

**AMENDED AGENDA**  
**Special Meeting**  
**VILLAGE OF PLEASANT PRAIRIE**  
**PLEASANT PRAIRIE VILLAGE BOARD**  
**PLEASANT PRAIRIE WATER UTILITY**  
**PLEASANT PRAIRIE SEWER UTILITY**  
**Village Hall Auditorium**  
**9915 – 39th Avenue**  
**Pleasant Prairie, WI**  
**May 14, 2018**  
**Immediately following Plan Commission Meeting**

1. Call to Order
2. Roll Call
3. New Business
  - A. Receive Plan Commission recommendation and consider for approval the Declaration of Covenants, Conditions, Restrictions and Easements for the Prairie Highlands Corporate Park.
  - B. Receive Plan Commission recommendation and consider Ordinance #18-19 for Zoning Text Amendments to Section 420-38 D (6) to correct the reference to the Wisconsin Administrative Code for performance standards for odors and to Section 420-125.2 related to uses, mechanical screening, and hours open to the general public in the M-5, Production Manufacturing District.
  - C. Receive Plan Commission recommendation and consider the Development Agreement for the development of a 136.8 acre property generally located at the southwest corner of 120<sup>th</sup> Avenue (West Frontage Road) and CTH C (Wilmot Road) for the new HARIBO Products manufacturing facility.
4. Adjournment

The Village Hall is handicapped accessible. If you have other special needs, please contact the Village Clerk, 9915 – 39<sup>th</sup> Avenue, Pleasant Prairie, WI (262) 694-1400

Document Number

Document Title

**THIS DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS  
FOR PRAIRIE HIGHLANDS CORPORATE PARK**

(this "Declaration") is made as of \_\_\_\_\_, 2018 (the "Effective Date"), by the **VILLAGE OF PLEASANT PRAIRIE**, a municipal corporation ("Declarant") and Haribo of America Manufacturing, LLC, a Delaware limited liability company ("Haribo").

**RECITALS**

A. Declarant is the owner of certain real property located in the Village of Pleasant Prairie, Wisconsin, as more particularly described on Exhibit A attached hereto (the "Declarant Property").

B. Haribo is the owner of certain real property located in the Village of Pleasant Prairie, Wisconsin, as more particularly described on Exhibit B attached hereto (the "Large Manufacturing Parcel") (the Declarant Property and the Large Manufacturing Parcel collectively hereafter referred to as "Prairie Highlands" or the "Property" and graphically depicted on Exhibit C attached hereto).

C. Declarant and Haribo intend by this Declaration to impose upon the Property covenants, conditions and restrictions and to create easements to establish a general plan for the improvement, development and use of the Property for manufacturing, limited warehousing, retail, services, research and development and office purposes.

D. Declarant and Haribo desire and intend that the Property shall be held, sold, leased, used and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, all of which shall run with the land.

E. Declarant desires to form a Wisconsin nonstock corporation to be known as the "Prairie Highlands Owners' Association, Inc." for the purposes of, among other things, holding title to or otherwise controlling the Common Areas of the Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and establishing, collecting, disbursing and enforcing the Assessments created herein; subject to the powers, rights and duties reserved by Declarant as set forth in this Declaration.

NOW THEREFORE, subject to all of the provisions of this Declaration, Declarant and Haribo hereby declare that the Property shall be held, conveyed, subdivided, platted, mortgaged, encumbered, leased, rented, used, occupied, sold and improved subject to all of the following covenants, conditions, restrictions and easements:

Recording Area

Name and Return Address

SCOTT L. LANGLOIS, ESQ.  
QUARLES & BRADY LLP  
411 EAST WISCONSIN AVENUE  
MILWAUKEE, WI 53202

91-4-121-244-0407, 91-4-121-241-0601,  
91-4-121-244-0602, 91-4-121-241-0701  
91-4-121-242-0702

Parcel Identification Number (PIN)

## **ARTICLE 1 DEFINITIONS**

Each of the capitalized terms used in this Declaration, including in the foregoing Recitals, shall have the following meaning:

- 1.1 Accessory Structure. The term “Accessory Structure” shall mean a structure occupied by or used for one or more accessory uses, which is not occupied by or used for any principal use, or a structure which constitutes an accessory use.
- 1.2 Accessory Use. The term “Accessory Use” shall mean the use of real property that is related, subordinate and customarily incidental to a particular principal use, or a use that is specifically recognized as an accessory use in relation to a particular principal use, and which is located on the same Lot as such principal use.
- 1.3 Application. The term “Application” shall have the meaning given to such term in Section 7.1.1 below.
- 1.4 Architectural Committee. The term “Architectural Committee” shall mean the Architectural and Development Control Committee created pursuant to Article V below.
- 1.5 Articles. The term “Articles” shall mean the Articles of Incorporation of the Association, as they may from time to time be amended or restated, which are or shall be filed with the Wisconsin Department of Financial Institutions.
- 1.6 Assessments. The term “Assessments” shall mean all regular assessments described in Section 10.5, special assessments described in Section 10.6, reimbursement assessments described in Section 10.7, capital improvement assessments described in Section 10.8, Advertising and Promotional Program assessments described in Section 10.9, Working Capital Assessments described in Section 10.10, Zone Specific Assessments described in Section 10.11.2, and any other assessments made pursuant to this Declaration.
- 1.7 Association. The term “Association” shall mean and refer to the Wisconsin nonstock corporation (and its successors and assigns) organized by Declarant to exercise the rights, powers and duties set forth in this Declaration. Declarant intends to name the Association the “Prairie Highlands Owners’ Association, Inc.”
- 1.8 Aurora. The term “Aurora” shall mean Aurora Health Care, Inc. and any successor by merger, acquisition or operation of law.
- 1.9 Auxiliary Use. The term “Auxiliary Use” shall mean a principal use that is a permitted use only when it is auxiliary (secondary) to one or more permitted uses located in a principal building, in that it is located in the same principal building as the permitted uses(s).
- 1.10 Board or Board of Directors. The terms “Board” or “Board of Directors” may be used interchangeably herein and shall mean and refer to the Board of Directors of the Association, as the same may be constituted from time to time.

1.11 Building. The term “Building” shall mean any building or other enclosed structure located on a Lot within Prairie Highlands.

1.12 Bylaws. The term “Bylaws” shall mean the Bylaws of the Association, as they may from time to time be amended or restated.

1.13 Common Area or Common Areas. The terms “Common Area” or “Common Areas” shall mean and refer to those portions of the Property, other than Lots previously purchased by Owners other than Declarant, designated by Declarant from time to time for use in common by one or more Owners as Common Areas and may include, without limitation, private sanitary sewer mains and laterals, private street lights, private water mains and lines, private roads and alleys within the Property, signage and associated landscaping, lighting, flags, parks, green space and green beltway areas, general areas, wetlands and wetland preservation areas, floodplain areas, shoreland areas, waterways and streams, environmental or conservation areas, corridors or districts, landscaping improvements and irrigation systems, detention/retention basins, fountains, water features, maintenance equipment, storm water drainage systems and other Improvements that have been constructed or maintained for the common good of the Owners.

1.14 Commercial Zone. The term “Commercial Zone” means a portion of the Property designated as such on the attached Exhibit D.

1.15 Declarant. The term “Declarant” shall mean the Village of Pleasant Prairie, or its successors and assigns (i) if such successors and assigns acquire or hold title to any part or all of the Property, and (ii) are expressly named as successor Declarant in a document executed by the Person then constituting the Declarant hereunder and the successor Declarant and recorded with the Office of the Register of Deeds of Kenosha County, which document specifically assigns the rights and duties of Declarant to such successor Declarant, and pursuant to which such successor Declarant expressly accepts and assumes the assignment of such rights and duties.

1.16 Declaration. The term “Declaration” shall mean this “Declaration of Covenants, Conditions, Restrictions and Easements for Prairie Highlands Corporate Park,” as it may be amended or supplemented from time to time.

1.17 Detention/Retention Basins. The term “Detention/Retention Basins” shall mean areas which may contain open water, whether permanent or seasonal, natural or man-made, forming part of Prairie Highlands' storm water management drainage system as described and designated as such on the Drainage Master Plan.

1.18 Development Guidelines or Guidelines. The term “Development Guidelines” or “Guidelines” shall mean the design and development guidelines and standards and the review and approval procedures prepared and issued from time to time by the Architectural Committee pursuant to Article V for the purposes of assisting Owners and Lessees in preparing building, landscaping, site and development plans for the Property. Upon adoption, the Guidelines shall have the same force and effect as if set forth in this Declaration.

1.19 Drainage Master Plan. The term “Drainage Master Plan” shall mean the storm water plan adopted by the Declarant and authorizing the proposed drainage system for Prairie Highlands together with any future revisions to said plan, which plan and revision shall be

available for review at the office of the Association. In no event shall the Drainage Master Plan either in effect on the date of this Declaration or amended or revised in the future conflict with the development of the Haribo Parcel and the Declarant shall not burden the Haribo Parcel in any respect related to the foregoing.

1.20 Exclusive Use. The term “Exclusive Use” shall have the meaning given to such term in Section 9.9 below.

1.21 Haribo. The term “Haribo” means Haribo of America Manufacturing, LLC and any successor by merger, acquisition or by operation of law.

1.22 Improvements. The term “Improvements” means all land preparation and excavation, buildings, outbuildings, structures, underground installations, slope and grade alterations, lighting, roads, walkways, bike paths, street lights, curbs, gutters, storm drains, drainage ways, utilities, equipment, driveways, parking areas, fences, screening walls and barriers, retaining walls, stairs, decks, patio areas, windbreaks, plantings, planted trees and shrubs, sidewalks, poles, Signs, storage or display areas, loading areas, docks, water retention areas, fountains, water features, ponds, recreational facilities and all other structures, land development or landscaping improvements of every type and kind.

1.23 International Building Code. The term “International Building Code” means the building code developed by the International Code Council as adopted by the State of Wisconsin.

1.24 Landscaping Plan. The term “Landscaping Plan” shall have the meaning given to such term in Section 8.8.2 hereof.

1.25 Large Health Care Parcel. The term “Large Health Care Parcel” means that certain parcel of land more particularly described on Exhibit B attached hereto and graphically depicted on Exhibit F attached hereto.

1.26 Large Manufacturing Parcel. The term “Large Manufacturing Parcel” means that certain parcel of land more particularly described on Exhibit B attached hereto and graphically depicted on Exhibit F attached hereto. The provisions on the attached Exhibit E shall supersede and replace the provisions of this Declaration regarding the Large Manufacturing Parcel to the extent set forth on such Exhibit E.

1.27 Laws. The term “Laws” shall mean any and all laws, codes rules, regulations and ordinances applicable to Prairie Highlands which have been promulgated by any local, state, federal or other governmental agency or authority including, but not limited to, the Village.

1.28 Lessee. The term “Lessee” shall mean the owner of a leasehold interest (including any subtenancy) or license or other occupancy right in a part or all of Prairie Highlands.

1.29 Lot. The term “Lot” shall mean and refer to each legally subdivided lot or parcel of the Property (including but not limited to any condominium unit), but shall not mean or refer to any lot that is entirely Common Area. If any of the Property now or hereafter subject to this Declaration is re-subdivided or if a line or boundary of one or more Lots is adjusted or a lot split occurs, or in the event of a merger of two or more Lots, and all of the foregoing is accomplished in

compliance with this Declaration and all applicable Laws regulating subdivision of land and/or lot splits, then each of the lots thus created shall be deemed to be included within the definition of Lot.

1.30 Manufacturing Zone. The term “Manufacturing Zone” means that portion of the Property designated as such on the attached Exhibit D.

1.31 Master Plan. The term “Master Plan” means that certain master plan for the Property, the current version of which is attached hereto as Exhibit E, as such may be amended from time to time by Declarant.

1.32 Member. The term “Member” shall mean and refer to every person or entity who is a Member of the Association pursuant to Article IV hereof.

1.33 Membership Units. The term “Membership Unit” shall have the meaning given to such term in Section 4.1 below.

1.34 Mortgage. The term “Mortgage” shall mean any duly recorded mortgage encumbering a Lot.

1.35 Mortgagee. The term “Mortgagee” shall mean a mortgagee under a Mortgage.

1.36 Net Acre. For the purpose of establishing the number of votes for each Lot and the assessments for each Lot, the term “Net Acre” shall mean and refer to an acre of land (43,560 square feet) which does not include any area dedicated as a street right-of-way for public use, but shall include the area covered by easements dedicated to the public and easements created herein or otherwise of record against any Lot.

1.37 Non-Assessed Property. The term “Non-Assessed Property” shall mean (i) all Common Area owned in fee by the Association, and (ii) all land and improvements owned by or dedicated to and accepted by the Village or other public or governmental authority for so long as the Village or other public or governmental authority is the owner or beneficiary thereof for municipal purposes, such as public roadways, water and sewer utilities. In no event shall any Lot be considered Non-Assessed Property even if such Lot is owned by the Village. Non-Assessed Property shall be exempt from Assessments and from all rights and obligations of membership in the Association, but shall not be exempt from all other covenants, restrictions and easements contained herein, including but not limited to all use and development restrictions.

1.38 Owner. The term “Owner” shall mean the fee simple interest owner of any Lot, but shall not include Mortgagees and others who hold such title merely as security. Owner shall not include a Lessee of a Lot. An Owner shall also include any Person who holds record title to a Lot in joint ownership with any other Person or holds an undivided fee interest in any Lot.

1.39 Period of Declarant Control. The “Period of Declarant Control” shall commence with the recording of this Declaration and shall continue as long as Declarant owns at least five (5) acres of developable land in Prairie Highlands, unless and until Declarant elects, in its discretion, to transfer, relinquish and/or surrender all of its rights and obligations in this Declaration in the manner set forth in Article XVI.

1.40 Person. The term “Person” shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, a trust or any other legal entity.

1.41 Prohibited Uses. The term “Prohibited Uses” shall mean the prohibited uses set forth in Section 9.9 hereof.

1.42 Prairie Highlands. The term “Prairie Highlands” shall mean and refer to the Property, as defined in Section 1.39.

1.43 Prime Rate. The term “Prime Rate” shall mean the prime commercial lending rate announced by BMO Harris Bank (or any successor) as its “prime rate,” as the same may be changed from time to time. If for any reason any such institution shall at any time discontinue quoting or charging a prime rate in the manner set forth above, the Association shall, in the exercise of reasonable judgment, substitute another means of determining the annual lending, rate of interest charged by major commercial banks in the Kenosha metropolitan area on 90-day unsecured commercial loans to their most creditworthy borrowers, and the rate so determined shall thereafter be the Prime Rate as defined herein.

1.44 Property. The term “Property” shall mean the real property described on Exhibit A and Exhibit B attached hereto and the Improvements situated thereon, as such real property may be expanded by annexation or reduced pursuant to the provisions of this Declaration.

1.45 Public Areas. The term “Public Areas” shall mean areas within public rights of way located within or bordering the Property and dedicated to the Village, including street medians, areas bordering street or sidewalk pavements, multi-use paths or trails and vision corridors, within which may be located light poles, flags and flag poles, landscaping, trees and other Improvements to be maintained by the Association pursuant to Section 7.5 or the Owners pursuant to Section 7.3.4.13, including, but not limited to, the public rights of way and any median areas within the public roadway to be designated Goldbear Drive, 120th Avenue, 128th Avenue, the I-94 west frontage road and the cloverleaf intersection areas surrounding the I-94 on and off ramps.

1.46 Recorded Assessment Lien. The term “Recorded Assessment Lien” shall mean a notice of assessment lien recorded by the Association pursuant to Article XI.

1.47 Restricted Uses. The term “Restricted Uses” shall be the uses restricted on Exhibit H attached hereto.

1.48 Signs. The term “Signs” shall mean all advertising, placards, signs, banners, marquees, names, insignia, trademarks, numerals, letters, addresses and descriptive words or material of any kind affixed, inscribed, erected or maintained on the Property or any Improvement, but excluding any of the foregoing which is on the interior of any improvements and is not visible from any portion of another Lot.

1.49 Sign Plan. The term “Sign Plan” refers to the overall plan for signs owned and operated by the Association for the benefit of Prairie Highlands, which signs are initially to be located as depicted on the attached Exhibit G.

1.50 Village. The term “Village” shall mean the Village of Pleasant Prairie, Wisconsin.

1.51 Working Capital Assessment. The term “Working Capital Assessment” shall have the meaning given to such term in Section 10.9 below.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION

2.1 Scope and Purpose. Declarant hereby declares that Prairie Highlands and every part thereof is and shall be owned, leased, transferred, developed, improved, built upon, occupied or otherwise used, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of an overall plan by Declarant for the development, improvement, sale and use of Prairie Highlands and is established for the purpose of enhancing and protecting the value, desirability and attractiveness of Prairie Highlands and every part thereof. Notwithstanding anything to the contrary herein contained, the provisions on the attached Exhibit E shall supersede and replace the provisions of this Declaration to the extent set forth on such Exhibit E.

2.2 Covenants Running with the Land. Declarant hereby declares that Prairie Highlands is now held, and shall hereafter be held, conveyed, leased, occupied, operated, improved and used, subject to the easements, restrictions, conditions, covenants and agreements herein set forth, each and all of which shall inure to the benefit of and pass with each and every part of the Property, including all Lots, and shall apply to and bind all Owners and Lessees and the heirs, successors and assigns of any Owner or Lessee, and each of which shall constitute covenants running with the land between the respective Owners of such Lots for the benefit of all other Lots.

2.3 Declarant’s Power to Exclude. Declarant may at any time and from time to time during the Period of Declarant Control, exclude or delete portions of the Property covered by this Declaration from the provisions of this Declaration by recording an amendment to this Declaration which specifically refers to this Section 2.3 and Declarant’s desire to exclude the same, provided that said amendment must also be approved and executed by the Owner of the excluded portion of the Property if other than Declarant, and by any Mortgagee encumbering the same. Notwithstanding anything to the contrary contained herein, any exercise by Declarant of its rights under this Section 2.3 to exclude or delete portions of the Property from the provisions of this Declaration shall not release as an encumbrance against any such excluded or deleted portion of the Property any Exclusive Use (as defined in Section 9.9 below) or release any Prohibited Use (as defined in Section 9.9 below) or Restricted Uses (as provided on Exhibit H) set forth in this Declaration, which Exclusive Use, Prohibited Use or Restricted Use provisions shall continue in full force and effect against any such excluded or deleted portion of the Property in accordance with the terms of this Declaration, unless such Excluded Use, Prohibited Use or Restricted Use is specifically released in such recorded amendment to this Declaration. Notwithstanding the foregoing or anything to the contrary herein contained, any excluded or deleted portion of the Property shall be subject to Assessments accruing prior to the exclusion or deletion of such property and such property shall either not flow any storm water into the storm water management drainage system for Prairie Highlands or such property shall be required to pay an equitable portion of the costs for the portion of the storm water management system utilized by such property.



ARTICLE III  
THE ASSOCIATION

3.1 Formation. The Association shall be a nonstock corporation formed under Wisconsin laws regarding nonstock corporations, charged with the duties and empowered with the rights prescribed by law and set forth herein and in the Bylaws and in the Articles. Upon the incorporation of the Association by Declarant, the Association shall be charged with the duties and vested with the powers set forth in the Articles, the Bylaws and this Declaration. The Association shall be incorporated and assume its duties hereunder not later than one hundred and twenty (120) days after the recording of this Declaration.

3.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The Board shall adopt Bylaws to govern the affairs of the Board and the Association. Except as otherwise provided herein or in the Articles or Bylaws, all acts of the Association shall be made by a majority of the members of the Board. The Board may also appoint various committees at its discretion and may contract with a Person to serve as a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the reasonable compensation to be paid to the manager and any employees of the Association.

3.3 Powers. The Association shall have all the powers of a nonstock corporation organized under Wisconsin law concerning nonstock corporations, subject only to such limitations on the exercise of such powers as are set forth in the Articles, the Bylaws and this Declaration. It shall have the power to do any lawful thing that may be authorized, required, or permitted to be done by the Association under this Declaration (including any rights, duties and responsibilities assigned by Declarant from time to time pursuant to Article XVI), the Articles and the Bylaws, and to do and perform any act that may be necessary or proper for or incidental to, the exercise of any of the express powers of the Association, including, without limitation, the following:

3.3.1 commence and maintain actions or restrain and enjoy any actual or threatened breach of this Declaration and enforce by mandatory injunction or otherwise any of the provisions of this Declaration;

3.3.2 pay taxes, special assessments and other liabilities which are or would become a lien on the Property;

3.3.3 levy assessments to the extent authorized hereunder and perfect and enforce liens as hereinafter provided;

3.3.4 enter into contracts to perform the duties set forth herein, including but not limited to maintenance and repair of the Common Areas and enforce said contracts;

3.3.5 adopt, amend and repeal rules and regulations as it deems reasonable;

3.3.6 enter onto the Lots to enforce the provisions of this Declaration in accordance with the provisions of Article XIV and in accordance with all applicable law;

3.3.7 enter into contracts with Owners or the Village regarding the maintenance of landscaped areas, parking areas or other areas;

3.3.8 elect to landscape and maintain any areas within Prairie Highlands that is not a Lot, except as specifically provided herein;

3.3.9 purchase such insurance as the Board deems necessary or appropriate;

3.3.10 borrow funds to pay costs of operation, secured by Assessment revenues due for succeeding years or by assignment or pledge of rights against delinquent Owners; provided, however, that a majority of the outstanding Membership Units of the Owners, and the vote of Declarant during the Period of Declarant Control, shall be required to borrow in excess of Ten Thousand and No/100 (\$10,000.00). Said borrowing may be from Declarant should Declarant elect to advance funds, but the amount borrowed must bear interest at a rate per annum which does not exceed the Prime Rate plus two percent (2%);

3.3.11 accept the conveyance of the Common Areas which are from time to time conveyed to the Association by the Declaration and own, maintain and control the Common Areas as set forth in Section 7.4 and elsewhere in this Declaration; and

3.3.12 maintain the Public Areas as set forth in Section 7.5 and elsewhere in this Declaration.

3.4 Rules. The Board may adopt, amend and repeal reasonable rules and regulations concerning all aspects of the Association's rights, activities and duties. The rules and regulations may govern and restrict the use of any area in Prairie Highlands; provided, however, that the same shall not discriminate among Members except to reflect their different rights as provided herein, and shall not be inconsistent with this Declaration, the Articles or the Bylaws. Upon adoption, the rules and regulations shall have the same force and effect as if set forth herein.

3.5 Disclaimer of Liability. No member of the Board, or of any committee of the Board or Association, nor any member of the Architectural Committee nor any officer or employee of the Association or any manager, or Declarant, or any agent, employee or officer of Declarant, shall be personally liable to any Owner, or to any Lessee or other person, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of any such person or entity if such person or entity has, on the basis of such information as may be possessed by such person, acted in good faith without willful or intentional misconduct.

3.6 Articles and Bylaws. Neither the Articles nor the Bylaws shall be amended or interpreted in a manner which is inconsistent with this Declaration.

#### ARTICLE IV ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

4.1 Memberships. Each Owner, including Declarant, shall be a member of the Association and shall have "Membership Units" equal to the Net Acres owned by such Owner within its Lot or Lots (but specifically excluding any Non-Assessed Property), rounded to the 1/1000 of an acre. For example, an Owner of 6.345 Net Acres shall have 6.345 Membership

Units, and the Owner of 1.800 Net Acres shall have 1.800 Membership Units. If any portion of the Property is resubdivided, the revised number of Net Acres and the number of Membership Units attributable to each Lot may be set forth in a supplement hereto or in a resolution of the Board.

4.2 Transfer of Memberships. An Owner shall, upon becoming the record Owner of a Lot, automatically become a Member of the Association and shall remain a Member until such time as its ownership ceases for any reason, at which time its membership in the Association shall automatically cease. Such membership shall be appurtenant to and pass with the ownership of such Lot. The membership shall not be transferred, pledged or alienated in any way, except as appurtenant to a transfer of ownership of a Lot. Any attempt to transfer a membership except as appurtenant to the transfer of ownership of a Lot shall be void and shall not be reflected upon the Association's books and records. An Owner shall notify the Association of any transfer of the ownership of a Lot.

4.3 Voting; Multiple Owners, Appointment of Agent. Unless otherwise provided herein or in the Bylaws, the votes of a majority of the Membership Units in the Association shall be sufficient to decide any question submitted to the membership. Each Owner shall have one vote for each Membership Unit owned as provided in Section 4.1 above. All voting pursuant to the terms of this Declaration shall be made in accordance with the provisions of this Section 4.3. Each vote must be cast as a single unit. If an Owner consists of more than one Person, then all Persons constituting an Owner of such Lot shall, simultaneously with or immediately after their acquisition of such Lot, deliver to the Association a written instrument appointing one Person as the agent for all Persons constituting the Owner of such Lot, which agent shall thereupon receive notices of Assessment and other notices and demands, cast votes hereunder, and take any and all actions required or permitted to be taken by an Owner under the terms of this Declaration. An Owner may change its designated agent by written notice to the Association as set forth above, which change shall be effective only upon actual receipt of such notice by the Association. No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof. If more than one Person casts or attempts to cast a vote for a particular Lot, all such votes shall be deemed void.

4.4 Initial Board of Directors. The initial Board of Directors shall consist of three Directors and shall be appointed by Declarant upon the incorporation of the Association. During the Period of Declarant Control, Declarant shall have the sole right, in its absolute discretion, to appoint and remove any or all Directors of the Board; however, Declarant may temporarily or permanently relinquish its right to appoint or remove some or all of the Directors at any time as provided in Article XVI. If Declarant relinquishes its appointment rights, the Members (including Declarant) shall then elect all Directors as provided in the Bylaws.

4.5 Subsequent Board of Directors. After the Period of Declarant Control, the Members (excluding Declarant) shall have the right to elect the Directors subject to the rights of Haribo set forth on Exhibit E attached hereto; which Directors may only be removed by action of the Members of the Association (except Declarant). The Board shall undertake all duties and responsibilities of the Association and the management and conduct of the affairs thereof, except as expressly reserved herein to a vote of the Members. The Bylaws may provide for staggered terms and lengths of terms for Directors chosen by the Members which are different than those initially set forth in this Declaration and may provide for a greater or lesser number of Directors to

be chosen by the Members than are set forth herein; provided that in no event shall there be fewer than three (3) Directors nor more than seven (7) Directors.

4.6 Administration and Compliance. If the Articles or Bylaws are in any way inconsistent with this Declaration, then this Declaration shall prevail and control. Each Owner and Lessee of a Lot shall comply with, and shall cause their respective invitees to comply with, the provisions of this Declaration, and the Articles, Bylaws, Development Guidelines and rules of the Association, as amended from time to time, and failure to so comply shall be grounds for (a) an action for damages and/or injunctive relief, and (b) such remedies, by legal proceedings or otherwise, as are available by reason of this Declaration or by law or equity, each of which remedies shall be cumulative and in addition to any other available remedy.

## ARTICLE V ARCHITECTURAL AND DEVELOPMENT CONTROL COMMITTEE

5.1 Architectural Committee Composition. An Architectural Committee shall be organized by Declarant and shall consist of three persons.

5.2 Appointment. The members of the Architectural Committee shall be selected as follows:

5.2.1 Until the expiration of the Period of Declarant Control, Declarant shall have the right to appoint and remove all members and alternate members of the Architectural Committee. Declarant may temporarily or permanently relinquish its right to appoint all or some of the Architectural Committee members and alternates at any time as provided in Article XVI.

5.2.2 After Declarant relinquishes its appointment rights or following expiration of the Period of Declarant Control, the Association through its Board shall, without further act or deed of Declarant, exercise all rights of Declarant provided herein to appoint and remove members of the Architectural Committee, to enforce and implement the Development Guidelines and to perform Declarant's obligations under this Article; and at such time, all obligations of Declarant under this Article shall automatically terminate, and except as otherwise provided herein, all rights and obligations of Declarant under this Article shall vest in the Board.

5.3 Terms of Office. The term of all Architectural Committee members and alternates appointed by Declarant shall be set by Declarant. The term of all Architectural Committee members and alternates appointed by the Board shall be one year. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members whose terms have expired may be reappointed or re-elected. A member of the Architectural Committee shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, an officer or employee of Declarant or a Person who is not a Member or Owner or Lessee or otherwise affiliated with Prairie Highlands. The members of the Architectural Committee may be professional consultants who are paid by the Association or by Declarant to serve on the Architectural Committee.

5.4 Resignations; Vacancies. Any member of the Architectural Committee may, at any time, resign from the Architectural Committee upon written notice to Declarant, so long as Declarant has the sole right to appoint any member, or upon written notice to the remaining Architectural Committee members and to the Board when the right to appoint any members is vested in the Board. Vacancies on the Architectural Committee of members appointed by Declarant, however caused, shall be filled by Declarant so long as Declarant has the right to appoint members. Vacancies on the Architectural Committee of members appointed by the Board, however caused, shall be filled by the Board.

5.5 Powers and Duties. The Architectural Committee shall have all of the powers and authority conferred upon it by this Declaration and the Articles and Bylaws, and shall have the right to hire and retain the services of engineers or other consultants and professionals as they deem necessary to perform the duties of the Architectural Committee. It shall be the duty of the Architectural Committee to perform the functions required of it by this Declaration; to consider and act upon all Applications and the plans, specifications and other documents submitted to it pursuant to the terms hereof; to adopt Development Guidelines; and to perform all other duties delegated to and imposed upon it by this Declaration. The Board shall determine the compensation, if any, to be paid to the members of the Architectural Committee.

5.6 Meetings. The Architectural Committee shall meet as often as it, in its sole discretion, shall deem necessary to properly perform its duties hereunder provided that the Architectural Committee shall meet not later than thirty (30) days after the date an Owner makes an Application requiring its approval as provided in Article VII. The vote or written consent of any two members shall constitute an act by the Architectural Committee. The Architectural Committee shall keep written records of all actions taken by it.

5.7 Development Guidelines. In addition to the architectural and development standards set forth herein, the Architectural Committee shall, from time to time, and in its commercially reasonable discretion, draft, propose, adopt and amend certain standards and regulations to be known as Development Guidelines. Such Development Guidelines, and any amendments thereto, shall supplement, interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Architectural Committee review, and (b) guidelines for Improvements which shall include, but not be limited to, guidelines for architectural design of Improvements, site plans, floor plans, setbacks and building envelopes, exterior elevations for Improvements, height limitations, landscape plans, irrigation plans, color schemes, signage, exterior lighting, finishes and materials for use in Prairie Highlands. The Architectural Committee shall also have the right, in its commercially reasonable discretion, to adopt and amend separate Development Guidelines for portions of Prairie Highlands as it deems necessary and appropriate for particular types of uses. The Development Guidelines initially adopted by the Architectural Committee and all amendments adopted during the Period of Declarant's Control shall be effective only after approval by Declarant. After the expiration of the Period of Declarant Control, any amendment to the Development Guidelines must be approved by a majority of the outstanding votes of the Association. In no event shall any Development Guidelines be less restrictive than any Laws or Village Ordinances nor shall any Development Guidelines conflict with any Laws or Village Ordinances or any other provision of this Declaration to the contrary.

ARTICLE VI  
RESERVATION OF EASEMENTS

6.1 Easements for Common Areas. Declarant hereby reserves to itself, its successors and assigns, and to the Association, and their respective employees, contractors and other authorized designees, an easement over, upon, under and across all Common Areas, together with a nonexclusive easement for ingress and egress over and upon the Lots, within Prairie Highlands, for the following purposes: installation, repair, reconstruction, restoration, replacement, landscaping and maintenance of the Common Areas (including without limitation Signs (including those pursuant to the Sign Plan), walls, utilities, sidewalks, walking or multi-use trails, landscaping, lighting, fencing and other features, and all landscaping corridors), and for other maintenance, rights and duties permitted to or required of Declarant or the Association in this Declaration.

6.2 Reservation of Roadway Easement. Declarant hereby reserves for its own use and benefit, and for the use and benefit of each Owner and the Association, and their respective customers, Lessees, and invitees, an easement for vehicular and pedestrian ingress and egress across any and all roadway areas, bike lanes, walkways and sidewalks designated as Common Areas by Declarant.

6.3 Reservation of Utility Easements. Declarant hereby reserves for its own use and benefit, and for the use and benefit of each Owner and the Association, easements on or beneath the Property for the location, installation and maintenance of utilities of convenience or necessity as may be requested or required by Declarant or the Association, or by an Owner with the prior written approval of Declarant during the Period of Declarant Control, or the Board thereafter. However, any such easement cannot be imposed against any land on which a building has been constructed or has been approved for construction pursuant to Article VII by the Architectural Committee. Upon approval of an easement area, the benefited Owner shall have the right at all reasonable times to enter upon the land covered by said easements and to install, maintain, repair, replace and service utilities thereon for the use and benefit of the benefited Lot; provided, however that any such Owner shall comply with any requirements imposed by Declarant or the Board as the case may be, as a condition to its approval, and shall promptly restore said land and any Improvements, at said Owner's expense, in a good and workmanlike manner and free of liens to substantially the same condition as existed prior to such entry. The Owner of any Lot shall have the right to assign the benefit and use of any such easement to any electric company, gas company, telephone company, flood control district, or other utility company for the purpose of installing, operating and maintaining utilities and enforcing the current easement rights. For the purpose hereof, "utilities" or "utility" shall include electricity, gas mains and lines, water distribution lines, storm water sewers, drainage systems, sanitary sewers, telephone cables and lines, and other similar or related facilities commonly regarded as utilities.

6.4 Reservation of Storm Water Easements. Declarant hereby reserves for its own use and benefit, and for the benefit of each Owner, easements for each Lot to flow storm water through the Prairie Highlands storm water management system and into the Detention/Retention Basins constituting Common Areas to be owned by the Association for the benefit of the Owners.

6.5 No Release of Easements. No conveyance by Declarant of any Lot, or any interest therein, shall be deemed to be or construed as a conveyance or release of the easements herein reserved.

ARTICLE VII  
ARCHITECTURAL CONTROL AND REGULATION OF IMPROVEMENTS

7.1 Approval of Plans.

7.1.1 Approval Required. Except for Improvements constructed and installed or to be constructed or installed by Declarant, no Improvement shall be constructed, erected, placed, expanded, added to, maintained or permitted to remain in Prairie Highlands, and no alterations or other work which alters the exterior appearance of any Lot or Improvement, until plans and specifications and a statement of proposed use of the Improvements and other documentation required by this Declaration or the Development Guidelines for said Improvements and alterations, which may include, without limitation, site plans, civil engineering plans, floor plans, exterior elevations, grading plans, drainage and water retention plans, materials, colors, landscaping, irrigation plans, signage, outside tanks, towers and equipment, exterior lighting, and any other information needed to accurately describe the exterior appearance or functional characteristics of said Improvements, and any cover sheets, checklists or forms required by the Development Guidelines (the "Application"), have been submitted to and approved in writing by the Architectural Committee. The Application shall include, without limitation, the Landscaping Plan, a drainage plan, a sign plan, a use plan, a site plan and a building plan meeting the requirements of this Declaration. Three paper sets of the Application shall be filed with the Architectural Committee along with an electronic copy. Improvements approved in writing by Declarant prior to the recording of this Declaration shall be deemed to have been approved by the Architectural Committee.

7.1.2 Filing Fee. As a means of defraying its expenses, the Architectural Committee may institute and require a reasonable filing fee to accompany the Application for each building or other construction project submitted. If resubmission of an Application is necessary, the Architectural Committee may require an additional filing fee.

7.1.3 Governmental Regulations. All Applications for Improvements submitted to the Architectural Committee hereunder shall comply with any and all Laws.

7.1.4 Basis for Approval. The Architectural Committee shall have the right to disapprove the Application submitted to it, whether a preliminary or final submittal, if any part of it is:

7.1.4.1 not in accordance with this Declaration or the Development Guidelines;

7.1.4.2 incomplete;

7.1.4.3 not in compliance with relevant approval requirements or Laws or regulations of local, state, federal or other governmental agencies;

7.1.4.4 deemed by the Architectural Committee to be contrary to the best interests of Prairie Highlands or the Owners;

7.1.4.5 incompatible with the architectural style, quality or aesthetics of existing Improvements or development plans for proposed Improvements, based in part on the criteria set forth in subsections (i) through (ix) below in this Section 7.1.4; or

7.1.4.6 incompatible with the Drainage Master Plan or otherwise causes adverse effects of storm water on other Lots.

The Architectural Committee shall not unreasonably withhold its approval of an Application submitted to it. In this connection, the Architectural Committee may also base its approval or disapproval on criteria which may include, but are not limited to, the following: (i) the adequacy of the building locations and dimensions on the Lot; (ii) the adequacy of the parking to be provided; (iii) conformity and harmony of external design with neighboring structures; (iv) effect of location and use of proposed Improvements on neighboring Lots and the types of operations and uses thereof; (v) relation of topography, grade and finish ground elevation of the Lot being improved to that of neighboring Lots; (vi) proper facing of main elevations with respect to nearby streets; (vii) adequacy of screening of trash facilities, storage areas, parking areas for service vehicles, mechanical and heating and air-conditioning facilities and rooftop installations; (viii) adequacy of landscaping on the Lot; and (ix) conformity of the Application to the purpose and general plan and intent of this Declaration. As long as Declarant is appointing the members of the Architectural Committee, any decision of the Architectural Committee shall be final. Any decision of the Architectural Committee made after Declarant is no longer entitled to appoint the members of the Architectural Committee may be appealed to the Board. If an Owner disputes the Board's decision with respect to such appeal, the Owner's sole remedy shall be an arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules in which the sole issue shall be whether the Board's decision was within the Board's authority under this Declaration.

