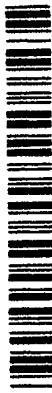


Document Number

Developer's Agreement
Title of Document



DOCUMENT

1 536037

RECORD
At Kenosha County, Kenosha, WI 53140
Louise I. Principe, Register of Deeds
on 10/04/2007 at 4:00PM
70049267 \$203.00

JANK

RESEDEED2

Recording Area

Name and Return Address
Prepared by:

Elizabeth Corey, Esq.
Foley & Lardner LLP
321 N. Clark St., Suite 2800
Chicago, IL 60610

203

80-4-222-271-0101; 80-4-222-271-0200 & 80-4-222-
271-0211

Parcel Identification Number (PIN)

**DEVELOPER'S AGREEMENT BETWEEN THE TOWN OF SOMERS
AND THE SOMERS MARKET CENTER, LLC FOR "SOMERS
MARKET CENTER" A PROPOSED PLANNED UNIT
DEVELOPMENT BEING A PART OF
SECTION 27, TOWN 2 NORTH, RANGE 22 EAST**

WITNESS THIS AGREEMENT made and entered into this 1 day of Oct., 2007, by and between the TOWN OF SOMERS, Kenosha County, Wisconsin, the TOWN OF SOMERS UTILITY DISTRICT ("District") and the TOWN OF SOMERS WATER UTILITY ("Utility") (the Town of Somers, the Utility and the District are hereinafter collectively referred to as the "Town") and Somers Market Center, LLC (hereinafter referred to as the "Developer").

WHEREAS, the Developer has proposed to rezone and develop a Planned Unit Development on a parcel of land described with more particularity as follows:

Parcel 1: The Northeast $\frac{1}{4}$ of Section 27, Town 2 North, Range 22 East of the Fourth Principal Meridian, EXCEPTING THEREFROM the following: Beginning at the point that is located by Commencing at an angle point in the center of State Trunk Highway 31, 839.4 feet South 0 degrees 38 minutes West from the North line of said quarter section, said angle point being 1839.3 feet North 10 degrees 24 minutes East along the center line of said Highway from the South line of said quarter section: thence North 89 degrees 05 minutes West parallel with the North line of said quarter section 60 feet to the west right-of-way line of said Highway and the point of beginning of this description; thence continuing North 89 degrees 05 minutes West 208.7 feet; thence North 0 degrees 38 minutes East parallel with the center of said Highway 208.7 feet; thence South 89 degrees 05 minutes East parallel with North line of said quarter section 208.7 feet to the West line of said highway; thence South 0 degrees 38 minutes West along the West line of said highway 208.7 feet to the point of beginning; ALSO EXCEPTING THEREFROM a parcel of land conveyed to Ronald J. Thomas and Gloria M. Thomas, husband and wife, as joint tenants by Warranty Deed dated March 30, 1962 and recorded April 4, 1962 in Volume 604 of Records, on pages 89-90 as document number 436651; ALSO EXCEPTING THEREFROM a parcel of land described in Award of Damages, recorded on November 17, 1964 in Volume 686 of Records, on pages 425-427, as document number 468971; ALSO EXCEPTING THEREFROM a parcel of land conveyed to Globe Corporation, an Illinois corporation, by Warranty Deed dated September 30, 1966 and recorded November 15, 1966 in Volume 742 of Records on pages 196-197, as document number 490641; AND ALSO EXCEPTING THEREFROM a parcel of land conveyed to National Historical Fire Foundation, an Illinois Not-for-Profit Corporation, by Warranty Deed dated September 20, 1966 and recorded November 15, 1966 in Volume 742 of Records, on page 198, as document number 490642; lying and being in the Town of Somers, County of Kenosha and State of Wisconsin; ALSO EXCEPTING THEREFROM

28.79 acres of vacant land in the Town of Somers, County of Kenosha, Wisconsin, more particularly described as: that part of the Northeast $\frac{1}{4}$ Section 27, Town 2 North, of Range 22 East of the Fourth Principal Meridian, East of State Trunk Highway 31 and North of State Trunk Highway 42; ALSO EXCEPTING THEREFROM that part of Northeast $\frac{1}{4}$ of Section 27, Town and Range aforesaid, described as follows:

Commencing at the Northwest corner of said Northeast $\frac{1}{4}$; thence North 89 degrees 43 minutes 18 seconds East, 1709.17 feet along the North line of said Northeast $\frac{1}{4}$, South line of 31st Street and North line of grantor's property to the point of beginning; thence South 0 degrees 16 minutes 42 seconds East, 5.11 feet; thence South 78 degrees 53 minutes 16 seconds East, 338.25 feet to the West line of STH 31; thence North 05 degrees 30 minutes 56 seconds West, 72.21 feet to the North line of said Northeast 1/4 and the North line of grantor's property, said point being South 89 degrees 43 minutes 18 seconds West, 634.36 feet of the Northeast corner of the Northeast $\frac{1}{4}$ of said Section 27; thence South 89 degrees 43 minutes 18 seconds West, 324.99 feet along said North line of said Northeast $\frac{1}{4}$ to the point of beginning, said tract being in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 27; AND ALSO EXCEPTING THEREFROM that part of the Northeast $\frac{1}{4}$ of Section 27, Town and Range aforesaid, described as follows: Commence at the North $\frac{1}{4}$ corner of said Section 27; run thence North 89 degrees 43 minutes 18 seconds East 2034.16 feet along the North line of said section to the point of beginning; continue thence North 89 degrees 43 minutes 18 seconds East 77.34 feet along the North line of said section to the West line of S.T.H 31; thence South 0 degrees 34 minutes 45 seconds East 631.06 feet along said West line to a South property line of the owner; thence South 89 degrees 43 minutes 17 seconds West 22.81 feet along said property line; thence North 5 degrees 30 minutes 56 seconds West 633.70 feet to the point of beginning. Said land being situated in Town of Somers, Kenosha County, Wisconsin.

Parcel II: Part of the Northeast $\frac{1}{4}$ of Section 27, Town 2 North, Range 22 East of the Fourth Principal Meridian, and being more particularly described as: Beginning on the West line of said quarter section at a point 664.49 feet North from the Southwest corner of said quarter section; thence East parallel with the South line of said quarter section 432 feet; thence North parallel with the West line of said quarter section 1513.24 feet; thence West parallel with the South line of said quarter section 432 feet to the West line of said quarter section; thence South along the West line of said quarter section 1513.24 feet to the point of beginning, lying and being in the Town of Somers, County of Kenosha and State of Wisconsin.

Parcel III: Part of the Northeast Quarter of Section 27, Town 2 North, Range 22 East of the 4th Principal Meridian, lying and being in the Town of Somers, Kenosha County, Wisconsin, and being more particularly described as: Beginning on the West line of said quarter Section at a point 160.08 feet North from the Southwest corner of said Quarter Section; thence East along the North Right -of -Way line of State Trunk Highway 43, and parallel with the South line of said Quarter Section, 432 feet; thence North parallel with West line of said Quarter Section 504.41 feet; thence West parallel with the South line of Quarter Section 432 feet to the West line of said Quarter Section; thence South along the

West line of said Quarter Section 504.41 feet to the Point of Beginning, containing 5.00 acres, be the same more or less.

FURTHER DESCRIBED AS:

Part of the Northeast Quarter of Section 27, Township 2 North, Range 22 East of the Fourth Principal Meridian, described as follows, to-wit: Beginning at the Northwest corner of the Northeast Quarter of said Section 27; thence North 89 degrees 43 minutes 12 seconds East along the North line of the Northeast Quarter of said Section 27, a distance of 1709.17 feet to the Northwest corner of the premises conveyed by Connolly Family Limited Partnership to the Town of Somers by Quit Claim Deed dated August 3, 2001 and recorded as Document No. 1231545 in the Register of Deeds Office of Kenosha County; thence South 0 degrees 16 minutes 48 seconds East on the West line of said premises, a distance of 5.11 feet; thence South 78 degrees 53 minutes 18 seconds East on the Southerly line of said premises, a distance of 338.57 feet to the Westerly right of way line of S.T.H. 31 (Green Bay Road), said line being the Westerly line of the premises conveyed by Connolly Family Limited Partnership to the Wisconsin Department of Transportation by Warranty Deed dated April 30, 2001 and recorded as Document No. 1219888 in said Register of Deeds Office; thence South 5 degrees 31 minutes 38 seconds East on the Westerly line of said premises, a distance of 561.12 feet to the North line of premises conveyed by Edward Piasecki and Joann Piasecki to John B. Zizzo and Lorrie A. Zizzo by Warranty Deed dated August 29, 1986 and recorded in Volume 1236 of Deeds on Page 122 in said Register of Deeds Office; thence South 89 degrees 45 minutes 17 seconds West along the Northerly line of said premises, a distance of 186.19 feet to the Northwest corner thereof; thence South 0 degrees 37 minutes 23 seconds East along the Westerly line of said premises, a distance of 208.63 feet to the Southwest corner of said premises so conveyed and the Northwest corner of the premises conveyed by Ted W. Moore and Bonnie J. Moore to Gary R. Smith and Linda B. Smith by Warranty Deed dated May 11, 1984 and recorded in Volume 1161 of Deeds on Page 400 in said Register of Deeds Office; thence South 9 degrees 04 minutes 59 seconds West along the Westerly line of premises, a distance of 184.35 feet to the Southwest corner thereof; thence South 80 degrees 50 minutes 12 seconds East along the Southerly line of said premises so conveyed, a distance of 199.73 feet to the Westerly Right of Way Line of S.T.H. 31 (Green Bay Road) described in Award of Damages by County Highway Committee recorded as Document No. 468971 in said Register of Deeds Office; thence Southwesterly on a curve to the right whose radius is 2799.79 feet and whose center is to the West, an arc distance of 112.70 feet, the chord of said curve bears South 10 degrees 02 minutes 43 seconds West, a chord distance of 112.69 feet to a point of tangency; thence South 11 degrees 11 minutes 54 seconds West on the Westerly line of S.T.H. 31 (Green Bay Road), a distance of 1244.22 feet to an angle point; thence South 49 degrees 14 minutes 56 seconds West on the Northwesterly line of said premises, a distance of

168.54 feet to the Northerly Right of Way Line of C.T.H. S (38th Street); thence South 89 degrees 45 minutes 01 second West along the Northerly Right of Way Line of C.T.H. S (38th Street), a distance of 1605.18 feet to the West line of the Northeast Quarter of said Section 27; thence North 1 degree 57 minutes 51 seconds West, a distance of 2493.76 feet to the Point of Beginning.

