Document #: 470933

Register of Deeds
Calumet County, WI

Received for Record
Date: 1/06/12 11:42
Tamara Alten

State Bar of Wisconsin Form 21-2003
MORTGAGE

Document Number

Document Name

Recording Area

Name and Return Address
Redevelopment Authority of the City of Menasha
140 Main Street
Menasha, WI 54952

ENVELOPE

Ponds of Menasha, LLC

("Mortgagor," whether one or more) mortgages to The Redevelopment Authority of the City of Menasha, its successors or assigns ("Mortgagee," whether one or more), to secure payment of $390,269.00 evidenced by a note or notes, or other obligation ("Obligation") dated October 28, 2011, executed by Jeffrey T. Marlow of Ponds of Menasha, LLC, to Mortgagee, and any extensions, renewals and modifications of the Obligation and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the Property and the security of this Mortgage, and all other amounts paid by Mortgagee hereunder, the following property, together with all rights and interests appurtenant thereto in law or equity, all rents, issue and profits arising there from, including insurance proceeds and condemnation awards, structures, improvements and fixtures located thereon, in ~~Winnebago~~ Calumet County, State of Wisconsin ("Property"):

Part of 7-1772-00
Parcel Identification Number (PIN)

This is not homestead property.
(is) (is not)

This is a purchase money mortgage.
(is) (is not)

SEE ATTACHED EXHIBIT "A".

1. **MORTGAGOR'S COVENANTS.**

a. **COVENANT OF TITLE.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any, and further excepting:

Terms and conditions of a Development Agreement between the parties dated September 7, 2011. Mortgagor will forever warrant and defend the premises against the claims of all persons whomsoever.

b. **FIXTURES.** Any property which has been affixed to the Property and is used in connection with it is intended to become a fixture. Mortgagor waives any right to remove such fixture from the Property which is subject to this Mortgage.

c. **TAXES.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagee's interest in it and to deliver to Mortgagee on demand receipts showing such payment.

d. **INSURANCE.** Mortgagor shall keep the improvements on the Property insured against loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, without co-insurance, through insurers approved by Mortgagee, in the amount of the full replacement value of the improvements on the Property. Mortgagor shall pay the insurance premiums when due. The policies shall contain the standard mortgage clause in favor of Mortgagee, and evidence of all policies covering the Property shall be provided to Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee

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otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided Mortgagee deems the restoration or repair to be economically feasible.

e. **OTHER COVENANTS.** Mortgagor covenants not to commit waste nor suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from future liens superior to the lien of this Mortgage and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.

2. **DEFAULT AND REMEDIES.** Mortgagor agrees that time is of the essence with respect to payment of principal and interest when due, and in the performance of the terms, conditions and covenants contained herein or in the Obligation secured hereby. In the event of default, Mortgagee may, at its option, declare the whole amount of the unpaid principal and accrued interest due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy available at law or equity. If this Mortgage is subordinate to a superior mortgage lien, a default under the superior mortgage lien constitutes a default under this Mortgage.

3. **NOTICE.** Unless otherwise provided in the Obligation secured by this Mortgage, prior to any acceleration (other than under paragraph 9, below) Mortgagee shall mail notice to Mortgagor specifying: (a) the default; (b) the action required to cure the default; (c) a date, not less than 3 days from the date the notice is mailed to Mortgagor by which date the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration.

4. **EXPENSES AND ATTORNEY FEES.** In case of default, whether abated or not, all costs and expenses, including, but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure be included in the judgment.

5. **FORECLOSURE WITHOUT DEFICIENCY.** Mortgagor agrees to the provisions of Sections 846.101 and 846.103, Wis. Stats., as may apply to the Property and as may be amended, permitting Mortgagee in the event of foreclosure to waive the right to judgment for deficiency and hold the foreclosure sale within the time provided in such applicable Section.

6. **RECEIVER.** Upon default or during the pendency of any action to foreclose this Mortgage, Mortgagor consents to the appointment of a receiver of the Property, including homestead interest, to collect the rents, issues and profits of the Property during the pendency of such an action, and such rents, issues and profits when so collected shall be held and applied as the court shall direct.

