

# PLANNED DEVELOPMENT DISTRICT (PDD) AMENDMENT & SITE PLAN REVIEW

12/13/21 Plan Commission Meeting

## Odyssey Hotels / Riversbend Country Club Inc.

Village Planner Report

Germantown, Wisconsin

### Summary

Rachit Dhingra, agent for Odyssey Hotels and Riversbend Country Club Inc., property owners, has submitted a proposal to amend the Neviaser Planned Development (PDD) conditions and restrictions and site development and building plans for an expansion of the hotel property located at W177 N9675 Riversbend Lane.

**Location:** W177 N9675 Riversbend Lane

**Agent/  
Property Owner:** Rachit Dhingra  
Odyssey Hotel Group  
1808 N. Wells Street  
Chicago, IL

**Zoning:** B-5: Highway Business/PDD (Holiday Inn Hotel)  
I: Institutional/PDD (Riversbend Golf Course)

Adjacent Land Uses		Zoning
North	Residential/	Rm-3
South	Commercial	B-5
East	Commercial/Residential	B-5/Rm-3
West	Commercial	B-1/B-2



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**Background**

The 2.88-acre Odyssey Hotel property located at W177 N9675 Riversbend Lane is east and adjacent to the former Riversbend golf course property and south of the residential area known as the Riversbend Condominiums. In 1997 the Neviaser PDD was created to facilitate development of the property with a 72-room hotel. Currently, the hotel is operated by Odyssey Hotels as a Holiday Inn Express.

In 2016, the Village approved amendments to the Neviaser PDD to allow the hotel building to be expanded from a 2 to 3-story building up to a height of fifty (50) feet (60 feet parapet) with up to 130 guest rooms. At the same time, the Village approved amendments to the Riversbend Planned Development District (PDD) to remove “golf course” as a permitted use and added “off-site parking” as a permitted use. At that time, the Odyssey Hotel Group had an offer to purchase the golf course property from Charles Schmit and construct a small parking area on the north side of the existing parking lot serving Buffalo Wild Wings to serve the expanded hotel.

**Proposal****PDD Amendments**

At this time, Rachit Dhingra, agent for Odyssey Hotels and Riversbend Country Club Inc., has submitted a proposal to amend the Neviaser PDD and the Riversbend PDD to:

1. Reduce the number of required parking stalls from 128 to 103 as part of the hotel expansion (Neviaser PDD);
2. Revise the General Development Plan (GDP) to reflect the reduced “off-site” parking area and landscaping to be constructed on the former golf course property (now owned in common by/with the Odyssey Hotel Group)

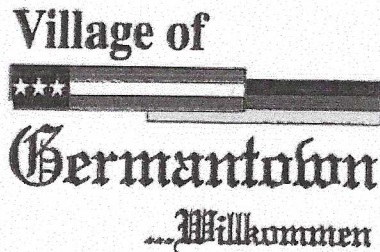
**Site Development & Building Plans**

In addition, site development and building plans have been submitted for expansion of the hotel up to only 100 guest rooms and a 3-story building, and, minor improvements to the proposed “off-site” parking area.

**Staff Comments**

At this time, Odyssey Hotel Group has requested that the Plan Commission’s review and consideration of the PDD amendment and Site Plan applications be TABLED until the Plan Commission meeting in January, 2022.





**Fee must accompany application**

- ☐ \$700 Minor Addition
- ☐ \$1,240 Construction <10,000 SF
- ☐ \$2,095 Construction 10,000 SF to 50,000
- ☐ \$3,460 Industrial Construction >50,000 SF
- ☐ \$3,460 Commercial Construction >50,000
- ☐ \$200 Plan Commission Consultation
- ☐ \$125 Fire Department Plan Review

PAID \_\_\_\_\_ DATE \_\_\_\_\_

## SITE PLAN REVIEW APPLICATION

Pursuant to Section 17.43 of the Municipal Code

Please read and complete this application carefully. All applications must be signed and dated.

**1 APPLICANT OR AGENT**

Odyssey Hotel Group

W177N9675 Riversbend Ln  
Germantown, WI 53022

Phone ( 312)867-7911

E-Mail rdhingra@odysseyhotels.com

**PROPERTY OWNER**

Odyssey Hotel Group

W177N9675 Riversbend Ln  
Germantown, WI 53022

Phone ( 312)867-7911

E-Mail rdhingra@odysseyhotels.com

**2 PROPERTY ADDRESS**

W177N9675 Riversbend Ln

**3 NEIGHBORING USES** – Specify name and type of use, e.g. Enviro Tech – Industrial, Smith – Residential, etc.

North Condos	South Commercial - KFC, Speedway	East Commercial - Thrivent, Panda Express	West Commercial - Starbucks Parking Lot
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**4 READ AND INITIAL THE FOLLOWING:**

X I am aware of the Village of Germantown ordinance requiring fire sprinklers in most new construction.

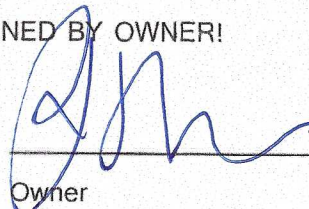
X I understand that all new development is subject to Impact and/or Connection Fees that must be paid before building permits will be issued.

X I understand that an incomplete application will be withdrawn from the Plan Commission agenda and that all resubmissions to the Plan Commission are subject to a new application fee.

**5 SIGNATURES** – ALL APPLICATION MUST BE SIGNED BY OWNER!

  
Applicant

Oct/27/2021  
Date

  
Owner

Oct/27/2021  
Date

Village of



Fee Must Accompany Application

☐ \$820 Paid \_\_\_\_\_ Date \_\_\_\_\_

☐ \$200 PC Consultation Only  
Paid \_\_\_\_\_ Date \_\_\_\_\_

## PLANNED DEVELOPMENT DISTRICT (PDD) AMENDMENT APPLICATION

Applications NOT signed by the Property Owner(s) will not be accepted. Attach additional sheets and/or include supplemental information in support of your application.

**APPLICANT OR AGENT:**

Odyssey Hotel Group

**PROPERTY OWNER(S):**

Odyssey Hotel Group

**Address:** W177N9675 Riversbend Ln  
Germantown, WI 53022

**Address:** W177N9675 Riversbend Ln  
Germantown, WI 53022

**Phone:** 312-867-7911

**Phone:** 312-867-7911

**FAX:** \_\_\_\_\_

**FAX:** \_\_\_\_\_

**E-Mail:** rdhingra@odysseyhotels.com

**E-Mail:** rdhingra@odysseyhotels.com

**PDD Name & Resolution No.:**

Resolution No. 19-16 which amended Resolution No. 16-97 for the Neviaser PDD

**Legal Description of Property or Area (metes and bounds description):**

Attach separate legal description if necessary

Lot 1 of Certified Survey Map No. 3903 recorded in the office of the Register of Deeds for Washington County, Wisconsin, on July 22, 1992 in Volume 25 of Certified Survey Maps, at Page 14, as Document No. 607696, being a part of the Southwest Quarter of the Southeast Quarter of Section 33, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

Check all that apply:

- ☐ **REQUEST TO AMEND PDD ZONING**
- ☐ **REQUEST TO AMEND PDD GENERAL DEVELOPMENT PLAN**
- ☒ **REQUEST TO AMEND PDD CONDITIONS & RESTRICTIONS**



**Planned Development District (PDD) Amendment Application**  
Page 2 of 3

**List of Proposed Amendment(s) (include Resolution # and Condition #):**

Attach Revised Plan(s) or Separate Pages as Necessary

Resolution # 19-16, Condition #3 - Parking.

Reduction in parking is requested. There will be less than 128 parking spaces which was what was required by the 2016 approval for a 73-128 guest room hotel. See attached narrative for explanation.

**Detailed Explanation and Justification for Proposed Amendment(s):**

Attach Revised Plan(s) or Separate Pages as Necessary

See attached narrative.

## Page 3 of 3

**APPLICATION SUBMITTAL REQUIREMENTS** (to be submitted at time of application):

### All Amendment Applications:

- ☒ Complete Application Form (Affidavit of Understanding and signatures required)
- ☒ Application Fee
- ☒ Detailed explanation of and justification for proposed amendment(s)
- ☒ Detailed explanation of if and how the proposed amendment(s) will affect other aspects of the development included within the PDD

General Development Plan Amendment Only:

- ☐ Legal Description of the land subject of map amendment in electronic/digital file format (e.g. Microsoft Word)
- ☐ Revised or New General Development Plan at a scale of 1" = 50' or other suitable scale necessary to accurately present:
  - o Exterior boundary of the land subject of the map amendment
  - o All existing and/or proposed features to be included in the development

## AFFIDAVIT OF UNDERSTANDING


**Please read and indicate that you understand and agree to the following (initials in box):**

- ☒ I understand that Village Staff, the Plan Commission and/or the Village Board may request additional information to properly evaluate this application and failure to provide such information may be sufficient justification to deny this application;
- ☒ I understand that, regardless of the justification and/or information provided in support of my application, the Village is not obligated to approve my application nor amend the PDD as requested;
- ☒ I am aware that the approval of an application to amend a PDD only amends the General Development Plan and/or conditions & Restrictions Resolution and does not otherwise revise or change the zoning of the land affected by the amendment(s), and, I may be required to obtain separate permits and/or approvals (e.g. site plan, building permits, etc.) from the Village or other agencies as a prerequisite to actual or continued development of such land.

**ALL APPLICATIONS MUST BE SIGNED BY THE APPLICANT/AGENT AND PROPERTY OWNER(S)**

Applicant/Agent Oct 27 2021 Date

APPLICANT/AGENT AND PROPERTY

 Oct 27 2021

Property Owner Date

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Applicant/Agent	Date
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Property Owner
Date

November 1, 2021

## **PDD Amendment Narrative**

Project: Odyssey Hotel Group – Holiday Inn Express conversion to Fairfield Inn & Suites  
W177N9675 Riversbend Ln  
Germantown, WI 50322

Odyssey Hotel Group is requesting PDD Amendment review and approval for the Holiday Inn property at W177N9675 Riversbend Lane (Tax Parcel #GTNV\_334100). The requested amendment is to Resolution No. 19-16 from December 19, 2016 (which amended Resolution No. 16-97 for the Neviasser PDD). Odyssey Hotel Group is the successor to the original developer.

The exterior of the building will be modified as shown in the attached exterior elevations and renderings. The existing hip roof on the building will be removed, a third floor will be added and the existing lobby will be heightened. Four (4) columns supporting the existing Porte Cochere will be reused and a new metal canopy structure will be installed in its place to comply with Fairfield Inn and Suites' prototype. A stone finish is proposed at the main entry and at the main pier of the Porte Cochere. EIFS (Exterior Insulated Finishing System) on the existing building will be repainted and the EIFS installed on the new construction will match existing adjacent finishes. The EIFS at the main entry section will receive a thicker EIFS finish (+5, +6") and a metal "trellis" will be used at the cap of the main entry. The existing stair tower is being refinished with a horizontal wood plank system per prototype. The new roof structure will be tapered and have a parapet with varied heights around the entire perimeter. The brick finish around the pool area will remain. The pool is being eliminated completely and the interior reconfigured. The existing concrete patio will remain as outdoor seating accessed from the breakfast area. Some minor site work including the reconfiguring of existing parking spaces and new sidewalk is proposed. The existing building footprint is not being altered or added onto.

The proposed building height(s) are in accordance with the existing PDD and include:

- Main parapet at third floor = +32'-0"
- Upper parapet = +36'-9"
- Parapet at stair tower + 40'-9"
- Parapet at Lobby / Breakfast Area = +13'-0"

The proposed amendment is to Condition #3 – Parking. Resolution 19-16 approved the following:



3. Parking. The project shall include a minimum number of **85** off-street parking spaces based on the maximum number of rooms as follows: No garages or maintenance buildings are approved for this site.
- a. 128 spaces: 73 to 123 guest rooms
  - b. 130 spaces: 123 to 130 guest rooms

Currently, 103 spaces for 100 guest rooms are proposed. The proposed number of spaces is less than the previously approved parking from Resolution No. 19-16. Pursuant to the Village of Germantown Municipal Code [Section 17.45(1)(d)12] this is an adequate number of spaces for a hotel having 100 guest rooms (1 space per guest room) and 6 employees (1 space for each 2 employees) per shift.

A substantial buffer currently exists along the northern perimeter of the hotel property fronting on Riversbend Circle W and Riversbend Lane obscuring the view of the hotel as viewed from those respective streets. The residential properties northwest of the hotel also have a dense evergreen screen along their lot lines. A low berm with evergreen trees is located at the northeast corner of the hotel parking spaces to the west (north end of the Buffalo Wild Wings/Starbucks parking lot); other than the construction of a connector sidewalk to provide pedestrian access from these parking spaces to the hotel, the parking spaces will not be modified or altered. Landscape plantings will be added to the existing berm at the northeast corner of the commercial parking lot to provide additional screening from the residential properties that are north of the parking lot.

## RESOLUTION NO. 18-16

### AMENDING RESOLUTION NO. 02-13 CONTAINING CONDITIONS AND RESTRICTIONS FOR THE RIVERSBEND COUNTRY CLUB INC- CONTINENTAL 246 FUND LLC PLANNED DEVELOPMENT DISTRICT ("RIVERSBEND PDD")

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**WHEREAS**, Continental 246 Fund LLC, agent for Riversbend Country Club Inc., property owner (hereinafter "Developer") applied for and was granted B-1 Neighborhood Business District zoning with a Planned Development District (PDD) overlay on the subject parcels located on County Line Road in the Village of Germantown (the "PDD Property"); and

**WHEREAS**, Section 17.27(4) of the Village of Germantown Municipal Code allows for the adoption of conditions and restrictions for Planned Development Districts; and

**WHEREAS**, Rachit Dhingra, agent for Odyssey Hotels, property owner and successor to the original developer Daniel Neviaser, and Riversbend Country Club Inc., property owner, has requested approval for a series of amendments to the Neviaser PDD and the Riversbend-Continental 246 Fund LLC PDD as it pertains to development of the Riversbend golf course property and the Odyssey Hotel property and other conditions and requirements set forth in the Conditions and Restrictions Resolution No. 16-97 and No. 02-13; and

**WHEREAS**, the Village Plan Commission did, on December 12, 2016, review said PDD amendments and subsequently recommended that the Village Board approve the proposed amendments to the Neviaser PDD and Resolution No. 16-97; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Village Board of the Village of Germantown hereby approves and adopts the proposed amendments to the Neviaser PDD and amends Resolution No. 02-13 as follows where items underlined are to be added and items ~~stricken~~ are to be deleted:

1. **General Development Plans.** ~~Except for the expanded parking area depicted on Sheet C-1 dated November 8, 2016, Exhibit B,~~ the detailed set of site development and building plans dated December 20, 2012, shall be considered the General Development Plans for this PDD, including the size and orientation of the building, setbacks, and location of access points, landscaping, utilities, grading and erosion control plan, floor plan and architectural elevations. All development within the PDD property shall be consistent with these plans or any subsequent plans (additional or revised) submitted pursuant to the conditions of approval adopted by the Plan Commission on January 14, 2013. Significant changes to said site development and building plans may require further review and approval by the Plan Commission as deemed necessary by the Zoning Administrator.
2. **Use Regulations.** The uses allowed for Lot 1 and Lot 2 shall be as set forth in the B-1: Neighborhood Business Zoning District regulations (Zoning Code Section 17.28), except that a restaurant with outdoor service shall be allowed on Lot 2 to the extent shown in the approved plans. The uses allowed for Lot 3 shall be as set forth in the I: Institutional Zoning District regulations (Zoning Code Section 17.26), except that ~~a golf course with a club house facility shall be allowed on Lot 3 only to the extent shown in the General~~

Riversbend Planned Development District (PDD)  
Resolution No.18-16

**Development Plans. "off-site parking areas" shall be allowed as a permitted use consistent with the site plans dated November 8, 2016.**

Introduced by: Baum

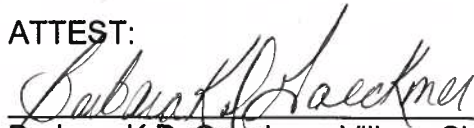
Adopted: December 19, 2016

Vote: Ayes: 9 Nays: 0



Dean M. Wolter, Village President

ATTEST:



Barbara K.D. Goeckner, Village Clerk



## RESOLUTION No. 19 - 16

### AMENDING RESOLUTION NO. 16-97 CONTAINING CONDITIONS AND RESTRICTIONS FOR THE NEVIASER PLANNED DEVELOPMENT DISTRICT (PDD)

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**WHEREAS**, Daniel Neviaser of Neviaser Investments applied for and was granted rezoning to the B-5: Highway Business Planned Development District (PDD) on the subject parcel (Key Number GTNV 334-100, hereinafter "the property") which was granted by the Village Board on March 17, 1997; and

**WHEREAS**, Section 17.27(4) of the Village of Germantown Municipal Code allows for the adoption of conditions and restrictions for PDDs, and

**WHEREAS**, Rachit Dhingra, agent for Odyssey Hotels, property owner and successor to the original developer Daniel Neviaser, and Riversbend Country Club Inc., property owner, has requested approval for a series of amendments to the Neviaser PDD and the Riversbend-Continental 246 Fund LLC PDD as it pertains to development of the Riversbend golf course property and the Odyssey Hotel property and other conditions and requirements set forth in the Conditions and Restrictions Resolution No. 16-97 and No. 02-13; and

**WHEREAS**, the Village Plan Commission did, on December 12, 2016, review said PDD amendments and subsequently recommended that the Village Board approve the proposed amendments to the Neviaser PDD and Resolution No. 16-97; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Village Board of the Village of Germantown hereby approves and adopts the proposed amendments to the Neviaser PDD and amends Resolution No. 16-97 as follows where items underlined are to be added and items ~~stricken~~ are to be deleted:

1. General Development Plan. Except for the expanded parking area depicted on Sheet C-1 dated November 8, 2016, the plan dated and revised through November 8, 1996, shall be considered the approved General Development Plan for the subject property, including the location of driveways, parking spaces, buildings and signage Detailed surveys, utility plans, building plans, lighting and landscaping plans covering any portion of the total project intended for construction shall be presented to the Plan Commission prior to issuance of any building permits These plans shall conform substantially to the approved General Development Plan in both location, design and number. Utility and driveway plans shall be based on the standards of then Village Public Works Department. If revisions of the development plan are necessary due to adverse site conditions, resubmittal and approval of all revisions by the Plan Commission will be required.
2. Building size height, location, and lot coverage
  - a. The building shall include up to a total of 130 ~~no more than 73~~ guest rooms.
  - b. The building shall not exceed a height of 50 feet ~~be no more than 35 feet in height as per Section 17.08(13)~~, except the parapet eastern tower, which shall not exceed ~~may be up to 35~~ 60 feet tall.
  - c. The buildings shall meet the following setback and lot coverage requirements:
    - i. Front yard setback from Riversbend Lane: minimum 50 feet

- ii. Front yard setback from Riversbend Circle West: minimum 15 feet
  - iii. Side yard setback from south property line: minimum 50 feet
  - iv. Side yard setback from west property line: minimum **10 49** feet
- d. The overall building, parking and hard surfaces shall not exceed 70% lot area.
- 3. Parking. The project shall include a minimum **number** of **85** off-street parking spaces **based on the maximum number of rooms as follows:** No garages or maintenance buildings are approved for this site.
  - a. **128 spaces: 73 to 123 guest rooms**
  - b. **130 spaces: 123 to 130 guest rooms**
- 4. Driveway Construction and Ownership. All internal driveways shall be constructed and maintained by the owner. Construction standards will be to Village specifications. Private easements and access agreements are not enforced by the Village and must be addressed separately.
- 5. Public Utilities.
  - a. The developer will provide all necessary easements and dedication of facilities as required by the Village Engineer.
- 6. Signage.
  - a. The property is allowed one free standing sign, maximum 160 square feet area, maximum 25 foot height.
  - b. The property is allowed two wall mounted signs, maximum 150 square feet each.
  - c. All signs shall be internally illuminated.
  - d. No roof signage is allowed for this project.
  - e. No wall mounted signage is allowed on the north side of the building.
- 7. Specific Lighting and Landscaping plans shall be submitted to and approved by the Plan Commission prior to occupancy of the building.
- 8. Garbage and Refuse collection and Disposal shall be provided by the property owner at his cost.
- 9. The berm (including plantings) to be repaired and maintained by the property owner, with replacement of any dead plantings.
- 10. **The minimum parking stall size shall be 162 sqft.**
- 11. **The minimum parking setback for parking areas located to the north, south and west of the hotel shall be (0) feet.**
- 12. **The minimum parking setback from the north parking area to the adjacent residential district shall be 43 feet.**

Amending Resolution No. 16-97 Neviaser Planned Development District (PDD)  
Resolution 19-16

Introduced by Trustee: Baum  
Adopted: December 19, 2016

Vote: Ayes: 9  
Nays: 0

  
\_\_\_\_\_  
Dean M. Wolter, Village President

ATTEST:

  
\_\_\_\_\_  
Barbara K.D. Goeckner, Village Clerk

This instrument drafted by:  
Jeffrey W. Retzlaff, AICP, Director, Community Development Department, Village of  
Germantown



# CIVIL SHEET INDEX

SHEET	SHEET TITLE
C0.1	CIVIL COVER AND SPECIFICATION SHEET
C1.1	CIVIL SITE AND DEMOLITION PLAN
C1.2	CIVIL GRADING AND EROSION CONTROL PLAN
C1.3	CIVIL LANDSCAPE AND RESTORATION PLAN
C2.0	CIVIL DETAILS