Tax Key No. 80-4-222-271-0101
 80-4-222-271-0200
 80-4-222-271-0211

WHEREAS, the Town Plan Commission has approved the subdivision plat, the subdivision site plans, the Wal-Mart site plan and the Sam's Club site plan attached hereto as Exhibits A, B, P and U, reviewed said proposed Rezoning and Planned Unit Development (P.U.D.) and has recommended to the Town Board that said Planned Unit Development be approved subject to the following terms and conditions:

I. INFRASTRUCTURE IMPROVEMENTS

A. SANITARY SEWER - DEVELOPER CONSTRUCTED.

1. The Developer shall be responsible to pay the full cost for the design and construction of the onsite gravity flow sanitary sewer system as defined by Chapters 12 and 18 of the Town Ordinances as required for connection of the P.U.D. to the interceptor sanitary sewer collection system of the Town of Somers Utility District the plans which have all been reviewed, and approved by the Town as depicted on Exhibit E attached hereto and are subject fo further review and approval by the County of Kenosha and the State of Wisconsin Department of Natural Resources. Town shall cooperate with Developer in obtaining all necessary permits required from the State of Wisconsin and the City and County of Kenosha for such sanitary sewer approval. Town shall provide operational sanitary sewer interceptor for connection by Developer no later than June 1, 2008, in accordance with subparagraph B, hereof.

2. The Developer shall be responsible for the full cost for the design and construction of sanitary sewer mains and laterals to service each building of the P.U.D. which shall be reviewed and approved by the Town. The Developer shall be responsible for all necessary approvals from state agencies and the Kenosha Water Utility. The Developer shall submit both electronic and paper form copies to the Town of the required plans and specifications. Developer shall forward true and correct photocopies of all bids received pursuant to the construction bid specifications and photocopies of any contracts to Town Engineer for review.

3. Any bidder on public sanitary sewer improvement infrastructure shall be pre-qualified for such work in accordance with Chapter 22 of the Town Code of Ordinances. The Town shall review the qualifications of the prospective Contractor for compliance with Chapter

22 of the Town Ordinances prior to commencement of construction. Upon the determination of a responsible bidder, the Developer shall inform the Town of the amount of such bid in written format and the contractor to whom contract shall be awarded. The Developer shall deposit with the Town one hundred twenty-five (125%) percent of the full amount of the estimated engineering, administrative and legal fees in an irrevocable letter of credit in form acceptable to and approved by the Town Attorney for the improvements to be constructed. Following the deposit of such letter of credit to cover all expenses to be incurred by the Town including engineering reviews, field observations, legal and administrative and other contingencies, the Developer shall then award the contract to a responsible bidder.

4. The Developer shall provide all construction staking and the Town shall make all appropriate inspections of the public sanitary sewer improvements. The Town shall prepare all record drawings and systems updates. The Developer shall provide both paper and electronic copies of all plans and specifications. Developer shall provide Town a copy of all television inspections for the public sanitary sewer improvements. All related costs for these items shall be paid by the Developer.

5. Town shall allow Developer to extend and connect its sanitary sewerage system to the sanitary sewerage system of Town at the cost and expense of Developer. Town shall cooperate with Developer in obtaining all necessary permits required from the State of Wisconsin and the City and County of Kenosha for such sanitary sewerage systems, extensions and connections.

6. Town shall accept all public sanitary sewerage systems improvements constructed by Developer, if any, located in the public right-of-way or in any easement lying within Real Estate upon (i) completion in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Utility of certified copies of all tests of sanitary sewerage system, (iv) receipt of lien waivers from all contractors, (v) review and certification by Town Engineer of the above and (vi) recorded easement documents. Said acceptance shall be subject to approval by the Board of Sewer Commissioners. Upon acceptance by Town, Town shall be responsible for the operation and maintenance of the publicly owned portion of said sanitary sewerage system.

7. Any road openings (i.e. road cuts) on streets to be constructed by Developer or on existing, contiguous Town streets or county highways where such road openings are used for utility or storm water infrastructure shall be filled by Developer with materials specifically approved by the appropriate governing authority prior to complete restoration as required by the applicable authority.

8. Upon completion of the sanitary sewer construction by Developer, and verification by the Town Engineer that said sanitary sewer system has been constructed in accordance with plans and specifications submitted, the Developer shall vest all right, title and interest in the public portion of the sanitary system, if any, and any easements required for

installation, and shall cause documents to be executed and delivered to Town which, in the opinion of counsel to the Town, shall be necessary to effectuate the purposes stated in this paragraph.

9. If any funds and/or "letter of credit" deposited by the Developer for inspection, engineering, legal and/or administrative expenses, are not required, they shall be returned to the Developer upon completion of construction. However, in the event additional or unforeseen costs or expenses are incurred which are in excess of the funds deposited by the Developer with the Town, then the Developer shall within thirty (30) days of demand by the Town reimburse to the Town all such costs and expenses so incurred.

10. Developer shall, during the term of Agreement, indemnify, defend and hold harmless Town and officers, consulting engineers, attorneys, agents, representatives and employees thereof from and against any and all claims, damages, judgments, costs and expenses and attorneys' fees which any of them may pay, sustain or incur should any person or party including Developer, Developer's contractors, subcontractors and materialmen incur personal injuries or property loss or damage arising out of the design or construction of the sanitary sewer system, other than any act or omission of Town, its agents or contractors; provided that Town shall cooperate with Developer and Developer's legal counsel in defending against any such claim. Town shall be permitted to assist in the defense of any such claim at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company.

B. SANITARY SEWER - TOWN CONSTRUCTED.

1. The Town shall design and construct no later than June 1, 2008, a complete gravity flow sanitary sewer which shall traverse from Green Bay Road (S.T.H. "31") along and adjacent to the North property line of the development West along 31st Street to the northwest corner of the P.U.D. then approximately 2,200 lineal feet generally west to the proposed Pike Creek Interceptor of the Town of Somers, Utility District as depicted on Exhibit F attached hereto. The costs associated with the design and construction of this element of the sanitary sewer improvements to be constructed under the terms of this Agreement as described in this Section I.B., subparagraphs 1 through 8 inclusive shall be paid by Developer but are included in the "Voluntary Donation in Lieu of Impact Fees", Section IV, E hereunder.

2. The Town Engineer shall be responsible for complete preparation of plans and specifications for the construction of the sanitary sewer interceptor. The Town Engineer shall request all necessary approvals from state agencies and the District. Following the submission of documentation to the Town Board of the required approvals of said plans and specifications the Town Board shall authorize advertisement for construction bids and shall receive such bids for the Developer, all in accordance with §66.29, Wis. Stats.

3. Upon receipt of the construction bids and the determination of the lowest responsible qualified bidder pursuant to Chapter 22 of the Town Ordinances, the Town shall

provide documentation to the Developer of the amount of such bid and the contractor to whom contract shall be awarded. The Town acknowledges that upon payment by the Developer of the first installment of the donation of fees described in Section IV.E., hereafter, that sufficient surety to begin construction of the improvements described in this section I.B. shall have occurred to allow the Town to proceed to bidding and public construction. Following the deposit of the first installment of the donation fees set forth in Section IV.E. herein, the Town shall then award the contract to the lowest responsible bidder in accordance with the letting of public works contracts. All matters relating to the construction and installation of the sanitary sewer system shall be referred to the Town Engineer whose determination shall be final in all construction matters.

4. The Town Engineer shall provide all contract administration, staking and all appropriate inspections of the sanitary sewer improvements , and all related costs for such shall be included in total project costs payable in accordance with Section B.8. below.

5. Town shall accept all sanitary sewerage systems located in the public right-of-way or in any public sanitary sewer easement upon (i) completion in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Utility of certified copies of all tests of sanitary sewerage system and a certified reproducible mylar "as built" drawing thereof which is prepared by the Town's Engineer, (iv) receipt of lien waivers from all contractors, and (v) certification by Town Engineer of the above. Said acceptance shall be subject to approval by the Board of Sewer Commissioners. The Town Engineer shall inspect said sanitary sewerage system without unreasonable delay upon completion of construction and issue written notice to correct any defect, damage or non-conformity which may be discovered. Any element of the sanitary sewerage system found to contain any defect, damage or non-conformity shall be reinspected by the Town Engineer and shall not be accepted until corrective action is taken. Upon acceptance by Town, Town shall be responsible for the operation and maintenance of said sanitary sewerage system.

6. Town shall acquire all easements required for the construction of the sanitary sewer interceptor to be built under the terms of this section, B, and all costs associated with the acquisition of such easements shall be included in the project costs.

7. Upon completion of the sanitary sewer construction, and certification by the Town Engineer that said sanitary sewer system has been constructed in accordance with plans and specifications submitted, the Developer shall vest in the Town all right, title and interest in the sanitary system and any easements required for installation, and shall cause documents to be executed and delivered to Town which, in the opinion of counsel to the Town, shall be necessary to effectuate the purposes stated in this paragraph.

8. Upon completion of the project described in this section, I.B., the final construction costs shall be based on the "as built" plans. The sum of Five Hundred Thousand (\$500,000.00) Dollars, which is included in the total donation by Developer of Three Million (\$3,000,000.00) Dollars as described at Section IV.E., herein, has been allocated for the project costs for the project

described in this Section I.B. In the event that the total project costs are less than Five Hundred Thousand (\$500,000.00) Dollars, the difference between the as built project costs and this sum (\$500,000.00) shall be returned to Developer or credited against other obligations owed by Developer to Town. If total project costs exceed Five Hundred Thousand (\$500,000.00) Dollars, for the sanitary sewer to be constructed pursuant to this section I.B., then to the extent costs exceed Five Hundred Thousand (\$500,000.00) Dollars, the Developer's recapture rights from benefitted property under section I.G., hereafter, shall be reduced dollar for dollar until all costs, in excess of Five Hundred Thousand (\$500,000.00) Dollars have been recovered by the Town.

C. MUNICIPAL WATER MAINS.

1. The Developer shall be responsible to pay the full cost for the design and construction of a complete potable water distribution system to service each building of the P.U.D. including connection to the existing water distribution system of the Somers Water Utility.

2. The Developer shall be responsible for complete preparation of plans and specifications for the construction of public and private water mains and laterals to serve each building and/or lot. The Developer shall be responsible for the cost of all water mains within said development to service the buildings, the cost of an off-site water metering pit which will service the development and shall construct the water mains within public right-of-way or easements dedicated to the Town. Following the submission of both paper and electronic format documentation to the Town, the Developer's Engineer shall prepare specifications and upon approval by the Town Engineer shall solicit bids for the construction of water main improvements. Developer shall award construction of public and private water improvements only to contractor(s) who have been pre-qualified under Chapter 22 of the Municipal Code of the Town.

