUSINESS:**
 - A. Policies Related to Residential Street Tree Program
Superintendent Anderson spoke regarding the 2023 tree planting project and the relocation of the planting area. DPW staff along with Wachtel had selected an area within the village to start closing our vacant planting sites which had included the original selected area of Indian Hills Subdivision. We've since learned that though there are vacant planting sites listed within GIS, the developer's agreement for this area never called for trees to be planted within the right-of-way. While Indian Hills tree planting could be part of future discussions, our priority needs to be protecting our \$25,000.00 investment in our urban forest.
Just west of Indian Hills is Meadow Creek Crossing, which currently has 100 vacant planting sites. There is also a developer's agreement in place which outlines the planting of trees as part of the development. It is Superintendent Anderson's recommendation that we move the planting project to this area. This will expedite the project and help to keep our current schedule on track for the health of the trees already dug for installation. As the new locations are marked, a doorhanger will be placed at each location outlining the project, and in addition, our letter and map will be placed on Facebook as well.

Discussion followed with several residents speaking.

Motion: Approve

Motioned By: Rick Miller

Seconded By: Phil Hudson

Yes: Terri Kaminski, Rick Miller, Bill Neureuther, Phil Hudson

No: None

Abstain: None

B. Additional Zero Turn Mower Purchase

As part of the 2023 budget, \$36,000.00 was requested for the replacement of two zero turn mowers. To help balance the 2023 budget, only \$18,000.00 was approved as part of the 2023 final budget to replace one zero turn mower. The actual expenditure was \$14,369.00 and this mower has arrived and is already in service. Staff just closed our spring auction in which three older mowers were sold and the auction revenue was \$13,576.00, we are requesting authorization to overspend 10-553-570-8100 to purchase the second mower. Any overage in spending would be offset by our auction sales and reflected in our revenue account:10-460-463-3210. Approval of this purchase will eliminate a 2024 budget request for an additional mower and get us back on our normal replacement schedule. Staff requested proposals in February from three area suppliers and because there is no change in cost, we plan to purchase from Bobcat Plus Inc., who provided the lowest proposal:

18,000.00 (original budget) - \$14,369.00 (February mower purchase) = \$3631.00
(remaining in 10-553-570-8100)

\$14,369.00 (second mower purchase) - \$3631.00 (remaining in 10-553-570-8100) = -
\$10,738.00 (to be offset by auction revenue).

Bobcat Plus Inc: \$14,369.00

Motion: Approve purchasing one ZT7061SW zero turn mower from Bobcat Plus Inc. in an amount NTE \$14369

Motioned By: Phil Hudson

Seconded By: Bill Neureuther

Yes: Terri Kaminski, Rick Miller, Bill Neureuther, Phil Hudson

No: None

Abstain: None

C. Resolution Adopting a Germantown Sanitary Sewer Service Area Amendment

The Village of Germantown is required to apply to the Southeastern Wisconsin Regional Planning Commission (SEWRPC) to amend the boundary of the currently approved Sanitary Sewer Service Area (SSSA). This approval process also involves the Wisconsin Department of Natural Resources (WDNR) and the Milwaukee Metropolitan Sewerage District (MMSD). The SSSA sets the limit for land within Germantown that can be served by the Village sanitary sewer system. Through this process, SEWRPC has drafted a document titled "Amendment to the Regional Water Quality Management Plan, Village of Germantown, and Environs". The amended areas are in the Village of Richfield and the Village of Germantown and reflect the areas outlined in the IGA. The attached map indicates the areas included in the Resolution.

VOG is within the planning area to include Richfield and enlarge the area to add future development. This is required by SEWRPC, so this has to come through this

committee.

There is a public hearing that will be planned and run by SEWRPC on May 15, 2023. This is part of the legal agreement.

Discussion followed.

Motion: Approve the Resolution and forward with a positive recommendation to the Village Board.

Motioned By: Rick Miller

Seconded By: Bill Neureuther

Yes: Terri Kaminski, Rick Miller, Bill Neureuther, Phil Hudson

No: None

Abstain: None

- VI. **NEXT MEETING DATE:** The next meeting date was set for Wednesday, June 7th, 2023 at 5:30pm.
- VII. **ANNOUNCEMENTS:** Director Ratayczak gave a brief update on the DOT projects throughout Germantown.
- VIII. **ADJOURNMENT:** The meeting was adjourned by Chairman Kaminski at 6:28pm.

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Resolution Adopting 2022 Compliance & Maintenance Annual Report (CMAR) WIDNR

SUBMITTED BY: Tim Zimmerman

SUMMARY EXPLANATION:

I am presenting for your review the 2022 CMAR (Compliance Maintenance Annual Report). This requirement went into effect on January 1, 2006 as part of the renewal of our WPDES (Wisconsin Pollutant Discharge Elimination System) General Permit under the authority of Chapter 283, Wisconsin Statutes and the requirements of Ch. NR 208 Wisconsin Administrative Code. The report must be accepted by resolution by the governing body (Village Board) before submission to the Department of Natural Resources.

ATTACHMENT:

1. A. Compliance Maintenance Annual Report 2023
2. A. Sewage Collection System Data
3. A. Resolution Adopting WPDES CMAR 2023

RECOMMENDATION:

It is my recommendation to send forward to the Village Board the 2022 CMAR and adopt its results by resolution of the full Village Board.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 2022

Financial Management

1. Provider of Financial Information Name: Timothy Zimmerman Telephone: 262-253-7765 (XXX) XXX-XXXX E-Mail Address (optional): tzimmerman@germantownwi.gov		
2. Treatment Works Operating Revenues 2.1 Are User Charges or other revenues sufficient to cover O&M expenses for your wastewater treatment plant AND/OR collection system ? ● Yes (0 points) ☐ ☐ ○ No (40 points) If No, please explain: 2.2 When was the User Charge System or other revenue source(s) last reviewed and/or revised? Year: 2022 ● 0-2 years ago (0 points) ☐ ☐ ○ 3 or more years ago (20 points) ☐ ☐ ○ N/A (private facility) 2.3 Did you have a special account (e.g., CFWP required segregated Replacement Fund, etc.) or financial resources available for repairing or replacing equipment for your wastewater treatment plant and/or collection system? ● Yes (0 points) ○ No (40 points)		0
REPLACEMENT FUNDS [PUBLIC MUNICIPAL FACILITIES SHALL COMPLETE QUESTION 3]		
3. Equipment Replacement Funds 3.1 When was the Equipment Replacement Fund last reviewed and/or revised? Year: 2022 ● 1-2 years ago (0 points) ☐ ☐ ○ 3 or more years ago (20 points) ☐ ☐ ○ N/A If N/A, please explain: 3.2 Equipment Replacement Fund Activity 3.2.1 Ending Balance Reported on Last Year's CMAR \$ 437,753.00 3.2.2 Adjustments - if necessary (e.g. earned interest, audit correction, withdrawal of excess funds, increase making up previous shortfall, etc.) \$ 0.00 3.2.3 Adjusted January 1st Beginning Balance \$ 437,753.00 3.2.4 Additions to Fund (e.g. portion of User Fee, earned interest, etc.) + \$ 51,715.70		

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 2022

3.2.5 Subtractions from Fund (e.g., equipment replacement, major repairs - use description box 3.2.6.1 below*)

- \$ 0.00

3.2.6 Ending Balance as of December 31st for CMAR Reporting Year

\$ 489,468.70

All Sources: This ending balance should include all Equipment Replacement Funds whether held in a bank account(s), certificate(s) of deposit, etc.

3.2.6.1 Indicate adjustments, equipment purchases, and/or major repairs from 3.2.5 above.

3.3 What amount should be in your Replacement Fund? \$ 125,000.00

0

Please note: If you had a CWFPP loan, this amount was originally based on the Financial Assistance Agreement (FAA) and should be regularly updated as needed. Further calculation instructions and an example can be found by clicking the SectionInstructions link under Info header in the left-side menu.

3.3.1 Is the December 31 Ending Balance in your Replacement Fund above, (#3.2.6) equal to, or greater than the amount that should be in it (#3.3)?

☒ Yes

☐ No

If No, please explain.

4. Future Planning

4.1 During the next ten years, will you be involved in formal planning for upgrading, rehabilitating, or new construction of your treatment facility or collection system?

☒ Yes - If Yes, please provide major project information, if not already listed below. ☐ ☐

☐ No

Project #	Project Description	Estimated Cost	Approximate Construction Year
1	Private property I/I remediatio	\$674,000	2023
2	Removal of Lift 2	\$1,200,000	2024
3	Sewer extension Village of Richfield	\$9,000,000	2024

5. Financial Management General Comments

ENERGY EFFICIENCY AND USE

6. Collection System

6.1 Energy Usage

6.1.1 Enter the monthly energy usage from the different energy sources:

COLLECTION SYSTEM PUMPAGE: Total Power Consumed

Number of Municipally Owned Pump/Lift Stations:

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 **2022**

	Electricity Consumed (kWh)	Natural Gas Consumed (therms)
January	54,881	
February	44,106	
March	39,029	
April	41,598	
May	45,941	
June	40,237	
July	47,637	
August	43,108	
September	48,811	
October	106,189	
November	48,119	
December	56,952	
Total	616,608	0
Average	51,384	0

6.1.2 Comments:

6.2 Energy Related Processes and Equipment

6.2.1 Indicate equipment and practices utilized at your pump/lift stations (Check all that apply):

- ☒ Comminution or Screening
- ☐ Extended Shaft Pumps
- ☒ Flow Metering and Recording
- ☐ Pneumatic Pumping
- ☒ SCADA System
- ☐ Self-Priming Pumps
- ☒ Submersible Pumps
- ☒ Variable Speed Drives
- ☐ Other:

6.2.2 Comments:

6.3 Has an Energy Study been performed for your pump/lift stations?

● No

○ Yes

Year:

By Whom:

Describe and Comment:

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 2022

6.4 Future Energy Related Equipment	
6.4.1 What energy efficient equipment or practices do you have planned for the future for your pump/lift stations?	
None at present	

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	A

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 2022

Sanitary Sewer Collection Systems

1. Capacity, Management, Operation, and Maintenance (CMOM) Program

1.1 Do you have a CMOM program that is being implemented?

- ☒ Yes
- ☐ No

If No, explain:

1.2 Do you have a CMOM program that contains all the applicable components and items according to Wisc. Adm Code NR 210.23 (4)?

- ☒ Yes
- ☐ No (30 points)
- ☐ N/A

If No or N/A, explain:

1.3 Does your CMOM program contain the following components and items? (check the components and items that apply)

☒ Goals [NR 210.23 (4)(a)]

Describe the major goals you had for your collection system last year:

- ☒ Comply with the conditions of the WPDES permit
- ☒ Minimize the occurrence of preventable overflows
- ☒ Minimize the life cycle ownership costs of the collection system assets
- ☒ Improve or maintain the level of customer service
- ☒ Improve or maintain system reliability
- ☒ Reduce the potential threat to human health from sewer overflows
- ☒ Provide adequate capacity to convey peak flow
- ☒ Manage infiltration and inflow

Did you accomplish them?

- ☒ Yes
- ☐ No

If No, explain:

☒ Organization [NR 210.23 (4) (b)] ☐ ☐

Does this chapter of your CMOM include:

- ☒ Organizational structure and positions (eg. organizational chart and position descriptions)
- ☒ Internal and external lines of communication responsibilities
- ☒ Person(s) responsible for reporting overflow events to the department and the public

☒ Legal Authority [NR 210.23 (4) (c)]

What is the legally binding document that regulates the use of your sewer system?

Chapter 13 Municipal Code

If you have a Sewer Use Ordinance or other similar document, when was it last reviewed and revised? (MM/DD/YYYY) 2022-03-01

Does your sewer use ordinance or other legally binding document address the following:

- ☒ Private property inflow and infiltration
- ☒ New sewer and building sewer design, construction, installation, testing and inspection
- ☒ Rehabilitated sewer and lift station installation, testing and inspection
- ☒ Sewage flows satellite system and large private users are monitored and controlled, as necessary
- ☒ Fat, oil and grease control
- ☒ Enforcement procedures for sewer use non-compliance

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 **2022**

☒ Operation and Maintenance [NR 210.23 (4) (d)]

Does your operation and maintenance program and equipment include the following:

- ☒ Equipment and replacement part inventories
- ☒ Up-to-date sewer system map
- ☒ A management system (computer database and/or file system) for collection system information for O&M activities, investigation and rehabilitation
- ☒ A description of routine operation and maintenance activities (see question 2 below)
- ☒ Capacity assessment program
- ☒ Basement back assessment and correction
- ☒ Regular O&M training

☒ Design and Performance Provisions [NR 210.23 (4) (e)] ☐ ☐

What standards and procedures are established for the design, construction, and inspection of the sewer collection system, including building sewers and interceptor sewers on private property?

- ☒ State Plumbing Code, DNR NR 110 Standards and/or local Municipal Code Requirements
- ☒ Construction, Inspection, and Testing
- ☒ Others:

<https://www.germantownwi.gov/DocumentCenter/View/74/Village-of-Germantown---Development-Handbook>
<https://www.germantownwi.gov/DocumentCenter/View/3639/Sanitary-Manhole-and-Sampling-Manhole-Detector>

☒ Overflow Emergency Response Plan [NR 210.23 (4) (f)] ☐ ☐

Does your emergency response capability include:

- ☒ Responsible personnel communication procedures
- ☒ Response order, timing and clean-up
- ☒ Public notification protocols
- ☒ Training
- ☒ Emergency operation protocols and implementation procedures

☒ Annual Self-Auditing of your CMOM Program [NR 210.23 (5)] ☐ ☐

☒ Special Studies Last Year (check only those that apply):

- ☒ Infiltration/Inflow (I/I) Analysis
- ☐ Sewer System Evaluation Survey (SSES)
- ☐ Sewer Evaluation and Capacity Management Plan (SECAP)
- ☒ Lift Station Evaluation Report
- ☐ Others:

2. Operation and Maintenance

2.1 Did your sanitary sewer collection system maintenance program include the following maintenance activities? Complete all that apply and indicate the amount maintained.

Cleaning	18.79	% of system/year
Root removal	0	% of system/year
Flow monitoring	100	% of system/year
Smoke testing	0	% of system/year
Sewer line televising	5.8	% of system/year
Manhole inspections	11.1	% of system/year
Lift station O&M	210	# per L.S./year
Manhole rehabilitation	.010	% of manholes rehabbed

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 **2022**

Mainline rehabilitation	4.1	% of sewer lines rehabbed
Private sewer inspections	0	% of system/year
Private sewer I/I removal	0	% of private services
River or water crossings	100	% of pipe crossings evaluated or maintained

Please include additional comments about your sanitary sewer collection system below:

3. Performance Indicators

3.1 Provide the following collection system and flow information for the past year.

35.68	Total actual amount of precipitation last year in inches
34.89	Annual average precipitation (for your location)
110.75	Miles of sanitary sewer
8	Number of lift stations
0	Number of lift station failures
0	Number of sewer pipe failures
2	Number of basement backup occurrences
3	Number of complaints
3.241	Average daily flow in MGD (if available)
3.804	Peak monthly flow in MGD (if available)
	Peak hourly flow in MGD (if available)

3.2 Performance ratios for the past year:

0.00	Lift station failures (failures/year)
0.00	Sewer pipe failures (pipe failures/sewer mile/yr)
0.00	Sanitary sewer overflows (number/sewer mile/yr)
0.02	Basement backups (number/sewer mile)
0.03	Complaints (number/sewer mile)
1.2	Peaking factor ratio (Peak Monthly:Annual Daily Avg)
0.0	Peaking factor ratio (Peak Hourly:Annual Daily Avg)

4. Overflows

LIST OF SANITARY SEWER (SSO) AND TREATMENT FACILITY (TFO) OVERFLOWS REPORTED **

Date	Location	Cause	Estimated Volume
None reported			

** If there were any SSOs or TFOs that are not listed above, please contact the DNR and stop work on this section until corrected.

5. Infiltration / Inflow (I/I)

5.1 Was infiltration/inflow (I/I) significant in your community last year?

- ☐ Yes
- ☒ No

If Yes, please describe:

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 **2022**

5.2 Has infiltration/inflow and resultant high flows affected performance or created problems in your collection system, lift stations, or treatment plant at any time in the past year? ● Yes ○ No If Yes, please describe: Rain event of 9-11 - 9-12, 2022. 5.48" categorized as a 200 year recurrence interval storm by MMSD. We contained all peak flows within the system without an overflow or basement backups. Much thanks to the Village of Jackson for mutual aid with their combination machine. Our largest Lift station was at capacity pumping for 6.5 hours. 5.3 Explain any infiltration/inflow (I/I) changes this year from previous years: I/I is trending down due to manhole rehab and mainline grouting, and less over all precipitation 5.4 What is being done to address infiltration/inflow in your collection system? On going manhole rehab, mainline pipe evaluations, PP I/I program through MMSD

Total Points Generated	0
Score (100 - Total Points Generated)	100
Section Grade	A

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 2022

Grading Summary

WPDES No: 0047341

SECTIONS	LETTER GRADE	GRADE POINTS	WEIGHTING FACTORS	SECTION POINTS
Financial	A	4	1	4
Collection	A	4	3	12
TOTALS			4	16
GRADE POINT AVERAGE (GPA) = 4.00				

Notes:

A = Voluntary Range (Response Optional)

B = Voluntary Range (Response Optional)

C = Recommendation Range (Response Required)

D = Action Range (Response Required)

F = Action Range (Response Required)

Compliance Maintenance Annual Report

Germantown Sewage Collection System

Last Updated: Reporting For:
6/1/2023 2022

Resolution or Owner's Statement

Name of Governing
Body or Owner:

Village of Germantown - Village Board

Date of Resolution or
Action Taken:

Resolution Number:

Date of Submittal:

ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO SPECIFIC CMAR SECTIONS (Optional for grade A or B. Required for grade C, D, or F):

Financial Management: Grade = A

Collection Systems: Grade = A

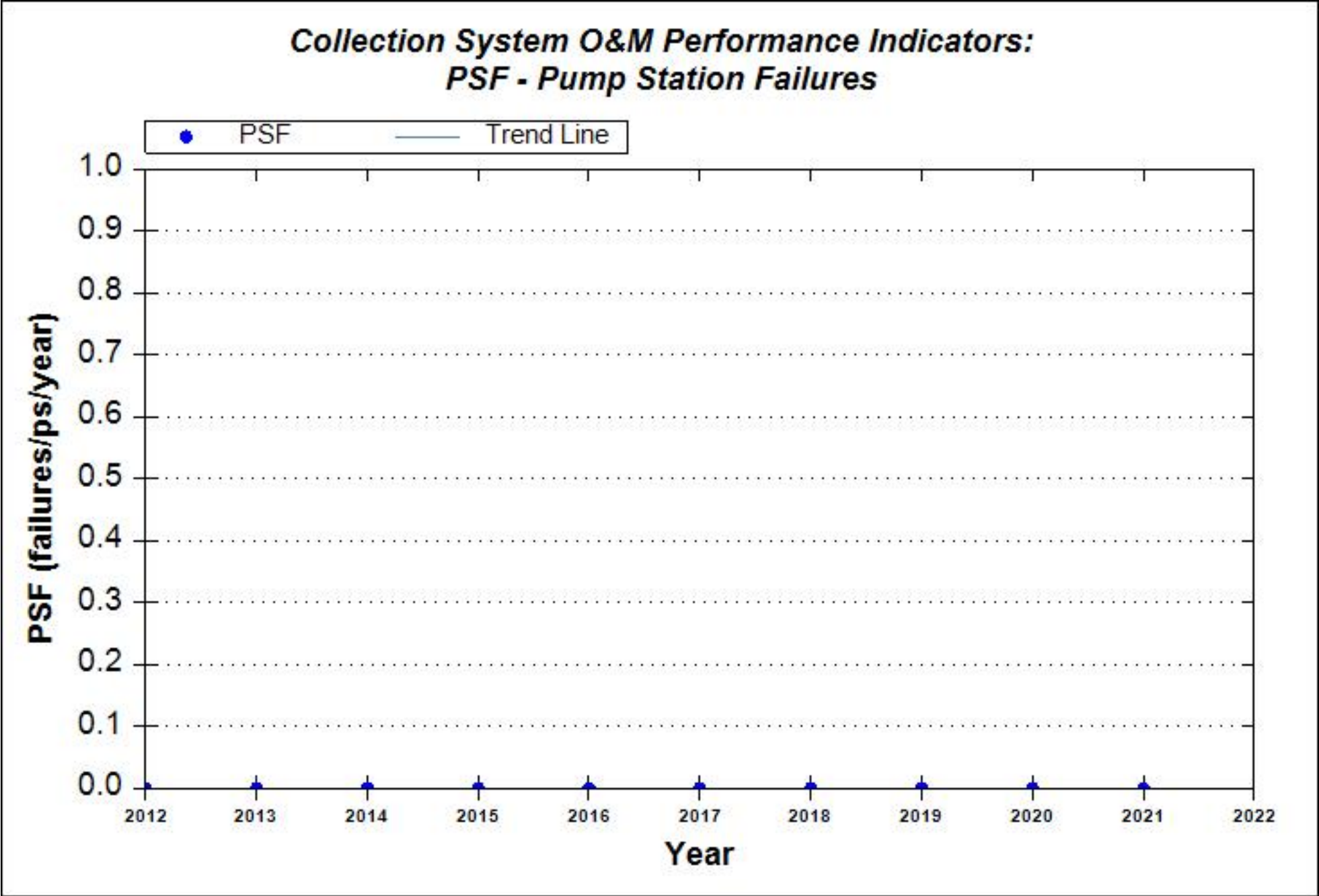
(Regardless of grade, response required for Collection Systems if SSOs were reported)

ACTIONS SET FORTH BY THE GOVERNING BODY OR OWNER RELATING TO THE OVERALL GRADE POINT AVERAGE AND ANY GENERAL COMMENTS

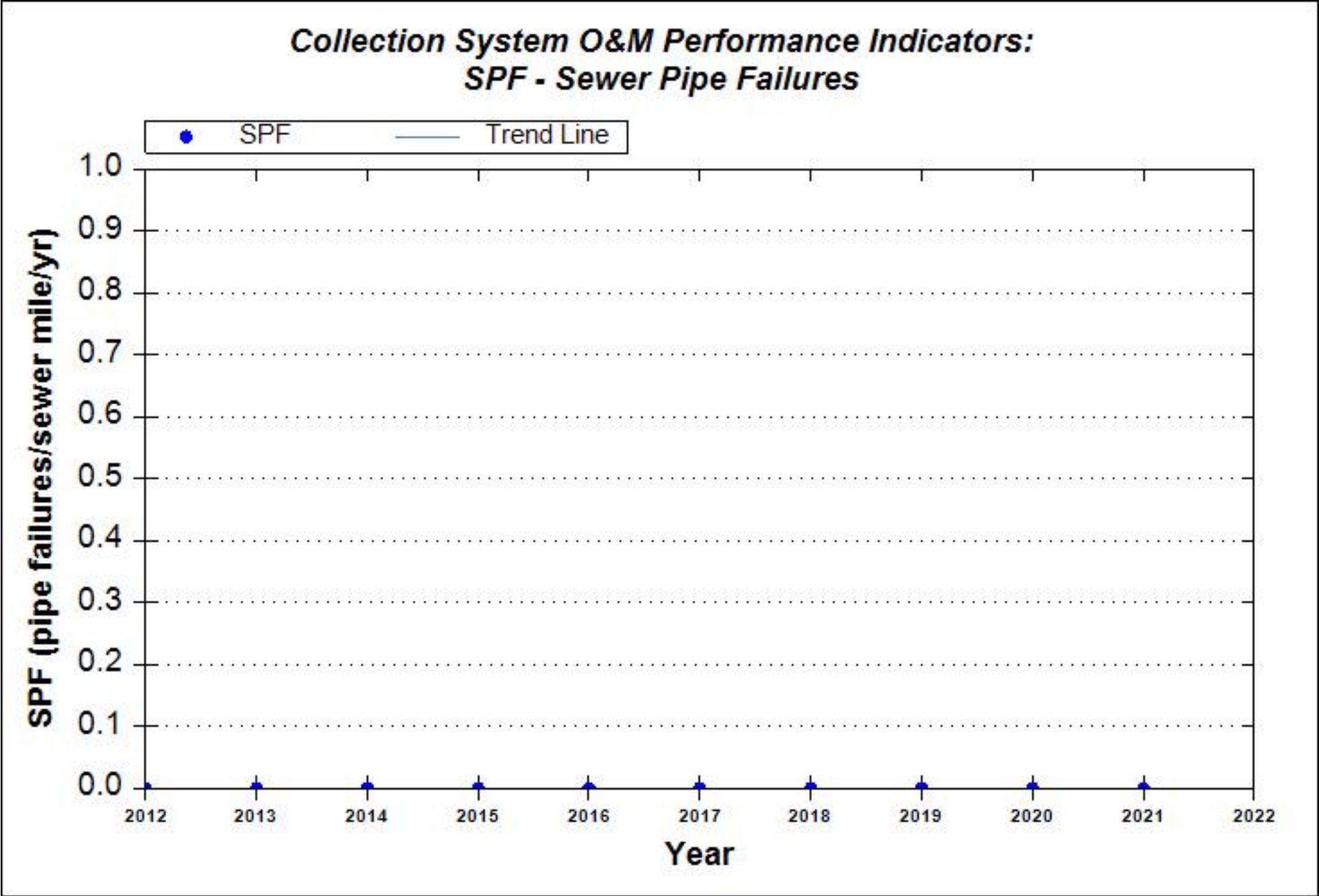
(Optional for G.P.A. greater than or equal to 3.00, required for G.P.A. less than 3.00)