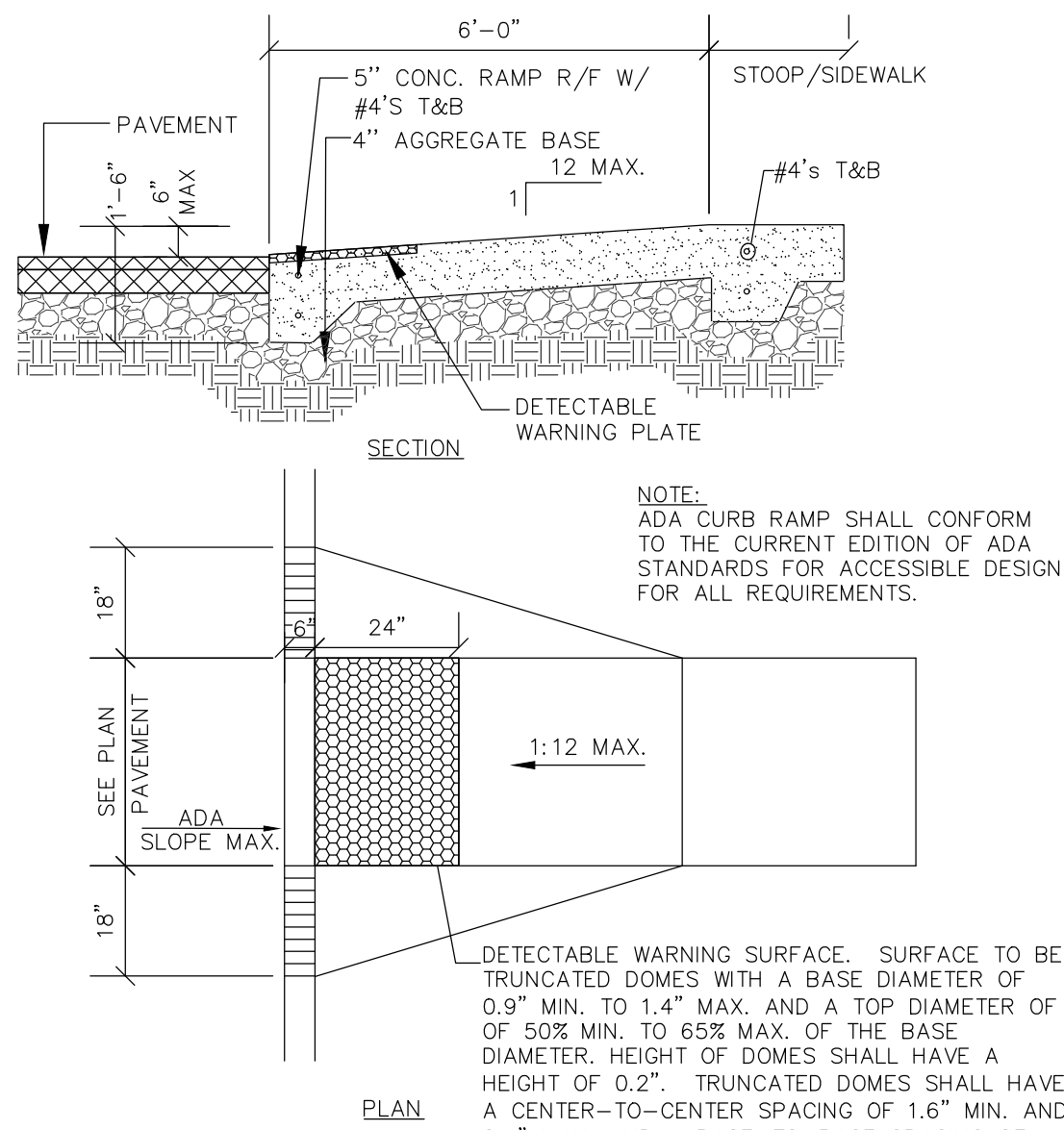


# CIVIL COVER AND SPECIFICATION SHEET



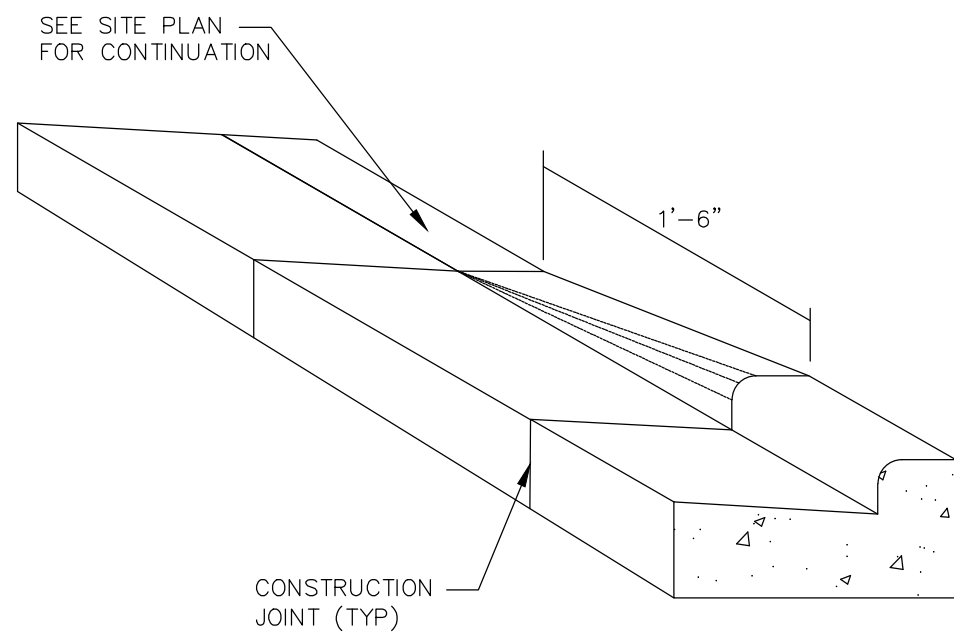
NOTICE BEFORE YOU EXCAVATE





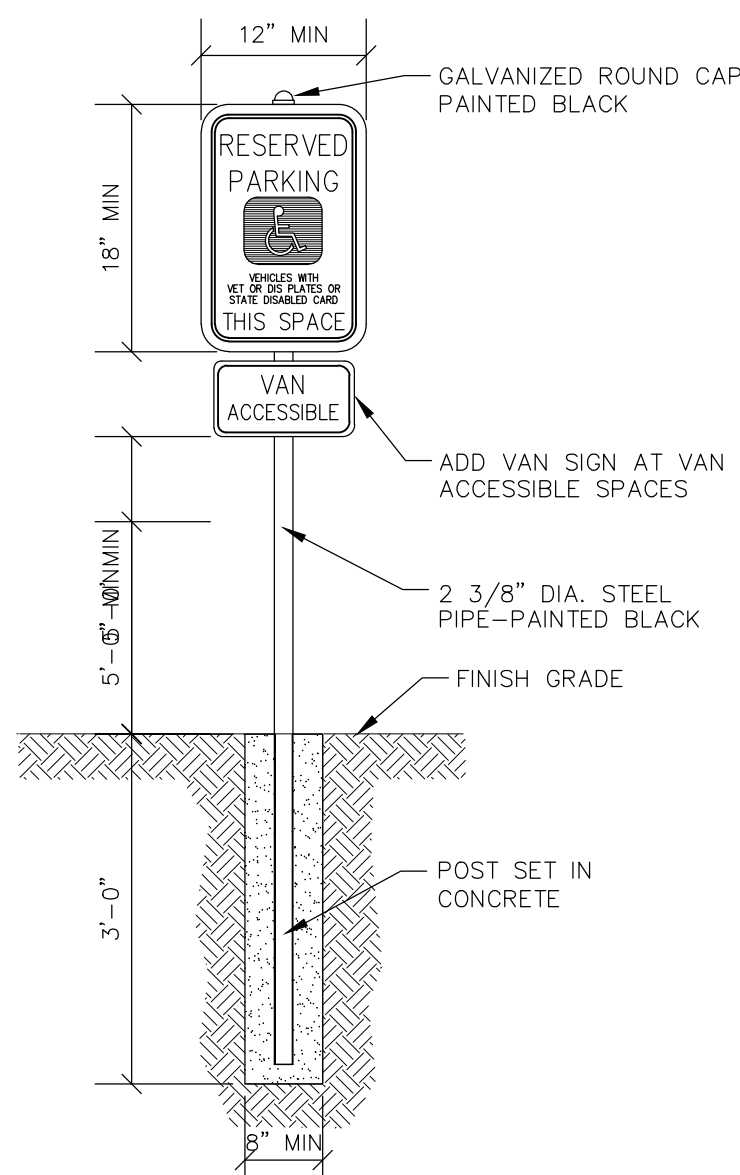
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NO SCALE



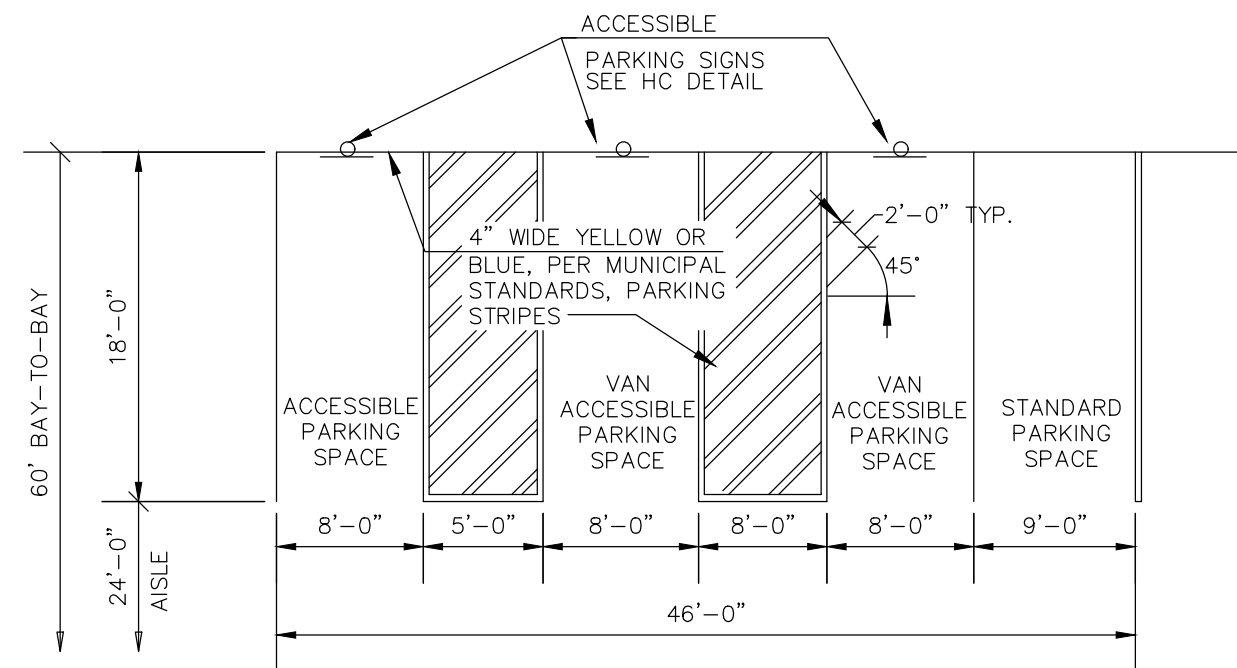
### CURB TAPER DETAIL

NO SCALE



### HANDICAP SIGNAGE WITH CONCRETE BASE DETAIL

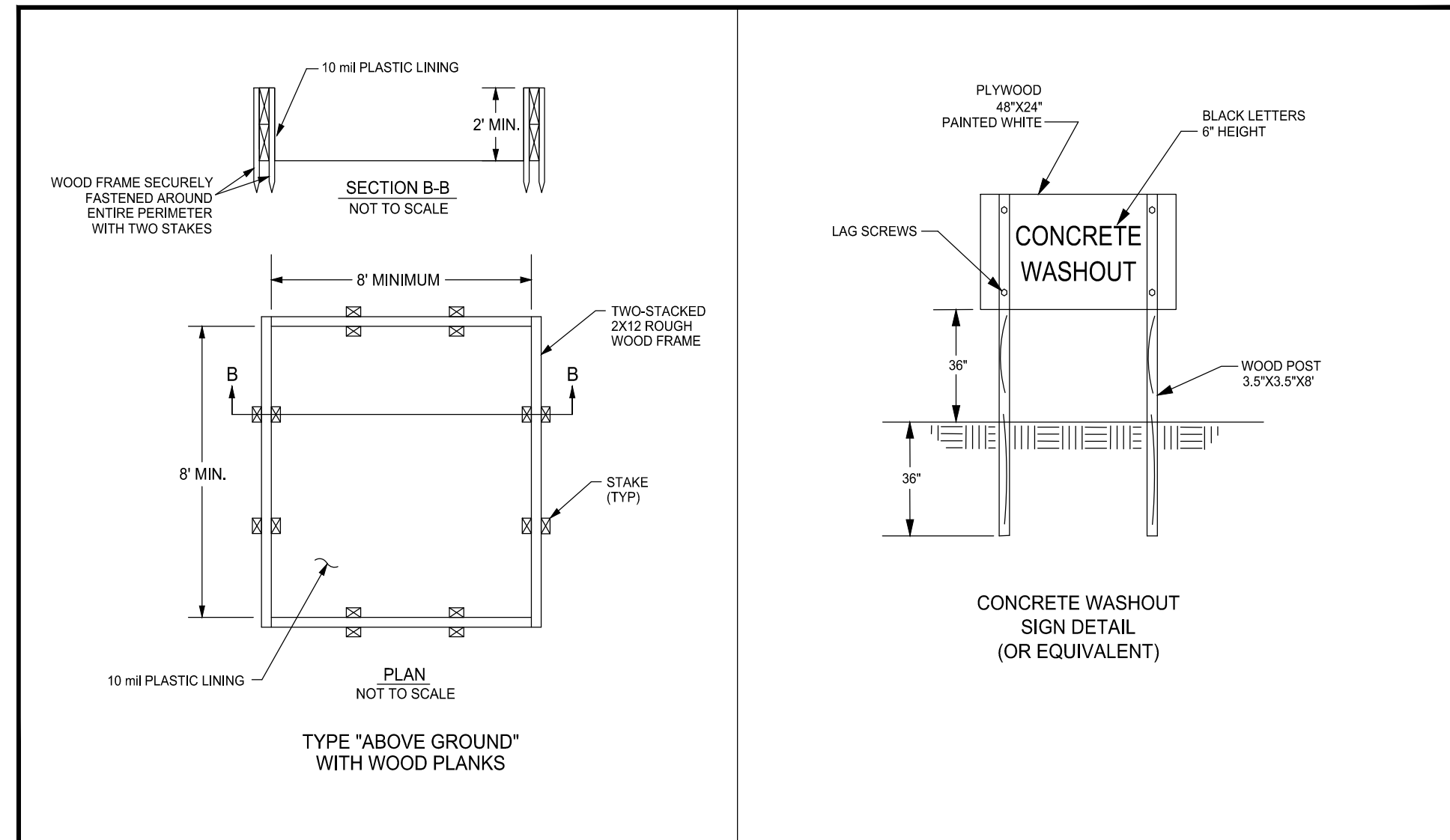
NO SCALE



### STANDARD & VAN ACCESSIBLE PARKING STALL STRIPING

NO SCALE

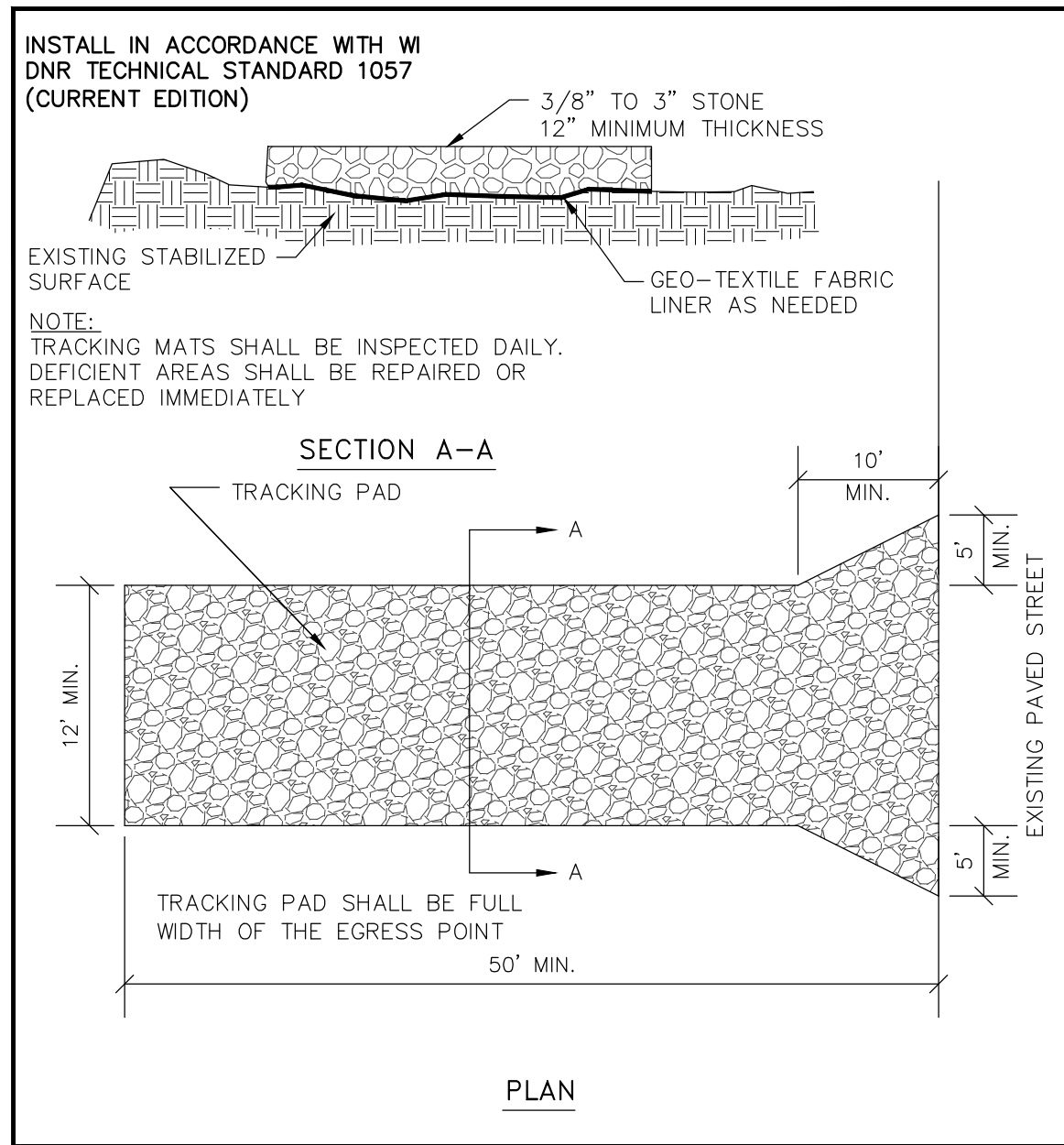
**SPECIFICATION NOTE:**  
SEE SHEET C0.1 FOR PLAN SPECIFICATIONS AND REQUIREMENTS



\*\*CONTRACTOR TO ADHERE TO NYS STANDARDS AND SPECIFICATIONS FOR EROSION AND SEDIMENT CONTROL (BLUE BOOK) DATED NOVEMBER 2016\*\*