7.1.5 Time for Decision. The Architectural Committee shall approve or disapprove each Application, whether a preliminary or final submittal, within forty-five (45) days from the receipt thereof. If the Architectural Committee fails either to approve or disapprove the Application within said 45-day period, and if the Person submitting the Application thereafter gives written notice to the Architectural Committee requesting a decision within thirty (30) days after such notice is received and the Architectural Committee fails to approve or disapprove the Application within said 30-day period, then it shall be irrevocably deemed that the Architectural Committee has approved the Application. At least one set of said Application shall, with the approval or disapproval endorsed thereon, be returned to the submitting person and one set shall be retained by the Architectural Committee for its permanent files. If the Architectural Committee disapproves an Application, the Architectural Committee shall also include a statement specifying the manner in which the materials conflict with this Declaration or the Development Guidelines. Notwithstanding Section 7.1.1, no application or notice shall be deemed filed with the Architectural Committee until it is actually received by at least one Architectural Committee member by certified mail (return receipt requested).



7.1.6 Time for Commencing Work. Work shall be commenced within ninety (90) days after receipt by the Person submitting the Application of approval from the Architectural Committee pursuant to this Section (or deemed approval of the Application under Section 7.1.5 above); provided that work shall not be commenced prior to obtaining all Village approvals, and provided, however, that work on the initial Improvements on a Lot shall in any event be commenced within the period of time set forth in Section 14.7.1.

7.1.7 Completion of Work. All construction, refinishing, alteration or excavation of any Improvements approved under this Section 7.1 shall be undertaken and pursued diligently to completion, and once such work is commenced it shall be completed within one (1) year after commencement (unless a longer period is expressly granted in writing by Declarant). Failure to comply with this Section 7.1.7 shall constitute a breach of this Declaration and subject the defaulting party or parties to all enforcement procedures set forth herein (including, without limitation, the provisions of Section 14.7 below) or any other remedies provided by law or in equity.

7.1.8 Disclaimer of Liability. Neither Declarant, the Architectural Committee nor any member thereof, nor any agents, officers or employees of Declarant or of the Architectural Committee, shall be liable in any way for any damage, loss or prejudice suffered or claimed by an Owner, Lessee or any other Person who submits an Application; except to the extent arising from the bad faith acts or intentional misconduct thereof. Any person or entity who submits an Application shall forever defend, indemnify and hold Declarant, the Architectural Committee, the members thereof, and the employees, officers and agents of each, harmless from all damage, loss or liability (including reasonable attorneys' fees) suffered or claimed by any third party on account of (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, or revised or approved in accordance with the foregoing provisions, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any Application, whether or not defective; (iii) the construction or performance of any work, whether or not pursuant to an approved Application; or (iv) the development of any Lot within Prairie Highlands.

7.1.9 No Representations or Warranties. In no event shall an approval by the Architectural Committee of any Application, or any written or oral statements made by the Board or any officer or employee of the Association, Declarant or any employee or officer or agent of Declarant, or the Architectural Committee or any member, agent or employee thereof, be deemed to constitute in any way any representations or warranties of any kind, express or implied, with regard to the Application and any plans, drawings, specifications or other documentation constituting a part of the Application, including without limitation representations or warranties regarding compliance with zoning, subdivision and land use Laws, or compliance with any other applicable Laws, or with regard to fitness for a particular purpose.

7.1.10 Presumption of Compliance. The foregoing notwithstanding, after the expiration of two (2) years from the date (i) the Architectural Committee receives from an Owner a copy of the certificate of occupancy issued by the applicable governmental authority for any Improvement, or (ii) an Improvement has been completed by an Owner and said Owner has delivered a valid notice of completion with respect to such Improvement to the

Architectural Committee, then said Improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with the provisions of this Article VII unless a notice of non-compliance or non-completion with respect thereto has been executed by Declarant or the Architectural Committee and recorded in the office of the Register of Deeds for Kenosha County, or unless legal proceedings shall have been instituted to enforce compliance or completion with respect to said Improvement.

7.1.11 Approval Cannot be Assigned. Any approvals given pursuant to this Article VII shall be personal to the Owner submitting the Application and cannot be assigned or transferred by such Owner without the prior written consent of the Board, which shall not be unreasonably withheld, conditioned or delayed except such consent will not be required to a successor to such Owner by merger, acquisition or operation of law. Without such consent, (except where such consent is not required as provided above), any subsequent Owner of a Lot for which a previous Owner has obtained approval of an Application shall submit a new Application pursuant to this Section 7.1 for review and approval as though no prior approvals had been received from the Architectural Committee with respect to such Lot.

7.2 Variances. The Architectural Committee is hereby authorized and empowered to grant variances for Improvements or uses within Prairie Highlands prohibited or regulated by this Declaration or the Development Guidelines and further to grant reasonable requests for relief from the provisions of this Declaration, or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein. Notwithstanding the foregoing, the Architectural Committee shall not grant such a variance to any Owner unless:

7.2.1 such Owner has obtained all necessary governmental approvals;

7.2.2 the construction of Improvements or the uses which are called for under the request for the variance shall be consistent in design, character, appearance and quality of construction with the other Improvements and uses in Prairie Highlands;

7.2.3 the variances do not materially injure, in the judgment of the Architectural Committee, any of the Lots or Improvements in Prairie Highlands;

7.2.4 the construction of Improvements and/or the uses called for under the request for variance are otherwise subject to and conform with all applicable Laws, including, but not limited to, zoning regulations of the Village; and

7.2.5 no variance or variances shall be granted or allowed with respect to the allowance of a use which would violate an Exclusive Use on the Property.

No variance granted pursuant to the authority granted herein shall constitute a waiver of any provision of this Declaration as applied to any other Person or portion of the Property, and the grant of a variance shall not obligate the Architectural Committee to grant other variances. In addition to the variance powers provided herein, the Architectural Committee shall be empowered to issue from time to time reasonable interpretations of the intent of the provisions of this Declaration or the Guidelines, which interpretations shall not constitute variances from the

provisions of this Declaration, but shall be designed to further the implementation of this Declaration in a manner consistent with its provisions.

### 7.3 Maintenance.

7.3.1 General. Notwithstanding the existence of any insurance covering an Owner, the Association, or both, against loss, damage and destruction, the Association and each Owner, as applicable, shall have the affirmative obligation for maintenance, repair and restoration as set forth in this Article.

7.3.2 Maintenance of Undeveloped Lots. All undeveloped portions of each Lot shall be maintained at all times by the Owner in a well-maintained condition, free of unsightly or unattractive weeds or other growth or the accumulation of rubbish, junk and debris thereon. All undeveloped portions of each Lot not covered by other plantings shall be maintained as well manicured turf lawns. No ornamental, native or prairie grasses will be allowed except in such areas which are specifically approved and designated by the Architectural Committee. Once construction is commenced and Improvements are completed, then the respective provisions of Sections 7.3.3 and 7.3.4 shall apply with respect to construction activities and completed Improvements, as the case may be.

7.3.3 Maintenance During Construction. All construction activities of any kind on any Lot shall be governed by the provisions of this Section 7.3.3 and corresponding provisions in the Development Guidelines. All construction activities shall be carried out in an orderly and timely manner and all partially completed Improvements shall be kept in an orderly condition during construction. Any construction equipment and building materials stored on a Lot may be kept only in areas approved by the Architectural Committee, and the Architectural Committee may also require screening of such storage areas. Dust from all construction sites shall be controlled at all times in a manner specified in the Development Guidelines. If trucks entering and leaving the Lot deposit mud or dust on any streets or walkways, the Owner of the Lot on which or for whose benefit the construction is being performed shall be responsible for maintaining the streets (or causing the same to be maintained) in a clean condition on a daily basis, as determined by the Architectural Committee. If the provisions hereof conflict with the provisions of the Development Guidelines or municipal ordinances with respect to construction activities, the most restrictive provision shall control.

7.3.4 Maintenance of Completed Improvements. Each Owner shall maintain or cause to be maintained, at its sole expense, its Lot and all Improvements completed thereon (except those Common Area Improvements to be maintained by the Association pursuant to Section 7.4, but including all Common Areas which the Architectural Committee requires the Owner to maintain under Section 7.4.4) in a well-maintained, clean, neat and attractive condition at all times and shall comply with all governmental health, fire, building and safety ordinances, codes, regulations and requirements applicable thereto. Such maintenance requirements shall include, without limitation, the following:

7.3.4.1 maintaining paved surfaces including private roadways, curb and gutter for all dock areas, fire lanes, parking lots and striping in a level, smooth and evenly-covered condition with the type of surfacing material originally approved by the Architectural

Committee and then installed, or such substitute as shall in all respects be equal in quality, use and durability to that originally approved and installed;

7.3.4.2 removing all paper, mud and sand, trash, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

7.3.4.3 removing snow and ice from all parking lots, private roadways, sidewalks, trails and paths;

7.3.4.4 placing, keeping in repair and replacing any necessary or appropriate Signs, including directional Signs, curb stops, markers, pavement/directional pavement markings and lines;

7.3.4.5 installation and preventative maintenance of all private sewer and water laterals servicing such Lot;

7.3.4.6 operating, keeping in repair and replacing, where necessary, such artificial lighting facilities (including lighted Signs) as shall be required or permitted during the Application approval process;

7.3.4.7 maintaining all Signs and all perimeter walls and exterior building walls (including but not limited to all retaining walls) and other exterior surfaces in a good condition and state of repair in compliance with the approved Application;

7.3.4.8 maintaining, mowing, weeding, thinning, trimming, watering, fertilizing, cultivating and pruning all landscaped areas to maintain the same in a neat, well-groomed condition, and replacing as necessary shrubs and other landscaping on a regular basis; dead or dying plants shall be removed and replaced within thirty days; all plants and trees are to be irrigated as often as necessary to maintain healthy growing conditions; Owners shall also adjust tree guys, stakes, etc., on a regular basis to maintain a neat appearance and to prevent damage to trees;

7.3.4.9 maintaining all equipment, gas pumps, fences, gatehouses and other Improvements in good condition and state of repair;

7.3.4.10 promptly, and in any event within 48 hours, removing all graffiti or other similar markings from all perimeter walls, exterior building walls and other exterior surfaces, paved areas and other portions of any Improvements;

7.3.4.11 not painting any brick or stone surfaces or painting or changing the colors of Improvements unless approved by the Architectural Committee;

7.3.4.12 maintaining any multi-use path or trail located on its Lot or adjacent to its Lot in the public street right of way; and

7.3.4.13 maintaining Public Areas adjacent to its Lot to the extent not maintained by the Association pursuant to Section 7.5 hereof, including grading, placing of

topsoil, seeding or sodding and mowing of the street terrace area; street tree replacing and pruning, watering, mulching, staking and other tree maintenance and replacements; payment of public street lights energy and maintenance costs, and installation and maintenance of mailboxes; the Owners are granted a non-exclusive easement for such maintenance; all trees in Public Areas shall be planted at a minimum three (3) inch caliper and eight (8) foot height.

7.3.5 Alteration and Repair of Common Areas. If any act, omission or condition caused by any Owner or its Lessees, or their agents, employees, customers or invitees, results in the destruction or removal of any landscape or other Improvements within Common Areas maintained by the Association hereunder, such Owner shall repair and replace, in a good and workmanlike manner, free of liens and to as good a condition as the condition of such Improvements prior to such destruction or removal, all such Improvements in such Common Areas. Any landscape Improvements shall be promptly replaced with landscaping and other materials of like size and kind as approved by the Architectural Committee.

7.3.6 Lateral Support. Each Owner shall maintain its Lot with sufficient landscaping and plantings to prevent any erosion upon its Lot that will result in damage to that Lot or to any adjacent Lot.

7.4 The Association's Obligation for Common Areas. The Association shall maintain the Common Areas, including Improvements within the Common Areas thereon and all landscaping within the Common Areas, in good condition and repair, and replace the same as may be necessary from time to time, subject to the following:

7.4.1 The Board shall maintain a reasonably high standard in providing for the repair, management, maintenance and replacement of the Common Areas and other properties maintained by the Association (including, without limitation, removal of graffiti and repair of other damage caused by vandalism); however, the Board shall be the sole judge as to the appropriate maintenance thereof.

7.4.2 The cost of maintenance, repair and replacement for which the Association is responsible under this Section shall be assessed as part of the regular assessments in accordance with the provisions of Section 10.5 hereof; provided, however, that the cost of any maintenance, repair or replacement of the Common Areas for which an Owner is responsible shall be reimbursed by such Owner as a reimbursement assessment in accordance with Sections 14.1.1 and 10.7 hereof.

7.4.3 Such maintenance shall include without limitation and as needed removing of dead, dying or decayed trees, plant material or evasive species, planting of wetland plant life as approved by the Village and the Wisconsin Department of Natural Resources in wetland areas, and removing of trash or debris in order to prevent a nuisance condition. No mowing or cutting of any wetlands shall be allowed unless expressly approved by the Village. No signage or fences shall be erected within the wetlands, which may damage the wetland areas.

7.4.4 The foregoing notwithstanding, Declarant or the Architectural Committee may determine that an individual Owner is responsible for the maintenance of certain Common Areas or Public Areas not already the responsibility of the Owner under Section 7.3.4 and the

Owner shall thereafter be responsible for maintaining and replacing, at its expense, all such Common Areas or Public Areas and shall do so in compliance with Section 7.3.4. The Association will not be responsible for maintaining said Common Areas, but may elect to do so pursuant to Article XIV if the designated Owner fails to comply with this Declaration and costs of such maintenance shall be reimbursed by such Owner as a reimbursement expense in accordance with Section 14.1.1 and 10.7 hereof.

7.5 The Association's Obligation for Public Areas. The Association shall maintain, at its sole expense, the Public Areas, including Improvements within the Public Areas, subject to Section 7.5.3 below, in good condition and repair, and replace the same as may be necessary from time to time, subject to the following:

7.5.1 The Association is granted a non-exclusive easement for such maintenance, including for the required planting, mowing, watering and maintenance of grass within the grassy terrace area, and for the maintenance and replanting of street trees.

7.5.2 Such maintenance shall include, without limitation and as needed planting, staking, mulching, weeding, pruning, watering, replanting, and removing of trash, debris, leaves and brush around the trees in order to prevent a nuisance condition. All trees in Public Areas shall be planted at a minimum three (3) inch caliper and eight (8) foot height.

7.5.3 Except for curb cuts constructed pursuant to municipal approval, no driveways, signage, mailboxes, parking areas, structures or fences shall be erected within the Public Areas, which might damage the street trees or might interfere with the Village's rights to maintain the public street improvements, unless approved by the Village.

7.5.4 The Board shall maintain a reasonably high standard in providing for the repair, management, maintenance and replacement of the Public Areas and other properties maintained by the Association (including, without limitation, removal of graffiti and repair of other damage caused by vandalism); however, the Village shall be the sole judge as to the appropriate maintenance thereof.

7.5.5 The cost of maintenance, repair and replacement for which the Association is responsible under this Section shall be assessed as part of the regular assessments in accordance with the provisions of Section 10.5 hereof; provided, however, that the cost of any maintenance, repair or replacement of the Public Areas for which an Owner is responsible shall be reimbursed by such Owner as a reimbursement assessment in accordance with Sections 14.1.1 and 10.7 hereof.

7.5.6 Once the Association undertakes maintenance of any Public Area, the Association shall not relinquish such responsibility without the written consent of the Village.

7.5.7 The Association is hereby granted an easement for the purposes set forth in this Section 7.5 and indemnifies the Village from and against any claims or damages in connection with its exercise of such activities.

7.6 Excavation. No excavation shall be permitted except in connection with construction of an Improvement, and upon completion thereof, exposed openings shall be

backfilled, and disturbed ground shall be graded and leveled. No Owner shall perform any excavation upon its Lot that will result in damage to any adjacent Lot.

7.7 Damage and Destruction Affecting Lots - Duty to Rebuild. If all or any portion of a Lot or any Improvement on any such Lot is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to do the following:

7.7.1 rebuild, repair or reconstruct the Lot and the Improvements thereon in a manner which will restore them to its prior condition and appearance; or

7.7.2 raze and remove the damaged Improvements and restore the Lot substantially to its original unimproved condition.

The Owner of any Lot on which damaged Improvements are located shall be obligated to proceed with all due diligence hereunder, and such Owner shall cause cleanup, securing and removal no later than three (3) months after the damage occurs, and pursue the commencement of reconstruction or demolition thereof as soon as commercially reasonably possible, unless prevented by causes beyond its reasonable control, as determined by the Board.

7.8 Insurance Obligation of Owners. Each Owner shall purchase such liability, fire or other casualty insurance as such Owner desires or as may be required by any Mortgagee of a Mortgage encumbering its Lot. The Association shall not be obligated to insure any Lot or portion thereof or Improvements thereon.

7.9 Leases. Any agreement for the lease of all or any portion of a Lot must be subject to this Declaration, the rules of the Association, the Development Guidelines, the Articles and the Bylaws. The Owner of the Lot shall remain liable for any violations of this Declaration, the rules of the Association, the Development Guidelines, the Articles and the Bylaws. All notices hereunder shall be sent to the Owner.

7.10 Association Signs.

7.10.1 Initial Construction of Signs. Declarant shall construct and install the monument signs set forth on the Sign Plan in the Common Area locations depicted thereon.

7.10.2 Allocation of Sign Space. Space on the monument signs as described on the attached Exhibit G shall be allocated as determined by Declarant during the period of Declarant Control, and thereafter the Board.

7.10.3 Alteration to Sign Plan. During the Period of Declarant Control, the Sign Plan may be altered by Declarant in its sole discretion.

ARTICLE VIII  
DEVELOPMENT STANDARDS

8.1 Parking.

8.1.1 Parking and Loading Areas. Off-street parking and loading areas shall be provided on each Lot and shall be of sufficient size to accommodate all planned or anticipated parking and loading needs of all Lot occupants and visitors. Loading areas shall be separate from parking areas on any Lot where possible, as determined by the Architectural Committee in its sole discretion. Front or street yard parking shall be allowed if the parking areas are adequately screened, as determined by the Architectural Committee.

8.1.2 No On-Street Parking. No on-street parking of any nature whatsoever will be permitted on public streets bordering or within Prairie Highlands regardless of whether parking plans have been approved by the Architectural Committee, the Village, and/or Kenosha County, except for designated parking spaces approved by the Architectural Committee. Paved off-street parking as required herein or in the Development Guidelines and by any applicable rules or regulations of any governmental authority shall be provided by each Owner on its Lot to accommodate all parking needs for employees, visitors, Lessees, invitees and company vehicles for the use and occupancy of the Lot. Each Owner shall be responsible for ensuring that its employees, visitors, Lessees, invitees and company vehicles park on the Owner's Lot rather than on the street. Notwithstanding prior approvals of parking layouts by the Architectural Committee, Declarant, the Village, or any other governmental jurisdiction or authority, if parking requirements increase on any Lot as a result of any change in use or number of employees or invitees, additional on-site parking shall be provided on said Lot to satisfy the intent of this Section and eliminate the need for on-street parking. No passenger motor vehicle, motorcycle, bus, truck or trailer shall be allowed to park on any public street, private driveway(s) designated as the fire lane(s), or on any cross access easement. The Architectural Committee reserves the right to permit temporary on-street parking for special events or activities with the Village's approval.

8.1.3 Hard-surfacing. All parking, loading and driveway areas, bike lanes and path ways shall be hard-surfaced with either concrete or asphalt materials prior to occupancy of any Building on a Lot.

8.1.4 Drainage. All parking, loading, and driveway areas shall be properly sloped and graded to ensure positive drainage to common, private storm sewer drainage facilities within the Premises or to on-site detention/retention basins or impoundments, if any. The perimeter of all hard-surfaced areas on a Lot, including loading and unloading and docking facility areas shall be edged with a permanent vertical-faced concrete curb and gutter, to facilitate such drainage and a finished appearance to the Site. Curb and gutter improvements shall be constructed to transition with curb and gutter improvements within the public or private rights-of-way.

8.1.5 Setback. No perimeter curb and gutter or hard-surfaced areas shall be constructed closer than twenty-five (25) feet from any property boundary lines, except where necessary to afford permanent ingress and egress to the Lot, and except where there are shared



parking facilities between Lots. Any such shared parking facilities must otherwise comply with this Declaration and recorded easements on the Lots, and must be approved in writing by the Architectural Committee and the Village.

8.1.6 Landscaping. The visual effect of all parking, loading, docking and other driveway areas shall be “softened” by use of landscaping so as to minimize the visibility of hard-surfaced areas, vehicles and equipment to the traveling motorists and people working in Prairie Highlands.

8.1.7 Location of Loading Areas. Truck and truck-trailer loading, docking, receiving and parking areas shall be located away from the street side(s) of any Building wherever possible, shall be paved and provided with vertical concrete curbs and shall be designed and located so as to confine all truck maneuvering to the Lot. In addition, all such loading areas shall be given priority with respect to landscape screening.

8.1.8 Storage of Trailers and Vehicles. There shall be no storage of semi-truck or semi-trailers, construction vehicles or equipment or passenger vehicles on any Lot in the Commercial Zone. In the Manufacturing Zone, there shall be no long-term storage of trailers or vehicles on any Lot unless adequately screened as determined by the Architectural Committee, and unless such storage is necessary to the principal business conducted on the Lot. Trailers located outside a Building shall not be utilized for the storage of any manufactured or distributed goods, and any trailers containing any such goods shall be moved from the Lot within thirty (30) days.

8.2 Refuse Collection Areas. All refuse from any Lot shall be deposited in dumpsters or containers for such Lot provided by a licensed refuse company and approved by the Architectural Committee. All refuse collection areas in Prairie Highlands shall be located in areas approved by the Architectural Committee. No refuse collection area shall be permitted between any street and the respective building setback line. All exterior refuse collection areas in Prairie Highlands shall be screened by building walls or screen walls as required by the Architectural Committee, and all dumpster enclosures shall also meet the requirements of the Village. All dumpsters and containers shall remain within said screening walls. All dumpster enclosures shall incorporate durable, architecturally and aesthetically pleasing gates to accommodate the removal of the refuse containers located therein by the licensed refuse company and otherwise comply with all Village ordinances. All dumpster enclosure gates shall remain securely closed when the refuse deposit and collection activities are not occurring. The location of all such enclosures shall allow for adequate ingress and egress by collection trucks within the boundaries of the Lot.

8.3 No Exterior Storage Areas or Service Yards. No outside storage or service yards shall be permitted outside any Building in Prairie Highlands. No work in progress, stored merchandise, inventory or racks shall be placed outside any Building in Prairie Highlands. All motor vehicles (other than passenger vehicles) and all equipment operated on Lots in Prairie Highlands shall be stored in a Building or screened outdoor storage area approved by the Architectural Committee, except that the Architectural Committee may permit exceptions to the foregoing restriction during the construction, maintenance and repair of Improvements on a Lot. No manufacturing or distributed goods will be stored in vehicles parked on a Lot, but shall be

stored within a Building designed for such purpose. All manufacturing and vehicle service, repair, cleaning and maintenance activities in Prairie Highlands shall be conducted within a Building.

8.4 Equipment. All roof-mounted equipment and ventilators projecting above the roof parapet of any building in Prairie Highlands shall be screened by an enclosure designed and painted to be compatible with the building. No wall-mounted equipment shall be permitted on the front or sides of any such building. Unless otherwise permitted by the Architectural Committee, only ground mounted building, electrical or mechanical equipment will be allowed and only in side or rear yards, and the same must be screened from view by walls or dense landscaping. Storage tanks and process equipment will be allowed only in side or rear yards of Lots and must be screened from view by walls or dense landscaping. Such tanks and equipment must be located where they will be the least visible to the public, must be painted to blend in with surrounding structures and must be screened by screen walls approved by the Architectural Committee. No storage tanks or process equipment shall be located between any street and the respective building street setback line.

#### 8.5 Signs.

8.5.1 Signage Approval. All Signs shall comply with the zoning code of the Village and must be approved by the Architectural Committee prior to installation. Except as approved by the Architectural Committee, no Signs of any kind shall be allowed. All directional signs shall be located on the Lots. No off-Lot directional signs will be allowed. All on-Lot directional signage shall be placed on ornamental sign poles. No raceway signs shall be allowed. All requests for signs on any Lot within Prairie Highlands shall be submitted to the Architectural Committee for approval and shall contain detail as to size, location, materials, color and lighting together with a full color rendering. The Architectural Committee may approve or disapprove the request, in writing, or may require that the proposal be altered to fulfill the intent of this Declaration. If the Architectural Committee does not act upon a sign proposal within thirty (30) days after submission, the proposal shall be deemed disapproved. All decisions regarding signs shall be within the sole discretion of the Architectural Committee. Temporary Signs for development or construction signs may be placed on the actual property so advertised or on which development work is underway, subject to the Development Guidelines and prior approval by the Architectural Committee. All permanent Sign concepts and designs shall be approved by the Architectural Committee prior to fabrication and installation. All Signs in Prairie Highlands shall be located within sign areas indicated on plans for Improvements approved by the Architectural Committee. All Signs shall be designed as an integral part of the building to which it relates and shall be compatible with the exterior architecture of such building with regard to location, scale, color and lettering or on monument signs approved by the Architectural Committee meeting the design guidelines set forth on the Sign Plan.

8.5.2 Sign Standards. Any sign located within Prairie Highlands shall, in addition to complying with applicable Village Zoning regulations, must meet the following minimum standards:

8.5.2.1 Signs may only advertise the name(s) of the Building occupants, the Owners, and the product manufactured or sold on the Lot.

8.5.2.2 Each Lot shall contain only one major free-standing project monument sign; unless the Lot street frontage is in excess of 600 feet of frontage or the Lot is bounded by more than one public street then additional signage will be considered by the Architectural Committee.

8.5.2.3 Signs shall be permanently affixed to the face of the Building or to the ground, and shall not flash, pulsate, rotate, or be affixed with moving appurtenances. Roof-top signs, tower signs, and pole signs are prohibited.

8.5.2.4 Signs attached to Buildings shall not extend past the top of a parapet wall and shall not extend past the edge/corner of a Building wall.

8.5.2.5 Smaller signs adjacent to individual tenant entrances and identifying individual tenants or directing traffic may also be allowed at the sole discretion of the Architectural Committee.

8.6 Utility Lines and Antennas. Except as may be approved by the Architectural Committee, no utility lines or wires or other devices in Prairie Highlands for the communication or transmission of electric current, gas, power or signals (including telephone, television, microwave or radio signals), shall be constructed, placed, or maintained anywhere in or upon any Lot other than within Buildings unless the same shall be contained in conduits or cables constructed, placed, or maintained underground or concealed in or under Buildings or integrated into the Building design in a manner approved by the Architectural Committee. No antenna dishes or other services for the transmission or reception of telephone, television, microwaves, or radio signals shall be placed on any Building or other Improvement on any Lot unless the consent of the Architectural Committee shall first have been obtained. Nothing contained herein shall be deemed to forbid the erection or use of temporary power or telephone facilities incidental to the construction or repair of Improvements on any Lot, subject to approval of the Architectural Committee.

## 8.7 Lighting.

8.7.1 Lighting Standards. Lighting on individual Lots shall adhere to applicable Laws, as well as the following requirements:

8.7.1.1 All exterior site lighting shall be LED style energy efficient lighting and shall be located, oriented, and of a same color and intensity to illuminate only the Lot where located without detrimentally glaring or affecting activity on adjacent Lots or traffic on nearby streets and highways.

8.7.1.2 Lighting shall not be located on the roofs of Buildings. Any lights affixed to a Building shall be oriented downward at no more than a 45 degree angle from the vertical so as to light only areas of the Lot except as may be allowed in connection with the approval of a heliport as provided in Section 8.12.

8.7.1.3 In the Commercial Zone, parking lot pole lighting shall not exceed 25 feet in height as measured from grade and the concrete base of the light poles shall not exceed 12 inches of concrete and shall be located within landscaped islands or adjacent parking lot green space areas.

8.7.1.4 Lights shall not flash, pulsate, glare nor be so bright as to impair or hinder vision on public streets or adjacent Lots, or otherwise constitute a nuisance in the judgment of the Architectural Committee.

8.7.1.5 Integration of the same height, color, size, style and base of lighting fixtures within the same unified commercial development area is required.

8.7.1.6 All plans for lighting must be submitted to the Architectural Committee for approval.

8.7.2 Public Street Lighting Assessment Fees. The Property shall be included within a Public Street Lighting District as designated by the Village. The public street lighting maintenance costs and facility energy and maintenance charges shall be the collective financial responsibility of the Owners as billed to the Association by the Village and charged by the Association to the Owners as regular assessments.

## 8.8 Landscaping.

8.8.1 Installation of Landscaping. All landscape areas required and approved for a Lot shall be landscaped prior to the issuance of a certificate of occupancy for all or a portion of the Improvements placed upon the Lot (subject to reasonable extension, in the Architectural Committee's discretion, based on adverse weather conditions). If an Owner fails to install landscaping as required hereunder, the Board may enter upon the Lot and install such landscaping as permitted by Section 14.1.1 at such Owner's cost. Every Lot upon which Improvements are constructed shall be landscaped in accordance with the Application submitted to and approved by the Architectural Committee pursuant to Section 7.1 hereof. These provisions are intended to promote compatible and continuous landscape development designed to enhance and unify Prairie Highlands.

8.8.2 Landscaping Plan. The landscaping upon any Lot shall be carried out in accordance with a detailed landscaping plan ("Landscaping Plan") which has been reviewed and approved, in writing, by the Architectural Committee. The landscape plan shall include, but not be limited to, plant location, common and botanical names of plant material, planting size, root condition, and quantity of all plant material. The plan shall also show all ground cover and mulch areas, landscape and construction materials, and planting details.

8.8.3 Landscaping Methods. Landscaping may include grading, earth berms, seeding, sodding, raised planters, architectural decorative walls or fencing, trees and shrubs, ground cover and other landscape materials including permanent underground sprinkling systems, foundation plantings, storm run-off retention basins, rain gardens, reflective ponds, fountains and lighting for ponds, and landscape lighting. The Owner of any Lot shall be required to install, operate and maintain a permanent underground irrigation system in groomed or regularly-maintained areas immediately surrounding its Building and in all areas on the street-side of any Building. All green space areas not covered by trees, bushes and other plantings shall be predominately covered with irrigated, mowed turf originally seeded or sodded.

8.8.4 Plant Material. Selected plant material should provide for a variety of shade trees, evergreen trees and shrubs, ornamental trees and shrubs and ground covers. All deciduous

trees shall be not less than three (3) inch caliper and eight (8) feet in height. Plant material selection shall take into consideration the following:

8.7.4.1 Disease and insect resistance.

8.7.4.2 Hardiness to the area.

8.7.4.3 The ability to provide seasonal interest.

8.7.4.4 Future maintenance considerations.

8.8.5 Maintenance. The Owner shall be responsible for maintaining all landscaping as approved on the original landscaping plan for the Lot. Any variation or changes to the landscape plan must be reviewed and approved in writing by the Architectural Committee. Landscaped areas, materials, fixtures, and Improvements shall be maintained by the Owner of the Building Site or by such Owner's lessee(s) in good condition at all times. Such maintenance shall include watering, mowing, trimming, pruning, spraying, fertilizing, repairing, planting, transplanting, dusting, treating, and other common landscape maintenance activities necessary to keep the Building Site landscape in a state of growth and visual beauty. Lots shall at all times be kept free of weeds, grass clippings, leaves, branches, and other natural debris as well as paper, cans, empty storage drums, crates, pallets, boxes, tires, and other trash or debris.

8.8.6 Screening. Landscape materials planted, located and oriented for the primary purpose of screening an ancillary Improvement or appurtenance or loading or parking area shall be of sufficient size to immediately screen a minimum of fifty percent (50%) of such Improvement or area and be of a plant type that will provide full screening within three (3) years from time of planting.

8.8.7 Open Water. Any liability concerning the maintenance of open water on a Lot shall be that of the Owner, and any disposal or diversion of such water from the Lot shall be carried out only with written permission of the Architectural Committee and, if affecting lands outside Prairie Highlands, the permission of the Village Plan Commission.

8.8.8 Preservation. Landscaping shall be designed to preserve the existing natural habitat to the extent economically practicable and reasonably required by the Architectural Committee.

8.8.9 Parking Lot Screening. Those parking areas for five (5) or more vehicles if adjoining a residential zoning district line or public right-of-way shall be screened from casual view by an earth berm, a solid decorative wall, fence, evergreen planting of equivalent visual density or other effective means approved by the Architectural Committee. Such fence or berm and landscaping together shall be an average of three (3) feet in height between the parking and the street right-of-way and six (6) feet in height between the parking and any adjacent residential property line. All screening materials shall be placed and maintained at a minimum height of three (3) feet. The Architectural Committee may require greater screening requirements for parking of large trucks, semi-trailers and large equipment.

8.8.9.1 At least one ornamental deciduous tree, no less than three (3) inch caliper and eight (8) foot height, shall be incorporated into the design for every fifty (50) linear feet of public or private street frontage and shall be planted within the terrace area of the adjoining street right-of-way.

8.8.9.2 At least 25% of the total green space area shall be landscaped utilizing plant materials, other than maintained turf, that contribute to ground coverage. For purposes of determining the number of plants necessary to meet the minimum 25% ground coverage requirement, plant types are categorized by their general size and potential mature at grade coverage area.

Area of Coverage

<u>Plant Type</u>	<u>Provided</u>
Evergreen Tree (>8' Dia.)	75 sq. ft.
Large Shrub (6-8' Dia.)	38 sq. ft.
Medium Shrub (4-6' Dia.)	20 sq. ft.
Small Shrub (2-4' Dia.)	12 sq. ft.
Perennial (4.5" Pot)	6 sq. ft.

\*Note shade and ornamental trees are not considered a plant type contributing to "at grade" coverage.

8.8.9.3 To assure a diversity of color, texture and year-round interest, the total number of plant materials must be comprised of a minimum 25% evergreens, but no more than 70%.

8.8.9.4 Ornamental, native or prairie grass shall only be utilized as accent landscaping materials and shall not be the primary landscaping material.

8.8.10 Interior Landscape Area. All public off-street parking lots which serve five (5) vehicles or more shall be provided with accessory landscaped areas; which may be landscape islands, landscape peninsulas or peripheral plantings totaling not less than five (5) percent of the surfaced area. Landscape islands or peninsulas shall be dispersed throughout the off-street parking area. Landscape islands shall provide a minimum 30-inch clear area for vehicle overhang and snow storage. One shade tree shall be provided within the interior planting area for every 300 square feet of interior landscaping. For parking lots designed for twenty-five (25) parking spaces or more, interior parking lot landscaping shall be provided at the following rates:

PERCENTAGE OF PARKING LOT TO BE COVERED BY INTERIOR PLANTINGS

Total paved area of lot	Percentage of total paved area which must be interior planting area
0-49,999 sq. ft.	5%
50,000 sq. ft. or larger	10%

8.8.11 Perimeter Parking Lot Landscape Area. In an effort to prevent adjacent parking lots from becoming one large expanse of paving, perimeter landscaping shall be required. The perimeter strip shall be a minimum 5 feet in width. A minimum of one tree and five shrubs are required for every 35 linear feet of the perimeter of the parking area and located within the perimeter landscape area.

8.8.12 Landscaping Adjacent to Buildings. There shall be a minimum three-foot landscape area provided between the edge of pavement and the entrance elevation of the building.

8.8.13 Screening of Trash. Trash receptacles shall not be located within the front or street yard, and shall be screened from casual view by means of screening that is compatible with the main Building and landscaping.

8.8.14 Screening of Ground Mounted Mechanical Equipment. Ground mounted mechanical equipment shall not be located within the front or street yard, shall be screened from casual view by means of screening that is compatible with the main Building and landscaping.

8.8.15 Screening of Roof Mounted Mechanical Equipment. Roof mounted mechanical equipment shall be screened from casual view.

8.8.16 Retaining Walls. No retaining wall shall exceed four (4) feet in height unless it has been designed and its construction supervised by a Professional Engineer. A retaining wall may be stepped to achieve greater height. Each step of the wall shall be no more than four (4) feet in height and shall be set back a minimum of three (3) feet from the previous step. Acceptable materials for retaining walls are: segmental masonry type, timber, railroad ties, or concrete. If the retaining wall is constructed of concrete, landscaping must accompany the design of the retaining wall.

8.8.17 Berms. Side slopes of berms shall not exceed a gradient of 1-ft. vertical to 3-ft. horizontal and will be covered with irrigated, mowed turf and trees, shrubs and other plantings allowed or required hereunder unless approved by the Architectural Committee.

8.8.18 Buffer Yards. Appropriate buffers shall be provided between dissimilar uses. Any Lot adjacent to a residential area either within the Village or within an adjoining municipality shall employ appropriate screening or berming where such Lot bounds such residential area, which screening or berming shall be specifically approved by the Architectural Committee and the Village.

8.8.19 Submittal Requirements. The Landscape Plan (to scale) must be submitted which includes details of all proposed landscaping, buffering and screening, including estimated cost of the landscaping. These plans shall be prepared by a landscape professional and show the location and dimensions of all existing and proposed structures, parking, drives, rights-of-way and any other permanent features, and all other information required by the Architectural Committee, including but not limited to the following:

- (1) A plant list and coverage chart showing the location, quantity, size (at time of planting and at maturity), spacing and the scientific and common names of all landscape materials used.