G.P.A. = 4.00

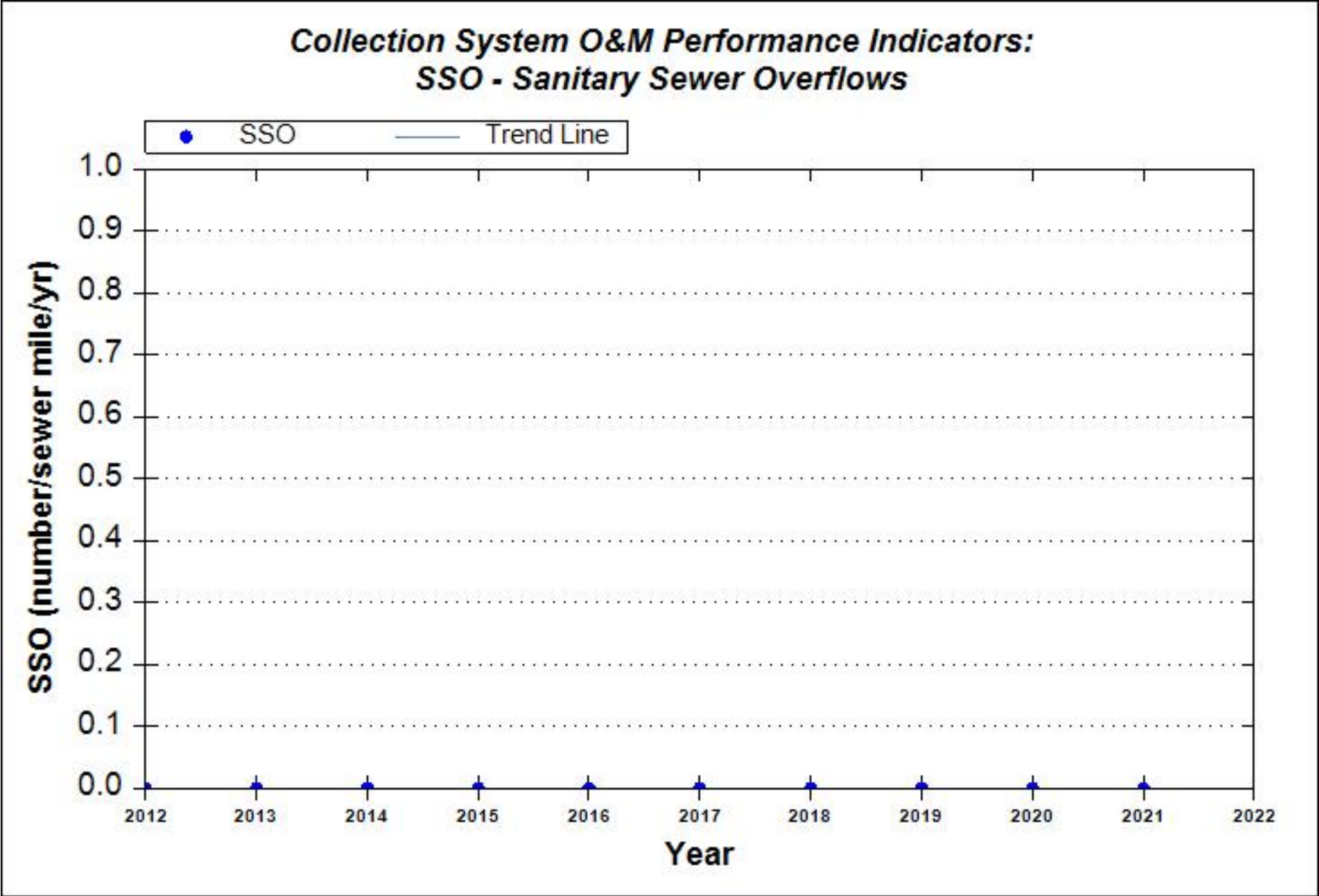
Germantown Sewage Collection System
Linear equation uses 2012 - 2022 CMAR data
for Trend Line: PSF: $y = 0x + 0$



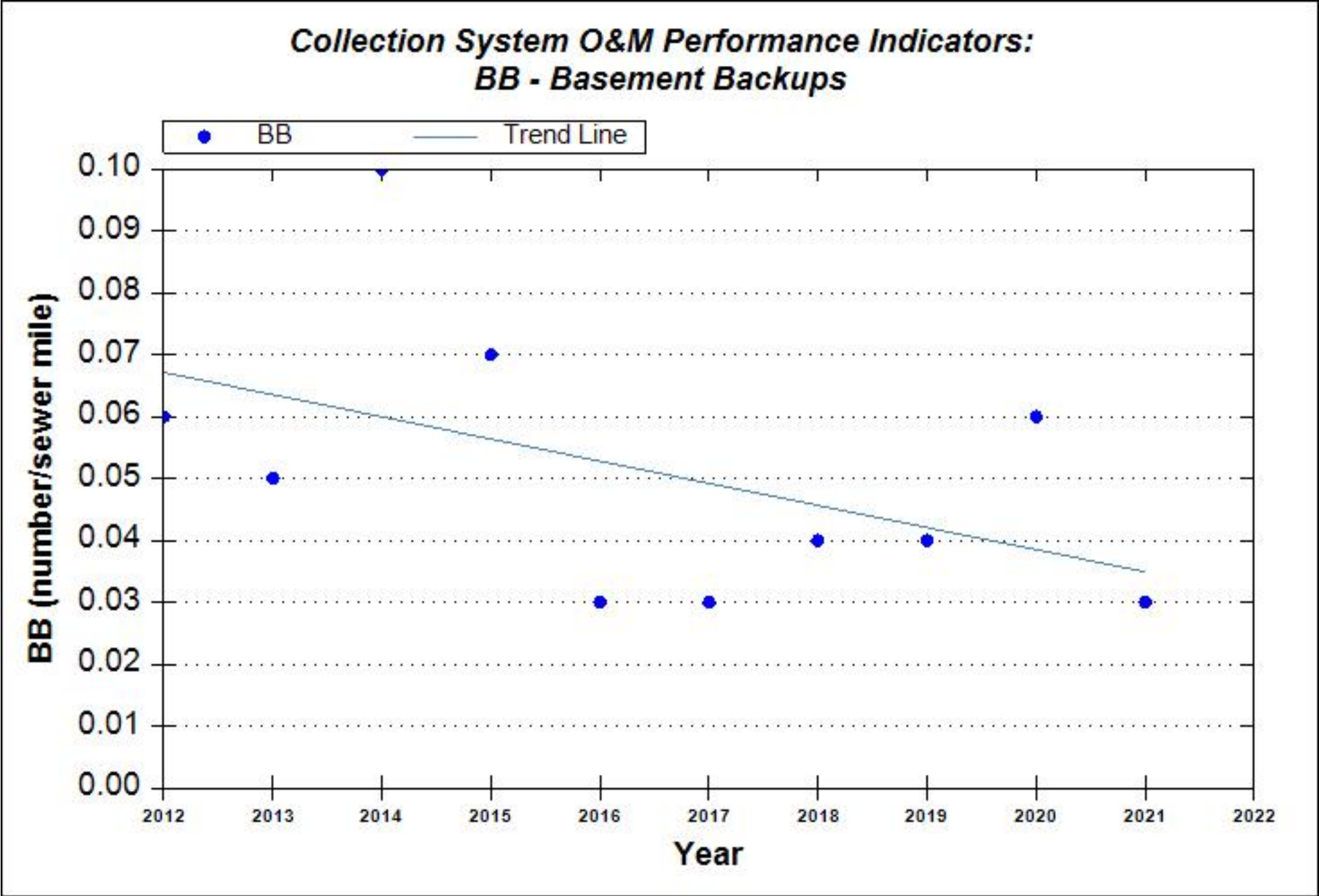
Germantown Sewage Collection System
Linear equation uses 2012 - 2022 CMAR data
for Trend Line: SPF: $y = 0x + 0$



Germantown Sewage Collection System
Linear equation uses 2012 - 2022 CMAR data
for Trend Line: SSO: $y = 0x + 0$



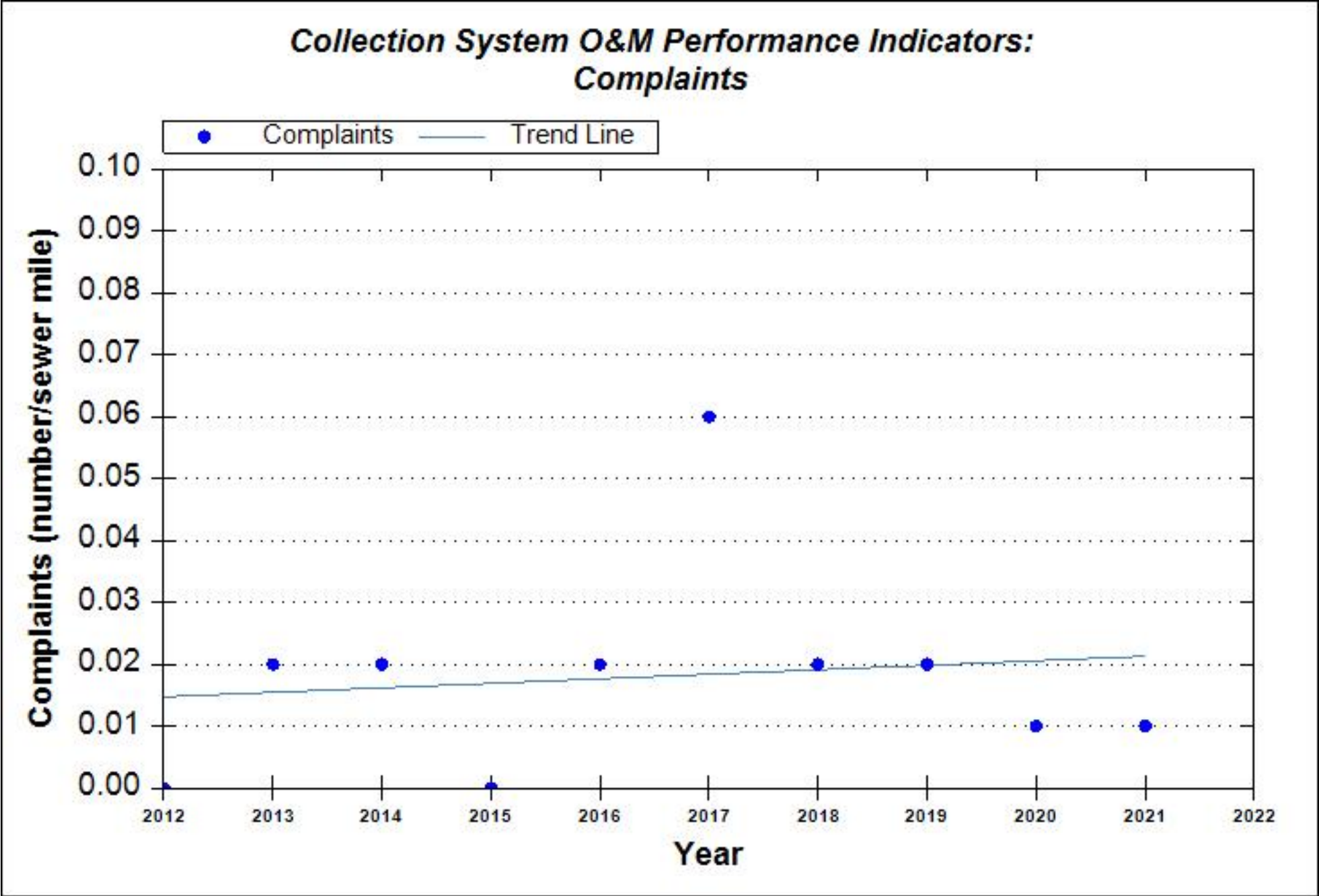
Germantown Sewage Collection System
Linear equation uses 2012 - 2022 CMAR data
for Trend Line: BB: $y = -0.003576 x + 0.07$



Germantown Sewage Collection System

Linear equation uses 2012 - 2022 CMAR data

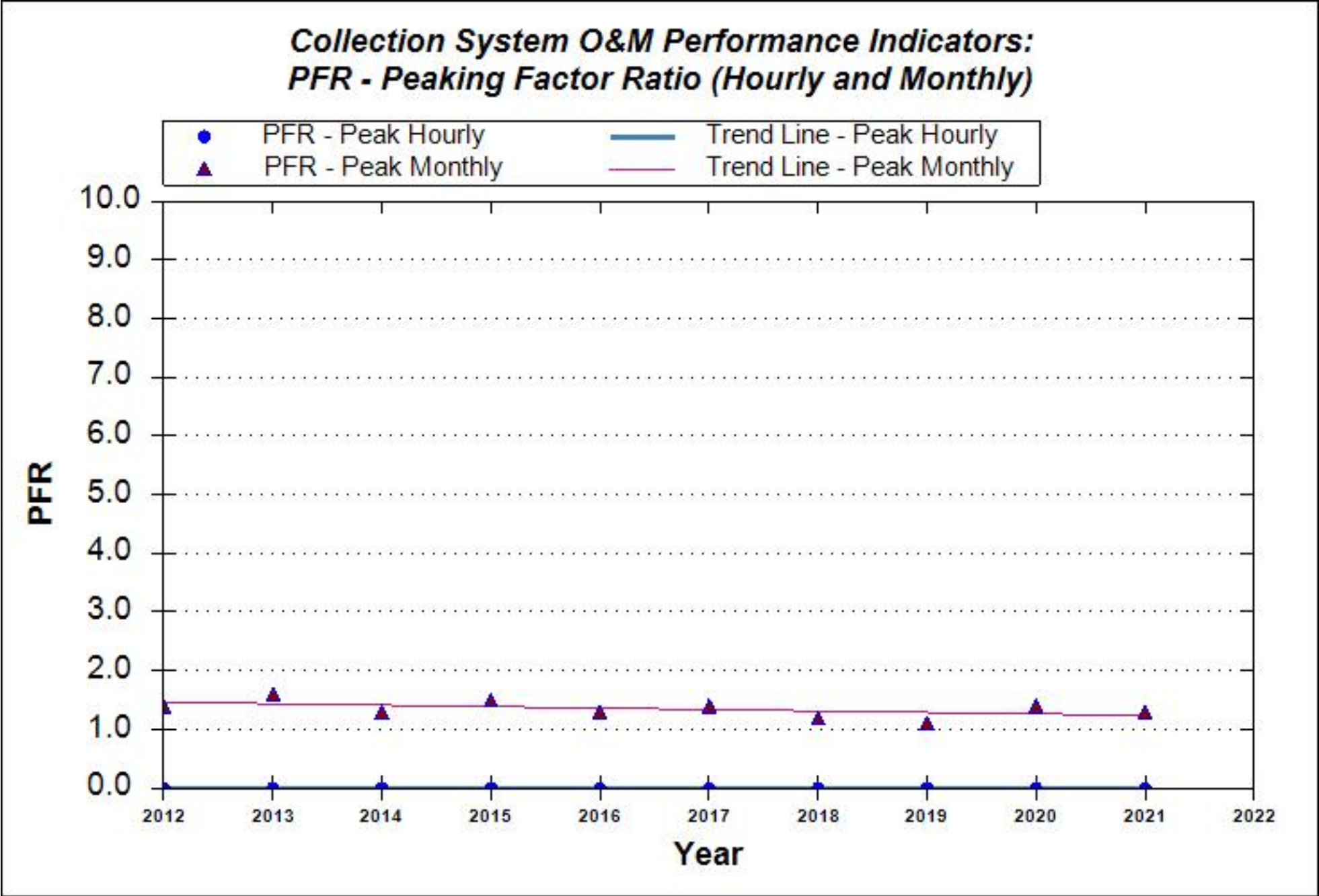
for Trend Line: Complaints: $y = 0.000728x + 0.01$



Germantown Sewage Collection System

Linear equations use 2012 - 2022 CMAR data

for Trend Lines: PFR - Peak Hourly: $y = 0x + 0$ PFR - Peak Monthly: $y = -0.024848x + 1.46$



STATE OF WISCONSIN
VILLAGE OF GERMANTOWN
WASHINGTON COUNTY

RESOLUTION NO. ____-23

A RESOLUTION ADOPTING THE 2021 WISCONSIN POLLUTION DISCHARGE
ELIMINATION SYSTEM COMPLIANCE MAINTANCE ANNUAL REPORT

WHEREAS, by the action taken in Resolution NO. ____-23, the Village is a participant in the Wisconsin Pollutant Discharge Elimination System ("WPDES") program; and

WHEREAS, participants in the WPDES program are required to renew their General Permits issued under that program; and

WHEREAS, the permit renewal requires the Village to complete and submit a Compliance Maintenance Annual Report ("CMAR"); and

WHEREAS, the Village's Public Works Committee reviewed the attached CMAR report and forwarded the same to the Village Board with a recommendation for adoption; and

WHEREAS, the Village Board having reviewed the same concurs with the recommendation of the Public Works Committee.

NOW, THEREFORE, BE IT RESOLVED that the Village Board of the Village of Germantown, Wisconsin, do hereby adopt the attached Compliance Maintenance Annual Report.

BE IT FURTHER RESOLVED that the Village Wastewater Superintendent is hereby directed and authorized to include the attached CMAR in the Village's application for the renewal of its WPDES General Permit. General Permit No.- WI-0047341-06-0.

Introduced by Trustee:

Adopted: June 7, 2023

Vote: Ayes: ____ Nays: ____ Absent: ____

Dean M. Wolter, Village President

ATTEST:

Erin Hirn, MPA Acting Village Clerk

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Emerald Ash Borer Treatment

SUBMITTED BY: Scott Anderson, Superintendent

SUMMARY EXPLANATION:

Each year, the village conducts Emerald Ash Borer treatment with the intent of maintaining a select number of ash trees throughout the village. Currently, each tree selected is treated on a bi-annual basis to maintain the tree's health and longevity. Starting in 2024, we will be transitioning to treatment once every three years. The transition is based on the recommendation of Wachtel Tree Science. New studies have shown that chemical concentration is still adequate, even up to three years, which supports the needs of the tree, based on the beetle population diminishing. While diminished, the beetle will always remain in our region, therefore continued treatment will be necessary. During the 2023 budget process, Emerald Ash Borer treatment was factored into the general fund street tree maintenance line item. The project will treat approximately 145 ash trees in various areas around the village. The project areas include: along roadways, around village buildings and parks. Staff has solicited pricing from eight area contractors and the results are listed below.

M&M Tree Care: \$10,675.00

Crawford Tree & Landscape: Not able to meet deadline, didn't supply proposal.

First Choice Tree Care: Did not supply proposal.

ATTACHMENT:

RECOMMENDATION:

Staff recommends using M&M Tree Care to complete the annual Emerald Ash Borer treatment project in an amount not to exceed: \$10,675.00. If approved, funds shall be allocated from the non-borrowed street tree maintenance account: 10-553-530-5290.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Increased cost for DOT project at Lannon & Maple Rds

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

The Village has been notified that the bids for the Lannon Rd & Maple Rd project came in higher than originally estimated and there is the possibility of the Village incurring an additional cost of \$130,000.00. The original estimate for the Village's cost was \$80,000.00 which was covered by ARPA Funds. WIDOT is attempting to find additional funds and will let the Village know within the next week. Staff wanted to make the Public Works Committee aware of the possible change.

ATTACHMENT:

RECOMMENDATION:

Staff will have a recommendation for the Committee the night of the meeting.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Grading Easement for Holy Hill Rd Reconstruction - Wetterau Easement

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

While performing the work to reconstruct Holy Hill Road and grading for the proposed 10' wide walkway on the southside and along the Troy Wetterau parcel, it became known that the backslope of the sidewalk was excessively steep. The remedy was to extend the grading limits south onto the Wetterau parcel. This grading extension would also remove land from farming, resulting in reduced income for the owner. Not considering the reduced income from farming, the land was valued based on the current value of \$75,000 per acre and based on the area taken for increased grading, the value of the land is \$27,000. Currently, land value in the TID #8 area is \$90,000 to \$100,000 per acre but the owner agreed to the value used to determine the easement value.

The payment will be part of the TID #8 payment for the reconstruction of Holy Hill Rd.

ATTACHMENT:

1. D. Wetterau Grading Easement

RECOMMENDATION:

Staff recommends that the Public Works Committee approve the purchase of the easement in the amount of \$27,000.00 and forward to the Village Board with a positive recommendation.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

Document Number	PERMANENT GRADING EASEMENT AGREEMENT Document Name
-----------------	--

THIS PERMANENT GRADING EASEMENT AGREEMENT (“Agreement”) is granted by Troy A Wetterau and Laurie A. Wetterau Living Trust UVA dated October 20, GRANTOR, and the Village of Germantown, a Wisconsin municipal corporation, GRANTEE.

RECITALS

A. GRANTOR is the fee holder of certain real property in the Village of Germantown, Washington County, State of Wisconsin, as more particularly described on the attached and incorporated Exhibit A (the “Property”).

B. GRANTEE has requested that the GRANTOR grant a permanent easement (the “Easement”) over certain portions of the Property as such portions are described and illustrated on the attached and incorporated Exhibit B (the “Easement Area”).

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

- Grant of Easement. GRANTOR grants to GRANTEE, and its licensees, a perpetual easement and right-of-way to establish and maintain a slope that will provide appropriate lateral support for GRANTEE’s roadway and sidewalk improvements within the Holy Hill Road right-of-way including with the right of ingress and egress for the purpose of this grant, over the Easement Area.
- Indemnification. GRANTEE shall indemnify GRANTOR from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with GRANTEE’s activities conducted on the Property, regardless of the cause of the injury, except to the extent caused intentionally or by the negligence or misconduct of GRANTOR or its agents or employees. However, nothing contained within this Agreement is intended to be a waiver or estoppel of the GRANTEE or its insurer to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including but not limited to those contained within Wis. Stat. §§ 893.80, 895.52, and 345.05. To the extent that indemnification is available and enforceable, the GRANTEE or its insurer shall not be liable in indemnity or contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin Law. In the event of an injury caused by GRANTOR, its agents or employees, GRANTOR shall indemnify GRANTEE from and against all loss, costs (including reasonable attorney fees), injury, death, or damage to persons or property that at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with such actions.
- Duty to Defend. GRANTOR hereby warrants that it has legal title to the Property and the lands which are subject to this Easement, and that the undersigned has lawful authority to grant this easement on GRANTOR’s behalf. GRANTOR shall defend GRANTEE in its exercise of rights granted under this Easement

Recording Data
Name and Return Address Village of Germantown ATTN: Director of Public Works PO BOX Germantown WI 53022
Parcel Identification Number GTNV 181990

against any defect in title to the Property and the lands which are subject to this Easement, or the right of GRANTOR to make the grant contained herein.

4. Consistent Uses Allowed. GRANTOR reserves the right to use the Easement for purposes that will not interfere with the GRANTEE's full enjoyment of the Easement rights granted in this Agreement except that GRANTOR agrees to restrict the use of the land in the Easement Area as follows:

a. The Easement Area will only be put to uses consistent with this easement, such as lawn areas that will not unreasonably interfere with the lateral support for GRANTEE's right-of-way improvements. Growing crops and related farming activities are prohibited within the Easement Area.

b. The surface grade elevation of the Easement Area shall not be raised or lowered more than two (2) inches without the prior written approval of the Village of Germantown Village Engineer. GRANTOR shall not cut into or otherwise modify the slope within the Easement Area.