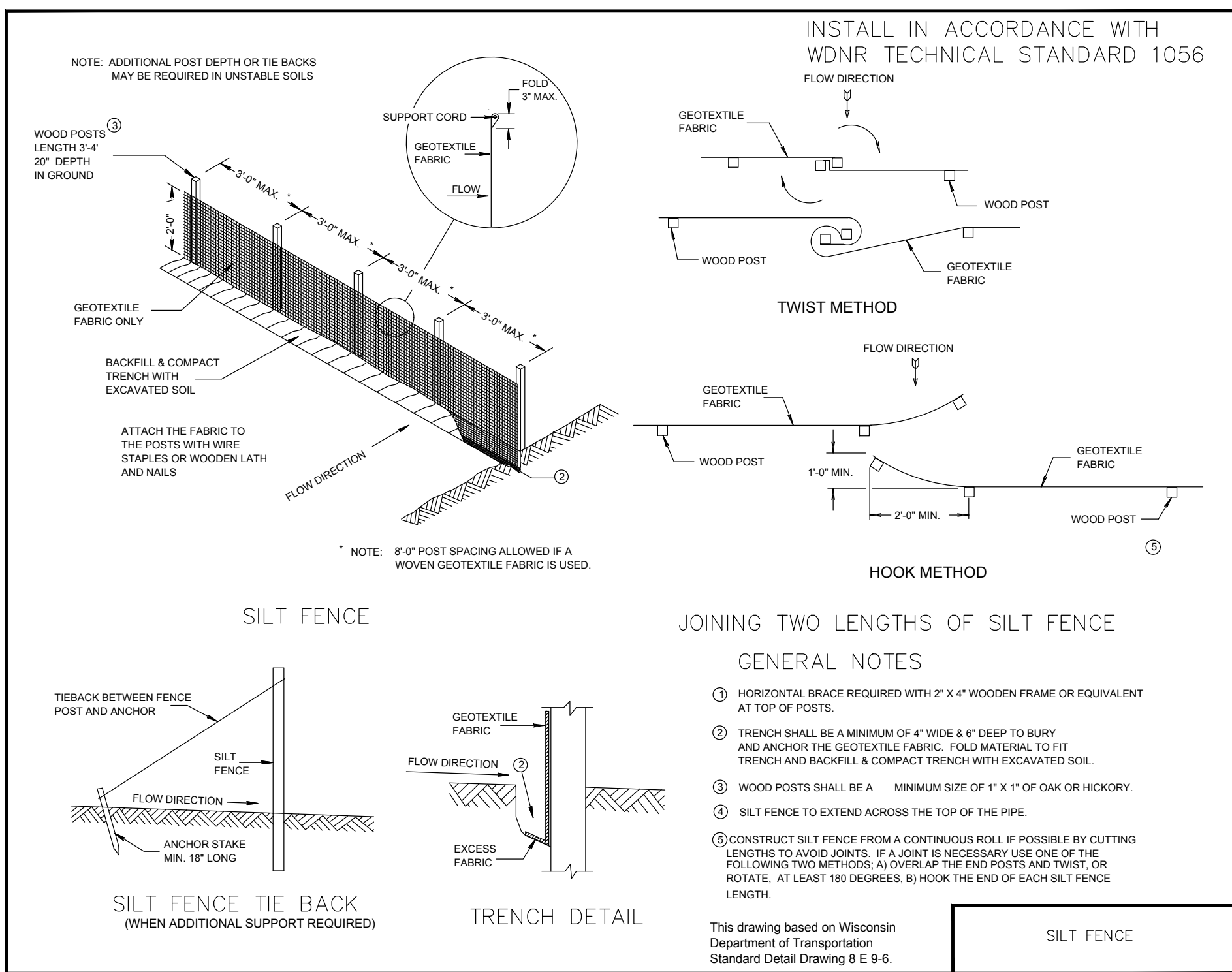
### CONCRETE WASHOUT DETAIL

NO SCALE



### TRACKPAD DETAILS

NO SCALE



### SILT FENCE - INSTALLATION DETAIL

NO SCALE

#### PROJECT INFORMATION

GENERAL DEVELOPMENT PLAN FOR:  
**ODYSSEY HOTELS**  
RIVERSBEND LA • GERMANTOWN, WI

PROFESSIONAL SEAL

#### PRELIMINARY DATES

NOV. 1, 2021

#### JOB NUMBER

2142200

#### SHEET NUMBER

**C2.0**

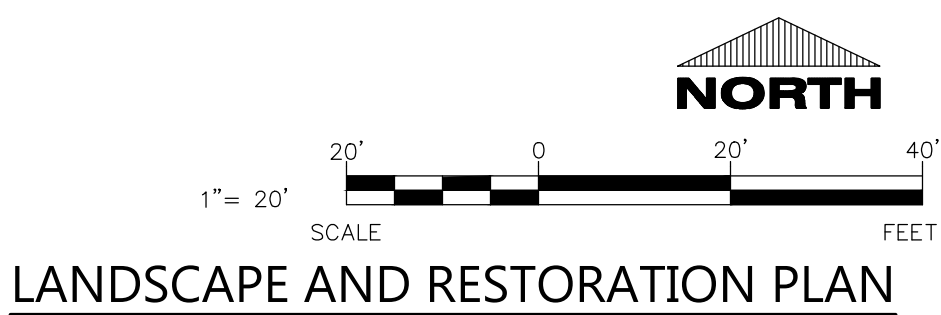


PROFESSIONAL SEAL

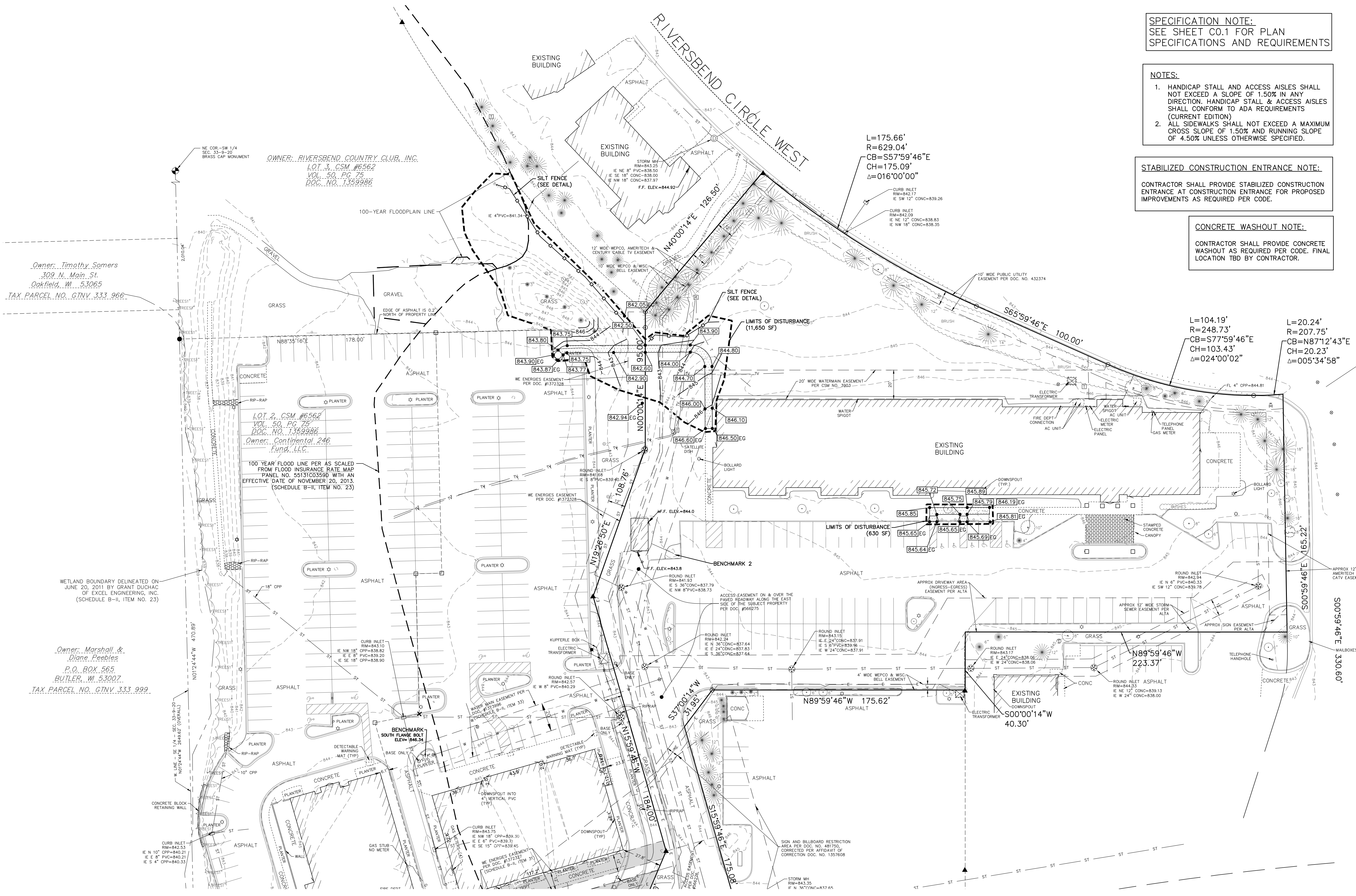
NOV. 1, 2021

2142200

# C1.3







SPECIFICATION NOTE:  
SEE SHEET C0.1 FOR PLAN  
SPECIFICATIONS AND REQUIREMENTS

NOTES:  
1. HANDICAP STALL AND ACCESS AISLES SHALL NOT EXCEED A SLOPE OF 1.50% IN ANY DIRECTION. HANDICAP STALL & ACCESS AISLES SHALL CONFORM TO ADA REQUIREMENTS (CURRENT EDITION)  
2. ALL SIDEWALKS SHALL NOT EXCEED A MAXIMUM CROSS SLOPE OF 1.50% AND RUNNING SLOPE OF 4.50% UNLESS OTHERWISE SPECIFIED.

STABILIZED CONSTRUCTION ENTRANCE NOTE:  
CONTRACTOR SHALL PROVIDE STABILIZED CONSTRUCTION ENTRANCE AT CONSTRUCTION ENTRANCE FOR PROPOSED IMPROVEMENTS AS REQUIRED PER CODE.

CONCRETE WASHOUT NOTE:  
CONTRACTOR SHALL PROVIDE CONCRETE WASHOUT AS REQUIRED PER CODE. FINAL LOCATION TBD BY CONTRACTOR.

GENERAL DEVELOPMENT PLAN FOR:  
**ODYSSEY HOTELS**  
RIVERSBEND LA • GERMANTOWN, WI

PROFESSIONAL SEAL

PRELIMINARY DATES  
NOV. 1, 2021

JOB NUMBER  
2142200

SHEET NUMBER

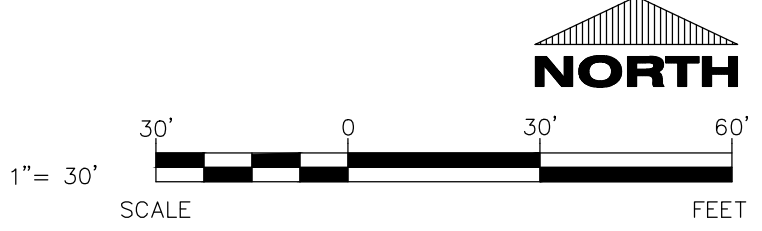
**C1.2**

2021 © EXCEL ENGINEERING, INC.

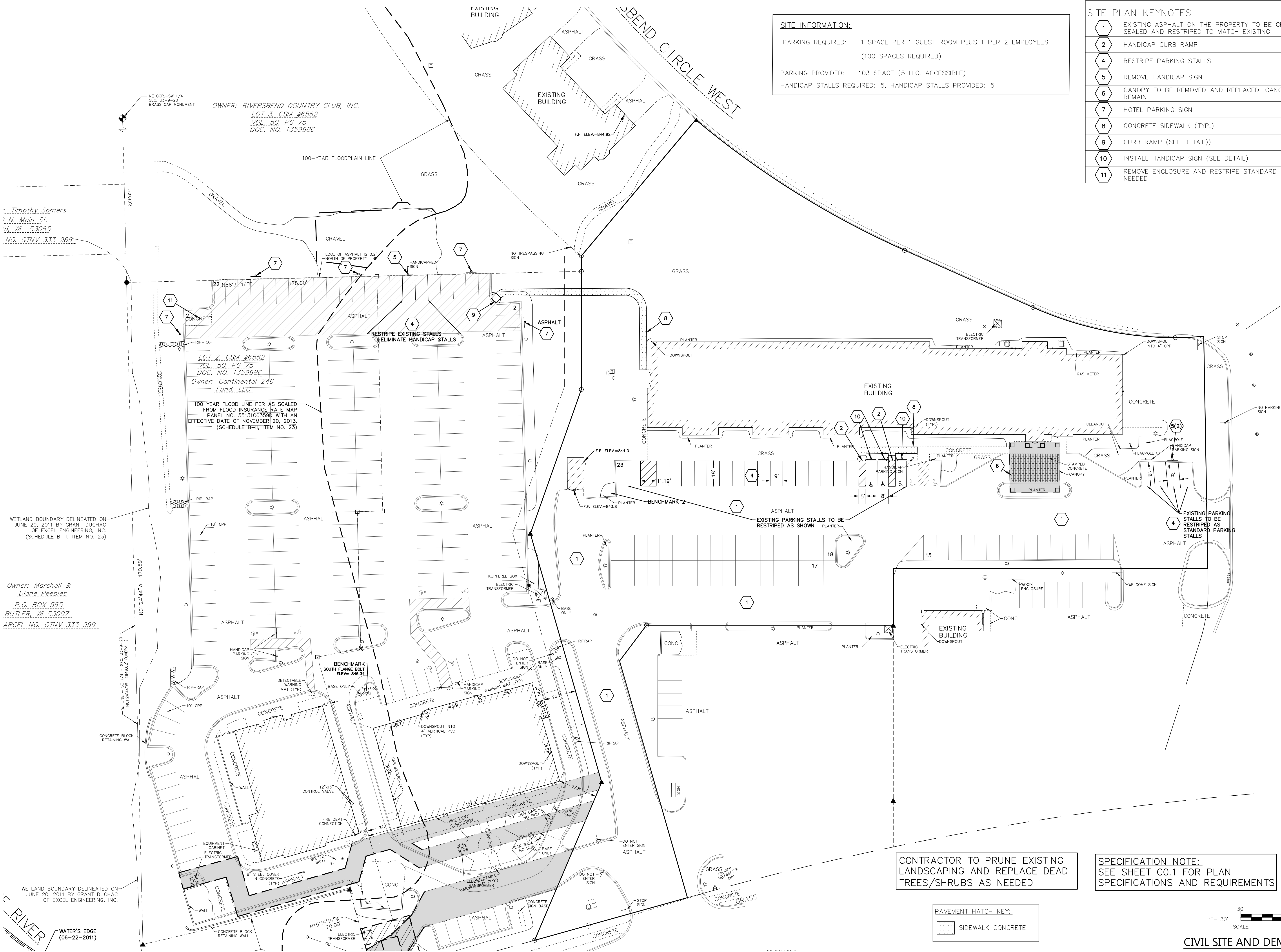
**EXCEL**  
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Always a Better Plan  
100 Camelot Drive  
Fond Du Lac, WI 54935  
Phone: (920) 926-9800  
www.EXCELENGINEER.com

PROJECT INFORMATION

NOT FOR CONSTRUCTION



CIVIL GRADING AND EROSION CONTROL PLAN



**SITE INFORMATION:**

PARKING REQUIRED: 1 SPACE PER 1 GUEST ROOM PLUS 1 PER 2 EMPLOYEES (100 SPACES REQUIRED)

PARKING PROVIDED: 103 SPACE (5 H.C. ACCESSIBLE)

HANDICAP STALLS REQUIRED: 5, HANDICAP STALLS PROVIDED: 5

SITE PLAN KEYNOTES	
1	EXISTING ASPHALT ON THE PROPERTY TO BE CRACK FILLED AND SEALED AND RESTRIPE TO MATCH EXISTING
2	HANDICAP CURB RAMP
4	RESTRIPE PARKING STALLS
5	REMOVE HANDICAP SIGN
6	CANOPY TO BE REMOVED AND REPLACED. CANOPY COLUMNS TO REMAIN
7	HOTEL PARKING SIGN
8	CONCRETE SIDEWALK (TYP.)
9	CURB RAMP (SEE DETAIL))
10	INSTALL HANDICAP SIGN (SEE DETAIL)
11	REMOVE ENCLOSURE AND RESTRIPE STANDARD PARKING STALL IF NEEDED

PROJECT INFORMATION

GENERAL DEVELOPMENT PLAN FOR:  
**ODYSSEY HOTELS**  
RIVERSBEND LA • GERMANTOWN, WI

PROFESSIONAL SEAL

**PRELIMINARY DATES**  
JULY 19, 2021  
NOV. 1, 2021

**JOB NUMBER**  
2142200

**SHEET NUMBER**  
**C1.1**

EXCEL

ARCHITECTS • ENGINEERS • SURVEYORS

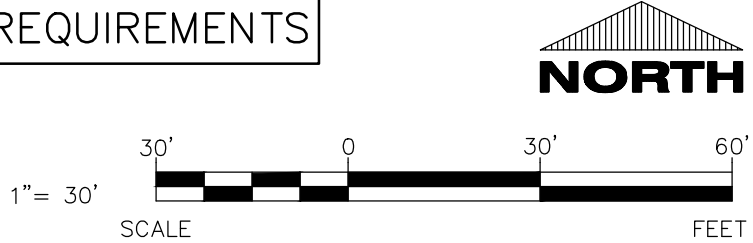
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**SPECIFICATION NOTE:**  
SEE SHEET C0.1 FOR PLAN SPECIFICATIONS AND REQUIREMENTS

PAVEMENT HATCH KEY:	
[Hatch Pattern]	SIDEWALK CONCRETE



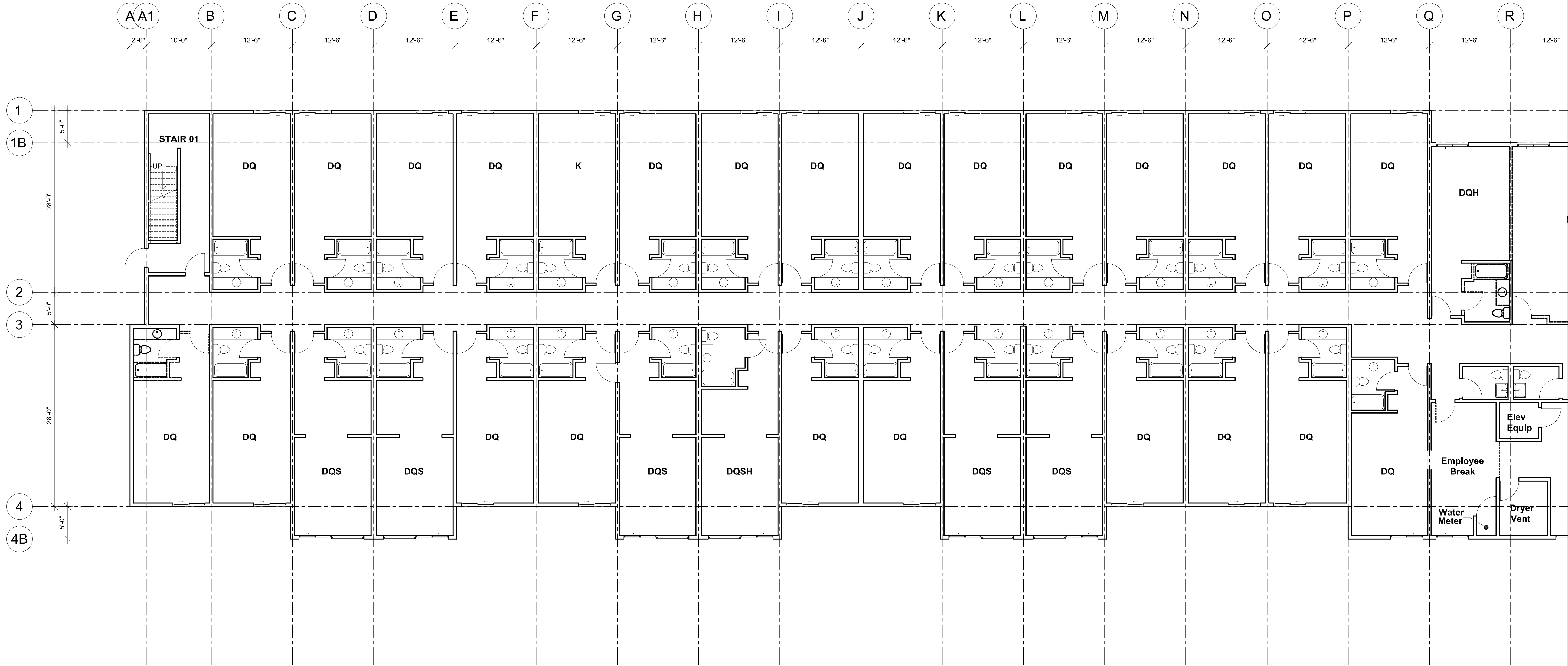
CIVIL SITE AND DEMOLITION PLAN







ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL. STUDIO 78 SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS THE CLIENT FROM AND AGAINST ALL SUCH DAMAGES FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



**1 FIRST FLOOR DEMOLITION PLAN**  
Scale: 1/8" = 1'-0"

Progress Printing - 09-17-21

**STUDIO 78**  
237 Woodridge Drive  
Atlanta, GA 30339  
(770) 547-5882  
SK@DesignStudio78.com

**FAIRFIELD INN & SUITES**  
Marriott  
Marriott Project #57344

**Holiday Inn Express**  
Conversion To  
**Fairfield Inn & Suites**  
W. 177 N. 9675 Riversbend Lane  
Germantown, Wisconsin 53022

*Not For Construction*

Revisions		
NO.	ISSUE	DATE

Sheet Information	
Date	09-17-21
Job Number	20-006
Scale	AS NOTED
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**1** FIRST FLOOR DEMOLITION PLAN  
A-101a





W. 177 N. 9675 Riversbend Lane  
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FIRST FLOOR  
DEMOLITION PLAN

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Date	09-17-21
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**A-101b**

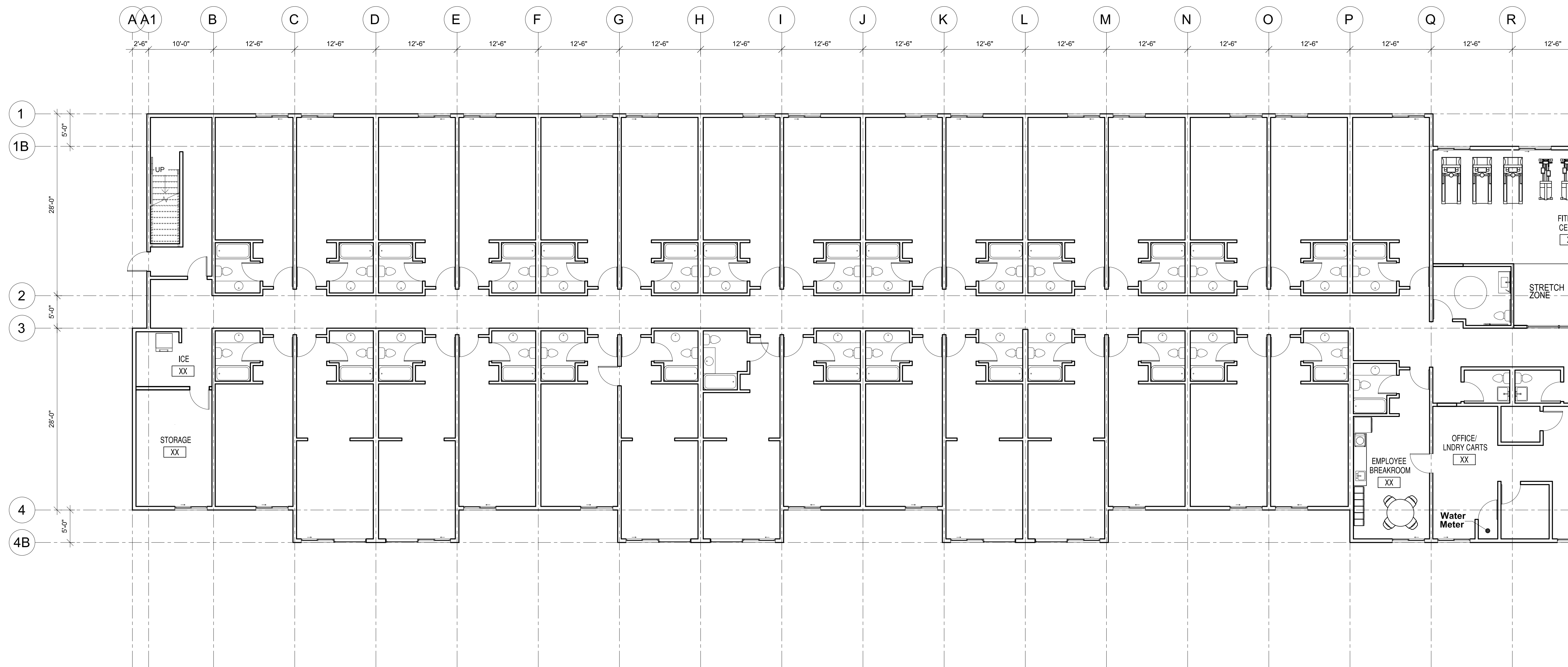
ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL AND USER ASSUMES RESPONSIBILITY FOR SUCH CHANGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS STUDIO 78 AGAINST ALL CAUSES OF ACTION ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



**Scale: 1/8" = 1'-0"**

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# 1 FIRST FLOOR PROPOSED PLAN

Scale: 1/8" = 1'-0"