- (2) The location and type of existing trees over four (4) inches in diameter (measured six (6) inches above the ground) within the area to be developed.
- (3) The location and percent of slope of all proposed berms using one (1) foot contours.
- (4) Detailed sections showing elevations of all proposed architectural features, such as walls, lighting or water features.
- (5) Methods used in staking, mulching, wrapping or any other early tree care used.
- (6) The Architectural Committee shall impose time schedules for the completion of buildings, parking areas, open space utilization, and landscaping. The Architectural Committee may require appropriate sureties to guarantee that improvements will be completed on schedule; as well as the approved protection of the identified wetlands and woodlands on the approved plan.

## 8.9 Drainage.

8.9.1 Drainage Plan. Prior to constructing any Improvements upon a Lot, the Owner shall submit to and obtain written approval from the Architectural Committee of a detailed plan describing all drainage facilities upon the Lot.

8.9.2 Conformance with Drainage Master Plan. Each Owner shall be responsible for controlling drainage from its Lot and conveying that drainage to Prairie Highlands' Detention/Retention Basins, as deemed necessary by the Architectural Committee. The existing drainage pattern on a Lot shall not be changed significantly, and no change to the drainage pattern on other lands within Prairie Highlands' shall be caused by an Owner which varies from the Drainage Master Plan unless that Plan is amended by the Architectural Committee.

8.9.3 Storm Drainage. Storm drainage outfall from a completely developed Lot, and generated from a 100 year rain storm event, shall not exceed the physical abilities of the streams, drainage ways or storm sewers immediately adjacent to and downstream from the Lot to accommodate such outfall. Such drainage shall be in compliance with the Drainage Master Plan and with all Wisconsin Department of Natural Resources (WI DNR) rules and regulations. Each Owner shall be responsible for obtaining all permits or approvals relating to drainage, wetland filling, erosion control and archeological investigation for such Owner's Lot from the WI DNR, United States Army Corps of Engineers (ACOE) and/or Village.

8.9.4 Erosion Control. Each Owner shall take whatever steps are deemed reasonably necessary by the Architectural Committee to prevent erosion during the construction of any Improvements and in compliance with the Village's Land Disturbance Construction Site Maintenance and Erosion Control Ordinance.

8.9.5 Retention and Drainage. No Owner shall permit water to drain from such Owner's Lot(s) onto adjacent Lots, except through drainage areas identified on an instrument approved by the Architectural Committee and in a manner which does not damage landscaping or other Improvements. All drainage plans for such Lots shall be reviewed and approved by the



Architectural Committee, and such plans shall be consistent with the Drainage Master Plan and the Village's master stormwater drainage plan for Prairie Highlands. No change in the drainage pattern or Improvements may be made without the prior written approval of the Architectural Committee. An Owner shall not at any time fill, block or obstruct any drainage facilities or drainage structures on its Lot and each Owner shall repair and maintain all drainage facilities and drainage structures located on its Lot. No structure of any kind shall be constructed and no vegetation shall be planted or allowed to grow within any drainage areas which may impede the flow of water under, over or through said areas.

8.10 Building Plan. No building or other Improvement shall be constructed or placed on any Lot, nor shall the exterior of any building or Improvement be remodeled or altered, until detailed plans and specifications for such building, Improvement, or remodeling, alteration or addition thereto (the "Building Plan"), have been reviewed and approved, in writing, by the Architectural Committee, which approval may be granted or withheld in the sole discretion of the Architectural Committee, rendered consistent with this Declaration.

The Building Plan shall comply with the following minimum requirements:

8.10.1 The Building Plan shall be prepared by an Architect or Engineer in at least 1/8" = 1' scale;

8.10.2 The Building Plan shall show Building and Improvements location(s) and setbacks upon the Lot;

8.10.3 Floor plans and Building elevations shall show all features, exterior equipment, mechanicals, tanks, towers and architectural projections and information required by the Village and the State of Wisconsin;

8.10.4 The Building Plan shall identify all materials used; samples and/or color charts and colors of all Improvements shall be provided to the Architectural Committee;

8.10.5 The Building Plan shall show all public and/or private water, sanitary sewer and storm sewer utility laterals and connections and storm water drainage systems.

8.11 Building Standards. Buildings and Improvement shall comply with the following minimum standards:

8.11.1 They shall be designed by an Architect or Engineer. No side, elevation or facade of a building or Improvement is exempt from public view, consequently, all sides, elevations, or facades of all buildings and Improvements shall be visually pleasing and architecturally and aesthetically compatible with the surrounding environment.

8.11.2 The majority of exterior and externally visible opaque surfaces shall be constructed of not more than three of the following types of materials (provided, however, that such list shall not be deemed to exclude the use of other accent or exterior trim materials, glass and glazing, and earth berms):

8.11.2.1 Brick;

8.11.2.2 Architectural precast concrete panels or concrete poured in place and painted;

8.11.2.3 Decorative concrete block (for no more than 50% of the exterior building wall area);

8.11.2.4 Cut stone;

8.11.2.5 Exterior insulation and finish systems such as Drivit or Sunalar may be used only as an accent or secondary material on a second floor or higher;

8.11.2.6 Wood;

8.11.2.7 High quality insulated architectural metal panels may be used only as reviewed and approved by the Architectural Committee, on a case-by-case basis;

8.11.2.8 Other building materials being developed, and to be developed, by the construction industry. The use of such materials will be reviewed and approved by the Architectural Committee on a case-by-case basis.

Building materials will be selected for their ability to present a visual statement of a building or Improvement's strength, attractiveness and permanence. The Building materials used shall be harmonious with the natural environment, shall not utilize any primary or garish colors and shall be compatible with the general character of other buildings and Improvements in the Prairie Highlands. Principal Building facades that are visible to and facing the public street and any portions of the building with office uses shall provide architectural details and elements such as but not limited to varying roof heights, varying fenestration and other appropriate architectural elements. In addition, the office area of the Building shall have an appearance of a two-story building.

8.11.3 Metal trim materials may be used when in keeping with the architectural and aesthetic character of the building or Improvement.

8.11.4 All mechanical, electrical, pollution control or waste handling equipment, whether roof, pedestal or ground mounted, and any outside solid waste, raw material, inventory, finished product, equipment, fuel storage facility or other storage of any kind, shall either be architecturally screened from view using materials identical to, or structurally and visibly compatible with, the main Buildings on the Lot, or shall be landscape screened in accordance with Article VIII. All storage areas shall be screened as provided above and shall be hard-surfaced with either concrete or asphalt materials prior to occupancy of a Building on a Lot, or as soon thereafter as weather will permit if such period occurs during winter months.

8.11.5 All Improvements to be constructed on a Lot which are to be heated or cooled shall be designed and constructed in an energy efficient manner consistent with sound and prudent design and construction techniques.

8.12 Heliports. All heliports to be constructed on any Lot shall be specifically approved by the Architectural Committee in compliance with all Laws, including all Village ordinances and all Federal Aviation Administration regulations. The Architectural Committee may establish conditions regarding the number and timing of flights to and from the heliport and may restrict the lighting of the heliport in intensity and mandating constant burn rather than blinking lights to limit the adverse effects upon neighboring Lots and properties surrounding the Park.

8.13 Accessory Structures. Accessory Structures will be approved by the Architectural Committee only if such Accessory Structures are necessary to the principal use of the Lot, are in architectural and aesthetic conformance with other Improvements on the lot, are properly screened, meet all requirements of this Declaration and are otherwise satisfactory to the Architectural Committee in its sole discretion. No building or Improvement of a temporary nature may be constructed on any Lot except construction sheds in use during construction. Such construction sheds shall be promptly removed upon completion of construction.

8.14 Utilities. All utilities serving a Lot shall be installed underground.

8.15 Restriction on Subdivision and Rezoning.

8.15.1 No Subdivision Without Approval. No Lot shall be subdivided or separated into smaller Lots by any Owner by deed, ground lease, condominium declaration, or otherwise, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner by deed, ground lease or otherwise, without the prior written approval of Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee. This provision shall not apply to transfers of an undivided ownership interest in the whole of any Lot or subdivisions by Declarant.

8.15.2 Plats, Certified Survey Maps and Site Plans to be Approved. No subdivision plat or certified survey map shall be recorded by any Owner or other person (other than Declarant) against any property in Prairie Highlands unless the provisions thereof have first been approved in writing by Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee. All land divisions within Prairie Highlands shall be accomplished by subdivision plat or certified survey map approved by the Village and meeting all the requirements of the Village including the Land Division and Development Control Ordinance and all other Laws. Any other plat or certified survey map recorded, or any site plan filed, without such approvals being evidenced thereon shall be null and void.

8.15.3 Rezoning, Variances, and Use Permits to be Approved. No application for rezoning of any area in Prairie Highlands, and no applications for variances or use permits, shall be filed with the Village unless the proposed use of the property has been approved by Declarant during the Period of Declarant's Control and thereafter by the Architectural Committee, and unless the proposed use otherwise complies with this Declaration and the general plan of development of Prairie Highlands.

8.15.4 Declarant Exempt. Any portion of the Property owned by Declarant is exempt from the restrictions on subdividing, platting, rezoning, and other restrictions set forth in this Section 8.14.

8.16 Limit on Development. No more than seventy-five percent (75%) of any Lot may be covered with Improvements impervious to surface water absorption.

8.17 Development Guidelines. Each Owner and Lot shall comply with all additional architectural and development standards adopted and set forth in the Development Guidelines from time to time. In the event of a conflict between this Declaration and the Development Guidelines, the more restrictive provision shall control.

8.18 Effect of Other Limitations. Any limitations on Improvements in Prairie Highlands contained herein or in the Development Guidelines are supplemental to any controls established by Laws, zoning, subdivision, building, health, fire or other jurisdictional codes and regulations of the Village or any other applicable governmental entity, and the more restrictive controls shall apply in each instance.

## ARTICLE IX

### USE RESTRICTIONS

9.1 Approval of Uses. Notwithstanding that any proposed use might otherwise be in compliance with the Master Plan and all applicable Laws, the uses of all Lots and Improvements, including all activities carried out thereon, and any changes in use shall in each instance be subject to the advance written approval of the approval of Declarant during the Period of Declarant's Control, and thereafter by the Architectural Committee.

9.2 Compliance with Zoning. All Lots in Prairie Highlands shall be developed in conformance with the Village Zoning regulations in effect as of the date of application and approval of necessary building permits or, if more restrictive in the judgment of the Architectural Committee, with the zoning requirements in existence on the date of this Declaration for the specific zoning district(s) in which such Lots are located. Owners shall be responsible for ascertaining the Village zoning classification applicable to their Lots, and shall comply with all regulations applicable to such classification. An Owner intending to apply for a zoning amendment, conditional use permit, modification/exception or variance for its Lot, must obtain the Architectural Committee's approval and shall first submit such written application to the Architectural Committee for review and approval prior to commencing any required action with the Village. Disapproval by the Architectural Committee shall be in the sole discretion of the Architectural Committee and shall be final notwithstanding later favorable action by the Village Plan Commission or Village Zoning Board of Appeals as it relates to a variance.

9.3 Use Plan. Simultaneously with the submission to the Architectural Committee of the Application, each Owner shall submit a Use Plan as part of such Application. The Use Plan shall include all of the following:

9.3.1 The primary use and any ancillary or secondary uses;

9.3.2 The number of employees anticipated to be present on the Lot and if the number will vary throughout the day or week, then the number of employees at such various times;

- 9.3.3 The projected number of visitors or other persons who may be expected to be on the Lot from time to time;
- 9.3.4 The proposed hours of operation and the number of days of the week such operations shall occur;
- 9.3.5 The name or trade name under which such use shall occur;
- 9.3.6 The plan of operation of the use, including a description of deliveries, times and locations of deliveries, and a description of the method by which any waste, trash, or debris shall be disposed;
- 9.3.7 A plan for containing or controlling noise and/or crowds;
- 9.3.8 An industrial commercial waste survey;
- 9.3.9 A development and performance standards compliance plan;
- 9.3.10 The quantity, arrangement, placement and storage of chemicals including material safety data sheets for such use; and
- 9.3.11 The proposed quantity and timing of automobile and truck traffic.

9.4 Hazardous Waste. Notwithstanding anything to the contrary in this Declaration and/or applicable zoning, no storage of hazardous or toxic waste, or discharge of such waste into the sanitary system or surface drainage system, shall be permitted in Prairie Highlands, except in full compliance with all Laws. Any party violating this provision, whether intentionally or negligently, hereby agrees to indemnify the Association, the Board and each and every other Owner against any and all liability and costs arising from such violation, including reasonable attorneys' fees.

9.5 Prohibited Uses. In addition to uses prohibited under applicable Laws, the following uses shall be prohibited at the Property (the "Prohibited Uses"): any "second hand" store or "surplus" store; any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located behind or on the side of any building); any pawn shop, check-cashing, short-term loan, payday loan or other similar business; any central laundry plant or laundromat; any outdoor automobile, truck, trailer or recreational vehicles sales, leasing, display or repair; any kennel or veterinary clinic where animals are kept overnight; any mortuary or funeral home; any establishment selling or exhibiting pornographic materials; any bingo parlor or gaming, gambling, betting or game of chance business; any flea market; any tattoo parlor; any so-called "head shop" or similar establishment; or any massage parlor (other than a licensed massage therapist), adult book store, adult entertainment facility, adult video store or establishment featuring a male or female adult revue or any other similar or related uses; any warehouse operations except as allowed under the M-5 Village Zoning Code zoning classification as modified by any planned unit development overlay ordinance adopted by the Village for any and all Property located in the Village and in the Manufacturing Zone; any uses classified as High Hazard Group H under Section 307 of the 2015 International Building Code.

9.6 Other Restricted Uses. During the period of the ownership of the Large Manufacturing Parcel by Haribo, the Property shall be subject to the additional restrictions set forth on the attached Exhibit H, Section A. During the period of the ownership of the Large Health Care Parcel by Aurora, the Property shall be subject to the additional restrictions set forth on the attached Exhibit H, Section B.

9.7 Nuisances; Objectionable Activities. No Owner, Lessee or other Person shall create a nuisance in Prairie Highlands or use any Lot for any activity or purpose which is considered by the Board or the Architectural Committee, in its sole and absolute discretion, to be objectionable due to sound, odor, vibration, visual effect or physical impact and which in the opinion of the Board or the Architectural Committee will disturb or tend to disturb other Owners or Lessees in Prairie Highlands, or which is deemed by the Board or the Architectural Committee to constitute a nuisance. Included among the uses, activities or operations prohibited hereunder because of their detrimental effect upon the general appearance, enjoyment and use of the Property, or other property in the vicinity of Prairie Highlands, and their conflict with the reasonable standards of appearance and maintenance required by this Declaration, are without limitation the uses, activities or operations which produce or are accompanied by the following characteristics:

9.7.1 Any public or private nuisance;

9.7.2 Any vibration, noise, sound or disturbance that is objectionable due to intermittence, beat, frequency, shrillness, loudness or pulsating effect;

9.7.3 Any lighting which is flashing or intermittent or is not focused downward or away from adjacent Lots, unless otherwise approved by the Architectural Committee pursuant to Section 7.1;

9.7.4 Any rubbish, trash or debris of any kind placed or permitted to accumulate upon or adjacent to any Lot;

9.7.5 Any electro-mechanical or electromagnetic disturbance or radiation;

9.7.6 Any air pollution or water pollution, including without limitation any dust, dirt or fly ash in excessive quantities;

9.7.7 Any emission of odor, or noxious, caustic or corrosive gas or matter, whether toxic or non-toxic;

9.7.8 Any explosion or other damaging or dangerous firing, detonation or activity, including the firing or detonation of ammunition or explosives or the storage, display or sale of explosives or fireworks; or

9.7.9 Open burning of paper, trash, debris, garbage or construction materials of any kind.

9.8 Additional Restrictions. Prior to the close of a sale of a Lot or Lots by Declarant, Declarant may record additional restrictions on said Lot or Lots. If such restrictions refer to this Declaration and provide for incorporation by that reference, said restrictions shall be deemed to be

part of this Declaration and shall be enforceable as provided herein. Any such restrictions may not be inconsistent with the provisions of this Declaration, except that such restrictions may be more restrictive than the provisions set forth herein.

9.9 Exclusive Uses and Restricted Uses. In order to promote the overall development of the Property, Declarant shall have the right, from time to time and in its sole discretion, to designate specific uses as permitted on some portions of the Property (an “Exclusive Use”) and prohibited on other portions of the Property (a “Restricted Use”). As of the Effective Date, certain Restricted Uses have been designated by Declarant as described in Exhibit H attached hereto and certain Exclusive Uses have been designated by Declarant as described in Exhibit I attached hereto. If Declarant designates Exclusive Uses or Restricted Uses after the Effective Date, notice thereof shall be given to all Owners and Declarant shall thereafter record a supplement to this Declaration against the Property setting forth such additional Exclusive Uses or Restricted Uses. Such supplement shall be binding upon the entire Property, including but not limited to those portions of the Property that are no longer owned by Declarant. An Exclusive Use or Restricted Use may be enforced by Declarant, the Association, or the Owner of the portion of the Property that is benefited by the Exclusive Use or Restricted Use (*i.e.*, the portion of the Property on which the Exclusive Use is permitted). An Exclusive Use or Restricted Use may not be modified, limited, or released without the recording of a written instrument that has been signed by Declarant and the Owner of the portion of the Property that is benefitted by such Exclusive Use or Restricted Use; provided, however, if the Owner of the portion of the Property that is benefitted by such Exclusive Use or Restricted Use discontinues such use for a period of one hundred eighty (180) days, and such discontinuation is not the result of a fire or other casualty, then Declarant may unilaterally terminate and release the Exclusive Use or Restricted Use by recording a written instrument against the Property (or applicable portions thereof).

9.10 Auxiliary Uses. A municipal fire station, sanitary sewer lift station(s), water tower(s) and other public facilities necessary for the development of the Property shall be deemed Auxiliary Uses which are allowed as permitted uses in the M-5 Production Manufacturing District of the Village Zoning Code or B-6 Freeway Oriented Business District of the Village Zoning Code, and shall be permitted within the Property without approval by the Architectural Committee.

9.11 Compliance With Laws. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Property which is in violation of any applicable Laws, including without limitation all zoning and other ordinances, regulations and codes of the Village.

9.12 Tax Exempt Covenant. No Owner will sell, lease, assign or otherwise transfer or convey any interest in a Lot to a person or entity exempt from general property taxation or use any portion of the Property in a manner which would cause all or any portion of the Property to be exempt from general property taxation unless such Owner agrees to make payments in lieu of taxes equal to the property taxes for all taxing bodies reflected on Village tax bills which would be payable if such portion of the Property was not exempt from such property taxes, pursuant to a written agreement between such Owner and the Village executed prior to any portion of the Property being conveyed to such Owner or in a manner otherwise acceptable to the Village (the “Tax- Exempt Covenant”). This Tax-Exempt Covenant shall be in effect during the term of the Village’s Tax Incremental District #5 or any successor tax increment district including the Property. This Tax-Exempt Covenant runs with the Property and binds all owners in title to the

Property during the term of the Tax-Exempt Covenant. In the event a court finds the Tax Exempt Covenant is not valid or enforceable or if for any reason the Tax Exempt Covenant is terminated, then the Owner shall, and shall cause any tenant of the Owner to make a payment in lieu of taxes to the Village as required from time to time by the Village.

9.13 Tax Assessment. No Owner shall contest or consent to any other party contesting the ad valorem tax assessed value for a Lot or any portion thereof using as evidence of its value the sales of “comparable” properties with buildings that were abandoned or vacated at the time of sale, and the ad valorem tax assessed value of a Lot or any portion thereof shall be determined using the same method used for other like properties and under no circumstances will a valuation method be used that incorporates or relies on sale evidence of “comparable” property with buildings that were abandoned or vacated at the time of sale to determine such ad valorem tax assessed value.

## ARTICLE X FUNDS AND ASSESSMENTS

10.1 Creation of Lien, Personal Obligation for Assessments. Declarant, for each Lot owned within Prairie Highlands, hereby covenants, and each successive Owner, by acceptance of a deed therefor, whether or not expressed in such deed, is deemed to covenant and agree to pay to the Association the Assessments which the Board is authorized to levy pursuant to the provisions of this Declaration. All Assessments, which shall include all late charges, interest, costs and reasonable attorneys’ fees due with respect thereto, shall be a charge on the land and shall be secured by a continuing lien upon the Lot against which each Assessment is levied. Each Assessment, including interest, costs and reasonable attorney’s fees, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the Assessment became due and owing. The personal obligation for delinquent Assessments shall not pass to said Person’s successors in title, unless expressly assumed by them. If more than one Person was the Owner of a Lot, the personal obligation to pay such Assessment respecting such Lot shall be both joint and several.

10.2 Purpose of Assessments. The Assessments shall be used to enhance, maintain and protect the desirability, attractiveness and safety of Prairie Highlands; for the improvement and maintenance of the Common Areas; to reimburse the Association for the costs incurred in bringing an Owner into compliance with this Declaration, the Articles, Bylaws, Development Guidelines and/or rules adopted by the Board; and for the common good and benefit of Prairie Highlands, the Association and the Members, as determined by the Board.

10.3 Budgets and Financial Statements of the Association. The following financial information shall be regularly prepared and distributed by the Board to all Members of the Association:

10.3.1 Within ninety (90) days after the end of each calendar year of the Association, the Board shall prepare, or cause to be prepared, and distribute to all Members of the Association an operating budget for the next fiscal year setting forth the estimated revenues and expenses for said fiscal year and the total cash reserves of the Association currently available for expenditures.



10.3.2 After the close of the Association's fiscal year, the Board shall prepare and distribute to each Member a balance sheet and a statement of actual expenses and income for the preceding fiscal year.

10.4 Accounts. The Association shall establish and maintain a reserve account into which the Board shall deposit all funds collected as reserves for contingencies and the repair and replacement of Common Area Improvements. The Association shall also maintain one or more operating accounts into which the Board shall deposit all other funds paid to the Association as Assessments or otherwise received by the Association as provided in this Declaration. All funds shall be held in trust by the Association for the use and benefit of its Members.

10.5 Regular Assessments.

10.5.1 Purpose. Regular assessments shall be used for all expenses incurred by the Association for (i) the administration, operation, maintenance, repair and replacement of the Common Areas and any Improvements therein, including all taxes and insurance; and (ii) carrying out the duties, rights and obligations of the Association, including the Board and the Architectural Committee, as provided for in this Declaration.

10.5.2 Date of Commencement of Regular Assessments. The regular assessments provided for in this Article X shall commence as to all Lots on the first day of the month following the later of (i) the incorporation of the Association or (ii) the conveyance of the first Lot to an Owner; provided, however, that Declarant may, at its option, delay the start of regular assessments so long as Declarant elects to perform all maintenance and other obligations of the Association at its sole cost and expense. The first regular assessment shall be adjusted according to the number of months remaining in the fiscal year.

10.5.3 Budget. Within sixty (60) days after the end of each calendar year of the Association, beginning with the first full fiscal year after regular assessments commence, the Board shall meet for the purpose of establishing the regular assessment for the forthcoming fiscal year. At such meeting, the Board shall review an operating statement showing income and expenses for the preceding fiscal year and a preliminary budget, any written comments received from any Member, and any other information available to it and, after making any adjustments that the Board deems appropriate, without a vote of the Members of the Association, shall establish an operating budget and the regular assessment for the forthcoming year.

10.5.4 Payment of Assessments. Regular assessments shall be due and payable by the Owners to the Association in four equal quarterly installments on or before the first day of April, July, October and January, or in such other manner as the Board shall designate.

10.5.5 Failure to Fix Regular Assessments. Failure by the Board to fix regular assessments hereunder before the expiration of any fiscal year shall not be deemed either a waiver or modification in any respect of the provisions of this Declaration, or a release of the Owner from the obligation to pay the Assessments, or any installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed.

## 10.6 Special Assessments.

10.6.1 Purpose. Special assessments may be levied by the Board from time to time during any fiscal year if the Board determines that the estimated total amount of funds necessary to defray the expenses of the Association for a given fiscal year is or will become inadequate to meet expenses due to unanticipated delinquencies or costs and fees incurred to enforce this Declaration, unexpected repairs, replacements or reconstruction of Improvements in the Common Areas, or if funds are otherwise required for any activity or purpose of the Association permitted under this Declaration.

10.6.2 Budgeting. The Board shall determine the approximate amount necessary to defray the expenses set forth in Section 10.6.1 above, and, if the amount is approved by a majority vote of the Board, it shall become a special assessment.

10.6.3 Time and Manner of Payment. The Board may, in its discretion, prorate a special assessment over the remaining months of the fiscal year or levy the assessment immediately against each Lot. Special assessments shall be due and payable within thirty (30) days after a Member receives written notice from the Board specifying the amount of the special assessment, unless the Board specifies in such notice a later date of payment.

10.7 Reimbursement Assessment. The Board may levy a reimbursement assessment against any Owner who fails to comply in any respect with this Declaration, the Articles, Bylaws, the rules promulgated by the Board or the Development Guidelines, or as otherwise permitted elsewhere in this Declaration, in an amount equal to any monies expended by the Association in remedying an Owner's failure to comply under this Declaration or in the amount of a fine or penalty imposed pursuant to this Declaration. All such reimbursement assessments shall be paid to the Association within five (5) days after demand.

## 10.8 Capital Improvement Assessment.

10.8.1 Purpose. Capital improvement assessments may be levied by the Association for the purpose of defraying, in whole or in part, the cost of construction of any Improvements deemed reasonably necessary by the Board for the benefit of Prairie Highlands.

10.8.2 Time and Manner of Payment. Capital improvement assessments shall be due and payable by all Owners in such equal installments and during such period or periods in the same manner as Special Assessments.

10.9 Working Capital Assessment. To assist the Association in establishing adequate funds to meet its expenses or to purchase necessary equipment or services for the purposes herein provided, each Owner of a Lot other than Declarant shall pay to the Association a working capital assessment (the "Working Capital Assessment") immediately upon becoming the Owner of the Lot. During the Period of Declarant Control, such funds may only be used to establish a replacement and repair reserve account or to apply towards repair and reconstruction of Common Areas. The Board shall at any time have the right, by an affirmative vote of the majority of the members of the Board, and based upon the Board's analysis of replacement and repair reserves, to permanently or temporarily reduce the amount of the Working Capital Assessment or cease assessing the Working Capital Assessment, and having ceased to assess the Working Capital

Assessment, the Board shall have the right to reinstate assessment of such fee at any time thereafter, it being the intent that the Board shall have the right to begin or cease assessment of the Working Capital Assessment as the Board deems appropriate from time to time. The initial Working Capital Assessment shall be One Hundred and 00/100 Dollars (\$100.00) per Membership Unit being acquired by the new Owner.

10.10 Rate of Assessment.

10.10.1 In General. All Assessments (other than a reimbursement assessment levied against an Owner pursuant to Section 10.7, a Working Capital Assessment under Section 10.9, or a Zone Specific Assessment under Section 10.10.2) shall be fixed at a uniform rate and levied based upon the number of Membership Units owned by each Owner in relationship to the total number of Membership Units in the Association at the time the Assessment is levied or imposed, as reflected in the records of the Association.

10.10.2 Zone Specific Assessments. Notwithstanding the foregoing, if the Board, shall reasonably and in good faith determine that certain costs and charges incurred by the Association provide a special benefit to certain Zones within the Property (“Zone Specific Costs”), then in such case the Board may cause such Zone Specific Costs to be assessed only against the Owners of Lots in such Zones (a “Zone Specific Assessment”). Such Zone Specific Assessments shall be fixed at a uniform rate and levied based upon the number of Membership Units owned by each Owner within the applicable Zone in relationship to the total number of Membership Units in such Zone at the time the Zone Specific Assessment is levied or imposed, as reflected in the records of the Association.

10.11 Estoppel Certificate. The Board, on not less than twenty (20) days prior written request and for a reasonable fee to be established from time to time by the Board, shall execute, acknowledge and deliver to the party making such request a written statement certifying whether or not, to the knowledge of the Association with no duty to investigate or make further inquiry, a particular Owner is in default as to its Lot under the provisions of this Declaration, and further stating the dates to which installments of Assessments have been paid as to such Lot. Any such certificate may be relied on by a prospective purchaser of the Lot or a Mortgagee, but reliance on such certificate shall not extend to any default (except one involving the payment of Assessments) of which the signer had no actual knowledge.

10.12 Non-Assessed Property. The foregoing notwithstanding, all Non-Assessed Property shall be exempt from paying Assessments and the Assessment liens provided for in Article XI, but an Owner of Non-Assessed Property shall not be a Member and shall have no voting rights.

ARTICLE XI  
COLLECTION OF ASSESSMENTS: ASSESSMENT LIENS

11.1 Right to Enforce. The right to collect and enforce Assessments, including all related interest, late charges, costs and fees, is vested in the Board acting for and on behalf of the Association. The Board, or its authorized representative, can enforce the obligations of the Owners to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Board may enforce the continuing lien against the Owner’s Lot

by judicial foreclosure proceedings. Any suit to recover a money judgment for unpaid Assessments, together with all other amounts described in this Article XI, may be maintainable with or without foreclosing or waiving the lien rights.

11.2 Notice of Default; Interest; Late Charges; Creation of Lien. Failure to make payment of any Assessment or installment thereof related to any Lot on or before the due date shall constitute a default and all amounts that are delinquent shall bear interest at a rate per annum equal to five percent (5%) more than the Prime Rate on the date of default (and shall fluctuate thereafter as the Prime Rate changes from time to time) and, if not paid within ten (10) days, a late charge of five percent (5%) (or such lower interest and late charges as the Board shall determine in its discretion) shall also be due on the outstanding balance, and all costs and expenses incurred by the Board or its authorized representative in the collection of the amounts, including reasonable attorneys' fees and costs, shall be part of the Assessment past due and the full Assessment shall be a lien against such Lot. The lien created pursuant to this Article shall not be foreclosed until the Board or its authorized representative has delivered written notice to the delinquent Owner or Owners not less than forty-five (45) days before commencement of any proceedings to enforce such lien, which shall set forth notice of default and a demand for payment, and unless such delinquency has not been cured in full within said 15-day period, including payment in full of all interest and late charges.

11.3 Notice of Lien; Foreclosure. Upon the giving of notice and failure to cure as provided in Section 11.2, the Association may record a notice of assessment lien against the Lot of the defaulting Owner (a "Recorded Assessment Lien"). In addition, the Association may proceed to foreclose the Recorded Assessment Lien provided for in this Article in any manner provided or permitted for the foreclosure of realty mortgages in the State of Wisconsin (including the right to recover any deficiency). The Association shall not be obligated to release any Recorded Assessment Lien until all delinquent Assessments, including interest, late charges, attorneys' fees and collection costs, have been paid in full, whether or not all such amounts are set forth in the recorded notice. On becoming delinquent in the payment of any Assessments or installments thereof, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of its Lot to the Association and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the Association, be enforced by the Association through specific performance). The Association, acting on behalf of the Owners, shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

11.4 No Offsets. All Assessments shall be payable in the amounts covered by the particular Assessment and no offsets against such amount shall be permitted for any reason, including, without limitation, nonuse or abandonment of a Lot or a claim that the Association is not properly exercising its duties of maintenance, operation or enforcement.

11.5 Priority; Subordination of Lien to First Mortgages.

11.5.1 Priority of Lien. The Recorded Assessment Lien described herein shall be superior to all charges, liens and encumbrances, including without limitation all mortgages and deeds of trust (except as provided in Section 11.5.2 below), federal and state tax liens, judgment

liens, and liens for labor or materials, which may be hereafter imposed against any portion of the Property.

11.5.2 Subordinate to First Mortgages. Notwithstanding the foregoing, the Recorded Assessment Lien provided for herein shall be subordinate and subject to the lien for governmental taxes and assessments which is deemed superior hereto by applicable law and the lien of any first Mortgage encumbering a Lot which is recorded prior to the Recorded Assessment Lien referred to in Section 11.3, but only as to advances or payments made pursuant to said Mortgage prior to the time the Recorded Assessment Lien is placed of record, and provided further that each such first Mortgage must have been made in good faith and for value and duly recorded in the office of the Register of Deeds of Kenosha County prior to the recording of the Recorded Assessment Lien. The sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien of such Assessments only as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from any obligation to pay any Assessments thereafter becoming due nor from the lien securing any subsequent Assessments. Where the holder of a first Mortgage or other purchaser of a Lot obtains title to the same as a result of foreclosure, such title holder, its successors and assigns, shall not be liable for Assessments by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer, except for the share of Assessments resulting from a reallocation of Assessments which are made against all Lots. The Recorded Assessment Lien provided for herein shall not be subordinate to the lien of any Mortgage which is junior to a first Mortgage.

11.6 Transfer of Property. After the sale of any Lot within Prairie Highlands, the selling Owner or Owners shall not be personally liable for any Assessment levied on its Lot after the date of such transfer of ownership and written notice of such transfer is delivered to the Association. However, except as provided in Section 11.5 with respect to a transfer of a Lot pursuant to foreclosure proceedings, the transferred Lot shall remain subject to the lien securing payment of all Assessments, including Assessments levied prior to the date of transfer. The selling Owner(s) shall also remain personally responsible for all Assessments and charges levied on its Lot prior to any such transfer. Upon the transfer of ownership of any Lot (excluding the initial sale by Declarant), the Board, in its discretion, may charge a reasonable transfer assessment to cover administrative costs associated with said transfer of ownership.

11.7 Other Enforcement Measures. In addition to the other remedies set forth in this Article, the Board may suspend the right of any Owner who is in default on any Assessments to vote pursuant to Section 4.3 above or the Articles and the Bylaws during the period of any default.

11.8 Contracts with Owners. If the Association elects to enter into contracts with Owners for the performance of special maintenance or other services to that Owner's Lot, any fees charged to that Owner for such services shall be due within ten (10) days after billing, shall be an Assessment, shall be secured by the Assessment lien, shall be the Owner's personal responsibility, and shall be enforceable as provided herein with respect to the Assessments.

ARTICLE XII  
DESTRUCTION OR CONDEMNATION OF COMMON AREAS

12.1 Repair. Within a reasonable time after the damage or destruction of all or any portion of the Common Areas, the Board shall cause the same to be repaired, reconstructed and restored substantially to the same condition as the same existed prior to such damage or destruction.

12.2 Insurance Proceeds Insufficient. If upon such damage or destruction the proceeds of insurance available to the Association are insufficient to cover the cost of repair, reconstruction and restoration of the damaged or destroyed portions of the Common Areas, the Board shall be authorized to specially assess all Owners and Lots for the additional funds needed pursuant to Section 10.6.

12.3 Eminent Domain. The Board shall represent all Members in connection with any condemnation proceeding regarding the Common Areas and shall be entitled to negotiate and settle with the condemning authority and to make a voluntary sale to the condemning authority in lieu of legal action. All condemnation proceeds regarding the Common Areas shall be paid to the Association to be used by the Board in its sole discretion for the purposes set forth in Section 10.2, after paying any costs or fees incurred by the Association in negotiating, settling and contesting the condemnation.

ARTICLE XIII  
DURATION, MODIFICATION AND TERMINATION

13.1 Duration of Covenants. This Declaration, and all covenants, conditions, restrictions and easements herein, shall continue and remain in full force and effect at all times with respect to Prairie Highlands and each part thereof, now or hereafter made subject thereto (subject, however, to the right to amend and terminate as provided in Section 13.2 below) for a period of thirty (30) years, commencing on the date this Declaration is recorded in the Office of the Register of Deeds of Kenosha County. From and after said date, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless earlier terminated as provided in Section 13.2 below.

13.2 Termination or Modification. This Declaration may be terminated, modified or amended in whole or in part with respect to all or any portion of Prairie Highlands solely by Declarant during the Period of Declarant Control, and thereafter by a vote of at least seventy-five percent (75%) of the Membership Units in the Association. Notwithstanding anything to the contrary set forth herein, the Exclusive Uses or Restricted Uses may only be terminated, modified, amended or released upon the recording of a written instrument that has been signed by Declarant and the Owner of the portion of the Property that is benefitted by such Exclusive Use or Restricted Use and the easement rights of any Lot Owner to flow storm water into the storm water management system and into the Detention/Retention Basins on the Property provided in Section 6.4 hereof may not be terminated without such Lot Owner's consent for so long as such storm water management system provides storm water drainage for the Property.

ARTICLE XIV  
ENFORCEMENT

14.1 Enforcement by Board; Right to Perform.

14.1.1 Failure to Maintain Improvements and Lots. Upon a failure to maintain and repair in accordance with Sections 7.3 and 7.4.4 above, or to perform any other obligation under this Declaration, the Board shall notify the respective Owner in writing pursuant to Section 17.7 of such default. If such default is not cured by the Owner or its Lessee within thirty (30) days from the date such notice is given to the Owner or if such default is incapable of being cured in thirty (30) days, such longer time as is necessary so long as such Owner is using diligent efforts to so cure same, the Board, or its designated agent or contractors, shall have the right, in addition to the rights and remedies set forth in Section 14.2, to enter upon the Lot for the purpose of maintaining, restoring or repairing said Improvement or Lot. The costs incurred by the Board in maintaining, restoring or repairing said Improvement or Lot, together with a charge for the overhead of the Board and the Association in an amount equal to fifteen percent (15%) of such costs, shall be paid by such Owner as a reimbursement assessment in accordance with Section 10.7 hereof.