7. **WAIVER.** Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

8. **MORTGAGEE MAY CURE DEFAULTS.** In the event of any default by Mortgagor of any kind under this Mortgage or any Obligation secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the Obligation secured by this Mortgage and shall constitute a lien upon the Property.

9. **CONSENT REQUIRED FOR TRANSFER.** Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, option, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness under the Obligation secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this paragraph. A violation of the provisions of this paragraph will be considered a default under the terms of this Mortgage and the Obligation it secures.

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10. **ASSIGNMENT OF RENTS.** Mortgagor hereby transfers and assigns absolutely to Mortgagee, as additional security, all rents, issues and profits which become or remain due (under any form of agreement for use or occupancy of the Property or any portion thereof), or which were previously collected and remain subject to Mortgagor's control following any default under this Mortgage or the Obligation secured hereby and delivery of notice of exercise of this assignment by Mortgagee to the tenant or other user(s) of the Property in accordance with the provisions of Section 708.11, Wis. Stats, as may be amended. This assignment shall be enforceable with or without appointment of a receiver and regardless of Mortgagee's lack of possession of the Property.

11. **ENVIRONMENTAL PROVISION.** Mortgagor represents, warrants and covenants to Mortgagee that (a) during the period of Mortgagor's ownership or use of the Property no substance has been, is or will be present, used, stored, deposited, treated, recycled or disposed of on, under, in or about the Property in a form, quantity or manner which if known to be present on, under, in or about the Property would require clean-up, removal or other remedial action ("Hazardous Substance") under any federal, state or local laws, regulations, ordinances, codes or rules ("Environmental Laws"); (b) Mortgagor has no knowledge, after due inquiry, of any prior use or existence of any Hazardous Substance on the Property by any prior owner of or person using the Property; (c) without limiting the generality of the foregoing, Mortgagor has no knowledge, after due inquiry, that the Property contains asbestos, polychlorinated biphenyl components ("PCBs") or underground storage tanks; (d) there are no conditions existing currently or likely to exist during the term of this Mortgage which would subject Mortgagor to any damages, penalties, injunctive relief or clean-up costs in any governmental or regulatory action or third-party claims relating to any Hazardous Substance; (e) Mortgagor is not subject to any court or administrative proceeding, judgment, decree, order or citation relating to any Hazardous Substance; and (f) Mortgagor in the past has been, at the present is and in the future will remain in compliance with all Environmental Laws. Mortgagor shall indemnify and hold harmless Mortgagee from all loss, cost (including reasonable attorney fees and legal expenses), liability and damage whatsoever directly or indirectly resulting from, arising out of or based upon (i) the presence, use, storage, deposit, treatment, recycling or disposal, at any time, of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, (ii) the violation or alleged violation of any Environmental Law, permit, judgment or license relating to the presence, use, storage, deposit, treatment, recycling or disposal of any Hazardous Substance on, under, in or about the Property, or the transportation of any Hazardous Substance to or from the Property, or (iii) the imposition of any governmental lien for the recovery of environmental clean-up costs expended under any Environmental Law. Mortgagor shall immediately notify Mortgagee in writing of any governmental or regulatory action or third-party claim instituted or threatened in connection with any Hazardous Substance on, in, under or about the Property.

12. **SECURITY INTEREST ON FIXTURES.** To further secure the payment and performance of the Obligation, Mortgagor hereby grants to Mortgagee a security interest in:

CHOOSE ONE OF THE FOLLOWING OPTIONS; IF NEITHER IS CHOSEN, OPTION A SHALL APPLY:

☐ A. All fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired.

☐ B. All property listed on the attached schedule.

This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the "debtor"; (2) Mortgagee shall be deemed to be the "secured party" and shall have allof the rights of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are Ponds of Menasha, LLC, 1300 N. Kimps Court, Green Bay, Wisconsin, 54313;
(6) the state of organization and the organizational identification number of the debtor (if applicable) are Wisconsin; and
(7) the address of the secured party is 140 Main Street, Menasha, Wisconsin, 54952.