5. Restoration of Surface. GRANTEE shall perform such maintenance, repairs or replacement to the slope as it shall deem necessary and appropriate in the course of regular and customary operations or as may be necessitated by an extraordinary or emergency situation. Upon completion of any such work, GRANTEE shall be responsible for the general restoration of any and all top soil, turf, other landscaping and/or surface pavement that is disturbed as a result of such work undertaken by GRANTEE, except that the GRANTOR, its successors and assigns shall be responsible for the restoration of any non-grass improvements to the Easement Area installed by GRANTOR.

6. Removal of Obstructions. Unless immediate removal is necessitated by extraordinary or emergency circumstances, GRANTEE shall notify GRANTOR in writing of any obstructions within the easement area that need to be removed due to such obstruction's interference with the rights granted herein. Upon receipt of such written notice, GRANTOR shall have seven (7) days to remove such obstruction at GRANTOR's sole expense. In the event such obstruction is not removed, GRANTEE may remove such obstruction and charge the cost for removal of the same to the GRANTOR. Any unpaid costs shall be assessed against the real estate as a special charge pursuant Wis. Stat. § 66.0627.

7. Covenants Run with Land. All terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by GRANTOR and GRANTEE and their respective successors and assigns. The party named as GRANTOR in this Agreement and any successor or assign to the GRANTOR as fee simple owner of the Property shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in the Property. GRANTOR shall cooperate with GRANTEE in recording any instrument deemed necessary by GRANTEE to address the provisions of Wis. Stat. § 893.33(6).

8. Non-Use. Non-use or limited use of the Easement rights granted in this Agreement shall not prevent the benefiting party from later use of the Easement rights to the fullest extent authorized in this Agreement.

9. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

10. Entire Agreement. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Washington County, Wisconsin.

11. Notices. All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send a notice, the party sending the notice may use the

address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.

12. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

13. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

14. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the nonprevailing party.

15. No Public Dedication. Nothing in this Agreement shall be deemed a gift or dedication of an portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever except as expressly provided herein.

16. Eminent Domain. This Easement has been granted in lieu of condemnation. The compensation paid for all rights associated with this easement is \$27,000.00. Parties holding an interest in the property are the GRANTOR, who may, within 6 months after the date of recording, appeal from the amount of compensation therein stated in the manner set forth in Wis. Stat. §§ 32.05(9) to (12).

[SIGNATURE PAGE FOLLOWS]

The GRANTOR having caused these presents to be signed and sealed this _____ day of June, 2023.

GRANTOR

Troy A Wetterau and Laurie A. Wetterau Living Trust

UVA dated October 20,

BY: _____
Troy A. Wetterau, Trustee

BY: _____
Laurie A. Wetterau, Trustee

STATE OF WISCONSIN)
) ss.
WASHINGTON COUNTY)

Personally came before me this _____ day of June, 2023, the above-named Troy A. and Laurie A. Wetterau, to me know to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission: _____

[THIS SPACE INTENTIONALLY BLANK]

ACCEPTANCE BY VILLAGE OF GERMANTOWN AS GRANTEE,

Dated this _____ day of June, 2023.

VILLAGE OF GERMANTOWN

Dean M. Wolter, Village President

ATTEST:

Village Clerk

STATE OF WISCONSIN)
) ss.
WASHINGTON COUNTY)

Personally came before me this _____ day of June, 2023, the above-named Dean Wolter and _____, to me know to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission: _____

EXHIBIT A

LEGAL DESCRIPTION — PROPERTY

Lot 1 of Certified Survey Map No. 6385, recorded in the Washington County Registry on November 24, 2010 in Volume 48 of Certified Survey Maps on Pages 159-162, as Document No. 1266288, and being a redivision of Parcel 1 of Certified Survey Map No. 5031 and being part of the Northeast 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 18, and part of the Northeast 1/4 of the Southeast 1/4 of Section 18, Township 9 North, Range 20 East, in the Village of Germantown, Washington County, Wisconsin

EXHIBIT B

LEGAL DESCRIPTION — EASEMENT AREA

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Capstone 41 Development - Public Watermain and Sanitary Sewer Easements

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

The second of three proposed buildings on the Capstone-41 Development will incorporate the installation of a water main that will be Public Water Main when the project is completed and accepted by the Village. This water main will be on private land but within a utility easement, which is what is being brought to the Public Works committee this evening. This is a standard easement that the Village obtains for public utilities located on private land. The sanitary portion of the easement is granting additional access to the sanitary sewer installed during the construction of building # 1 and amends the previous easement to allow additional points of access to the existing sanitary sewer.

ATTACHMENT:

1. E. Easement for Water Main - Capstone 41 Development
2. E. Easement for Sanitary Sewer - Capstone 41 Development

RECOMMENDATION:

Staff recommends that the Public Works Committee approve the easement and forward it to the Village Board with a positive recommendation.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

Document Number	20' Public Water Main Easement
-----------------	-----------------------------------

This space reserved for recording data:

Return to: Village of Germantown
PO BOX 337
Germantown, WI 53022

This Water Main Easement (the "Easement") is made by and between **CQ WI 2021, LLC**, a Delaware limited liability company, and the **VILLAGE OF GERMANTOWN**, a Wisconsin municipal corporation ("Grantee"), as of the date signed by Grantor set forth below.

FOR AND IN CONSIDERATION of the sum of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, owners and Grantors of the lands herein described do hereby grant unto the Village of Germantown, Washington County, Wisconsin (Grantee), a non-exclusive easement with the right, permission and authority to enter upon, construct, install, maintain, replace, enlarge, remove public water main facilities and related appurtenances, in, through, under, across, and upon the tract of land more particularly described and depicted with respect to the premises of the Grantor on "**Exhibit A**" attached hereto and made a part hereof. Notwithstanding anything to the contrary contained herein, Grantee's right of access to the premises of Grantor shall include the right to access all paved areas and driving lanes that may be located on the premises of Grantor from time to time.

Grantors hereby warrant that they have legal title to the lands which are the subject of this easement and that they have lawful authority to grant this easement. Further, Grantors shall defend the Village of Germantown in its exercise of rights under the easement herein granted against any defect in title to the land involved or the right of the Grantors to make the grant herein contained.

The right, permission and authority is also granted said Grantee, to trim and/or cut down certain trees and/or brush where said trees and/or brush interfere with the installation of the facilities, maintenance of the facilities or represent a hazard to such facilities. The restoration, however, does not apply to any brush or trees which may be removed at any time pursuant to the rights herein granted.

Grantee shall perform such regular and customary, or extraordinary or emergency maintenance, repairs or replacement to the improvements as it shall deem necessary and appropriate. Upon completion of any such work, Grantee shall backfill to approximate the pre-existing grade. Grantor, and Grantor's successors and assigns shall be responsible for the restoration of topsoil, turf or other landscaping disturbed as a result of such work undertaken by Grantee.

The Grantor(s), their successors and assigns, covenant(s) and agree(s) to restrict the use of the land included in the easement described hereinabove as follows:

- (1) The land will only be put to uses consistent with this easement such as lawn areas, driveways, parking for vehicles, and small and easily movable structures that will not interfere with access to Grantee's facility or its appurtenances, with the exception of item (3), below.
- (2) No permanent construction of any obstruction of access to the Grantee's facility or its appurtenances shall be created in the future and that no building, trees or other

structures or items that may interfere with inspection, maintenance or repair shall be located in the space over and within vertical planes located on both sides of the facility and/or its appurtenances. This shall not preclude buried electrical conduit, sanitary piping or stormwater piping traversing crossing across the easement area to power lighting and appurtenances, which may require hand excavation.

- (3) The surface elevation of the land within the easement shall not be raised or lowered more than four (4) inches relative to the design grades in construction drawings approved by the Village without the prior written approval of the Village Engineer of the Grantee.

In consideration of the foregoing grant of water main easement and the covenants herein contained, Grantor and Grantee agree that (i) Grantor, in and upon developing Grantor's Land, may freely install laterals and connections to and utilize all improvements installed by Grantor pursuant to this Easement (including the water systems of which they are part) in accordance with the Village of Germantown Code, (ii) from and after the acceptance of dedication of the water main to be installed in the easement granted hereunder. Grantee will indemnify and hold Grantor, including its members, officers, employees, successors and assigns, contractors and tenants, harmless from and against any and all claims, litigation, liability, loss, injury, damage, cost and/or expense on account of injury to or death of any person or persons whomsoever in any way arising out of caused, connected with, or attributed to the Easement, this agreement or the rights herein granted, and Grantee, will defend by counsel satisfactory to Grantor any suit or action brought against same based on any alleged injury, death, or damage and shall pay all damages, costs and expenses, including attorneys' fees connected therewith or resulting therefrom, and (iii) in connection with the hook-up by Grantor to the municipal water distribution system, the Village of Germantown shall levy upon Grantor only charges of general applicability to and for utilization of Village of Germantown water main facilities and improvements; no special or unique, tax, special assessment, tap fee, connection charge, capitalization, recovery fee, reclamation charge, or any other charge not generally levied upon one connecting to the municipal water distribution system shall be assessed to or against Grantor or Grantor's land in connection with such hook-ups.

Grantor(s), their successors and assigns, covenant(s) and agree(s) to permit and allow Grantee to have facility and its appurtenances to be installed at such time and in such location as Grantee may deem necessary.

Grantee and its agents shall have the right to enter upon the premises of the Grantor for the purpose of exercising its rights herein acquired. Grantee agrees to restore or cause to have restored said premises, as nearly as is reasonably possible, to the condition and construction standards existing prior to such entry by the Grantee or its agents. The restoration, however, does not apply to any brush or trees which may be removed at any time pursuant to the rights herein granted.

The said Grantor(s), has/have caused these presents to be signed and sealed this _____ day of _____, 2023.

By: **CQ WI 2021, LLC,**
by: **Capstone Germantown LLC, a Co-Managing Member**

Michael Faber, its: Manager

STATE OF WISCONSIN

COUNTY OF WAUKESHA

Personally came before me this _____ day of _____, 2023 , the above named Michael Faber, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public
Commission Expires _____

CONSENT OF MORTGAGEE:
_____ of _____, mortgagee of Tax Key # GNTV 181979, do hereby consent to the described water main easement by CQ WI 2021, LLC, owner of said land, to the Village of Germantown, Washington County, Wisconsin, and hereby submits its mortgage described above to the described easement.

WITNESS the hand and seal of said mortgages this _____ day of _____, 2023.

By: _____
Name: _____
Title: _____

STATE OF WISCONSIN

COUNTY OF _____

Personally came before me this _____ day of _____, 2023, the above named,
to me known to be the person who executed the foregoing instrument and acknowledged the same.

My commission expires _____

Notary Public,

State of _____

VILLAGE OF GERMANTOWN ACCEPTANCE

ACCEPTED BY The Village of Germantown on _____, 2023

_____, 2023
Dean Wolter - Village President

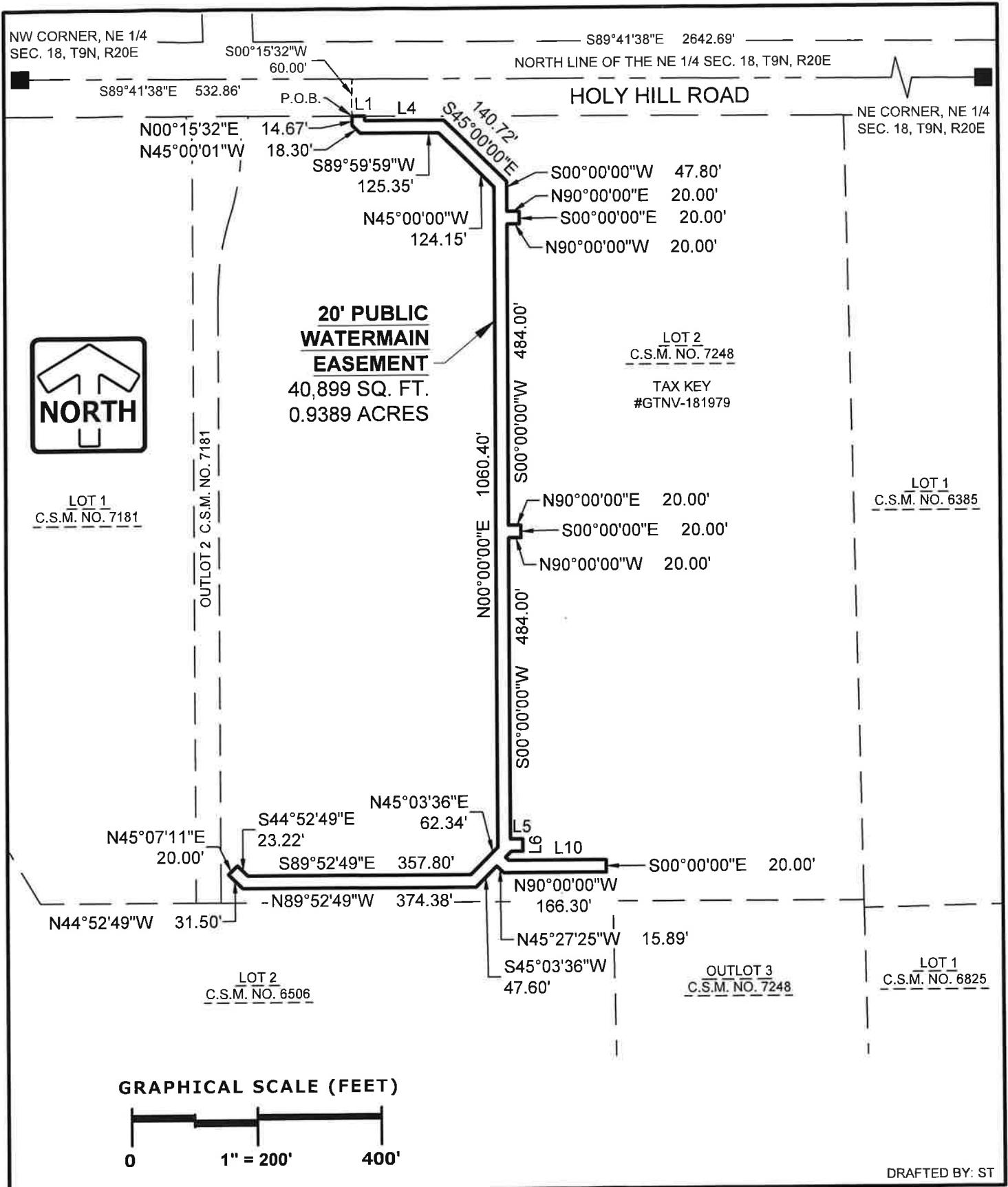
_____, 2023
_____- Village Clerk

Drafted by:
Tomas Clasen, Esq.
Reinhart Boerner Van Deuren, s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Exhibit A

Description and Depiction of Water Main Easement

[To be inserted]



LEGAL DESCRIPTION:

Being a part of Lot 2 of Certified Survey Map No. 7248, as recorded in the Register of Deeds office for Washington County as Document No. 1571463, located in the Northwest 1/4 of the Northeast 1/4 of Section 18, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin, bounded and described as follows:

Commencing at the northwest corner of the Northeast 1/4 of said Section 18; thence South 89°41'38" East along the north line of said Northeast 1/4, 532.86 feet; thence South 00°15'32" West, 60.00 feet to the south right of way line of Holy Hill Road and the Point of Beginning;

Thence South 89°41'38" East along said south right of way line, 20.00 feet; thence South 00°15'32" West, 6.31 feet; thence South 45°00'01" East, 1.68 feet; thence North 89°59'59" East, 125.35 feet; thence South 45°00'00" East, 140.72 feet; thence South 00°00'00" West, 47.80 feet; thence North 90°00'00" East, 20.00 feet; thence South 00°00'00" East, 20.00 feet; thence North 90°00'00" West, 20.00 feet; thence South 00°00'00" West, 484.00 feet; thence North 90°00'00" East, 20.00 feet; thence South 00°00'00" East, 20.00 feet; thence North 90°00'00" West, 484.00 feet; thence North 90°00'00" East, 20.00 feet; thence South 00°00'00" East, 20.00 feet; thence North 90°00'00" West, 18.82 feet; thence South 45°03'36" West, 13.00 feet; thence South 45°27'25" East, 7.52 feet; thence North 90°00'00" East, 158.11 feet; thence South 00°00'00" East, 20.00 feet; thence North 90°00'00" West, 166.30 feet; thence North 45°27'25" West, 15.89 feet; thence South 45°03'36" West, 47.60 feet; thence North 89°52'49" West, 374.38 feet; thence North 44°52'49" West, 31.50 feet; thence North 45°07'11" East, 20.00 feet; thence South 44°52'49" East, 23.22 feet; thence South 89°52'49" East, 357.80 feet; thence North 45°03'36" East, 62.34 feet; thence North 00°00'00" East, 1060.40 feet; thence North 45°00'00" West, 124.15 feet; thence South 89°59'59" West, 125.35 feet; thence North 45°00'01" West, 18.30 feet; thence North 00°15'32" East, 14.67 feet to the Point of Beginning.

Said land containing 40,899 square feet (0.9389) acres.

LINE TABLE		
LINE NO.	BEARING	DISTANCE
L1	S89°41'38"E	20.00'
L2	S00°15'32"W	6.31'
L3	S45°00'01"E	1.68'
L4	N89°59'59"E	125.35'
L5	N90°00'00"E	20.00'
L6	S00°00'00"E	20.00'
L7	N90°00'00"W	18.82'
L8	S45°03'36"W	13.00'
L9	S45°27'25"E	7.52'
L10	N90°00'00"E	158.11'



EXHIBIT A

PINNACLE ENGINEERING GROUP

20725 WATERTOWN ROAD | SUITE 100 | BROOKFIELD, WI 53186

SHEET 2 OF 2

WWW.PINNACLE-ENGR.COM

05/04/2023

PLAN | DESIGN | DELIVER

PEG JOB#1262.00B

Document Number	20' Sanitary Sewer Easement
-----------------	-----------------------------

This space reserved for recording data:

Return to: Village of Germantown
PO BOX 337
Germantown, WI 53022

This Sanitary Sewer Easement (the "Easement") is made by and between **CQ WI 2021, LLC**, a Delaware limited liability company, and the **VILLAGE OF GERMANTOWN**, a Wisconsin municipal corporation ("Grantee"), as of the date signed by Grantor set forth below.

FOR AND IN CONSIDERATION of the sum of One (\$1.00) Dollar and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, owners and Grantors of the lands herein described do hereby grant unto the Village of Germantown, Washington County, Wisconsin (Grantee), a non-exclusive easement with the right, permission and authority to enter upon, construct, install, maintain, replace, enlarge, remove sanitary sewer facilities and related appurtenances, in, through, under, across, and upon the tract of land more particularly described and depicted with respect to the premises of the Grantor on "**Exhibit A**" attached hereto and made a part hereof. Notwithstanding anything to the contrary contained herein, Grantee's right of access to the premises of Grantor shall include the right to access all gravel and/or paved areas and driving lanes that may be located on the premises of Grantor from time to time. Additionally, for the avoidance of doubt, this Easement is the 20' Sanitary Sewer Easement depicted on Certified Survey Map No. 7248 recorded with the Office of the Register of Deeds for Washington County recorded on November 14, 2022 as Document No. 1571463 and is being recorded to clarify the parties' respective rights and obligations with respect to such easement.

Grantors hereby warrant that they have legal title to the lands which are the subject of this easement and that they have lawful authority to grant this easement. Further, Grantors shall defend the Village of Germantown in its exercise of rights under the easement herein granted against any defect in title to the land involved or the right of the Grantors to make the grant herein contained.

The right, permission and authority is also granted said Grantee, to trim and/or cut down certain trees and/or brush where said trees and/or brush interfere with the existing sanitary sewer and maintenance of the facilities or represent a hazard to such facilities. The restoration, however, does not apply to any brush or trees which may be removed at any time pursuant to the rights herein granted.

Grantee shall perform such regular and customary, or extraordinary or emergency maintenance, repairs or replacement to the improvements as it shall deem necessary and appropriate. Upon completion of any such work, Grantee shall backfill to approximate the pre-existing grade. Grantor, and Grantor's successors and assigns shall be responsible for the restoration of topsoil, turf or other landscaping disturbed as a result of such work undertaken by Grantee.

The Grantor(s), their successors and assigns, covenant(s) and agree(s) to restrict the use of the land included in the easement described hereinabove as follows:

- (1) The land will only be put to uses consistent with this easement such as lawn areas, driveways, parking for vehicles, and small and easily movable structures that will not

interfere with access to Grantee's facility or its appurtenances, with the exception of item (3), below.

- (2) No permanent construction of any obstruction of access to the Grantee's facility or its appurtenances shall be created in the future and that no building, trees or other structures or items that may interfere with inspection, maintenance or repair shall be located in the space over and within vertical planes located on both sides of the facility and/or its appurtenances. This shall not preclude buried electrical conduit, sanitary piping or stormwater piping traversing crossing across the easement area to power lighting and appurtenances, which may require hand excavation.
- (3) The surface elevation of the land within the easement shall not be raised or lowered more than four (4) inches relative to the design grades in construction drawings approved by the Village without the prior written approval of the Village Engineer of the Grantee.

In consideration of the foregoing grant of sanitary sewer easement and the covenants herein contained, Grantor and Grantee agree that (i) Grantor, in and upon developing Grantor's Land, may freely install laterals and connections to and utilize all improvements installed by Grantor pursuant to this Easement (including the sanitary sewer systems of which they are part) in accordance with the Village of Germantown Code, (ii) from and after the acceptance of dedication of the sanitary sewer installed in the easement granted hereunder. Grantee will indemnify and hold Grantor, including its members, officers, employees, successors and assigns, contractors and tenants, harmless from and against any and all claims, litigation, liability, loss, injury, damage, cost and/or expense on account of injury to or death of any person or persons whomsoever in any way arising out of caused, connected with, or attributed to the Easement, this agreement or the rights herein granted, and Grantee, will defend by counsel satisfactory to Grantor any suit or action brought against same based on any alleged injury, death, or damage and shall pay all damages, costs and expenses, including attorneys' fees connected therewith or resulting therefrom, and (iii) in connection with the hook-up by Grantor to the municipal sanitary sewer system, the Village of Germantown shall levy upon Grantor only charges of general applicability to and for utilization of Village of Germantown sanitary sewer facilities and improvements; no special or unique, tax, special assessment, tap fee, connection charge, capitalization, recovery fee, reclamation charge, or any other charge not generally levied upon one connecting to the municipal sanitary sewer systems shall be assessed to or against Grantor or Grantor's land in connection with such hook-ups.

Grantor(s), their successors and assigns, covenant(s) and agree(s) to permit and allow Grantee to have facility and its appurtenances to be installed at such time and in such location as Grantee may deem necessary.

Grantee and its agents shall have the right to enter upon the premises of the Grantor for the purpose of exercising its rights herein acquired. Grantee agrees to restore or cause to have restored said premises, as nearly as is reasonably possible, to the condition and construction standards existing prior to such entry by the Grantee or its agents. The restoration, however, does not apply to any brush or trees which may be removed at any time pursuant to the rights herein granted.

Notwithstanding anything to the contrary contained herein, in the event that Grantee's maintenance and repair of the facilities within the sanitary sewer easement area requires the removal or dismantling of the retaining wall located at the southeast corner of the premises of Grantor that is located in the sanitary sewer easement area, Grantor shall be solely responsible for the costs of restoring or otherwise reconstructing such retaining wall.

The said Grantor(s), has/have caused these presents to be signed and sealed this _____ day of _____, 2023.

**By: CQ WI 2021, LLC,
by: Capstone Germantown LLC, a Co-Managing
Member**

Michael Faber, its: Manager

STATE OF WISCONSIN

COUNTY OF WAUKESHA

Personally came before me this _____ day of _____, 2023, the above named Michael Faber, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public
Commission Expires _____

CONSENT OF MORTGAGEE:

_____ of _____, mortgagee of Tax Key # GNTV 181979, do hereby consent to the described sanitary sewer easement by CQ WI 2021, LLC, owner of said land, to the Village of Germantown, Washington County, Wisconsin, and hereby submits its mortgage described above to the described easement.