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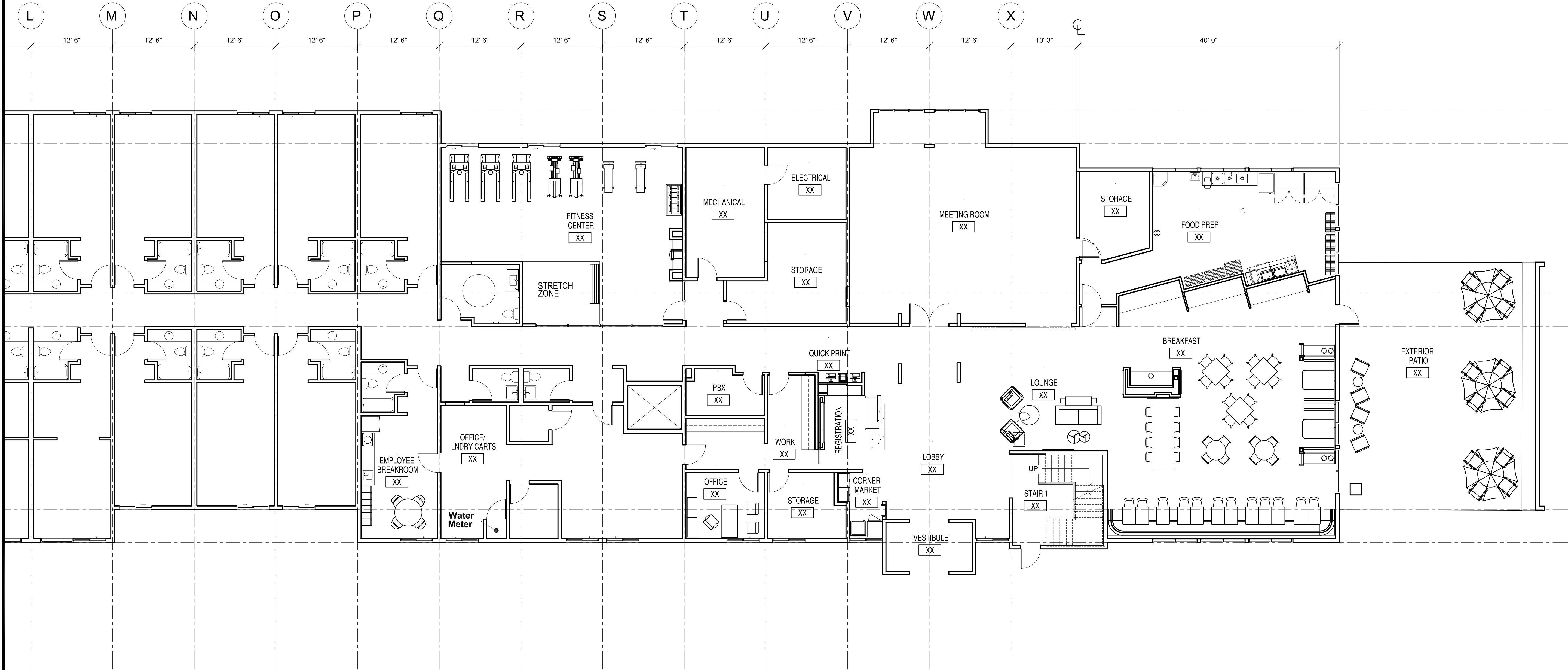
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**1 FIRST FLOOR PROPOSED PLAN**  
Scale: 1/8" = 1'-0"

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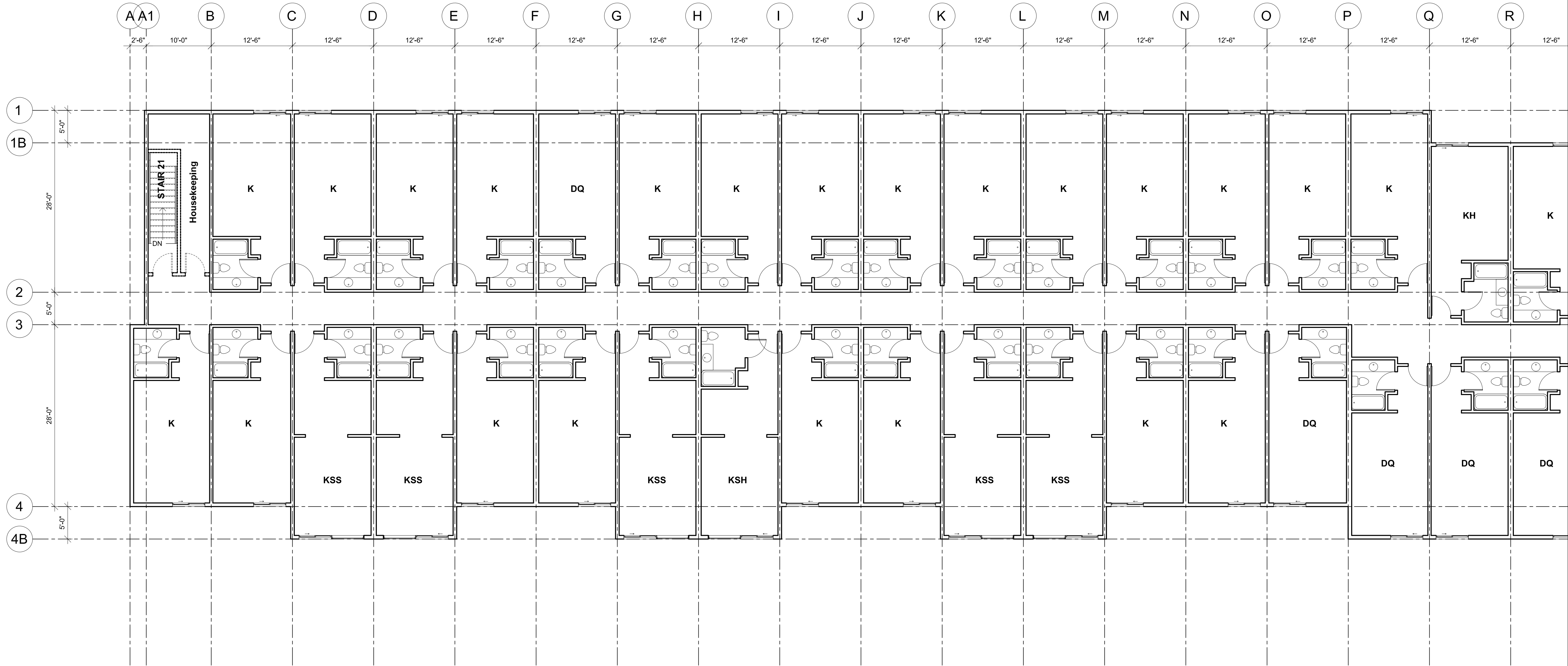
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**FIRST FLOOR PROPOSED PLAN**

Sheet Information	Sheet
Date 09-17-21	
Job Number 20-006	
Scale AS NOTED	
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ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL. STUDIO 78 SHALL NOT BE RESPONSIBLE FOR ANY CHANGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS THE OTHER PARTY FROM AND AGAINST ALL CLAIMS, DAMAGES, LOSSES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



**1 SECOND FLOOR DEMOLITION PLAN**  
Scale: 1/8" = 1'-0"

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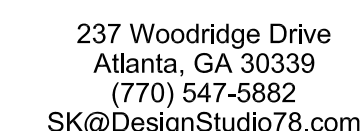
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Sheet Information		Title
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Job Number	20-006	SECOND FLOOR DEMOLITION PLAN
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Sheet		A-102a





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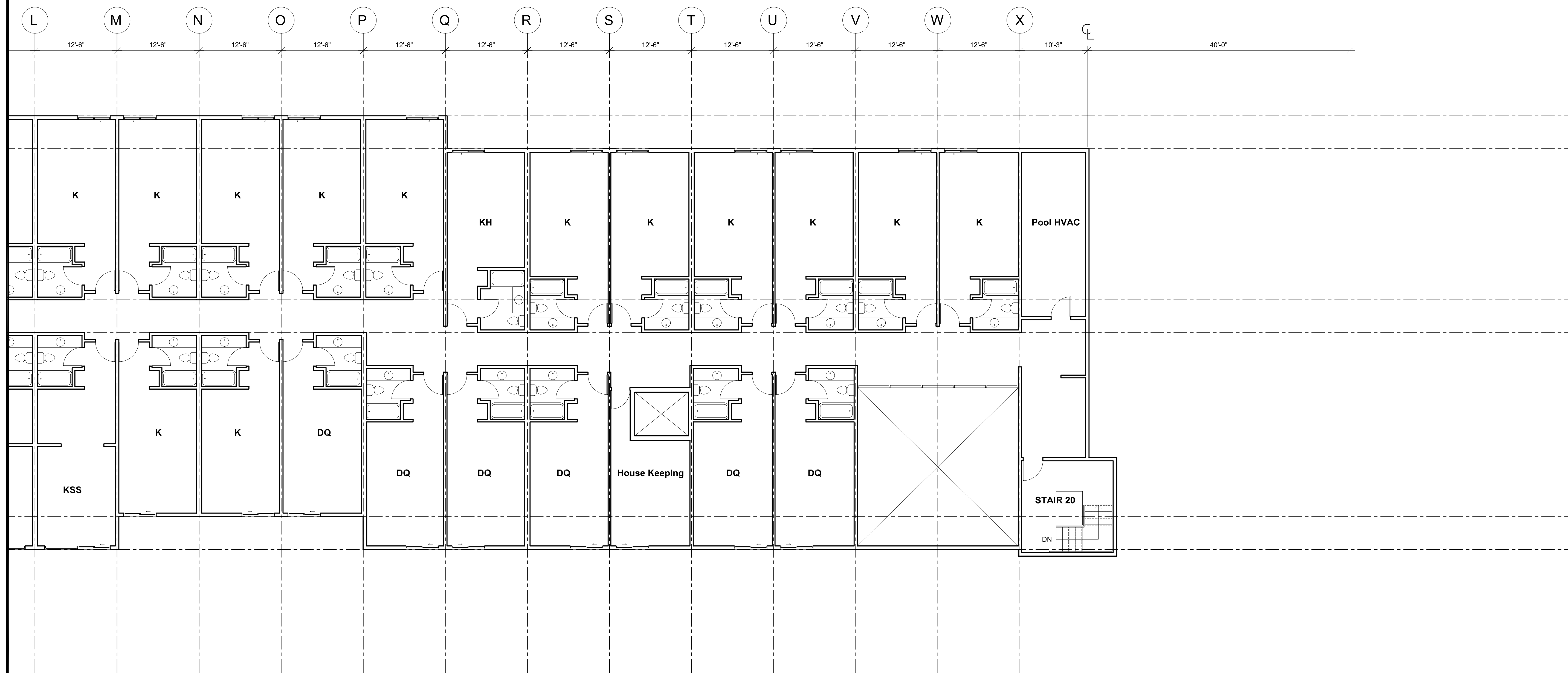
Revision		
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SECOND FLOOR  
DEMOLITION PLAN

Sheet Information	
Date	09-17-21
Job Number	20-006
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Drawn	SVK
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Approved	SVK

**A-102b**

ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL AND USER ASSUMES RESPONSIBILITY FOR SUCH CHANGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS STUDIO 78 AGAINST ALL CAUSES OF ACTION ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



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1

## SECOND FLOOR DEMOLITION PLAN

Scale: 1/8" = 1'-0"

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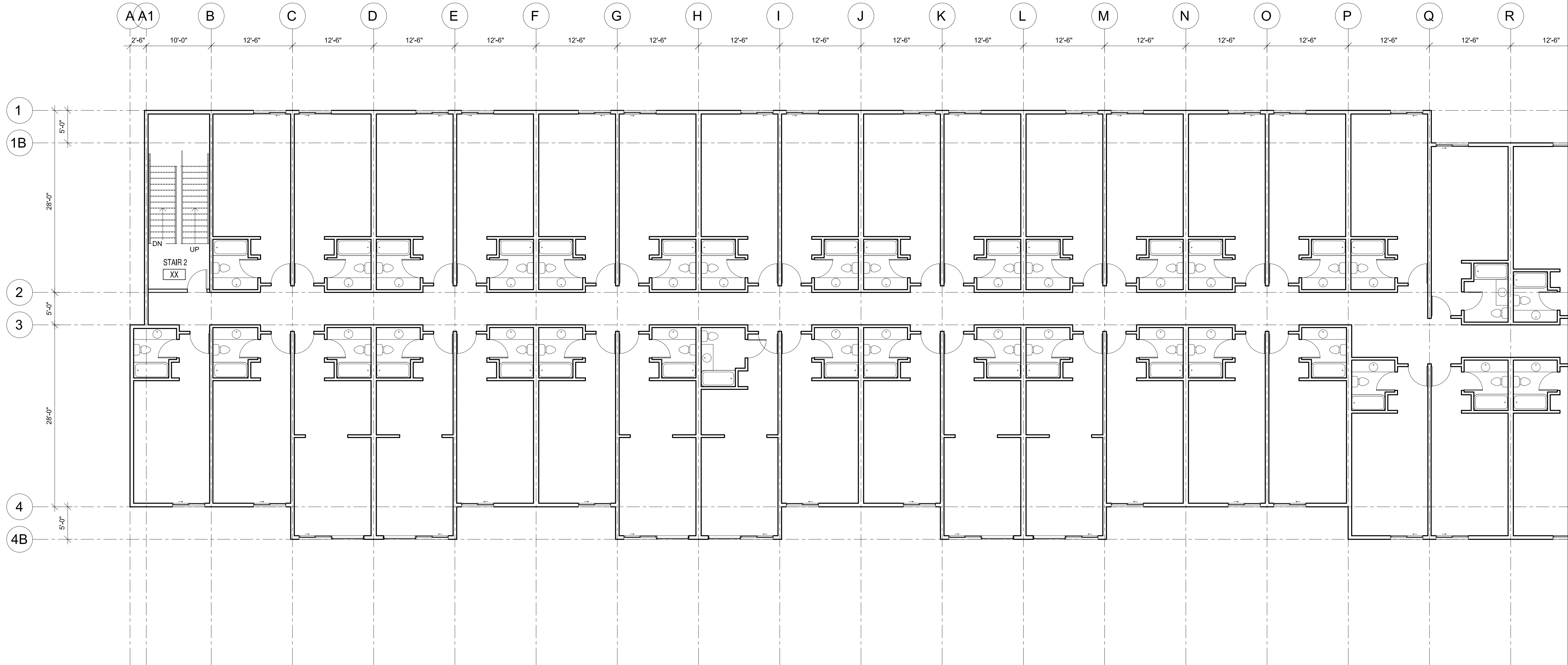
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SECOND FLOOR  
PROPOSED PLAN

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**A-102c**



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## SECOND FLOOR PROPOSED PLAN

**Scale: 1/8" = 1'-0"**

Architectural floor plan of a building wing, oriented with a grid system (L-X) and 12'-6" spacing. The plan shows a series of rooms, including restrooms, storage, guest laundry, and an ice lounge. A large area is marked "OPEN TO BELOW". The plan is oriented with a north arrow pointing towards the top right.

Grid lines are labeled L through X, with dimensions of 12'-6" between most lines, and 10'-3" between X and the next line. The total width of the grid is 40'-0".

Rooms and areas include:

- STORAGE (XX)
- GUEST LAUNDRY (XX)
- ICE/ LOUNGE (XX)
- OPEN TO BELOW
- UP (stairs)
- DN (stairs)

The plan also shows various restrooms, including men's, women's, and combined restrooms, as well as a central area marked with a large 'X'.

## SECOND FLOOR PROPOSED PLAN

**Scale: 1/8" = 1'-0"**



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# Holiday Inn Express Conversion To Fairfield Inn & Suites

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SECOND FLOOR  
PROPOSED PLAN

Sheet Information	
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Job Number	20-006
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**A-102d**

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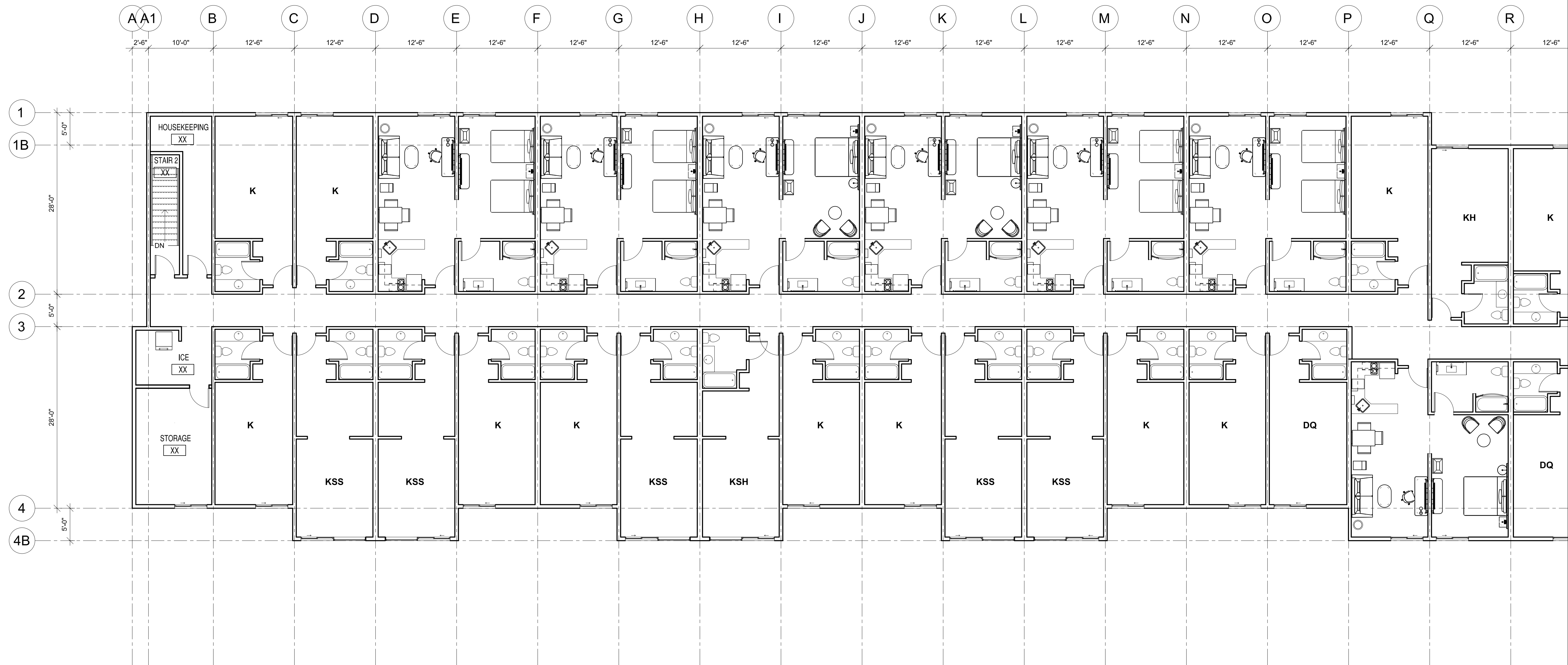
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THIRD FLOOR  
PROPOSED PLAN

Sheet Information	
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Scale	AS NOTED
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Approved	SVK

**A-103a**



Progress Printing - 09-17-21

# 1 THIRD FLOOR PROPOSED PLAN

Scale: 1/8" = 1'-0"

**Scale: 1/8" = 1'-0"**

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THIRD FLOOR  
PROPOSED PLAN

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Sheet Information	
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Approved	SVK

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ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL AND USER ASSUMES RESPONSIBILITY FOR SUCH CHANGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS STUDIO 78 AGAINST ALL CAUSES OF ACTION ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



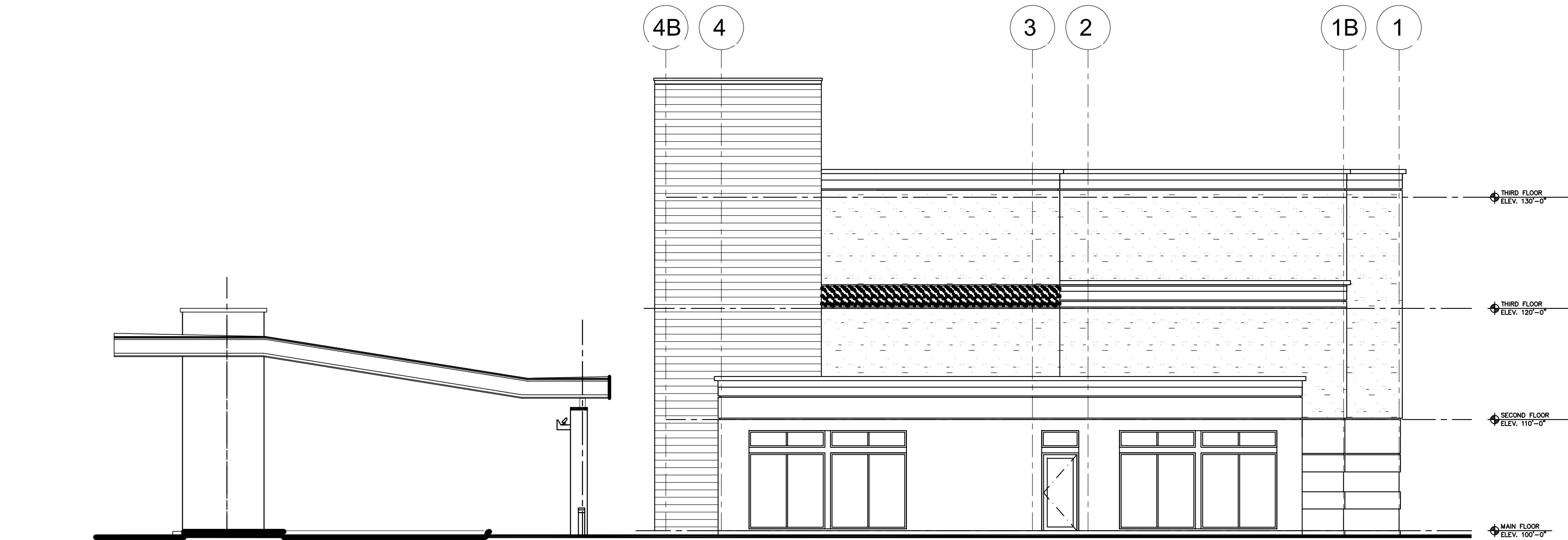
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1 REAR ELEVATION - PROPOSED  
SCALE: 1/8" = 1'-0"