13. **SINGULAR; PLURAL.** As used herein, the singular shall include the plural and any gender shall include all genders.

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14. **JOINT AND SEVERAL/LIMITATION ON PERSONAL LIABILITY.** The covenants of this Mortgage set forth herein shall be deemed joint and several among Mortgagors, if more than one. Unless a Mortgagor is obligated on the Obligation secured by this Mortgage, Mortgagor shall not be liable for any breach of covenants contained in this Mortgage.

15. **INVALIDITY.** In the event any provision or portion of this instrument is held to be invalid or unenforceable, this shall not impair or preclude the enforcement of the remainder of the instrument.

16. **MARITAL PROPERTY STATEMENT.** Any individual Mortgagor who is married represents that the obligation evidenced by this instrument was incurred in the interest of Mortgagor's marriage or family.

Dated 11/22/11.

Ponds of Menasha LLC

_____(SEAL) _____(SEAL)
* * Jeffrey T. Marlow

_____(SEAL) _____(SEAL)
* *

AUTHENTICATION

Signature(s) _____

authenticated on _____.

*_____
TITLE: MEMBER STATE BAR OF WISCONSIN
(If not, authorized by Wis. Stat. § 706.06)

THIS INSTRUMENT DRAFTED BY:
City Attorney Pamela A. Captain
SBN 1023192

ACKNOWLEDGMENT

STATE OF WISCONSIN

~~Winnebago~~ Brown COUNTY

Personally came before me on 11-22-2011
the above-named Jeffrey T. Marlow

to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

* Ann C. Wery
Notary Public, State of Wisconsin
My Commission (is permanent) (expires: 4-29-2012)

ANN C. WERY NOTARY PUBLIC STATE OF WISCONSIN

(Signatures may be authenticated or acknowledged. Both are not necessary.)

NOTE: THIS IS A STANDARD FORM. ANY MODIFICATIONS TO THIS FORM SHOULD BE CLEARLY IDENTIFIED.

MORTGAGE STATE BAR OF WISCONSIN FORM NO. 21-2003

* Type name below signatures.

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EXHIBIT "A"

Lot One (1), Certified Survey Map No. 3277 filed in the Office of the Register of Deeds for Calumet County, Wisconsin on July 21, 2011 in Volume 28 on Page 73, as Document No. 466103, being all of Lot 1 CSM 3275 and all of Lot 3 CSM 3276, and All of which property being part of the Northwest 1/4 of the Northeast 1/4, part of the Northeast 1/4 of the Northeast 1/4 and part of the Southwest 1/4 of the Northeast 1/4 all located in Section Seventeen (17), Township Twenty (20) North, Range Eighteen (18) East, City of Menasha, Calumet County, Wisconsin.

The above parcels now described as Lots 1-5, inclusive, Lots 36-62, inclusive, and Lots 83-124, inclusive of the plat of THE PONDS OF MENASHA recorded on November 10, 2011.

(for Phase IV) in accordance with Section 5.02.2 and before December 31, 2012, DEVELOPER shall acquire fee simple title to Lot 16 for Phase IV.