3. Upon receipt of the construction bids and the determination of a responsible bidder, the Developer shall inform the Town of the amount of such bid and the Contractor to whom contracts shall be awarded. The Town shall review and confirm the qualifications of the prospective Contractor pursuant to Chapter 22 of the Town Ordinances. The Developer shall deposit with the Town one hundred twenty-five (125%) percent of the full amount of the construction bid and estimated engineering, administrative and legal fees for the public portion of improvements to be constructed. Such deposit shall be in the form of a letter of credit in a form acceptable to the Town Attorney. Following the delivery of such letter of credit to cover construction, and all expenses to be incurred by the Town, including engineering, legal, administrative and other contingencies, the Developer shall then award the contract to a responsible bidder.

4. Upon completion of the public portion of the water main within and adjacent to the development and verification by the Town Engineer that said water system has been constructed in accordance with plans and specifications, all right, title and interest in, and any

easements required for the installation by the Water Utility, shall be vested in the Utility for the public portion of such improvements without further documentation. The Developer shall assign to the Water Utility any easements or rights-of-way obtained from other owners required for the installation of water lines, and shall cause documents to be executed and delivered to Town which, in the opinion of counsel to the Town, shall be necessary to effectuate the purposes stated in this paragraph.

5. Upon completion of the project, the final costs shall be based on the "as built" plans. Any funds deposited by the Developer that are not required following completion of construction, shall be returned to the Developer. However, in the event additional or unforeseen costs or expenses are incurred by the Town which are in excess of the funds deposited by the Developer with the Town, then the Developer shall within thirty (30) days of demand by the Town reimburse to the Town all such costs and expenses so incurred.

6. The Developer shall provide all construction staking and the Town shall make appropriate inspections of all public water main improvements. The Town shall prepare all record drawings and system map updates for the public mains. All related costs shall be paid by Developer.

7. Upon completion of public water main improvements, the Town shall allow Developer to connect to the municipal water system of Town, all at the cost and expense of Developer. Town shall cooperate with Developer and shall assist in obtaining all necessary permits required from the State of Wisconsin and the City of Kenosha for such municipal water systems, extensions and connections. Developer, for itself, its successor and assigns, specifically waives any objection to the imposition of future special assessments levied by the Town which benefit lots, outlots or other parcels or units for the municipal water system improvements not originally constructed by Developer pursuant to the terms of this Agreement. Any such future special assessment(s) which would be imposed after construction of future water improvements would occur only after demonstration of a special benefit to such parcel(s) and only on an equal and non-discriminatory basis.

8. The Town shall accept the public portion of all municipal water systems improvements located in the public or private roadway or in any easement lying within Real Estate upon (i) completion in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Utility of certified copies of all tests of the municipal water system, (iv) receipt of lien waivers from all contractors, and (v) review and verification by Town Engineer of the above. Said acceptance shall be subject to approval by the Board of Water Commissioners. Upon acceptance by Town, Town shall be responsible for the operation and maintenance of the public portion of said water system.

9. Developer shall, during the term of Agreement, indemnify, defend and hold harmless Town and officers, consulting engineers, attorneys, agents, representatives and

employees thereof from and against any and all claims, damages, judgments, costs and expenses and attorneys' fees which any of them may pay, sustain or incur should any person or party including Developer, Developer's contractors, subcontractors and materialmen incur personal injury, property loss or damage arising out of the design or construction of the municipal water system other than any act or omission of Town, its agents or contractors; provided that Town shall cooperate with Developer and Developer's legal counsel in defending against any such claim. Town shall be permitted to assist in the defense of any such claim, at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company.

D. INTERNAL ROADWAYS AND STORM SEWERS.

1. Required Improvements. The Developer shall be responsible to pay for and shall proceed with the preparation of complete plans and specifications for all internal roads prepared by Developer's engineer, including road bed preparation and storm sewer construction which shall be as set forth in the Appendix of the Town Subdivision Control Ordinance, denominated as "Typical Urban Section". For purposes of this Section D, all references to road or roads shall include curbs and gutters, all in accordance with Exhibits C, G and J attached hereto. No construction of said roads shall be commenced until plans and specifications have been reviewed by the Town Engineer and approved by Town which engineering reviews shall occur within fifteen (15) business days of receipt. All road improvements with the exception of those portions of roadway designated on the Final Plat as publicly owned and with the exception of the reconstruction of 31st Street, once constructed, shall be privately owned either by Developer or by a property owner's association. The public portion of the roads shall be accepted by the Town upon (i) completion in accordance with the approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Town of certified copies of all tests of the road surface, (iv) receipt of lien waivers from all contractors, and (v) review and verification by Town Engineer of the above. Upon acceptance by Town, Town shall be responsible for the operation and maintenance of the public portion of the roads so constructed. The Town shall allow such private roads or parking lots to be used after construction has been completed and Developer has certified to the Town that the private street is in compliance with all Town specifications. The entire cost for the construction of all public roads and private roads including fees for Town services, (inspection, engineering, legal, etc.) shall be paid by the Developer. The Developer's Engineer shall submit to the Town both paper and electronic copies of public road and private street plans and specifications.

- (a) Upon receipt of the construction bids and the determination of the responsible bidder, the Developer shall inform the Town of the Contractor to whom contracts shall be awarded. The Town shall review and confirm the qualifications of the prospective contractor pursuant to Chapter 22 of the Town Code of Ordinances. The Developer shall deposit with the Town one hundred twenty-five (125%) percent of the full amount of the estimated engineering, administrative and legal fees or an irrevocable letter of credit as described in A.3. on page 4 of this Agreement for the public portion

of the roadway improvements. Following the delivery of such letter of credit to cover all expenses to be incurred by the Town including engineering, legal, administrative and other contingencies, the Developer may proceed to construction.

- (b) The Town shall provide all appropriate inspections of the public road along 31st Street and 35th Street, including graveling and paving and storm sewer improvements. All such costs shall be paid by Developer. The reconstruction limits along 31st Street shall be as shown on the attached exhibits.
- (c) Upon completion of the 31st Street public road reconstruction and the public portion of 35th Street, graveling and paving and verification by the Town Engineer that it has been constructed in accordance with plans and specifications, the Town shall allow use of said streets for access and exit to the Development for non-construction traffic only.
- (d) If any funds deposited by the Developer are not required following completion of road construction, they shall be returned to the Developer. However, in the event additional or unforeseen costs or expenses are incurred by the Town which are in excess of the funds deposited by the Developer with the Town, then the Developer shall within thirty (30) days of demand by the Town reimburse to the Town all such costs and expenses so incurred.
- (e) The Developer shall be responsible to keep and maintain the base course of said streets until binder coat of asphalt is completed.
- (f) Town shall approve as properly constructed all public roads within Real Estate upon (i) completion, in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformity, and (iii) receipt of lien waivers from all contractors. Said approval of said roads shall be upon recommendation of the Town Engineer, and formal action by the Board of Supervisors. Developer shall be obligated to continue to maintain the public portion of roadways which provide access to the Development to and from S.T.H. 31 (Green Bay Road) at 35th Street.
- (g) Developer shall provide an easement for utilities in or adjacent to private and public roads. Easements shall be recorded on the plat, by deed restriction or other document approved by counsel to the Town. Required easements may be modified or terminated only in the event that Town or other appropriate utilities determine that said easement(s), in full or part, are not required to provide essential service.

2. Paving Sequence And Timing. All work along 31st Street and 35th Street shall be substantially completed prior to occupancy of any building. Substantially complete shall mean

all improvements complete with the exception of any associated landscaping or final erosion stabilization.

3. Indemnification. Developer shall, during the term of Agreement, indemnify, defend and hold harmless Town and its officers, consulting engineers, attorneys, agents, representatives and employees thereof from and against any and all claims, damages, judgments, costs and expenses and attorneys' fees which any of them may pay, sustain or incur should any person or party including Developer, Developer's contractor, subcontractors or materialmen, incur personal injury, property loss or damage arising out of the design or construction of the roadway improvements other than any act or omission of Town, its agents or contractors; provided that Town shall cooperate with Developer and Developer's legal counsel in defending against any such claim. Town shall be permitted to assist in the defense of any such claim at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company.

E. EXTERNAL TRAFFIC IMPROVEMENTS ALONG S.T.H. 31 AND C.T.H. "S" AND 31ST STREET.

Developer agrees to timely pay for or reimburse the Town for monies expended by the Town for expenses reimbursed to the Wisconsin Department of Transportation to Town for all the costs, fees and expenses of the design of the traffic improvements, including signalization required for the reconstruction of S.T.H. 31, C.T.H. "S", 35th Street and 31st Street, or any portion thereof in accordance with Exhibits C and H. The Town shall provide documentation to the Developer for said expenses.

F. GRADING, EROSION CONTROL AND SURFACE WATER DRAINAGE.

1. Upon signing this Agreement, the Developer shall provide a complete design for grading, erosion control and surface stormwater drainage facilities which shall be adequate to serve the development and shall be in compliance with requirements and specifications as set forth in §18.32(F) of the Somers Subdivision and Platting Ordinance. Storm and surface waters shall be retained on Real Estate to the extent necessary to assure that the rate of storm and surface water runoff from Real Estate, during the construction and after completion of construction of improvements, shall not be greater than the rate of runoff allowed in Chapter 18 of the Code of Ordinances. Stormwater drainage shall be accomplished by the construction of a stormwater collection system in accordance with the subdivision stormwater plan, Exhibit "G" attached hereto. All such plans and specifications referred to above shall be reviewed by the Town Engineer and approved by the Town and the Kenosha County Department of Planning and Development, such costs of review to be paid by Developer. Town shall assist Developer in procuring stormwater easements outside of development which will allow for discharge of stormwater to Pike Creek.

2. Upon receipt of the construction bids and the determination of a responsible bidder by review of the qualifications pursuant to Chapter 22 of such prospective Contractor by the Town Engineer, the Developer shall inform the Town of the amount of such bid and the Contractor to whom contracts shall be awarded and the Developer shall deposit with the Town one hundred twenty-five (125%) percent of the full amount of the stormwater erosion control and grading bid and estimated engineering, administrative and legal fees or an irrevocable letter of credit as described in A.3. on page 4 of this Agreement, if not already included in such letter of credit. Following the delivery of such letter of credit to cover construction, and all expenses incurred by the Town including engineering, legal, administrative and other contingencies, the Developer shall then award the contract to the responsible bidder and may proceed to construction.