14.1.2 Failure to Install Landscaping. If any landscaping has not been installed within the period required in Section 8.8 above, the Board shall notify the Owner in writing that the landscaping is to be installed within thirty (30) days from the date of such notice. If the landscaping has not been installed within such additional 30-day period, the Board or its designated agent or contractors shall have the right, in addition to the other rights set forth herein, to enter upon the Lot for the purpose of installing the approved landscaping. If a landscape plan has not been approved by the Architectural Committee, the Board may cause a plan to be prepared and submitted to the Architectural Committee for approval prior to installation. All costs incurred by the Board in preparing a landscape plan and installing such landscaping, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25%) of such costs, shall be paid by the Owner as a reimbursement assessment in accordance with Section 10.7 hereof.

14.1.3 Other Covenants. Declarant and/or the Board or their duly authorized agents shall have the right, upon violation or breach of any other covenant, restriction or easement set forth herein, if such violation or breach continues for a period of thirty (30) days after written notice thereof is given to the Owner or if such violation or breach is incapable of being remedied in thirty (30) days, such longer time as is necessary so long as such Owner is using diligent efforts to so remedy the same, to enter upon the Lot where such violation or breach exists, and summarily remove, at the expense of the Owner thereof who shall pay all such expenses within five (5) days after demand, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions of this Declaration. All costs so incurred by the Board, together with a charge for the overhead of the Board and the Association in an amount equal to twenty-five percent (25%) of such costs, shall be paid by the Owner as a reimbursement assessment in accordance with Section 10.7 hereof.

14.1.4 Inspection Rights. Members of the Board and Architectural Committee, or authorized representatives thereof, have the right from time to time, during reasonable hours

and upon reasonable prior notice to enter upon and inspect any Lot and the Improvements thereon for the purpose of determining whether or not the provisions of this Declaration have been, or are being, complied with, and the exercise of such rights shall not be deemed a trespass upon such Lot.

14.1.5 Other Enforcement Measures. In addition to other remedies set forth herein, the Board shall have the right to suspend a defaulting Owner's right to vote under Section 4.3 and the Articles and Bylaws during the period of any default. If an Owner is in default on Advertising and Promotional Program assessment, the Board may remove the name of such Owner (and the names of occupants of such Owner's Lot) from any advertising or promotional materials until such Owner is no longer in default.

14.2 Additional Remedies In addition to the rights and remedies set forth in Article XI and Section 14.1 above, in the event of any breach, default, noncompliance, violation or failure to perform or satisfy any of the covenants, conditions, restrictions and easements contained in this Declaration by an Owner or by a Lessee or other Person with respect to the Lot of an Owner (collectively referred to herein as a "default"), and the default is not cured within thirty (30) days after written notice describing the default is given to such Owner by Declarant and/or the Board (or if any such default is not reasonably capable of being cured within such 30-day period, then if such Owner has not commenced to cure the default promptly after such notice is given and does not thereafter diligently continue to prosecute such cure to completion), then Declarant or the Association may enforce any one or more of the following rights or remedies in this Section 14.2 or any other rights or remedies available at law or in equity, whether or not set forth in this Declaration. All rights and remedies set forth in this Declaration or available at law or in equity shall be cumulative and not mutually exclusive. No Owner shall be permitted to enforce the Declaration against another Owner without the advance written approval of Declarant during the Period of Declarant Control or, thereafter, the Association.

14.2.1 Damages. Declarant or the Association may bring a suit for damages arising from or with respect to any such default.

14.2.2 Declaratory Relief. Declarant or the Association may bring suit for declaratory relief to determine the enforceability of any of the provisions of this Declaration.

14.2.3 Injunctive Relief, Specific Performance. It is recognized that a default hereunder may cause material injury or damage not compensable by an award of money damages and that Declarant or the Association shall be entitled to bring an action in equity or otherwise for a specific performance to enforce compliance with this Declaration, or for any injunctive relief to enjoin the continuance of any default or to prevent a default.

14.2.4 Fines. This Section 14.2.4 may be enforced only by the Association. Upon a default that is defined in this Section 14.2, the Board may assess fines based on a schedule of fines adopted from time to time by the Board for various types of defaults that may arise under this Declaration, or as the Board may assess for defaults not covered by an existing schedule of fines, provided that the Board shall assess a fine that is reasonable and appropriate under the circumstances, and provided further that the assessment of a fine shall be in addition to all other rights and remedies available hereunder.



14.3 Rights of Lenders. No default under or violation of any provision of this Declaration shall defeat or render invalid the lien of any Mortgage or similar instruments securing a loan made in good faith and for value with respect to the development or permanent financing, or any refinancing, of any Lot or portion thereof, or any Improvement thereon. However, all of the provisions of this Declaration shall be binding upon and effective against any subsequent Owner of any Lot or any portion thereof whose title is acquired by foreclosure, trustee sale, deed in lieu of foreclosure or otherwise pursuant to the lien rights under any such Mortgage or similar instrument.

14.4 Attorneys' Fees. In any legal or equitable proceeding to determine the rights of the parties and/or to enforce or restrain the violation of this Declaration, the non-prevailing party or parties, as determined by the court for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties, as fixed by the court in such proceedings.

14.5 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to it upon the recurrence or continuance of said violation or the occurrence of a different violation, nor shall there be construed to be a duty upon Declarant or the Board to take any action to enforce the provisions of this Declaration.

14.6 No Liability Regarding Enforcement. Neither Declarant, the Board or any member thereof, the Architectural Committee or any member thereof, nor their successors or assigns (if such Persons have acted in good faith, without willful or intentional misconduct) shall be liable to any Owner or Lessee of any real property subject to this Declaration by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Declaration, or any part hereof. Each Owner and Lessee acquiring an interest in Prairie Highlands agrees that it will not bring any action or suit against Declarant, the Board or any member thereof, or the Architectural Committee or any member thereof, from time to time, or their successors and assigns to recover any such damages or to seek equitable relief.

#### 14.7 Declarant Right of Repurchase

14.7.1 Duty to Commence and Complete Construction. The Owner of a Lot who acquires such Lot from Declarant, and any subsequent Owner of such Lot, shall have six (6) months, or such longer period as may be granted by Declarant, from the closing date of the transfer of the Lot by Declarant to the first Owner to begin substantial construction of Improvements on such Lot. Once construction begins, it shall continue uninterrupted until substantial completion of such Improvements (which shall include the principal structure or structures to be constructed on such Lot), which shall be no later than one (1) year from commencement, unless a longer period is expressly granted in writing by Declarant. If an Owner fails to comply with this section or any agreement between Declarant and such Owner hereunder permitting development at a later date, Declarant may, but shall not be required to, thereafter, by written notice given to the Owner at any time prior to the commencement of substantial development, purchase the Lot for the price paid to Declarant by the first Owner (after subtracting Declarant's costs of both selling the Lot to the Owner as well as the costs of repurchasing it), if another price is not willingly agreed to in writing by Declarant and the then-Owner, or at such other price as was agreed upon by Declarant and the first Owner at the time

of the first conveyance to such Owner by Declarant, by giving written notice to the then-Owner of Declarant's intention to repurchase. The notice can be given at any time after failure of an Owner to comply with the requirements of this section.

14.7.2 Completion of Construction or Restoration of Site. In the alternative, if the Owner has not commenced substantial construction of Improvements on the Lot within the six (6) month period referred to in Section 14.7.1 above, or if the Owner has not substantially completed such construction within the one (1) year period referred to in Section 14.7.1 above, and if the Owner does not remedy such failure to commence or complete construction within thirty (30) days after written notice from Declarant to the Owner, then Declarant may enter upon such Owner's Lot for the purpose of either (i) commencing or completing (as applicable) such required construction, or (ii) restoring the Lot to the condition it was in prior to the commencement of construction, in either event at such Owner's cost and expense. If Declarant commences or completes construction or restores the Lot as set forth herein, the Owner shall reimburse Declarant for all costs so incurred by Declarant within thirty (30) days after Declarant's demand therefor. If the Owner fails to reimburse Declarant for such costs and expenses within thirty (30) days after Declarant's demand therefor, Declarant shall have the right to record a lien against the Owner's Lot. Such lien may thereafter be enforced by Declarant through foreclosure of the lien or by action on the debt or both.

14.8 Declarant Right of First Refusal. The Declarant shall have the right of first refusal on any contemplated sale of a vacant Lot by any Owner. The Owner shall provide the Declarant with a copy of any bona fide offer which the Owner has accepted or intends to accept, and the Declarant shall have thirty (30) days after receipt thereof, to elect, at its option, to purchase the Lot upon the same terms and conditions set forth in the bona fide offer. If the Declarant elects to purchase, the Owner shall, in addition to complying with all other terms and conditions of such offer to purchase, no later than fifteen (15) days before the date set for closing, furnish the Declarant with a commitment for title insurance in the amount of the purchase price, naming the Declarant as the insured and showing title to be in the condition called for in the bona fide offer to purchase. If the Declarant rejects the offer or fails to act within thirty (30) days, the Owner may close the transaction with the proposed purchaser upon the terms of the offer submitted to the Declarant. Rejection of or failure of the Declarant to act upon an offer does not waive the Declarant's right of first refusal should the subsequent Owner later decide to sell the Vacant Lot. This section shall not apply to the sale of a Lot by an Owner to an entity controlled by the Owner or to the acquisition and subsequent sale, by a bona fide third party lender, by reason of a mortgage foreclosure or deed in lieu of foreclosure. This section shall terminate upon commencement of construction on a Lot approved in accordance with the terms hereof.

14.9 Enforcement by the Village. The Village shall have the right, but not the obligation, to enforce the provisions in this Declaration in the same manner as the Declarant, Association or Architectural Committee.

## ARTICLE XV RESERVED RIGHTS OF DECLARANT

15.1 Right to Use Common Areas to Promote Prairie Highlands. Declarant shall have, and hereby reserves the right to, reasonable use of the Common Areas and services offered by the

Association in connection with the promotion and marketing of Lots within the Property, such use to be at Declarant's cost and expense. The rights of Declarant shall include, without limitation, the right (i) to erect and maintain on any part of the Common Areas and on any portion of the Property owned by Declarant, such Signs, temporary buildings and other structures as Declarant may reasonably deem necessary or proper from time to time in connection with the promotion, development and marketing of Lots within Prairie Highlands; (ii) to use vehicles and equipment on the Common Areas or any portion of the Property owned by Declarant for promotional purposes; and (iii) to permit purchasers of Lots to use the Common Areas in a manner reasonably designated by Declarant, as its sole election, to promote, develop and market subdivided portions of said Lot to Persons interested in purchasing the same.

15.2 Right to Construct Additional Improvements Within Common Areas. Declarant shall have, and hereby reserves, the right to construct additional Improvements within the Common Areas from time to time for the improvement and enhancement of the Common Areas and of Prairie Highlands and for the benefit of the Association and its Members, and the same shall thereafter be maintained by the Association pursuant to Section 7.5.

15.3 Right to Complete Development of Prairie Highlands. During the Period of Declarant Control, Declarant shall have, and hereby reserves, the right (i) to subdivide or resubdivide or otherwise split or combine any portion of the Property or otherwise to complete development of Lots; (ii) to construct or alter Improvements on any Lot owned by Declarant; (iii) to maintain an office for construction, sales, promotion or leasing purposes or other similar facilities on any Lot owned by Declarant or by the Association within the Property; and (iv) without the approval of the Association or the Architectural Committee, to excavate, cut, fill or grade any Lot owned by Declarant, or to construct, alter, demolish or replace or renovate any Improvements owned by Declarant or to alter its construction plans or design or to rezone or amend its master plan or any development documents agreed to by Declarant and the Village, and to permit any activity, use or improvement by Declarant on any Lot owned by Declarant. Without limiting the generality of the foregoing, Declarant shall be exempt from the provisions of Section 7.1.

15.4 Right to Approve Conveyance or Change in the Use of Common Areas. During the Period of Declarant Control, the Association shall not, without first obtaining the prior written consent of Declarant, which consent shall not be unreasonably withheld, convey, change or alter the use of the Common Areas, record a Mortgage against the Common Areas or use Common Areas other than for the benefit of the Members.

15.5 Declarant's Right to Grant Additional Easements. During the Period of Declarant Control, Declarant shall have, and hereby reserves the right to grant or create, temporary or permanent easements from time to time for construction, access, utilities, drainage and other purposes for the development and sale of the Property in, on, under, over and across any Lots or other portion of the Property owned by Declarant, and the Common Areas owned by the Association so long as the foregoing exercise of rights do not increase the burdens or cost to the other Owners.

15.6 Right to Convey Additional Property for Use as Common Area. During the Period of Declarant Control, Declarant shall have, and hereby reserves, the right to convey additional real

property and any Improvements thereon, or grant easements against the Property owned by Declarant, to the Association at any time and from time to time for use as Common Areas, and the Association shall be obligated to assume administrative and maintenance responsibilities thereof in accordance with Section 7.4.

15.7 Reserved Rights Do Not Create Obligations. Anything in this Article XV to the contrary notwithstanding, the foregoing rights in favor of Declarant shall not in any way be construed as creating any obligation on the part of Declarant to exercise any such rights or to perform any of the activities, construct any Improvements, convey any property or grant any easements referred to in this Article.

ARTICLE XVI  
ASSIGNMENT OF DECLARANT'S RIGHTS AND DUTIES.

Any and all of the rights, powers and reservations of Declarant herein contained may be assigned by Declarant from time to time, in its discretion, to any Person who will assume the duties of Declarant pertaining to the particular rights, powers and reservations assigned. Upon such assignment, any such Person assuming such duties (and its heirs, successors and assigns) shall have, to the extent of such assignment, the same rights and powers and shall be subject to the same obligations and duties as are given to and assumed by Declarant in this Declaration. Any assignment made under this Article shall be in recordable form and shall be recorded in the Office of the Register of Deeds of Kenosha County. The assignment of such powers, rights and reservations shall not relieve the Declarant of its obligations that have accrued and are outstanding as of the date of assignment. Notwithstanding any provision of this Declaration to the contrary, Declarant may, at any time and from time to time without the consent of the Board or other Owners, temporarily or permanently relieve itself of all or a portion of its rights and obligations under this Declaration by filing in the Office of the Register of Deeds of Kenosha County a notice stating that Declarant has surrendered the rights and obligations specified therein, and upon the recording of such notice, said powers and obligations so specified shall immediately vest in the Board of Directors unless otherwise specified therein.

ARTICLE XVII  
ADDITIONAL PROVISIONS.

17.1 Constructive Notice and Acceptance of Declaration. Every Person who now or hereafter owns or acquires any right, title or interest in or to any portion of Prairie Highlands is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in said Prairie Highlands.

17.2 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for enforcement hereof shall lie exclusively in Kenosha County, Wisconsin, and each Person with rights hereunder hereby waives the right to sue or be sued in any other place.

17.3 Mutuality and Reciprocity. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot of Prairie Highlands; shall create mutual, equitable

servitudes upon each Lot of Prairie Highlands in favor of every other Lot of Prairie Highlands; and shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees of real property in Prairie Highlands, their heirs, successors and assigns.

17.4 Declarant's Disclaimer. Declarant makes no warranties or representations that the plans presently envisioned for the development of Prairie Highlands can or will be carried out, or that any Lot is or will be committed to or developed for any particular use. In addition, while Declarant has no reason to believe that any of the provisions of this Declaration are or may be unenforceable, Declarant makes no representations as to enforceability. Declarant shall have no liability for the development of Prairie Highlands or the enforcement of this Declaration.

17.5 Headings. Headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

17.6 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the same shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired and in full force and effect.

17.7 Notices.

17.7.1 To Declarant or Architectural Committee. Any and all notices, or other communication made pursuant hereto, shall be in writing and shall be deemed properly delivered, given to or received by Declarant or the Architectural Committee, as the case may be (a) when personally delivered against receipted copy, (b) the day after deposit with an overnight courier, or (c) four (4) business days after being mailed by certified or registered mail, postage prepaid; in either case to Declarant or the Architectural Committee at the following address:

If to Declarant: Village of Pleasant Prairie  
9915 39th Avenue  
Pleasant Prairie, WI 53158  
Attn: Village Administrator

If to Architectural Committee: Prairie Highlands Property Owners'  
Association, Inc.  
c/o Village of Pleasant Prairie  
9915 39th Avenue  
Pleasant Prairie, WI 53158  
Attn: Community Development Director

Declarant or the Architectural Committee may change its address by (i) giving notice to all Owners, or (ii) giving notice to the Board at the principal office of the Association, or (iii) recording a Notice of Change of Address in the Office of the Register of Deeds of Kenosha County.

17.7.2 To Owners. A notice to any Owner shall be deemed duly given, delivered and received (a) when personally delivered against receipted copy, (b) the day after deposit with an overnight courier, or (c) four (4) business days after mailing by certified or registered mail, postage prepaid; in either case to the address of the Owner's Lot or to such other address as the Owner has specified in writing to the Association.

17.8 Exhibits. All Exhibits attached hereto are incorporated herein by this reference and shall constitute a part of this Declaration.

17.9 Requirements of Village. The covenants and restrictions contained herein are in addition to the requirements, codes and ordinances imposed by the Village on Prairie Highlands. In the event of a conflict or inconsistency between the provisions of this Declaration and the requirements, codes or ordinances of the Village applicable to Prairie Highlands, then the more restrictive requirement shall govern.

*[signatures on following page]*

**DATED** as of the day, month and year first above written.

**VILLAGE OF PLEASANT PRAIRIE,**  
a Wisconsin municipal corporation

By: \_\_\_\_\_  
Name: John P. Steinbrink  
Title: Village President

By: \_\_\_\_\_  
Name: Jane C. Snell  
Title: Village Clerk

STATE OF WISCONSIN    )  
  )    ss.  
COUNTY OF KENOSHA    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018 the above-named John P. Steinbrink and Jane C. Snell to me known to be the Village President and Village Clerk of the Village of Pleasant Prairie, Wisconsin, respectively, who executed the foregoing instrument and acknowledged the same on behalf of said municipal corporation.

\_\_\_\_\_  
Jean M. Werbie-Harris, Notary Public,  
Kenosha County, Wisconsin  
My Commission Expires \_\_\_\_\_

**HARIBO OF AMERICA MANUFACTURING, LLC,**  
a Delaware Limited Liability Company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018 the above-named  
\_\_\_\_\_, the \_\_\_\_\_ of Haribo of America, Manufacturing, LLC,  
a Delaware limited liability company, to me known to be the person who executed the foregoing  
instrument and acknowledged the same on behalf of the aforesaid corporation.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, \_\_\_\_\_ County,  
State of \_\_\_\_\_  
My Commission Expires \_\_\_\_\_

This instrument was drafted by:  
  
Scott L. Langlois, Esq.  
Quarles & Brady LLP  
411 E. Wisconsin Avenue  
Milwaukee, WI 53202



**EXHIBIT A**

**LEGAL DESCRIPTION OF DECLARANT PROPERTY**

LOT 2, OUTLOT 1 AND OUTLOT 2 OF CERTIFIED SURVEY MAP NO. 2849, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR KENOSHA COUNTY, WISCONSIN ON DECEMBER 27, 2017, AS DOCUMENT NO. 1810901, BEING A REDIVISION OF ALL OF LOT 1 OF CERTIFIED SURVEY MAP NO. 2714 AND ADDITIONAL LANDS, ALL BEING A PART OF THE SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, THE NORTHEAST 1/4, SOUTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 24, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 21 EAST, VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

AND

LOT 2 OF CERTIFIED SURVEY MAP NO. 2714 RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR KENOSHA COUNTY, WISCONSIN ON NOVEMBER 7, 2012 AS DOCUMENT NO. 1686990, BEING A PART OF THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 21 EAST, VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

**EXHIBIT B**

**LEGAL DESCRIPTION OF LARGE MANUFACTURING PARCEL**

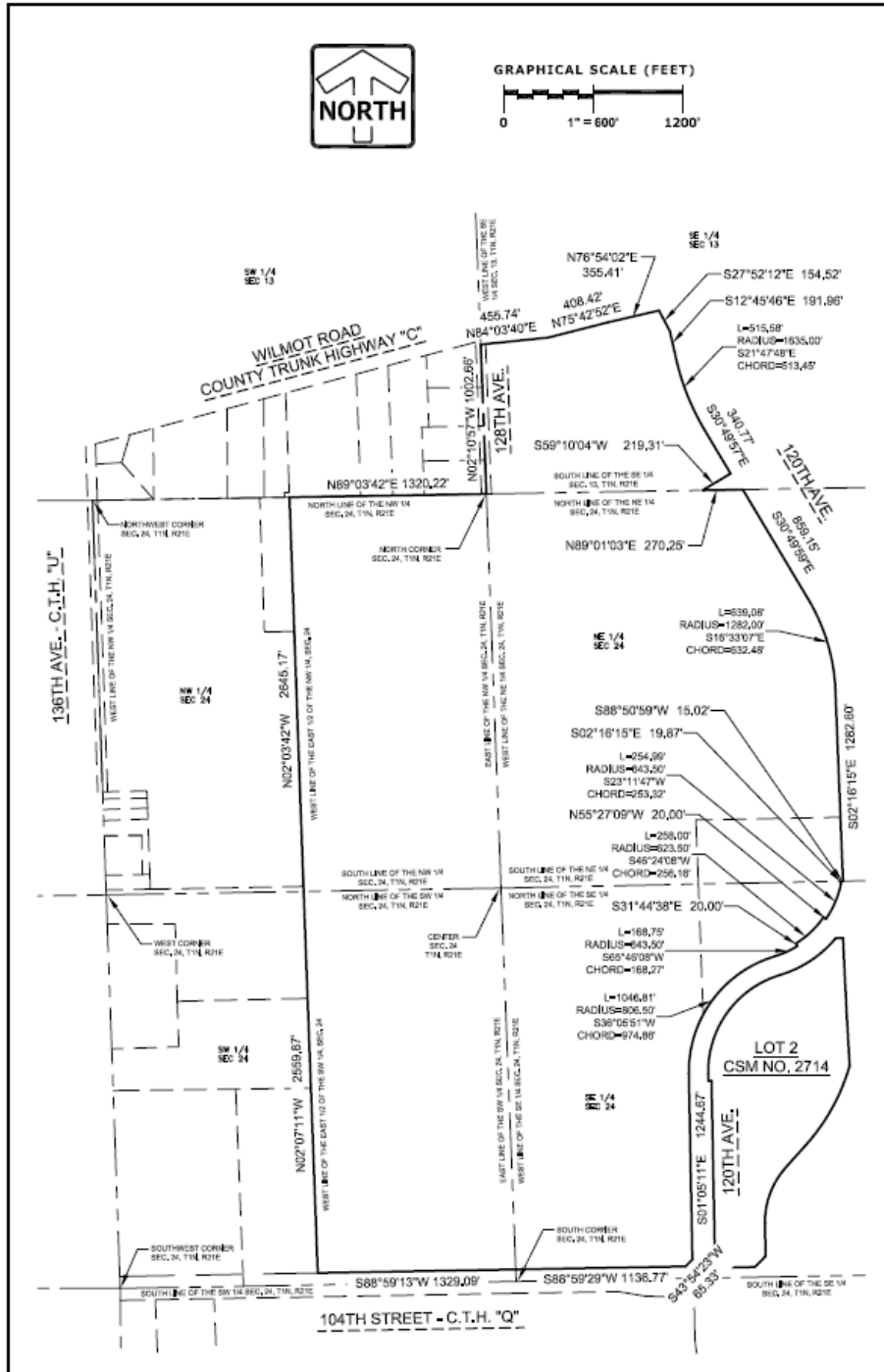
LOT 1 OF CERTIFIED SURVEY MAP NO. 2849, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR KENOSHA COUNTY, WISCONSIN ON DECEMBER 27, 2017, AS DOCUMENT NO. 1810901, BEING A REDIVISION OF ALL OF LOT 1 OF CERTIFIED SURVEY MAP NO. 2714 AND ADDITIONAL LANDS, ALL BEING A PART OF THE SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, THE NORTHEAST 1/4, SOUTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 24, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 21 EAST, VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

**LEGAL DESCRIPTION OF LARGE HEALTH CARE PARCEL**

LOT 2 OF CERTIFIED SURVEY MAP NO. \_\_\_\_\_, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR KENOSHA COUNTY, WISCONSIN ON \_\_\_\_\_, 2018, AS DOCUMENT NO. \_\_\_\_\_, BEING A REDIVISION OF THE DISCONTINUED 128TH AVENUE AND ALL OF LOT 2 OF CERTIFIED SURVEY MAP NO. 2849, BEING A PART OF THE SOUTHEAST 1/4 AND THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4 AND THE NORTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 21 EAST, VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

# EXHIBIT C

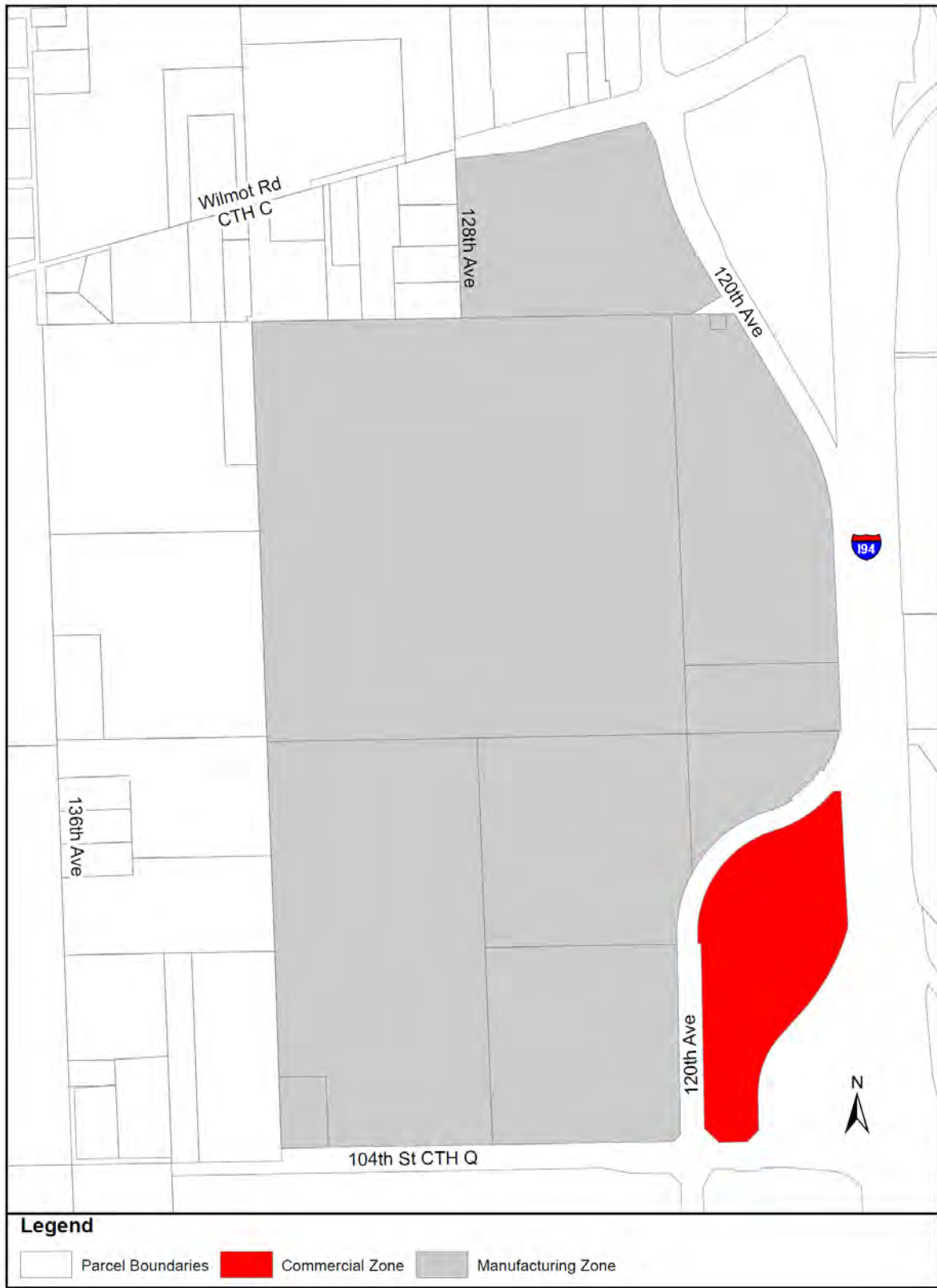
## GRAPHIC DEPICTION OF PRAIRIE HIGHLANDS CORPORATE PARK



**PRAIRIE HIGHLANDS - BOUNDARY EXHIBIT** 04/02/2018  
**PINNACLE ENGINEERING GROUP** PLAN | DESIGN | DELIVER  
 15850 W. BLUEMOUND ROAD | SUITE 210 | BROOKFIELD, WI 53005 WWW.PINNACLE-ENGR.COM PEC JOB # 897.00

**EXHIBIT D**

**PROPERTY ZONES**



## EXHIBIT E

### LARGE MANUFACTURING PARCEL PROVISIONS

Notwithstanding any provision set forth in the Declaration to the contrary, for so long as Haribo owns the Large Manufacturing Parcel, the following provisions shall supersede and replace any inconsistent provisions in the Declaration, to the extent provided below, regarding the development and construction of and operations upon the Large Manufacturing Parcel:

1. To the extent set forth in the Planned Unit Development Overlay Ordinance adopted by the Village for the Large Manufacturing Parcel, the detailed development site plans submitted therewith or exhibits attached thereto including the conceptual site plan or site plans approved by the Village (the "PUD Ordinance"), the Improvements and locations thereof, specifications shown thereon and uses set forth therein shall be deemed to comply with the provisions of this Declaration, including, without limitation, Article VII and Article VIII hereof, the Bylaws, and any Development Guidelines or rules and regulations adopted by the Declarant, Architectural Committee or the Board of Directors. Accordingly, to the extent detailed within the PUD Ordinance, neither the Declarant, nor the Board, nor the Association, nor the Architectural Committee shall have any right to raise any objection to the construction of any Improvement, nor to the design, signage, street name, heliport location and restrictions, condition, location, building materials, colors, lengths, width, height, grade, volume, access location, parking, landscaping, setbacks, equipment screening, loading areas, storage of trailers, lot coverage, exterior storage areas and service yards, location of above ground utilities, facilities and chillers, lighting or any other characteristic of such Improvement or use of the Large Manufacturing Parcel (collectively, the "Improvement Characteristics") to the extent set forth in the PUD Ordinance, and any such objection is hereby waived by any such parties, and any such Improvement or Improvement Characteristic is deemed approved pursuant to the terms of this Declaration. However, to the extent that any Improvement or Improvement Characteristic is not set forth in the PUD Ordinance, such Improvement or Improvement Characteristic shall comply with the terms of this Declaration when such Improvement is submitted for approval pursuant to Section VII of the Declaration. For the avoidance of doubt, the initial construction of Improvements and any subsequent Improvements shall be submitted to the Architectural Committee for approval pursuant to Article VII of the Declaration, but the Architectural Committee shall comply with the provisions of this Exhibit E in connection with providing such approvals.

2. Any subsequent amendment to the PUD Ordinance adopted by the Village shall be treated the same as the original PUD Ordinance, and the same waiver of objection, deemed approval and grandfathering shall apply to any such amendment, the same as provided in paragraph 1 above for the original PUD Ordinance.



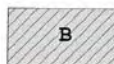
3. Notwithstanding Article VI or Article XV of the Declaration, or any other provision of the Declaration, neither the Declarant, nor the Board, nor the Association, nor the Architectural Committee shall have any right to grant any easement or multi-use path, trail or like encumbrance upon or over the Large Manufacturing Parcel without Haribo's written consent.

4. Notwithstanding anything contained in the Declaration to the contrary, for so long as Haribo owns the Large Manufacturing Parcel, Haribo shall have the right to appoint a representative to be one of the three Directors and one of the three Architectural Committee Members, notwithstanding any right to remove an individual Director or Architectural Committee Members nor the relinquishment by the Declarant of the right to appoint or remove a Director or Architectural Committee Member, nor the ability of the Members to elect the Directors or the right of the Board to appoint an Architectural Committee Member. In the event Haribo exercises its right to appoint a Director or Architectural Committee Member, the remaining Owners other than Haribo shall have the right to elect the remaining Directors or Architectural Committee Members. In the event the number of Directors is increased as provided in Section 4.5 of the Declaration, Haribo shall have the right to appoint at least one-third (1/3) of the Directors.
5. With respect to the last paragraph of Section 7.1.4.6 of the Declaration, in the event of a decision by the Architectural Committee regarding the Large Manufacturing Parcel, Haribo shall have the right to appeal such decision to the Board, whether or not Declarant is appointing the members of the Architectural Committee and the basis for any appeal by Haribo of the Board's decision shall not be limited to only whether the Board's decision was within its authority.
6. Notwithstanding Section 7.1.5 of the Declaration, the time for the Architectural Committee to approve or disprove an application relating to the Large Manufacturing Parcel shall be extended to be coterminous with the approval of such matter by the Village in connection with the approval process regarding the PUD Ordinance.
7. Sections 7.3.2 and 7.3.3 of the Declaration shall be modified to the extent of the Village's or Haribo's obligations to perform work in connection with the initial construction upon the Large Manufacturing Parcel as provided in the initial Development Agreement between the Village and Haribo for such construction.
8. Sections 7.1.6, 7.1.7, 14.7.1 and 14.7.2 of the Declaration shall not apply to construction upon the Large Manufacturing Parcel. Deadlines for the commencement and completion of construction upon the Large Manufacturing Parcel and maintenance of the undeveloped Large Manufacturing Parcel shall be dictated by the initial Development Agreement between the Village and Haribo for the initial construction upon the Large Manufacturing Parcel and shall be dictated by future development agreements or Village approvals for Improvements subsequent to Haribo's initial construction upon the Large Manufacturing Parcel.
9. Section 7.4.4 of the Declaration shall not apply to the Large Manufacturing Parcel.
10. Notwithstanding Section 8.15.3 of the Declaration, an application for rezoning, variance or use permits for the Large Manufacturing Parcel may be filed contemporaneously for approval with the Village and for approval under the Declaration.
11. The modifications and exceptions set forth in Section 42-139 of the Village Zoning Code are incorporated into the Declaration by reference.


12. In Section 9.9 of the Declaration, the period of discontinuation of “one hundred eighty (180) days” shall be deleted and replaced with “twelve (12) continuous months” when applied to the Large Manufacturing Parcel.
13. The Board of the Association shall not levy any Assessments pursuant to Article X of the Declaration to pay for any storm water management facilities which the Village is obligated to construct pursuant to that certain Development Agreement executed or to be executed between the Village and Haribo.
14. No Assessments will be levied against the Large Manufacturing Parcel pursuant to Article X of the Declaration to pay for the initial construction of any: (i) public or private road, (ii) storm water detention or drainage, (iii) other utility installations or (iv) site grading within Prairie Highlands; provided that the foregoing will not prohibit Assessments for the construction of new or additional facilities located in Common Areas after the initial construction of such facilities or the maintenance of initial or subsequently constructed facilities in the Common Areas.
15. In the event that Declarant excludes or deletes portions of the Property from the Declaration as provided in Section 2.3 of the Declaration, the Restricted Uses for the benefit of Haribo set forth on Exhibit H to the Declaration and the Exclusive Use(s) for the benefit of the Large Manufacturing Parcel set forth on Exhibit I to the Declaration shall not be released from such excluded or deleted portion of the Property without Haribo’s written consent.
16. Notwithstanding anything to the contrary in Section 13.2 of the Declaration, during the Period of Declarant Control, no amendment to the Declaration shall be made which modifies any provision of this Exhibit E, including but not limited to, the Exclusive Use and Restricted Uses for the benefit of Haribo set forth in Exhibit H and Exhibit I to the Declaration, without the written consent of Haribo.
17. After the Period of Declarant Control, any amendment to the Declaration will require a vote of at least seventy-five percent (75%) of the Membership Units of the Association as provided in Section 13.2 of the Declaration.
18. In the event Haribo desires to sell the Large Manufacturing Parcel, and is required to pay Shortfall (as defined in and pursuant to the Purchase and Sale Agreement and Development Agreement executed by Haribo and the Village) payments to the Village, and receives a bona fide offer which Haribo has accepted or intends to accept, including an obligation of the prospective purchaser to pay future Shortfall payments to the Village, the amount of such Shortfall payments to be paid to the Village will be credited against the Shortfall payments to be made to the Village, in the event that Declarant exercises its right of first refusal to purchase the Large Manufacturing Parcel under Section 14.8 of the Declaration pursuant to the terms of such bona fide offer.