THIS SECTION OF THE DEVELOPMENT AGREEMENT ASSIGNED FROM THE CITY TO THE RDA

SECTION 3.01.1 CITY shall transfer Lot 1, Lot 2 and Lot 4 for Phase I, Phase II and Phase III to DEVELOPER by warranty deed for $17,000 per acre subject to the terms and conditions of this AGREEMENT and a separate Real Estate Purchase AGREEMENT to be executed by the parties. The Real Estate Purchase AGREEMENT shall provide that DEVELOPER shall pay $27,200 down at date of closing and shall execute a Promissory Note in favor of CITY in the amount of the balance of the Purchase Price. The terms of the Note shall be zero percent (0%) interest until paid in full, except that in the event DEVELOPER fails to pay in full before January 1, 2020, then interest shall be paid at five percent (5%) per annum of the remaining balance assessed from the date of closing. DEVELOPER shall be required to make a payment of $5,700 to CITY toward the outstanding balance of the Promissory Note for each Lot sold or transferred by DEVELOPER prior to or at the time of each closing using first proceeds for said payment. As security for said Promissory Note, the DEVELOPER shall give CITY a first mortgage position on Lot 2 and Lot 4 which CITY shall subordinate upon Phase I Development Improvements being completed and a second mortgage position on Lot 1, second to the first mortgage position of the commercial lending institution approved by DEVELOPER in the approximate amount of $2,000,000 representing monies necessary for DEVELOPER's Public and Private Infrastructure obligations herein for Phase I, Phase II and Phase III. Closing shall take place on or before October 18, 2011. Real estate shall be defined as Lot 1 (for Phase I), Lot 2 (for Phase II), Lot 4 (for Phase III) estimated to be 41.2176 acres of land (Purchase Price estimated to be $700,699.20 ($17,000 x 41.2176)). CITY shall be responsible for any and all transfer taxes as well as preparation of any and all Certified Survey Maps. CITY shall further be responsible for obtaining the separate legal descriptions, one description for each respective Lot within each Phase. Certified Survey Map and legal description shall be provided to DEVELOPER by CITY, at CITY's sole expense, at least thirty (30) days prior to closing. The AGREEMENT of sale shall also provide that the CITY shall update all wetland studies for the Real Estate and provide a copy of said wetland studies to DEVELOPER at least fifteen (15) days prior to closing. The AGREEMENT shall further provide that the AGREEMENT is contingent upon the CSM mappings allowing for the development of one hundred twenty-four (124) or more residential real estate lots, as approved by DEVELOPER, within the real estate areas for Development Phase I and Development Phases II and III.

SECTION 3.01.2 Title Insurance. The CITY shall obtain and pay for a title insurance commitment in the amount of the purchase price. A commitment by the title company agreeing to issue a title policy upon the recording of proper documents as agreed herein shall be deemed sufficient performance. DEVELOPER may obtain additional title insurance at its cost. The CITY shall provide to DEVELOPER a preliminary commitment for title insurance not less than fifteen (15) days prior to the closing.

SECTION 3.01.3 Title. The CITY shall cooperate with DEVELOPER to clear up any defect in title that may be pertaining to the property; provided, however, the Real Estate shall be conveyed subject to (1) reasonable and customary easements and restrictions of record; (2) a reversion of title in accordance with this AGREEMENT; (3) requisite public and private utility easements; and (4) all other terms and