3. The Developer shall create a Storm Water Pollution Prevention Plan (SWPPP) which shall address the concerns associated with storm water pollution during mass grading and site preparation during construction of the initial phase of the development, including the detention basin. Upon completion of the detention basin, a topographic survey of the detention basin shall be obtained by the Developer and submitted to the Town Engineer for review and conformance with the exhibits incorporated herein by reference. In addition, prior to the issuance of any building permit for the construction of the Wal-Mart Supercenter and/or Sam's Club buildings on Lots 1 and/or 2 pursuant to Section III.E. of this Agreement, the Developer shall provide a topographic survey to the Town Engineer of the relevant Lot 1 and/or Lot 2 prior to the issuance of such building permit(s), which topographic survey shall be in conformance with Exhibits "G", "P" and "U", which are incorporated herein by reference. The Developer's engineer of record shall provide a certification that each building site (i.e. Lot 1 and/or Lot 2) is in conformance with such exhibits and shall provide such certification to the Town Engineer at the time of application for a building permit for improvements on either of such lots. Upon completion of construction of the storm water detention facilities, the Developer's engineer will certify that such construction is in conformance with the subdivision storm water plan, Exhibit "G" incorporated herein by reference. No occupancy permit shall be issued for either the Wal-Mart Supercenter building and/or the Sam's Club building until such time as a complete topographic survey of the entire development shall have been obtained by the Developer and submitted to the Town Engineer which shall confirm conformance with the subdivision site plan, subdivision storm water plan, Wal-Mart site plan and Sam's Club site plan, Exhibits "B", "G", "P" and "U" which are incorporated herein by reference.

4. Town shall approve all public storm and surface water drainage facilities, including retention and detention basins, underground storm and surface water conveyance systems and outlet structures, located in the public road or in any easement lying within Real Estate upon (i) completion in accordance with approved plans and specifications, (ii) construction and delivery without defect, damage or non-conformance, (iii) delivery to Town of certified copies of all tests of the storm sewer system, (iv) receipt of lien waivers from all contractors, and (v) certification by Town Engineer of the above. Approval of the storm and surface water drainage facilities shall be upon recommendation by the Town Engineer, and

formal action by the Town Board. Such approval shall occur within ninety (90) days of certification and recommendation of the Town Engineer as stated above. Upon acceptance by Town, Town shall be responsible for the operation and maintenance of said underground storm and surface water drainage facilities lying within the public rights-of-way and public easements within said Real Estate, excluding retention and detention basins and outlet structures, subject to the Indemnity and Hold Harmless Agreement of Developer herein provided. Town may specially assess benefitted property or initiate a user fee for the cost of maintenance thereof.

5. Retention and detention basins, underground storm and surface water conveyance systems and outlet structures for storm and surface water shall meet Town's current outflow and storage requirements as well as all WDNR requirements. Developer shall submit plans, specifications and calculations for such storm and surface water drainage system to Town Engineer and obtain written approval from the Town, which shall not be unreasonably withheld or delayed prior to construction. All portions of Real Estate designated as retention and detention basins and outlet structures shall either be retained by Developer or assigned to a property owners association and shall be maintained in accordance with the schedule described in the attached Exhibit "DD", which is incorporated herein by reference. Either Developer or the property owners association to which title is transferred shall be responsible for maintenance, replacement or repair of all retention and detention basins, storm and surface water conveyance systems and outlet structures lying within Real Estate, excepting those on public rights-of-way. Town shall review and approve of any covenants and restrictions of any property owners association prior to final acceptance of the storm and surface water drainage system. Developer, prior to transfer to the property owners association, shall provide Town with a maintenance easement for the storm and surface water drainage facilities not located within public rights-of-way, and the Town may specially assess benefitted property for any service performed by the Town or at its instance. Town shall assume all control and maintenance responsibility for storm sewers in any public right-of-way or public easement upon approval and acceptance of completed improvements.

6. Town, at Developer's cost, will procure easements to construct surface and stormwater improvements outside of Real Estate as identified on the approved plans located between P.U.D. and Pike Creek. All costs associated with easements or stormwater improvements constructed outside of P.U.D. for benefit of P.U.D. shall be borne by Developer. In this regard, simultaneous to the execution of this Agreement, Developer shall tender to Town the sum of One Hundred Fifty Thousand (\$150,000.00) Dollars in certified funds for the purpose of compensating adjoining landowners (Edquist) for the acquisition of a permanent stormwater drainage easement. This payment shall be in addition to all other monetary requirements stated herein.

7. Developer shall, during the term of Agreement, indemnify, defend and hold harmless Town and officers, consulting engineers, attorneys, agents, representatives and employees thereof from and against any and all claims, damages, judgments, costs and expenses and attorneys' fees which any of them may pay, sustain or incur should any person or party

including Developer, Developer's contractors, subcontractors or materialmen, incur personal injury, property loss or damage arising out of the design or construction of the storm and surface water drainage system other than any act or omission of Town, its agents or contractors; provided that Town shall cooperate with Developer and Developer's legal counsel in defending against any such claim. Town shall be permitted to assist in the defense of any such claim, at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company.

8. Developer or the property owner's association or other designee of the Developer who must be approved by the Town, which approval shall not be unreasonably withheld, as appropriate, shall enter into a maintenance agreement to provide for the maintenance of stormwater detention facilities beyond the duration of this Agreement in accordance with Exhibit "DD". The maintenance agreement or a recordable document memorializing that Agreement shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin, so that it is binding upon all subsequent owners of land served by the stormwater management detention facilities. The maintenance agreement shall contain, at a minimum, the following information and provisions:

- (a) Identification of the stormwater facilities and designation of the drainage area served by the facilities.
- (b) A schedule for regular maintenance of each aspect of the stormwater management system consistent with Exhibit "DD".
- (c) Identification of the Developer or property owner's association responsible for long-term maintenance of the stormwater management practices identified in the stormwater plan required hereunder.
- (d) Requirement that the landowner or property owner's association shall maintain stormwater detention facilities in accordance with Exhibit "DD".
- (e) Authorization for the Town to access the property to conduct inspections of stormwater detention facilities as necessary to ascertain that the facilities are maintained and in accordance with the Agreement. This authorization shall also be noted on the Final Plat prior to recording the same.
- (f) Provisions that the landowner or property owner's association charged with the responsibility to perform the terms of the maintenance agreement repair any maintenance problems which require correction, the specified corrective actions to be taken within thirty (30) days of written notice to Developer (or Developer's approved designee) of the problem (unless after written notice from Developer to Town seeking a longer period of time for compliance for good cause, approval of an extension is granted by Town, which approval will not be unreasonably withheld).

- (g) Authorization for the Town at its discretion to perform the corrective actions if the responsible owner or responsible property owner's association does not make the required action within the specified time period together with the provision that the Town may enter the amount due on the tax rolls and collect the money as a special charge against all property benefitted by such action by the Town pursuant to §66.60(16), Wis. Stats. This authorization shall also be noted on the Final Plat before recording the same.
- (h) Water quality enhancement program through aeration if required by WDNR.

9. The entire development shall be graded and restored to the proposed elevations shown on the approved grading plan.

10. The Developer will pay for all costs associated with the grading, erosion control and stormwater drainage facilities including the Town's administrative, legal and engineering costs.

11. The Developer's Engineer shall prepare plans and specifications for grading, erosion control and surface stormwater drainage which shall be approved by the Town Engineer. All appropriate inspections of the grading, erosion control and surface stormwater drainage improvements and construction staking shall be conducted by the Developer's Engineer.

G. RECAPTURE OF A PORTION OF COSTS BY DEVELOPER FROM BENEFITTED PROPERTY FOR SANITARY SEWER.

1. For purposes of this section G, benefitted properties are those defined as parcels of land outside of the Development adjacent to 31st Street and described with more particularity on the attached Exhibit "BB", which may, subsequent to the execution of this agreement, be benefitted by construction of the proposed water main and sanitary sewer improvements.

2. The total expense of construction of sanitary sewer main improvements and water main within the right-of-way of 31st Street shall be determined and paid for as set forth above, and the parties have agreed that the portion of the costs allocated to the Developer's parcel as described above shall be 50% of the total costs of the sanitary sewer and an eight (8") inch equivalent municipal water main improvement which abut 31st Street, and that the remaining total costs of the sanitary sewer and municipal water main improvement abutting 31st Street shall be fairly allocated among the benefitted properties. The benefitted properties shall pay a portion of the total share of the total costs, in the amounts which shall be based upon the "as built" costs and determined by the Town Engineer, in the event that such benefitted properties (other than the Developer's parcel) connect to the sanitary sewer or water main improvements within a period of 25 years following the date of execution of this agreement.

3. Subject to the provisions of Section I.B., above, relating to Town compensation for total construction costs in excess of Five Hundred Thousand (\$500,000.00) Dollars, the Town shall collect from the property owners of the benefitted properties, their successors or assignees, the recapture costs as set forth in subparagraph (2) above, if and only if, such benefitted properties or part thereof, shall utilize the sanitary sewer or water main improvements within a 25 year period from the date of execution of this agreement. At such time or times as benefitted owners seek connection to the water main improvements, the Town shall collect from such owner or owners, the amount of the Developer's reimbursement based upon "as built" and administrative costs. The Town agrees not to issue any change in use or to allow division of any benefitted property unless and until such recapture costs have been paid by the benefitted owner or owners. Such recapture costs, when paid, shall be first applied to the total outstanding "as built" and Town administrative costs until paid in full (in the event that, for whatever reason, any such costs have not been paid by the Developer and have been incurred by the Town). Thereafter, all recapture costs collected by the Town pursuant to this Agreement shall be paid to the Developer or to its successors or assigns(as they may be designated in writing), within 30 days after collection. The Town shall cooperate with the Developer by allowing full and free access to all books or records referring to the development of parcels of property benefitted, and the collection of recapture costs thereof. It is understood and agreed that the Town's obligation shall be limited to only the funds collected from such recapture costs. This agreement shall not be construed as creating any obligation upon the Town or the Town of Somers Water Utility, for any reason whatsoever, to make payments from its general corporate funds or revenue from the operation of the Town of Somers water utility or otherwise.

4. The Developer shall defend and hold harmless the Town, its officials, officers, employees, consulting engineers, attorneys, agents or representatives from any and all costs connected with or resulting from any claim or suit brought by any benefitted owner or interest person, contesting the Town's right to collect the Developer's recapture costs under the terms of the agreement, other than any act of omission of Town, its agents or contractors. The Town shall cooperate with the Developer in defending any such claim or action, at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company.

5. The recapture provisions of this agreement shall be in full force and effect for a period of 25 years from the date upon which it is executed by all parties, and after said 25 year period, Developer shall have no further right to recapture costs under this agreement, unless extended or amended by mutual agreement.

H. RECAPTURE OF A PORTION OF COSTS BY DEVELOPER FROM BENEFITTED PROPERTY FOR ROADWAY IMPROVEMENTS.

1. For purposes of this section, H, benefitted properties are those defined as parcels of land outside of the Development adjacent to 31st Street and described with more particularity on the attached Exhibit "CC", which may, subject to the signing of this agreement, be benefitted by construction of the proposed roadway improvements.