WITNESS the hand and seal of said mortgages this _____ day of _____, 2023.

By: _____
Name:
Title:

STATE OF WISCONSIN

COUNTY OF _____

Personally came before me this _____ day of _____, 2023, the above named, to
me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public,

State of _____

My commission expires _____

VILLAGE OF GERMANTOWN ACCEPTANCE

ACCEPTED BY The Village of Germantown on _____, 2023 Date

_____, 2023
Dean Wolter - Village President

_____, 2023
_____ - Village Clerk

Drafted by:
Tomas Clasen, Esq.
Reinhart Boerner Van Deuren, s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53202

Exhibit A

Description and Depiction of Sanitary Sewer Easement

[To be inserted]

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: TDC Willow Creek LLC Development Easement

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

The proposed project in the Willow Creek Industrial Park is named "TDC Willow Creek, LLC" and this development will incorporate relay/ relocation of a portion of the existing public sanitary sewer and water main and the installation of an additional water main that will be a public water main when the project is completed and accepted by the Village. This sanitary sewer and water main relocation and new water main will be on private land but within a utility easement, which is what is being brought to the Public Works committee this evening. This is a standard easement that the Village obtains for public utilities located on private land.

ATTACHMENT:

1. F. Easement for Sanitary Sewer and Water Main - TDC Willow Creek Development

RECOMMENDATION:

Staff recommends that the Public Works Committee approve the easement and forward it to the Village Board with a positive recommendation.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

Document No.

AMENDMENT TO PUBLIC
SANITARY AND
WATERMAIN EASEMENT

This Amendment to Public Sanitary and Watermain Easement ("Amendment") is dated as of this _____ day of _____, 2023, by and among by **TDC WILLOW CREEK, LLC**, a Wisconsin limited liability company ("Owner") and the **VILLAGE OF GERMANTOWN**, a municipal corporation ("Village").

RECITALS

WHEREAS, Owner is the owner of that certain real property situated in the Village of Germantown, Washington County, Wisconsin, as legally described in Exhibit A attached hereto and incorporated herein by reference ("Property").

After recording return to:
Lawrence Ratayczak, PE
Village of Germantown
N112W17001 Mequon Rd
Germantown, WI 53022-0337
lratayczak@germantownwi.gov

Tax Parcel Number:
See Exhibit A

WHEREAS, the Village benefits from a Public Sanitary and Watermain Easement pursuant to that certain Certified Survey Map No. 6782 recorded with the Washington County Register of Deeds on September 28, 2017 as Document No. 1438853, Volume 52, Pages 160-171 ("Original Easement"; Original Easement and this Amendment, as may further be amended, collectively, the "Easement"), over a portion of the Property as more particularly depicted in Exhibit B attached hereto and incorporated herein by reference ("Easement Area").

WHEREAS, the parties desire to amend the Original Easement, pursuant to the terms and conditions hereof.

AGREEMENT

In consideration of the foregoing Recitals, which are incorporated herein and made a part hereof, and the mutual agreements that follow, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby as follows:

1. Vacation. Those portions of the Property legally described and depicted on Exhibit C attached hereto and incorporated herein by reference (“Vacated Easement Area”) shall no longer be part of the Easement Area or subject to the Easement. The Village hereby forever and fully waives, releases, terminates, and vacates any rights, easements, and benefits in or to the Vacated Easement Area.

2. Additional Easement Area. Those portions of the Property legally described and depicted on Exhibit D attached hereto and incorporated herein by reference (“Additional Easement Area”) shall be deemed part of the Easement Area under the Easement.

3. Developer. The “Developer” under the Easement shall be deemed to mean the Owner and any successor owner of the Property.

4. Successors and Assigns. All of the obligations of the parties under the Easement shall bind and inure to the benefit of their respective heirs, personal representatives, successors, grantees, and assigns and the restrictions, covenants, and obligations pertaining to the Easement shall run with the land and shall continue until the Easement is terminated or expires.

5. Ratification. The Original Easement, as modified by this Amendment, is ratified and shall remain in full force and effect. To the extent of any inconsistency or conflict between the Original Easement and this Amendment, this Amendment shall control.

6. Counterparts. This Amendment may be executed in two or more counterparts, all of which taken together shall constitute one instrument.

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

[Signature Pages Follows]

IN WITNESS WHEREOF, this Amendment is effective as of the day, month, and year first above written.

OWNER:

TDC WILLOW CREEK, LLC, a Wisconsin limited liability company

By: Dickman Development, LLC, its Manager

By: _____
Name: Samuel D. Dickman
Title: Manager

By: _____
Name: Samuel M. Dickman
Title: Manager

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this ____ day of _____, 2023, the above named Samuel D. Dickman and Samuel M. Dickman, each as Manager of Dickman Development, LLC, the Manager of TDC Willow Creek, LLC, a Wisconsin limited liability company, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Notary Public
Name: _____
My Commission expires: _____

(NOTARY SEAL)

VILLAGE:

VILLAGE OF GERMANTOWN, a Wisconsin municipal corporation

By: _____
Name: Dean Wolter
Title: Village President

By: _____
Name: Angel Rettler
Title: Village Clerk

STATE OF WISCONSIN)
)
WASHINGTON COUNTY)

Personally came before me this ____ day of _____, 2023, the above-named Dean Wolter as Village President and Angel Rettler as Village Clerk of the Village of Germantown, to me known to be such officers and acknowledge that they executed the foregoing instrument in such capacity.

Notary Public
Name: _____
My Commission expires: _____

Drafted By:
Katherine G. Bills, Esq.
Reinhart Boerner Van Deuren s.c.
1000 North Water Street, Suite 1700
Milwaukee, WI 53201-2965

EXHIBIT A

PROPERTY LEGAL DESCRIPTION

Lot 4 of Certified Survey Map No. 6782, recorded in the Office of the Register of Deeds for Washington County, Wisconsin, on September 28, 2017 in Volume 52 of Certified Survey Maps, Pages 160-171, as Document No. 1438853, being part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 32, and part of the Southeast 1/4 of the Southeast 1/4 of Section 29, all in Town 9 North, Range 20 East, in the Village of Germantown, County of Washington, State of Wisconsin.

Property Address: N102 W19200 Willow Creek Way, Germantown, WI 53022 Tax Key

Tax Identification Number: GTNV 321973

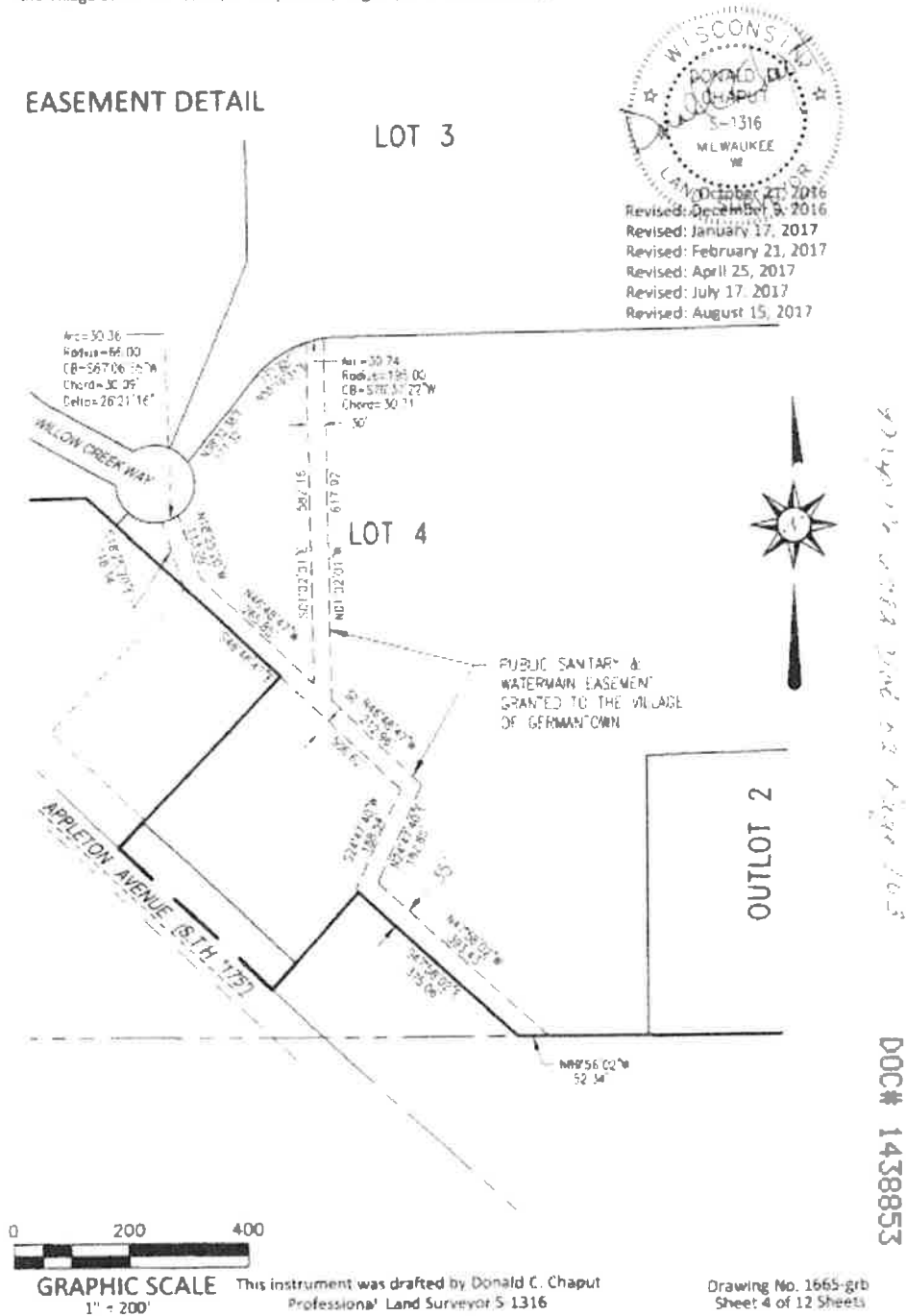
EXHIBIT B

ORIGINAL EASEMENT DEPICTION

CERTIFIED SURVEY MAP NO. _____

Part of the Northwest 1/4, Northeast 1/4, Southwest 1/4 and Southeast 1/4 of the Northeast 1/4 of Section 37, and part of the Southeast 1/4 of the Southeast 1/4 of Section 29 all in Town 9 North, Range 20 East, in the Village of Germantown, County of Washington, State of Wisconsin.

EASEMENT DETAIL



Amended and Restated Public Sanitary and Watermain Easement – Exhibit B

EXHIBIT C

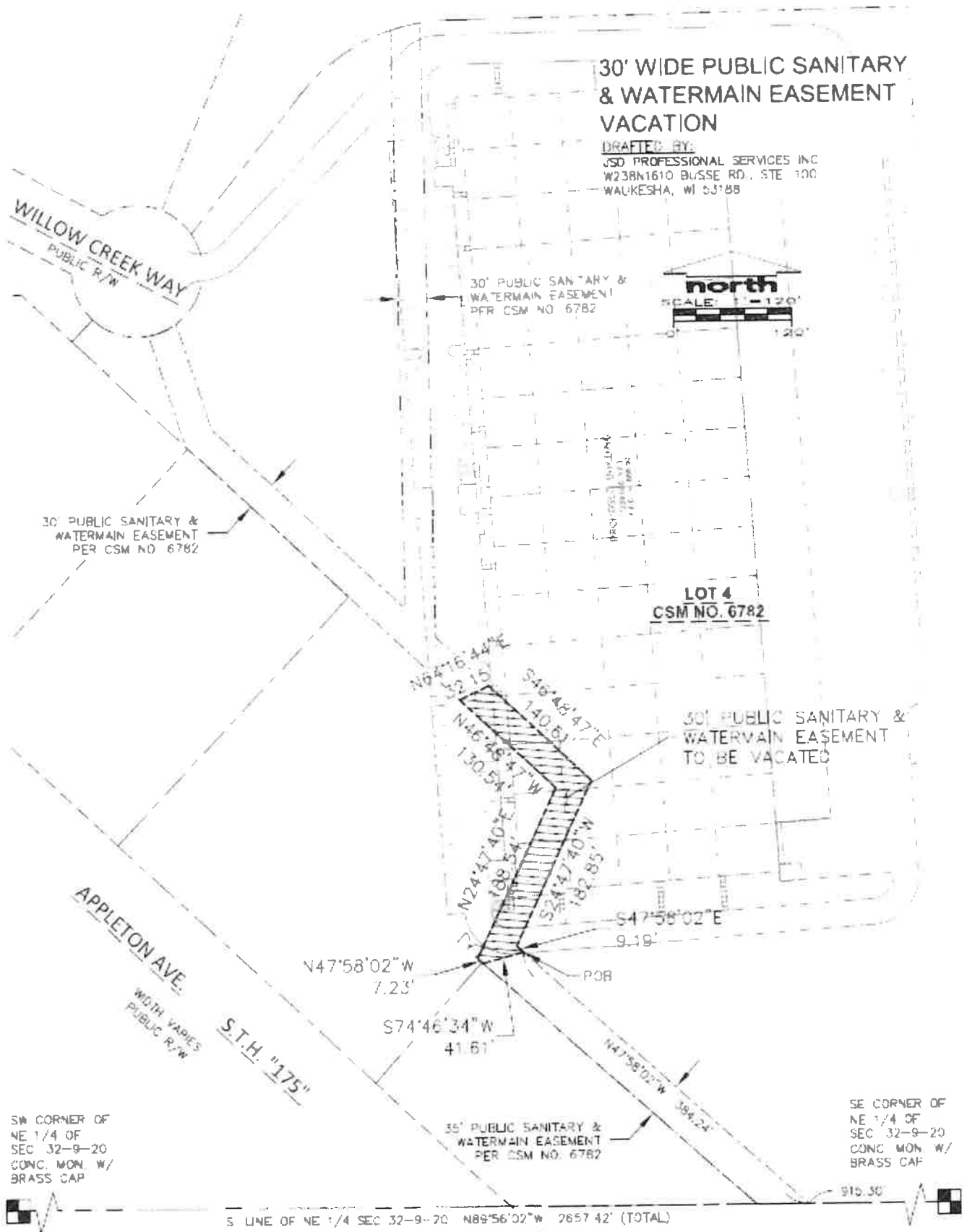
VACATED EASEMENT AREA LEGAL DESCRIPTION AND DEPICTION

Being a part of Lot 4 of Certified Survey Map No. 6782, located in the Southeast 1/4 of the Northeast 1/4 of Section 32, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin bounded and describe as follow:

Commencing at the southeast corner of said Northeast 1/4 section; thence North 89°56'02" West along the south line of said Northeast 1/4 section, 915.30 feet to the northerly line of a 35-foot Public Sanitary and Watermain Easement as shown in said Certified survey Map No. 6782; thence North 47°58'02" West along said northerly line, 384.24 feet to the point of beginning;

Thence South 74°46'34" West, 41.61 feet; thence North 47°58'02"W, 7.23 feet; thence North 24°47'40" East, 188.54 feet; thence North 46°48'47" West, 130.54 feet; thence North 64°16'44" East, 32.15 feet; thence South 46°48'47" East, 140.61 feet; thence South 24°47'40" west, 182.85 feet; thence South 47°58'02" East, 9.19 feet to the point of beginning.

Containing in all 9,926 square feet (0.2281 acre) of lands, more or less.



49330173

Amended and Restated Public Sanitary and Watermain Easement – Exhibit C

EXHIBIT D

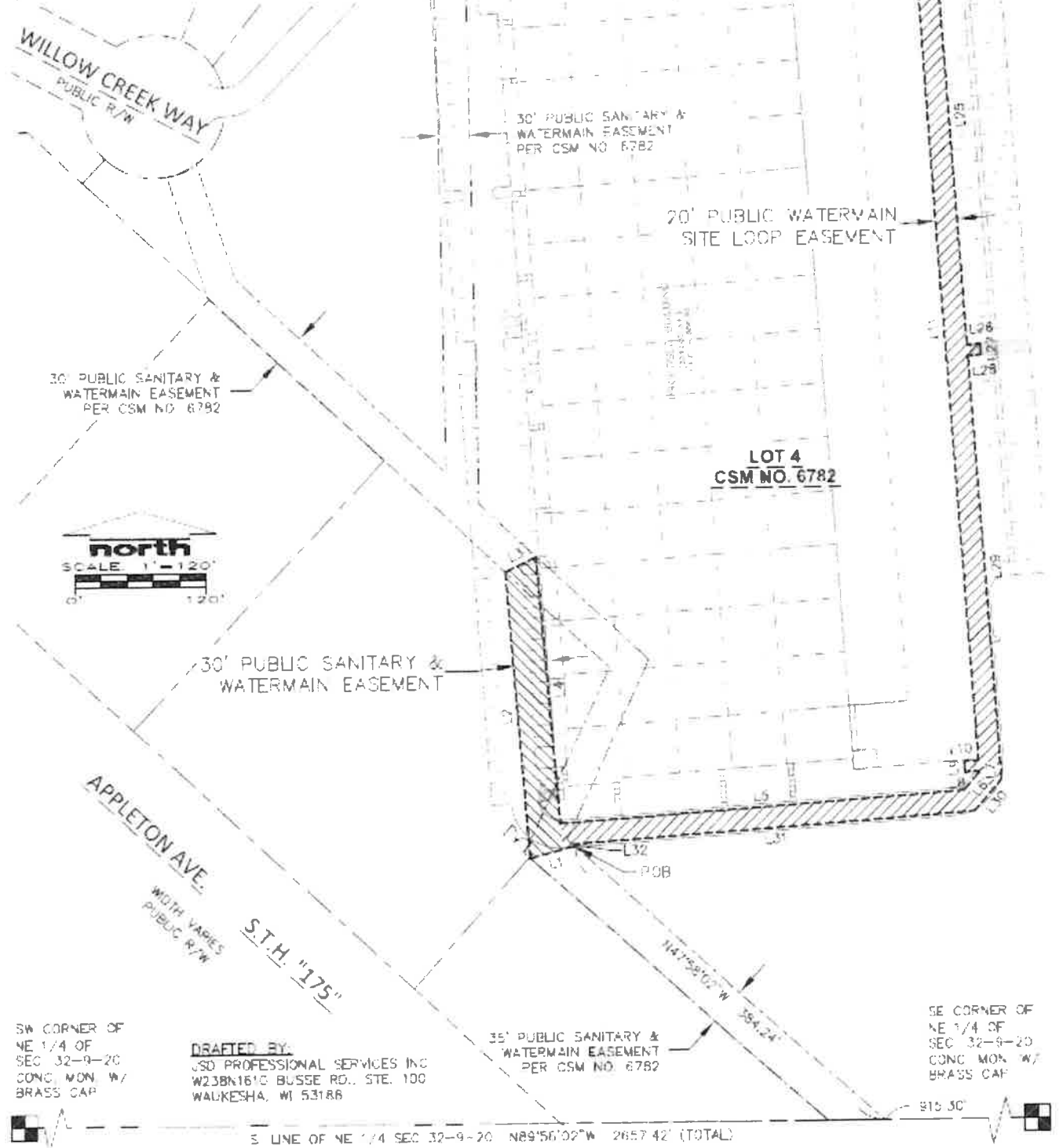
ADDITIONAL EASEMENT AREA LEGAL DESCRIPTION AND DEPICTION

Being a part of Lot 4 of Certified Survey Map No. 6782, located in the Southeast 1/4 of the Northeast 1/4 of Section 32, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin bounded and describe as follow:

Commencing at the southeast corner of said Northeast 1/4 section; thence North 89°56'02" West along the south line of said Northeast 1/4 section, 915.30 feet to the northerly line of a 35-foot Public Sanitary and Watermain Easement as shown in said Certified survey Map No. 6782; thence North 47°58'02" West along said northerly line, 384.24 feet to the point of beginning; Thence South 74°46'34" West, 41.61 feet; thence North 04°37'45" West, 266.22 feet; thence North 64°16'44" East, 32.15 feet; thence South 04°37'45" East, 248.07 feet; thence North 85°59'03" East, 376.70 feet; thence North 40°59'02" East, 21.72 feet; thence North 03°59'42" West, 1.01 feet; thence South 85°59'15" West, 13.35 feet; thence North 04°00'45" West, 10.00 feet; thence North 85°59'15" East, 13.35 feet; thence North 03°59'42" West, 802.27 feet; thence North 46°00'18" West, 42.02 feet; thence South 88°59'42" West, 31.90 feet; thence South 01°00'18" East, 15.77 feet; thence South 88°59'42" West, 10.00 feet; thence North 01°00'18" West, 15.77 feet; thence South 88°59'42" West, 63.87 feet; thence South 01°00'18" East, 13.50 feet; thence South 88°59'42" West, 10.00 feet; thence North 01°00'18" West, 13.50 feet; thence South 88°59'42" West, 270.65 feet to the easterly line of a 30-foot Public Sanitary and Watermain Easement as shown in said Certified survey Map No. 6782; thence North 01°02'01" West along said easterly line, 20.00 feet; thence North 88°59'42" East, 394.72 feet; thence South 46°00'18" East, 57.98 feet; thence South 03°59'42" East, 425.81 feet; thence North 85°59'15" East, 12.00 feet; thence South 04°00'45" East, 10.00 feet; thence South 85°59'15" West, 12.00 feet; thence South 03°59'42" East, 393.43 feet; thence South 40°59'02" West, 38.28 feet; thence South 85°59'03" West, 373.85 feet; thence South 04°00'58" East, 1.95 feet to the point of beginning.

Containing in all 42,107 square feet (0.9666 acre) of lands, more or less.

30' WIDE PUBLIC SANITARY &
WATERMAIN EASEMENT
RELOCATION AND
20' WIDE PUBLIC WATERMAIN
SITE LOOP EASEMENT
(SHEET 1 OF 2)



49330173

Amended and Restated Public Sanitary and Watermain Easement – Exhibit D

30' WIDE PUBLIC SANITARY &
WATERMAIN EASEMENT
RELOCATION AND
20' WIDE PUBLIC WATERMAIN
SITE LOOP EASEMENT
(SHEET 2 OF 2)

DRAFTED BY:
JSD PROFESSIONAL SERVICES INC
W238N1610 BUSSE RD., STE. 100
WAUKESHA, WI 53188

EASEMENT LINE TABLE			EASEMENT LINE TABLE		
LINE NO	BEARING	LENGTH	LINE NO	BEARING	LENGTH
L1	S74°46'34"W	41.61'	L17	S88°59'42"W	63.87'
L2	N04°37'45"W	266.22'	L18	S01°00'18"E	13.50'
L3	N64°16'44"E	32.15'	L19	S88°59'42"W	10.00'
L4	S04°37'45"E	248.07'	L20	N01°00'18"W	13.50'
L5	N85°59'03"E	375.70'	L21	S88°59'42"W	270.65'
L6	N40°59'02"E	21.72'	L22	N01°02'01"W	20.00'
L7	N03°59'42"W	1.01'	L23	N88°59'42"E	394.72'
L8	S85°59'15"W	13.35'	L24	S46°00'18"E	57.98'
L9	N04°00'45"W	10.00'	L25	S03°59'42"E	425.81'
L10	N85°59'15"E	13.35'	L26	N85°59'15"E	12.00'
L11	N03°59'42"W	802.27'	L27	S04°00'45"E	10.00'
L12	N46°00'18"W	42.02'	L28	S85°59'15"W	12.00'
L13	S88°59'42"W	31.90'	L29	S03°59'42"E	393.43'
L14	S01°00'18"E	15.77'	L30	S40°59'02"W	38.28'
L15	S88°59'42"W	10.00'	L31	S85°59'03"W	373.85'
L16	N01°00'18"W	15.77'	L32	S04°00'58"E	1.95'

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Award of Contract for Legend Avenue Culvert Replacement

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

The existing twin CMP (corrugated metal pipe) are failing, and the road is settling. The replacement culverts are designed as reinforced concrete pipe (RCP). Also included is the replacement of two (2) catch basins built on top of the pipe.

The engineers' estimate for this project is \$150,000.00. The project will be funded by Acct. # 40-541-570-8892 which are CIP Funds for Storm Drainage System Repairs. The current fund amount is \$282,500.00.

Staff will present the bids received and associated recommendations to the Committee prior to the start of the meeting.