2 NORTH ELEVATION - PROPOSED  
SCALE: 1/8" = 1'-0"



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EXTERIOR ELEVATIONS

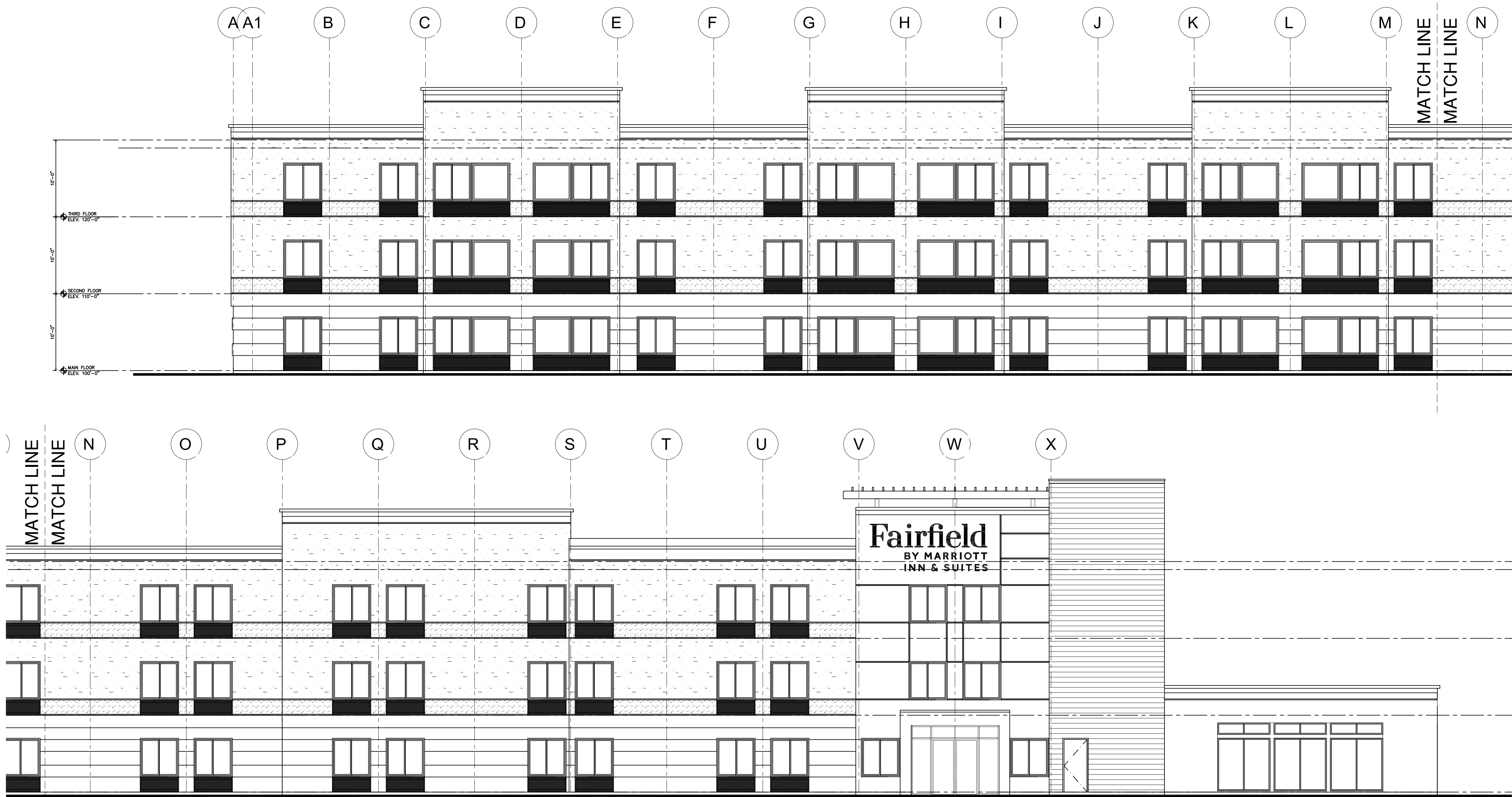
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Sheet Information  
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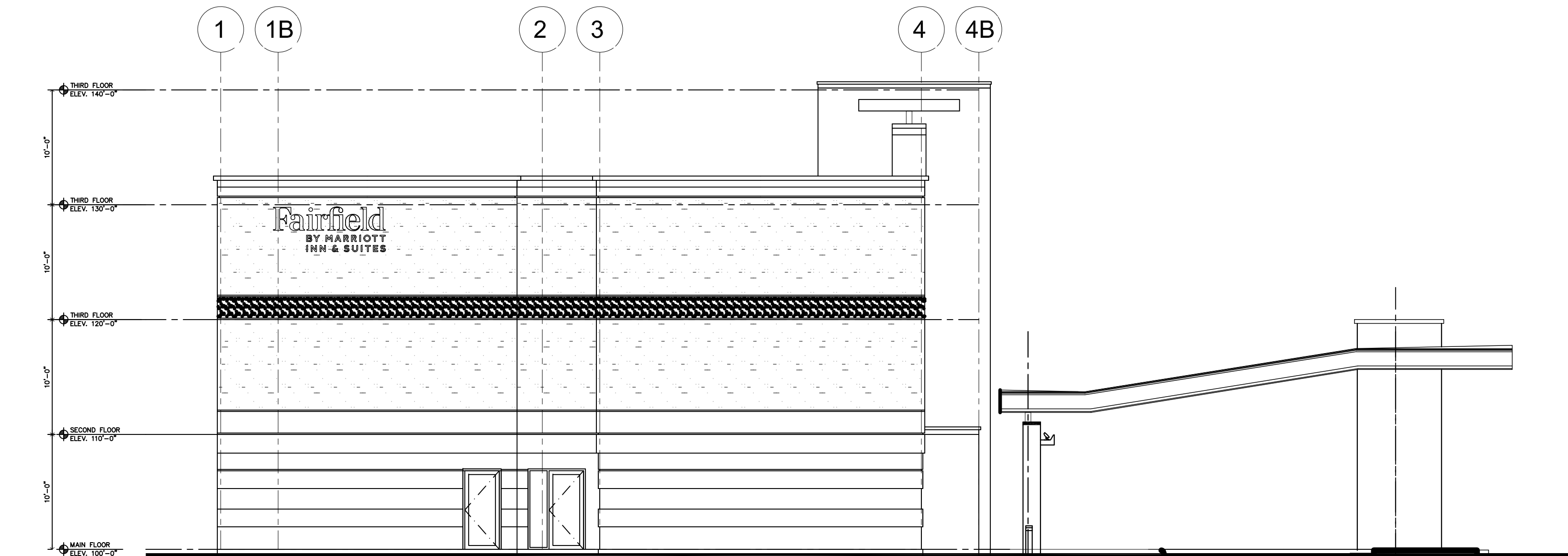
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A-212

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2 FRONT ELEVATION - PROPOSED  
SCALE: 1/8" = 1'-0"



1 SOUTH ELEVATION - PROPOSED  
SCALE: 1/8" = 1'-0"



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EXTERIOR ELEVATIONS

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Checked SVK  
Approved SVK

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A-211

Progress Printing - 10-04-21



ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL. STUDIO 78 SHALL NOT BE RESPONSIBLE FOR ANY DAMAGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS THE CLIENT FROM AND AGAINST ALL SUCH DAMAGES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



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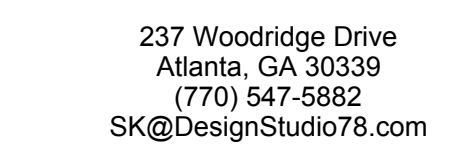
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Date	10-04-21
Job Number	20-008
Scale	AS NOTED
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ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL. STUDIO 78 SHALL NOT BE RESPONSIBLE FOR ANY ERRORS, OMISSIONS, AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS THE CLIENT FROM AND AGAINST ALL SUCH DAMAGES, LOSSES, AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.





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## RENDERING

Sheet

Sheet

## Sheet Information

Date 10-04-21

Job Number 20-006

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ALTERATIONS BY PARTIES OTHER THAN STUDIO 78 ARE BEYOND ITS CONTROL AND USER ASSUMES RESPONSIBILITY FOR SUCH CHANGES AND FURTHER AGREES TO PROTECT, INDEMNIFY, AND HOLD HARMLESS STUDIO 78 AGAINST ALL CAUSES OF ACTION ARISING FROM ALTERATION OR DEVIATION FROM THESE DOCUMENTS.



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1359988



RECIPROCAL EASEMENT AGREEMENT

Document Number

Document Title

RECORDED

May 23, 2014 8:30 AM  
SHARON A MARTIN, REGISTER OF DEEDS  
WASHINGTON COUNTY, WISCONSIN

Recording Fee Paid: \$30.00

Recording Area

37

Name and Return Address

Continental Properties Company, Inc.  
Attn: Legal Department  
W134N8675 Executive Parkway  
Menomonee Falls, WI 53051

Part of GTNV 333-965

Parcel Identification Number (PIN)

Drafted By:  
Continental Properties Company, Inc.  
W134N8675 Executive Parkway  
Menomonee Falls, WI 53051

Joshua Gunn

**THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.**

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

WRDA Rev. 12/22/2010

## RECIPROCAL EASEMENT AGREEMENT

THIS RECIPROCAL EASEMENT AGREEMENT (hereinafter "REA"), is made and declared as of this 22 day of May, 2014, by CONTINENTAL 246 FUND LLC, a Wisconsin limited liability company ("Continental") and RIVERSBEND COUNTRY CLUB, INC., a Wisconsin corporation ("Riversbend").

### WITNESSETH:

WHEREAS, Continental is the owner in fee simple of the land located in the Village of Germantown, Washington County, Wisconsin and more particularly described on Exhibit A attached hereto ("East Property") and depicted on the Site Plan attached hereto as Exhibit D (the "Site Plan");

WHEREAS, Continental is the owner in fee simple of the land located in the Village of Germantown, Washington County, Wisconsin and more particularly described on Exhibit B attached hereto ("West Property") and depicted on the Site Plan;

WHEREAS, Riversbend is the owner in fee simple of the land located in the Village of Germantown, Washington County, Wisconsin and more particularly described on Exhibit C attached hereto ("Riversbend Property"; the East Property, the West Property and the Riversbend Property are sometimes collectively referred to herein as the "Shopping Center") and depicted on the Site Plan; and

WHEREAS; the parties desire to make integrated use of the East Property, the West Property and the Riversbend Property to develop and operate the properties substantially in accordance with the Site Plan and this REA, and to establish certain covenants, conditions and restrictions relating to their development and operation.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and declarations, as hereinafter set forth, it is agreed and declared as follows:

### **ARTICLE I** **DEFINITIONS**

As used hereinafter in this REA, the following terms shall have the following respective meanings:

- 1.1 "Building" shall mean any enclosed structure placed, constructed or located on a Parcel.
- 1.2 "Building Area" shall mean those areas of the East Property, West Property and the Riversbend Property which are designated as such on the Site Plan and within which a Building may be constructed, placed or located.
- 1.3 "Claims" shall mean claims, losses, liabilities, actions, proceedings, costs and expenses (including reasonable attorneys' fees and cost of suit actually incurred).
- 1.4 "Common Areas" shall mean all portions of the East Property and West Property not shown as Building Areas and those portions of the Building Areas upon which buildings are not constructed. Common Areas shall not include Outdoor Seating Areas (as defined in Section 4.2).
- 1.5 "Common Area Improvements" refers to the Permanent Access Drives, roads, streets, drives, passageways, sidewalks, landscape areas, drainage facilities, lighting facilities and parking and service areas serving the Parcels, directional and parking signs, all monument or pylon signs serving the Parcels and any other improvements designated for the common use of occupants of the Parcels. Common Area Improvements shall not include appurtenant building canopies, building supports, loading docks, truck ramps, dumpster and enclosures or any other outward extensions of a Building which are not intended for the common use of occupants of the Parcels.

1.6 **"Common Utility Lines"** shall mean those Utility Lines which are installed to provide the applicable service to more than one (1) of the Parcels. The Shared Detention Ponds shall be deemed to be a Common Utility Line.

1.7 **"Effective Date"** means the first date written above.

1.8 **"Floor Area"** refers to and means with respect to any Building within the Shopping Center, whether or not actually occupied, the actual number of square feet of floor space within the exterior walls of all floors, measured to the center lines of all common walls or to the exterior of all non-common walls, including stairs, interior elevators, escalators, air conditioning and other interior equipment rooms; but excluding: (i) unenclosed loading docks and platforms, transformer vaults, utility or mechanical penthouses or utility enclosures located outside of the exterior walls of the building serviced thereby; (ii) patio or outside selling areas or Outdoor Seating Areas; (iii) any mezzanine space or basement space not used for retail sales. Upon written request from a Party (as hereinafter defined), each Party shall deliver to the requesting Party a certification from an architect duly licensed in the State of Wisconsin certifying the exact Floor Area of all Buildings on the requested Party's Parcel; provided however that after construction of the Building(s) on a Party's Parcel only one such certification shall be permitted until new Buildings are constructed on such Parcel. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of the survey to the other Parties for informational purposes only.

1.9 **"Force Majeure"** shall mean any accident, breakage, war, insurrection, civil commotion, riots, acts of God or the elements, governmental action, installation, wear, use, repairs, renewal, improvements, alterations, strikes or lockouts, picketing (whether legal or illegal), inability of a Party or its agents or contractors, as applicable, to obtain fuel or supplies, or any other cause or causes beyond the reasonable control of such Party or its agents or contractors, as applicable.

1.10 **"Indemnify"** shall mean indemnify, protect, hold harmless and defend with counsel designated by the insurer charged with the obligation to defend (or if no insurer is involved, with counsel reasonably acceptable to the Person being defended).

1.11 **"Interest Rate"** means the rate of three percent (3%) per annum over the then existing prime rate of interest per annum as defined in The Wall Street Journal or its successor (but in no event exceeding the maximum rate permitted by law).

1.12 **"Laws"** shall mean and include all then applicable laws, rules, regulations, orders, ordinances, statutes and other requirements of all federal, state, county and municipal authorities having jurisdiction over the Parcels.

1.13 **"Mortgagee"** refers to and shall include a mortgagee, trustee and beneficiary under any deed of trust or mortgage, and the term "Mortgage" shall include any indenture of mortgage, deed of trust, and to the extent applicable, a sale and lease back transaction.

1.14 **"Occupant"** refers to and means any Person from time to time entitled to use and occupy any Parcel under any lease, deed, agreement to purchase or other instrument whereunder such Person has acquired rights with respect to the use and occupancy of such Parcel.

1.15 **"Parcel"** or **"Parcels"** refers to and means each of the East Property, the West Property and the Riversbend Property.

1.16 **"Party"** or **"Parties"** refers to and means the owner or owners, respectively, of fee simple title from time to time of the Parcels or any portion thereof; provided, however, in the event of the sale by an owner of all or a portion of the Parcel and a simultaneous leaseback of the same or portions thereof (a "sale/leaseback"), the seller/lessee under such sale/leaseback shall be deemed to be the Party with respect to the related Parcel for the purposes of this REA, unless otherwise designated in the sale/leaseback lease.



1.17 "Permanent Access Drives" shall mean those drives noted as "Permanent Access Drives" on the Site Plan.

1.18 "Permittees" refers to and means all Occupants and their respective officers, directors, partners, employees, agents, contractors, customers, visitors, invitees, licensees, assignees, subtenants and concessionaires; provided however, persons engaged in civic, public or political activities on the Parcels, including but not limited to the following activities, shall not be considered to be Permittees: (i) exhibiting any placard, sign or notice; (ii) distributing any circular, handbill, placard or booklet; (iii) soliciting memberships or contributions for private, civic, public or charitable purposes; (iv) parading, picketing or demonstrating; and (v) failing to follow rules or regulations established by the Parties relating to the use of the Parcels.

1.19 "Person" refers to and shall include individuals, partnerships, limited liability companies, firms, associations and corporations, or any other form of business or government entity, and the use of the singular shall include the plural.

1.20 "Protected Area" shall have the meaning set forth in Section 4.5 hereof.

1.21 "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to a Parcel, exclusive of all of the other Parcels. For the purpose of this REA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line.

1.22 "Shared Detention Ponds" shall mean those certain detention ponds labeled as the "Shared Detention Ponds" on the Site Plan.

1.23 "Utility Lines" shall mean those facilities and systems for the transmission of utility services, including without limitation, the drainage and storage of surface water.

## **ARTICLE II** **EASEMENTS**

2.1 Access and Parking. Each Parcel is hereby granted in common with all other Parcels, for each Party's respective use, and for the use of their respective Permittees, in common with all others entitled to use the same, mutual, reciprocal and non-exclusive easements over the Common Area of each Parcel, for ingress into and egress from such respective Parcel, for the passage and parking of vehicles, and for passage and accommodation of pedestrians, on such respective portions of such Common Area as are set aside, maintained and authorized for such use pursuant to the terms of this REA, and for the doing of such other things as are authorized or required to be done on said Common Area pursuant to this REA. Notwithstanding the foregoing, (a) the owner of the Riversbend Property shall use its best efforts to cause its Permittees to park their vehicles only in the area designated as "Golf Course Parking Area" on the Site Plan, (b) the Parties, for themselves and future Parties hereto, reserve the right to close off the Common Area of a Parcel for such reasonable period or periods of time as: (i) may be legally necessary to prevent the acquisition of prescriptive rights by anyone; and (ii) may be reasonably necessary for repairs and/or maintenance; provided, however, that prior to closing off any portion of the Common Area, as herein provided, such Party shall give written notice to any other Party, and shall coordinate such closing with all other Parties so that there is no unreasonable interference with any Occupant's access to or operation of any portion of its Parcel; and (iii) may be necessary for initial construction of the Common Area and improvements on any Parcel provided that such Party gives written notice to any other Party of the location of the staging area during construction provided that the location of the staging area is not within any Permanent Access Drives and does not unreasonably interfere with any Occupant's access to any part of its Parcel; (c) no Party and no Occupant of any Party's Parcel shall, during construction or reconstruction, stage, deposit, store or have any construction material or equipment on the Parcel of another Party and in no event shall the Common Area be closed pursuant to (b)(i) or (b)(ii) above from August 1<sup>st</sup> to January 15<sup>th</sup> of any calendar year (except in the event of an emergency and during the initial construction). In the event that the Permittees of the Riversbend Property fail to limit their parking to the Golf Course Parking Area, then the Occupants of the East Property and the West Property, respectively, shall have the right to install signs within the Common Area of their respective Parcels, which designate the parking outside of the Golf Course Parking Area

as solely for use by customers of the East Property and the West Property. The owner of the East Property shall have the right to designate up to eight (8) exclusive parking spaces on the East Property for the exclusive use of one or more Occupants of the East Property and such Occupants' invitees (provided that such exclusive parking spaces shall not be located along the common boundary line between the West Property and the East Property). The owner of the West Property shall have the right to designate up to six (6) exclusive "to go" parking spaces on the West Property for the exclusive use of one or more Occupants of the West Property and such Occupants' invitees. Each such designation shall be honored by the owners of the East Property, the West Property and the Riversbend Property.

2.2 Utilities. Each Party hereby grants and conveys to each other Party non-exclusive perpetual easements in, to, over, under, along and across those portions of the Common Area (exclusive of any portion located within Building Areas) located on the grantor's Parcel necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Parcel, including but not limited to, sanitary sewers, storm drains, and water (fire and domestic), gas, electrical, telephone and communication lines, subject to the following requirements and restrictions:

(a) All Utility Lines shall be underground except: (i) ground mounted electrical transformers; (ii) stormwater management practices, (iii) the Shared Detention Ponds; (iv) as may be necessary during periods of construction, reconstruction, repair, or temporary service; (v) as may be required by governmental agencies having jurisdiction over the Parcels; (vi) as may be required by the provider of such service; and (iii) fire hydrants.

(b) At least ten (10) days prior to any installation, maintenance, connection, repair, relocation or removal of Utility Lines located on another Party's Parcel pursuant to the easement granted herein (except in an emergency, the work may be initiated with reasonable notice), the grantee shall first provide the grantor with a written statement describing the need for such work, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated commencement and completion dates for the work and shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 8.2.

(c) The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Common Area is to be burdened thereby, such approval not to be unreasonably withheld or conditioned, and such Party shall respond to any request within fifteen (15) days after receipt. The easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility. Upon request, the grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line.

(d) Except as otherwise agreed to by the grantor and the grantee, any Party installing Separate Utility Lines pursuant to the provisions of this subparagraph shall pay all costs and expenses with respect thereto and shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of the Common Area. In addition, the grantee of any Separate Utility Line shall Indemnify the grantor from all Claims arising out of or resulting from the installation, maintenance and operation of the Separate Utility Line.

(e) The grantor whose Parcel is affected by a Utility Line shall have the right to relocate such Utility Line upon ten (10) days' prior written notice, provided that such relocation:

(i) shall not be commenced between August 1<sup>st</sup> and January 15<sup>th</sup>;

(ii) shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;

(iii) shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

(iv) shall be performed without cost or expense to grantee;

(v) shall be completed using materials and design standards which equal or exceed those originally used; and

(vi) shall have been approved by the provider of such service and the appropriate governmental or quasi-governmental agencies having jurisdiction thereover.

Documentation of the relocated easement area, including the furnishing of an "as-built" survey, shall be performed at the grantor's expense and shall be accomplished as soon as possible following completion of such relocation. At the request of any Party hereto, this Agreement shall be supplemented to memorialize the as-built location (and corresponding easement) of any Utility Line.

(f) Each Party hereby grants and conveys to each other Party the perpetual right and easement to discharge surface storm drainage and/or runoff from the grantee's Parcel over, upon and across the Common Area of the grantor's Parcel, and the owner of the Riversbend Property hereby grants and conveys to each other Party the perpetual right and easement to discharge and store surface drainage and/or runoff into the Shared Detention Ponds, upon the following conditions and terms:

(i) The Common Area grades and the Shared Detention Ponds shall be initially constructed in strict conformance with the details approved by the Parties; provided that the owner of the Riversbend Property hereby approves the grading and drainage plans for the East Property and West Property; and

(ii) Following the initial construction of the improvements on the Parcels, no Party shall alter or permit to be altered the surface of the Common Area or the area or capacity of the drainage/retention system constructed on its Parcel if such alteration would unreasonably increase the flow of surface water onto an adjacent Parcel either in the aggregate or by directing the flow of surface water to a limited area. The foregoing shall not limit or affect the rights of the East Property and the West Property to discharge surface drainage to the Shared Detention Ponds pursuant to this REA.