2. The total expense of construction of the 31st Street entrance roadway improvements shall be paid by Developer and the parties have agreed that the portion of the costs allocated to the Developer's parcel as described above shall be fairly allocated among the benefitted properties as described in the attached Exhibit "CC". The benefitted properties shall pay a portion of the total share of the total costs, in the amounts described in the attached Exhibit "CC", in the event that such benefitted properties (other than the Developer's parcel) are rezoned to a commercial use within a period of 25 years following the date of execution of this agreement.

3. The Town shall collect from the property owners of the benefitted properties, as described in the attached Exhibit "CC", their successors or assignees, the recapture costs as set forth in subparagraph (2) above, if and only if, such benefitted properties or part thereof, shall be rezoned to a commercial use within a 25 year period from the date of execution of this agreement. At such time or times as benefitted owners obtain such commercial rezoning, the Town shall collect from such owner or owners, the amount of the Developer's reimbursement. The Town agrees not to issue any commercial building or occupancy permits or to allow rezoning to commercial zoning of any benefitted property unless and until such recapture costs have been paid by the benefitted owner or owners. All recapture costs collected by the Town pursuant to this Agreement shall be paid to the Developer or to its successors or assigns(as they may be designated in writing), within 30 days after collection. The Town shall cooperate with the Developer by allowing full and free access to all books or records referring to the development of parcels of property benefitted, and the collection of recapture costs thereof. It is understood and agreed that the Town's obligation shall be limited to only the funds collected from such recapture costs. This agreement shall not be construed as creating any obligation upon the Town, for any reason whatsoever, to make payments from its general corporate funds or otherwise.

4. The Developer shall defend and hold harmless the Town, its officials, officers, employees, consulting engineers, attorneys, agents or representatives from any and all costs connected with or resulting from any claim or suit brought by any benefitted owner or interest person, contesting the Town's right to collect the Developer's recapture costs under the terms of the agreement, other than any act or omission of Town, its agents or contractors. The Town shall cooperate with the Developer in defending any such claim or action, at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company.

5. The recapture provisions of this agreement shall be in full force and effect for a period of 25 years from the date upon which it is executed by all parties, and after said 25 year period, Developer shall have no further right to recapture costs under this agreement, unless extended or amended by mutual agreement.

II. ADDITIONAL REQUIRED DEVELOPER IMPROVEMENTS AND DESIGN STANDARDS FOR SAME

A. LANDSCAPING.

1. The Developer shall provide plans and specifications to be approved by the Town, for landscaping for all areas of the proposed development which are in accordance with the landscaping standards stated hereafter. It is hereby acknowledged that Exhibits I 1-4, K, L, Q and V satisfy the requirements set forth herein. Plans shall show plant lay-out, and shall specify a species and size. All landscaping shall be sprinkled, except those areas designated and depicted on Exhibits I 1-4, K, L, Q and V to be "non-sprinkled".

2. The total of the area surface of the P.U.D. which shall be devoted to green space shall be as is depicted on the exhibits attached hereto or referred to in other documents or incorporated herein by reference. For purposes of this Agreement, "green space" shall be defined as areas which do not constitute impervious or otherwise improved surface areas. For purposes of calculating "green space" area for compliance with applicable Town imposed requirements, any offsite contiguous lands acquired by Developer either in fee simple or by permanent easement for the sole purpose of complying with stormwater drainage requirements stated herein shall be included in such calculation. The landscaping standards contained herein establish a point system to determine the appropriateness and effectiveness of plant installation. The system recognizes that the installation and maintenance of live plants is essential to creating a healthy, safe and aesthetically pleasing environment. The system places priority on the planting of deciduous shade trees which results in the highest level of environmental impact mitigation. As such all real property proposed for development shall be landscaped as follows:

- (a) Planting designs shall concentrate on shading building roofs, parking lots, pedestrian facilities and the adjoining public streets. Equally important are foundation and screening plantings intended to soften the transition from the ground plane to the vertical plane.
- (b) Landscaping shall be provided based on the following requirements or point schedules. Landscaping is defined as living plants normally cultivated or used on residential and business sites. These requirements supercede any other landscaping or screening requirements of the zoning ordinance. The requirements of each of the following categories are additive and must be satisfied independently except in the following circumstances: (1) on corner lots, one-half of the trees provided to meet the street frontage requirement may be credit toward satisfying the landscape point/tree requirements of the paved areas standard if said street frontage trees meet the location requirements of both the street frontage and paved areas sections; and (2) the landscape point totals associated with landscaping planted to meet the buffer yard requirements shall be credit toward the point totals required to meet any other landscape requirement provided the

buffer yard plants meet the location requirements of both the buffer yard section and the section for which credit is requested.

- (1) One (1) large deciduous tree shall be planted for each fifty (50') feet of property line along a public street right-of-way. Said trees shall be planted in the public terrace equidistant from the curb and the normal sidewalk line or on the private site and within ten (10') feet of the property line adjoining the public right-of-way. The preference for tree locations is on private property. The trees should be planted as near as possible at intervals of fifty (50') feet on center although the clustering of trees for valid design purposes may be allowed.
- (2) One hundred fifty (150) points of landscaping shall be planted for each three thousand (3,000') square feet of paving. At least one-half of the landscape points required shall be satisfied by the planting of large deciduous trees. Paving is defined as all hard surfaced areas within the ground plane including but not limited to parking stalls, driveways, trash enclosure pads, loading docks, sidewalks, plazas and patios. Plants required by this section shall be installed in landscape islands within or extending into the paved area or generally within fifteen (15') feet of the perimeter of the edges of the paved area. Parking lots containing more than seventy-five (75) stalls shall incorporate at least one-third (1/3) of the required landscaping within planting islands that are located within the interior of the parking lot. Such islands shall be a minimum of ten (10') feet wide back of curb to back of curb and three hundred sixty (360') square feet in area and shall contain at least one (1) large deciduous. Said islands should be evenly dispersed throughout the parking lot. Emphasis should be placed creating islands that function positively with respect to plant physiology, vehicle maneuvering and overall site maintenance. Linear islands located between rows of parking stalls are preferred rather than small islands located at the ends of parking rows.
- (3) Four hundred (400) points of landscaping for each one hundred (100') lineal feet of exterior building wall. Plants required by this section must generally be installed within twenty (20') feet of the building foundation. Large deciduous trees will not be used as foundation plantings.
- (4) There shall be provided and maintained a permanent twenty (20') foot wide buffer yard screening element along any perimeter boundary of the P.U.D., all public right-of-ways, any boundary of a commercial, office or business zoned property and any residential zone district. Said buffer yard screening element is intended to visually screen the office or business use from the adjoining residential district. The buffer yard screen shall be

located within twenty-five (25') feet of the common property line between the commercial, office or business use and residential property. A buffer yard screen shall consist of any combination of an earth berm, opaque fence constructed of materials compatible with the materials of buildings within the development and/or landscape plantings and shall be designed to provide a permanent all-season visual screen that will be a minimum of five (5') feet tall. If plantings are used, such elements must be a minimum of three (3') feet high and wide at the time of planting and of a species that will attain a height and width of at least five (5') feet within four (4) years following planting. When such buffer yard planting is located within the required building setback from a public street right-of-way the height of the plants within that setback area must be maintained at thirty (30') inches or less. The location of the buffer yard planting should be offset from the property line a distance equal to any utility easement of any nature that may be located along and encompassing said line.

- (5) Development sites shall satisfy the Street Frontage landscaping requirements and shall be graded to a mowable condition and seeded with an acceptable lawn mix. Development sites are defined as any land area that is a separate site, lot, parcel or a vacant portion of a larger site that included within a development but which is intended to be developed in the future for building, parking or other physical improvement purposes.

- (c) Credit for landscaping will be granted based on the following schedule:
 - (1) Large deciduous tree - one hundred fifty (150) points per tree
 - (2) Small deciduous tree - sixty (60) points per tree
 - (3) Evergreen or conifer tree - sixty (60) points per tree
 - (4) Shrub - twenty (20) points per shrub
 - (5) Annual/perennial bed - twenty (20) points per twenty (20') square feet of planted bed
- (d) Landscaping elements are defined as follows:
 - (1) A large deciduous tree is any deciduous tree that will attain a mature height exceeding twenty-five (25') feet, is classified as having a hardiness zone standard of 2 - 5 and is at least three (3") inches in diameter at the time of planting. Large deciduous trees planted within the public street right-of-way shall be a species normally classified as Street trees. Trees

will be downsized appropriately when overhead utility lines exist within the terrace area.

- (2) A small deciduous tree is any deciduous tree that will attain a mature height less than twenty-five (25') feet, is classified as having a hardiness zone standard of 2 - 5 and is at least two to two and one-half (2" - 2½") inches in diameter at the time of planting.
- (3) Evergreen or conifer trees are any upright conifer that will attain a mature height exceeding twelve (12') feet, is classified as having a hardiness zone standard of 2 - 5 and is at least six (6') feet tall at the time of planting.
- (4) Shrubs are plants that are both deciduous or evergreen in character, attain mature heights between two (2') and eight plus (8+) feet, are classified as having hardiness zone standards of 2 - 5 and that are at least eighteen (18") inches in height or five (5) gallon sizing at the time of planting.
- (5) Annual/perennial beds are any planting area containing annual and perennial bedding plants or other ground covers such as creeping evergreens, that are intensively planted to form a continuous planting mass and are at least twenty (20') contiguous square feet in area and shall be a minimum of one (1) gallon sizing each.

(e) Green areas of the site not used for landscaping shall be seeded or sodded with an acceptable maintainable lawn seed mix. Mulch of plantings or planting beds is acceptable provided that such mulching consists of organic or natural materials. Mulches shall be installed so that they will not erode, fall, be plowed or otherwise transported into walks, drives, streets or other hard surfaced portions of the site. Functional weed barriers will be installed in all areas to be mulched.

(f) All landscaping shall be installed consistent with industry accepted standards. Installation shall occur prior to the issuance of a Certificate of Occupancy for the site unless such occupancy occurs during winter, in which case the landscaping shall be completed by July 1 of the next summer.

(g) Landscaping required by this title is intended to be a permanent site improvement just as any other building, structure or infrastructure that is necessary to facilitate the intended use of the site. As such, all landscaping shall be continually maintained in a live state. Maintenance shall include periodic and timely watering, fertilizing, pruning and any other such normally required horticulture activity necessary to keep all landscaping in a healthy, safe and aesthetically pleasing state. All individual lots which shall require issuance of a building permit prior to construction shall be watered by an underground irrigation system. Recognizing that over time plants may mature and die or otherwise expire because of natural or unnatural causes,

maintenance shall include the removal and replacement of dead or dying plants. Such replacement shall occur within the same year in which a plant dies or in the spring planting season of the following year. Developer shall place the sum of Twenty-five Thousand (\$25,000.00) Dollars in an escrow account to be maintained by the Town for the purpose of providing a source of funding for the replacement of landscape plants in the event that Developer, its successors, agents or assigns fails to replace failed plantings. All interest accrued on such account shall be added to the principal balance and the escrow shall be maintained for a period of twenty (20) years at which time all remaining funds shall be donated to the Town Park Fund or fund of similar purpose.