Document # 466103

FORM NO. 985-A

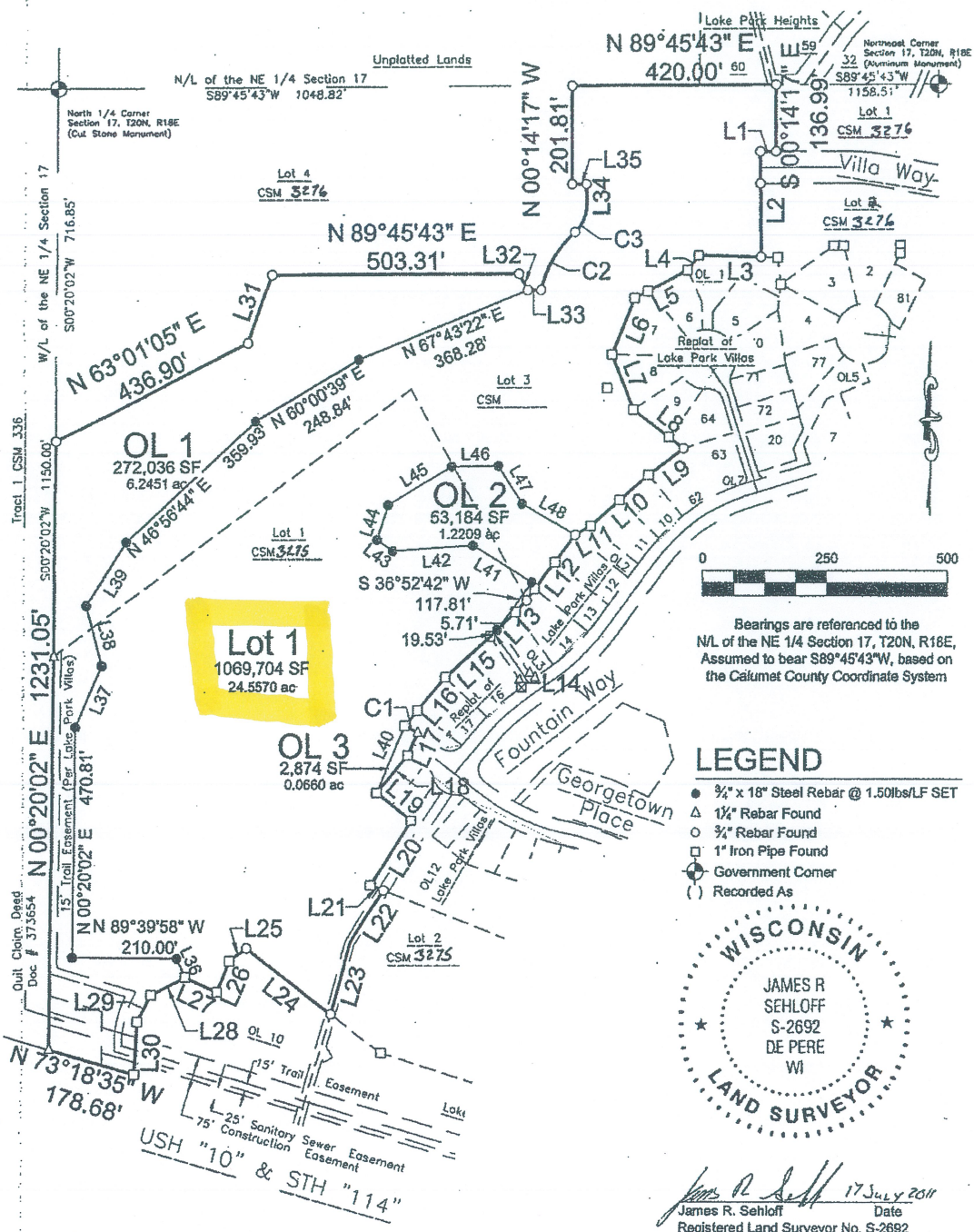
HCMiller
Print Evolutionaries

Stock No. 26273

EXHIBIT E-

Certified Survey Map No. 3277

All of Lot 1 CSM 3275 and all of Lot 3 CSM 3276 being part of the Northwest 1/4 of the Northeast 1/4, part of the Northeast 1/4 of the Northeast 1/4 and part of the Southwest 1/4 of the Northeast 1/4 all located in Section 17, Township 20 North, Range 18 East, City of Menasha, Calumet County, Wisconsin.



Bearings are referenced to the N/L of the NE 1/4 Section 17, T20N, R18E, Assumed to bear S89°45'43"W, based on the Calumet County Coordinate System

LEGEND

- ● ¾" x 18" Steel Rebar @ 1.50lbs/LF SET
- △ 1¼" Rebar Found
- ○ ¾" Rebar Found
- □ 1" Iron Pipe Found
- Government Corner
- ( ) Recorded As

WISCONSIN
JAMES R
SEHLOFF
S-2692
DE PERE
WI
LAND SURVEYOR

17 July 2011
James R. Sehloff — Date
Registered Land Surveyor No. S-2692

Davel Engineering & Environmental, Inc.
Civil Engineers and Land Surveyors
1811 Racine Street
Menasha, Wisconsin
Ph. 920-991-1886, Fax 920-830-9595

Survey for:
City of Menasha
140 Main Street
Menasha, WI 54952

File: 3754CSM3.dwg
Date: 06/22/2011
Drafted By: jim
Sheet: 1 of 4

Document # 466101

EXHIBIT F.