**EXHIBIT F**  
**MASTER PLAN**



	<b>A</b>	LARGE MANUFACTURING PARCEL		PLANNED POND LOCATIONS
	<b>B</b>	LARGE HEALTH CARE PARCEL		
		PRAIRIE HIGHLANDS BOUNDARY		

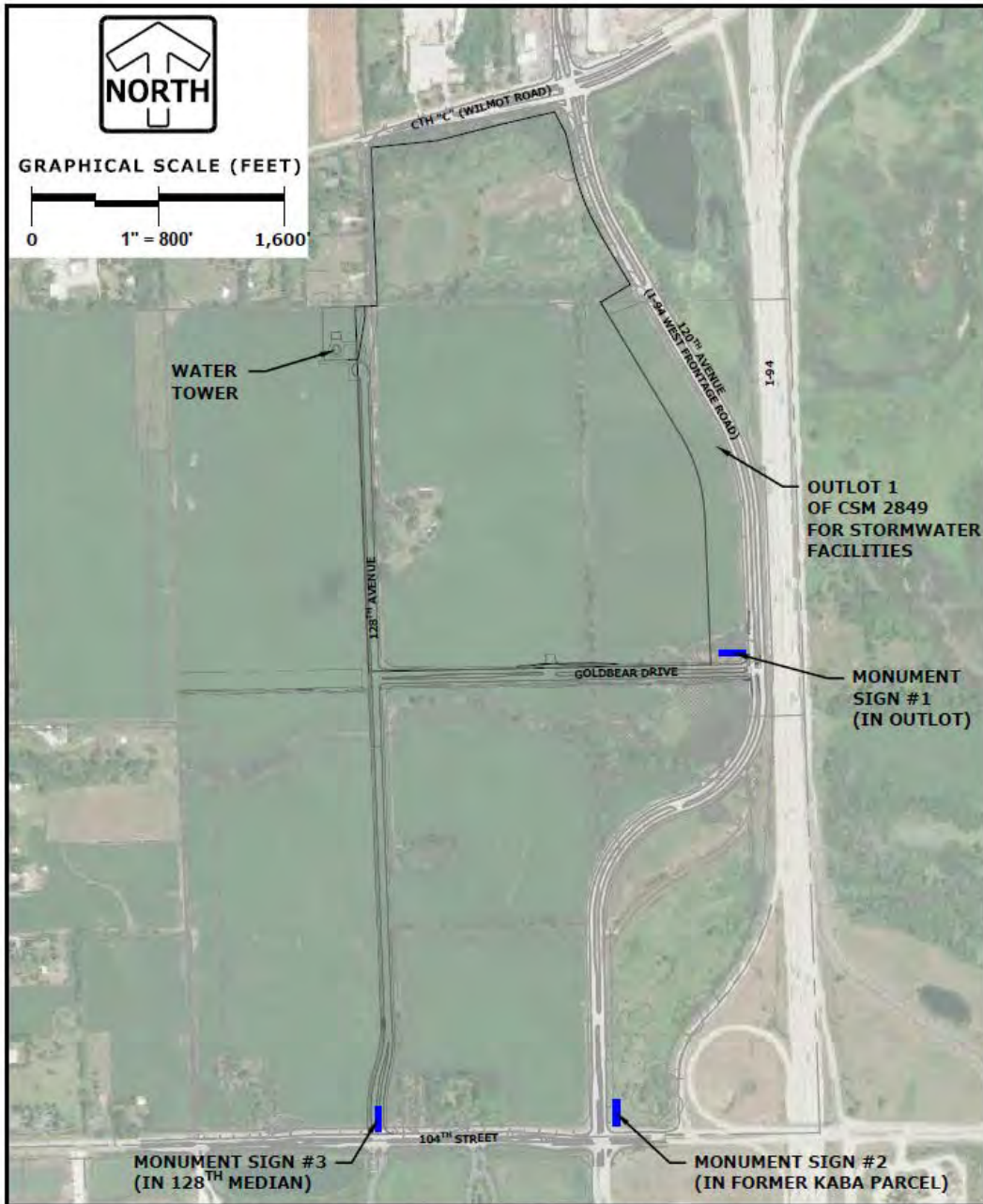
**EXHIBIT F**

0 250 500 Feet 



**EXHIBIT G**

**SIGN PLAN**



**PRAIRIE HIGHLANDS MONUMENT SIGN EXHIBIT** 03-13-18  
**PINNACLE ENGINEERING GROUP** PLAN | DESIGN | DELIVER  
15850 W. BLUEMOUND ROAD | SUITE 210 | BROOKFIELD, WI 53005 WWW.PINNACLE-ENGR.COM PEGJOB# 897.00-WI

## EXHIBIT H

### OTHER RESTRICTED USES

During the period of the ownership of the Large Manufacturing Parcel by Haribo, Prairie Highlands shall be subject to the following restrictions:

A. Haribo Restricted Uses

1. No part of Prairie Highlands, other than the Large Manufacturing Parcel, may be used for the manufacture of confections or candy.

2. The restrictions set forth in section 1 above: (i) are for the benefit of Haribo and may be enforced by Haribo through the exercise of all available rights and remedies at law and/or in equity; (ii) may only be amended by a written instrument that is signed by Declarant and Haribo; and (iii) Haribo's right to enforce these restrictions shall automatically terminate and Declarant may unilaterally remove these restrictions on the date on which Haribo ceases manufacturing operations on the Large Manufacturing Parcel for a period of over one (1) year (provided that such period shall be extended to allow completion of reconstruction or restoration of such facilities in the event of a casualty if reconstruction or restoration is commenced within two (2) years after such casualty and Haribo is diligently pursuing such completion).

B. Aurora Restricted Uses

During the period of the ownership of the Large Health Care Parcel by Aurora, Prairie Highlands shall be subject to the following restrictions:

1. No part of Prairie Highlands, other than the Large Health Care Parcel, may be used for the operation of a hospital, clinic, ambulatory surgery center, eye surgery clinic, urgent care clinic, oral surgery clinic, laboratory that analyzes blood and human tissues for medical treatment, physical therapy or rehabilitation facility, or medical office building (meaning an office building in which forty percent (40%) or more of the total rentable square footage is used for performing services described in this paragraph; but excluding any such services provided by an entity which does not offer such services to the general public in the location of Prairie Highlands, but limits said services at such locations to employees, dependents, family members of employees and similar parties as an employee benefit).

2. The restrictions set forth in section 1 above: (i) are for the benefit of Aurora and may be enforced by Aurora through the exercise of all available rights and remedies at law and/or in equity; (ii) may only be amended by a written instrument that is signed by Declarant and Aurora; and (iii) Aurora's right to enforce these restrictions shall automatically terminate and Declarant may unilaterally remove these restrictions on the date on which Aurora ceases health care operations on the Large Health Care Parcel (provided that such period shall be extended to allow completion of reconstruction or restoration of such facilities in the event of a casualty if reconstruction or restoration is commenced within 180 days after such casualty and Aurora is diligently pursuing such completion).

**EXHIBIT I**

**EXCLUSIVE USES**

The following parcels (as designated on the Master Plan) shall have Exclusive Uses within Prairie Highlands as set forth below:

Large Manufacturing Parcel                      From the Effective Date and for so long as Haribo or a successor owner of the Large Manufacturing Parcel which also uses the Large Manufacturing Parcel for the Exclusive Use is the owner of any part of the Large Manufacturing Parcel, then except for the Large Manufacturing Parcel and the Improvements now or hereafter constructed and/or replaced or redeveloped thereon, no portion of Prairie Highlands, a/k/a and defined herein as the Property or the Improvements now or hereafter constructed and/or replaced or redeveloped thereon may be used for the manufacturing, retail sales or marketing of confections or candy by a manufacture or their related companies (a related company includes any such operation where the following entities have at least a 5% investment interest), which shall include but not be limited to the following companies: Hershey Company, Mars Incorporated, Mondelēz International, Storck USA, LP, Ferrara Pan Candy Company, Ferrero International, S.A., Fini Sweets, Inc., Wrigley Company, Jelly Belly Candy Company, Just Born Quality Confections and Promotion In Motion Companies, Inc. This Exclusive Use may be enforced and amended and is subject to the conditions set forth in Exhibit H, Section A.2.

Large Health Care Parcel                      From the Effective Date and for so long as Aurora is the owner of the Large Health Care Parcel, then except for the Large Health Care Parcel and the Improvements now or hereafter constructed thereon, no portion of Prairie Highlands, a/k/a and defined herein as the Property or the Improvements now or hereafter constructed and/or replaced or redeveloped thereon may be used for the operation of a hospital, clinic, ambulatory surgery center, eye surgery clinic, urgent care clinic, oral surgery clinic, laboratory that analyzes blood and human tissues for medical treatment, physical therapy or rehabilitation facility, or medical office building (meaning an office building in which forty percent (40%) or more of the total rentable square footage is used for performing services described in this paragraph; but excluding any such services provided by an entity which does not offer such services to the general public in the location of Prairie Highlands, but limits said services at such locations to employees, dependents, family members of employees and similar parties as an employee benefit. This Exclusive Use may be enforced and amended and is subject to the conditions set forth in Exhibit H. Section B.2.

Consider approval of **Zoning Text Amendments (Ord. 18-19)** to amend Sections 420-38 D (6) to correct the reference to the Wisconsin Administrative Code for performance standards for odors and to amend Section 420-125.2 related to uses, mechanical screening, and hours open to the general public in the M-5, Production Manufacturing District.

**Recommendation:**

Village Plan Commission recommends that the Village Board to approve the **Zoning Text Amendments** subject to the comments and conditions of the May 14, 2018 Village Staff Report.

## VILLAGE STAFF REPORT OF MAY 14, 2018

Consider approval of **Zoning Text Amendments (Ord. 18-19)** to amend Sections 420-38 D (6) to correct the reference to the Wisconsin Administrative Code for performance standards for odors and to amend Section 420-125.2 related to uses, mechanical screening, and hours open to the general public in the M-5, Production Manufacturing District.

*On April 23, 2018 the Plan Commission approved Resolution #18-13 to initiate zoning text amendments to amend/clarify requirements related to the M-5, Production Manufacturing District and to correct a reference to the Wisconsin Administrative Code related to performance standards for odors.*

The amendments include:

1. To amend Section 420-38 D (6) related to performance standards for odors is amended to correct the reference in the Wisconsin Administrative Code to read:

Odors. Except in any Agricultural District, no activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful outside its premises. The guide for determining odor measurement and control shall be Ch. ~~NR 154~~ **NR429.032**, Wis. Adm. Code, and amendments thereto.
2. To amend Section 420-125.2 C (2) related to permitted service auxiliary uses in an office building is being clarified and amended to allow a day-care (for children or adults) not open to the general public; and a fitness center not open to the general public as permitted use.
3. To amend Section 420-125.2 C (4) (c) related to permitted service auxiliary uses in a corporate campus, whether within any building or within a separate standalone building is being clarified and amended to allow a day-care (for children or adults) not open to the general public; and a fitness center not open to the general public as permitted use.
4. To amend Section 420-125.2 E (2) to clarify that a day-care facility, either for children or adults that is open to the general public is allowed with approval of a conditional use permit.
5. To amend Section 420-125.2 L (8) (b) to specify that all mechanical units, ground or roof mounted shall be screened from public view by either landscaping or other approved high quality architectural grade metal screening or panels as specifically approved by the Plan Commission.
6. To amend Section 420-125.2 M(1) (a) related to Hours of Operation when the public is allowed to enter or remain on site for business purposes to read:

From 5:00 a.m. to 12:00 midnight maximum for corporate, business and professional office uses, and service or retail uses allowed as auxiliary permitted uses; for any day-care facilities, either for children or adults **that are open to the general public**, as may be allowed by a conditional use permit.

### **Recommendations:**

Village staff recommends that the Village Plan Commission send a favorable recommendation to the Village Board to approve the Zoning Text Amendments as presented.

**ORD. NO. 18-19**

**ORDINANCE TO AMEND THE VILLAGE ZONING ORDINANCE  
IN THE VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN**

**THE VILLAGE BOARD OF TRUSTEES OF THE VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN, DO HEREBY ORDAIN THAT THE FOLLOWING SECTIONS OF THE VILLAGE ZONING ORDINANCE ARE HEREBY AMENDED AS FOLLOWS:**

**1. Section 420-38 D (6) related to performance standards for odors is hereby amended as follows:**

- (6) Odors. Except in any Agricultural District, no activity shall emit any odorous matter of such nature or quantity as to be offensive, obnoxious or unhealthful outside its premises. The guide for determining odor measurement and control shall be Ch. ~~NR-154~~ NR429.032, Wis. Adm. Code, and amendments thereto.

**2. Section 420-125.2 related to M-5 District regulations are amended to read as follows:**

420-125.2 M-5 Production Manufacturing District.

**A. Purpose and characteristics.**

- (1) The M-5 Production Manufacturing District is intended to provide for manufacturing, assembly, office, and research and development uses with limited warehouse and distribution uses within an enclosed structure wherein no high hazard uses are allowed and the method of manufacturing is not injurious to the point of constituting a nuisance to the occupants of adjacent properties by reason of the emission or creation of noise, vibration, smoke, dust or particle matters, toxic or noxious materials, odors, fire or explosive hazards, glare or heat and located in those areas where the relationship to surrounding land uses would create few problems of compatibility. This district also allows for office parks or individual office buildings and ancillary uses, which may or may not include space for manufacturing, assemblies, or research and development but provides direct services to the employees or customers or other uses in the area. It is anticipated that these areas would be developed in an attractive corporate parklike setting with landscaping, consistent signage, and similar or compatible building materials and designed to present an integrated image to customers. No such district shall be established unless it is in compliance with Village adopted or amended comprehensive, neighborhood and conceptual plans.

- (2) Some of the uses allowed in the M-5 District are based on the Use and Occupancy Classification specified in Chapter 3 of the 2006 International Building Code (2006 IBC), as may be amended from time to time. Where a use is proposed for a purpose that is not specifically provided in Chapter 3 of the 2006 IBC and is not specifically listed as a prohibited use in the M-5, District, such use shall be classified in the group that the occupancy most clearly resembles, according to the firesafety and relative hazard involved. The Zoning Administrator shall make the final determination if the use is allowed within the M-5 District.

**B. Permitted uses.** The following listed principal uses and certain unspecified principal uses approved pursuant to Subsection C below are allowed as permitted uses in the M-5 District, subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

- (1) Uses classified as Factory Group F in Section 306 of the 2006 IBC, including assembling, disassembling, fabricating, finishing, manufacturing, packaging, distributing [pursuant to Subsection C(3) below], repair or

processing operations that are not classified as a Group H Hazard or Group S Storage pursuant to Sections 307 and 311 of the 2006 IBC; provided, however, the use is not listed as a prohibited use in Subsection C below.

- (a) Factory Industrial F-2 Low-hazard uses that involve the fabrication or manufacturing of noncombustible materials which during finishing, packing or processing do not involve a significant fire hazard, as determined by the Village Fire & Rescue Chief, including but not limited to beverages (up to and included twelve-percent alcohol content); brick and masonry; ceramic products; foundries; glass products; gypsum; ice; and metal products (fabrication and assembly).
- (b) Factory Industrial F-1 Moderate-hazard uses which are not classified as Factory Industrial F-2 Low-hazard uses, including but not limited to aircraft; appliances; athletic equipment; automobiles and other motor vehicles; bakeries; beverages (over twelve-percent alcohol content); bicycles; boats, building; brooms or brushes; business machines; cameras and photo equipment; canvas or similar fabric; carpet and rug (including cleaning); clothing; construction and agricultural machinery; disinfectants, dry cleaning and dyeing; electronics; engines (including rebuilding); food processing; furniture; hemp products; jute products; laundries; leather products; lighting products; machinery; metals; millwork (sash and door); motion pictures and television filming (without spectators); musical instruments; optical goods; paper mills or products; photographic film; plastic products; printing or publishing; recreational vehicles; shoes; soaps and detergents; textiles; tobacco; trailers; upholstery; wood, distillation; woodworking (cabinets).

- (2) Corporate, business and professional office uses.
- (3) Commercial communication structures (as a principal or accessory use per § 420-89).
- (4) Stormwater detention or retention facilities.
- (5) Water storage tanks, towers and reservoirs and related appurtenances.
- (6) Medical office facility (operation of a health center for the provision of medical, surgical, dental, psychiatric and behavioral care, whether inpatient or outpatient, and related uses, including, without limitation, a hospital, outpatient surgery center, urgent care, medical offices, health club, pharmacy, laboratory, auxiliary uses such as temporary overnight lodging for employees for use while on duty only, and complimentary retail uses, such as gift shop, food and beverage and similar uses reasonably auxiliary to the operation of a health center) with approval of a Payment in Lieu of Taxes (PILOT) Agreement acceptable to the Village, if any portion of the property is exempt from paying Village of Pleasant Prairie real estate taxes.

C. Auxiliary permitted uses. The following listed auxiliary principal uses, and certain unspecified auxiliary principal uses as approved pursuant to Subsection C (5) below, are allowed as permitted uses in the M-5 District:

- (1) Retail auxiliary permitted uses. The retail sale of any of the following goods or products shall be an auxiliary permitted use in a principal office building or medical office facility in the M-5 District: bakery goods; books; candy; cards; clothing; electronics; handbags; ice cream; jewelry; leather goods; newspapers and magazines; office supplies; pharmaceuticals;

sundries; shoes; and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all retail and service auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.

- (2) Service auxiliary permitted uses. The following service uses shall be auxiliary permitted uses in a principal office building or medical office facility in the M-5 District: barbershop; coffeehouse; day care (for children or adults) not open to the general public; dry-cleaning service; financial institution; fitness center not open to the general public; museum; photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant or a restaurant with drive-through facility; and shoe shine or repair service, provided that the following limitations are satisfied: such uses are auxiliary to the permitted office uses(s), in that they are located in the principal office building, and are designed to serve the needs of the occupants of the principal office building, and have no dedicated outside entrance to such building, and have no signage visible from the exterior of such building, and further provided that all service and retail auxiliary permitted uses in a principal office building together shall not occupy more than 10% of the gross floor area of such building, all subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (3) Warehouse and distribution auxiliary permitted uses. The warehouse and distribution auxiliary uses which are permitted in the M-5 District are uses classified as Storage Group S in Section 311 of the 2006 IBC that are not classified as a Group H Hazard pursuant to Section 307 of the 2006 IBC shall be auxiliary permitted uses in a building in the M-5 District, provided that all of the following limitations shall be satisfied:
  - (a) Such uses are auxiliary to the permitted manufacturing or research and development use(s), in that they are located in the principal building;
  - (b) All warehouse and distribution auxiliary permitted uses in a principal building together shall not occupy more than 30% of the gross floor area of such building, except that the building occupant's storage of raw materials and finished products assembled or produced on site shall be exempt from this thirty-percent requirement;
  - (c) The building façade area of dock doors is limited to a total of 25% of the building exterior walls; and
  - (d) Such uses are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (4) Corporate campus auxiliary permitted uses. The following auxiliary uses are permitted within a corporate campus development either within any building or a separate standalone building within the corporate campus. A corporate campus for this section is defined as a development with multiple buildings on a single lot provided that a minimum of 60% of the gross floor area of all of the buildings within the campus development is



being developed as permitted uses listed in subsections B (1) and (2) on a single lot with Village approval of a Master Conceptual Plan. As a part of the Master Conceptual Plan, the Village Board, may on a case by case basis, allow for buildings to be constructed and occupied in phases pursuant to an approved development agreement, wherein reasonable conditions for the development construction are made and reasonable time frames for the required permitted uses to be constructed and occupied within the corporate campus development are required.

- (a) Retail auxiliary permitted uses. The retail sale of any of the following goods or products: bakery goods; books; candy; cards; clothing; electronics; handbags; ice cream; jewelry; leather goods; newspapers and magazines; office supplies; pharmaceuticals; sundries; shoes; and tobacco, provided that the following limitations are satisfied: such uses are auxiliary to the permitted uses(s), in that they are designed **primarily** to serve the needs of the occupants of the corporate campus occupants and **secondarily** ~~to serve~~ the needs of the general public, provided that they are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (b) Retreat center or corporate retreat center, with or without overnight stays in a separate building on the property of the permitted use or within the same building as the permitted use on the property.
- (c) Service auxiliary permitted uses. The following service uses: barbershop; coffeehouse; **day care (for children or adults) not open to the general public;** dry-cleaning service; financial institution; **fitness center not open to the general public;** museum; photocopying center; photograph developing and printing; restaurant (not including a drive-in restaurant or a restaurant with drive-through facility); and shoe shine or repair service, provided that the following limitations are satisfied: such uses are auxiliary to the permitted uses(s), in that they are designed to **primarily** serve the needs of the corporate campus occupants and ~~to~~ **secondarily serve** the general public provided that they are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (d) Warehouse and distribution uses within a corporate campus are permitted auxiliary to permitted manufacturing use(s) on the lot to the extent all warehouse and distribution auxiliary uses within the corporate campus shall not occupy more than 30% of the gross floor area of all of the buildings on the lot, except that the buildings' occupant's storage of raw materials and finished products assembled or produced on the site shall be exempt from this 30% requirement, the building façade area of dock doors is limited to a total of 25% of any building's exterior walls, and such uses are subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes.
- (5) Unspecified permitted auxiliary uses. The Zoning Administrator shall have authority to approve, as an auxiliary permitted use, a proposed principal use not listed in Subsection C (1), (2) (3) or (4) above, if the proposed use is similar in character to one or more of the listed auxiliary permitted uses in the M-5 District, the use satisfies all of the limitations of this

Subsection C above and is free of potential problems requiring special regulation. The Zoning Administrator shall make written findings supporting any such decision. Notwithstanding the foregoing authorization, the following uses shall not be construed to be auxiliary permitted uses in the M-5 District:

- (a) Any adult-oriented uses, including, without limitation, an adult bookstore, adult cabaret, adult club, adult dry cabaret, adult movie theater, adult video rental store, adult video store or adult viewing facility.
- (b) Anhydrous ammonia (bulk storage facility or retail sale).
- (c) Asbestos (storage of).
- (d) Animal hospitals, kennels and pounds.
- (e) Any cabaret.
- (f) Car wash (commercial).
- (g) Concrete and asphalt batch plants.
- (h) Dry cabaret.
- (i) Fertilizer (production, sales, storage, mixing or blending).
- (j) Feed mills.
- (k) Fireworks (manufacturing, storage or sale).
- (l) Flea markets.
- (m) Gas stations with or without a car wash (commercial).
- (n) Greenhouse.
- (o) Hotel.
- (p) Liquor store.
- (q) Livestock sale facilities.
- (r) Motel.
- (s) Nursery.
- (t) Pawnshop.
- (u) Petroleum bulk stations and terminals.
- (v) Psychic/tarot card/astrology reading.
- (w) Refuse incineration.
- (x) Slaughterhouse.
- (y) Tavern.
- (z) Tires (production or bulk storage).
- (aa) Truck stop and/or truck service facility.
- (bb) Wrecking, junk, demolition and scrap yards.

- D. Unspecified permitted uses. The Zoning Administrator shall have authority to approve as a permitted use in the M-5 District a proposed principal use not listed in Subsection B or C above if the proposed use is similar in character to one or more of the listed permitted uses in the M-5 District and is free of potential problems requiring special regulation. The Zoning Administrator shall make written findings supporting any such decision. Any use so approved shall be subject to all requirements of Subsection B or C above. Notwithstanding the

foregoing authorization, the following uses shall not be construed to be permitted uses in the M-5 District:

- (1) Any listed permitted use or conditional use or unspecified permitted use specified in any other district that is not expressly listed in Subsection B above.
- (2) Any use involving the serving or selling of alcoholic beverages that is not specifically listed in Subsection B or C above.
- (3) Any adult-oriented uses, including, without limitation, an adult bookstore, adult cabaret, adult club, adult dry cabaret, adult movie theater, adult video rental store, adult video store or adult viewing facility.
- (4) Any use classified as a High-Hazard Group H uses pursuant to Section 307 of the 2006 IBC that involve the manufacturing, processing, generation or storage of materials that constitute a physical or health hazard in quantities in excess of those allowed in control areas constructed and located as required in Section 414 of the 2006 IBC.

E. Conditional uses. The following uses may be permitted as conditional uses in the M-5 District (as principal uses or accessory uses, as appropriate) pursuant to and in accordance with Article XVIII of this chapter, subject to the requirements of Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes:

- (1) Retail or wholesale of merchandise manufactured or stored within the building, provided that the retail or wholesale use is not classified as a High-Hazard Group H pursuant to Section 307 of the 2006 IBC.
- (2) Day-care facilities, either for children or adults **that are open to the general public.**
- (3) Miscellaneous uses. The following miscellaneous uses may be permitted as conditional uses in the M-5 District:
  - (a) (Reserved)
  - (b) Electric power or gas metering substation (only as a principal use on its own lot).
  - (c) Heliport pad.
  - (d) Outside storage.
  - (e) Transmission line (electric power or natural gas).
  - (f) Utility substation building (only as a principal use on its own lot).
  - (g) Wind energy conversion systems.

F. Special licensed uses. Some uses require a special license approved by the Village Board and may only be operated pursuant to and in accordance with such license. The granting of a Village license by the Village Board is not assured either by permitted use status or by the granting of a conditional use permit or of any other permit or approval under this chapter.

G. Combination of uses. Except as otherwise specifically provided for in this section, two or more principal uses and their related accessory uses may be located and conducted in the same principal building in the M-5 District, subject to Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes, in accordance with each of the following restrictions to the extent such restrictions are applicable:

- (1) Permitted uses allowed in the M-5 District and their related accessory uses may be located separately or together, and may be conducted separately

or together, with other such permitted uses and their related accessory uses in the same principal building in the M-5 District.

- (2) Conditional uses allowed in the M-5 District and their related accessory uses may be located separately or together, and may be conducted separately or together, with other such conditional uses and their related accessory uses in the same principal building in the M-5 District; provided, however, that the area of a building occupied by a conditional use and any related accessory uses shall be a physically separate defined area in which any proposed new use of any kind (or any use of any kind existing as of the time when the conditional use permit for such conditional use or any amendment of such permit is approved) shall be allowed only pursuant to and in accordance with the conditional use permit issued for such conditional use under Article XVIII of this chapter.
- (3) Permitted uses allowed in the M-5 District and their related accessory uses and conditional uses allowed in the M-5 District and their related accessory uses may be located separately or together, and may be conducted separately or together, in the same principal building in the M-5 District; provided, however, that the area of a building occupied by a conditional use and any related accessory uses shall be a physically separate defined area in which any proposed new use of any kind (or any use of any kind existing as of the time when the conditional use permit for such conditional use or any amendment of such permit is approved) shall be allowed only pursuant to and in accordance with the conditional use permit issued for such conditional use under Article XVIII of this chapter.
- (4) Nonconforming uses existing in the M-5 District as of the effective date of Ordinance No. 13-22 (June 17, 2013) and any related accessory uses existing as of such date may be continued in the same principal building along with other existing agricultural related uses; provided, however, that no nonconforming use and no accessory use to a nonconforming use may be extended or expanded into new areas, and no new accessory use related to such nonconforming use (and no prior accessory use to such nonconforming use that has been discontinued as an actively conducted use for a period of 12 or more consecutive months) may be commenced or recommenced, and further provided that the area of a building occupied by a nonconforming use and any related accessory uses shall be a physically separate defined area in which any proposed new use of any kind shall be prohibited.

H. Accessory uses.

- (1) Except as otherwise specifically provided in this chapter, accessory uses to principal uses allowed in the M-5 District are allowed, subject to Article IX and all other applicable provisions of this chapter and of other Village ordinances and codes, as follows:
  - (a) Accessory uses to principal permitted uses in the M-5 District are allowed.
  - (b) Accessory uses to principal conditional uses allowed in the M-5 District are allowed, but only pursuant to and in accordance with a conditional use permit issued under Article XVIII of this chapter.
- (2) New proposed accessory uses to nonconforming uses (and any prior accessory uses to a nonconforming use that have been discontinued as actively conducted uses for 12 or more consecutive months) are prohibited.
- (3) In the event of any issue about whether a particular use is properly an

accessory use, the Zoning Administrator shall have authority to decide. The Zoning Administrator shall make written findings to support any such decision.

- I. Temporary uses. Temporary uses may be allowed in the M-5 District pursuant to § 420-140.1 of this chapter.
- J. Prohibited uses. Uses that are not specifically allowed in the M-5 District by this chapter as specified in the foregoing sections are prohibited in the M-5 District. However, where a use is proposed for a purpose that is not specifically provided in Chapter 3 of the 2006 IBC and is not specifically listed as a prohibited use in the M-5 District regulations, such uses shall be classified in the group that the occupancy most clearly resembles, according to the firesafety and relative hazard involved. The Zoning Administrator shall make the final determination if the use is allowed within the M-5 District.
- K. Dimensional standards. Except as specifically provided in this chapter, and without limitations, all uses, sites, buildings and structures in the M-5 District shall comply with the following dimensional standards to the extent applicable.
  - (1) Lot size: two acres minimum, except that the minimum lot size for a freestanding commercial communication structure or a utility substation building shall be as prescribed by § 420-148 of this chapter, and further provided that no minimum lot size shall be applicable to transmission lines.
  - (2) Lot frontage. Lot frontage on a public street: 150 feet minimum; however, that on a substantial curve or cul-de-sac, the public street frontage may be reduced as necessary to an absolute minimum of 100 feet if all other requirements are satisfied, except that the minimum lot frontage on a public street for a freestanding communication structure or a utility substation building shall be as prescribed by § 420-148 of this chapter, and further provided that no minimum lot frontage on a public street shall be applicable to transmission lines.
  - (3) Open space: 25% minimum.
  - (4) Building standards:
    - (a) Gross floor area. No maximum or minimum building area shall be required in the M-5 District due to the variety of uses within this district and the diverse building demands of each use.
    - (b) Principal building height: 60 feet maximum; however, the height of a principal building or part thereof may be increased to a maximum of 100 feet in height, provided that for every one foot above 60 feet, said principal structure shall be set back an additional 1.5 feet from all property lines.
    - (c) Accessory building height: 30 feet maximum.
    - (d) Setbacks. The following setbacks shall be considered to be minimum setbacks; greater setback may be required by state building codes.
      - [1] Street setback: minimum of 65 feet from arterial streets or highways and a minimum of 40 feet from nonarterial streets or private roads for buildings.
      - [2] Shore setback: 50 feet minimum adjacent to Lake Michigan, 35 feet minimum adjacent to all other navigable waterways.
      - [3] Wetland setback: 25 feet minimum.
      - [4] Side setback: 45 feet minimum for all buildings.

[5] Rear setback: 45 feet minimum for all buildings.

[6] Separation distance between all buildings: 45 feet minimum.

L. Design standards. Except as otherwise specifically provided in this chapter, and without limitation, all uses, sites, buildings and structures in the M-5 District shall comply with the following design standards to the extent applicable:

- (1) Number of principal structures per lot: no limit.
- (2) Number of detached accessory buildings: no limit.
- (3) Fences may be allowed pursuant to § 420-81; however, chain-link fences shall be vinyl coated and the color shall be black, earth tones or complementary to the color of the building.
- (4) Dock doors shall not face a public street.
- (5) All accessory uses or structures shall be on the same lot or approved site as the principal use.
- (6) Principal building standards. All facades that are visible to and facing the public street and any portions of the building with office uses shall provide architectural details and elements such as but not limited to varying roof heights, varying fenestration and other appropriate architectural elements. In addition, the office area of the building shall have an appearance of a two-story building.
- (7) Principal office building standards (for stand-alone corporate, business, professional office buildings where no manufacturing, distribution and/or warehouse activities are conducted in the office building):
  - (a) Each principal office building shall have a minimum of two floors above grade.
  - (b) The gross floor area of a principal office building shall be a minimum of 24,000 square feet, and each of the first two floors above grade shall have a gross floor area of at least 10,000 square feet.
  - (c) The gross floor area for all auxiliary permitted uses within a principal office building shall not exceed 10% of the gross floor area of such building.
  - (d) Height: 30 feet minimum.
- (8) Site and operational plan requirements pursuant to Article IX of this chapter, except as provided below:
  - (a) Buildings shall comply with the façade design requirements in this subsection. The Village Zoning Administrator shall have the discretion to adjust the minimum glazed area percentages set forth below among various facades of a building so long as all facades, taken together, satisfy the minimum glazed area percentages (for example, any individual façade may be less than the minimum so long as one or more of the other facades exceeds the minimum such that the total glazed area for all facades equals or exceeds the minimum glazed area percentages); provided, however, that the glazing on the sides visible from the public streets or highways outside the district shall not be less than stated minimum percentages.
    - [1] Manufacturing. Portions of the building used for manufacturing or directly related warehousing and/or distribution uses, as defined in Subsection C(3)(b) above,

shall have a minimum glazed area (calculated on the basis of all manufacturing or directly related warehousing and/or distribution building facade areas) of 5%.

- [2] Office building(s). Portions of the building used for business office or research and development uses shall have a minimum glazed area (calculated on the basis of all office or research and development building facade areas) of 25%.
  - [3] Parking garages. Parking garages shall have entry and exit stairwells and lobbies that are visible from the exterior, and any such areas visible from the exterior shall have a minimum glazed area of 25%.
  - [4] Utility substations; utility substation building. Utility substations and utility substation buildings shall have no minimum glazing requirement.
- (b) Construction materials. Principal buildings, accessory buildings, parking garages and any penthouse areas associated with such building or structure shall comply with the following requirements for construction materials:
- [1] Glazed area. The following requirements apply to all glazed areas:
    - [a] Glazed areas may be tinted or clear glass. Mirrored glass is prohibited.
    - [b] Anodized or powder-coated aluminum curtain wall systems, storefront systems and accents are allowed.
    - [c] Stainless steel, bronze or brass curtain wall systems. Storefront systems and accents are allowed.
    - [d] Anodized or powder-coated aluminum metal panels or other metal panels are allowed if integral to window wall or curtain wall systems or if used for trim, soffits, canopy, sun protection systems or mechanical penthouses.
    - [e] Door frames. Door frames shall complement window frames in material, finish and color.
  - ~~[1]~~
  - [2] Nonglazed area. The nonglazed areas of any building in this district shall comply with the standard in § 420-57H(2)(g). Additionally, architectural precast concrete panels, through the application/addition of certain finishing elements (e.g., reveals, relief, and dimension), finish, shape, color or texture shall contribute to the architectural form, style and aesthetics or the structure. Architectural precast concrete may be structural (e.g., load-bearing element) and/or decorative (e.g., building cladding) and may be conventionally reinforced or prestressed. Architectural precast concrete panels shall not result in plain, blank walls.
  - [3] ~~[2]~~ Roofs (architectural features). Section 420-57H(2)(i) shall not apply. Architectural roof features or forms shall be copper or zinc-coated aluminum metal panels or slate or architecturally painted metal panels.
  - [4] Mechanical Screening. All mechanical units, ground or roof

mounted shall be screened from public view by either landscaping or other approved high quality architectural grade metal screening or panels as specifically approved by the Plan Commission.

- (9) Parking, access and traffic requirements pursuant to Article VIII of this chapter.
  - (10) Sign requirements pursuant to Article X of this chapter.
  - (11) Fence requirements pursuant to Article XI of this chapter.
  - (12) Each use, site, building and structure shall be designed, laid out, constructed and maintained in full compliance with the approved site and operational plan, any required conditional use permit, any required license and all other applicable provisions of this chapter and of all other Village ordinances and codes.
- M. Operational standards. Except as otherwise specifically provided in this chapter, and without limitation, all uses, sites, buildings and structures in the M-5 District shall comply with the following operational standards to the extent applicable:
- (1) Hours of operation (when the public is allowed to enter or remain on site for business purposes):
    - (a) From 5:00 a.m. to 12:00 midnight maximum for corporate, business and professional office uses, and service or retail uses allowed as auxiliary permitted uses; for any day-care facilities, either for children or adults that are open to the general public, as may be allowed by a conditional use permit.
    - (b) All other uses: no limit.
  - (2) Hours for deliveries, or any other activities outside the principal building (e.g., outside loading or unloading, the arrival of deliveries, idling of delivery trucks, beeping of backing vehicles, and garbage pickup), except for snow removal:
    - (a) 6:00 a.m. to 10:00 p.m. maximum for corporate, business and professional office uses, and service or retail uses allowed as auxiliary permitted uses; for any day-care facilities, either for children or adults, as may be allowed by a conditional use permit.
    - (b) All other uses: no limit.
  - (3) Except as otherwise specifically permitted by this chapter under a conditional use granted by the Village, all activities shall be conducted within a building.
  - (4) No on-site residential uses are allowed.
  - (5) Each use, site, building and structure shall comply with all applicable performance standards set forth in § 420-38 of this chapter.
  - (6) Each site, building and structure shall be maintained in a neat, presentable, aesthetically pleasing, structurally sound and nonhazardous condition. All litter and debris shall be promptly removed.
  - (7) Each use, site, building and structure shall be operated in full compliance with the approved site and operational plan, any required conditional use permit, any required license and all other applicable provisions of this chapter and of all other Village ordinances and codes.
- N. Authorized sanitary sewer system. See § 420-32 of this chapter.
- O. Authorized water supply system. See § 420-33 of this chapter.



**Adopted this 14<sup>th</sup> day of May 2018.**

VILLAGE OF PLEASANT PRAIRIE

ATTEST:

\_\_\_\_\_  
John P. Steinbrink  
Village President

\_\_\_\_\_  
Jane C. Snell  
Village Clerk

Posted: \_\_\_\_\_

19-m-5 district and performance changes

**Development Agreement**  
**Between**  
**The Village of Pleasant Prairie**  
**And**  
**Haribo of America Manufacturing, LLC**

\_\_\_\_\_, 2018

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**Development Agreement**

**Between**

**The Village of Pleasant Prairie**

**And**

**Haribo of America Manufacturing, LLC**

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## List of Exhibits

- Exhibit A - Legal Description of the Property
- Exhibit A-1 - Depiction of the Property on Preliminary Certified Survey Map
- Exhibit B - Industrial Road Section
- Exhibit C - Memorandum of Development Agreement
- Exhibit D - Infrastructure Plan
- Exhibit E - Specifications for Village Work
- Exhibit F - Grading Plan

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (this "Development Agreement") is made and entered into effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018 (the Effective Date"), by and between Haribo of America Manufacturing, LLC, a Delaware limited liability company, (the "Developer") and the Village of Pleasant Prairie, a Wisconsin municipal corporation (the "Village").