2.3 Monument Sign Easement. Continental, for itself and any future party owning any of the Parcels, hereby grants, declares and reserves a perpetual, exclusive easement over that portion of the East Property depicted on Exhibit D attached hereto and made a part hereof, for the installation, replacement and removal of a monument sign ("**Monument Sign**"). The initial Monument Sign shall be in substantially the location shown on Exhibit D and shall be constructed in accordance with the sign rendering shown on Exhibit E attached hereto. The owner of the West Property, the East Property and the Riversbend Property shall each be entitled to certain panels on the Monument Sign in accordance with the allocation shown on Exhibit E.

2.4 Trash Enclosure Easements. Continental, for itself and any future party owning the West Property, hereby grants and conveys to the owner of the Riversbend Property a perpetual, exclusive easement over that portion of the West Property depicted on Exhibit D attached hereto and made a part hereof, for the placement of a trash enclosure and facilities for the removal of trash from the Riversbend Property ("**Golf Course Trash Enclosure**"). The Golf Course Trash Enclosure shall be located in the area labeled as such on Exhibit D and the design and construction of the enclosure and facilities shall be subject to the prior written approval of the owner of the West Property, which approval shall not be unreasonably withheld. Continental, for itself and any future party owning the West Property, hereby grants and conveys to the owner of the East Property a perpetual, exclusive easement over that portion of the West Property depicted on Exhibit D attached hereto and made a part hereof, for the placement of a trash enclosure and facilities for the removal of trash from the East Property ("**East Property Trash Enclosure**"). The East Property Trash Enclosure shall be located in the area labeled as such on Exhibit D and the design and construction of the enclosure and facilities shall be



subject to the prior written approval of the owner of the West Property, which approval shall not be unreasonably withheld.

### **ARTICLE III**

#### **TAXES**

3.1 **Taxes.** Each Party shall pay or cause to be paid before delinquency all taxes and assessments levied or assessed against its Parcel, and indemnify and defend the other Parties and hold the other Parties harmless from and against any and all claims or demands for payment of such taxes or assessments.

### **ARTICLE IV**

#### **BUILDING AREAS, COMMON AREAS, AND CONSTRUCTION OBLIGATIONS**

4.1 **Improvements.** The East Property and the West Property shall be developed as a uniform and harmonious development as generally shown on the Site Plan. The Parties shall be permitted in accordance with the terms and restrictions contained in this REA to construct buildings within the Building Area as so labeled on the Site Plan. Portions of the Building Area upon which buildings or other improvements are not constructed shall be paved and/or landscaped by the Party owning the Parcel and integrated into the Common Area until construction thereon commences. Except as set forth in Section 4.5 below, each Party may alter, modify and/or rearrange the Common Areas on its Parcel from time to time as it determines in its sole discretion.

4.2 **Building Areas.** All buildings constructed on the East Property and the West Property shall be located wholly within the areas labeled "**Building Area**" on the Site Plan. Canopies and roof overhangs (including supporting columns or pillars), normal foundations, sidewalks, required emergency exits (including associated stairs, landings, footings and foundations), trash enclosures, loading and delivery docks (whether open or enclosed), covered areas attached to such docks, and doors for ingress and egress may project or extend from any building over or outside of the Building Area; provided: (a) any such projection or extension shall comply with all applicable governmental laws, rules, ordinances and regulations; and (b) no such extension or projection is permitted if it: (i) materially alters the parking configuration or vehicular or pedestrian circulation or access in and through the Parcels or to and from adjacent streets from that shown on the Site Plan; (ii) unreasonably interferes with the use and occupancy of any Parcel or portions thereof; or (iii) hinders the construction of buildings on adjacent Building Areas (collectively, the "**Building Extensions**"). In addition, each Party or occupant shall be entitled to utilize certain outdoor seating area(s) adjacent to the Buildings on its Parcel designated as "**Outdoor Seating Areas**" on the Site Plan (it also being acknowledged that outdoor seating shall also be permitted within any Building Area). The Building Extensions and Outdoor Seating Areas are collectively referred to as the "**Permitted Extensions**". Permitted Extensions, as they may exist from time to time, are not part of the Common Area, and shall be maintained and insured against fire and other casualty as part of the building from which they extend or project.

4.3 **Building Encroachments.**

(a) In order to accommodate any Building improvements which inadvertently may be constructed beyond a Parcel's boundary line, each Party grants to each Party owning an adjacent Parcel an easement not to exceed a maximum lateral distance of six inches (6"), in, to, over, under and across that portion of the grantor's Parcel adjacent to such common boundary line for the maintenance and replacement of such encroaching Building improvements. The foregoing easement grant shall not diminish or waive any right of a Party to recover damages resulting from the constructing Party's failure to construct its Building within its Parcel.

(b) If a constructing Party (the "**Constructing Party**") determines that it is necessary to place underground piers, footings and/or foundations ("**Subsurface Construction Elements**") across the boundary line of its Parcel, the Constructing Party shall advise the Party owning the adjacent Parcel (the "**Adjacent Party**") of its construction requirement and shall provide plans and specifications relating thereto, including proposed construction techniques for the Subsurface Construction Elements. The Adjacent Party hereby grants and conveys to the Constructing Party for the benefit of its Parcel an easement, not to exceed a maximum

lateral distance of five feet (5'), in, to, under and across that portion of the Adjacent Party's Parcel not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements.

(c) The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to use the same in connection with the construction of its Building improvements to the end that each Party shall be able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Parties, each shall assume and pay its reasonable share of the cost and expense of the design and construction and maintenance thereof. If any Building using a common Subsurface Construction Element is destroyed and not replaced or removed, the common Subsurface Construction Element shall remain in place for the benefit of the other Building using the same.

(d) The easements in each instance shall: (i) continue in effect for the term of this REA and thereafter for so long as the Building using the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged or demolished); and (ii) include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 2.1.

(e) With respect to Buildings constructed along the common boundary line between Parcels, nothing herein shall be deemed to create or establish a "common" or "party" wall to be shared with the adjacent Building, or the right for a Building to receive support from or apply pressure to the adjacent Building.

4.4 Parking Ratio. Each Parcel shall independently maintain sufficient parking to comply with all applicable laws, ordinances, regulations, and zoning codes given the use being made of such Parcel.

4.5 Protected Areas. After the initial construction of the Common Area Improvements, without the prior written consent of the other Parties (which consent may be withheld or conditioned, in each Party's sole discretion), (a) the Permanent Access Drives shall not be altered or modified and (b) the areas designated as "Protected Areas" on the Site Plan shall not be materially altered or modified.

4.6 Construction Requirements. All work performed in the construction, repair, replacement, alteration or expansion of any improvements shall be performed as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Parcels, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking, (iii) the receiving of merchandise by any business being operated on a Parcel, including, without limitation, access to its Building, or (iv) construction work being performed on any other Parcels. Unless otherwise specifically stated herein, the Person contracting for the performance of such work (the "Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Common Area improvements damaged or destroyed in the performance of such work. Staging for the initial construction of Buildings, or the replacement, alteration or expansion of any Building, sign or Common Area improvements shall be located solely on the constructing Party's Parcel. Each staging area on any Parcel shall be located in such a way that it will not interfere with the use of the Protected Area on any other Parcel. Once the initial construction is complete and either or both of the Occupants of the West Property and the East Property are open for business, any construction vehicles accessing the West Property or the Riversbend Property by crossing the East Property shall access the West Property or the Riversbend Property via the curb cut and driveways designated on the Site Plan as "Permitted Construction Access". At such time as any business has commenced operations on any Parcel, then each Contracting Party shall keep its Parcel and the Permitted Construction Access in a clean and neat condition for the duration of any construction on such Contracting Party's Parcel.

## ARTICLE V USE, NUISANCE AND GOVERNMENTAL COMPLIANCE

5.1 Use of Parcels. The Parcels may be used for any lawful purpose (except for any purpose which is expressly prohibited by this REA).

5.2 Nuisance. A Party shall not suffer or permit thereon the maintenance of any nuisance, including unusual noises and obnoxious odors (except that customary restaurant noises and odors shall not constitute a nuisance), on its Parcel.

5.3 Compliance with Laws. To the extent that the terms of this REA require or allow a Party, as the case may be, to perform any construction, repair, alteration, replacement, remediation or similar task or action (collectively, "Tasks"), then the Party shall perform such Tasks in accordance with all applicable laws, statutes, ordinances, codes, rules and regulations.

5.4 Hazardous Materials. No Party shall use or permit the use of Hazardous Materials (as hereinafter defined) on, about, under or in its Parcel or any other Parcel except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws (as hereinafter defined). Each Party shall Indemnify the other Parties from and against all Claims, including, but not limited to, costs of investigation, litigation and remedial response arising out of any Hazardous Materials used or permitted to be used by such Party, whether or not in the ordinary course of business. "Hazardous Materials" shall mean petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law. "Environmental Laws" shall mean all Laws which relate to or deal with human health or the environment, all as may be amended from time to time.

5.5 Restrictions on Common Area Use. Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area. Each Party shall use its best efforts to cause the employees of the Occupants of its Parcel to park their vehicles only on such Parcel. No merchandise, equipment or services, including, but not limited to, vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored on the sidewalks in front of or alongside the Buildings or within the remainder of the Common Area; provided, however, that the foregoing prohibition shall not be applicable to trash enclosures constructed in connection with the construction of a Building or replacements thereof in the same location, and provided, further that the foregoing restrictions shall not restrict customary use of Outdoor Seating Areas, as the same are not part of the Common Area.

## **ARTICLE VI**

### **UTILITIES AND LIGHTING**

6.1 Utilities. Each Party agrees to pay, or cause to be paid, all charges for utility services used by such Party and/or its Occupants.

6.2 Lighting.

(a) After completion of the lighting system on its Parcel, each Party hereby covenants and agrees to keep its Tract fully illuminated from dusk to at least two (2) hours past the close of any business operating on such Parcel, or if no business is operating on such Parcel until 10:00 p.m.. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this REA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

(b) It is recognized that Occupants of the Parcels may be open for business at different hours, and that a Party may wish to have the Common Area lights on another Parcel illuminated before or after the required time period set forth in Section 6.2(a). Accordingly, a Party ("**Requesting Party**") shall have the right, at any time, to require the Party that controls the lighting on such Tract ("**Requested Party**") to keep the Common Area lights it controls operating as stipulated by the Requesting Party, provided that the Requesting Party notifies the Requested Party of such request not less than seven (7) days in advance. The Requesting Party shall state the period during which it wishes such Common Area lights to be kept operating and shall pay the costs of such lighting to the Requested Party within ten (10) days after receipt



of an invoice from the Requested Party. Upon the failure of a Requesting Party to pay the estimated amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours of additional operation may be made from time to time.

## **ARTICLE VIII**

### **OCCUPANT SIGNS**

7.1 Monument Sign Construction. Continental shall construct, at its sole cost and expense (subject to reimbursement from its Occupants), the initial Monument Sign structure (excluding individual tenant sign panels which shall be fabricated and installed by the Occupants of each Parcel), extend electricity to each sign panel box and install a meter to the initial Monument Sign in accordance with the approved plans and specifications. The Occupant entitled to utilize each panel on the Monument Sign shall be responsible for the fabrication and installation of the individual tenant signage.

7.2 Monument Sign Maintenance. Following installation of the Monument Sign, the owner of the East Property shall be responsible for keeping the Monument Sign fully operational, and shall operate, maintain and repair the Monument Sign in a manner consistent with a first-class shopping center. The owners of the East Property, the West Property and the Riversbend Property shall contribute to the cost of operating, maintaining and repairing the Monument Sign based on the fraction, the numerator of which is the square footage of such party's sign panel(s) on the Monument Sign, and the denominator of which is the square footage of all panels on the Monument Sign. Payments shall be made within thirty (30) days following receipt of invoices setting forth the amount owed, accompanied by reasonable supporting documentation, invoices and work orders. If the owner of the East Property fails to maintain the Monument Sign in accordance with the standards set forth herein, the owner of the West Property may exercise all remedies contained in Article XIV hereof, including without limitation self-help. Each Occupant entitled to place a sign panel on the Monument Sign shall keep its sign panel in good condition and repair.

7.3 Building Signs.

(a) Subject to all applicable laws, ordinances, rules and regulations, each Occupant may have the maximum number of identification sign placed on the exterior of the Building it occupies. No Occupant identification sign attached to the exterior of a Building shall be:

(iii) placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk;

(iv) painted on the surface of any Building;

(iii) flashing, moving or audible, except that in the case of a bank, a moving sign that shows the Dow Jones Industrial Average, time and temperature, and similar information customarily shown on first-class bank signs may be used and in the case of a pharmacy, "reader" boards may be used in a manner consistent with national pharmacy chains;

(iv) employ exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers; provided, however, exposed raceways shall be permitted if (A) the primary purpose of the raceways are to limit damage to the Buildings to which the raceways are attached and (B) the raceways do not draw undue attention when viewed from the Common Area; or

(v) paper, cardboard and/or temporary (exclusive of contractor signs), stickers or decals; provided, however, the foregoing shall not prohibit (A) the placement at the entrance of each Occupant's space of a small sticker or decal, indicating hours of business, emergency telephone

numbers, acceptance of credit cards, and other similar information, or (B) "For Sale" signs, "For Lease" signs, "Coming Soon" signs and "Grand Opening" signs placed within a Parcel for a period of time not to exceed ninety (90) days per instance.

(b) No Occupant shall have an exterior sign which identifies leased departments and/or concessionaires operating under the Occupant's business or trade name, nor shall such sign identify specific brands or products for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

7.4 Miscellaneous Signs. Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place the following signs within the Common Area located on its Parcel:

- (a) directional signs or informational signs such as "Handicapped Parking";
- (b) temporary signs displaying leasing information;
- (c) one (1) temporary sign identifying each contractor working on a construction job;
- (d) one (1) temporary sign identifying a lender financing a construction project; and
- (e) parking signs installed pursuant to Section 2.1 above.

Notwithstanding anything herein to the contrary, (a) the Occupants of the West Property shall each have the right to place up to six (6) exclusive "to go" parking signs on the Common Area located on each Occupant's Parcel and (b) the Occupants of the East Property may place up to eight (8) exclusive parking signs to the extent permitted by the owner of the East Property and Section 2.1 hereof, provided the eight parking stalls identified on the East Property shall not be located along the common boundary of the East Property and the West Property.

## **ARTICLE VII** **INDEMNIFICATION AND INSURANCE**

8.1 Liability Insurance Coverage and Limits. Each Party agrees to maintain, and/or cause to be maintained, at no cost to the other Parties, commercial general liability insurance insuring against claims for personal injury, bodily injury, death and property damage occurring on, in or about such Party's Parcel and the ways immediately adjoining such Party's Parcel, with cumulative policy limits of not less than Three Million Dollars (\$3,000,000.00) for any one occurrence whether via a single policy or a combination of underlying and umbrella coverages. The insurance required hereunder shall: (i) be issued by a company having an AM Best rating of at least A-:VIII; (ii) provide for thirty (30) days notice of cancellation or amendment; (iii) contain a contractual liability endorsement; and (iv) name the other Parties hereto (and the first Mortgagee of each Party) as additional insureds.

8.2 Contractor's Insurance. During the period of any construction by or at the request of any Party, such Party agrees to obtain or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage: (i) workers' compensation - statutory limits; (ii) builder's risk equal to the replacement cost of the improvements; (iii) commercial general and commercial automobile liability covering personal injury and property damage with limits of not less than Three Million Dollars (\$3,000,000.00) for any one occurrence; (iv) independent contractor's liability or owner's protective liability with policy limits of not less than Three Million Dollars (\$3,000,000.00); (v) products/completed operations coverage which shall be kept in effect for two (2) years after completion of any construction work; (vi) XCU coverage, if applicable; (vii) broad form property damage endorsements; personal injury endorsements; and blanket contractual liability endorsement.

8.3 Property Insurance. The Parties shall cause their buildings and improvements to the Common Areas to be insured against loss or damage by fire and the perils commonly covered under the "special form" policy for not less than the full replacement cost thereof, including all improvements, alterations, additions and changes made, but excluding footings, foundations and excavation. Insurance required to be carried by the Parties hereunder

shall: (i) be issued by a company having an AM Best rating of at least A-:VIII; and (ii) provide for thirty (30) days notice of cancellation or amendment.

8.4 Policy Requirements. Insurance coverage required by this REA may contain the following elements, so long as the required coverage is not diminished, the required limits are not reduced, and the elements thereof are otherwise commercially reasonable: a Party's insurance program may include blanket, layered, umbrella, conventional and/or manuscript forms of policies, as well as retention levels and loss reserves which are charged against earnings or otherwise funded. The Parties shall pay all deductible amounts payable for all insurance required to be maintained by the respective Party hereunder. Upon request, each Party shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Section to be delivered to the other Parties. The insurance policies and certificates required by this Section shall require the insurance company to furnish the other Parties thirty (30) days prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage.

8.5 Liens. No Party shall permit the lien of any contractor, subcontractor, mechanic, materialman, laborer, architect or any other Person or entity arising out of work, material or services performed or supplied or contracted for by that Party, or those claiming by, through or under such Party, to be or remain a lien upon any other Parcel or the Common Areas, but such Party shall have the right to contest the lien in good faith by appropriate judicial proceedings so long as: (i) the proceeding operates to stay any execution or foreclosure on the lien; and (ii) the Party diligently pursues the contest to its conclusion. In any event, such Party shall indemnify the other parties harmless from any such lien, and such indemnity shall survive a termination of this REA.

8.6 Self Insurance. Insurance under this Article VIII may be provided pursuant to a plan of self insurance, provided that any Person so self-insuring notifies the other Parties of its intent to self-insure and shall upon request deliver to such other Parties each calendar year a copy of its annual report or Form 10-K that is audited by an independent certified public accountant which discloses that such Person has Two Hundred Million Dollars (\$200,000,000) or more of net current assets.

8.7 Indemnification. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned by each indemnifying Party; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

## **ARTICLE IX**

### **DAMAGE OR DESTRUCTION**

9.1 If any of the Buildings are damaged by fire or other casualty (whether insured or not), the Party upon whose Parcel such Building is located shall, subject to governmental regulations and/or insurance adjustment delays, promptly remove the debris resulting from such event and provide a sightly barrier, and within a reasonable time thereafter shall perform one of the following alternatives:

(i) such Party shall repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all applicable provisions of this REA;

(ii) such Party shall erect another Building in such location, such construction to be performed in accordance with all applicable provisions of this REA; or

(iii) such Party shall demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement Building is erected.



**ARTICLE X**  
**RESTRICTIVE COVENANTS**

10.1 Restrictive Covenants. The types of uses permitted on the Parcels shall be those of a retail and/or commercial nature found in first class shopping centers of a similar size in the metropolitan marketing area in which the Parcels are located. Notwithstanding the foregoing the Riversbend Property is currently operated as a golf course and shall have the right to continue to be used as a golf course and related purposes. In the event that the Riversbend Property is ever changed to a retail or restaurant use, then parking for such retail and/or restaurant use shall be solely contained within the Riversbend Property. In no event shall (i) any Parcel contain a business operation which would violate one of the "Prohibited Uses" listed on Exhibit F attached hereto and made a part hereof or (ii) the Riversbend Property or the East Property contain a business operation that would violate the "West Exclusive Use" listed on Exhibit F-attached hereto and made a part hereof. No building constructed on the Parcels shall consist of more than one (1) story plus Mezzanine. "Mezzanine" means any floor area above the ground floor that does not extend over the entire ground floor and which is used in connection with the primary commercial use of the building but is not used as a sales area or generally open to the public. No Mezzanine or basement of any Building shall be used as an area for sales or display or open to the public generally. The restrictions set forth in this Section shall be deemed to be restrictions and covenants against the Parcels, a servitude upon each of the Parcels, shall run with the land and shall be binding upon any Person acquiring any interest in any Parcel or part thereof. In the event of a breach or threatened breach of any of the restrictions or covenants contained in this Section, the Parties shall be entitled to injunctive relief in addition to any other remedy available under this REA, except for termination.

**ARTICLE XI**  
**NOTICES**

11.1 Notices. All notices, requests, demands, and other communications hereunder shall be in writing and shall be given by: (i) national courier service which maintains delivery records; or (ii) certified or registered mail, postage prepaid, return receipt requested, to the Parties at the following addresses, or at such other address as the Parties may designate by written notice in the above manner:

If to Continental:  
Continental 246 Fund LLC  
Attention: Legal Department  
W134 N8675 Executive Parkway  
Menomonee Falls, WI 53051  
Facsimile: (262) 502-5522

If to Riversbend:  
Riversbend Country Club, Inc.  
Attention: Charles L. Schmit  
N96 W18034 County Line Road  
Germantown, WI 53022

Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery. Each Party shall give all other Parties notice of their Notice address upon acquiring an interest in the Parcels.

**ARTICLE XII**  
**CERTIFICATION**

12.1. A Party shall, within fifteen (15) days after receipt of another Party's written request therefor, acknowledge and deliver to the requesting Party, a statement in writing certifying: (i) that this REA is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications); (ii) the dates to which any charges have been paid; (iii) if the same is true, no default has been declared pursuant to this REA by any Party and the Party furnishing such certification at the time has no knowledge of any facts or circumstances which it might reasonably believe would give rise to default by any Party, and (iv) and identifying the date of this REA and any amendment thereto.

### ARTICLE XIII MAINTENANCE

13.1 Building Improvements. After completion of construction, each Party shall maintain and keep (i) the exterior portion of the Buildings, if any, located on its Parcel in first-class condition and state of repair, and (ii) unless otherwise provided in this REA, the Buildings and Common Area located on its Parcel in compliance with all applicable Laws, and in compliance with the provisions of this REA. Each Party shall store all trash and garbage in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

13.2 Utility Lines.

(a) Each Party shall maintain and repair, or cause to be maintained and repaired, in a good state of repair and safe condition, all Separate Utility Lines used by such Party regardless of where located unless the provider of the utility service or a public or quasi-public authority has agreed to maintain such Utility Lines. Any maintenance, replacement and/or repair of non-dedicated Utility Lines located on another Party's Parcel shall be performed only after ten (10) days' notice to the grantor (except in an emergency the work may be initiated with reasonable notice), after normal business hours whenever possible, and in such a manner as to cause as little disturbance in the use of the grantor's Parcel as is practicable under the circumstances. Any Party performing or causing to be performed maintenance or repair work shall promptly pay all costs and expenses associated therewith, diligently complete such work as quickly as possible and promptly clean the area and restore the affected portion of the Common Area to a condition equal to or better than the condition which existed prior to the commencement of such work.