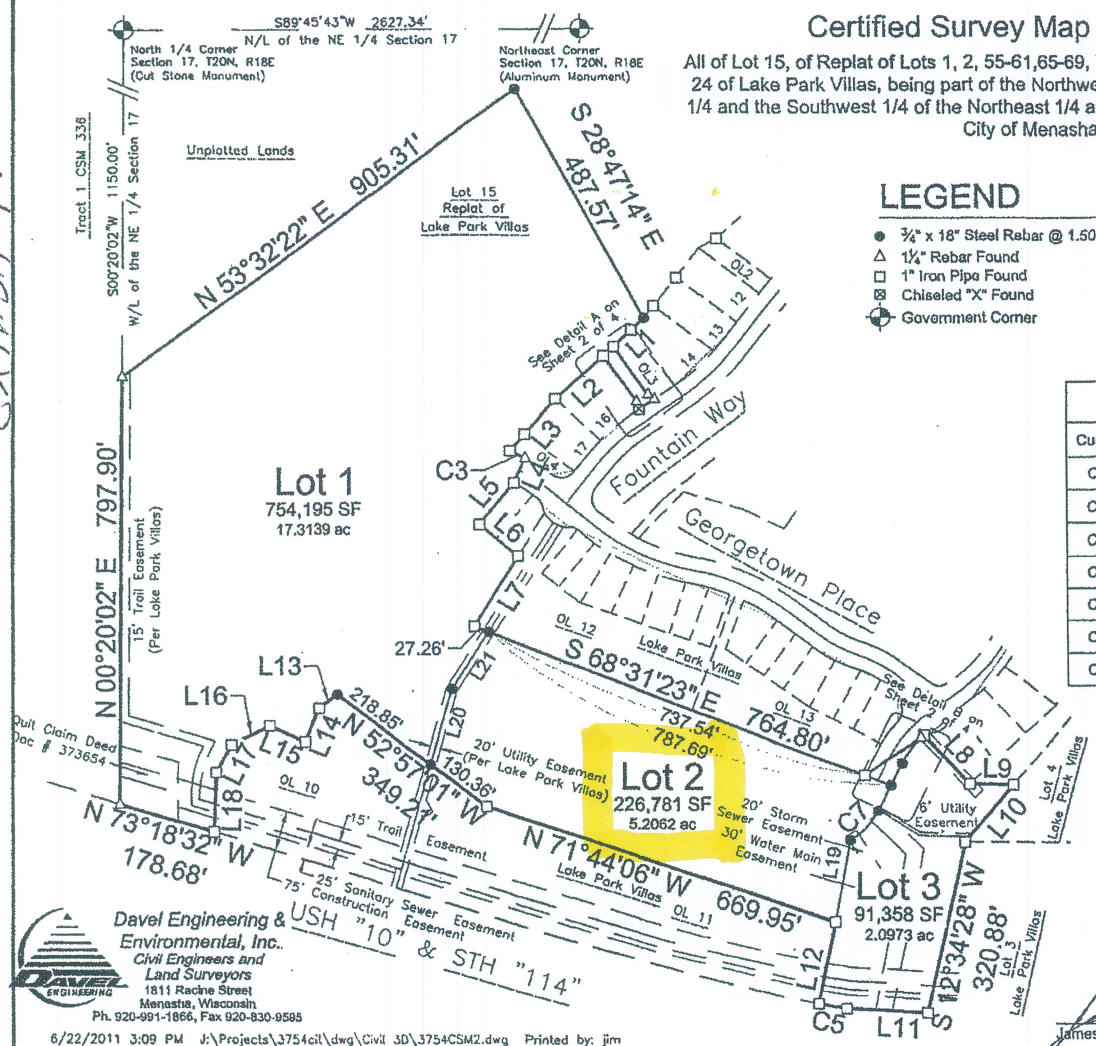
FORM NO. 985-A

HCMiller Print Systems

Stock No. 26273

Certified Survey Map No. 3275

All of Lot 15, of Replat of Lots 1, 2, 55-61,65-69, 73, 75, 76, 78-80, 119, 120, Outlots 4-5, Outlots 8-9 and Outlot 24 of Lake Park Villas, being part of the Northwest 1/4 of the Northeast 1/4 and Northeast 1/4 of the Northeast 1/4 and the Southwest 1/4 of the Northeast 1/4 all being part of Section 17, Township 20 North, Range 18 East, City of Menasha, Calumet County, Wisconsin.