### RECITALS:

**WHEREAS**, the Developer purchased the real estate located within the Village, more particularly described on **Exhibit A** attached hereto (the "Property") from the Village pursuant to that certain Purchase and Sale Agreement dated as of December 20, 2017, between the Village and the Developer (the "PSA");

**WHEREAS**, the Developer and the Village have, pursuant to the PSA, entered into that certain Predevelopment Agreement dated December 12, 2017, and which relates to the development of the Property as herein provided (the "Predevelopment Agreement");

**WHEREAS**, the recorded certified survey map attached hereto as **Exhibit A-1** includes the Property as Lot 1;

**WHEREAS**, the Property is zoned M-5 Production Manufacturing District and C-1 Lowland Resource Conservancy District and will incorporate a PUD Planned Unit Development Overlay District ("PUD") to be used for manufacturing, which zoning classification will allow the development of buildings for manufacturing with warehouse and distribution, assembly, office, research and development, and other auxiliary uses such as retail and museum/experiential center uses and as more particularly described in the Village zoning ordinance and the detailed site and operational plans to be approved in connection with the approval of such PUD;

**WHEREAS**, the Developer contemplates developing and constructing a building including manufacturing on a portion of Lot 1 (the "Building") on or before December 31, 2022, with the remainder of Lot 1 being available for Developer's continued expansion of this Building and other facilities in additional phases (the "Comprehensive Site Development");

**WHEREAS**, the Property will be part of a larger corporate park known as "Prairie Highlands Corporate Park" (the "Park") located on land purchased by the Village and, the portion not owned by Developer currently owned by the Village;

**WHEREAS**, Section 66.1105 of the Wisconsin statutes (the "Tax Increment Law") provides the authority and establishes procedures by which the Village may exercise powers necessary and convenient to carry out the purposes of the Tax Increment Law, cause project plans to be prepared, approve such plans, implement

provisions and effectuate the purposes of such plans, and finance such development through the use of tax incremental financing;

**WHEREAS**, on April 17, 2017, the Village Board of Trustees (the "Village Board") adopted: (i) Resolution No. 17-06 which amended the TID Project Plan (as amended, the "TID 2 Project Plan") of Tax Incremental District No. 2 ("TID 2"), with Amendment No. 6 ("Amendment No. 6"), to amend the TID 2 Project Plan to add as project costs the purchase price to purchase the Property and surrounding property from its previous owner and costs for the construction of infrastructure improvements benefitting the Property and surrounding property, as more particularly described in Amendment No. 6 to the TID 2 Project Plan and (ii) Resolution No. 17-07 which adopted the TID Project Plan (the "TID 5 Project Plan") which created Tax Increment Financing District No. 5 ("TID 5") which includes as project costs the costs for the construction of infrastructure improvements benefitting the Property and surrounding property, as more particularly described in the TID 5 Project Plan (TID #2 and TID #5 collectively referred to individually as a "District" and collectively as the "Districts");

**WHEREAS**, the Village has required that the development of the Building be accompanied by this Development Agreement between the Developer and the Village as a condition to the Village constructing the infrastructure improvements benefitting the Property;

**WHEREAS**, this Development Agreement is intended to provide for certain duties and responsibilities of the Developer and the Village relating to the development of the Property and construction of the Building. Further, the parties wish to set forth the obligations of the Village to perform, or cause to be performed, certain work and improvements related to the construction and improvement of portions of the Park and certain improvements to the Property to benefit the Village, the Developer and the Property and make the Property usable for Developer's intended purposes in light of the Developer having purchased the Property as unimproved land; and the Village's promise to perform, or cause to be performed, such work is a material inducement to the Developer entering into this Agreement;

**WHEREAS**, the Village believes that unless the Village constructs the infrastructure improvements benefitting the Property, the Developer will not undertake the construction and development of the Property; and

**WHEREAS**, the Village has determined that the development of the Property and the Building pursuant to this Development Agreement and the fulfillment generally of this Development Agreement by the parties hereto are in the best interests of the Village and its residents; will create jobs benefitting the residents of the Village and the surrounding region; will enhance the value of other properties in the Village; will promote the orderly development of the Property in accordance with the master land use plan for growth and development adopted by the Village; and are in accord with the public purposes and conditions of the applicable state and local laws and requirements under which the Project Plans for the Districts have been undertaken and are being carried out;



## **AGREEMENT**

**NOW, THEREFORE**, in consideration of the Recitals, the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### **SECTION I. REPRESENTATIONS AND WARRANTIES OF THE DEVELOPER**

The Developer makes the following representations and warranties, which the Village may rely upon in entering into this and all other agreements between the parties for the subject matter herein provided, and which specifically the Village may rely in granting all approvals, permits and licenses for the Building and in executing this Development Agreement and performing its obligations hereunder:

- A. Haribo of America Manufacturing, LLC is a duly organized and validly existing limited liability company in good standing under the laws of the State of Delaware and qualified to do business in the State of Wisconsin.
- B. The execution, delivery and performance of this Development Agreement and the consummation of the transactions contemplated hereby have been duly authorized and approved by the Developer, and no other or further acts or proceedings of the Developer are necessary to authorize and approve the execution, delivery and performance of this Development Agreement and the matters contemplated hereby. This Development Agreement, and the exhibits, documents and instruments associated herewith and made a part hereof, have been duly executed and delivered by the Developer and constitute the legal, valid and binding agreement and obligation of the Developer, enforceable against it in accordance with their respective terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and by general equitable principles.
- C. There are no lawsuits filed or pending, or to the best of the knowledge of Developer, threatened against Developer that may in any way jeopardize or materially and adversely affect the ability of the Developer to perform its obligations hereunder.
- D. The Developer has at this time, or will have so long as this Development Agreement continues in effect, sufficient available funds for the completion of the Developer's obligations under this Development Agreement.
- E. The Developer has obtained all necessary financing to fully fund all of its obligations hereunder and has performed and complied with all conditions, covenants and agreements as required by such financing.

### **SECTION II. REPRESENTATIONS AND WARRANTIES OF THE VILLAGE**

The Village makes the following representations and warranties, which the Developer may rely upon in entering into this and all other agreements between the parties for the subject matter herein provided, and in executing this Development

Agreement and performing its obligations hereunder and upon which the Developer may specifically rely in undertaking its improvement of the Property as herein provided:

A. The Village of Pleasant Prairie, Wisconsin is a duly created municipality incorporated under the laws of the State of Wisconsin, and in good standing as of the date of this Development Agreement.

B. The Village of Pleasant Prairie has given all notices and taken all requisite actions to amend TID #2 and form TID #5 and has procured adequate funds to complete the Village Work (as hereinafter defined).

C. The Village has authorized the execution of this Agreement and has taken all requisite action to bind itself hereunder.

D. No lawsuit is pending or to the best of the knowledge of the Village, threatened against Village that may in any way jeopardize or materially and adversely affect the ability of the Village to perform its obligations hereunder.

### **SECTION III. UNDERTAKINGS OF THE DEVELOPER**

The Developer shall comply with the following provisions. Notwithstanding anything to the contrary provided herein, in the event that the Property is conveyed back to the Village pursuant to the Buyer Option set forth in Sections 16 and 17 of the PSA, the Developer obligations under this Section III shall terminate and be of no further force and effect. In the event that the Property is conveyed back to the Village pursuant to the Repurchase Option as set forth in Sections 16 and 17 of the PSA, the Developer's obligations under this Section III shall terminate and be of no further force and effect provided, however, that in the event of the conveyance back to the Village pursuant to the Repurchase Option, the release of the obligations provided in Section III.F. shall not release Developer from the obligation to make the Shortfall payments as set forth in Section 18(b) of the PSA, as such obligation is limited in Section VII.B.3. herein.

A. **Obtain Approvals for Development and Occupancy.** The Developer, at its cost and expense, shall: (i) submit all information, drawings, elevations, plans, specifications and other documents and information and all other matters required by the Village in a manner consistent with the Village's code and applicable ordinances, for approval of all plans for any and all grading, site work, improvements, construction and development to be undertaken by the Developer on the Property as herein provided including for the Building in accordance with the normal practices and procedures of the Village including, but not limited to, obtaining Village approval of a grading plan (such grading plan to be complementary to and not in substitution of the grading that the Village will complete as part of the Village Work) before commencing any work on the Property; and (ii) obtain all federal, state, county and Village approvals and permits necessary therefor within the earliest reasonable time thereafter, and obtain all zoning, building and other permits and other approvals for construction detailing the requirements for construction and development of the Property and the construction of the Building prior to the commencement of any construction activities thereon including,

but not limited to, a complete application for all required Site and Operational Plans and approvals (as defined in Article IX of the Village's Zoning Ordinance).

The Developer has submitted a Master Conceptual Plan Application to the Village for approval. The Village may accept plans in phases to facilitate the construction of the Comprehensive Site Development. The Developer agrees to pay all customary development, license, permit, legal and other fees required by the State of Wisconsin, the Village and all other applicable governmental entities, except for those related to the Village Work, and will not in any way seek reimbursement from the Village for the cost thereof. No site grading, buildings or improvements shall be constructed on or in the Property until the plans and specifications for such buildings and improvements have been reviewed and approved by Village staff and granted final approval by the Village Plan Commission and/or Board; all necessary zoning, building and other permits and approvals are obtained in accordance with the requirements of the State of Wisconsin, Kenosha County and the Village and any of their laws, rules, regulations and ordinances; and the Developer shall comply with permit conditions of the kind customarily imposed by the Village or other governmental entities with respect to the requirements for any and all demolition, construction on, and development of, the Property, and the obligations of the Developer with respect to the Comprehensive Site Development. No buildings or improvements shall be occupied prior to the approval of a permit application for and the issuance by the Village of a certificate of occupancy pursuant to Chapter 370 of the Village Code of Ordinances or otherwise in compliance with all applicable provisions of the Village Code of Ordinances.

**B. Compliance with Declaration, Codes, Plans and Specifications.** The construction of the Building and other improvements constructed on and in the Property, and their uses, shall be in compliance with all applicable zoning and other ordinances of the Village, all other applicable laws, ordinances, regulations and requirements of all other governmental and quasi-governmental entities having jurisdiction over the Property, with the pertinent provisions of the plans and specifications which have been approved by the Village, in connection with the approval of the PUD and with a Declaration of Covenants, Conditions, Restrictions and Easements for Prairie Highlands Corporate Park recorded against or to be recorded against the Property and surrounding property by the Village (the "Declaration"). The acceptance of this Development Agreement and granting of any and all approvals, zoning, licenses and permits by the Village, in and of itself, shall not obligate the Village to grant any variances, exceptions or conditional use grants, or approve any site grading, building or construction the Village determines not to be in compliance with the Village ordinances, or the requirements of any other applicable governmental authority. However, the Village shall use its reasonable efforts to process all applications for approvals submitted by Developer, the Village acknowledging the substantial investment by the Developer in the subject project and timing of the Village approvals being important to the timing of the construction of the Building. The Village agrees to review the Developer's plans, specifications and applications on a reasonable basis. The Village will cooperate with the Developer when seeking approvals from third parties (or other municipal agencies) with jurisdiction over the project or a component thereof.

C. **Site Work, Grading and Filling of Wetlands.** The Developer shall, at its sole cost and expense, obtain all necessary permits and approvals, and perform the site work and grading on the Property (the "Site Work and Grading") not previously performed by the Village as set forth in Section IV.I. hereof, on the portion of the Property located south of the northern section line of Section 24, Township 1 North, Range 21 East (the "Southern Parcel") and on the portion of the Property located north of the northern section line of Section 24, Township 1 North, Range 21 East (the "Northern Parcel"). Developer shall apply for and obtain, at its sole cost and expense, any requested fill permits from the Wisconsin Department of Natural Resources ("DNR") and/or U.S. Army Corps of Engineers ("Army Corps") for the filling of wetlands in connection with Developer's proposed uses on the Northern Parcel. The Village shall pay for the cost of obtaining any required compensatory mitigation credits from a wetland mitigation bank or from the DNR sponsored Wetland Conservation Trust in lieu-fee program for any wetlands allowed to be filled under approved permits on the Northern Parcel. The Site Work and Grading shall be performed by the Developer in accordance with the applicable ordinances of the Village. Upon completion of the Site Work and Grading, Developer shall submit a topographic survey providing as-built grades to the Village for confirmation that such grades are in compliance with all Village ordinances.

D. **Storm Water.** The Developer shall, at its sole cost and expense, construct all private storm water facilities on the Property and at all times use the Property in accordance with the Village's Stormwater Management and Stormwater Drainage System Facilities, Stormwater Storage Facility and Construction Site Maintenance and Erosion Control Ordinance, the Site and Operational Plans, all surface and storm water runoff, management, filtration and other such requirements of the Village and all other applicable governmental entities and authorities as are applicable and in effect. The Developer shall not commence any construction or improvement on or in any part of the Property unless and until the Developer has obtained all Site and Operational Plan approvals required for a storm water management plan from the Village, and from all other applicable government authorities. The Developer and the Village shall cooperate to insure that the storm water facilities to be constructed by Developer under this Section and the storm water facilities to be constructed by the Village pursuant to Section IV.H. hereof are coordinated and integrated to provide storm water drainage for the Property and the Park.

E. **Utilities.** The Developer shall install water services from the shut-off valve to the buildings on the Property, such that no portion of the Property shall be served by a private water system. The Developer shall install an on-site irrigation system for the Property meeting the requirements of the Village ordinance. The Developer shall obtain all requisite permits and approvals for such water systems from all other applicable government authorities. The Developer shall install sanitary sewer service to the buildings on the Property such that no portion of the Property shall be served by private septic or alternate means of treating sanitary sewer effluent. Such sanitary sewer system shall meet all applicable requirements, including Chapter 285 of the Village Code of Ordinances and Chapter 32 of the Kenosha County Code of General Ordinances. The Developer shall obtain all requisite permits and approvals for

such sanitary sewer service from the Village and all other applicable government authorities. The Village shall allow Developer to connect to the public utilities being constructed by the Village in connection with the Village Work and will grant private utility providers easements within the public rights of way necessary to accommodate the installation of requisite utilities to serve the Property.

F. **Construction of Improvements.** The Developer agrees to pay or incur the amount for real property improvements by the date as provided in Section 18 of the PSA as such date may be extended for Excused Delay as set forth in Section 18(b) of the PSA, which Section 18 is incorporated herein for all purposes. Should the Developer fail to meet such obligations as provided in Section 18 of the PSA, the Developer shall be liable to the Village to the extent provided in Section 20 of the PSA. These provisions of the PSA are incorporated herein by reference for all purposes and shall survive the closings under the PSA.

#### **SECTION IV. UNDERTAKINGS OF THE VILLAGE**

The Village has received Developer's Master Conceptual Plan Application. The Village shall commence to design or cause to be designed and use its best efforts thereafter to commence construction in the time and manner provided below, at the sole cost and expense of the Village, the following improvements which shall directly serve or be located on the Property as further herein provided in this Section IV (collectively the "Village Work") to be completed under the terms and conditions that follow, which Village Work will constitute the Southern Parcel being "construction ready" for the purposes of this Development Agreement. Notwithstanding anything to the contrary provided herein, in the event that the Property is conveyed back to the Village pursuant to the Buyer Option as set forth in Sections 16 and 17 of the PSA or the Repurchase Option as set forth in Sections 16 and 17 of the PSA, the Village's obligations under this Section IV shall terminate and be of no further force and effect.

A. **Wetland Delineation.** The Village has delineated existing wetland boundaries for the Property in accordance with DNR and Army Corps of Engineers guidelines and requirements and delivered such delineation to Developer. The Village shall apply for and obtain, at its sole cost and expense, any requested fill permits from the DNR or the Army Corps, in connection with the construction of the Southern Boulevard (as hereinafter defined).

B. **Sanitary Sewer.** The Village shall design and construct all publicly owned sanitary sewer mains to service the Property up to a sanitary sewer metering manhole located on the Property boundary line in the location shown on the infrastructure plan attached hereto as **Exhibit D** (the "Infrastructure Plan") and to support the specifications set forth for the sanitary sewer system set forth on **Exhibit E** attached hereto (the "Specifications"). The sanitary sewer line to serve the Property shall be extended from the existing Village sanitary sewer line within the public rights of way of the boulevard running east-west adjoining the entire southern boundary of the Property (the "Southern Boulevard") to the Property in the locations depicted on the Infrastructure Plan. The sewer line shall serve the Property from the location as shown on the Infrastructure

Plan. Subject to Section VIII hereof and pursuant to the requirements of this Section, the Infrastructure Plan and the Specifications, the sanitary sewer line construction shall be completed on or before November 1, 2020.

C. **Water Mains**. The Village shall design and construct all publicly owned water mains and facilities to service the Property to the Property boundary line at the location shown on the Infrastructure Plan. The water mains to serve the Property shall be extended from the existing Village water main within the public rights of way of the Southern Boulevard, the West Frontage Road and/or 128<sup>th</sup> Avenue to the Property. The water main shall serve the Property from the location as shown on the Infrastructure Plan. Subject to Section VIII hereof, and to support the requirements of this Section, the Infrastructure Plan and the Specifications, the construction of the water mains shall be completed on or before November 1, 2020.

D. **Public Roadways**. The Village shall design and construct the public roadways and area intersection improvements providing access to the Property which are to be identified by the traffic impact analysis for the Property (to be prepared pursuant to Section E below). Subject to Section VIII hereof, the construction of the roadways and area intersection improvements providing access to the Property shall be completed on or before November 1, 2020.

Prior to the road construction, the Developer and its consultants shall have the right to review and provide comment upon the designated scope and location of the roadway improvements to be constructed as part of the Village Work but the foregoing shall not limit the Village's obligation to construct the roadways and intersection improvements consistent with the locations identified by the traffic impact analysis.

All roadway improvements for the public roadways, area intersections and roadways within the Park and serving the Property shall be improved to not less than the Village's standard industrial street section as provided on **Exhibit B** attached hereto.

The roadways serving the Park and access to the Property shall all be public roadways and shall include all curb & gutter, storm water collection facilities, utilities, traffic signals, bike lanes, street signs, pavement markings, street lights and turn lanes, acceleration lanes and deceleration lanes, installed to not less than Wisconsin Department of Transportation ("WisDOT") standards as recommended by governing authority or State law or local ordinance.

The roadways shall be installed in a manner which will provide access to the Property from the West Frontage Road and the Southern Boulevard with curb cuts and access points to be determined as provided in Section E below. All roadways within the jurisdiction of the Village shall be dedicated and accepted by the Village and shall provide legal access to the Property prior to the Village being deemed to have completed the Village Work. The Village will determine the timing of the final lift of asphalt, which may occur after the completion date provided above, however such final

lift to be completed in a time consistent with the final completion of the Building and Developer's occupancy thereof for business purposes.

E. **Traffic Impact Analysis**. The Village shall prepare and provide a traffic impact analysis based on and consistent with the Infrastructure Plan, planned access points to the West Frontage Road and other planned connection points to boundary roads as part of the overall Park design. The Village shall fully incorporate recommendations as may be provided by jurisdictional authorities into the public roadway plans. Prior to the road construction, the Developer and its consultants shall have the right to review and provide comment upon the designated scope and location of the roadway improvements to be constructed as part of the Village Work and the Village shall endeavor to incorporate such comments in the manner provided above. The Village shall make all applications necessary to those agencies with jurisdiction over the roadways adjoining the Park and all access points thereto in order to implement the recommendations of the traffic impact analysis. As part of the roadway improvements and traffic impact analysis, the Village shall approve or obtain WisDOT approval of (and dedicate as required) curb cut access to the Property from the Southern Boulevard and along the aforesaid West Frontage Road.

F. **Storm Sewers**. The Village shall design and construct all public storm sewer lines to the boundary line of the Property to service the Property. Subject to Section VIII hereof, and consistent with the locations provided on the Infrastructure Plan and pursuant to the Grading Plan attached hereto as **Exhibit F** (the "Grading Plan"), the construction of the public storm sewer lines shall be completed on or before November 1, 2020.

G. **Soil Borings**. The Village has obtained soil borings, as needed, for all public roadway and regional retention pond designs. The Village has obtained and provided to Developer soil borings, as instructed by Developer, for all necessary design of private infrastructure and building design. The Village makes no representations as to the existing soil conditions of the Property except as may be provided in the PSA. However, the foregoing shall not relieve the Village of its grading obligations provided in Section IV.I. below.

H. **Grading of Public Roadways and Storm Water Management Facilities**. The Village shall grade the public roadways and regional storm water management ponds and system consistent with the planned roadway improvements and development of the Park and requirements of any municipal, state or federal agency with jurisdiction over the storm water management of the Park and consistent with sound engineering standards and the Infrastructure Plan. The capacities of the storm water management ponds and system shall not be less than the 10-year reoccurrence frequency storm event as identified by the Southeastern Wisconsin Regional Planning Commission for storm sewers and the 100-year reoccurrence frequency storm event for retention ponds and overland flood routes. Subject to Section VIII hereof, the construction of the storm water management ponds and system shall be completed on or before November 1, 2020, except for plantings or growth delayed because of the growing season.

I. **Grading and Seeding of the Property.** The Village shall include in the Bid Package (as hereinafter defined) the grading of the Property to the grades set forth in the Grading Plan (the "Grading Work"). The Village will prepare a bid package including the construction of all of the Village Work, including the Grading Work and providing a lump sum cost for the Grading Work (the "Bid Package"). The Village will advertise the Bid Package on May 17, 2018 and May 24, 2018 with the opening of the bids received pursuant to the Bid Package scheduled to occur June 5, 2018. Village staff will assemble all of the bids and provide them to the Village Board for the Village Board to review. Upon the acceptance of a bid from a bidder (the "Accepted Bidder and its bid the Accepted Bid"), the Village shall negotiate and execute the construction contract (the "Construction Contract") with the Accepted Bidder. The Village shall perform and enforce the performance of the Village Work by the Accepted Bidder pursuant to the terms of the Construction Contract. The parties acknowledge that the target date for the completion of the Grading Work will be on or about April 1, 2019 and the Developer, the Village and their contractors will cooperate with each other and integrate their work on the Property to facilitate the completion of the Grading Work, the Village Work and the Building as soon as reasonably practicable. The Developer will pay to the Village the cost of the grading of the Northern Parcel, which cost will be determined by multiplying the total lump sum Grading Cost set forth in the Accepted Bid divided by the total cubic yards of material graded on the Property, such per cubic yard cost then multiplied by the number of cubic yards of material graded upon the Northern Parcel (the "Northern Parcel Grading Costs"). The parties agree to split equally the cost of seeding the Property after the grading, including the cost of any winter conditions required on the Property because such seeding was not able to be performed prior to the winter cold and necessitating the germination of such seeding the following spring (the "Seeding Cost"). Developer shall pay the Village the Northern Parcel Grading Costs and Developer's share of the Seeding Cost within ten (10) days of receipt of an invoice for such costs.

J. **Street Name.** The portion of the Southern Boulevard heading to the Property from the West Frontage Drive will be named "Goldbear Drive" or other name chosen by Developer and reasonably approved by the Village prior to the Second Closing (as defined in the PSA).

K. **Permitting.** The Village shall apply for and obtain any necessary permits associated with the construction of the Village Work. Developer shall apply for and obtain any necessary Village, State, and Federal permits associated with their on-site building, utility and site work.

L. **Design/Bidding/Construction Timelines.** It is the intent of the Village to design and bid infrastructure in a timely and cost effective manner with consideration of factors such as, but not limited to, site construction logistics, contract responsibilities and operations of contractors, order of construction operations, construction contract logistics and administration, public bidding laws and timelines, and non-working seasonal weather. Although the infrastructure improvements are listed separately above, the Village reserves the right to best combine public infrastructure bid packages and adjust timelines to effectively construct the project with all its components. Where



the Village sees the opportunity to advance timelines due to Developer's collaboration and site design progress, the Village will not object and will pursue such opportunities for the mutual benefit of both the Village and Developer.

## SECTION V. MISCELLANEOUS REQUIREMENTS

A. **Developer Requirements.** The Developer shall do each and all of the following at its cost and expense:

1. **Manner of Performance.** Cause all construction obligations of the Developer referred to in this Development Agreement to be carried out and performed in a good and workmanlike manner, consistent with construction standards for industrial use property in Wisconsin;

2. **Survey Monuments.** Properly install metal stakes or pipes marking the corners of all lots that are being resurveyed and recreated pursuant to the terms of any plat of survey submitted to, and approved by, the Village;

3. **Utilities.** Install all electrical, telephone, cable, fiber optic and gas utilities underground in accordance with all ordinances of the Village. It shall be the responsibility of the Developer to contract to have installed and pay for all costs associated with private utilities. Consistent with Section III.E. hereof, the Village will allow the foregoing private utilities to be installed in the public right of way adjacent to the Property and the Village will grant easements in furtherance thereof in a manner customary with Village practice;

4. **Permits.** Provide and submit to the Village valid copies of any and all governmental agency permits relating to the construction of the Building. No occupancy permits shall be issued for the occupancy of any building on the Property or portion thereof until such time as final inspections are completed and passed by the building, fire and rescue and zoning inspectors;

5. **Performance Standards.** Comply with the performance standards set forth in Section 420-38 and elsewhere in the Village Code of Ordinances;

6. **Debris.** Keep the Property free from litter and debris during all phases of grading and construction. The Developer shall promptly remove and lawfully dispose of all tree trunks, limbs, brush and other rubbish and debris from the development of the Building. Tree trunks and other organic matters shall not be backfilled on the Property. Offsite sediment deposition occurring as a result of a storm event shall be cleaned up by the end of the next work day following the occurrence. All other offsite sediment deposition occurring as a result of construction activities shall be cleaned up at the end of the work day;

7. **Stop Work Orders.** The Developer shall promptly comply with any stop work orders issued pursuant to applicable provisions of the Village Land Division and Development Control Ordinance or the Village Zoning Ordinance or other municipal agency because the design, location, materials, workmanship or other

performance are not in accordance with the provisions of this Development Agreement, a Site and Operational Plan, the Land Division and Development Control Ordinance, the Design Standards and Construction Specifications Ordinance, the Erosion Control and Construction Site Maintenance Ordinance or any other Village Ordinances;

8. **Occupancy Certificates.** The Developer shall apply for and obtain certificates of occupancy for all buildings on the Property prior to occupancy and comply with the terms of such certificates of occupancy.

B. **Village Requirements.** The Village shall do each and all of the following at its cost and expense:

1. **Manner of Performance.** Cause all construction obligations of the Village referred to in this Development Agreement to be carried out and performed in a good and workmanlike manner, consistent with construction standards for industrial use property in Wisconsin.

2. **Compliance with Law.** All of the Village Work will be done in compliance with all Village codes and ordinances and those codes, ordinances and requirements of other governmental agencies as applicable, including, but not limited to, the contractor qualification requirements set forth in Chapter 150 of the Village ordinances and the Design Standards and Construction Specifications set forth in Chapter 405 of the Village ordinances and substantially comply with the plans and specifications for the Village Work.

3. **Utilities.** The Village will allow the installation of electric, telephone, cable fiber optic and gas utilities within the public rights of way adjacent to the Property in a manner consistent with customary Village practice.

4. **Insurance.** For any contractor performing any of the Village Work on or within the Property, the Village shall require each such contractor to name the Developer as an additional insured on the contractor's general liability insurance. Prior to entry on the Property, the Village shall cause the contractor to provide the Developer a certificate of insurance to confirm the foregoing, such insurance being issued by an insurance company licensed to write insurance in the State of Wisconsin, rated not less than "A-VII" by "A.M. Best" insurance rating service with limits of not less than \$3,000,000 per occurrence, \$3,000,000 in the aggregate and excess or umbrella liability limits of not less than \$2,000,000 per occurrence, \$2,000,000 in the aggregate. The Village shall cause each general contractor for which it enters into a contract for any part of the Village Work that will occur on or within the Property to add the Developer as an indemnified party in any indemnification provision of its written contract with such general contractor for damage or injury (to persons or property), loss, cost or claim for the same.

C. **Inspection Rights.**

1. **Village's Inspection Right.** The Village shall have the right, on reasonable basis and from time to time, to enter upon the Property with prior notice,

except in an emergency, to perform any testing and inspections deemed necessary or appropriate by the Village pursuant to matters related to Developer's compliance with Village code or applicable laws and ordinances.

2. **Developer's Inspection Right.** The Developer shall have the right to request, and the Village shall provide, all plans and specifications, all building permits and inspection reports prepared by the Village for all of the Village Work. The Developer shall have the right to observe the Village Work with prior notice.

D. **Cooperation.** The parties acknowledge and agree that the construction of the Building by the Developer and the construction of the Village Work will oftentimes be occurring simultaneously. Each party hereto agrees to cooperate with the other to facilitate the efficient completion of the construction of the Building and the Village Work, respectively, and to instruct their respective contractors to cooperate with the other party's contractors and to minimize any interference with the other party's respective work.

E. **Warranties.** Post completion of the Village Work, the Village shall enforce any warranty for the Village Work as reasonably determined by the Village.

F. **Construction Access and Utilities.** For work to be undertaken by the Developer prior to the completion of the roadway improvements pursuant to Section IV.D. hereof, the Village shall cooperate with the Developer to provide access to the Property for the Developer's construction of the Building. During Developer's construction, and not later than April 1, 2019, the Village shall provide access to the Property over Village property through construction roads or driveways on the south boundary of the Property sufficient to support Developer's construction activities as well as access to existing utilities over Village property to support Developer's construction activities.

## **SECTION VI. INDEMNIFICATIONS**

Each party hereto will indemnify, defend and hold harmless the other party, its governing body members, officers, agents, including the independent contractors, consultants and legal counsel, servants and employees thereof, shareholders, successors and assigns (hereinafter, for purposes of this paragraph each party and the foregoing additional parties are collectively referred to as the "Indemnified Parties") against any loss or damage to property or any injury to or death of any person occurring at or about or resulting from any breach of any warranty, covenant or agreement under this Development Agreement related to the construction activities or operations occurring on the Property and the Park by the other party; provided that the foregoing indemnification shall not be effective for any willful acts of the Indemnified Parties.

Except for any willful misrepresentation or any willful misconduct of the Indemnified Parties, each party will protect and defend the other Indemnified Parties from any claim, demand, suit, action or other proceeding whatsoever by any person or entity whatsoever arising or purportedly arising from its action or inaction (or other

persons acting on its behalf or under its direction or control) under this Development Agreement, for any damage to property or any injury to or death of any person related to the construction, installation, ownership and operation of the Building, the Park and the Property.

All covenants, stipulations, promises, agreements and obligations of the Village and the Developer as contained herein shall be deemed to be covenants, stipulations, promises, agreements and obligations of the Village or the Developer itself and not of any governing body, member, officer, agent, servant, shareholder or employee of the Village or Developer respectfully.

## **SECTION VII. DEFAULT/REMEDIES**

A. **Developer Events of Default.** An event of default by Developer ("Developer Event of Default") is any of the following:

1. A failure by the Developer to meet its obligations set forth in Section 18 of the PSA, whereupon the Developer shall be liable to the Village to the extent provided in Section 20 of the PSA, including the failure of the Developer to pay any Shortfall payments as provided in Section 18 of the PSA; or
2. A failure of the Developer to perform or observe any and all other covenants, conditions, obligations or agreements on its part to be observed or performed when and as required under this Development Agreement; or
3. The Developer becomes insolvent or is the subject of bankruptcy, receivership or insolvency proceedings of any kind; or
4. The dissolution or liquidation of the Developer, or the commencement of any proceedings therefor.

B. **Village Remedies Upon Developer Default.** Whenever a Developer Event of Default occurs and is continuing, the Village shall have the following remedies:

1. Immediately suspend its performance under this Development Agreement from the time any notice of an event of default is given until it receives assurances from the Developer deemed adequate by the Village that the Developer will cure its default and continue its due and punctual performance under this Development Agreement;
2. Commence an action against Developer for the damages of the Village resulting from the Developer Event of Default through arbitration as herein provided. The Village agrees that any damages awarded through arbitration against the Developer for failure to comply with this Development Agreement shall be limited to the sum of One Million Dollars (\$1,000,000.00) (the "Damages Cap"), provided that, in the event the Village does not exercise its Repurchase Option as set forth in Sections 16 and 17 of the PSA for the failure of Developer to commence construction as provided in Section 16(a) of the PSA, any Shortfall payments to the Village will not be

subject to the Damages Cap as provided in Section 18 of the PSA or subject to the limitation on the duration of the Shortfall payments set forth in Section VII.B.3. below, and Developer shall pay the Village the Second Closing Purchase Price upon the completion of the Village Work; and

3. In the event of the Developer Event of Default provided in Section VII.A.1. above, and the exercise by the Village of its Repurchase Option as set forth in Sections 16 and 17 of the PSA, and notwithstanding anything to the contrary provided herein or in the PSA, the Shortfall payments to be made to the Village under Section 18(b) of the PSA shall be limited to four (4) consecutive calendar years, commencing for the calendar year 2021, upon the payment of four (4) consecutive years of Shortfall payments, the obligation of Developer to make any further Shortfall payments shall terminate.

**C. Village Events of Default.**

The Village shall be in default of its obligations hereunder upon the failure of the Village to cause completion of the Village Work pursuant to the terms, conditions and limitations of this Development Agreement (a "Village Default"). In such case, the Developer shall notify the Village of said Village Default by sending a Notice of Event of Default as provided below.

**D. Developer Remedies Upon Village Default.** Whenever a Village Default occurs and is continuing, and such default is not cured within the applicable period described herein, the Developer shall have the following remedies:

1. Immediately suspend its performance under this Development Agreement from the time any notice of an event of default is given until it receives assurances from the Village deemed adequate by the Developer that the Village will cure its default and continue its due and punctual performance under this Development Agreement;

2. Commence an action against the Village for damages of the Developer resulting from the Village Default through arbitration as herein provided. Developer agrees that any damages awarded through arbitration against the Village for failure to comply with this Development Agreement shall be limited to the Damages Cap; and

3. In the event that the Village fails to complete the Village Work by the dates set forth in Section IV hereof, which failure delays the ability of the Developer to commence the operation of its business on the Property, and subject to the first paragraph of said Section IV, Section VII.E. and Section VIII hereof, Developer shall have the right to commence an action against the Village in the Kenosha County, Wisconsin Circuit Court for specific performance, seeking an injunction to require the Village to complete the Village Work.

**E. Notice of Event of Default and Cure Periods.**

1. In the event that the either party believes the other party has failed to perform its obligations under this Development Agreement, that party shall notify the other in writing of such default.

2. The delivery by the Village of a Developer Default Notice to the Developer shall not be a condition precedent to the issuance by the Village of a stop work order pursuant to the applicable provisions of the Village's Land Division and Development Control Ordinance, or to any legal action taken pursuant to this Development Agreement to enforce such ordinance or other applicable ordinance.

3. The party receiving such default notice shall have fifteen (15) days after receipt of a default notice to cure an alleged monetary default and shall have thirty (30) days after receipt of a default notice to cure any other alleged failure to perform under this Development Agreement; provided, however, that if the failure is reasonably incapable of cure within said thirty (30) day period, the defaulting party has commenced such cure within said thirty (30) day period, and is diligently pursuing such cure, then the time for such cure shall be extended for a reasonable additional period of time under the circumstances as reasonably determined to allow the defaulting party to complete its curative activity.

4. Whenever an alleged failure of performance under this Development Agreement is believed by the party sending the default notice, to pose an imminent threat to public health or safety, the parties shall immediately confer in good faith as to how such threat can be most effectively and expeditiously eliminated.

**F. No Implied Waiver.** In the event any warranty, covenant or agreement contained in this Development Agreement should be breached by a party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other concurrent, previous or subsequent breach hereunder.

**G. Agreement to Pay Attorneys' Fees and Expenses.** Whenever any event of default occurs under this Development Agreement and the aggrieved party incurs attorneys' fees, court costs and other such expenses for the collection of payments due or to become due or for the enforcement or performance or observance of any obligation or agreement on the part of the defaulting party herein contained, the party in default shall pay the reasonable attorneys' fees, costs and other such expenses incurred by the other party in the enforcement of this Agreement.

**H. Limitation on Damages.** The parties agree that their remedies for damages available hereunder due to the default of the other party are limited to their direct damages resulting from such default and neither party shall be liable to the other for special, consequential or punitive damages in connection with any default hereunder.

## SECTION VIII. EXCUSED DELAYS

Whenever performance is required of either party hereunder, such party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however that if completion of performance shall be delayed at any time by reason of any of the following, such delay shall be deemed individually or collectively an "Excused Delay" and the time for performance of both parties hereunder shall be extended for a commercially reasonable period of time thereafter:

1. concealed or unknown conditions; should either party encounter conditions that are (a) subsurface or otherwise concealed physical conditions that differ materially from those anticipated when preparing the Infrastructure Plan and designing the improvements; and/or (b) unknown physical conditions that differ from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for sites similar to the Property or the type of improvements to be constructed;

2. the discovery of archeological or historical sites, burial markers, natural species habitat, environmental or wetlands not indicated in the prior study of the Property or beyond expected degree and remediation of such areas are required or deemed necessary on a commercially reasonable basis;

3. delays due to labor disputes or labor strikes; rebidding contracts due to lack of responsible bidders; shortage of materials; actions or inactions of the other party hereto which cause delay in performance to the performing party; unusual delays in deliveries of materials or equipment; unavoidable casualties; delays due to weather conditions; government restrictions or regulation of materials and component parts of the improvement installations (whether or not deemed a shortage thereof); the declaration of war; any act or acts of God ("act of God" means an unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable, and irresistible character, the effects of which could not have been prevented or avoided by the exercise of due care or foresight); or other similar circumstance beyond the party's reasonable control;

4. the anticipated project is the subject of litigation or the reasonable threat thereof, or the approval of the Infrastructure Plan, planned unit development, permit applications, variances or conditions are delayed or objected to by any third party; or a party in good faith initiates litigation against a third party who objects or may object to any part of the project as a defensive measure related to proceeding in good faith to complete the project; then the time for performance as herein specified shall be appropriately extended by the time of the delay actually caused; and

5. a delay by any state or federal governmental agency, department or division issuing any construction permit, operating permit, license or other approval required for the construction of the Building or the construction of the Village Work.