(b) Common Utility Lines shall be maintained, repaired and/or replaced by the Party on whose Parcel the Common Utility Lines are located in accordance with the standards set forth in Section 13.2(a) above.

13.3 Maintenance of Common Areas. Each Party shall operate and maintain, or cause to be operated and maintained, the Common Area on its respective Parcel in good order, condition and repair. The maintenance and repair obligations shall include, but not be limited to, the following:

(a) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacing base, skin patching, resealing and resurfacing (for the purpose of this section, an overlay of the drives and parking areas shall be considered to be a maintenance item).

(b) Debris and Refuse. Periodically removing all papers, debris, filth, refuse, ice and snow, including periodic vacuuming and broom sweeping to the extent necessary to keep the Common Area in a first-class, clean and orderly condition. All sweeping shall be performed at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees. Snow shall be plowed as soon as a two-inch accumulation occurs and re-plowed as necessary to maintain less than a two-inch accumulation at all times; upon cessation of the snowfall, the Common Area shall be plowed to the paved surface.

(c) Non-Occupant Signs and Markers. Maintaining, cleaning, repairing and replacing directional, stop and handicapped parking signs and markers; restriping of parking lots and drive lanes as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian crosswalks.

(d) Lighting. Operating, maintaining, cleaning, repairing and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

(e) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs, including those adjacent to the exterior walls of Buildings, in an attractive and thriving condition, trimmed and weed free. Maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings. Modifying irrigation system to satisfy governmental water allocation or emergency requirements.

(f) Obstructions. Keeping the Common Area free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this REA.

(g) Sidewalks. Maintaining, cleaning, repairing and replacing all sidewalks, including those adjacent and contiguous to Buildings. Sidewalks shall be cleaned at least monthly and shall be swept at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area.

(h) Traffic. Supervising traffic at entrances and exits to, within and between the Parcels as conditions reasonably require in order to maintain an orderly and proper traffic flow.

(i) Security. In their sole and absolute discretion and without any obligation to do so, providing security services for the Common Area.

13.4 Maintenance of the Shared Detention Ponds. The owner of the Riversbend Property, at its sole cost and expense, shall maintain, clean and repair the Shared Detention Ponds, or cause the Shared Detention Ponds to be maintained, cleaned and repaired, in compliance with all applicable Laws so as to keep the Shared Detention Ponds in a safe, attractive and fully functional condition and in a good state of repair, including, without limitation, periodically removing all papers, debris, filth and refuse from the Shared Detention Ponds. The Shared Detention Ponds shall be repaired or replaced with materials of a quality which is at least equal to the quality of the materials being repaired or replaced. The owner of the Riversbend Property shall Indemnify each other Party from and against any mechanic's, materialmen's and/or laborer's liens and all Claims in connection therewith arising out of the operation, maintenance and repair of the Shared Detention Ponds by said Party, and if any Parcel shall become subject to any such lien, the owner of the Riversbend Property shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge. No alterations to the Shared Detention Ponds shall be permitted without the consent of each Party, which consent may be withheld in such Party's sole discretion. If the owner of the Riversbend Property fails to maintain the Shared Detention Ponds, or if other owners fail to maintain stormwater management facilities on their Parcels in accordance with this Agreement, it is agreed by the Parties that such default shall be subject to only a ten (10) day cure period before the rights of Curing Owner(s) shall apply pursuant to Section 14.2, rather than 30 days as provided in Section 14.1.

13.5 Maintenance of Shared Access Road. Each of the Parties acknowledges the right of each of the Parcels to use the access road labeled as "Shared Access Road" on the Site Plan pursuant to that certain Declaration of Conditions, Covenants and Easements Affecting Property of RAL Germantown/Monroe Income Limited Partnership dated September 14, 1990 and record as Document #566275 in Volume 1089, Page 225 of the County Records of Washington County, Wisconsin (the "Access Easement"). It is acknowledged that the Access Easement does not require the Parcels to contribute to the maintenance of the Shared Access Road and that payment for such maintenance is required only to the extent that a Party causes "excessive wear and tear or damage." Each of the Parties hereby agrees to pay to the grantor of the Access Easement ("Access Easement Grantor") any required payments due in connection with excessive wear and tear or damage caused by such Party or its Occupants and to indemnify and hold harmless each of the other Parties against any claims related to the same. Further, in the event that Access Easement Grantor fails to maintain the Shared Access Road in the condition that would otherwise be required for roadways pursuant to Section 13.3 of this Agreement, then (except in an emergency), after commercially reasonable efforts have been made to obtain performance from such Access Easement Grantor, any Party (the "Repairing Party") may perform critically necessary maintenance on the Shared Access Road and bill a portion of the actual and reasonable out-of-pocket costs and expenses incurred in performing such maintenance to the other Parties (the "Access Road Costs") as provided in the remainder of this paragraph. If a Party desires to perform maintenance that is not critically necessary, and if such Party desires



reimbursement for a share of the same from the other Parties, the Parties shall use commercially reasonable efforts to agree on the scope of maintenance beyond that critically necessary before any Party performs such maintenance. The Parties shall pay their "Pro Rata Share" (as hereinafter defined) of Access Road Costs to the Repairing Party within thirty (30) days after receipt of an invoice and reasonable backup therefor. A Party's "Pro Rata Share" means a fraction, the numerator of which is the square footage of the Party's Floor Area at the time Access Road Costs were incurred, and the denominator of which is the total square footage of all Floor Area in the Shopping Center, including the Party's Floor Area, at the time Access Road Costs were incurred, provided that any Floor Area on the Riversbend Property shall be excluded from both the numerator and denominator of such fraction, it being acknowledged that the Riversbend Property owner shall not share in Access Road Costs or Traffic Signal Costs. Notwithstanding anything to the contrary contained in this Section 13.5 or Section 13.6, so long as the lease between the owner of the West Property and Blazin Wings, Inc. (and any amendments thereto) remains in effect, the owner of the West Property shall never be required to contribute more than \$5,000 for Access Road Costs and Traffic Signal Costs with respect to any 12 month period (in which event the other Parties will also be required to pay any shortfall resulting thereby).

13.6 Lighting, Maintenance, Insurance and Replacement of the Traffic Signal. In connection with the initial development of the Shopping Center, a traffic signal will be installed in the location labeled "Traffic Signal" on the Site Plan (the "Traffic Signal"). As a condition of the governmental approvals for the Shopping Center, the Village of Germantown has required that the owners of the Shopping Center pay the electricity costs of lighting the Traffic Signal (the "Traffic Signal Costs"). The owner of the East Property shall initially perform such Traffic Signal obligations (i.e., paying the lighting bills, but such owner shall receive reimbursement from the owner of the West Property of a portion of the Traffic Signal Costs based on the West Property Owner's Pro Rata Share (as defined in Section 13.5 above). The West Property Owner shall pay its Pro Rata Share of Traffic Signal Costs to the East Property owner within thirty (30) days after receipt of an invoice and reasonable backup therefor. The Riversbend Property owner shall not have responsibility for Traffic Signal Costs.

13.7 Lift Station Changes. The Parties acknowledge that, on or about the date hereof, Continental and Riversbend have executed that certain Declaration of Covenants and Restrictions (the "Declaration") for the benefit of the Village of Germantown. In the event that any owner of a Parcel hereunder requests changes to the lift station as contemplated by the Declaration, such requesting owner shall be solely responsible for any cost in connection therewith and shall indemnify and hold harmless the other owners from all such costs.

13.8 Damage to the Common Area. If any of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this REA, other than damage caused by ordinary use or wear and tear, the Party upon whose Parcel such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence. Except to the extent limited by Article IX, if such damage or destruction of Common Area is caused in whole or in part by another Party or by a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution or damages.

#### **ARTICLE XIV**

##### **FAILURE TO PERFORM**

14.1 Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this REA by the non-performing Party (the "Defaulting Owner"):

(a) The failure to make any payment required to be made under this REA within ten (10) days after the Defaulting Owner has received notice of its failure to make such payment as and when due; or

(b) The failure to observe or perform any of the covenants, conditions or obligations of this REA, other than as described in (a) above, within thirty (30) days after the issuance of a notice by another Party or Occupant (either a "Non-Defaulting Owner") specifying the nature of the default claimed; provided, however if such matter is not susceptible of being cured within thirty (30) days, the cure period shall be extended for a reasonable period of time provided the Defaulting Owner commences the cure within said 30-day period and thereafter diligently prosecutes the cure to completion; provided that if either Party fails to timely remove snow or

ice from the Common Area on its Parcel on three (3) or more consecutive occasions (provided such Party received written notice of each such failure from the Non-Defaulting Owner), then the Non-Defaulting Owner shall thereafter not be required to provide the Defaulting Owner with time to cure any subsequent failures to remove snow or ice therefrom and the Non-Defaulting Owner shall instead have the immediate right, at its option, to remove snow and ice from all or any portion of such area(s) and shall have the rights of a Curing Owner (defined below).

Each Party shall be responsible for the default of its Occupants.

#### 14.2 Right to Cure.

(a) With respect to any default under Section 14.1, any Curing Owner (as hereinafter defined) shall have the right, but not the obligation, to cure such default by the payment of money or the performance of some other action for the account of and at the expense of the Defaulting Owner; provided, however, if an event that would become a default under Section 14.1(b) with the passage of time shall constitute an emergency condition, the Curing Owner acting in good faith, shall have the right to cure such event prior to the passage of the time period set forth in Section 14.1(b).

(b) If any Curing Owner shall cure a default, the Defaulting Owner shall reimburse the Curing Owner for all costs and expenses reasonably incurred in connection with such curative action, plus interest thereon at the Interest Rate, within ten (10) days after receipt of an invoice from such Curing Owner, together with reasonable documentation supporting the expenditures made. Furthermore, the Curing Owner shall have the right, if such invoice is not paid within said ten-day period, to record a lien on the Parcel of the Defaulting Owner for the amount of the unpaid costs incurred by the Curing Owner pursuant to this Section 14.2.

(c) To effectuate any such cure, a Curing Owner shall have the right to enter upon the Parcel of the Defaulting Owner (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Owner.

(d) As used in this Section 14.2, the term "Curing Owner" shall refer to a Non-Defaulting Owner that issued a notice of default pursuant to Section 14.1 hereof and elected to exercise self-help pursuant to this Section 14.2.

#### 14.3 Remedies.

(a) Notwithstanding anything to the contrary contained in this REA, each Non-Defaulting Owner, shall have the right to prosecute any proceedings at law or in equity against any Defaulting Owner hereto, or any other Person violating or attempting to violate or default upon any of the provisions contained in this REA, and to recover damages for any such violation or default.

(b) In the event of any violation or threatened violation by any Person of any of the easements, restrictions or other terms of this REA, any or all of the Parties shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

(c) All of the remedies permitted or available to a Party under this REA or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

(d) In all situations arising out of this REA, all Parties shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this REA.

(e) Notwithstanding anything contained herein to the contrary the remedies available to the Parties shall not include the termination of the REA.

#### 14.4 Default Liens.

(a) The liens provided for in Section 14.2(b) above shall only be effective when filed as a claim of lien against the Defaulting Owner in the official real estate records of the County of the State in which the Parcels are located by the Party making the claim. The claim of lien shall include the following:

- (i) The name of the lien claimant;
- (ii) A statement concerning the basis for the claim of lien and identifying the lien claimant as the Non-Defaulting Owner;
- (iii) An identification of the owner or reputed owner of the Parcel or interest therein against which the lien is claimed;
- (iv) A description of the Parcel against which the lien is claimed;
- (v) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof; and
- (vi) A statement that the lien is claimed pursuant to the provisions of this REA, reciting the date of recordation and the recorded document number (or book and page) hereof.

(b) The lien shall attach from the date a claim of a lien is recorded and may be enforced in any manner allowed by law, including, but not limited to, by suit in the nature of an action to foreclose a mortgage or mechanic's lien under the applicable provisions of the laws of the State in which the Parcels are located. The curing Party shall have the power to purchase the interest of the defaulting Party at such foreclosure sale and thereafter to hold, lease, mortgage and convey the same. Upon payment in full to the curing Party (prior to such a foreclosure) of all costs and expenses secured by the lien, together with all applicable interest due thereon and attorney's fees relating thereto, the curing Party shall promptly cause to be recorded a further notice stating the satisfaction and release of the lien against the defaulting Party's Parcel.

(c) A curing Party's right to record a lien as provided herein shall not be impaired by an intervening sale or other disposition of the affected Parcel, new Parcel or demised premises by the defaulting Party. The claim of lien, when so established against the real property described in the claim of lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the claim of lien, and shall be subordinate to any others. The claim of lien shall be for the use and benefit of the Person curing the default of the Owner in default.

14.5 Attorneys' Fees. If any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this REA, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

## **ARTICLE XV**

### **MISCELLANEOUS PROVISIONS**

15.1 Relationship of the Parties. Nothing herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the Parties, it being understood and agreed that no provision herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties except as specifically set forth herein.

15.2 Remedies Not Exclusive. The various rights and remedies herein contained and reserved to each of the Parties, except as herein otherwise expressly provided, are not exclusive of any other right or remedy of such Party, but are cumulative and in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by either Party, shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein.

15.3 No Presumption. This REA shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against any Party.

15.4 Headings. The headings of the Sections contained herein are for convenience only and do not define, limit, or construe their contents.

15.5 Pronouns. When required by context, the singular includes the plural, and the neuter gender includes a person, corporation, firm or association.

15.6 Severability. If any term or provision of this REA or the application of it to any Person or circumstance shall to any extent be held by a court in an action affecting this REA to be invalid or unenforceable, the remainder of this REA or the application of such term or provision to Persons or circumstances other than those to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this REA shall be valid and shall be enforced to the extent permitted by law.

15.7 No Other Agreements. This REA is intended to be a complete and exclusive statement of the terms hereof and the terms of this REA may not be explained or supplemented by evidence of consistent additional terms. This REA may not be amended or modified by any act or conduct of the Parties or by oral agreement, unless reduced to a writing signed by all Parties.

15.8 Successors. All of the rights and obligations of the Parties under this REA shall bind and inure to the benefit of the respective heirs, personal representatives, successors, grantees and assigns of the Parties and the restrictions, covenants and obligations pertaining to each of the Parcels shall run with the land and shall continue until this REA is terminated or expires.

15.9 Governing Law. This REA shall be governed by and construed in accordance with the internal laws of the state of Wisconsin without regard to choice of law.

15.10 Incorporation. The Exhibits attached hereto are incorporated herein by reference.

15.11 Exculpation. Anything to the contrary in this REA notwithstanding, the covenants contained in this REA to be performed by a Party shall not be binding personally, but instead said covenants are made for the purpose of binding only the fee simple estate and income therefrom which the Party owns.

15.12 Consent. In any instance in which any Party to this REA shall be requested to consent to or approve of any matter with respect to which such Party's consent or approval is required by any of the provisions of this REA, such consent or approval shall be given in writing, and shall not be unreasonably withheld, delayed or qualified, unless the provisions of this REA with respect to a particular consent or approval shall expressly provide that the same may be given or refused in the sole and absolute judgment of such Party.

15.13 Breach Shall Not Defeat Mortgage. A breach of any of the terms, conditions, covenants or restrictions of this REA shall not defeat or render invalid the lien of any first Mortgage made in good faith and for value, but such term, condition, covenant or restriction shall be binding upon and effective against any Person who acquires title to the Parcel encumbered by said Mortgage, by foreclosure, trustee's sale or otherwise, provided however, no mortgagor, its successors or assigns, shall be personally liable for any breach hereunder unless and until it takes title to the Parcel encumbered by said Mortgage and then only for breaches which occur after the date it takes title or which occurred prior to such date and remain uncured.

15.14 Condemnation. If any Parcel or any part thereof shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the land or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one Party, such as Utility Lines or signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this REA, the portion of the award allocable to each such easement right shall be paid to the respective grantee thereof.



In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this REA which does not reduce or diminish the amount paid to the Party owning the land or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this REA shall expire or terminate based solely upon such taking.

15.15 Notice of Transfer.

(a) Subject to the provisions of Section 16.16, each Party shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to its Parcel which accrue during the period of such ownership, and such liability shall continue with respect to any portion transferred until the notice of transfer set forth below is given, at which time (i) the transferring Party shall be released from the obligations of this REA arising subsequent to the effective date of the transfer notice and (ii) the transferee Party shall assume the obligations of this REA arising subsequent to the effective date of the transfer notice.

(b) A Party transferring all or any portion of its interest in a Parcel shall give notice to all other Parties of such transfer and shall include therein the name and address of the new Party and a copy of the legal description of the Parcel or portion thereof transferred. Until the notice of transfer is given, the transferring Party shall (for the purpose of this REA only) be the transferee's agent.

(c) If a Parcel is owned by more than one Person as tenants in common or as joint tenants, the Person or Persons holding at least fifty-one percent (51%) of the ownership interest in the Parcel shall designate one of their number to represent all owners of the Parcel and such designated Person shall be deemed to be the Party for the purposes of exercising rights (but not performing obligations) for such Parcel.

(d) Nothing to the contrary contained in this REA shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is placed upon the transferred Parcel or part thereof prior to receipt of the notice of the transfer or which is placed on the transferred Parcel or part thereof after receipt of the notice of transfer with respect to events occurring prior to the effective date of the transfer notice.

15.16 Limitation of Liability. Except as specifically provided below, there shall be absolutely no corporate or personal liability of persons, firms, corporations or entities who constitute a Party hereto, including, but not limited to, officers, directors, shareholders, members, partners, employees or agents of a party hereto with respect to any of the terms, covenants, conditions, and provisions of this REA. Any non-defaulting Party who seeks recovery from a defaulting Party hereto shall look solely to the interest of such defaulting Party, its successors and assigns, in such defaulting Party's Parcel (including, without limitation, the rents, issues and proceeds therefrom) for the satisfaction of each and every remedy of the non-defaulting Party; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of any Party:

(a) to pursue equitable relief in connection with any term, covenants or condition of this REA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance;

(b) to recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this REA;

(c) to recover from another Party (or its guarantor) all losses suffered, liabilities incurred or costs imposed arising out of or in connection with, or on account of, such Party's (or its guarantor's) breach of its obligation to carry liability insurance, or fund its self-insurance obligation pursuant to Section 8.6;

(d) to recover from a Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.4;

(e) to recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified under Section 15.3; and

(f) to recover from a Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenants, or condition in this REA.

**SEPARATE SIGNATURE PAGE TO FOLLOW**  
**[Remainder of page intentionally left blank]**

IN WITNESS WHEREOF, this REA has been executed as of the date first above written.

**CONTINENTAL:**

CONTINENTAL 246 FUND LLC, a Wisconsin limited liability company

By: CONTINENTAL PROPERTIES COMPANY, INC.,  
a Wisconsin corporation, its Managing Member

By: *Daniel J. Minahan*  
Daniel J. Minahan, President *AM*

STATE OF WISCONSIN

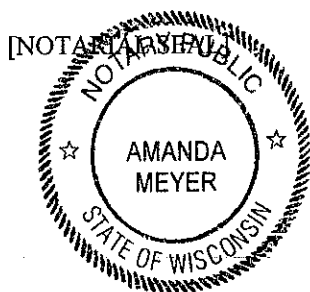
COUNTY OF WAUKESHA

I, *Amanda Meyer*, a Notary Public for the aforesaid County and State, certify that Daniel J. Minahan personally came before me this day and acknowledged that he is the President of Continental Properties Company, Inc., the Managing Member of Continental 246 Fund LLC, and that he, as President being authorized to do so, executed the foregoing on behalf of the company. And the said President acknowledged the said writing to be the act and deed of said company.

Witness my hand and notarial stamp or seal, this *13* day of May, 2014.

*[Signature]*  
Notary Public

My commission expires: *02/22/2015*



*(Signatures Continue On Following Page)*

(Signatures Continued From Previous Page)

RIVERSBEND COUNTRY CLUB, INC.  
a Wisconsin corporation

By: Charles L. Schmit  
Name: Charles L. Schmit  
Title: President

STATE OF WISCONSIN

COUNTY OF OSHAUK

I, William J. Farrell, a Notary Public for the aforesaid County and State, certify that Charles L. Schmit personally came before me this day and acknowledged that he is the President of Riversbend Country Club, Inc., and that he, as President, being authorized to do so, executed the foregoing on behalf of the company. And the said President acknowledged the said writing to be the act and deed of said company.

Witness my hand and notarial stamp or seal, this 12 day of May, 2014.



Permanent

William J. Farrell  
Notary Public



**EXHIBIT A**

**EAST PROPERTY LEGAL DESCRIPTION**

Lot 1 of Certified Survey Map No. 6562 recorded in the office of the Register of Deeds for Washington County, Wisconsin, on May 23, 2014 in Volume 50 of Certified Survey Maps, at Page 75 as Document No. 135 9986, being a part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 33, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

**EXHIBIT B**

**WEST PROPERTY LEGAL DESCRIPTION**

Lot 2 of Certified Survey Map No. 6562 recorded in the office of the Register of Deeds for Washington County, Wisconsin, on May 23, 2014 in Volume 50 of Certified Survey Maps, at Page 75 as Document No. 1359986, being a part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 33, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

**EXHIBIT C**

**RIVERSBEND PROPERTY LEGAL DESCRIPTION**

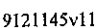
Lot 3 of Certified Survey Map No. 6562 recorded in the office of the Register of Deeds for Washington County, Wisconsin, on May 23, 2014 in Volume 50 of Certified Survey Maps, at Page 75 as Document No. 1359986, being a part of the Southwest  $\frac{1}{4}$  of the Southeast  $\frac{1}{4}$  of Section 33, Township 9 North, Range 20 East, Village of Germantown, Washington County, Wisconsin.