LEGEND

- ● ¾" x 18" Steel Rebar @ 1.50lbs/LF SET
- △ 1¼" Rebar Found
- □ 1" Iron Pipe Found
- ⊠ Chiseled "X" Found
- Government Corner

0 250 500

Bearings are referenced to the N/L of the NE 1/4 Section 17, T20N, R18E, Assumed to bear S89°45'43"W, based on the Calumet County Coordinate System

CURVE TABLE					
Curve	Radius	Chord Direction	Chord Length	Arc Length	Central Angle
C1	25.00'	S 52°53'04" E	14.87'	15.09'	34°35'30"
C2	25.00'	N 17°26'27" W	15.57'	15.83'	36°17'12"
C3	475.00'	S 62°39'51" E	30.05'	30.05'	3°37'30"
C4	24.00'	N 51°34'27" E	6.93'	6.95'	16°35'53"
C5	3712.20'	N 79°19'17" W	51.89'	51.89'	0°48'03"
C6	200.00'	N 34°36'35" E	60.26'	60.49'	17°19'49"
C7	125.00'	N 43°17'22" E	74.53'	75.68'	34°41'23"

WISCONSIN
JAMES R SEHLOFF
S-2692
DE PERE
WI
LAND SURVEYOR

Survey for:
City of Menasha
140 Main Street
Menasha, WI 54952

James R. Sehloff R.L.S. 2692 — 17 July 2011 Date

File: 3754CSM2.dwg
Date: 06/22/2011
Drafted By: jim
Sheet: 1 of 4

Davel Engineering & Environmental, Inc.
Civil Engineers and Land Surveyors
1811 Racine Street
Menasha, Wisconsin
Ph. 920-991-1866, Fax 920-830-9585

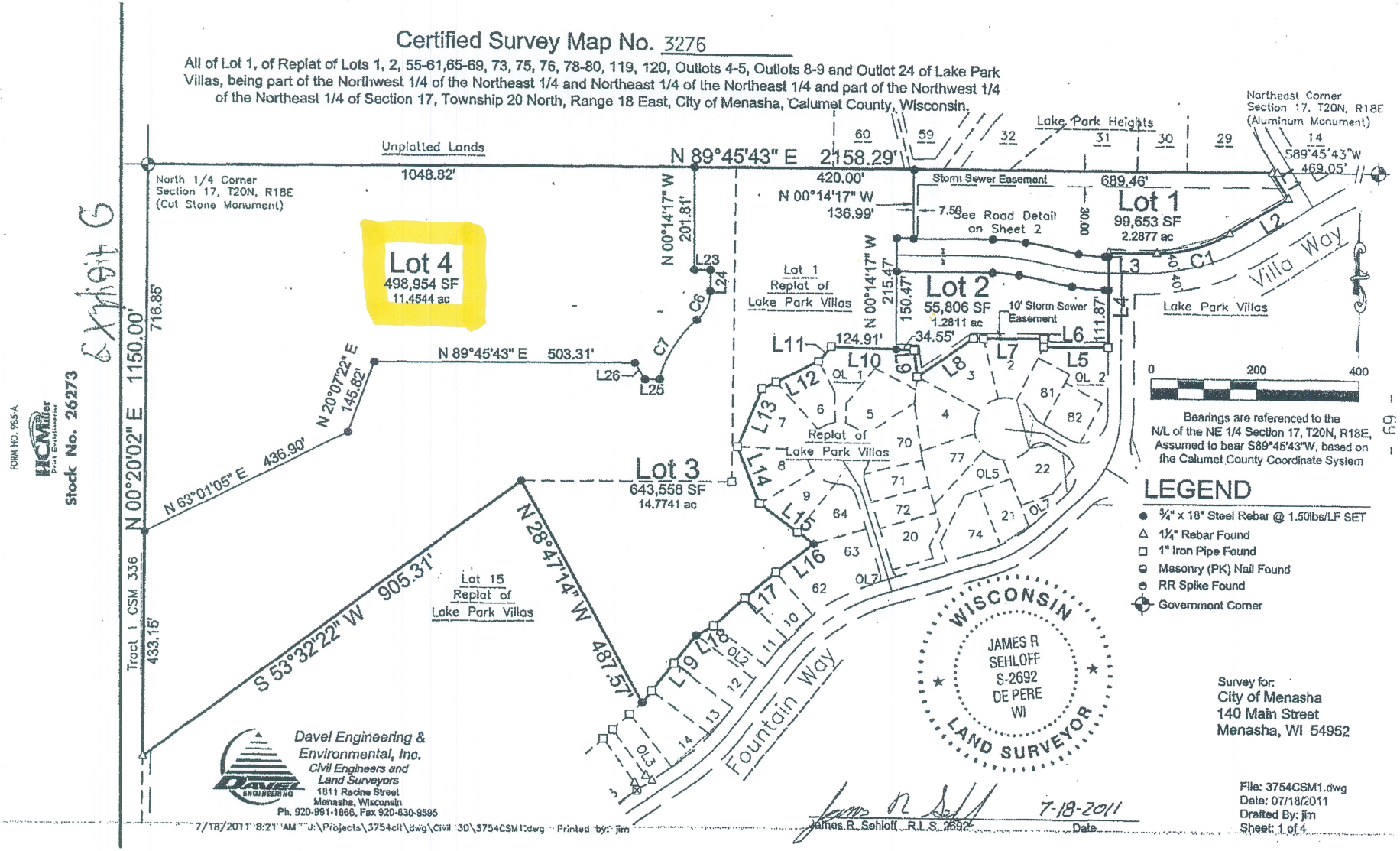
6/22/2011 3:09 PM J:\Projects\3754cit\dwg\Civil 3D\3754CSM2.dwg Printed by: jim