## SECTION IX. FEES

A. **Miscellaneous Fees.** The Developer shall pay to the Village Treasurer in cash or by check upon execution of this Development Agreement, all fees which have not already been paid by the Developer but are currently due and payable, if any, and the Developer shall pay to the Village Treasurer when they have become due and payable all other fees prescribed by the Village Land Division and Development Control Ordinance which are or may become due and payable.

B. **Engineering and Zoning Review Fees.** In addition to the Village's Consulting Engineer's Inspection services, the Developer shall reimburse the Village for all reasonable fees incurred by it for the Village Engineer's inspections, the Village Community Development Department staff services and any other expert or administrative services in connection with its inspections and approvals associated with the development of the Building requiring the Village's review, inspection or approval. The Village's invoice shall provide an itemization specifying the work done, by whom it was done and the charge for such work.

C. **Impact Fees.** The Village charges impact fees to developers, and subsequent landowners thereafter, of all new developments. These impact fees compensate the Village for additional costs for public improvements resulting for services for the new development for police, fire, public works and parks related projects. Impact fees are due as a condition precedent to the issuance of a building permit and will be paid by the Developer at such time. As information to the Developer, the Village is contemplating that additional impact fees will be charged to developers and subsequent landowners in the future for storm water management, water connections and transportation related projects.

## SECTION X. ASSIGNMENT

Neither party shall transfer, sell or assign this Development Agreement or its obligations under this Development Agreement, without the prior written consent of the other party, which consent may be withheld, conditioned or delayed for any reason except that this Development Agreement may be assigned by Developer to an entity one hundred percent (100%) owned, directly or indirectly, by Haribo Holding GmbH & Co. KG, a German private limited partnership, without Village consent but after written notice to the Village, so long as such entity is the owner of the Property.

## SECTION XI. BINDING

This Development Agreement shall be binding upon the parties hereto and their respective representatives, successors and assigns, and any and all future owners of the Property or any portion thereof, and their respective heirs, representatives, successors and assigns.



## SECTION XII. AMENDMENTS

This Development Agreement may only be modified or amended by written agreement, duly authorized and signed by the Village and the Developer, their permitted successors or assigns.

## SECTION XIII. ADDITIONAL PROVISIONS

A. **Conflicts of Interest.** No member of any governing body or other official of the Village ("Village Official") shall have any financial interest, direct or indirect, in this Development Agreement, the Property or the Building, or any contract, agreement or other transaction contemplated to occur or be undertaken thereunder or with respect thereto, unless such interest is disclosed to the Village and the Village Official fully complies with all conflict of interest requirements of the Village. No Village Official shall participate in any decision relating to this Development Agreement which affects his or her personal financial interest or the financial interests of any corporation, partnership or association in which he or she has a direct or indirect financial interest. No member, official or employee of the Village shall be personally liable to the Village for any event of default or breach by the Developer of any obligations under the terms of this Development Agreement.

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

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

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

E. **Notices.** Any notice required hereunder shall be given in writing, signed by the party giving notice, personally delivered, mailed by certified or registered mail, return receipt requested, or sent via a nationally-recognized overnight delivery service (such as Federal Express), to the parties' respective addresses as follows:

To the Village: Village of Pleasant Prairie, Wisconsin  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158  
Attn: Village Administrator

With a copy to: Village of Pleasant Prairie, Wisconsin  
9915 39<sup>th</sup> Avenue  
Pleasant Prairie, WI 53158  
Attn: Jean M. Werbie-Harris,  
Community Development Director

With a further copy to: Brian G. Lanser and Scott L. Langlois Quarles & Brady LLP 411 East Wisconsin Avenue #2350 Milwaukee, WI 53202

To the Developer: Haribo of America Manufacturing, LLC 9500 Bryn Mawr Avenue #700 Rosemont, IL 60018 Attn: Wes Saber, Chief Financial Officer

With copy to: Tim Hammersmith Masuda, Funai 203 N. LaSalle St, Suite 2500 Chicago, IL 60601

or to such other address as a party may designate for itself by notice given to the other parties from time to time in accordance with the provisions hereof.

Notice shall be deemed delivered (i) in the case of personal delivery, on the date when personally delivered; (ii) in the case of certified or registered mail, on the third business day after the date when deposited in the United States mail with sufficient postage to effect such delivery, or (iii) in the case of notice sent via a nationally-recognized overnight delivery service, on the day such delivery service attempts delivery at the notice address.

F. **Entire Agreement.** This document and all other documents and agreements expressly referred to herein contain the entire agreement between the Developer and the Village with respect to the matters set forth herein.

G. **Governing Law/Mediation and Arbitration of Disputes.** This Development Agreement shall be construed in accordance with the internal laws of the State of Wisconsin. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, shall be resolved by mediation and arbitration administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules and Mediation Procedures. The mediation shall precede the arbitration and follow the Mediation Procedures of the AAA. The number of arbitrators shall be determined by application of the AAA rules. The place of arbitration shall be Milwaukee, Wisconsin. The parties intend that the forms of relief that may be granted by the arbitrators to be the forms of relief contemplated within the scope of this Agreement, including but not limited to the remedy of specific performance of contract. Judgment on the award rendered by the arbitrators or the enforcement of any specific performance of this Development Agreement ordered by the arbitrators may be entered in any court having jurisdiction thereof.

H. **Further Assurances.** The Developer and Village will at any time, and from time to time at the written request of the other party sign and deliver such other

documents and instruments requested by the other party as may be reasonably necessary or appropriate to give full effect to the terms and conditions of this Development Agreement.

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

J. **No Third Party Beneficiaries.** This Development Agreement is not intended to benefit or to be enforceable by any person other than the Village, the Developer, and their respective successors and permitted assigns, which shall not include, for purposes of this subsection, any person who has not assumed all of the benefits and obligations of this Development Agreement in accordance with the terms of this Development Agreement.

K. **Applicability of Land Division and Development Control Ordinance and Zoning Ordinance.** The provisions of the Village Land Division and Development Control Ordinance and Zoning Ordinance are applicable to the subject matter of this Development Agreement whether or not such provisions are referred to expressly herein.

L. **Amendment of Ordinances.** In the event that the Village Land Division and Development Control Ordinance or Zoning Ordinance is amended or recreated after this Development Agreement is entered into, and before all of the obligations of the Developer under this Development Agreement have been satisfied, then any such amendment shall apply to this Development Agreement and Developer shall comply with any such amendment.

M. **Severability.** In the event that any part of this Development Agreement is determined to be invalid by a court of competent jurisdiction, such part shall be severed from the Agreement, and the balance of this Development Agreement shall survive.

N. **No Threat to Public Health or Safety.** Notwithstanding any language in this Development Agreement to the contrary, the Developer and Village shall not do nor permit any other person to do anything in connection with the performance of the Developer's obligations under this Development Agreement which poses a threat to the public health or safety.

O. **Good Faith and Fair Dealing.** The parties shall deal with one another fairly and in good faith. If this Development Agreement provides that an approving party may grant or withhold its approval or consent in its sole and absolute judgment or discretion, such approval or consent may be unreasonably withheld or conditioned and the approving party shall not be obligated to state the reasons for withholding its approval. If this Development Agreement does not expressly provide that an approving or consenting party may grant or withhold its approval in its sole and absolute judgment or discretion, the approving party shall not unreasonably withhold, condition or delay its approval.

P. **No Rule of Construction Against Drafter.** The language used in this Development Agreement shall be deemed to be the language chosen by the parties to express their mutual intent and no rule of construction shall be applied against either party as the drafter of this Development Agreement.

Q. **Incorporation of Recitals.** The Recital paragraphs set forth at the beginning of this Development Agreement are incorporated as part of this Development Agreement as though fully set forth herein.

R. **Recording.** The Developer shall, contemporaneously with the execution of this Development Agreement, execute and deliver to the Village the Memorandum of Development Agreement substantially in the form attached hereto as **Exhibit C** for recording. Upon the satisfaction by the Developer and the Village of all of their respective obligations hereunder, the parties shall jointly record a release of Development Agreement, releasing the same from the public record.

S. **Tax-Exempt Covenant.** Developer will not sell, lease, assign or otherwise transfer or convey any interest in the Property to a person or entity exempt from general property taxation or in a manner which would cause all or any portion of the Property to be exempt from general property taxation (the "Tax-Exempt Covenant"). This Tax-Exempt Covenant shall be in effect during the term of TID 5 or any successor tax increment district including the Property. This Tax-Exempt Covenant runs with the Property and binds all owners in title to the Property during the term of the Tax-Exempt Covenant. In the event a court finds the Tax-Exempt Covenant is not valid or enforceable or if for any reason the Tax-Exempt Covenant is terminated, then Developer and its successors and assigns shall, and shall cause Developer and its successors and assigns to, make a payment in lieu of taxes to the Village as required from time to time by the Village.

T. **Survival of Representations and Warranties.** All representations and warranties made by the Developer and the Village in this Development Agreement shall survive for a period of one (1) year after substantial completion of the last building constructed on the Property by the Developer for the Developer representations and warranties and one (1) year after the completion of the Village Work by the Village for the Village representations and warranties.

**[SIGNATURES CONTINUED ON NEXT PAGES]**



**THE VILLAGE:**

**VILLAGE OF PLEASANT PRAIRIE,**  
a Wisconsin municipal corporation

By: \_\_\_\_\_  
Name: John P. Steinbrink  
Title: Village President

By: \_\_\_\_\_  
Name: Jane C. Snell  
Title: Village Clerk

STATE OF WISCONSIN    )  
  )  
  )     ss.  
COUNTY OF KENOSHA    )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018 the above-named John P. Steinbrink and Jane C. Snell to me known to be the Village President and Village Clerk of the Village of Pleasant Prairie, Wisconsin, respectively, who executed the foregoing instrument and acknowledged the same on behalf of said municipal corporation.

\_\_\_\_\_  
Jean M. Werbie-Harris, Notary Public,  
Kenosha County, Wisconsin  
My Commission Expires \_\_\_\_\_

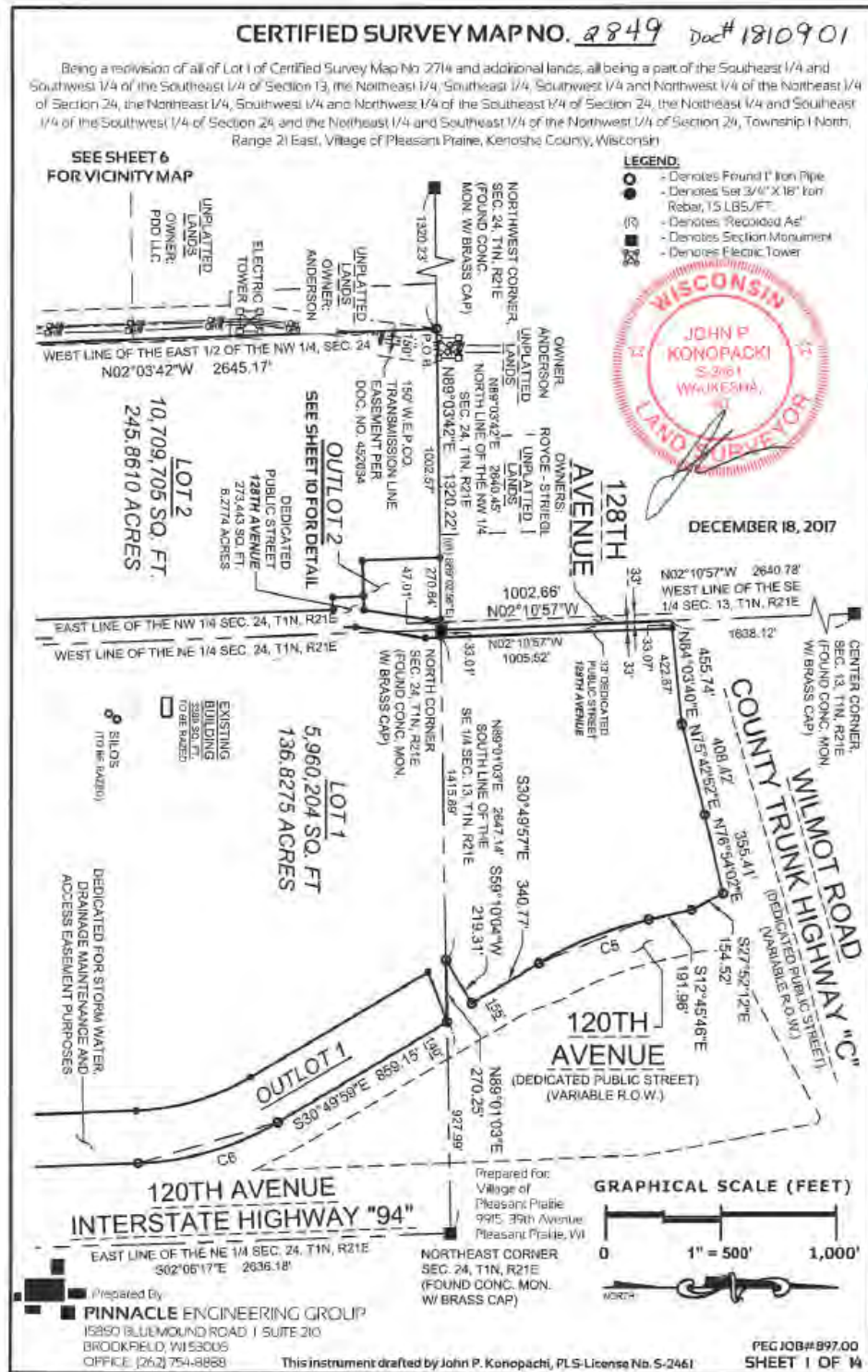
**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

LOT 1 OF CERTIFIED SURVEY MAP NO. 2849, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR KENOSHA COUNTY, WISCONSIN ON DECEMBER 27, 2017, AS DOCUMENT NO. 1810901, BEING A REDIVISION OF ALL OF LOT 1 OF CERTIFIED SURVEY MAP NO. 2714 AND ADDITIONAL LANDS, ALL BEING A PART OF THE SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, THE NORTHEAST 1/4, SOUTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 24, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 21 EAST, VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

# EXHIBIT A-1

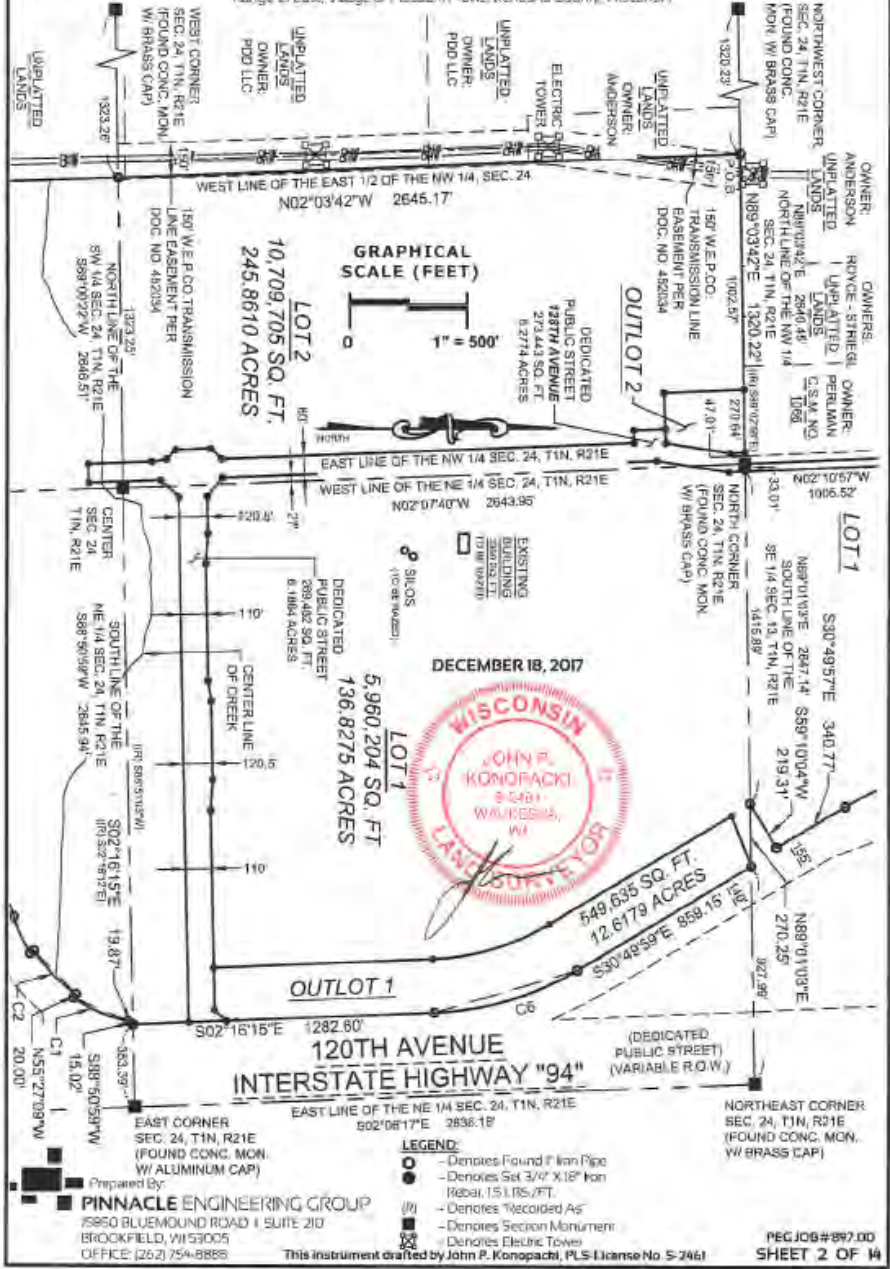
## CERTIFIED SURVEY MAP INCLUDING THE PROPERTY





**CERTIFIED SURVEY MAP NO. 2849 Doc # 1810901**

Being a subdivision of all of Lot 1 of Certified Survey Map No. 2774 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southwest 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North Range 2 East, Village of Pleasant Prairie, Kenosha County, Wisconsin



CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901

Being a redivision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwestern 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 2 East, Village of Pleasant Plain, Kershaw County, Wisconsin

Tax Key Numbers:  
91-4-121-134-0302  
91-4-121-241-0102  
91-4-121-241-0111  
91-4-121-241-0401  
91-4-121-243-0101  
91-4-121-243-0401  
91-4-121-244-0112  
91-4-121-244-0201  
91-4-121-244-0301

UNPLATTED  
LANDS  
OWNER:  
MAV

UNPLATTED  
LANDS  
OWNER:  
POWELL

UNPLATTED  
LANDS  
OWNER:  
WILKINSON

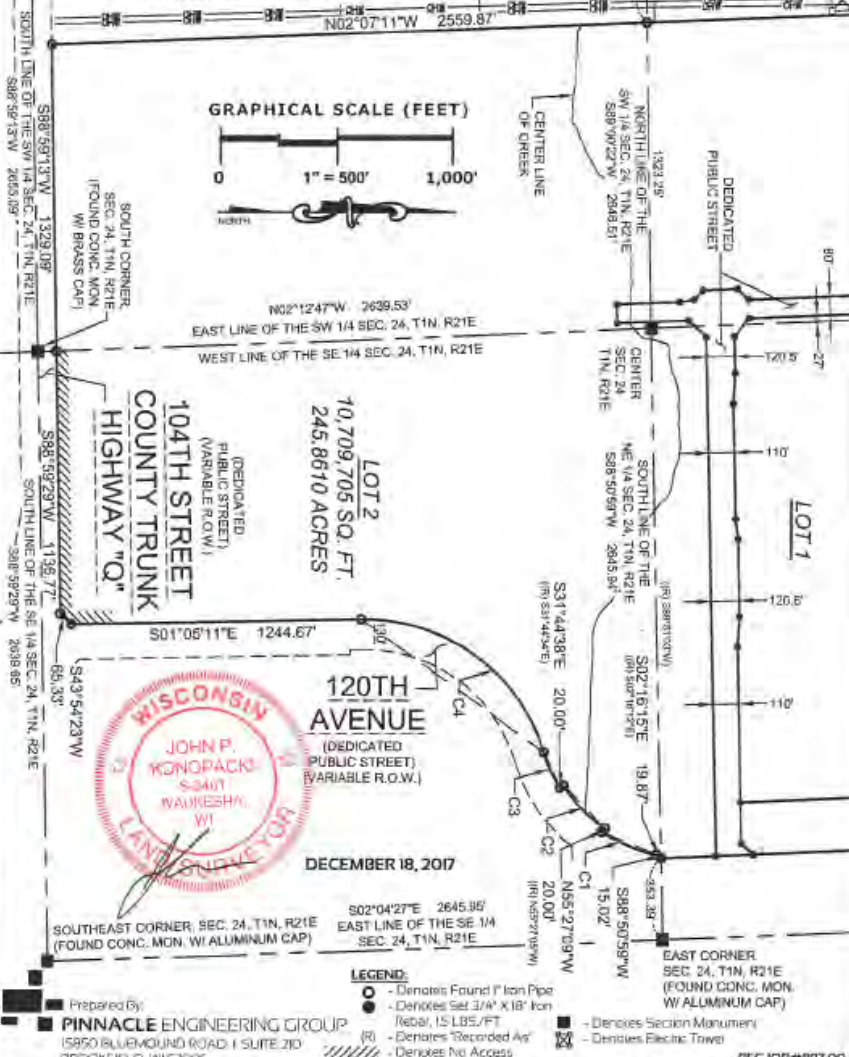
UNPLATTED  
LANDS  
OWNER:  
POD LLC

WEST CORNER  
SEC. 24, T1N, R21E  
(FOUND CONC. MON.  
W/ BRASS CAP)

SOUTH  
WEST CORNER  
SEC. 24, T1N, R21E  
(FOUND CONC. MON.  
W/ BRASS CAP)

SOUTH CORNER  
SEC. 24, T1N, R21E  
(FOUND CONC. MON.  
W/ BRASS CAP)

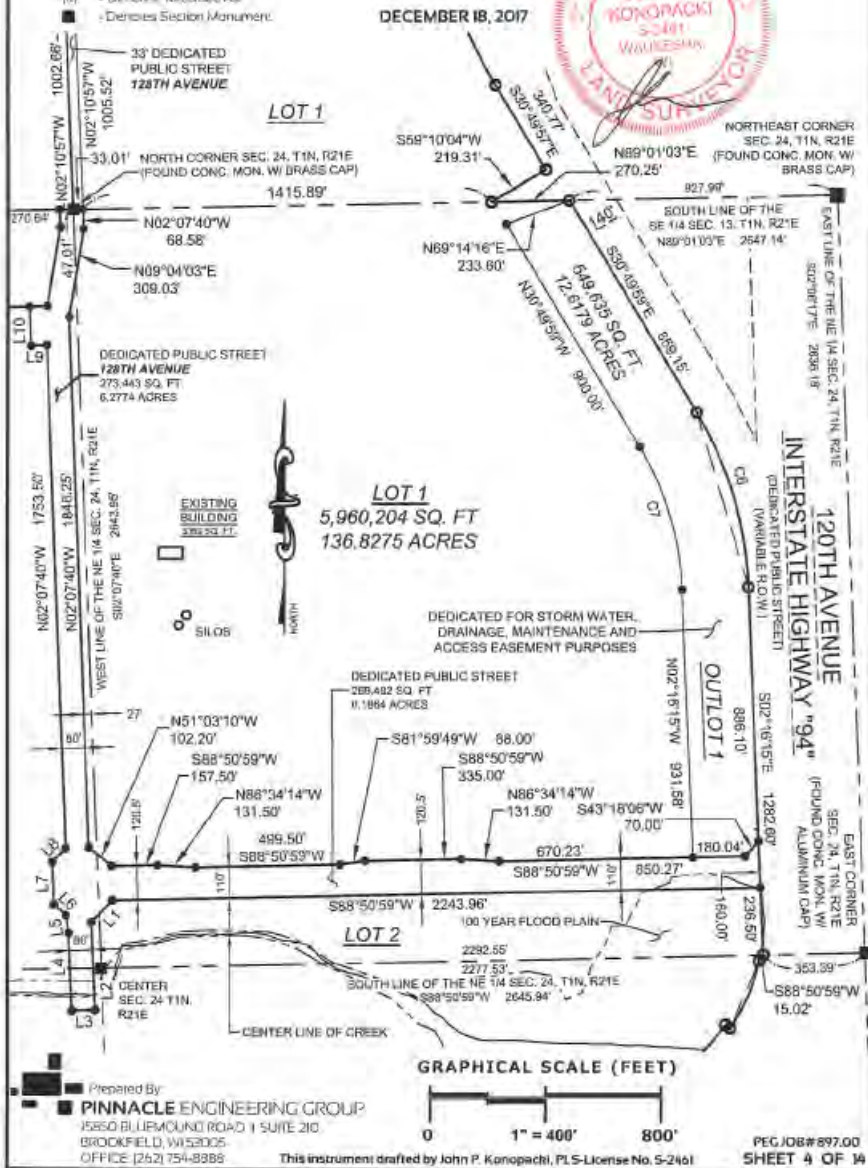
GRAPHICAL SCALE (FEET)  
0 1" = 500' 1,000'



**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a redivision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 2 East, Village of Pleasant Prairie, Kenosha County, Wisconsin.

- LEGEND:**
- - Denotes Found 1" Iron Pipe
  - - Denotes Six 3/4" X 18" Iron Rebar, 15 LBS./FT.
  - (R) - Denotes "Recorded As"
  - - Denotes Section Monument



**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a redivision of all of Lot 1 of Certified Survey Map No. 2774 and additional lands, all being a pair of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 2 East, Village of Pleasant Prairie, Kenosha County, Wisconsin



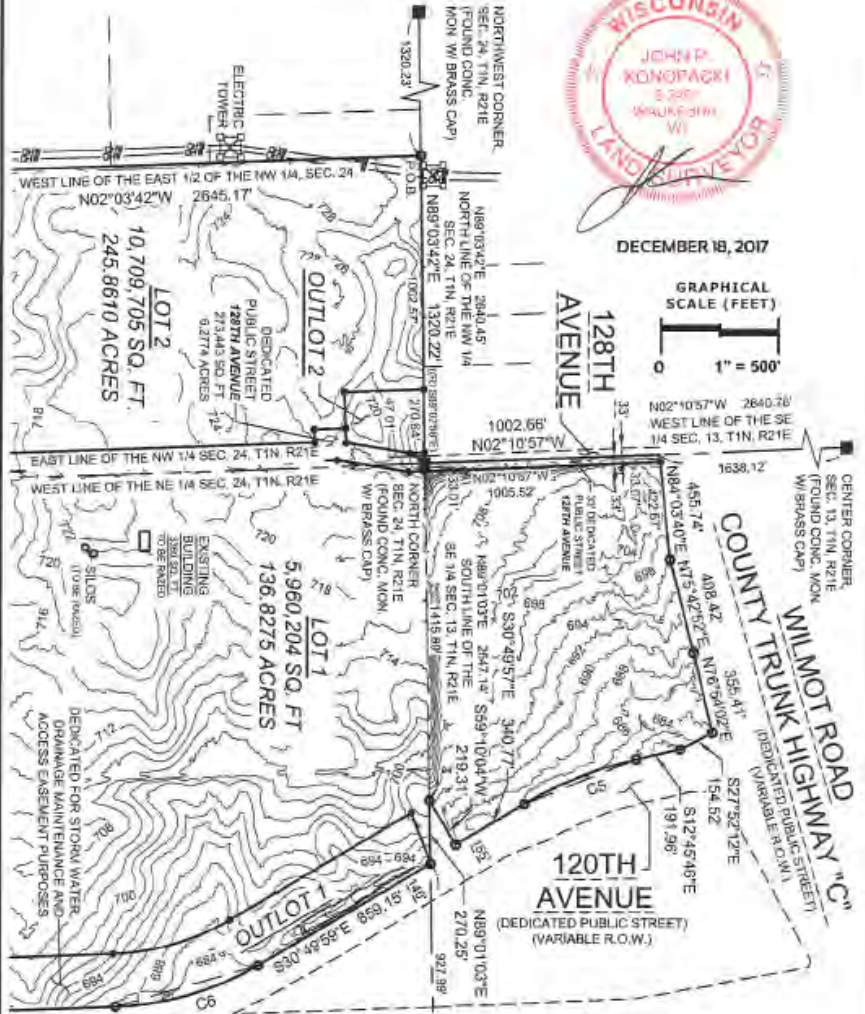
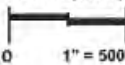
**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a redivision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin.



DECEMBER 18, 2017

GRAPHICAL SCALE (FEET)



**120TH AVENUE INTERSTATE HIGHWAY "94"**

EAST LINE OF THE NE 1/4 SEC. 24, T1N, R21E  
S82°06'17"E 2636.18'

Prepared by:  
**PINNACLE ENGINEERING GROUP**  
15850 BLUEMOUND ROAD | SUITE 210  
BROOKFIELD, WI 53005  
OFFICE: (262) 754-9889

NORTHEAST CORNER  
SEC. 24, T1N, R21E  
(FOUND CONC. MON.  
W/ BRASS CAP)

**LEGEND:**

- - Denotes Found Iron Pipe
- - Denotes Set 3/4" X 18" Iron Rebar, 15 LBS./FT.
- - Denotes Recorded As
- ⊠ - Denotes Section Monument
- ⚡ - Denotes Electric Tower

PEG JOB # 897.00  
**SHEET 6 OF 14**

This instrument drafted by John P. Konopacki, PLS License No. S-2461

**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a subdivision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin.

**SURVEYOR'S CERTIFICATE**

STATE OF WISCONSIN)  
WAUKESHA COUNTY) SS

I, John P. Konopacki, Professional Land Surveyor, do hereby certify:

That I have surveyed, mapped and divided all of Lot 1 of Certified Survey Map No. 2714, recorded in the Register of Deeds Office for Kenosha County on November 7, 2012 as Document No. 1886990 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin, bounded and described as follows:

Commencing at the northwest corner of said Section 24; thence North 89°03'42" East along the north line of the Northwest 1/4 of said Section 24, 1320.23 feet to the west line of the East 1/2 of said Northwest 1/4 and the Point of Beginning;

Thence continue North 89°03'42" East along said north line, 1320.22 feet to the North corner of said Section 24; thence North 02°10'57" West along the west line of the Southeast 1/4 of said Section 13, 1002.56 feet to a point on the south right of way line of Wilmet Road - County Trunk Highway "C"; thence North 84°03'40" East along said south right of way line, 455.74 feet; thence North 75°42'52" East along said south right of way line, 408.42 feet; thence North 76°54'02" East along said south right of way line, 356.41 feet to the west right of way line of 120th Avenue; thence the following courses along said west right of way line of 120th Avenue:

South 27°52'12" East, 154.92 feet;  
South 12°45'46" East, 191.86 feet to a point of curvature;  
Southeasterly 516.58 feet along the arc of said curve to the left, whose radius is 1635.00 feet and whose chord bears South 21°47'48" East, 513.45 feet;  
South 30°49'57" East, 340.77 feet;  
South 59°10'04" West, 219.31 feet to the south line of the Southeast 1/4 of said Section 13;  
North 89°01'03" East along said south line, 270.25 feet;  
South 30°49'59" East along said West line 859.15 feet to a point of curvature;  
Southeasterly 639.08 feet along the arc of said curve to the right, whose radius is 1282.00 feet and whose chord bears South 16°33'07" East, 632.48 feet;  
South 02°16'15" East, 1282.60 feet to the south line of the Northeast 1/4 of said Section 24;  
South 88°50'59" West along said south line, 15.02 feet;  
South 02°16'15" East, 19.87 feet to a point of curvature;  
Southwesterly 254.89 feet along the arc of said curve to the right, whose radius is 643.50 feet and whose chord bears South 23°11'47" West, 253.32 feet;  
North 55°27'09" West, 20.00 feet to a point on a curve;  
Southwesterly 258.00 feet along the arc of said curve to the right, whose radius is 623.60 feet and whose chord bears South 46°24'08" West, 256.16 feet;  
South 31°44'38" East, 20.00 feet to a point on a curve;  
Southwesterly 168.78 feet along the arc of said curve to the right, whose radius is 643.50 feet and whose chord bears South 65°46'06" West, 168.27 feet to a point of reverse curve;  
Southwesterly 1048.81 feet along the arc of said curve to the left, whose radius is 806.50 feet and whose chord bears South 36°08'51" West, 974.86 feet;  
South 01°05'11" East, 1244.67 feet;  
South 43°54'23" West, 65.33 feet to the north right of way line of 104th Street - County Trunk Highway "Q"; thence South 88°58'29" West along said north right of way line, 1136.77 feet; thence South 88°58'13" West along said north right of way line, 1329.09 feet to the west line of the East 1/2 of the Southwest 1/4 of said Section 24; thence North 02°07'11" West along said west line, 2559.87 feet to the north line of said Southwest 1/4; thence North 02°03'42" West along the west line of the East 1/2 of the Northwest 1/4 of said Section 24, 2645.17 feet to the Point of Beginning.

Dedicating lands as graphically shown for right of way purposes.  
Containing 17,846,114 square feet (409.8904 acres) gross and 17,303,189 square feet (397.2266 acres) net of land, more or less.  
That I have made survey, land division and map by the Village of Pleasant Prairie, owner of said land.  
That such map is a correct representation of all the exterior boundaries of the land surveyed and land division thereof made.  
That I have fully complied with the provisions of s.236.34 of the Wisconsin State Statute and the Village of Pleasant Prairie Land Division Control Ordinance in surveying and mapping the same.

  
John P. Konopacki  
Professional Land Surveyor S-2461  
Date: DECEMBER 18, 2017



Prepared By:  
**PINNACLE ENGINEERING GROUP**  
15650 BLUEMOUND ROAD, SUITE 200  
BROOKFIELD, WISCONSIN  
OFFICE: (262) 794-8888

This instrument drafted by John P. Konopacki, PLS-License No. S-2461  
PEG JOB# 897.00  
SHEET 7 OF 14

**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a recision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southwest 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin

The following "Lot Owner Responsibilities" and "Restrictive Covenants" were drafted by the Village of Pleasant Prairie and are shown herein as a condition of map approval. Inclusion thereof on this document is not to be considered practicing law in the State of Wisconsin by the abovesigned Land Surveyor; the Land Surveyor is not responsible for rights granted, perceived or otherwise stated herein.

**LOT OWNER RESPONSIBILITIES:**

1. The fee interest in the areas shown as a Dedicated Public Street on this Certified Survey Map (CSM) were/are being dedicated, given, granted and conveyed to the Village of Pleasant Prairie, its successors and assigns (the "Village") and/or the Wisconsin Department of Transportation (WI DOT) for the construction, installation, repair, alteration, replacement, planting and maintenance of public roadway improvements, uses and purposes, including, without limitation, roadway pavement, curbs and gutters, street signs, street lights, street trees, sanitary sewerage system improvements, water system improvements, roadway improvements, storm sewer and drainage system improvements, utility and communications facilities, street tree landscaping, and for all related ingress and egress, construction, installation, repair, alteration, replacement, planting and maintenance activities. Such fee interest is subject to the following, a nonexclusive easement which is hereby reserved in the right-of-way by the Village and/or the WI DOT as shown on this CSM for the Lot Owners adjacent to the public street areas for the required planting, mowing, watering and maintenance and cutting of grass within the grassy terrace area and for the maintenance and replanting of street trees in the area between the roadway pavement and the Lots. In the event of any conflict between the rights of the Village and WI DOT under its existing fee interest in the Dedicated Public Street areas shown on this CSM and the rights of the Lot Owners pursuant to the public street dedication retained herein, the rights of the Village or WI DOT shall be deemed to be superior.

The Village shall be responsible for all costs associated with the construction, installation, repair, alteration, and replacement of roadway improvements. The Lot Owners shall be responsible for the maintaining and mowing of the street terrace area; street tree pruning, watering, mulching, staking and other tree maintenance and replacements; payment of public street lights energy and maintenance costs; installation and maintenance of mailboxes; extensions and maintenance of private utility and communications facilities; and maintenance of the private storm water drainage improvements leading to the off-site retention basins used to handle storm water from the development site in accordance with the terms and conditions of the Village Municipal Code and the specific requirements of the respective Development Agreement approvals.

2. Future potential nonexclusive utility easements coextensive with the future areas to be shown on the Lots by WE Energies (fka W.E.P.CO.), AT & T (fka Wisconsin Bell) and Spectrum (fka Time Warner Cable Inc.) and their respective successors and assigns (collectively the "Utility and Communications Grantees") as may be granted by the Lot Owners, shall be identified for the purposes of constructing, installing, operating, repairing, altering, replacing and maintaining utility and communication lines and other related facilities to serve the Lots and for any related ingress and egress. The future General Utility Easements shall also include the right to trim or cut down trees, bushes, branches, and roots as may be reasonably required, that are interfering with the Utility and Communication Grantees use of the easement areas. To the extent possible, all such utility and communications lines and facilities shall be installed underground. Upon the installation of the utility lines, utility cables and related appurtenances, the elevation of the existing ground surface within the General Utility Easement areas shall only be altered in accordance with separate agreement between Utility and Communications Grantees and Lot Owners and as may be approved by the Village. Upon the installation of the required utilities, the Lot Owners shall be responsible to restore or cause to be restored, all such land, as nearly as is reasonably possible, to the conditions existing prior to installation of such utilities within the General Utility Easement, on which such easements are located on their Lots as does not interfere with the purpose of the utility and communications easements and the use of such easements by the Utility and Communications Grantees. Unless there is a separate agreement entered into between the individual Lot Owners and Grantees regarding the transfer of the restoration and maintenance responsibilities to the Utility and Communications Grantees, the Grantor shall be responsible for all restoration maintenance. No buildings, fences, or structures of any kind shall be placed within the General Utility Easement areas without the approval of the Utility and Communication Grantees.