ATTACHMENT:

RECOMMENDATION:

Staff recommendations will be presented via a modified backup the night of the meeting.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Development Agreement - Dickman (Willow Creek)

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

Staff is bringing the Developers Agreement for TDC Willow Creek, LLC. This development is by Dickman Development and is located on the last open parcel in the Willow Creek Industrial Park. This Development Agreement is necessary due to the installation of a public water main and relocation of the existing sanitary sewer and water main.

ATTACHMENT:

1. H. Development Agreement - TDC Willow Creek LLC

RECOMMENDATION:

Staff is recommending the Public Works and Highway Committee approve the Development Agreement for the TDC Willow Creek, LLC development and any revisions by the Village Attorney and forward with a positive recommendation for approval to the Village Board.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

**TDC WILLOW CREEK, LLC
DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into by and between the Village of Germantown, a Municipal Corporation of the State of Wisconsin located in Washington County, hereinafter called the "Village", and TDC Willow Creek, LLC, hereinafter referred to as "Developer".

WHEREAS, the Developer owns Lot # 4 (26.6779 acres) of Certified Survey Map No. 6782 which is a total of 119.7414 acres, in the Northwest ¼, Northeast ¼, Southwest ¼ and Southeast ¼ of the Northeast ¼ of Section 32, and part of the Southeast ¼ of the Southeast ¼ of Section 29 all in Township 9 North of Range 20 East, in the Village of Germantown, Washington County, Wisconsin, as identified in the attached Exhibit "C" in the Village of Germantown, Washington County, Wisconsin (the "Property"); and

WHEREAS, Developer has submitted a site plan for one (1) building on the parcel; having 209,329 sq. ft., the building will be an office and warehouse and manufacturing facility ("Development"); and

WHEREAS, the Village may require that Developer make and install any public improvements reasonably necessary within a reasonable time; and further that the acceptance of dedication of these improvements may be conditioned upon the construction of such improvements according to Village specifications and without cost to the Village; and

WHEREAS, it will be necessary that Developer construct and install water distribution facility in a dedicated easement on the Property and relay existing water main, and the Village will require that such plans and designs be approved and permitted; and

WHEREAS, it will be necessary that Developer construct and relay existing sanitary sewer collection system in a dedicated easement on the Property, and the Village will require that such plans and designs be approved and permitted; and

WHEREAS, The Village seeks to protect the health, safety and general welfare of the Village as a whole and, in particular, property owners who abut the site or are potentially affected by the project through application of the Municipal Code and rules and regulations of governmental agencies with jurisdiction.

NOW, THEREFORE, in consideration of these recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - REQUIRED IMPROVEMENTS

1.01 GENERALLY. Developer, entirely at its own expense, shall, except as herein provided, design and install the public improvements required by Sec.18.08 of the Municipal Code in accordance with the applicable provisions of that section and as directed by the Village

Engineer or Village Board and consistent with the plans and specifications described in the attached Exhibit D which have been approved by the Village (“Approved Plans”). It is the intent of this Agreement that all public improvements shall be installed by Developer. Notwithstanding the foregoing, the public improvements described in this Agreement are deemed to be undertaken for a public (not a private) purpose.

1.02 WATER SUPPLY FACILITIES. Developer has designed and submitted and the Village Engineer has approved the proposed plans for all water supply facilities, including an extension of 12”, 8” and 6” water main for a combined distance of approximately 2,062 lineal feet together with necessary valves and 5 fire hydrants/leads. Included in these quantities is the relocation of approximately 292 lineal feet of 12” water main. Authorization for construction has been given, in accordance with Sec. 18.08(8) of the Municipal Code. All such documents have been prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. All water utility improvements that are to be transferred to the Village Water Utility Department shall be contained in a utility easement dedicated to the Village. The easement shall be dedicated to and accepted by the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney.

The pre-construction meeting was held on May 9, 2023.

1.03 SANITARY SEWERAGE SYSTEMS. Developer shall relocate existing public sanitary sewer for approximately 260 lineal feet, including 2 manholes, within a utility easement beginning at the existing sanitary sewer located at approximately the southwest corner of the proposed building and proceed in a northerly direction to the reconnection point to the existing public sanitary sewer. Each end will incorporate a new manhole. The sampling manhole is to be private and the lateral to the building is private. Developer has designed and submitted and the Village Engineer has approved all proposed plans, specifications and contract documents for all sanitary sewerage systems facilities and authorization for construction has been given, in accordance with Sec.18.08(7) of the Municipal Code. All such documents have been prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. All sanitary sewerage system improvements that are to be transferred to the Village Waste Water Utility shall be contained in a utility easement dedicated to the Village. The easement shall be dedicated to and accepted by the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney. Sanitary Sewer main and lateral trenches in an existing roadway shall be aggregate slurry backfilled.

1.04 OTHER UTILITIES. All such services constructed after the date hereof shall be located underground in accordance with applicable codes.

1.05 EROSION CONTROL. In order to minimize and control erosion, siltation, sedimentation and washing of soils during the period of construction, Developer shall evaluate, initiate and undertake such measures as may be necessary from time to time and as the Village

Engineer may require or direct pursuant to Chap. 29 of the Municipal Code, and, in addition, has undertaken the following measures to insure sediment control:

- (1) Submitted an Erosion Control Plan which the Village Engineer has approved.
- (2) Obtained an erosion control permit from the Building Inspection Department. Developer is required to maintain all erosion control until the final top-soiling, grading, seeding, mulching, sodding, has been completed for the Development and until the vegetation has sufficient growth to control the run-off as shall be determined by the Village Engineer. Silt fencing shall be removed by Developer promptly, following establishment of vegetation on all disturbed areas sufficient to control run-off from the site, as shall be determined by the Village Engineer.
- (3) Developer shall promptly undertake top soiling, fine grading, seeding and fertilizing of all drainage easements and areas within the public right-of-way and all approved drainage swales in accordance with the approved Master Grading and Erosion Control Plans after installation of all electric, gas, telephone, cable TV and drainage utilities and appurtenances. All surface restoration shall be completed prior to acceptance of dedication of improvements by the Public Works Committee.
- (4) Off-site sediment tracking is closely monitored by Village and County Inspectors. To assist in reduction of sediment infiltration of ponds and streams, sediment tracking must adhere to the sediment and erosion control plan. Violations of the approved Erosion Control Plan shall result in the Village cleaning the streets traveled by construction equipment with a street sweeper as deemed necessary by the Village Building Inspector or Engineer to restore compliance with the Erosion Control Plan. Such cleaning shall not exceed a frequency of twice weekly. Developer shall be charged and invoiced at standard rates set by the Village for any such services rendered, and Developer shall remit payment within 30 days of receipt of such invoice(s). If not so promptly paid, the Village may submit a draw request pursuant to Section 6.01 of this Agreement, to recover such costs. Notwithstanding the foregoing, the right of the Village to respond to off-site sediment tracking hereunder shall not excuse Developer from strict compliance with the Erosion Control Plan or be considered a substitute or replacement for such measures.
- (5) Topsoil to be stockpiled on site. No topsoil to be transported off site, except as provided by Section 17.441 of the Municipal Code.

1.06 STORM WATER DRAINAGE FACILITIES. Drainage from the Property comprising the "Development" discharge into one (1) existing Regional Storm Water Pond owned by the Village of Germantown. The Storm Water Pond is located on a parcel adjacent to the southeast corner of the Property. The Pond will remain under the ownership of the Village of Germantown. Developer has submitted and the Village Engineer has reviewed and approved

storm water volumes to verify the existing Pond will be adequate to accommodate expected surface water flow within and through the Development.

1.07 LANDSCAPING. Developer shall complete and continually maintain all landscaping as accepted by the Village in the site plan approval granted March 13, 2023.

1.08 STREET SIGNS AND MARKINGS. Developer shall install all required street signs and markings at Developers expense. (None are required.)

1.09 SIDEWALKS AND PATHWAYS. No sidewalks or pathways located in Public ROW on this Development.

ARTICLE II - CONSTRUCTION

2.01 GENERALLY. Developer, entirely at its own expense, shall construct and install all public improvements and provide all plans, specifications and other documents in accordance with Sec.18.09 of the Municipal Code or as required by the Village Engineer pursuant to Sec.18.09. Developer understands and acknowledges that the Municipal Code may be and is subject to revision from time to time, and that such revisions may impose altered or additional obligations on individual and entities creating subdivisions and other developments in the Village, including Developer. Developer hereby agrees that with respect to any such revision which shall be approved by the Village prior to issuance of permits for all public improvements provided for herein, or as mutually agreed upon between Developer and the Village after the commencement of work, Developer shall incorporate any such revision into Developer's plans, specifications and work.

Developer shall provide a schedule of construction setting forth approximate dates of commencement and completion of the water supply and sanitary sewerage system construction. Developer agrees that no work shall be scheduled for the water supply and sanitary sewerage system improvements without the Village Engineer's written approval of the starting date and schedule.

The pre-construction meeting was held on May 9, 2023.

2.02 BUILDING AND OCCUPANCY PERMITS. No temporary occupancy permits shall be issued until the sanitary sewer, sampling manhole, water main, storm sewer improvements and landscaping are installed consistent with Approved Plans, inspected by the Village Utilities/Building Inspection and approved by the Village Engineer or Director of Public Works, all record drawings are filed with the Village and approved by the Village Engineer in accordance with 2.05 below. All public improvements required by the Agreement shall be installed and accepted by the Public Works Committee prior to issuance of any final occupancy permits.

2.03 REQUIRED PLANS. Developer has submitted to the Village Engineer and the Village Engineer has approved all of the plans, profiles and specifications required by Sec.18.09 (3) of the Municipal Code. Required plans for improvements include the following:

- (1) Master site grading
- (2) Site Plan
- (3) Water main record-drawings
- (4) Erosion and sedimentation controls
- (5) Water main extensions
- (6) Sanitary Sampling Manhole
- (7) Sanitary Sampling Manhole Record Drawings
- (8) Sanitary Sewer Extensions
- (9) Sanitary Sewer Record Drawings
- (10) Landscaping

In addition, Developer has submitted and the Village Engineer has approved all specifications and authorized construction.

2.04 EXISTING FLORA. Developer shall, in accordance with Sec.18.09(5) of the Municipal Code, make reasonable efforts to protect and retain all existing trees, shrubbery, vines and grasses not actually lying within public roadways, drainageways, building foundation sites, private driveways and parking areas, soil absorption waste and disposal areas, paths and trails, except as necessary for implementation of the Development. Such trees are to be protected and preserved during construction in accordance with sound conservation practices, including the preservation of trees by use of wells or islands or retaining walls whenever abutting grades are altered.

2.05 RECORD DRAWING DOCUMENTS. Developer shall, not later than ninety (90) days following Final Acceptance of the public improvements, prepare and submit to the Village Engineering Department, record-drawing documents in Plan & Profile format in both hardcopy and digital format (i.e., AutoCAD .dwg file format) as defined in the Record Drawings Section (6.3) of the Village's Development Handbook.

The Record Drawings shall be of all public improvements to be constructed pursuant to this Agreement.

All record-drawing measurements shall be prepared using the following approved and accepted survey datum for horizontal and vertical control as referenced to the Village coordinate system being the Wisconsin State Plane Coordinate System, South Zone, based on North American Datum of 1983, 2011 Adjustment, and the North American Vertical Datum of 1988.

If Developer is unable to furnish the location and digital files as required, the Village Engineer shall complete the record-drawing plans with costs charged back to Developer. Each original or copy shall be certified by the Developer's engineer and/or architect, in accordance with requirements of applicable Village Code.

In the event it shall become necessary to mark Village owned utilities through Digger's Hotline prior to the Record Drawings for the same being provided to the Village, Developer shall be responsible for the marking.

ARTICLE III - DEDICATION AND ACCEPTANCE

Developer agrees that the public improvements will not be accepted by the Village until (i) all outstanding charges to be paid by Developer relating to the Development under the Ordinances have been paid in full, (ii) copies of affidavits and lien waivers are received by the Village indicating that all contractors providing work, services or materials in connection with the improvements have been paid in full for all such work, services and materials, and (iii) the Village has received evidence reasonably satisfactory to it from Knight Barry Title, Inc. ("Knight Barry") that no liens or other encumbrances (except those approved in writing by the Village) encumber the public improvements. Any water main installation shall not be accepted until a bacteriologically safe sample and satisfactory pressure test results are obtained. Developer or its Contractor will flush the main and obtain the samples required for this testing under the supervision of the Village Inspector. Any sanitary sewer installation shall not be accepted until satisfactory pressure and vacuum test results are obtained. Upon completion of the sanitary sewer, water main and service laterals and acceptance of the systems by the Village Public Works Committee, ownership and control shall be turned over without reservation to the Village.

Developer shall request in writing to the Village Engineer, acceptance of the public improvements. The Village Engineer will order an inspection of the public improvements by the Village Inspector and a punch-list of corrections (if required) shall be forwarded to Developer within two days of such inspection for completion prior to acceptance. Upon completion of corrective action, Developer shall inform the Village Engineer in writing and request acceptance by the Public Works Committee. Upon satisfaction of the conditions set forth in this Agreement, and upon written request by Developer, the Village shall accept the improvements (the "Final Acceptance"). Completion of the public improvements shall commence running of the one-year warranty period provided for and in accordance with Section 7.01 of this Agreement.

ARTICLE IV - PAYMENT OF FEES

4.01 GENERALLY. Developer shall pay all fees, expenses, costs and disbursements which Developer is required to pay, pursuant to Sec. 18.10 of the Municipal Code. Unless required to be pre-paid as a condition of the approval of this Agreement, such amount shall be paid by Developer within thirty (30) days after being billed by the Village. Nothing in this provision, or in the remaining provisions of this article, shall be construed as exempting Developer, its successors and assigns, from such future fees, expenses, costs, or assessments which might be imposed by way of general operation of law or ordinance, and as otherwise assessable against properties within the Village of Germantown.

4.02 IMPACT FEES. As a condition of the approval of this Agreement by the Village, Developer shall pay to the Village Treasurer tax impact fees/Residential Unit that have been determined in accordance with Sec. 3.14 of the Municipal Code. These fees are calculated for the Development as follows:

- | | |
|----------------------|---------------------------------|
| (1) Water: | \$ 832.00/REC |
| (2) Fire Protection: | \$ 0.63549/\$1000 Building Cost |

- (3) Police Protection Facilities: \$ 0.2809/\$1000 Building Cost
- (4) Sanitary Sewer Connection: \$ 4,764/REC

REC is a residential unit equivalent for pumping and storing municipal water or as per Section 15.07(2) of the Municipal Code and per Resolution No. 27-07, establishing the sewer connection charge. The REC Fees change annually with the current year REC Fee to be used at time of Building Permit issuance. These fees are payable at the time of Building Permit issuance.

4.03 IMPROVEMENT REVIEW FEE. Developer shall pay a fee based on the cost of required development improvements for the Development to cover the cost of the Village for checking and reviewing plan and specification documents. Such improvement review fee shall be as provided by Sec.18.10(3) of the Municipal Code. The fee shall be calculated as follows:

- 2.25% of the first \$250,000 of construction costs
- 1.75% of the next \$250,000 of construction costs, and
- 1.25% of construction costs which exceed \$500,000

If a Developer's Agreement is required for this project, the Engineering Department shall charge a minimum fee of \$5,000 for a fee as per Section 18.10(3) of the Municipal Code.

4.04 PROFESSIONAL FEES AND INSPECTION FEES. In accordance with Sections 18.10(7) and (8) of the Municipal Code, Developer shall be responsible for all professional (technical and legal) fees incurred by the Village in connection with this Development. The Village shall be reimbursed for engineering services, whether provided by a staff engineer or technician or designated employee or by a consultant and shall also be reimbursed for services rendered by the Village Attorney. Additionally, Developer shall reimburse the Village costs for inspection and related services provided by the Village or by a consultant, on the basis of all such services rendered as deemed necessary by the Village Engineer. Developer will be billed for Village personnel at the standard rates presented in Exhibit B. Estimated billings are also set forth on Exhibit B.

4.05 DATA CONVERSION FEE. In accordance with Section 18.10(13) of the Municipal Code, Developer shall be responsible for all fees associated with the upload of Geographic Information System data incurred by the Village in connection with this Development.

4.06 PREPAYMENT OF CERTAIN FEES. Developer shall pay the fees specified in Paragraphs 4.02 through 4.05, as itemized in Exhibit A, for the Development prior to the issuance of a building permit for the Development on the Property.

ARTICLE V - SPECIAL PROVISIONS

5.01 SEWER CONNECTIONS. In accordance with the rules and regulations of the Village, Developer has been authorized one (1) sewer connection for this Development, subject to the provisions of Sec. 5.02 of this Agreement.

5.02 SEWER CAPACITY. It is understood by and between the parties that the Village, by entering into this Agreement, makes no representations or guarantees with respect to sewer capacity for the Development contemplated by this Agreement. It is understood by Developer that other governmental authorities having jurisdiction may impose limitations or restrictions upon the Village's decision to authorize the sewer connections referred to in Sec. 5.01 of this Agreement.

5.03 WETLAND AND FLOODPLAIN CONDITIONS. It shall be an explicit condition that Developer shall comply with all required regulations and shall obtain all necessary approvals in writing from the appropriate government agencies relative to the wetlands and floodplain areas which may be on the Property. Except as otherwise expressly approved by the Village, approval of the subject Development Plan by the Village Plan Commission shall not be construed to be Village approval of intrusions into wetland or floodplain areas, or Village approval of filling or modifications to wetlands or floodplain areas. Developer, except as required on approved plans, will not be allowed to grade, fill, or conduct any other type of development within 75 feet of the high-water mark of a navigable waterway or 25 feet from a wetland. If the Zoning Administrator suspects the presence of wetlands or navigable stream upon site inspection, an updated delineation will be required. Final delineation of wetlands and navigable streams shall be confirmed by the Southeastern Wisconsin Regional Planning Commission.

5.04 PHASES. Developer has represented that it will construct the public improvements for this Development in one phase. All public improvement work associated with the Development shall be completed within one year following the date of issuance of permits for such work by the Village.

5.05 ROADWAY MAINTENANCE. The Development is comprised of internal private roadways. Developer shall be responsible for all damage to Willow Creek Way which was caused by vehicles and equipment entering and leaving the Development during construction.

ARTICLE VI - FINANCIAL GUARANTY

6.01 AMOUNT. Developer has obtained a construction loan from Old National Bank (the "Bank") in the principal amount of \$21,994,125.00 to assure the faithful performance and funding of Developer's obligations under this Agreement as itemized in Exhibit A attached hereto and incorporated herein by reference, as well as the construction of the Development. The Bank is requiring construction disbursing through Knight Barry, and independent inspections prior to each draw and retainage of 10% (reduced to retainage of 5% upon completion of 50% of the Development). Upon request, Developer shall provide the Village copies of the draw request and lien waivers relating to disbursements for public improvements for the Development. If the public improvements to be undertaken by Developer under this Agreement are not complete within one year following the issuance of permits for such work (as such deadline may be extended and subject to Section 8.03) and the expiration of any applicable notice and cure periods, the Village is hereby authorized to submit a draw request to Knight Barry to fund any

third party costs actually incurred by the Village after such one year period (as may be extended and subject to Section 8.03) and expiration of any applicable notice and cure periods to construct the public improvements shown on the Approved Plans.

6.02 Intentionally deleted.

6.03 Intentionally deleted.

6.04 RESERVATION OF ASSESSMENT RIGHTS. In addition to the remedies for default provided to the Village under this Article VI, the Village reserves the right without notice or hearing to impose special assessments or charges for any third party costs actually incurred by the Village to construct the public improvements shown on the Approved Plans. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special assessments or charges. This provision constitutes Developer's Waiver of Notice and Consent to all special assessment or special charges proceedings which may be required by law.

6.05 REMEDIES. In the event of a material breach of this Agreement by the Developer, the Village shall, within a reasonable amount of time, give notice of such breach to the Developer. If Developer fails to remedy the breach within thirty (30) days of the notice (or such other amount of time to which the parties might agree or is reasonably necessary to remedy a breach or, if the breach cannot reasonably be corrected using commercially reasonable and diligent efforts within such 30-day period but could, with additional time, be corrected using commercially reasonable and diligent efforts, such 30-day remedy period shall be extended for the period reasonably necessary to correct if (and for such period as), (i) Developer uses commercially reasonable and diligent efforts during such 30-day period; (ii) Developer continues to use all commercially reasonable and diligent efforts to correct after such 30-day period; and (iii) such efforts are adequate to ensure a correction) (the "Cure Period"), the Village shall have the option of ordering the Developer to not proceed any further with the construction and installation of the public improvements described in this Agreement until such time as the breach is remedied. All remedies as stated herein shall be deemed alternative remedies, and cumulative as and to such other remedies in law or equity as the Village may assert and herein reserves.

ARTICLE VII - GUARANTEE AND INDEMNIFICATION

7.01 GUARANTEE OF IMPROVEMENTS. Developer shall guarantee on cause its contractor to guaranty all dedicated public improvements against defects due to faulty materials or workmanship which appear within one (1) year from the date of Final Acceptance by the Village, as provided in Article III of this Agreement. Developer shall repair or replace any such improvements as required by the Village Engineer to eliminate such defects and shall pay for all damages to Village property resulting from such defects. Each repair or replacement performed pursuant to this paragraph shall be guaranteed for one (1) year from the completion thereof.

7.02 GENERAL INDEMNIFICATION. Developer shall indemnify and hold the Village harmless against and from any and all liability, judgments, costs and expenses incurred by the Village as the result of any action by whomsoever or whenever brought or obtained against the Village or Developer, or both, which may in any manner result from or arise in the

course of, out of, or as a result of the carelessness, negligence or neglect of Developer, its agents, contractors or employees. In every case where judgment is recovered against the Village and where notice of the pendency of the suit and an opportunity to defend the same has been given to Developer within ten (10) days after its commencement, the judgment shall be conclusive upon Developer, not only as to the amount of damages, but also as to its liability to the Village.

7.03 CONTRACTOR INSURANCE. Contractors engaged by Developer to perform the work required by this Agreement within public rights-of-way shall, prior to commencing such work, submit to the Village proof of the following:

- (1) Unemployment and Workers' Compensation insurance which is in strict compliance with state laws.
- (2) Personal and public liability insurance having limits of not less than \$1,000,000.00.
- (3) Property damage insurance having limits of not less than \$500,000.00.
- (4) Fire and extended coverage which shall insure against losses and damage to completed work, materials or equipment until the same has been accepted by the Village.

7.04 INDEMNIFICATION FOR ENVIRONMENTAL CONTAMINATION. Developer shall indemnify, and hold the Village and its officers, agents and employees harmless from and against any and all losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorneys' fees, but not punitive damages, fines, penalties or consequential damages) resulting from or relating in any way to (a) Developer's introduction of toxic or hazardous material or substances in or on the real property dedicated or conveyed by Developer to the Village; or (b) toxic or hazardous material or substances not introduced by Developer, but which cause damage to the Village because of the Village's work performed pursuant to, or in connection with this Agreement. For purposes of this Agreement, "toxic or hazardous material or substances" is defined as any pollutant, contaminant, waste or toxic or hazardous chemicals, wastes or substances, including, without limitation, asbestos, urea formaldehyde insulation, petroleum, PCBs, lead, air pollutants, water pollutants, soil pollutants and other substances defined as hazardous or toxic or words of similar import under federal, state or local statute, rule, regulation or order of any government entity having jurisdiction over the control of such wastes or substances.

Upon the Village becoming aware of the occurrences of any event or the existence of any state of facts in respect of which the Village has or will have a claim for indemnification under this Agreement ("Claim"), as soon as reasonably practicable thereafter:

- (1) the Village shall provide Developer written notice of the losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorney's fees but not punitive damages, fines, penalties, or consequential damages) as and when reasonably apprehended. Notwithstanding

anything to the contrary contained herein, the Village's failure to timely notify Developer shall not prevent or in any way impair recovery by the Village unless Developer is materially prejudiced as a result of such failure;

- (2) subject to paragraphs (3) through (5) below, Developer diligently, at its own expense, shall control and shall be responsible for the defense, negotiation and/or settlement of the Claim, including the diligent performance of any remediation associated therewith;
- (3) the Village may at its own expense hire counsel or consultants to monitor the Claim;
- (4) Developer shall not, without the prior written consent of the Village, which consent shall not be unreasonably delayed, withheld or conditioned, settle any Claim;
- (5) Developer shall lose its right to defend, negotiate and settle any Claim if, as determined by an arbitrator jointly selected by the parties, it fails to diligently defend, negotiate or settle such Claim. In the event that Developer has lost its right to defend, negotiate or settle any Claim:
 - (i) the Village shall have the right, without prejudice to its right of indemnification hereunder, at Developer's cost and expense, to defend, negotiate and settle any Claim, and
 - (ii) Developer shall pay such reasonable costs and expenses incurred by the Village within thirty (30) days of receipt of written notice from the Village together with an invoice for work performed;
- (6) If Developer does not timely assume responsibility for any Claim, the Village shall have the right, without prejudice to its right of indemnification hereunder, at the sole cost and expense of Developer, to assume control of the defense, negotiation and/or settlement of the Claim, and may engage counsel or other agents, consultants, and contractors to contest, defend, settle or otherwise dispose of such Claim, including, without limitation, hiring any environmental consultant or contractor to perform any remediation necessary to address the Property or the toxic or hazardous materials or substances at the Property.