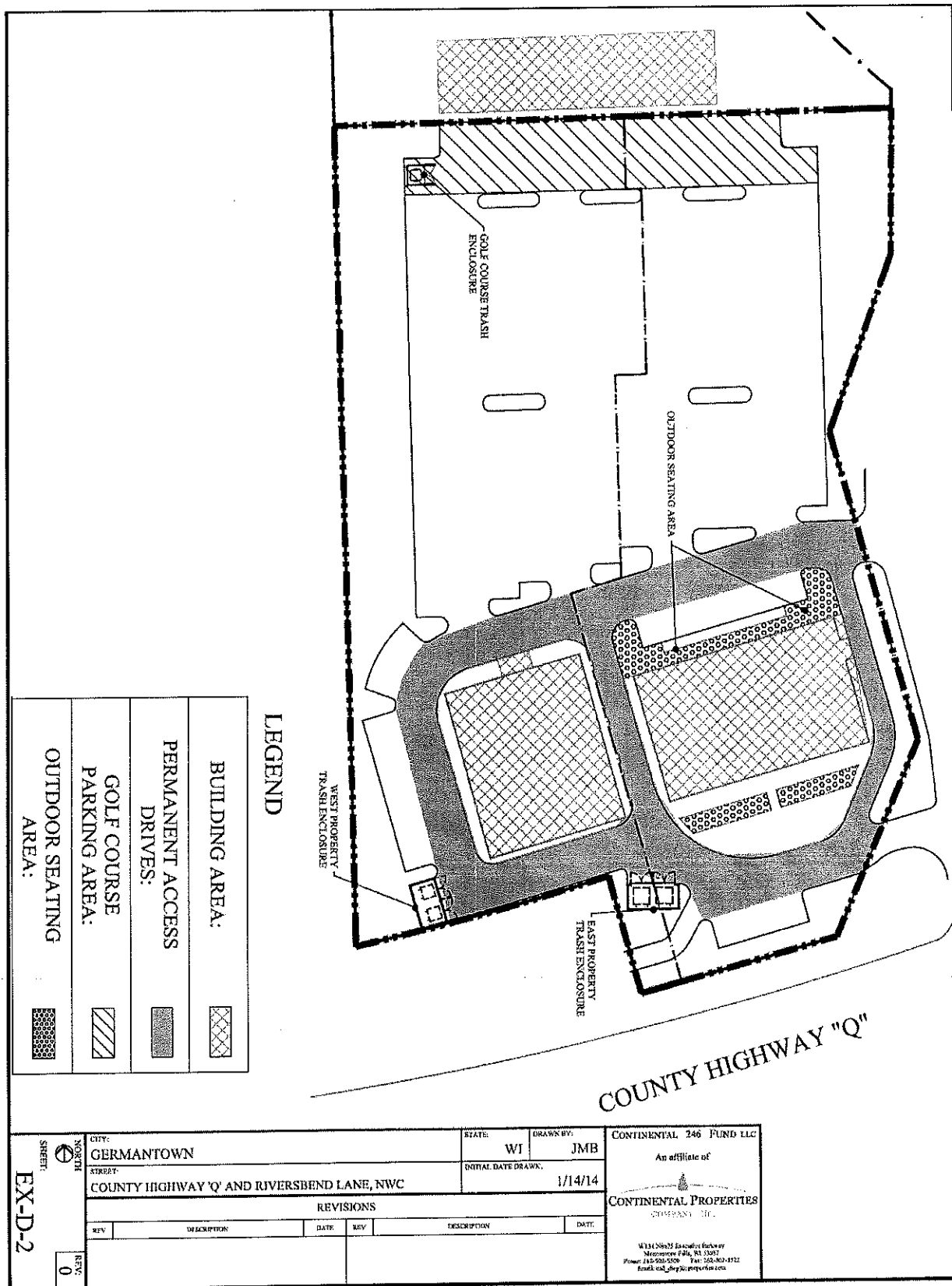


**EXHIBIT D**

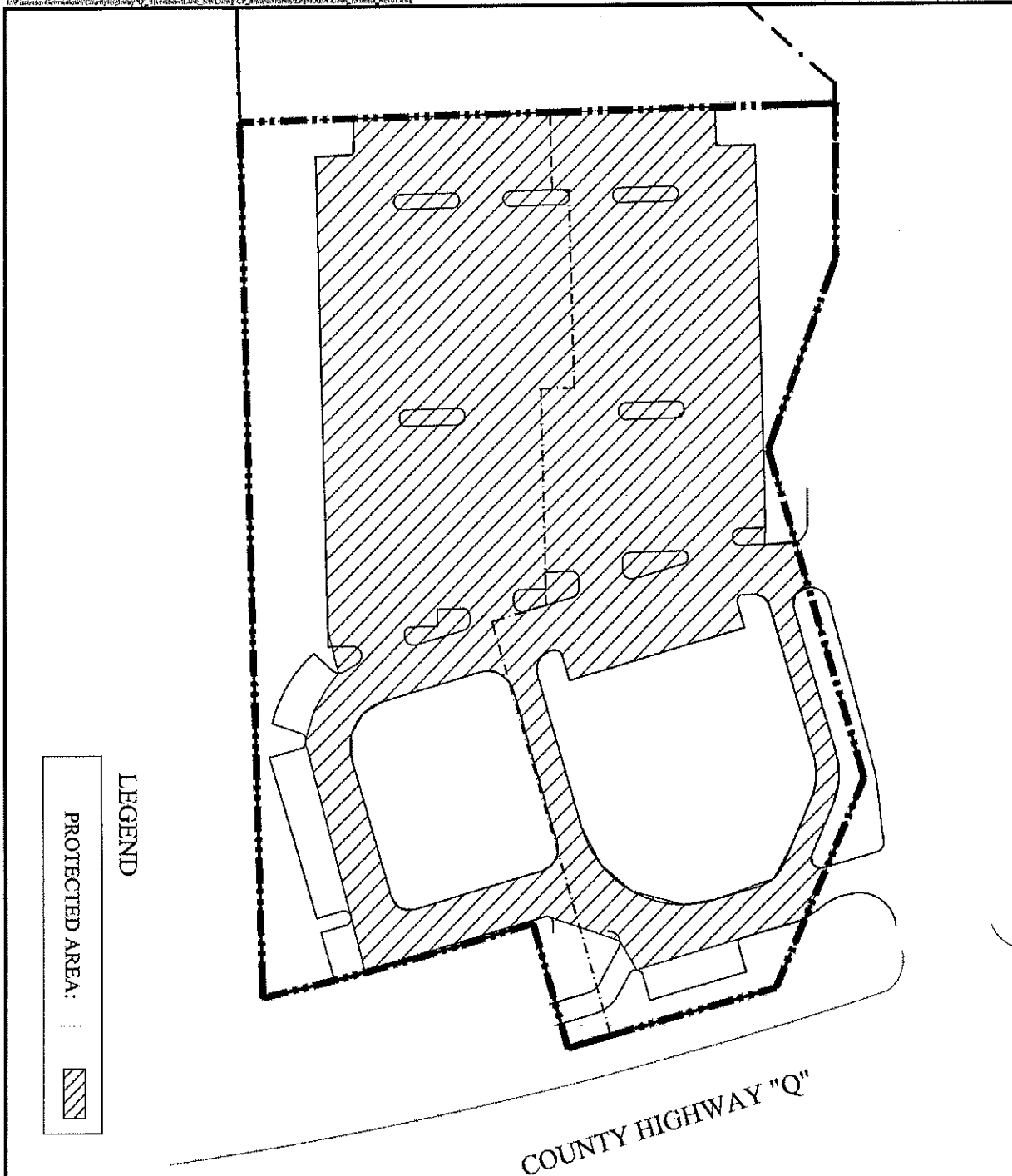
**SITE PLAN**

**(see attached)**

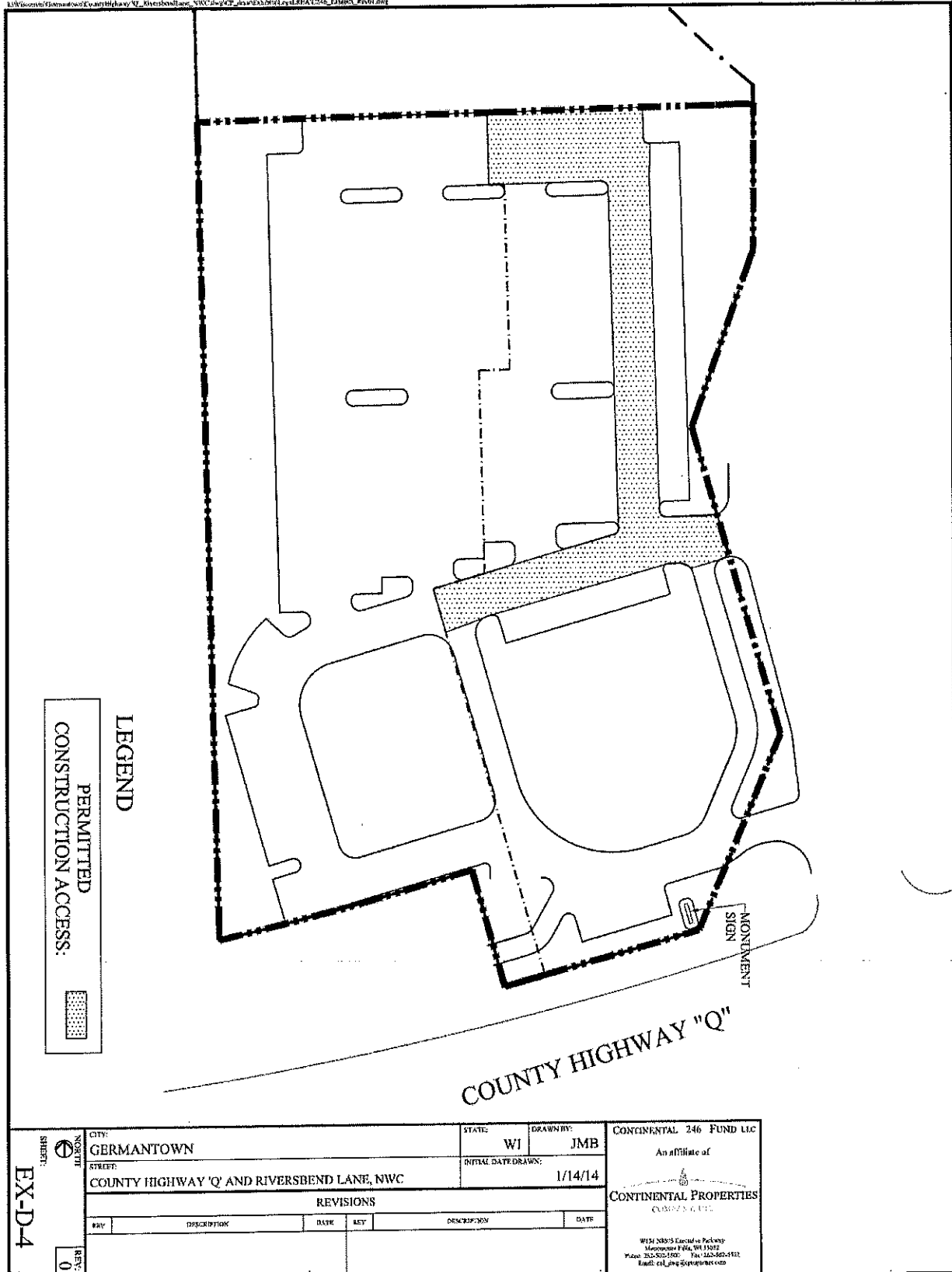








SHEET: <b>EX-D-3</b>	CITY: GERMANTOWN		STATE: WI	DRAWN BY: JMB	<b>CONTINENTAL 246 FUND LLC</b> An affiliate of <b>CONTINENTAL PROPERTIES COMPANY, INC.</b> 1134 N. 80th Executive Parkway Menomonee Falls, WI 53051 Phone: 763-225-5500 Fax: 763-225-5521 Email: cpl_gm@continental.com
	STREET: COUNTY HIGHWAY 'Q' AND RIVERSBEND LANE, NWC		INITIAL DATE DRAWN: 1/14/14		
	REVISIONS				
	REV	DESCRIPTION	DATE	BY	
0					

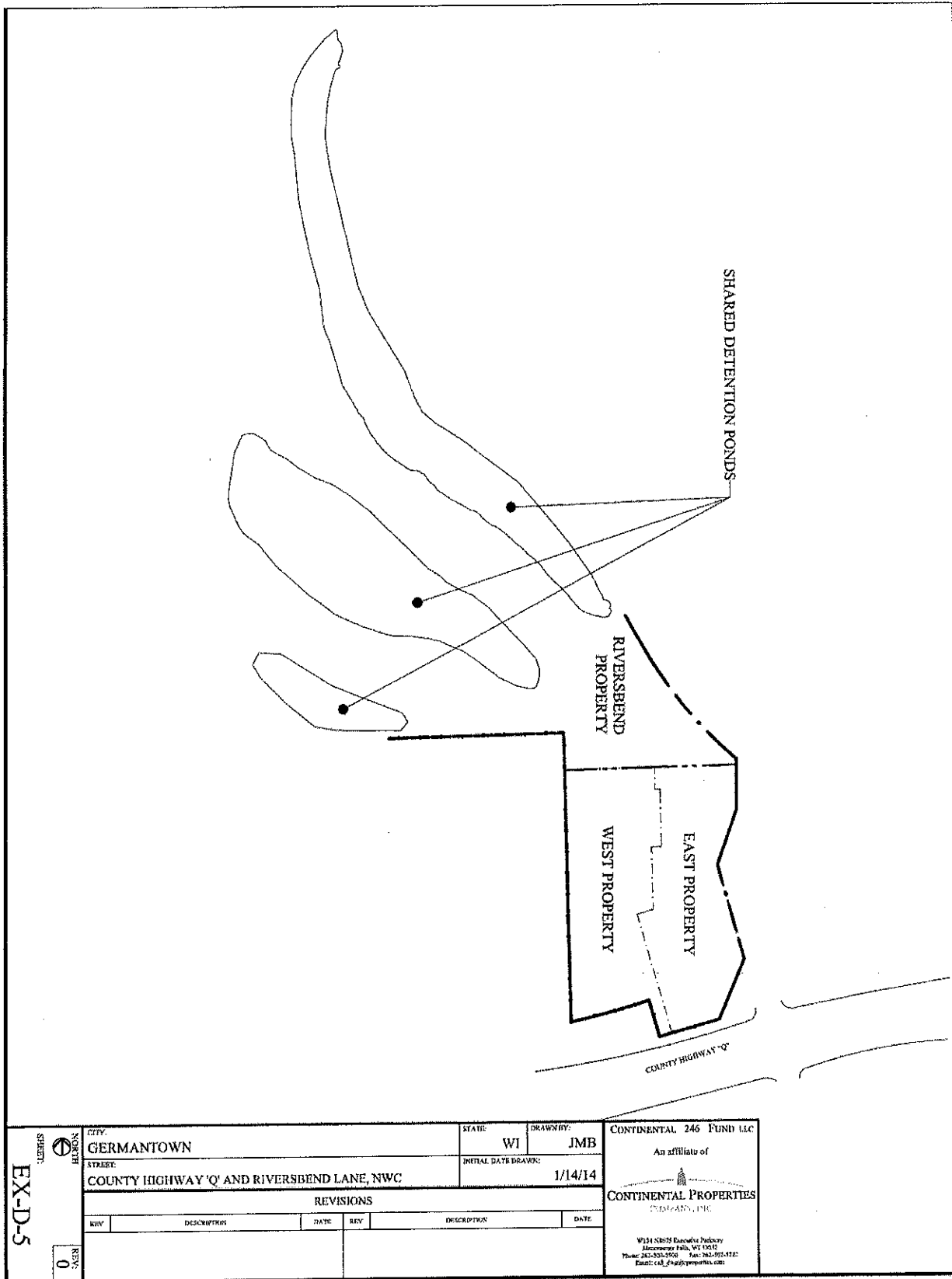


**LEGEND**

PERMITTED  
CONSTRUCTION ACCESS:

COUNTY HIGHWAY "Q"

CITY: GERMANTOWN STREET: COUNTY HIGHWAY "Q" AND RIVERSBEND LANE, NWC SHEET: EX-D-4 REV: 0	STATE: WI	DRAWN BY: JMB	CONTINENTAL 246 FUND LLC												
	INITIAL DATE DRAWN: 1/14/14		An affiliate of												
	REVISIONS <table border="1"> <thead> <tr> <th>REV</th> <th>DESCRIPTION</th> <th>DATE</th> <th>KEY</th> <th>DESCRIPTION</th> <th>DATE</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>		REV	DESCRIPTION	DATE	KEY	DESCRIPTION	DATE							CONTINENTAL PROPERTIES COUNCIL BLVD, LLC 15151 240th Street Minneapolis, MN 55425 Phone: 763-555-1400 Fax: 763-555-1412 Email: cpl_fund@continentalproperties.com
	REV	DESCRIPTION	DATE	KEY	DESCRIPTION	DATE									
CONTINENTAL 246 FUND LLC An affiliate of CONTINENTAL PROPERTIES COUNCIL BLVD, LLC															





**EXHIBIT E**

**MONUMENT SIGN RENDERING**

**(see attached)**

9121145v1I

## EXHIBIT F

### Prohibited Uses

(a) Warehouse or storage facility or any assembling, manufacturing, distilling, refining, smelting, agricultural, rendering or mining operation;

(b) "Second-hand" store whose principal business is selling used merchandise, thrift shops, "Salvation Army" type stores, "Goodwill" type stores, and similar businesses; provided, however, the foregoing restriction shall not prohibit the operation of an antique shop or first class resale business such as "Play It Again Sports", "Music Go Round" or quality furniture or clothing consignment store;

(c) Mobile home park, trailer court, labor camp, junk yard, or stock yard (except that this provision shall not prohibit the temporary use of construction trailers during any periods of construction, reconstruction or maintenance);

(d) Dumping, disposing, incinerating, or reducing of garbage (exclusive of dumpsters for the temporary storage of garbage and any garbage compactors);

(e) Fire, going out of business (except during the thirty (30) day period immediately prior to the date on which such occupant actually goes out of business), relocation, bankruptcy or similar sales unless pursuant to court order;

(f) Central laundry, dry cleaning plant, or laundromat; provided, however, this restriction shall not apply to: (i) any dry cleaning facility providing on-site service oriented to pickup and delivery by the ultimate consumer, including, nominal supporting facilities; or (ii) any dry cleaning facility which performs on-site clothing cleaning for its customers only using (x) a wet cleaner using aqueous non-solvent systems, and/or (y) a dry cleaner using Exxon DF 2000 or PureDry Solvent;

(g) Selling or leasing of new or used automobiles, trucks, trailers, boats or recreational vehicles except the incidental renting of delivery vehicles in connection with the operation of another business such as a home improvement store;

(h) Bowling alley, skating rink, gymnasium, dance hall, discotheque, night club, cabaret, or off-track betting parlor;

(i) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the foregoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the floor area of the pet shop;

(j) Funeral home or mortuary;

(k) Any establishment offering one or more of the following products, services or forms of entertainment whether as its primary business or incidental to another business: (i) the sale or rental of "X" rated motion pictures (in any format), the sale of books, magazines or other print material (or any electronic version thereof) which may not legally be sold to minors or which have as their primary emphasis the depiction of nudity, sexual conduct or other prurient interests including national so-called gentlemen's magazines such as "Playboy" and "Penthouse"; (ii) the offering of adult entertainment involving partial or complete nudity, with or without the sale of alcoholic beverages; (iii) the exhibition of motion pictures (in any format) that exhibit the male or female genitalia, depict sexual acts or present any material considered by the general public to be lewd, lascivious, obscene, pornographic or generally catering to prurient interests; (iv) except in connection with the operation of a licensed prescription pharmacy, the operation of a



business which sells any product generally used for or in connection with the consumption or ingestion of illegal drugs such as bongs, waterpipes, roach clips, coke spoons, hypodermic needles, cigarette papers, or any evolution of such products or any new product, generally used, or considered by the general public or law enforcement officials as being used, primarily for the consumption or ingestion of illegal drugs whether or not such products may also have a legal use or a use unrelated to the consumption or ingestion of illegal drugs; (v) a massage parlor, modeling studio, rap parlor or any similar or other business offering "adult oriented" entertainment or services; (vi) psychic, fortune teller, card reader or similar establishment; (vii) casino, gambling hall, off track betting facility or gambling operation;

- (l) Flea market;
- (m) Car wash;
- (n) Living quarters, sleeping apartments or lodging rooms or residential use of any kind;
- (o) Tattoo parlor or body piercing establishment (however, ear piercing as an incidental part of another business shall be permitted);
- (p) Church, school, day care center or religious or educational facility, including without limitation, religious reading room, beauty school, barber college or other facility catering primarily to students or trainees rather than customers;
- (q) General office facility other than: (i) an incidental office located within a business establishment and used for the purposes of managing the business being operated therein; (ii) offices that provide services directly to consumers, which are customarily found in first class neighborhood shopping centers such as financial institutions, real estate agencies, stock brokerages, title company, escrow offices, travel and insurance agencies, law offices, and medical and dental offices that do not admit patients for overnight stays;
- (r) Cinema or movie theater or performing arts theatre;
- (s) Amusement arcade or amusement center (which does not apply to ancillary use of video games and electronic amusement devices in connection with operation of a restaurant and/or bar);
- (t) Any use involving the sale of gasoline or diesel fuel or other petroleum products, or use as an automobile or truck service station or repair establishment, including tire sale establishments;
- (u) Any food depository, food pantry, half-way house, homeless shelter or other similar use;
- (v) Any jail, penal, detention or correctional institution;
- (w) Gun shop or shooting range;
- (x) A facility whose primary business is check cashing or "pay day" loans;
- (y) A facility whose primary business is the sale of tobacco and tobacco related products.

**EXHIBIT F-1****West Exclusive Use**

No (i) a restaurant and/or bar with a sports theme or concept as a "Sports Bar" (defined below) or (ii) a restaurant and/or bar which serves bone-in or boneless chicken wings as a menu item with two or more types of sauces, where sales of the same in the aggregate constitute 7% or more of such operation's food sales on a gross revenue basis (a "Wings Restaurant"). A "Sports Bar" is defined as a restaurant and/or bar which markets itself for the viewing of sports events, and which has (i) three (3) or more televisions, or (ii) any projection programming or broadcasting, or (iii) any screens that exceed 37" diagonal. Competing businesses prohibited by the foregoing exclusive shall include, without limitation, Champps, Hooters, Wing Stop, Buffalo Wings & Rings, Paradocks East Coast Grille, Raising Cane's, Quaker Steak and Lube, The Green Turtle, Brick House Tavern & Tap, Show Me's, Tilted Kilt Pub & Eatery, Cheddar's Casual Café, East Coast Wings & Grill, BJ's Restaurant, AJ Gators Sports Bar & Grill, Gators Sports Bar & Grill, and Brewhouse, Hurricane Grill and Wings.