The Village generally allows private utilities, including but not limited to electric and communications facilities, to be installed in public street rights-of-way areas with prior written approval from the Village, subject to the requirements of applicable Village ordinances and the requirements of such public uses and purposes of the Village. Further, each individual private utility, electric or communications company shall be responsible for promptly restoring the public street areas to their pre-existing condition, at its own cost, after any use of such areas. In the event the private companies do not restore the public street areas to a vegetatively stabilized condition, the individual Lot Owners shall be ultimately responsible for the costs of such restoration and may pursue its remedies against the respective utility company(ies). Under no circumstances shall any private utility, electric or communications company conduct any open cutting of the public streets without prior written approval of the Village and/or the WI DOT. Any such private utility or communications facilities shall be promptly relocated, at the cost of the individual utility, electric or communications company, upon written request of the Village, to serve the public functions and purposes of the Village in the public street area. In the event of any conflict between the rights of the Village or WI DOT and the rights of the private utility, electric or communications company in such public street areas, the Village's or the WI DOT's rights shall be deemed to be superior.



Prepared By:  
**PINNACLE ENGINEERING GROUP**  
15850 BLUEMOUND ROAD # SUITE 210  
BROOKFIELD, WI 53005  
OFFICE: (262) 754-8888

This instrument drafted by John P. Konopacki, PLS - License No. 5-2461

PEG JOB# 897.00  
SHEET 8 OF 14

**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a subdivision of all of Lot 1 of Certified Survey Map No. 2794 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin.

"LOT OWNER RESPONSIBILITIES" AND "RESTRICTIVE COVENANTS" CONTINUED.....

**RESTRICTIVE COVENANTS:**

1. The Village of Pleasant Prairie hereby covenants that the respective Lot Owners shall have the obligation of replanting, maintaining and replacing the public street trees and maintaining the street terrace areas located within the right-of-way areas abutting the Lot Owner's property as shown on this CSM. Such replanting and maintenance shall include without limitation and as needed planting, staking, mulching, weeding, pruning, watering, replanting, and removing of trash, debris, leaves and brush around the trees in order to prevent a nuisance condition. No driveways, signage, mail boxes, parking areas, structures or fences shall be erected within the right-of-way areas, which might damage the street trees or might interfere with the Village's rights or the WI DOT's rights to maintain the public street improvements, unless approved by the Village and/or the WI DOT. This covenant shall run with the land, shall be binding upon the Lot Owners, its successors, successors and assigns and successors-in-title of the land, in their capacity as the Lot Owners, and shall benefit and be enforceable by the Village and/or the WI DOT. Such street tree planting and terrace area maintenance shall be performed regularly for the trees and terrace areas abutting the Owner's Lot, without compensation, and to the satisfaction of the Village.

To the extent that the Village performs any such public street tree or street terrace related maintenance activities, the respective Lot Owners not having maintained the trees or terrace areas, shall be liable for any costs which may be incurred by the Village, which the Village may recover from such Lot Owners as special assessments or special charges under Section 66.0627 (or successors or similar provisions) of the Wisconsin Statutes or otherwise according to law.

2. The Village of Pleasant Prairie hereby covenants that the respective Lot Owners shall have the obligation of protecting and preserving the wetland areas shown on their Lot on this CSM in those areas in which wetland fill permits have not been obtained. Such maintenance shall include removing of trash or debris in order to prevent a nuisance condition and as needed removing of dead, dying or decayed trees, invasive plant materials or species, and planting of wetland plant life as approved by the Village, Wisconsin Department of Natural Resources (WI DNR), and Army Corps of Engineers (ACOE). No mowing or cutting of the wetlands shall be allowed unless approved by the Village. No signage or fences shall be erected within the wetlands, which may damage the wetland areas. This covenant shall run with the land, shall be binding upon the Lot Owners, its successors and assigns and successors-in-title of the land, in their capacity as the Lot Owner, and shall benefit and be enforceable by the Village, WI DNR or ACOE. The Lot Owner shall perform such wetland maintenance as may be needed, without compensation, and to the satisfaction of the Village.

To the extent that the Village performs any such wetland related maintenance activities, the respective Lot Owners shall be liable for any costs which may be incurred by the Village, which the Village may recover from such Lot Owner as special assessments or special charges under Section 66.0627 (or successors or similar provisions) of the Wisconsin Statutes or otherwise according to law. Unless the Village exercises the rights granted to it in the Dedication and Easement Provisions on this CSM, the Village shall have no obligation to do anything pursuant to its rights under this paragraph.

3. The Village of Pleasant Prairie hereby covenants that the Lot Owners shall have the obligation of protecting and preserving the 100-Year floodplain areas shown on their Lot on this CSM in those areas in which floodplain fill permits have not been obtained. Such maintenance shall include removing of trash or debris in order to prevent a nuisance condition and as needed removing of dead, dying or decayed trees or plant life as approved by the Village, Wisconsin Department of Natural Resources (WI DNR), and Federal Emergency Management Agency (FEMA). No filling or land disturbance of the floodplains shall be allowed unless approved by the Village, WI DNR and FEMA. No signage or fences shall be erected within the floodplain, which may cause flooding or redirection of the water off of the Lot. This covenant shall run with the land, shall be binding upon the Lot Owner, its successors and assigns and successors-in-title of the land, in their capacity as the Lot Owner, and shall benefit and be enforceable by the Village, WI DNR or ACOE. The Lot Owner shall perform such floodplain maintenance as may be needed, without compensation, and to the satisfaction of the Village.

To the extent that the Village performs any such floodplain related maintenance activities, the respective Lot Owner shall be liable for any costs which may be incurred by the Village, which the Village may recover from such Lot Owner as special assessments or special charges under Section 66.0627 (or successors or similar provisions) of the Wisconsin Statutes or otherwise according to law. Unless the Village exercises the rights granted to it in the Dedication and Easement Provisions on this CSM, the Village shall have no obligation to do anything pursuant to its rights under this paragraph.

  
WISCONSIN  
JOHN P. KONOPACKI  
STATE  
WISCONSIN  
WI  
LAND SURVEYOR  
1810901  
DECEMBER 18, 2017

Prepared By  
 **PINNACLE ENGINEERING GROUP**  
15850 BLUEMOUND ROAD, SUITE 210  
BROOKFIELD, WI 53005  
OFFICE: (262) 754-8888

This instrument drafted by John P. Konopacki, PLS-License No. S-2461

PEGJOB# 897.00  
SHEET 9 OF 14



**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a redivision of all or part of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 (excl. Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin

**OWNER'S CERTIFICATE**

We, the Village of Pleasant Prairie, a municipal body corporate, duly organized and existing under and by virtue of the laws of the State of Wisconsin, as owner, hereby certify that said corporation caused the land described on this map to be surveyed, divided and resurveyed as represented on this map in accordance with the requirements of the Village of Pleasant Prairie.

The Village of Pleasant Prairie does further certify that this certified survey map is required by Chapter 236 of the Wisconsin State Statutes to be submitted to the following for approval or objection:

- Village of Pleasant Prairie

IN WITNESS WHEREOF, Village of Pleasant Prairie, has caused these presents to be signed by Thomas G. Shroede and John M. Komacki as the Village Administrator and Village Clerk, respectively, of said company on this 21st day of December, 2017.

Jean M. Walke-Hanne  
(Witness)  
Jean M. Walke-Hanne  
(Witness)

By: Thomas G. Shroede  
Village Administrator  
By: John M. Komacki  
Village Clerk

STATE OF WISCONSIN  
Kenosha COUNTY

Personally came before me this 21st day of December, 2017, (name) Thomas G. Shroede (Title) Village Administrator and (name) John M. Komacki (Title) Village Clerk of the above named corporation, to me known to be the persons who executed the foregoing instrument, and to me known to be such members of said corporation, and acknowledged that they executed the foregoing instrument as such members of said corporation, by John P. Komacki

John P. Komacki  
Notary Public  
Name: John P. Komacki  
State of Wisconsin  
My Commission Expires: 11/30/20



**EASEMENT DETAIL**



Prepared By:  
**Pinnacle Engineering Group**  
15850 BLUEMOUND ROAD | SUITE 210  
BROCKFIELD, WI 53005  
OFFICE: (262) 754-8888

DECEMBER 18, 2017



PEC JOB # 897.00  
SHEET 10 OF 14

**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a redivision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin.

**PLAN COMMISSION APPROVAL**

Approved by the Plan Commission of the Village of Pleasant Prairie on this 18th day of Dec., 2017

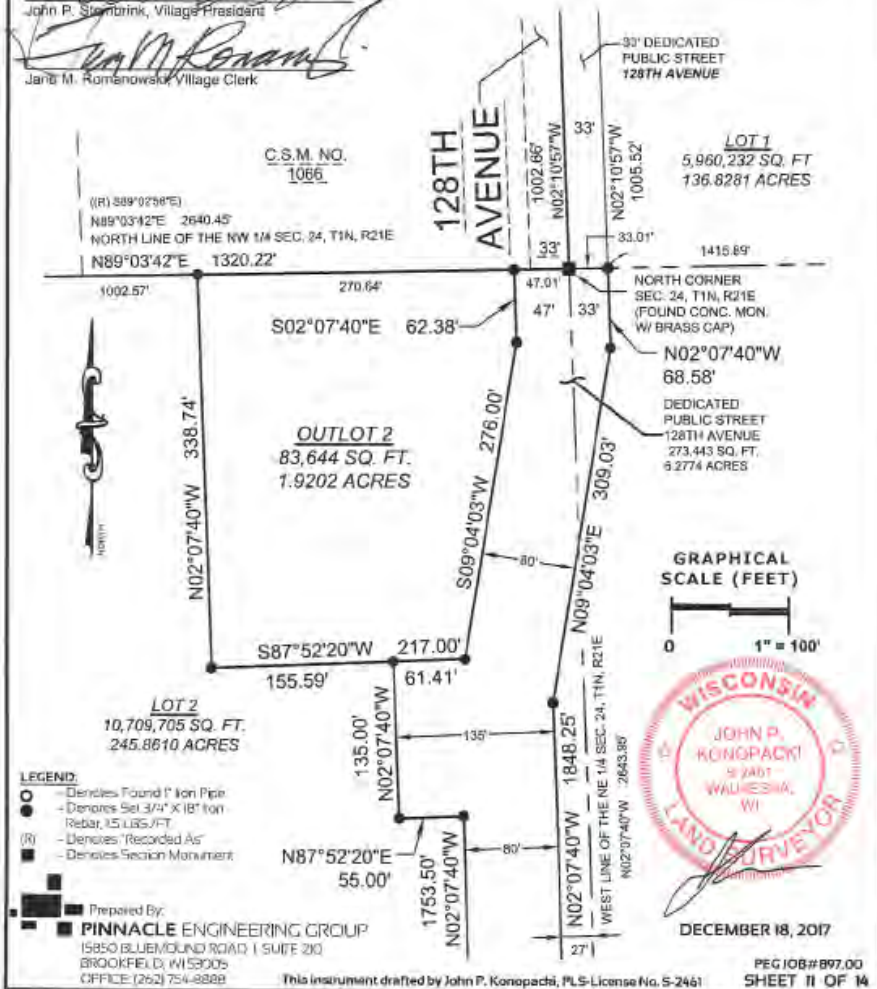
*Thomas W Terwell*  
 Thomas W Terwell, Chairman

**VILLAGE BOARD APPROVAL**

Approved by the Village Board of the Village of Pleasant Prairie, Wisconsin, on this 18th day of Dec., 2017

*John P. Stombrink*  
 John P. Stombrink, Village President

*Jane M. Romanowski*  
 Jane M. Romanowski, Village Clerk



**CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901**

Being a redivision of all of Lot 1 of Certified Survey Map No. 2714 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northwest 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northeast 1/4 of Section 24, the Northwest 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 21 East, Village of Pleasant Prairie, Kenosha County, Wisconsin



- LEGEND:**
- - Denotes Found 1" Iron Pipe
  - - Denotes Set 3/4" X 18" Iron Rebar, 15 LBS/FT
  - - Denotes "Recorded As"
  - - Denotes Section Monument

WETLANDS DELINEATED  
BY R. A. SMITH NATIONAL  
JUNE 23, 2017

Prepared by  
**Pinnacle Engineering Group**  
15850 BLUEMOUND ROAD, SUITE 210  
BROOKFIELD, WI 53005  
OFFICE: (262) 754-8888

This instrument drafted by John P. Koropacki, PLS-License No. 5-2461

REG JOB# 897.00  
SHEET 12 OF 14



# CERTIFIED SURVEY MAP NO. 2849 Doc# 1810901

Being a redivision of all of 1 or 1 of Certified Survey Map No. 2774 and additional lands, all being a part of the Southeast 1/4 and Southwest 1/4 of the Southeast 1/4 of Section 13, the Northeast 1/4, Southeast 1/4, Southwest 1/4 and Northwest 1/4 of the Northwest 1/4 of Section 24, the Northeast 1/4, Southwest 1/4 and Northwest 1/4 of the Southeast 1/4 of Section 24, the Northeast 1/4 and Southeast 1/4 of the Southwest 1/4 of Section 24 and the Northeast 1/4 and Southeast 1/4 of the Northwest 1/4 of Section 24, Township 1 North, Range 2 East, Village of Pleasant Prairie, Kenosha County, Wisconsin.

### CURVE TABLE

CURVE NO.	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH	TANGENT	TANGENT
C1	258.99'	643.50'	022°42'12"	S23°11'47"W	253.32'	S11°50'41"W	S34°32'53"W
C1 (RECORDED AS)	134.99'			(S23°11'50"W)			
C2	258.00'	623.50'	023°42'50"	S46°24'08"W	256.16'	S34°32'53"W	S68°16'23"W
C2 (RECORDED AS)			(023°43'01")	(S46°24'11"W)			
C3	168.75'	643.50'	015°01'31"	S65°46'08"W	168.27'	S38°13'24"W	S73°16'04"W
C3 (RECORDED AS)			(015°01'30")	(S65°46'11"W)			
C4	1046.81'	806.50'	074°22'05"	S36°05'51"W	974.86'	S73°16'54"W	S01°05'12"E
C5	515.58'	1635.00'	018°04'04"	S21°47'48"E	513.45'	S12°45'46"E	S30°49'50"E
C6	639.08'	1282.00'	028°33'43"	S16°43'07"E	632.48'	S30°49'58"E	S02°16'16"E
C7	524.42'	1052.00'	028°33'43"	N16°33'07"W	519.01'	S30°49'58"E	S02°16'16"E

### WETLAND & FLOODPLAIN AREA RESTRICTIONS

1. Grading and filling are prohibited, unless specifically authorized by the village, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
2. The removal of topsoil or other earthen materials is prohibited, unless specifically authorized by the village, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
3. The removal or destruction of any vegetative cover, i.e., trees, shrubs, grasses, etc., is prohibited, with the exception that dead, diseased or dying vegetation may be removed, unless specifically authorized by the village, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
4. The introduction of plant material not indigenous to the existing environment of the Wetland & Floodplain area is prohibited, unless specifically authorized by the village, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.
5. Ponds may be permitted subject to the approval by the village, if applicable, the Wisconsin Department of Natural Resources and the Army Corps of Engineers.

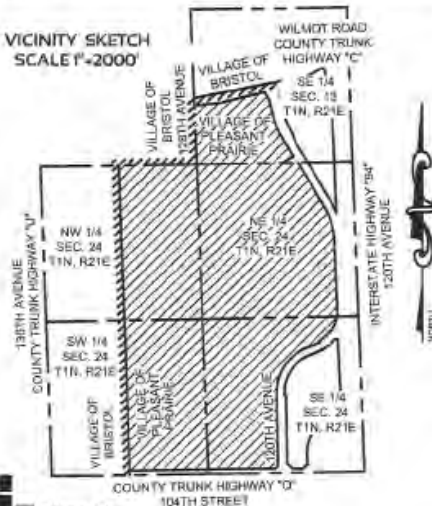


DECEMBER 18, 2017

### NOTES:

- All measurements have been made to the nearest one-hundredth of a foot.
- All angular measurements have been made to the nearest one second.
- Flood Zone Classification: The property lies with in Zone "AE" of the Flood Insurance Rate Map Community Panel No. 55059C0199D and 55059C0199D dated JUNE 19, 2012. Zone "AE" areas have base flood elevations determined; Floodplain shown based on Federal Emergency Management Agency letter of Map Revision Case No. 12-05-74947 effective June 20, 2013.

### VICINITY SKETCH SCALE 1"=2000'



- Bearings referenced to the Wisconsin State Plane Coordinate System, South Zone (NAD 1927). The north line of the Northeast 1/4 of Section 24, Township 1 North, Range 2 East bears S89°01'03"W.
- Coordinates for the Northeast Corner of the Northwest 1/4 Section 24, Township 1 North, Range 2 East referenced to the Wisconsin State Plane Coordinate System, South Zone Northeast Corner coordinates:  
N=202,970.66  
E=2,552,033.51
- Contours are shown at 2' intervals based Village of Pleasant Prairie Geographical Information System.
- Wetlands delineated by R. A. Smith National June 23, 2017.
- All access points to West Frontage Road shall be approved by the Village of Pleasant Prairie and WI Department of Transportation.

### LINE TABLE

LINE NO.	BEARING	DISTANCE
L1	S43°21'38"W	105.16'
L2	S62°07'40"E	305.80'
L3	S87°52'20"W	80.00'
L4	N62°07'40"W	288.80'
L5	N09°06'08"W	63.50'
L6	N46°26'00"W	55.50'
L7	N02°07'40"W	148.50'
L8	N43°08'33"E	86.50'
L9	S87°52'20"W	55.00'
L10	N02°07'40"W	130.00'

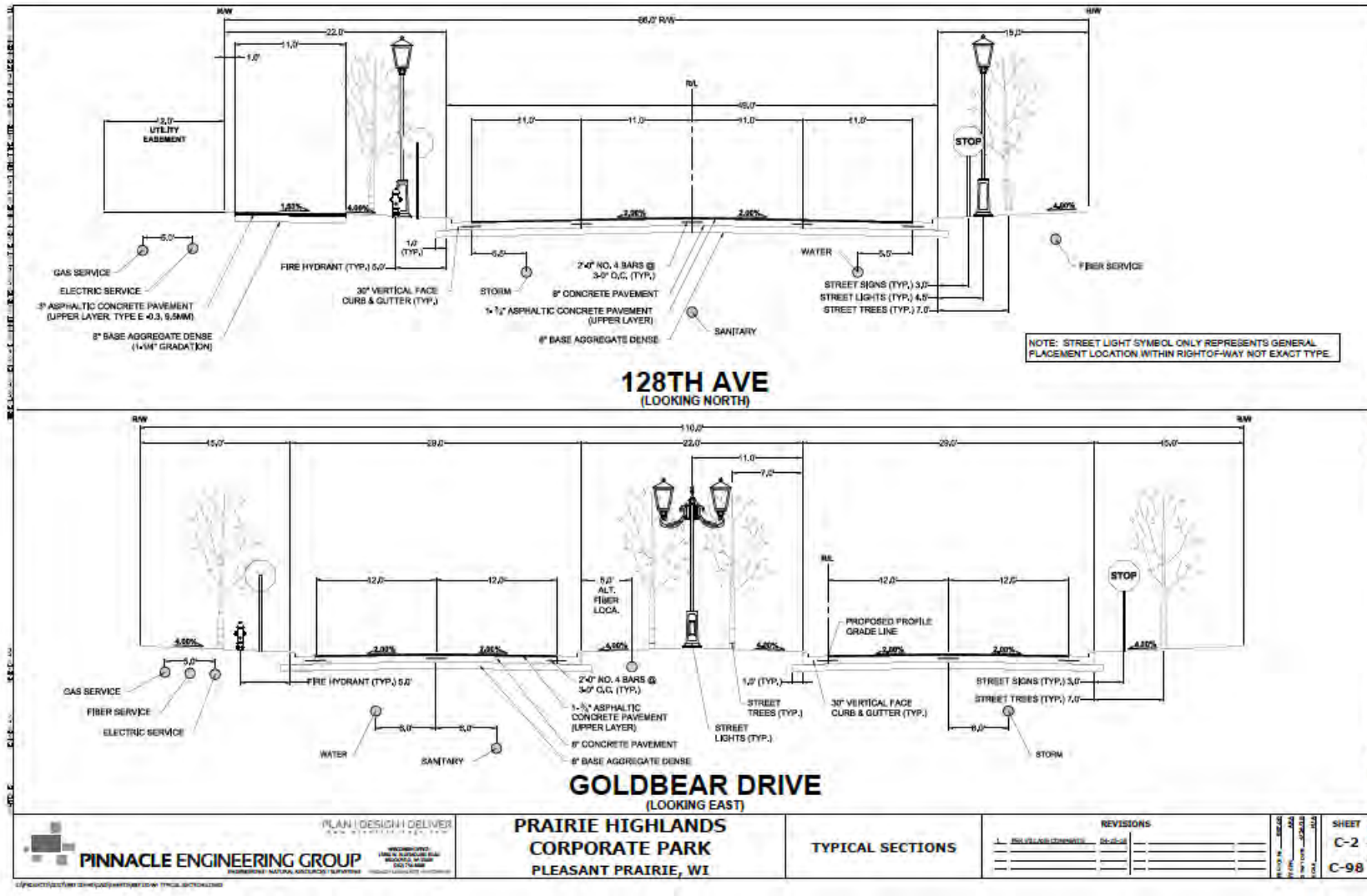
Prepared By  
**PINNACLE ENGINEERING GROUP**  
 15250 BLUEWIND ROAD - SUITE 210  
 BROOKFIELD, WI 53005  
 OFFICE: (262) 754-8888

This instrument drafted by John P. Konopacki, PLS-License No. S-2461

PEG JOB# B97.00  
**SHEET 14 OF 14**

# EXHIBIT B

## INDUSTRIAL ROAD SECTION



PLAN | DESIGN | DELIVER  
**PINNACLE ENGINEERING GROUP**  
 PROFESSIONAL ENGINEERS & ARCHITECTS  
 1200 WEST WISCONSIN AVENUE, SUITE 200, MILWAUKEE, WI 53233  
 TEL: 414.224.1100 FAX: 414.224.1101 WWW.PINNACLE-ENG.COM

**PRAIRIE HIGHLANDS CORPORATE PARK**  
 PLEASANT PRAIRIE, WI

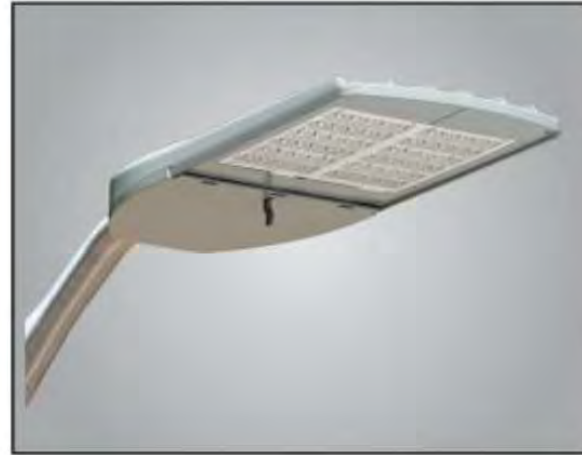
TYPICAL SECTIONS

REVISIONS	
1.	REVISED FOR COMMENTS

SHEET  
**C-2**  
 C-98

FOR REVIEW

**EXHIBIT – STREET LIGHT**



NOTE: STREET LIGHT PICTURE IS FROM STH 165, WITHIN THE VILLAGE OF PLEASANT PRAIRIE. VILLAGE TO INSTALL SAME STYLE LIGHT WITHIN PRAIRIE HIGHLAND CORPORATE PARK. LIGHT POLES WILL BE BLACK WITH SINGLE OR DOUBLE ARM AS MAY BE APPROPRIATE FOR STREET SECTION AND LIGHTING DESIGN.

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**EXHIBIT C**

**MEMORANDUM OF DEVELOPMENT AGREEMENT**

**[See attached]**



Document Number

Document Title

**MEMORANDUM OF DEVELOPMENT  
AGREEMENT**

**THIS MEMORANDUM OF DEVELOPMENT AGREEMENT** ("Memorandum") is made by the **Village of Pleasant Prairie**, (the "Village"), a Wisconsin municipal corporation with offices located at 9915 39<sup>th</sup> Avenue, Pleasant Prairie, Wisconsin 53158 and **Haribo of America Manufacturing, LLC**, a Delaware limited liability company, with a business address of 9500 Bryn Mawr Avenue #700, Rosemont, Illinois 60018 (the "Developer"), for the purposes set forth in the Development Agreement dated \_\_\_\_\_, 2018 between the Village and Developer ("Development Agreement") on file with the Village.

**WITNESSETH:**

1. The Developer and the Village have entered into the Development Agreement regarding the development of a manufacturing facility on certain real property located within the Village, the legal description of which is attached hereto as **Exhibit A** and incorporated herein by reference (the "Property"). A copy of the Development Agreement which details certain required construction activities, responsibilities and obligations of all parties for the development of the Property is on file with the Village Clerk and can be viewed at the Village Municipal Building at the address stated above, as can copies of the approved construction plans, profiles and specifications relating to such construction, all of which are a part of or provided for in the Development Agreement.
2. The Development Agreement has provided, among other things, the following:
  - a. The Developer has undertaken certain obligations under the Development Agreement to construct the Building (as such term is defined in the Development Agreement) as more particularly set forth in the Development Agreement.
  - b. The Developer has made various representations, warranties and indemnities in the Development Agreement.
  - d. The Developer has agreed to construct the Building on the Property within the timelines provided in the Development Agreement.

Recording Area

Name and Return Address

Village Of Pleasant Prairie  
9915 39th Avenue  
Pleasant Prairie, WI 53158

Parcel Identification Number (PIN)

3. The Development Agreement, as referenced herein, is not intended to benefit or to be enforceable by any person(s) other than the Village and the Developer, and their respective successors and assigns as to the Development Agreement.

4. This Memorandum is intended for notice purposes only and is not a complete summary of the Development Agreement. The provisions of this Memorandum shall not be used in interpreting the Development Agreement. In the event of any conflict between this Memorandum and the Development Agreement, the Development Agreement shall control.

**IN WITNESS WHEREOF**, the Developer and the Village have caused this Memorandum of Development Agreement to be signed and dated as of this \_\_\_\_ day of \_\_\_\_\_, 2018.

**[SIGNATURES CONTINUED ON NEXT PAGES]**

**VILLAGE OF PLEASANT PRAIRIE,**  
a Wisconsin municipal corporation

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

Name: John P. Steinbrink

Title: Village President

ATTEST:

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

Name: Jane C. Snell

Title: Village Clerk

STATE OF WISCONSIN    )  
  )  
COUNTY OF KENOSHA    )       ss.

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2018 the above-named John P. Steinbrink and Jane C. Snell to me known to be the Village President and Village Clerk of the Village of Pleasant Prairie, Wisconsin, respectively, who executed the foregoing instrument and acknowledged the same on behalf of said municipal corporation.

\_\_\_\_\_  
Jean M. Werbie-Harris, Notary Public,  
Kenosha County, Wisconsin  
My Commission Expires \_\_\_\_\_



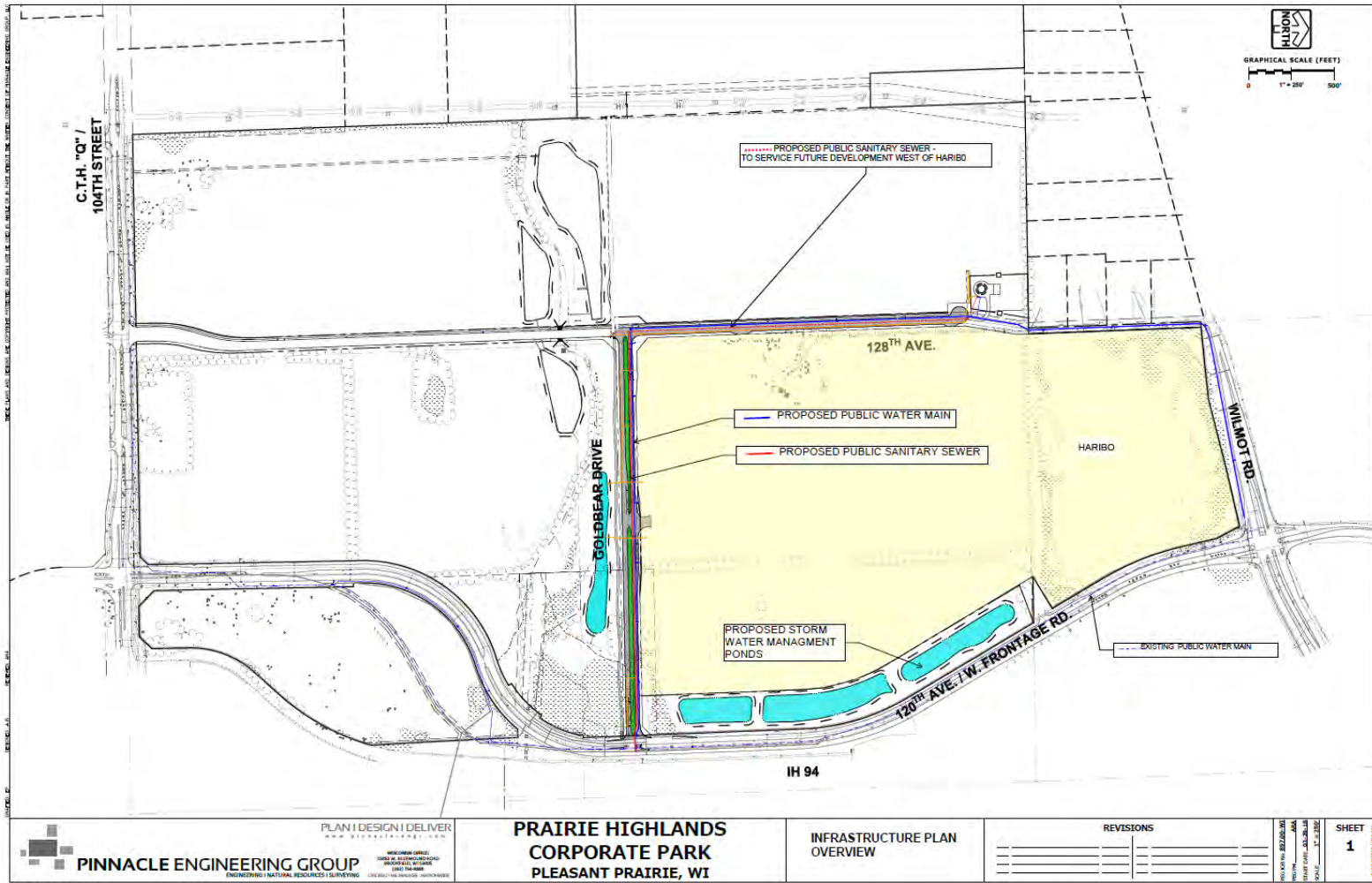
## **EXHIBIT A**

### **LEGAL DESCRIPTION**

LOT 1 OF CERTIFIED SURVEY MAP NO. 2849, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR KENOSHA COUNTY, WISCONSIN ON DECEMBER 27, 2017, AS DOCUMENT NO. 1810901, BEING A REDIVISION OF ALL OF LOT 1 OF CERTIFIED SURVEY MAP NO. 2714 AND ADDITIONAL LANDS, ALL BEING A PART OF THE SOUTHEAST 1/4 AND SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 13, THE NORTHEAST 1/4, SOUTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4, SOUTHWEST 1/4 AND NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 24, THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 24, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 24, TOWNSHIP 1 NORTH, RANGE 21 EAST, VILLAGE OF PLEASANT PRAIRIE, KENOSHA COUNTY, WISCONSIN.

# EXHIBIT D

## INFRASTRUCTURE PLAN



**PINNACLE ENGINEERING GROUP**  
ENGINEERING | ARCHITECTURE | INTERIORS | SURVEYING  
20 PROJECTS 2017 7897-05-WILCAD (REVISED) 2018-03-29 897-00-01-Roadway Plan Overview.dwg

**PRAIRIE HIGHLANDS CORPORATE PARK**  
**PLEASANT PRAIRIE, WI**

**INFRASTRUCTURE PLAN OVERVIEW**

REVISIONS	

SHEET  
1

FOR REVIEW ONLY www.pinnacle-engr.com

## **EXHIBIT E**

### **SPECIFICATIONS FOR VILLAGE WORK**

The following specifications apply to the categories of the Village Work set forth below to service the Property:

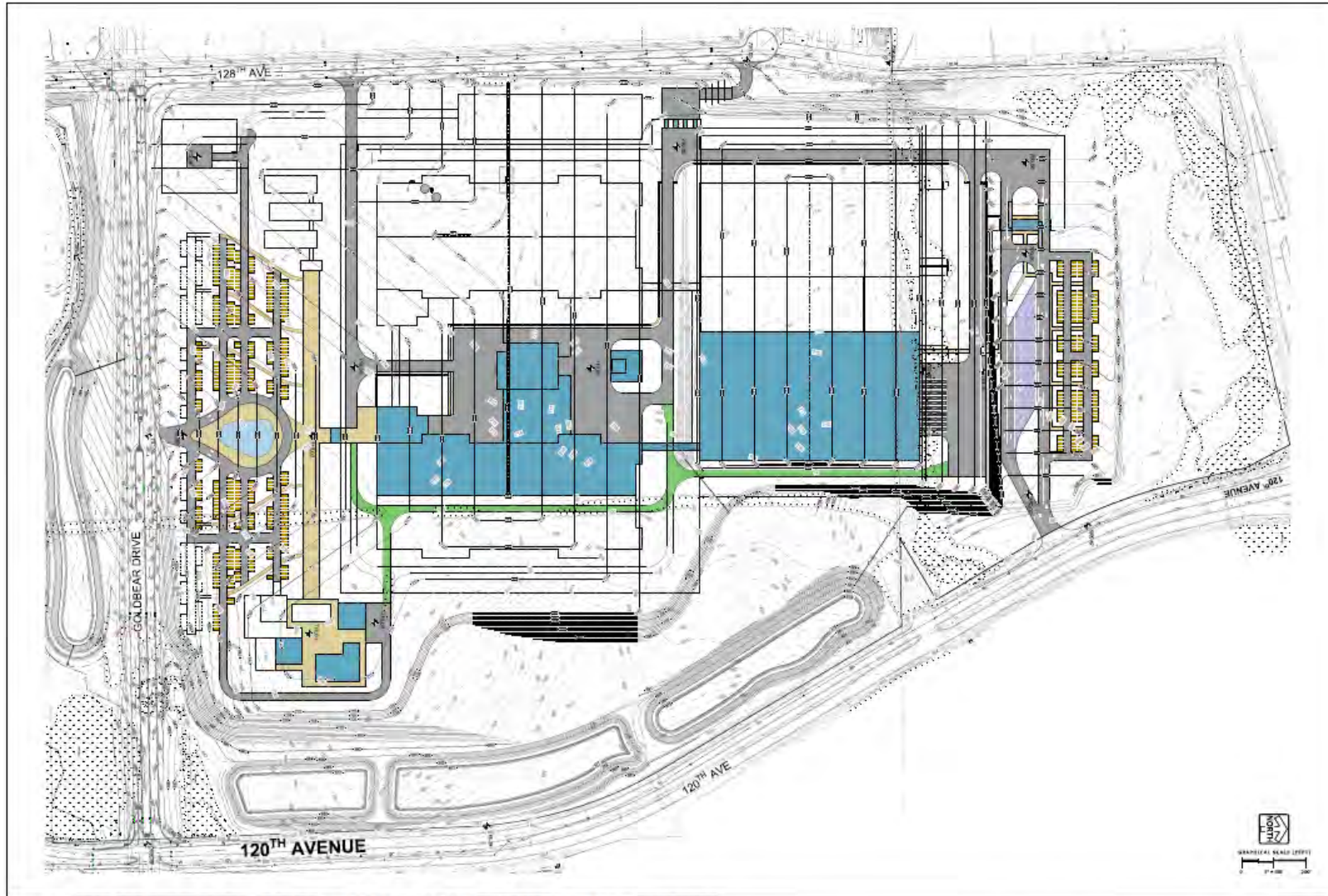
A. Sanitary Sewer System

- a. Average daily sanitary sewer discharge (gallons per day): 124,000 gallons per day
- b. Peak sanitary sewer discharge (gallons per minute): 381 gallons per minute

B. Water Main System

- a. Peak day water demand (gallons per day): 154,000 gallons per day (max at buildout)

**EXHIBIT F**  
**GRADING PLAN**



**PRAIRIE HIGHLANDS - HARIBO SITE GRADING EXHIBIT**

PINNACLE ENGINEERING GROUP

15850 W. BLUEMOUND ROAD | SUITE 20 | BROOKFIELD, WI 53005 | WWW.PINNACLE-ENGL.COM

PLAN | DESIGN | DELIVER

04/24/2018  
PEG JOB# 897.00