(h) Planting in utility easements should be avoided. If such planting does occur, it is at the risk of the property owner. Any plants that must be removed because of utility work within such easements shall be replaced by the property owner(s) at their cost. Replacement landscaping shall satisfy the minimum standards of this title.

(i) All plantings contained within Exhibit "I", with the exception of those designated as "future", shall be installed with the initial construction of the subdivision. "Future" plantings shall be installed at the time contiguous lot uses are constructed.

(j) All plantings within the private roadways, "future" or otherwise, shall be credited to the interior lots for planting requirements as specified in this section II. A.

B. EXTERIOR LIGHTING AND ILLUMINATION

1. The Developer shall provide plans and specifications to be approved by the Town for the exterior lighting and illumination of the development, which shall be consistent with the exterior lighting and illumination standards contained hereafter in accordance with Exhibits "N", "O", "R" and "W" attached hereto. Developer shall be responsible for all costs associated with construction and installation of all exterior lighting and illumination.

2. The intent of the following standards is to mitigate the impact of exterior illumination related to development on surrounding properties, particularly in areas proximal to residential uses, while providing safe, healthy and visually attractive nighttime environments. In order to achieve that, good lighting design shall be practiced. Good lighting design is characterized by: Illumination levels appropriate for the visual task; reasonably uniform illumination levels on adjoining sites; an absence of glare and consideration of the compatibility and aesthetics of illumination and the mechanical improvements that create it as those relate to surrounding properties and the character of the community.

In order to insure that proper lighting design occurs, the following standards shall apply to all development within the district.

- (a) All exterior lighting fixtures shall be full cut-off fixtures as defined by the Illuminating Engineering Society of North American (IESNA) and shall be of the same design and theme throughout the development. All lighting shall be designed and fixtures selected to prevent glare. The Developer, with the advance written approval of the Town, may modify the cutoff fixture requirement for security lighting in areas where the exterior lights are not visible from a residential area or a public street.
- (b) Illumination of sites and improvements thereon shall be designed to avoid competition with illumination on adjoining or neighboring properties.
- (c) Illumination levels shall be appropriate for the intended improvement, area and/or function to be illuminated. In general, illumination levels should follow the guidelines and recommendations of the IESNA.
- (d) In no event shall any exterior illumination exceed an average illumination level of twenty (20') foot-candles for the surface to be illuminated unless approved otherwise by the Plan Commission as part of a conditional use permit.
- (e) The illumination uniformity ratio (the ratio of the average illumination to the minimum illumination) for the surface to be illuminated shall not exceed 4:1.
- (f) The illumination level at any property line shall not exceed one-half (0.5') foot-candle above the ambient lighting conditions on a cloudless night.
- (g) In no instance shall an outdoor lighting fixture be mounted or oriented such that the lighting element is visible from any residence located in a residential zone district.
- (h) The following shall be the maximum mounting height for the respective lighting fixture. The mounting height shall be measured from the surface to be illuminated to the bottom of the light fixture.
 - (1) Parking lot light fixtures in lots - twenty-five (25') feet.
 - (2) Building or security lighting - twenty-five (25') feet.
 - (3) Any other site lighting fixture twenty-five (25') feet or as determined appropriate and consistent with the intent of this title by the Town Administrator.

- (i) When a use is not in operation, only building mounted security lighting and up to twenty-five (25%) percent of all other outdoor lighting fixtures may remain illuminated.
- (j) Exterior illumination of wall, building or ground signs, architecture, landscaping, site amenities or other specialty illumination of any kind shall be designed consistent with the intent of this title.
- (k) Alternatives to these standards may be proposed to incorporate the use of a particular architectural style or theme or to incorporate innovative or unique illumination techniques. Such alternatives shall be presented to the Town Plan Commission and Town Board with supportive evidence sufficient to determine that the proposal is consistent with intent of the heretofore-established standards. Approval of an alternative illumination plan is at the discretion of the Town Administrator.
- (l) A lighting plan, specifications for all proposed fixtures and photometric plan or other plans delineating illuminance levels that evidence compliance with the established standards are required for all developments in order to determine compliance with these standards.

C. INTERNAL TRAFFIC CONTROL.

The Developer, at Developer's cost, shall install, pursuant to plans and specifications approved by the Town, such traffic signs and other parking control signs at such locations as are required on the approved plan. The Developer shall submit an internal traffic analysis justifying the internal road net geometry prior to final plat. Developer shall be responsible for the costs of maintenance and upkeep of such stop signs and traffic control signs as are installed.

D. BUILDING DESIGN.

1. Exterior building materials shall be of comparable aesthetic quality on all sides. Building materials such as glass, brick, tinted and decorative concrete block, wood, stucco, and exterior insulation and finish systems (EIFS) shall be used, as determined appropriate by the Plan Commission. Decorative architectural metal with concealed fasteners or decorative tilt-up concrete panels may be approved if incorporated into the overall design of the building. It is hereby acknowledged that Exhibits S, X and Z satisfy the requirements set forth herein, subject to Town of Somers verification to conformance of construction specifications and material selections with such exhibits.

2. The building exterior shall complement other buildings in the vicinity, and shall be of a design determined appropriate by the Town Board:

- (a) The building shall employ varying setbacks, heights, roof treatments, doorways, window openings, and other structural or decorative elements to reduce apparent size and scale of the building.
- (b) A minimum of twenty (20%) percent of all of the combined linear roof eave or parapet lines of the structure shall employ differences in height.
- (c) Roofs with particular slopes may be required by the Town to complement existing buildings or otherwise establish a particular aesthetic objective.

3. Ground floor facades that face public streets shall have display windows, entry areas, awnings, or other such features along no less than twenty-five (25%) percent of their horizontal length. The integration of windows into building design is required, and shall be transparent, clear glass (not tinted) between three (3') feet to eight (8') feet above the walkway along any facades facing a public street. The use of blinds shall be acceptable where there is a desire for opacity.

4. Building facades shall include a repeating pattern that includes no less than three (3) of the following elements: color change; texture change; material modular change; and expression of architectural or structural bay through a change in plane no less than twenty-four (24") inches in width, such as an offset, reveal or projecting rib. At least one (1) of these elements shall repeat horizontally. All elements shall repeat at intervals of no more than thirty (30') feet, either horizontally or vertically.

5. Public building entryways shall be clearly defined and highly visible on the building's exterior design, and shall be emphasized by on-site traffic flow patterns. Two (2) or more of the following design features shall be incorporated into all public building entryways: canopies or porticos, overhangs, projections, arcades, peaked roof forms, arches, outdoor patios, display windows, distinct architectural details. Where additional stores will be located in the principal building, each such store shall have at least one (1) exterior customer entrance that shall conform to the above requirements.

6. Building facade colors shall be non-reflective, subtle, neutral, or earth tone. The use of high intensity colors, metallic colors, fluorescent colors or black on facades shall be prohibited. Building trim and architectural accent elements may feature bright colors or black, but such colors shall be muted, not metallic, not fluorescent, and not specific to particular uses or tenants. Standard corporate and trademark colors shall be permitted only on signage, subject to the limitations contained in applicable standards contained in both Kenosha County and Town ordinances.

7. Screening.

- (a) All ground-mounted and wall-mounted mechanical equipment, refuse containers and any permitted outdoor storage shall be fully concealed from on-site and off-site ground level views, with materials identical to those used on the building exterior.
- (b) All rooftop mechanical equipment shall be screened by parapets, upper stories, or other areas of exterior walls or roofs so as to not be visible from public streets adjacent or within one thousand (1,000') feet of the subject property. Fences or similar rooftop screening devices may not be used to meet this requirement.
- (c) Loading docks shall be completely screened from surrounding roads and properties. Said screening may be accomplished through loading areas internal to buildings, screen walls, which match the building exterior in materials and design, fully opaque landscaping at time of planting, or combinations of the above.
- (d) Gates and fencing may be used for security and access, but not for screening, and they shall be of high aesthetic quality. Decorative metal picket fencing and screening is acceptable. Chain link, wire mesh or wood fencing is unacceptable. Decorative, heavy-duty wood gates may be used.

E. TRAFFIC IMPACT.

1. The project (excluding outlots contained therein) shall have direct access to existing arterial and/or collector roads deemed appropriate by the Town and/or the authority having authority over the respective road(s).

2. Vehicle access shall be designed to accommodate peak on-site traffic volumes without disrupting traffic on public streets or impairing pedestrian safety. This shall be accomplished through adequate parking lot design and capacity; access drive entry throat length, width, design, location, and number; and traffic control devices; and sidewalks.

3. The site design shall provide direct connections to adjacent land uses if required by the Town. Prior to Final Plat approval, the Developer shall present a Traffic Impact Analysis following Wisconsin Department of Transportation District Two guidelines. The Traffic Impact Analysis shall be in accordance with the Institute of Traffic Engineer (ITE) standards.

F. PARKING.

1. Parking lots shall, in addition to the requirements which follow in this Section F, conform to the requirements contained in Section 12.13-3 of the Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinance entitled "Parking Requirements".

2. Parking lot design shall employ interior, vertical faced, curbed landscaped islands at all parking aisle ends. In addition, the project shall provide landscaped islands within each parking aisle spaced at intervals as depicted in the attached exhibits which are incorporated herein by reference.

3. Landscaped and curbed medians, a minimum of ten (10') feet in width from back-of-curb to back-of-curb, shall be used to create distinct parking areas of no more than one hundred twenty (120) parking stalls. It is hereby acknowledged that Exhibits P and U satisfy the requirements set forth herein.

G. BICYCLE AND PEDESTRIAN FACILITIES.

1. The entire development shall provide for safe pedestrian and bicycle access to all uses within the development, connections to existing and planned public pedestrian and bicycle facilities, and connections to adjacent properties.

2. Pedestrian walkways shall be provided from all building entrances to existing or planned public sidewalks or pedestrian/bike facilities. The minimum width for sidewalks adjacent to buildings shall be ten (10') feet; and the minimum width for sidewalks elsewhere in the development shall be five (5') feet.

3. Where applicable, landscapes adjoining sidewalks shall match the landscaping used for the street frontages.

4. Crosswalks shall be distinguished from driving surfaces to enhance pedestrian safety by using different pavement materials, pavement color, pavement textures, and signage.

5. The development shall provide secure, integrated bicycle parking at each developed improvement.

6. The development shall provide exterior pedestrian furniture in appropriate locations as depicted on the attached exhibits or as may be agreed upon in the future by the parties hereto.