Document # 466182

Exhibit G

Certified Survey Map No. 3276

All of Lot 1, of Replat of Lots 1, 2, 55-61,65-69, 73, 75, 76, 78-80, 119, 120, Outlots 4-5, Outlots 8-9 and Outlot 24 of Lake Park Villas, being part of the Northwest 1/4 of the Northeast 1/4 and Northeast 1/4 of the Northeast 1/4 and part of the Northwest 1/4 of the Northeast 1/4 of Section 17, Township 20 North, Range 18 East, City of Menasha, Calumet County, Wisconsin.



Davel Engineering & Environmental, Inc.
Civil Engineers and Land Surveyors
1811 Racine Street
Menasha, Wisconsin
Ph. 920-991-1866, Fax 920-830-9585

James R. Sehloff R.L.S. 2692 — 7-18-2011 Date

Survey for:
City of Menasha
140 Main Street
Menasha, WI 54952

File: 3754CSM1.dwg
Date: 07/18/2011
Drafted By: jim
Sheet: 1 of 4

7/18/2011 8:21 AM J:\Projects\3754clt\dwg\Civil 3D\3754CSM1.dwg Printed by: jim

FORM NO. 985-A
HCM Business Solutions
Stock No. 26273

- 69 -

Preliminary Plat of

The Ponds of Menasha

LOCATION MAP

PHASE II

PHASE I

PHASE III

Phase 3 - 8 Lots

Ponds - 125 Total Lots

LEGEND

SUPPLEMENTARY DATA

Total Area = 1,796,405 SF 41.2336 acres
R/W Area = 320,913 SF 7.3663 acres
Net Area = 1,475,792 SF 33.8765 acres
Number of Lots = 125
Average lot size = 11,806 SF
Typical lot dimension = 70'x 180'
Lineal feet of street = 6,043 LF
Existing zoning = Single Family Residential
Proposed zoning = Same
Approving Authorities
City of Menasha
Calumet County
Objecting Authorities
Department of Administration

NOTES
Utility and Drainage Easements will be shown on Final Plat

DAVEL ENGINEERING & ENVIRONMENTAL, INC.
CIVIL ENGINEERING CONSULTANTS