ARTICLE VIII - TIME OF COMPLETION

8.01 COMPLETION DATE. The public improvement work required by this Agreement shall be completed by Developer not later than one (1) year following the date of issuance of permits for such work by the Village.

8.02 DEFAULT. In the event Developer does not complete installation of the public improvements required by this Agreement by the time period required in Section 8.01 (as such

deadline may be extended and subject to Section 8.03) and the expiration of thirty (30) days after the Village has served notice of default upon Developer, the Village may complete the same and take title thereto. The costs of doing such work shall be funded as provided in Article VI of this Agreement.

8.03 FORCE MAJEURE. Notwithstanding anything herein to the contrary, in the event that Developer is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, orders or decrees, riots, insurrection, war, acts of God, inclement weather, bureaucratic delays or other reasons beyond Developer's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for the period of such delay.

8.04 SUNSET CLAUSE. The conditions of this Agreement shall terminate two (2) years after Village Board approval unless construction has begun or amended in writing by both parties.

ARTICLE IX - GENERAL PROVISIONS

9.01 APPROVAL TERMS. No tax-exempt use is authorized by the approvals granted by the Village.

9.02 ENTIRE AGREEMENT. This written Agreement and written amendments and any referenced attachments thereto shall constitute the entire agreement between the Developer and the Village with respect to the construction and installation of utilities on the Property and shall replace the Predevelopment Agreement and that in the event of any conflict between the Development Agreement and the Predevelopment Agreement, the terms of the Development Agreement will control.

9.04 AMENDMENTS. This Agreement may be amended or modified only by an instrument in writing executed by all of the parties to this Agreement.

9.05 OWNERSHIP. Developer certifies and warrants to the Village that all of the owners of the real estate within said Development and all of the land contract vendors and/or mortgagees having interest in said real estate are as follows: TDC Willow Creek, LLC and the Bank.

9.06 AUTHORITY. Developer, by the undersigned, represents, certifies and warrants that the undersigned has the authority to bind TDC Willow Creek, LLC as an agent of the same.

9.07 NO VESTED RIGHTS GRANTED. Except as expressly provided by law or as expressly provided by this Agreement, no vested rights in connection with this project shall inure to the Developer, its heirs, successors or assigns.

9.08 NO WAIVER. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing

waiver unless expressly provided for by a duly signed and executed, written amendment by all parties to this Agreement. The Village's failure to act or exercise any right under this Agreement shall not constitute the approval or a waiver of its right to act or exercise any right under this Agreement or a ratification of any wrongful or negligent act by the Developer or the acceptance of any improvement or performance on the part of the Developer.

9.09 APPROVAL. No approval by the Village Engineer or the Village attorney or any other person acting on behalf of the Village shall be construed as a waiver of any of the requirements of the Ordinances, or any statute or regulation governing the improvements.

9.10 SEVERABILITY. If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision; and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.

ARTICLE X - NON-ASSIGNMENT

This Agreement, which is binding upon Developer, Developer's agents, officers, employees, personal representatives, guardians and trustees shall not be assigned by Developer to any individual, firm, partnership or corporation without the express approval of the Village.

IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed in duplicate originals this _____ day of _____, 2023 which shall be the effective date of this Agreement.

DEVELOPER:

TDC WILLOW CREEK, LLC
By: DICKMAN DEVELOPMENT, LLC

By: _____
Samuel D. Dickman, Manager

STATE OF WISCONSIN)
) SS
 COUNTY)

Personally came before me this ____ day of _____, 2023, the above-named, Samuel D. Dickman, Manager of Dickman Development, LLC, Manager of TDC Willow Creek,

LLC, to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said limited liability company and acknowledged that he executed the foregoing instrument in such capacity.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

VILLAGE OF GERMANTOWN

By: _____
Dean Wolter, Village President

Attest By: _____
Angel Rettler, Interim Village Clerk

Per Village Board Approval: Dated _____

STATE OF WISCONSIN)
) SS
WASHINGTON COUNTY)

Personally came before me this ____ day of _____, 2023, the above-named, Dean Wolter, Village President, and Angel Rettler, Interim Village Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be such President and Interim Clerk of the above-named municipal corporation, Village of Germantown, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

Approved as to form:

Brian C. Sajdak, Village Attorney

This instrument was drafted by: Lawrence W. Ratayczak, P.E., Director of Public Works

EXHIBIT “A” (financial & fee’s)

EXHIBIT “B” (labor & equipment rates)

EXHIBIT “C” (CSM)

EXHIBIT “D”
Approved Plans and Specifications

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Development Agreement - Keller/F-Street (Town Nine Industrial Park)

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

Staff is bringing the Developers Agreement forward for the proposed Town 9 Industrial Building A Development for PWHC approval. This Development Agreement is necessary due to the installation of a public water main and public sanitary sewer. The Development is located on the south side of Donges Bay Road and adjacent to the east property line of the new DPW Facility Campus.

ATTACHMENT:

1. I. Development Agreement - Town 9 Industrial Bldg A

RECOMMENDATION:

Staff is recommending the Public Works and Highway Committee approve the Development Agreement for the Town 9 Industrial Building A and any revisions by the Village Attorney and forward with a positive recommendation for approval to the Village Board.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

TOWN 9 INDUSTRIAL BUILDING A DEVELOPMENT AGREEMENT

THIS AGREEMENT is entered into by and between the Village of Germantown, a Municipal Corporation of the State of Wisconsin located in Washington County, hereinafter called the "Village", and F Street Germantown. LLC, A Wisconsin Limited Liability Company, hereinafter referred to as "Developer".

WHEREAS, the Developer owns Lot # 1 (39.906 acres) of Certified Survey Map No. 7272, described as follows: lands located in Northwest $\frac{1}{4}$, the southwest $\frac{1}{4}$, and the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin and as identified in the attached Exhibit "C" in the Village of Germantown, Washington County, Wisconsin (the "Property"); and

WHEREAS, Developer has submitted a site plan for one (1) building on the parcel; having 374,949 sq. ft., the building will be an office and warehouse and light manufacturing facility; and

WHEREAS, the Village may require that Developer make and install any public improvements reasonably necessary within a reasonable time; and further that the acceptance of dedication of these improvements may be conditioned upon the construction of such improvements according to Village specifications and without cost to the Village; and

WHEREAS, it will be necessary that Developer construct and install water distribution facility in a dedicated easement on the Property, and the Village will require that such plans and designs be approved and permitted; and

WHEREAS, it will be necessary that Developer construct, in a dedicated easement on the Property, and the Village will require that such plans and designs be approved and permitted; and

WHEREAS, The Village seeks to protect the health, safety and general welfare of the Village as a whole and, in particular, property owners who abut the site or are potentially affected by the project through application of the Municipal Code and rules and regulations of governmental agencies with jurisdiction.

NOW, THEREFORE, in consideration of these recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I - REQUIRED IMPROVEMENTS

1.01 GENERALLY. Developer, entirely at its own expense, shall, except as herein provided, design and install the public improvements required by Sec.18.08 of the Municipal Code in accordance with the applicable provisions of that section and as directed by the Village Engineer or Village Board and consistent with the plans and specifications described in the

attached Exhibit D which have been approved by the Village ("Approved Plans"). It is the intent of this Agreement that all public improvements shall be installed by Developer. Notwithstanding the foregoing, the public improvements described in this Agreement are deemed to be undertaken for a public (not a private) purpose.

1.02 WATER SUPPLY FACILITIES. Developer has designed and submitted and the Village Engineer has approved plans for all water supply facilities, including an extension of 12" water main for a distance of approximately 2,077 lineal feet together with 3 each 12" valves and 4 fire hydrants assemblies (includes; hyd, 6" vlv & lead). Authorization for construction has been given, in accordance with Sec. 18.08(8) of the Municipal Code. All such documents have been prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. All water utility improvements that are to be transferred to the Village Water Utility Department shall be contained in Village right-of-way or a utility easement dedicated to the Village. The easement shall be dedicated to the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney.

1.03 SANITARY SEWERAGE SYSTEMS. Developer shall extend sanitary sewer within a utility easement for approximately 1,014 lineal feet of 8" pipe and 5 each manholes, beginning at the existing sanitary sewer located at approximately the southwest corner of the proposed building and proceed in a southeasterly direction to the end point and manhole of the sanitary sewer extension. The sampling manhole is to be private and the lateral to the building is private. Developer has designed and submitted, and the Village Engineer has approved all proposed plans, specifications and contract documents for all sanitary sewerage systems facilities and authorization for construction has been given, in accordance with Sec.18.08(8) of the Municipal Code. All such documents have been prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. All sanitary sewerage system improvements that are to be transferred to the Village Waste Water Utility shall be contained in the Village right-of-way or a utility easement dedicated to the Village. The easement shall be dedicated to the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney. Sanitary Sewer main and lateral trenches in an existing roadway shall be aggregate slurry backfilled.

1.04 OTHER UTILITIES. All such services shall be located underground in accordance with applicable codes.

1.05 EROSION CONTROL. In order to minimize and control erosion, siltation, sedimentation and washing of soils during the period of construction, Developer shall evaluate, initiate and undertake such measures as may be necessary from time to time and as the Village Engineer may require or direct pursuant to Sec.17.43 of the Municipal Code, and, in addition, has undertaken the following measures to insure sediment control:

- (1) Submitted an Erosion Control Plan which the Village Engineer has approved.
- (2) Obtained an erosion control permit from the Building Inspection Department. Developer is required to maintain all erosion control until the final top-soiling, grading, seeding, mulching, sodding, has been completed for each building phase and until the vegetation has sufficient growth to control the run-off as shall be determined by the Village Engineer. Silt fencing shall be removed by Developer promptly, following establishment of vegetation on all disturbed areas sufficient to control run-off from the site, as shall be determined by the Village Engineer.
- (3) Developer shall promptly undertake top soiling, fine grading, seeding and fertilizing of all drainage easements and areas within the public right-of-way and all approved drainage swales in accordance with the approved Master Grading and Erosion Control Plans after installation of all electric, gas, telephone, cable TV and drainage utilities and appurtenances. All surface restoration shall be completed prior to acceptance of dedication of improvements by the Public Works Committee.
- (4) Off-site sediment tracking is closely monitored by Village and County Inspectors. To assist in reduction of sediment infiltration of ponds and streams, sediment tracking must adhere to the sediment and erosion control plan. Violations of the approved Erosion Control Plan shall result in the Village cleaning the streets traveled by construction equipment with a street sweeper as deemed necessary by the Village Building Inspector or Engineer to restore compliance with the Erosion Control Plan. Such cleaning shall not exceed a frequency of twice weekly. Developer shall be charged and invoiced at standard rates set by the Village for any such services rendered, and Developer shall remit payment within 30 days of receipt of such invoice(s). If not so promptly paid, the Village may submit a draw request pursuant to Section 6.01 of this Agreement, to recover such costs. Notwithstanding the foregoing, the right of the Village to respond to off-site sediment tracking hereunder shall not excuse Developer from strict compliance with the Erosion Control Plan or be considered a substitute or replacement for such measures.
- (5) Topsoil to be stockpiled on site. No topsoil to be transported off site, except as provided by Section 17.441 of the Municipal Code.

1.06 STORM WATER DRAINAGE FACILITIES. Drainage from the Property comprising the "Development" discharge into two (2) proposed storm drainage Ponds located at the south end of the Property. The proposed Ponds will remain under the ownership of the Developer or an affiliate of Developer. Developer has submitted and the Village Engineer has reviewed and approved storm water volumes to verify the proposed Ponds will be adequate to accommodate expected surface water flow within and through the Development. Design and installation shall conform to Wisconsin Department of Natural Resources Conservation Practice Standards, Milwaukee Metropolitan Sewerage District Ch. 13 Rule, Ch. 27 and Sec. 18.08(10) of

the Municipal Code, and the Village Design, Drafting & Construction Standards & Specifications, Sec. 7.0 “Storm Water Management Requirements” and Sec. 4.0 “Storm Water Conveyance System Requirements” and the Stormwater Management Plan for the Development described on the attached Exhibit D and approved by the Village Engineer (the “SWMP”). All such documents shall be prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies.

- (1) Developer shall install all storm water management facilities as shown on the SWMP.
- (2) The proposed Pond shall be certified to verify that the Pond was constructed to meet the requirements of the SWMP.
- (3) Developer shall prepare, submit to the Village Engineer for review and record with the Washington Co. Register of Deeds a Declaration of Covenant for Storm Water Management Facility Maintenance before applying for an occupancy permit. Developer shall prepare and submit to the Village Engineer a Storm Water Management Facility Compliance Report and an Engineering/Construction Certification letter before applying for an occupancy permit.

(a)The Developer or its affiliates successors or assigns shall be responsible for the perpetual maintenance of all storm water drainage and detention and retention facilities consistent with the SWMP and applicable Village ordinance.

1.07 LANDSCAPING. Developer shall complete and continually maintain all landscaping as accepted by the Village in the site plan approval granted February 27, 2023.

1.08 STREET SIGNS AND MARKINGS. Developer shall install all required street signs and markings at Developers expense. (None are required.)

1.09 SIDEWALKS AND PATHWAYS. No sidewalks or pathways located in Public ROW on this Development.

ARTICLE II - CONSTRUCTION

2.01 GENERALLY. Developer, entirely at its own expense, shall construct and install all public improvements and provide all plans, specifications and other documents in accordance with Sec.18.09 of the Municipal Code or as required by the Village Engineer pursuant to Sec.18.09. Developer understands and acknowledges that the Municipal Code may be and is subject to revision from time to time, and that such revisions may impose altered or additional obligations on individual and entities creating subdivisions and other developments in the Village, including Developer. Developer hereby agrees that with respect to any such revision which shall be approved by the Village prior to issuance of permits for all public improvements

provided for herein, or as mutually agreed upon between Developer and the Village after the commencement of work, Developer shall incorporate any such revision into Developer's plans, specifications and work.

Developer shall provide a schedule of construction setting forth approximate dates of commencement and completion of each phase of the water supply and sanitary sewerage system construction. Developer agrees that no work shall be scheduled for the water supply and sanitary sewerage system improvements without the Village Engineers written approval of the starting date and schedule.

The pre-construction meeting is required prior to starting installation of sanitary sewer and water main.

2.02 BUILDING AND OCCUPANCY PERMITS. No temporary occupancy permits shall be issued until the sanitary sewer, sampling manhole, water main, storm sewer improvements and landscaping are installed consistent with Approved Plans, inspected by the Village Utilities/Building Inspection and approved by the Village Engineer or Director of Public Works, all record drawings are filed with the Village and approved by the Village Engineer in accordance with 2.05 below. All public improvements required by the Agreement shall be installed and accepted by the Public Works Committee prior to issuance of any final occupancy permits.

2.03 REQUIRED PLANS. Developer has submitted to the Village Engineer has approved all of the plans, profiles and specifications required by Sec.18.09 (3) of the Municipal Code. Required plans for improvements include the following:

- (1) Master site grading
- (2) Site Plan
- (3) Water main record-drawings
- (4) Erosion and sedimentation controls
- (5) Water main extensions
- (6) Sanitary Sampling Manhole
- (7) Sanitary Sampling Manhole Record Drawings
- (8) Sanitary Sewer Extensions
- (9) Sanitary Sewer Record Drawings
- (10) Landscaping

In addition, Developer has submitted and the Village Engineer has approved all specifications and authorized construction.

2.04 EXISTING FLORA. Developer shall, in accordance with Sec.18.09(5) of the Municipal Code, make reasonable efforts to protect and retain all existing trees, shrubbery, vines and grasses not actually lying within public roadways, drainageways, building foundation sites, private driveways and parking areas, soil absorption waste and disposal areas, paths and trails, except as necessary for implementation of the Development. Such trees are to be protected and

preserved during construction in accordance with sound conservation practices, including the preservation of trees by use of wells or islands or retaining walls whenever abutting grades are altered.

2.05 RECORD DRAWING DOCUMENTS. Developer shall have prepared and submitted to the Village Engineering Department, record-drawing documents in Plan & Profile format in both hardcopy and digital format (i.e., AutoCAD .dwg file format) as defined in the Record Drawing Specifications Section (6.3) of the Developer's Handbook. These documents shall be signed and sealed by the engineer of record.

The Record Drawings shall be of all public sanitary sewerage systems, public water supply systems, public storm sewer systems, electric, lighting and traffic control facilities, post-construction certification of all site grading, roads and stormwater management pond(s) drainage facilities. The Record Drawings for street lighting, Street Signage and for electric for street lighting shall include the MUTCD code, size, wording, sign material, sheeting type, date installed, owner, pole material, etc.

All record-drawing measurements shall be prepared using the following approved and accepted survey datum for horizontal and vertical control as referenced to the Village coordinate system being the Wisconsin State Plane Coordinate System, South Zone, based on North American Datum of 1983, 2011 Adjustment, and the North American Vertical Datum of 1988.

If Developer is unable to furnish the location and digital files as required, the Village Engineer shall complete the record-drawing plans with costs charged back to Developer. Each original or copy shall be certified by the Developer's engineer, in accordance with requirements of the Village Engineering Department. Record drawings shall be submitted by Developer and approved by the Village Engineer prior to applying for a Village occupancy permit or subdivision plat approval.

Developer shall be responsible for all utility locates installed as part of this development until such time that the record drawings have been incorporated into the Villages GIS System.

ARTICLE III - DEDICATION AND ACCEPTANCE

Developer agrees that the public improvements will not be accepted by the Village until (i) all outstanding charges to be paid by Developer relating to the first phase of the Development under the Ordinances have been paid in full, (ii) copies of affidavits and lien waivers are received by the Village indicating that all contractors providing work, services or materials in connection with the improvements have been paid in full for all such work, services and materials, and (iii) the Village has received evidence satisfactory to it First American Title Insurance Company, Inc. ("First Am") that no liens or other encumbrances (except those approved in writing by the Village) encumber the public improvements. Any water main installation shall not be accepted until a bacteriologically safe sample and satisfactory pressure test results are obtained. Developer or its Contractor will flush the main and obtain the samples required for this testing under the supervision of the Village Inspector. Any sanitary sewer

installation shall not be accepted until satisfactory pressure and vacuum test results are obtained. Upon completion of the sanitary sewer, water main and service laterals and acceptance of the systems by the Village Public Works Committee, ownership and control shall be turned over without reservation to the Village.

Developer shall request in writing to the Village Engineer, acceptance of the public improvements. The Village Engineer will order an inspection of the public improvements by the Village Inspector and a punch-list of corrections (if required) shall be forwarded to Developer within two days of such inspection for completion prior to acceptance. Upon completion of corrective action, Developer shall inform the Village Engineer in writing and request acceptance by the Public Works Committee. Upon satisfaction of the conditions set forth in this Agreement, and upon written request by Developer, the Village shall accept the improvements (the "Final Acceptance"). Completion of the public improvements shall commence running of the one-year warranty period provided for and in accordance with Section 7.01 of this Agreement.

ARTICLE IV - PAYMENT OF FEES

4.01 GENERALLY. Developer shall pay all fees, expenses, costs and disbursements which Developer is required to pay, pursuant to Sec. 18.10 of the Municipal Code. Unless required to be pre-paid as a condition of the approval of this Agreement, such amount shall be paid by Developer within thirty (30) days after being billed by the Village. Nothing in this provision, or in the remaining provisions of this article, shall be construed as exempting Developer, its successors and assigns, from such future fees, expenses, costs, or assessments which might be imposed by way of general operation of law or ordinance, and as otherwise assessable against properties within the Village of Germantown.

4.02 IMPACT FEES. As a condition of the approval of this Agreement by the Village, Developer shall pay to the Village Treasurer tax impact fees/Residential Unit that have been determined in accordance with Sec. 3.14 of the Municipal Code. These fees include:

- | | |
|-----------------------------------|---------------------------------|
| (1) Water: | \$ 832.00/REC |
| (2) Fire Protection: | \$ 0.63549/\$1000 Building Cost |
| (3) Police Protection Facilities: | \$ 0.2809/\$1000 Building Cost |
| (4) Sanitary Sewer Connection: | \$ 4,764/REC |

REC is a residential unit equivalent for pumping and storing municipal water or as per Section 15.07(2) of the Municipal Code and per Resolution No. 27-07, establishing the sewer connection charge. The REC Fees change annually with the current year REC Fee to be used at time of Building Permit issuance. These fees are payable at the time of Building Permit issuance.

4.03 IMPROVEMENT REVIEW FEE. Developer shall pay a fee based on the cost of required development improvements for all phases of the Development to cover the cost of the Village for checking and reviewing plan and specification documents. Such improvement

review fee shall be as provided by Sec.18.10(3) of the Municipal Code. The fee shall be calculated as follows:

- 2.25% of the first \$250,000 of construction costs
- 1.75% of the next \$250,000 of construction costs, and
- 1.25% of construction costs which exceed \$500,000

If a Developer's Agreement is required for this project, the Engineering Department shall charge a minimum fee of \$5,000 for a fee as per Section 18.10(3) of the Municipal Code.

4.04 PROFESSIONAL FEES AND INSPECTION FEES. In accordance with Sections 18.10(7) and (8) of the Municipal Code, Developer shall be responsible for all professional (technical and legal) fees incurred by the Village in connection with this Development. The Village shall be reimbursed for engineering services, whether provided by a staff engineer or technician or designated employee or by a consultant and shall also be reimbursed for services rendered by the Village Attorney. Additionally, Developer shall reimburse the Village costs for inspection and related services provided by the Village or by a consultant, on the basis of all such services rendered as deemed necessary by the Village Engineer. Developer will be billed for Village personnel at the standard rates presented in Exhibit B. Estimated billings are also set forth on Exhibit B.

4.05 DATA CONVERSION FEE. In accordance with Section 18.10(13) of the Municipal Code, Developer shall be responsible for all fees associated with the upload of Geographic Information System data incurred by the Village in connection with this project.

4.06 PREPAYMENT OF CERTAIN FEES. Developer shall pay the fees specified in Paragraphs 4.02 through 4.05, as itemized in Exhibit A, for each phase of the Development prior to the issuance of a building permit for said phase of the Development on the Property.

ARTICLE V - SPECIAL PROVISIONS

5.01 SEWER CONNECTIONS. In accordance with the rules and regulations of the Village, Developer has been authorized one (1) sewer connection for this Development, subject to the provisions of Sec. 5.02 of this Agreement.

5.02 SEWER CAPACITY. It is understood by and between the parties that the Village, by entering into this Agreement, makes no representations or guarantees with respect to sewer capacity for the Development contemplated by this Agreement. It is understood by Developer that other governmental authorities having jurisdiction may impose limitations or restrictions upon the Village's decision to authorize the sewer connections referred to in Sec. 5.01 of this Agreement.

5.03 WETLAND AND FLOODPLAIN CONDITIONS. It shall be an explicit condition that Developer shall comply with all required regulations and shall obtain all necessary approvals in writing from the appropriate government agencies relative to the wetlands and floodplain areas which may be on the Property. Except as otherwise expressly approved by the

Village, approval of the subject Development Plan by the Village Plan Commission shall not be construed to be Village approval of intrusions into wetland or floodplain areas, or Village approval of filling or modifications to wetlands or floodplain areas. Developer, except as required on approved plans, will not be allowed to grade, fill, or conduct any other type of development within 75 feet of the high-water mark of a navigable waterway or 25 feet from a wetland. If the Zoning Administrator suspects the presence of wetlands or navigable stream upon site inspection, an updated delineation will be required. Final delineation of wetlands and navigable streams shall be confirmed by the Southeastern Wisconsin Regional Planning Commission.