H. CENTRAL AREAS AND FEATURES.

Each additional building not shown on the exhibits within the development exceeding forty thousand (40,000') square feet in total gross floor area shall provide central area(s) or feature(s) such as a patio/seating area, pedestrian plaza with benches, outdoor playground area, water feature, and/or other such deliberately designed areas or focal points that adequately enhance the development or community as depicted on the attached exhibits. Lots 1 and 2 are acknowledged as satisfying the conditions set forth herein. All such areas shall be openly accessible to the public, connected to the public and private sidewalk system, designed with

materials compatible with the building and remainder of the site, and shall be maintained over the life of the building project.

I. CART RETURNS.

A minimum of one (1) two hundred (200') square foot cart return area shall be provided for every one hundred (100) parking spaces. Cart corrals shall be of durable, non-rusting, all season construction, and shall be designed and colored to be compatible with the building and parking lot light standards. There shall be no exterior cart return or cart storage areas located within twenty-five (25') feet of the building.

J. OUTDOOR DISPLAY AREAS.

Exterior display areas shall be permitted only where clearly depicted on Exhibit P and V hereto. All exterior display areas shall be separated from motor vehicle routes by a physical barrier, which shall be softened by landscaping and which shall be visible to drivers and pedestrians, by a minimum of ten (10') feet. Display areas on building aprons must maintain a minimum walkway width of five (5') feet between the display items and any vehicle drives.

K. OUTDOOR STORAGE USES AND AREAS.

Exterior storage structures or uses, including the parking or storage of service vehicles, trailers, equipment, containers, crates, pallets, merchandise, materials, fork lifts, trash, recyclables, and all other items shall be permitted only where clearly depicted and labeled on Exhibits P and V attached hereto, such outdoor storage uses and areas shall be appropriately screened as required by Section II.D.7

L. SIGNAGE.

All signage shall comply with the requirements contained in the Kenosha County General Zoning and Shoreland/Floodplain Zoning Ordinances. Town approves the signage depicted on Exhibits "L" and "M" attached hereto. The plan for exterior signage shall provide for modest, coordinated and complimentary exterior sign locations, configurations, and color throughout the development, including outlots. All freestanding signage within the development shall complement on-building signage. Monument style ground signs are required, and shall not exceed a height of twenty (20') feet. Consolidated signs for multiple users may be required instead of multiple individual signs. The Town may require the use of muted corporate colors on signage if proposed colors are not compatible with the Town design objections for the area. The use of logos, slogans, symbols, patterns, striping and other markings, and colors associated with a franchise or chain is permitted, and shall be considered as contributing to the number and area of permitted signs.

M. NOISE.

Noise associated with activities at the site shall not create a nuisance to nearby properties. Any automotive/vehicle repair activity associated with any business located within the development shall not operate during the hours from 10:00 p.m. to 6:00 a.m. C.S.T.

N. TRANSIT STOP.

Developer shall construct within the development or within the adjoining public right-of-way a public transit stop which shall be connected with appropriate sidewalks, all at the Developer's cost. Developer shall coordinate with the City of Kenosha Transit Department to site the location of the public transit stop. Bus stops shall only be located on public or private roadways.

O. MAINTENANCE OF IMPROVEMENTS.

Developer shall be responsible for maintaining the appearance of the entire development including, but not limited to, all parking areas, sidewalks and landscape features in accordance with Exhibit "DD" attached hereto. Developer shall be responsible for the collection of debris and snow plowing throughout the entire property and shall periodically clean and maintain all paved surfaces, including the public portion of 35th Street. Any debris collected shall be disposed of in accordance with all federal, state and local laws. Developer acknowledges that if, after 30 days written notice from Town (unless after written request from Developer to Town seeking a longer period of time for good cause, approval of an extension is granted by Town, which approval will not be unreasonably withheld), maintenance has not yet been performed in accordance with the provisions of this paragraph then the Town may proceed to maintain or hire an independent contractor of its choice to maintain the property or parts thereof and impose the costs of such maintenance upon the benefitted property as a special assessment. Developer may, after review and approval by Town, assign the responsibilities for maintenance and cleaning under this paragraph for all or portions of the development to a third party provided such third party is financially responsible to discharge such obligations.

III. DEVELOPER WARRANTIES AND OBLIGATIONS

A. GUARANTEE OF ROADS AND TRENCH BACKFILL.

1. Developer shall guarantee all public utility improvements, reconstruction of 31st Street required herein, and construction of 35th Street against defects due to faulty materials or workmanship of which it is notified in writing within a period of one (1) year from the date of acceptance of the improvement in question by the Town Board. Developer shall perform and pay for any required repairs.

2. With respect to any portion of Real Estate subject to this Agreement, Developer shall assume responsibility for any settlement of fill materials which may occur in any Developer installed public utility trenches in any right-of-way or easement not under street pavement for a period of five (5) years from the date of the last acceptance by Town of any utility improvement located in such portion of Real Estate. Developer agrees to mechanically compact all granular materials used in Developer installed utility trenches.

3. In order to assure compliance with said guarantee in the preceding paragraph, Developer shall deposit with Town a cash deposit or letter of credit in an amount determined sufficient by Town to support guarantee, which shall be based upon the Developer's contract for such improvements and which shall be maintained by Developer for a period of one (1) year.

4. The Developer shall be responsible for backfilling and compacting with granular material all utility trenches which are located within the public road rights-of-way which is located within five (5') feet of the back of the curb on each side of each public road to be constructed by the Developer, or in such other areas as are required pursuant to specifications approved by the Town Engineer.

B. TOWN COSTS.

Upon execution of this Agreement, Developer shall pay to the Town the actual costs incurred by the Town for engineering (including construction staking and inspection services), attorney fees and administrative costs. The Developer shall also pay to the Town Engineering fees for staking and inspection of all improvements and any legal and administration costs encountered by the Town in the development of the real estate as set forth in the P.U.D. and all documents incorporated therein. In addition to the reimbursements to the Town for costs incurred by the Town referred to above, but in lieu of making a cash deposit for costs undertaken by the Town, the Developer may, at its election, provide the Town with an irrevocable letter of credit in a form acceptable to the Town's attorneys issued by a financial institution within the State of Wisconsin to be drawn on by the Town as may be required. Such letter of credit (or cash deposit) shall be in the sum equal to one hundred twenty-five (125%) percent of the collective estimate of all public infrastructure costs to be constructed pursuant to the terms of this Agreement as set forth in Section I. A, B, C, D, E and II. C and G above, and Town engineering costs for construction staking and inspection of all improvements and any legal and administration costs encountered by the Town in the development of the Real Estate, which will be used to compensate the Town for the public infrastructure costs to be constructed on behalf of the Developer pursuant to this Agreement in the event of default by the Developer. The Town shall provide the Developer with an accounting of expenditures made on behalf of the Developer and in the event that funds are not sufficient, the Developer shall immediately provide the additional funds. In the event that there shall be surplus funds after the projects are completed the excess shall be returned to the Developer. Payment of the costs of installation or, in the alternative, delivery of a letter of credit, shall be made prior to issuance of any building permit and the issuance of any building permit shall be conditioned upon payment of such sums or

providing a letter of credit in lieu thereof. This Agreement is contingent upon the Developer engaging the services of competent persons including a design engineer for the purpose of designing such infrastructure improvements and administering the contracts for construction of same as required and set forth in Sections I. A, B, C, D, E and Section II. C and G and providing written proof of such engagement.

C. SUBDIVISION AND CONDOMINIUM PLATTING ORDINANCE.

The Developer represents that he has been provided with a copy of the Somers Subdivision and Condominium Platting Ordinance showing printing date of 3/27/90 revised 3/23/93, 6/23/93 and 11/15/05 and will complete the improvements set forth herein in compliance with the Subdivision and Platting Ordinance, and its revisions and further agrees to comply therewith, except as may be modified by the terms of this Agreement.

D. DECLARATION OF RESTRICTIONS.

It is agreed that the Developer shall furnish the Town with a complete copy of any Declaration of Restrictions which, following review and approval by Town, which shall not be unreasonably withheld or delayed, shall be recorded by Developer. Said Declaration shall define all restrictions and shall identify and create the building control committee or other arrangement or entity whose responsibility it will be to monitor and enforce the restrictions. It is hereby covenanted and agreed by Developer, in addition to such Declaration of Restrictions as the Developer may impose, that no check cashing facility, Pay-Day loan store (or similar task store), bowling alley, billiard parlor or night club shall be allowed on any portion of the P.U.D. or within any improvement thereon. Provided, however, that a National Discount retail store located in the development, which has a building which contains at least one hundred thousand (100,000) square feet of floor area at least may, within such store and only as an ancillary part of its operations and not as a separate business, provide certain banking related services including, but not limited to, cashing payroll checks, selling prepaid credit cards, money orders and similar products. Nothing contained herein shall permit the making of loans, the advance of funds conditioned on future events (other than through existing customer owned credit cards or the like) or similar services.

E. BUILDING PERMITS AND LARGE RETAIL DEVELOPMENTS.

It is agreed that, except as is provided in subparagraph III. E(1), hereafter, there shall be no building permits issued by the Somers Building Inspector until that Inspector shall be satisfied that all the terms and conditions of the Somers Subdivision and Platting Ordinance have fully complied with all requirements for public improvements under Sections A, B, C, D and E of this agreement, private utilities and gravel roadways and storm sewer pursuant to section C of this agreement have been installed. No building permits will be issued until all public improvements including gravel roadways have been completed and any required air quality permit is obtained by Developer. In addition, Developer warrants and represents that Developer understands that

any new retail development (other than the Wal-Mart Supercenter and Sam's Club buildings which are addressed in this Agreement) with a total gross floor area (GFA) of forty thousand (40,000) square feet or more, shall be required to execute a separate Developer's Agreement with the Town which shall be subject to the requirements contained in this document as well as those requirements which are contained in the separate Developer's Agreement for such development.