5.04 PHASES. Developer has represented that it will construct the public improvements for this Development in one phase. All public improvement work associated with the Development shall be completed within one year following the date of issuance of permits for such work by the Village.

5.05 ROADWAY MAINTENANCE. The development is comprised of internal private roadways.

5.06 WETLAND AND FLOODPLAIN CONDITIONS. It shall be an explicit condition that the Developer shall comply with all required regulations and shall obtain all necessary approvals in writing from the appropriate agencies relative to the wetlands and floodplain areas which may be on the subject site.

ARTICLE VI - FINANCIAL GUARANTY

6.01 AMOUNT. Developer has obtained a construction loan from the _____ (the "Bank") in the principal amount of \$ _____ to assure the faithful performance and funding of Developer's obligations under this Agreement as itemized in Exhibit A attached hereto and incorporated herein by reference, as well as the construction of the Development. The Bank is requiring construction disbursing through First Am, and independent inspections prior to each draw and retainage of 10%. Developer or First Am shall provide the Village all documentation requested by First Am or the Bank prior to any disbursement relating to public improvements for the Development. The Village is hereby authorized to contact directly First Am or the Bank from time to time regarding the sufficiency of the financial guaranty and to submit a draw request to First Am to fund any third party costs actually incurred by the Village to construct the public improvements shown on the Approved Plans.

6.02 Intentionally deleted.

6.03 Intentionally deleted.

6.04 RESERVATION OF ASSESSMENT RIGHTS. In addition to the remedies for default provided to the Village under this Article VI, the Village reserves the right without notice or hearing to impose special assessments or charges for any third party costs actually incurred by the Village to construct the public improvements shown on the Approved Plans. Such special assessments or charges shall be collected on the next succeeding tax roll as are other special

assessments or charges. This provision constitutes Developer's Waiver of Notice and Consent to all special assessment or special charges proceedings which may be required by law.

6.05 REMEDIES. In the event of a material breach of this Agreement by the Developer, the Village shall, within a reasonable amount of time, give notice of such breach to the Developer. If Developer fails to remedy the breach within thirty (30) days of the notice (or such other amount of time to which the parties might agree or is reasonably necessary to remedy a breach) (the "Cure Period"), the Village shall have the option of ordering the Developer to not proceed any further with the construction and installation of the public improvements described in this Agreement until such time as the breach is remedied. All remedies as stated herein shall be deemed alternative remedies, and cumulative as and to such other remedies in law or equity as the Village may assert and herein reserves.

ARTICLE VII - GUARANTEE AND INDEMNIFICATION

7.01 GUARANTEE OF IMPROVEMENTS. Developer shall guarantee on cause its contractor to guaranty all dedicated public improvements against defects due to faulty materials or workmanship which appear within one (1) year from the date of Final Acceptance by the Village, as provided in Article III of this Agreement. Developer shall repair or replace any such improvements as required by the Village Engineer to eliminate such defects and shall pay for all damages to Village property resulting from such defects. Each repair or replacement performed pursuant to this paragraph shall be guaranteed for one (1) year from the completion thereof.

7.02 GENERAL INDEMNIFICATION. Developer shall indemnify and hold the Village harmless against and from any and all liability, judgments, costs and expenses incurred by the Village as the result of any action by whomsoever or whenever brought or obtained against the Village or Developer, or both, which may in any manner result from or arise in the course of, out of, or as a result of the carelessness, negligence or neglect of Developer, its agents, contractors or employees. In every case where judgment is recovered against the Village and where notice of the pendency of the suit and an opportunity to defend the same has been given to Developer within ten (10) days after its commencement, the judgment shall be conclusive upon Developer, not only as to the amount of damages, but also as to its liability to the Village.

7.03 CONTRACTOR INSURANCE. Contractors engaged by Developer to perform the work required by this Agreement within public rights-of-way shall, prior to commencing such work, submit to the Village proof of the following:

- (1) Unemployment and Workers' Compensation insurance which is in strict compliance with state laws.
- (2) Personal and public liability insurance having limits of not less than \$1,000,000.00.
- (3) Property damage insurance having limits of not less than \$500,000.00.

- (4) Fire and extended coverage which shall insure against losses and damage to completed work, materials or equipment until the same has been accepted by the Village.

7.04 INDEMNIFICATION FOR ENVIRONMENTAL CONTAMINATION.

Developer shall indemnify, and hold the Village and its officers, agents and employees harmless from and against any and all losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorneys' fees, punitive damages, fines, penalties and consequential damages) resulting from or relating in any way to (a) Developer's introduction of toxic or hazardous material or substances in or on the real property dedicated or conveyed by Developer to the Village; or (b) toxic or hazardous material or substances not introduced by Developer, but which cause damage to the Village because of work performed pursuant to, or in connection with the platting/subdivision of the Property or this Agreement. For purposes of this Agreement, "toxic or hazardous material or substances" is defined as any pollutant, contaminant, waste or toxic or hazardous chemicals, wastes or substances, including, without limitation, asbestos, urea formaldehyde insulation, petroleum, PCBs, lead, air pollutants, water pollutants, soil pollutants and other substances defined as hazardous or toxic or words of similar import under federal, state or local statute, rule, regulation or order of any government entity having jurisdiction over the control of such wastes or substances.

Upon the Village becoming aware of the occurrences of any event or the existence of any state of facts in respect of which the Village has or will have a claim for indemnification under this Agreement ("Claim"), as soon as reasonably practicable thereafter:

- (1) the Village shall provide Developer written notice of the losses, damages, costs, expenses, liabilities, obligations, claims or suits (including, without limitation, reasonable attorney's fees but not punitive damages, fines, penalties, or consequential damages) as and when reasonably apprehended. Notwithstanding anything to the contrary contained herein, the Village's failure to timely notify Developer shall not prevent or in any way impair recovery by the Village unless Developer is materially prejudiced as a result of such failure;
- (2) subject to paragraphs (3) through (5) below, Developer diligently, at its own expense, shall control and shall be responsible for the defense, negotiation and/or settlement of the Claim, including the diligent performance of any remediation associated therewith;
- (3) the Village may at its own expense hire counsel or consultants to monitor the Claim;
- (4) Developer shall not, without the prior written consent of the Village, which consent shall not be unreasonably delayed, withheld or conditioned, settle any Claim;
- (5) Developer shall lose its right to defend, negotiate and settle any Claim if, as determined by an arbitrator jointly selected by the parties, it fails to diligently

defend, negotiate or settle such Claim. In the event that Developer has lost its right to defend, negotiate or settle any Claim:

- (i) the Village shall have the right, without prejudice to its right of indemnification hereunder, at Developer's cost and expense, to defend, negotiate and settle any Claim, and
 - (ii) Developer shall pay such reasonable costs and expenses incurred by the Village within thirty (30) days of receipt of written notice from the Village together with an invoice for work performed;
- (6) If Developer does not timely assume responsibility for any Claim, the Village shall have the right, without prejudice to its right of indemnification hereunder, at the sole cost and expense of Developer, to assume control of the defense, negotiation and/or settlement of the Claim, and may engage counsel or other agents, consultants, and contractors to contest, defend, settle or otherwise dispose of such Claim, including, without limitation, hiring any environmental consultant or contractor to perform any remediation necessary to address the Property or the toxic or hazardous materials or substances at the Property.

ARTICLE VIII - TIME OF COMPLETION

8.01 COMPLETION DATE. The public improvement work required by this Agreement shall be completed by Developer not later than one (1) year after acceptance of this Agreement by the Village Board.

8.02 DEFAULT. In the event Developer does not complete installation of the public improvements required by this Agreement within thirty (30) days after the Village has served notice of default upon Developer, the Village may complete the same and take title thereto. The costs of doing such work shall be funded as provided in Article VI of this Agreement.

8.03 FORCE MAJEURE. Notwithstanding anything herein to the contrary, in the event that Developer is delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental regulations, orders or decrees, riots, insurrection, war, acts of God, inclement weather, bureaucratic delays or other reasons beyond Developer's reasonable control, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for the period of such delay.

8.04 SUNSET CLAUSE. The conditions of this Agreement shall terminate two (2) years after Village Board approval unless construction has begun or amended in writing by both parties.

ARTICLE IX - GENERAL PROVISIONS

9.01 APPROVAL TERMS. No tax-exempt use is authorized by the approvals granted by the Village.

9.02 ENTIRE AGREEMENT. This written Agreement and written amendments and any referenced attachments thereto shall constitute the entire agreement between the Developer and the Village with respect to the construction and installation of utilities on the Property and shall replace the Predevelopment Agreement and that in the event of any conflict between the Development Agreement and the Predevelopment Agreement, the terms of the Development Agreement will control.

9.04 AMENDMENTS. This Agreement may be amended or modified only by an instrument in writing executed by all of the parties to this Agreement.

9.05 OWNERSHIP. Developer certifies and warrants to the Village that all of the owners of the real estate within said Development and all of the land contract vendors and/or mortgages having interest in said real estate are as follows: F Street Germantown, LLC

9.06 AUTHORITY. Developer, by the undersigned, represents, certifies and warrants that the undersigned has the authority to bind F Street Germantown, LLC as an agent of the same.

9.07 NO VESTED RIGHTS GRANTED. Except as expressly provided by law or as expressly provided by this Agreement, no vested rights in connection with this project shall inure to the Developer, its heirs, successors or assigns.

9.08 NO WAIVER. No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor shall it be deemed or constitute a continuing waiver unless expressly provided for by a duly signed and executed, written amendment by all parties to this Agreement. The Village's failure to act or exercise any right under this Agreement shall not constitute the approval or a waiver of its right to act or exercise any right under this Agreement or a ratification of any wrongful or negligent act by the Developer or the acceptance of any improvement or performance on the part of the Developer.

9.09 APPROVAL. No approval by the Village Engineer or the Village attorney or any other person acting on behalf of the Village shall be construed as a waiver of any of the requirements of the Ordinances, or any statute or regulation governing the improvements.

9.10 SEVERABILITY. If any part, term or provision of this Agreement is held by a court to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or provision; and the right of the parties will be construed as if the part, term or provision was never part of the Agreement.

ARTICLE X - NON-ASSIGNMENT

This Agreement, which is binding upon Developer, Developer's agents, officers, employees, personal representatives, guardians and trustees shall not be assigned by Developer to any individual, firm, partnership or corporation without the express approval of the Village.

IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed in duplicate originals this _____ day of _____, 2023 which shall be the effective date of this Agreement.

DEVELOPER:

TOWN 9 INDUSTRIAL BUILDING A

By: F Street Germantown, LLC

A Wisconsin Limited Liability Company

By: _____
Scott J. Lurie, Manager

STATE OF WISCONSIN)
) SS
 COUNTY)

Personally came before me this ____ day of _____, 2023, the above-named, Scott J. Lurie, Manager of F Street Germantown, LLC, to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said Limited Liability Corporation and acknowledged that he executed the foregoing instrument in such capacity.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

VILLAGE OF GERMANTOWN

By: _____
Dean Wolter, Village President

Attest By: _____
Angel Rettler, Interim Village Clerk

Per Village Board Approval: Dated _____

STATE OF WISCONSIN)
) SS
WASHINGTON COUNTY)

Personally came before me this ____ day of _____, 2023, the above-named, Dean Wolter, Village President, and Angel Rettler, Interim Village Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be such President and Interim Clerk of the above-named municipal corporation, Village of Germantown, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

Approved as to form:

Brian C. Sajdak, Village Attorney

This instrument was drafted by: Lawrence W. Ratayczak, P.E., Director of Public Works

EXHIBIT “A” (financial & fee’s)

EXHIBIT “B” (labor & equipment rates)

LABOR RATES -- 2023

VILLAGE OF GERMANTOWN

POSITION DESCRIPTION	Annual Hourly Rates		
	2021	2022	2023
Director of Public Works	\$82.51	\$85.40	\$80.09
Community Development Director			\$82.69
Village Engineer	\$69.53	\$71.96	\$67.19
Project Engineer	\$58.88	\$60.94	\$56.81
Civil Engineer	\$44.33	\$45.88	\$54.63
Land Surveyor/Survey Crew w/Robot	\$148.65	\$153.85	\$140.30
Engineer Tech III / Land Surveyor	\$52.53	\$54.37	\$42.95
Construction Inspection	\$52.73	\$54.58	\$52.84
Record Drawing Documentation Preparation	\$52.73	\$54.58	\$51.75
Clerical_DPW			\$43.64
Clerical_Planning/Zoning			\$43.90
Superintendent_Highway	\$59.52	\$61.60	\$67.24
Foreman_Highway			\$63.14
Highway Maintenance Worker II	\$49.94	\$51.69	\$58.02
Highway Operators (Traffic Signals)	\$57.98	\$60.01	\$60.38
Superintendent_Water Utility	\$59.52	\$61.60	\$65.85
Foreman_Water Utility			\$60.95
Superintendent_Waste Water	\$59.53	\$61.61	\$66.45
Utility Operator	\$51.24	\$53.03	\$58.02

**NOTE: 2023 rates reflect base wage + benefits/fed/state/pension/ins/ss (from payroll)
+ 15% Administration/Overhead.**

EQUIPMENT RATES -- 2023

VILLAGE OF GERMANTOWN

EQUIPMENT DESCRIPTION	Annual Hourly Rates		
	2021	2022	2023
Cruz-Air	\$74.27	\$76.50	\$78.79
Case Backhoe & Loader	\$43.85	\$45.17	\$46.52
Michigan Loader	\$56.03	\$57.71	\$59.44
Case/John Deer Loader/Snow Plow	\$95.01	\$97.86	\$100.80
Case/John Deer Loader/Snow Blower	\$129.10	\$132.97	\$136.96
Single Axle Dump Truck (5yd)	\$40.19	\$41.40	\$42.64
Single Axle Dump Truck w/Plow/Aux. Wing/Sander (5 yd)	\$64.55	\$66.49	\$68.48
Tandem Axle Dump Truck	\$53.59	\$55.20	\$56.85
Tandem Axle Dump Truck w/Plow/Aux. Wing/Sander	\$79.17	\$81.55	\$83.99
Quad Axle Dump Truck	\$92.89	\$95.68	\$98.55
1-Ton Patrol Truck (2-3 yd)	\$30.46	\$31.37	\$32.32
1-Ton Truck w/Plow	\$37.76	\$38.89	\$40.06
Truck w/Water Jetter w/Aux. Power Unit	\$60.89	\$62.72	\$64.60
Aerial Lift Truck	\$75.52	\$77.79	\$80.12
3500- Truck w/ Utility Box & Crane	\$65.00	\$65.00	\$65.00
Pickup Truck	\$23.75	\$24.46	\$25.20
Pickup Truck w/Plow	\$34.10	\$35.12	\$36.18
Self Propelled Vibrating Roller	\$46.28	\$47.67	\$49.10
Self Propelled Non-Vibratory Roller	\$42.62	\$43.90	\$45.22
185 cfm Air Compressor (Portable)	\$34.10	\$35.12	\$36.18
Street Sweeper 40 Hp w/Front Mounted Broom	\$45.06	\$46.41	\$47.80
Vacuum Sweeper	\$99.87	\$102.87	\$105.95
Vac All	\$104.74	\$107.88	\$111.12
Sewer line Televising Truck	\$141.29	\$145.53	\$149.89
Combination Sewer Machine (pipe jetter & vac)	\$170.51	\$175.63	\$180.89
Mini Excavator	\$59.70	\$61.49	\$63.34
Skid Steer Loader w/Bucket	\$38.98	\$40.15	\$41.35
Skid Steer Loader w/Snow Blower/Broom	\$42.62	\$43.90	\$45.22
20" Enclosed Trailer	\$15.45	\$15.91	\$16.39
REX Valve Turner	\$85.49	\$88.05	\$90.70
10' Utility Trailer	\$12.36	\$12.73	\$13.11
Tar Kettle	\$41.41	\$42.65	\$43.93
Motorized Mower (24" & Under)	\$16.15	\$16.63	\$17.13
Motorized Mower (25"-47")	\$22.54	\$23.22	\$23.91
Motorized Mower (48" & larger)	\$26.19	\$26.98	\$27.78
Tractor w/Sickle or Flail Mower	\$56.14	\$57.82	\$59.56

Chain Saw	\$14.94	\$15.39	\$15.85
Hydraulic Saw	\$14.94	\$15.39	\$15.85
Hydraulic Pruner	\$14.94	\$15.39	\$15.85
Chipper	\$48.71	\$50.17	\$51.68
Generator (225 Kw)	\$69.42	\$71.50	\$73.65
Generator (Under 10 Kw)	\$30.46	\$31.37	\$32.32
Trailer Mounted Vacuum Excavator & Valve Turner	\$102.31	\$105.38	\$108.54
6 " Pump/Hose	\$37.76	\$38.89	\$40.06
4" Pump/Hose	\$31.67	\$32.62	\$33.60
3" Pump/Hose	\$26.19	\$26.98	\$27.78
Barricades-----DAILY COST	\$3.66	\$3.77	\$3.88
Traffic Control Signs-----DAILY COST	\$1.83	\$1.88	\$1.94
NOTE: 2023 rates reflect a 3% increase of 2022 rates			

EXHIBIT “C” (CSM)

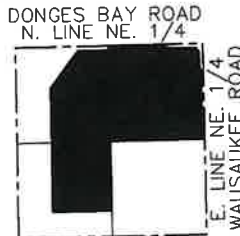
CERTIFIED SURVEY MAP NO. 7272

Unplatted lands located in Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

GRAEF

275 West Wisconsin Avenue, Suite 300
Milwaukee, WI 53203
414 / 259 1500
414 / 259 0037 fax
www.graef-usa.com

1" = 2000'



VICINITY MAP
NE. 1/4, SECT. 36,
T.9N., R.20E.

Document # 1576008

MAP # 7272

VOLUME: 56 PAGE: 174
WASHINGTON COUNTY WISCONSIN
2023-03-09 9:58:00 AM

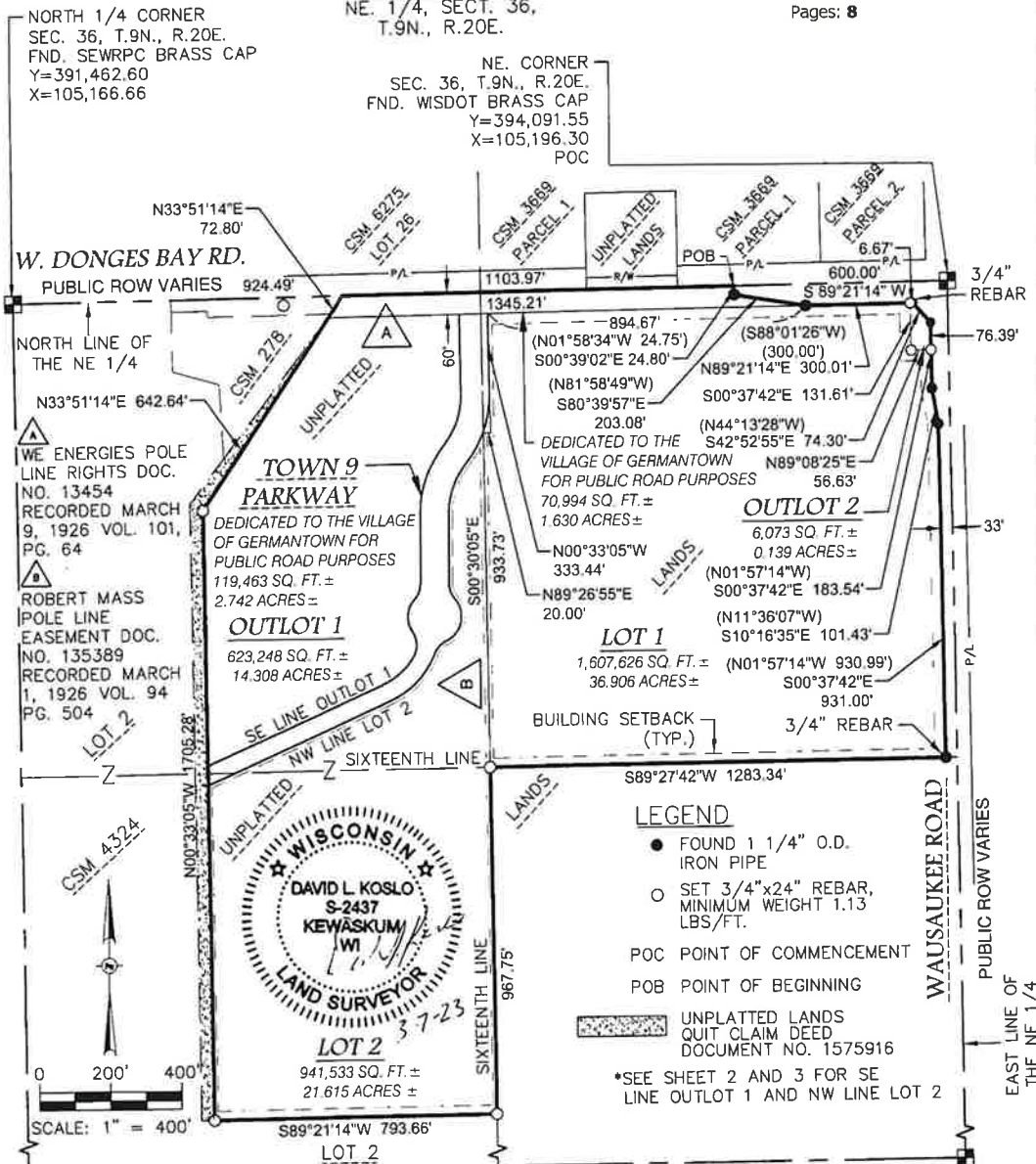
Sharon A. Martin

SHARON A MARTIN
WASHINGTON COUNTY
REGISTER OF DEEDS

Fee: \$30.00

Fee Exempt: 2R

Pages: 8

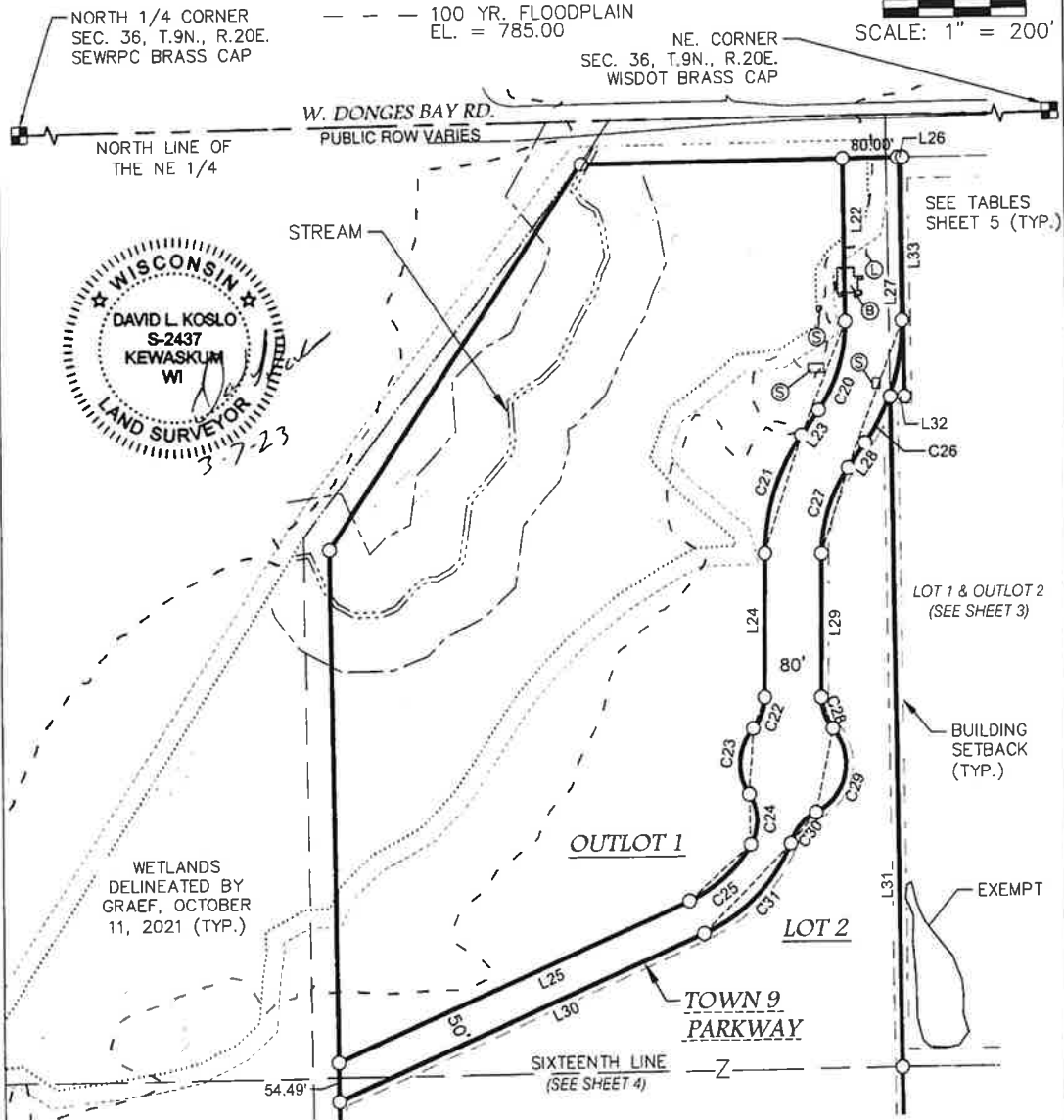
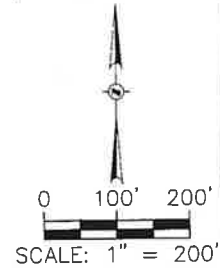


CERTIFIED SURVEY MAP NO.

Unplatted lands located in Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

LEGEND

-----	STREAM	⊗	BUILDING
-----	STREAM 75' SETBACK	⊙	SHED
.....	DELINEATED WETLAND	⊕	LP TANK
-----	WETLAND 25' SETBACK		
- - -	100 YR. FLOODPLAIN		
	EL. = 785.00		



GENERAL NOTES

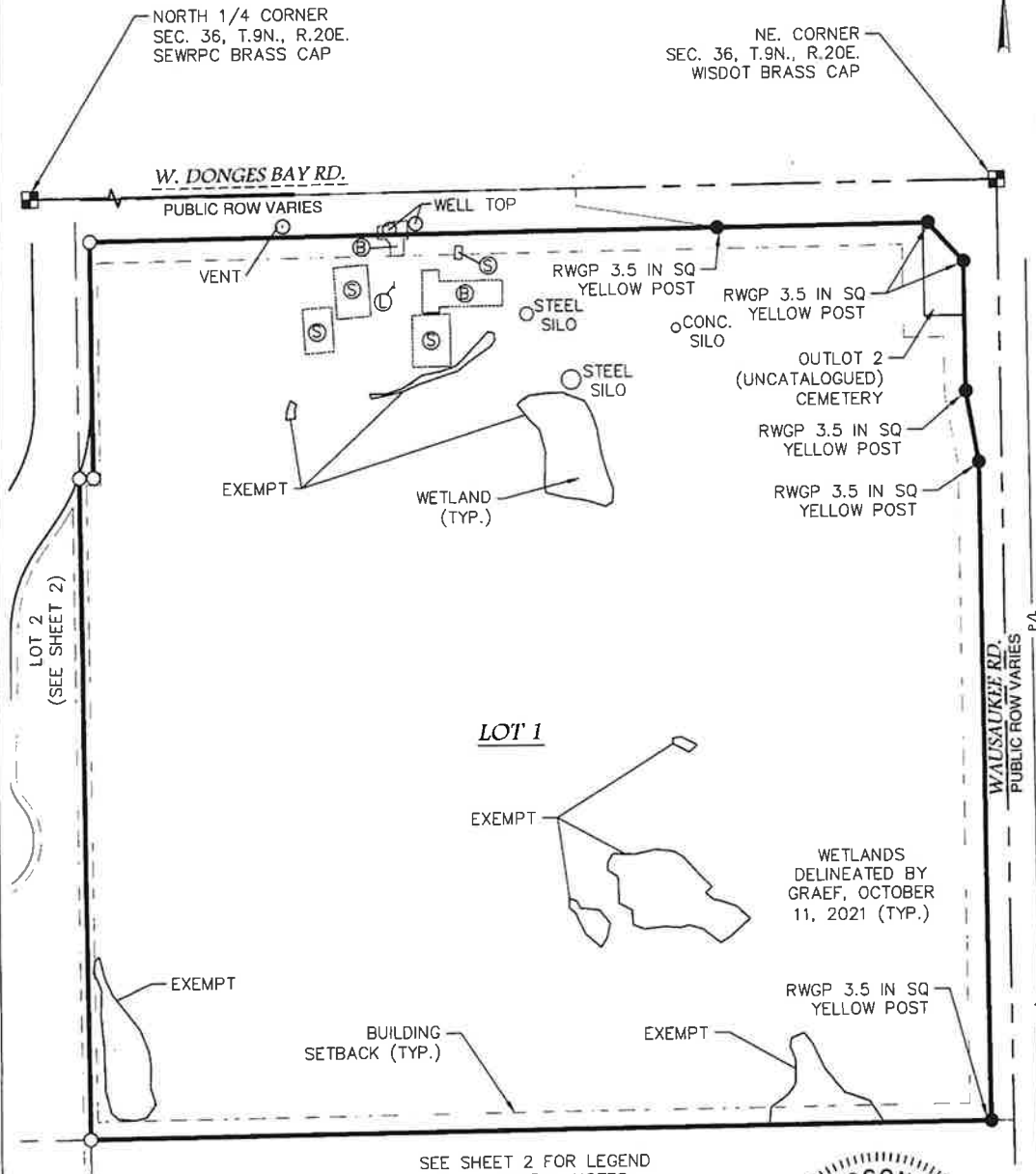
- 1.) Lot 2 is zoned I: Institutional District. A minimum building setback from the right-of-way of all streets, or highways equal to the average setback on each side of the use parcel or districts. A minimum side yard equal to the side yard of adjacent use parcels or districts. a rear side yard of not less than 25 feet. Front yard = 30 feet, Side yards = 10 feet, Rear yard = 25 feet
- 2.) Lot 1 is zoned M-1: Limited Industrial. Minimum building setbacks are; Front/Street yard = 30 feet, Side yard = 10 feet, Rear yard = 25 feet. Donges Bay Road: Front/Street yard setback = 30 feet, Wausaukee Road: Front/Street yard setback = 30 feet, West Lot line: Rear yard setback = 25 feet, South Lot line: Rear yard setback = 25 feet.
- 3.) These are minimum setbacks with actual setbacks to be determined by the Plan Commission through Site Development & Building Plan approval.
- 4.) Development within the wetland and stream bank setbacks is prohibited unless otherwise allowed pursuant to the provisions of chapter 24 (shoreland-wetland zoning code) in the Germantown municipal code".

This Instrument Drafted By: David L. Koslo, PLS No. 2437 JOB. NO. 20210820.02 SHEET 2 OF 8

CERTIFIED SURVEY MAP NO. _____

Unplatted lands located in Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

0 100' 200'
SCALE: 1" = 200'



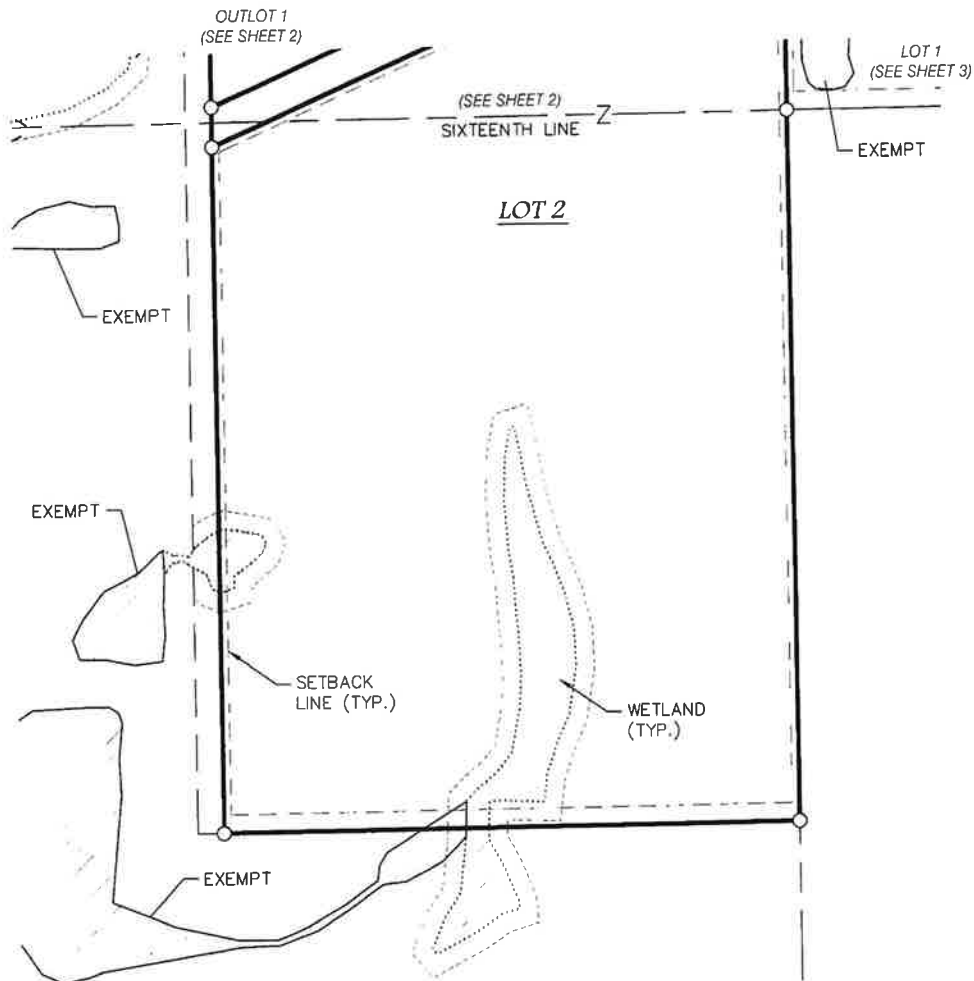
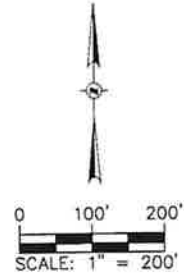
SEE SHEET 2 FOR LEGEND AND GENERAL NOTES



This Instrument Drafted By: David L. Koslo, PLS No. 2437 JOB. NO. 20210820.02 SHEET 3 OF 8

CERTIFIED SURVEY MAP NO. _____

Unplatted lands located in Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.



SEE SHEET 2 FOR LEGEND
AND GENERAL NOTES



This Instrument Drafted By: David L. Koslo, PLS No. 2437 JOB. NO. 20210820.02 SHEET 4 OF 8

CERTIFIED SURVEY MAP NO. _____

Unplatted lands located in Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

OUTLOT 1 TABLES

LINE TABLE		
LINE #	LENGTH	DIRECTION
L22	227.31'	S00°30'31"E
L23	42.27'	S35°17'13"W
L24	200.34'	S00°34'38"W
L25	541.92'	S66°01'55"W

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD BEARING
C20	131.20'	210.00'	35°47'44"	129.07'	S17°23'21"W
C21	175.68'	290.00'	34°42'35"	173.01'	S17°55'56"W
C22	47.52'	66.00'	41°15'21"	46.50'	S21°12'18"W
C23	98.75'	75.00'	75°26'23"	91.77'	S4°06'47"W
C24	73.76'	66.00'	64°01'51"	69.98'	S1°35'29"E
C25	118.70'	191.00'	35°36'28"	116.80'	S48°13'40"W

LOT 2 TABLES

LINE TABLE		
LINE #	LENGTH	DIRECTION
L26	1.61'	S89°24'59"W
L27	333.44'	N00°33'05"W
L28	42.27'	S35°17'13"W
L29	200.34'	S00°34'38"W
L30	563.57'	S66°01'55"W
L31	933.73'	N00°33'05"W
L32	20.00'	N89°26'55"E
L33	227.50'	S00°30'31"E

CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHORD LENGTH	CHORD BEARING
C26	78.06'	290.00'	15°25'21"	77.83'	S27°34'32"W
C27	127.22'	210.00'	34°42'35"	125.28'	S17°55'56"W
C28	47.60'	66.00'	41°19'19"	46.57'	S20°05'02"E
C29	137.69'	75.00'	105°11'17"	119.15'	S11°58'26"W
C30	47.52'	66.00'	41°15'23"	46.50'	S43°56'23"W
C31	189.40'	242.22'	44°48'04"	184.61'	S43°34'36"W



This Instrument Drafted By: David L. Koslo, PLS No. 2437 JOB. NO. 20210820.02 SHEET 5 OF 8

CERTIFIED SURVEY MAP NO. _____

Unplatted lands located in the Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

SURVEYOR'S CERTIFICATE

STATE OF WISCONSIN)
 : SS
MILWAUKEE COUNTY)

I, David L. Koslo, a professional land surveyor, do hereby certify: That I have surveyed, divided, and mapped unplatted lands located in the Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said Northeast 1/4; Thence South 89°21'14" West along the North line of said Northeast 1/4, 600.00 feet to the point of beginning; Thence South 00°39'02" East along the South right of way line of West Donges Bay Road, 24.80 feet; Thence South 80°39'57" East along said South right of way line, 203.08 feet; Thence North 89°21'14" East along said South right of way line, 300.01 feet; Thence South 42°52'55" East along said South right of way line, 74.30 feet to the West right of way line of Wausaukee Road; Thence South 00°37'42" East along said West right of way line, 183.54 feet; Thence South 10°16'35" East along said West right of way line, 101.43 feet; Thence South 00°37'42" East along said West right of way line parallel to the East line of said Northeast 1/4, 931.00 feet to the South line of the Northeast 1/4 of said Northeast 1/4; Thence South 89°27'42" West along said South line, 1283.34 feet to the West line of the Northeast 1/4 of said Northeast 1/4; Thence South 00°30'05" East along said West line, 967.75 feet to a Northerly line of Lot 2 of Certified Survey Map numbered 4324 as recorded in the office of the Register of Deeds for Washington County; Thence South 89°21'14" West along said Northerly line, 793.66 feet; Thence North 00°33'05" West, 1705.28 feet; Thence North 33°51'14" East, 715.44 feet to the North line of said Northeast 1/4; Thence North 89°21'14" East along said North line, 1103.97 feet to the point of beginning.

Containing 3,368,938 square feet (77.340 acres), more or less.

That I have made such survey, land division, and map by the direction of the Village of Germantown, owners of said land. That such map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made. That I have fully complied with the provisions of Chapter 236.34 of the Wisconsin Statutes and Chapter 18 of the Village of Germantown Subdivision Control Ordinance in surveying, dividing, and mapping the same.



David L. Koslo S-2437
Professional Wisconsin Land Surveyor

Date: 3-7-23

CERTIFIED SURVEY MAP NO. _____

Unplatted lands located in the Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

OWNER'S CERTIFICATE:

The Village of Germantown, a Wisconsin Municipal organization, duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, we hereby certify that we caused the land described on this Certified Survey Map to be surveyed, divided, mapped, and dedicated as represented on this Certified Survey Map. As Owners, we hereby dedicate that part of Donges Bay Road and Town 9 Parkway to the Village of Germantown for public road purposes as represented on sheets 1 and 2 of 8 of this Certified Survey Map. We also certify that this Certified Survey Map is required by s.236.10 or 236.12 to be submitted to the following for approval or objection: Village of Germantown.

In witness whereof, The Village of Germantown has caused these presents to be signed by Dean Wolter, Village President, and its corporate seal to be hereunto affixed on this 5th day of March, 2023.

Village of Germantown

By

Dean Wolter, Village of Germantown, President



STATE OF WISCONSIN

) SS

MILWAUKEE COUNTY

Personally came before me this 8 day of March, 2023, the above named Dean Wolter, Village President, to me known to be the person who executed the foregoing instrument, and to me known to be President of the Village of Germantown, and acknowledged that he executed the foregoing instrument as such President of the Village of Germantown by its authority.

My Commission expire

8/6/2024

Angela V. Rettler

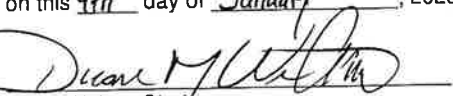


CERTIFIED SURVEY MAP NO. _____

Unplatted lands located in the Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

VILLAGE OF GERMANTOWN PLANNING COMMISSION APPROVAL

This Certified Survey Map is hereby approved by the Planning Commission of the Village of Germantown on this 9th day of January, 2023.


Dean Wolter, Chairman

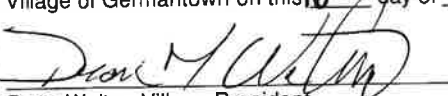
3-8-23
Date


Laura A. Johnson, Secretary

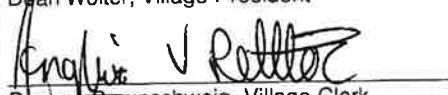
3/7/23
Date

VILLAGE OF GERMANTOWN BOARD APPROVAL

This Certified Survey Map, being a division of the Northwest 1/4, the Southwest 1/4, and the Northeast 1/4 of the Northeast 1/4 of Section 36, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin, having been approved by the Planning Commission being the same, is hereby approved and the dedication of that part of Donges Bay Road and Town 9 Parkway for public road purposes as shown on Sheets 1 and 2 of 8 is hereby accepted by the Village Board of Trustees of the Village of Germantown on this 16th day of January, 2023.


Dean Wolter, Village President

3-8-23
Date


Angelica V. Retter, Village Clerk

3-8-23
Date



EXHIBIT “D”
Approved Plans and Specifications

BUSINESS OF THE PUBLIC WORKS & HIGHWAYS COMMITTEE

MEETING DATE: June 7, 2023

PLACEMENT: Action Item

ITEM TITLE: Amended Development Agreement - Capstone Building #2

SUBMITTED BY: Lawrence Ratayczak

SUMMARY EXPLANATION:

Staff is bringing the Developers Agreement for the proposed Building No. 2 of the CAPSTONE-41 Development for PWHC approval. This Development Agreement is necessary due to the installation of a public watermain. The Development is located on the south side of Holy Hill Road (across from the Briggs & Stratton Facility). The public improvements were addressed in the DA.

ATTACHMENT:

1. J. Amended Development Agreement - Capstone 41

RECOMMENDATION:

Staff is recommending the Public Works and Highway Committee approve the Development Agreement for CAPSTONE 41 Development Bldg No. 2 and any revisions by the Village Attorney and forward it with a positive recommendation for approval to the Village Board.

ACTION BY Committee:

Proper parliamentary procedure to deny a request is to have a motion made in the affirmative and by voting NAY would deny the request if a majority vote.

CAPSTONE 41
FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT (the "Amendment") is entered into by and between the Village of Germantown, a Municipal Corporation of the State of Wisconsin located in Washington County, hereinafter called the "Village," and CQ WI 2021, LLC, a Delaware limited liability company, hereinafter referred to as "Developer." The Village and the Developer shall individually be referred to as a "Party" and collectively as the "Parties."

WHEREAS, the parties entered into a Development Agreement on December 30, 2021, which was recorded in the office of the Washington County Register of Deeds as Document No. 1553963 on January 19, 2022 (the "Agreement") for the development of certain property located generally in the Northwest ¼ and Southwest ¼ of the Northeast ¼ and Part of the Northeast ¼ and Southeast ¼ of the Northwest ¼, all in Section 18, Township 9 North of Range 20 East, in the Village of Germantown, Washington County, Wisconsin, as identified in the Agreement; and

WHEREAS, the Agreement identified a series of three buildings in the development; Building #1 as an approximately 202,455 sq. ft industrial (warehouse/office/distribution) or light manufacturing facility; Building #2 is estimated to be approximately 290,580 sq. ft., and Building #3 is estimated to be approximately 293,536 sq. ft., both of a presently undetermined use but intended to be consistent with the current Village comprehensive plan and M-1 zoning; and

WHEREAS, the Developer divided the property by CSM such that Building #2 and Building #3 are to be constructed on the parcel described as Lot 2 of CSM 7181, being a part of the Northwest 1/4 of Section 18, Town 9 North, Range 20 East, in the Village of Germantown, Washington County, Wisconsin (the "Second Development Parcel"); and

WHEREAS, subsequent to entering into the Agreement the plans to serve Building #2 and #3 with water and sewer changed such that public utilities will extend further into the Second Development Parcel which necessitates this amendment; and

WHEREAS, the Village seeks to protect the health, safety and general welfare of the Village as a whole and, in particular, property owners who abut the Second Development Parcel or are potentially affected by the Development through application of the Municipal Code and rules and regulations of governmental agencies with jurisdiction.

NOW, THEREFORE, in consideration of these recitals, the mutual agreements, benefits and responsibilities outlined herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. Paragraph 1.02 of the Agreement, as it relates to the Second Development Parcel only, shall read as follows:

1.02 WATER SUPPLY FACILITIES. Pursuant to the Agreement, Developer designed and installed all water supply facilities that were intended to serve the

three buildings. Subsequent to the Agreement, Developer decided to change the water service for buildings 2 and 3. For buildings 2 and 3, Developer has designed plans for all proposed water infrastructure consisting of; 808 lf of 12" water main / 493 lf of 8" water main / 887 lf of 6" water main / 2 each 12" gate valves / 1 each 8" gate valve / 5 each 6" gate valves and 5 each hydrants with bollards. The water main will connect to the existing 12" service along Holy Hill Road. The Village Engineer has approved all proposed plans, specifications and contract documents for all water systems facilities and authorization for construction has been given, in accordance with Sec.18.08(8) of the Municipal Code. All plans and documents have been prepared in accordance with state and local standards by a Professional Engineer registered in the State of Wisconsin and submitted stamped and signed for review by the Village Engineer and by all applicable governmental agencies. All water utility improvements that are to be transferred to the Village shall be contained in Village right-of-way or a utility easement dedicated to the Village. The easement shall be dedicated to the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney. Easement document shall not be drafted until construction of water main is completed and alignment is documented. Water Main and lateral trenches in an existing roadway shall be aggregate slurry backfilled.

A pre-construction meeting is required prior to the starting work on water main.

Section 2. Paragraph 1.03 of the Agreement, as it relates to the Second Development Parcel only, shall read as follows:

1.03 SANITARY SEWERAGE SYSTEMS. Developer plans do not call for the installation of public sanitary sewer. The only sanitary sewer facilities work on this project is raising four (4) existing sanitary manholes to the revised pavement elevation. This work shall be completed in the presence of Village staff or assigned representative.

Also, the Developer will grant an ingress/egress easement for the Village Wastewater Utility to gain access to the onsite sanitary manholes through the developments paved driveways/parking lots for the purpose of maintenance and repairs as needed. The easement shall be dedicated to the Village through an easement document prepared and submitted by Developer, subject to review and approval by the Village Engineer and the Village Attorney.

Section 3. All other provisions of the Development Agreement shall remain in effect.

IN WITNESS WHEREOF, Developer and the Village have caused this Agreement to be signed in duplicate originals this _____ day of _____, 2023 which shall be the effective date of this Agreement.

[SIGNATURE PAGES FOLLOW]

DEVELOPER:

By: CQ WI 2021, LLC

By: Capstone Germantown LLC, its Co-managing Member

By: _____
Michael Faber, its: Manager

STATE OF WISCONSIN)
) SS
COUNTY OF WAUKESHA)

Personally, came before me this ____ day of _____, 2023, the above-named, Michael Faber, Manager of Capstone Germantown LLC, as Co-Managing Member of CQ WI 2021, LLC, to me known to be the person who executed the foregoing instrument and to me known to be such Manager of said company and acknowledged that he executed the foregoing instrument in such capacity.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

VILLAGE OF GERMANTOWN

By: _____
Dean Wolter, Village President

Attest By: _____
, Village Clerk (Acting)

Per Village Board Approval: Dated _____

STATE OF WISCONSIN)
) SS
WASHINGTON COUNTY)

Personally came before me this ____ day of _____, 2023, the above-named, Dean Wolter, Village President, and _____, Village Clerk, to me known to be the persons who executed the foregoing instrument and to me known to be such President and Clerk of the above-named municipal corporation, Village of Germantown, and acknowledged that they executed the foregoing instrument as such officers, as the deed of said municipal corporation, by its authority.

By: _____
Print Name: _____
Notary Public, State of Wisconsin
My Commission Expires:

Approved as to form:

Brian C. Sajdak, Village Attorney

This instrument was drafted by: Lawrence W. Ratayczak, P.E., Director of Public Works