1. As an exception to the provisions contained in subparagraph III E, immediately above, as to the Wal-Mart Supercenter and Sam's Club buildings only, the Town will agree to the issuance of building permits for these two buildings on Lot 1 and Lot 2, respectively, which will allow for the simultaneous construction of the Wal-Mart Supercenter and Sam's Club buildings as well as construction of site improvement/mass excavation subject to the following conditions: The first prerequisite to allow for the issuance of a building permit for the retail building of the Wal-Mart Supercenter and/or Sam's Club building(s) is that a stormwater detention basin on Outlot 1 be constructed to facilitate the runoff from the property. The basin will be constructed as a sedimentation basin, to the capacity required for the final specification for the basin and in accordance with i) Wisconsin Site Best Management Practices Handbook prepared by the Wisconsin Department of Natural Resources, ii) federal NPDES requirements, iii) permit requirements as may be dictated by Wisconsin Department of Commerce and/or Wisconsin Department of Natural Resources. A second prerequisite to allow for the issuance of a building permit for the retail building of the Wal-Mart Supercenter and/or Sam's Club building or either of the two prior to the completion of all public infrastructure improvements will be the creation of a separate construction/emergency access road to the Wal-Mart Supercenter and Sam's Club building sites, the purpose of which will allow construction traffic and emergency vehicles to ingress and egress to these sites simultaneous to the construction of the sanitary sewer, municipal water and permanent road network. The precise location and details of these temporary construction roads will be agreed upon by the Developer's Engineer and the Town Engineer. The third prerequisite for issuance of building permits for either the Wal-Mart Supercenter or Sam's Club buildings, or both, is submission by Developer and approval by Town of building site topographic survey pursuant to this Agreement. Said topographic survey shall be specifically for lots 1, 2, 6 and outlot 1. The survey shall depict the sub-base pavement and building pad elevations for lots 1, 2 and 6. The survey shall also depict positive drainage from lots 1, 2 and 6 to the detention lot (outlot 1). The Town acknowledges the remainder of the development property, except as contemplated within this section, shall be at varying stages of construction and is not contingent upon the issuance of building permits for lots 1, 2 and 6. Occupancy permit will not be provided until all improvements required herein are completed and approved.

2. As an exception to the provisions contained in subparagraph III.E., immediately above, as to the Sam's Club Gas Station building, the Town will agree to the issuance of a building permit for this building on lot 6 provided:

- (a) The Town has approved the site topographic survey, as described immediately above.

- (b) The Town reviews and approves all related construction documents for the building and corresponding site improvements, including but not limited to building elevations, building signage, landscaping, lighting, parking, etc.
- (c) Said construction documents are consistent with this Development Agreement.
- (d) An occupancy permit will not be provided until all improvements required herein are completed and approved.

For the purposes of the topographic survey and corresponding certification, as described immediately above, lot 6 shall be considered as part of lot 1.

F. INDEMNIFICATION.

Developer shall, during the term of this Agreement, indemnify, defend and hold harmless Town and officers, consulting engineers, attorneys, agents, representatives and employees thereof from and against any and all claims, damages, judgments, costs and expenses and attorney fees which any of them may pay, sustain or incur should any person or party incur personal injury, property loss or damage arising out of the design or construction of any of the public improvements relating to this proposed development or as a result of any claim for labor, materials or improvements in connection with the construction of the same other than any act or omission to Town, its agents or contractors, provided that Town shall cooperate with Developer and Developer's legal counsel in defending against any such claim, at Town's expense if by separate counsel, to the extent permitted by Developer's insurance company. Any costs or expenses including actual attorney fees, which the Town incurs as a result of any claim indemnified herein shall be reimbursed to the Town either through a cash deposit, any letter of credit posted by the Developer in connection with this Agreement, other assurance or through such other means as the Town, in the Town's sole discretion, deems appropriate.

It is specifically understood that the Developer contemplates extensive earth work which alters the original topography of the site as shown on the grading plan. It is specifically understood between the Developer and the Town that the indemnification contained in this paragraph shall cover any claim by any other property owner or any contractor, subcontractor or other person who bids on or performs services in connection with any portion of site grading required under this Agreement where such party claims, in whole or in part, to have been damaged, mistaken, misled, or otherwise in error as a result in the change in topography created by the Developer or for any other reason whatsoever.

IV. MISCELLANEOUS

A. ASSIGNMENT.

The Developer recognizes that agreement is based on Developer's presentation to the Plan Commission and Town Board and Developer shall not assign or transfer this agreement to any other person or corporation without prior consent of the Town.

B. MODIFICATION AND APPLICABLE LAW.

This Agreement supersedes all prior oral or written understandings or representations between the parties except as may be embodied by applicable state, county or town statute, code or ordinance. Any modification to the terms of this Agreement shall only be enforceable if in writing signed by duly authorized representatives of each of the parties hereto in the same manner as this Agreement. This Agreement shall be construed and enforced under the laws of the State of Wisconsin.

C. DISCRETIONARY REDUCTIONS OF LETTER OF CREDIT.

If and to the extent that Developer shall properly complete portions of improvements for which it shall have deposited an assurance with the Financial Manager of Town, then, upon request of Developer, the Financial Manager of Town, shall upon recommendation of Town Engineer and Town Attorney and approval of Town Board of Supervisors, accordingly reduce the amount of the assurance. Prior to the release of any amount of the assurance, Developer shall submit to Town and Utility a waiver of lien current to date from all contractors and subcontractors.

D. TERM.

Agreement shall be in effect for a period of forty (40) years from the date of execution hereof and shall inure to the benefit of and be binding upon the successors in title and assigns of Developer and upon successor corporate authorities and successor municipalities of Town. However, the guarantee of improvements shall be for the period specified herein, whether or not such guarantee may extend beyond the term of Agreement, and any recorded restrictions shall have the life accorded to such restrictions under applicable state law.

E. VOLUNTARY DONATIONS IN LIEU OF IMPACT FEES.

Developer and Town agree that in lieu of the imposition of the fees delineated in Section 18.30 of the Code of Ordinances of the Town of Somers, including impact fees, the Developer shall make to the Town a donation in the sum of Three Million (\$3,000,000.00) Dollars which shall be paid as follows: the sum of One Million (\$1,000,000.00) Dollars shall be paid by the Developer upon execution of this Agreement and receipt of all required approvals by the Town

of Somers, County of Kenosha and State of Wisconsin; the payment of One Million (\$1,000,000.00) Dollars shall be paid upon the earlier of the issuance of a building permit for the construction of the Wal-Mart Supercenter or the Sam's Club discounter center and the remaining One Million (\$1,000,000.00) Dollars shall be paid upon the earlier of issuance of an occupancy permit for either the Wal-Mart Supercenter or the Sam's Club building. The Developer and the Town hereby agree to be contractually bound by the terms and conditions of this paragraph, IV.E., in lieu of the terms and conditions of Section 18.30 of the Code of Ordinances, except as provided hereafter, and in consideration of such accommodation on the part of the Town, the Developer agrees to forever waive and relinquish any objection to any fees or the use of such fees by the Town whether such objection could be based upon Chapter 18 of the Code of Ordinances of the Town of Somers, Chapter 66 of the Wisconsin Statutes or otherwise. This waiver and acknowledgment shall be binding upon the legal successors and assigns of the Developer. Developer affirmatively represents that it is not necessary for the Town to expend the donations received under this Agreement in the year in which received and that the Town may use such donations for any lawful purpose without consulting with or advising the Developer as to how such donations are to be used. The foregoing notwithstanding, the voluntary donations referred to in this paragraph IV. E. Shall not eliminate the requirements of municipal sanitary sewer and municipal water connection fees to be paid by users of those systems as required by Section 18.30(O) and Appendix "C" of the Code of Ordinances of the Town as described hereafter.

F. SANITARY SEWER AND WATER CONNECTION CHARGES.

Pursuant to Section 18.30(O) and Appendix "C" of Chapter 13 of the Code of Ordinances of the Town of Somers, users of the municipal sanitary sewer and municipal water systems must pay a one-time connection fee for each service prior to the issuance of a building permit at the then applicable rate specified in such ordinances at time of issuance of such building permit.

G. DEFAULTS.

No default shall arise hereunder unless the non-defaulting party has provided the defaulting party with written notice and a reasonable cure period of at least ten (10) business days.

H. SEVERABILITY.

If any provision, covenant, or a portion of this Agreement or its application to any person, entity or property is held to be invalid or unenforceable by a court of law or equity, such status shall not affect the application or validity of other provisions, covenants or portions of this Agreement which shall be given effect without the invalid provisions or applications, and to this end, the provisions and covenants of this Agreement are declared to be severable.

I. RECORDATION.

This Agreement shall be recorded in the office of the Register of Deeds for Kenosha County, Wisconsin, and all costs of recordation shall be paid by the Developer. Such recordation may, at the discretion of the Town, omit some or all of the attached exhibits delineated in subsection K below.

J. EXECUTION OF COUNTERPARTS.

This Agreement may be executed as two (2) or more counterparts, with each acting as an original.

K. EXHIBITS INCORPORATED BY REFERENCE.

Each of the terms, conditions and specifications described, noted or depicted on the following Exhibits are hereby incorporated herein by reference:

Exhibit A	Subdivision Plat
Exhibit B	Subdivision Site Plan
Exhibit C	Subdivision Off-Site Improvements Plan
Exhibit D	Subdivision Watermain Plan
Exhibit E	Subdivision Sewer Plan
Exhibit F	Off-Site Sewer Plan
Exhibit G	Subdivision Stormwater Plan
Exhibit H	Subdivision ATC Overhead Electric Plan
Exhibit I	Subdivision Master Tree Planting Plan
Exhibit J	Subdivision Typical Sections
Exhibit K	Subdivision Roundabout Plan
Exhibit L	Subdivision Entry Feature Plan
Exhibit M	Subdivision Signage Plan
Exhibit N	Subdivision Lighting/Photometric Plan
Exhibit O	Subdivision Lighting Fixtures
Exhibit P	Wal-Mart Site Plan
Exhibit Q	Wal-Mart Landscape Plan
Exhibit R	Wal-Mart Lighting/Photometric Plan
Exhibit S	Wal-Mart Building Elevations
Exhibit T	Wal-Mart Building Signage
Exhibit U	Sam's Club Site Plan
Exhibit V	Sam's Club Landscape Plan
Exhibit W	Sam's Club Lighting/Photometric Plan
Exhibit X	Sam's Club Building Elevations
Exhibit Y	Sam's Club Building Signage
Exhibit Z	Typical Retail Building Plan

Exhibit AA	Typical Landscape Plan
Exhibit BB	List of Benefitted Properties for Sanitary Sewer Recapture
Exhibit CC	List of Benefitted Properties for Roadway Improvement Recapture
Exhibit DD	Maintenance Agreement

L. CONDITIONS TO DEVELOPER'S OBLIGATIONS.

Notwithstanding anything herein to the contrary, all of the obligations of the Developer hereunder are expressly conditioned upon (i) the closing of the sale by Developer of Lot 1 of the Planned Unit Development (the Wal-Mart Parcel) and Lot 2 of the Planned Unit Development (the Sam's Club Parcel), together referred to herein as "the Closing", and (ii) the issuance by Town, and if necessary procurement by Town, to Developer of all municipal permits required to develop the Planned Unit Development as contemplated herein (with the exception of building permits). In the event that the Closing does not take place on or before December 31, 2007, then Developer shall be released from all prospective obligations contained in this Agreement and all prior approvals by the Town for the Development including, but not limited to, rezoning, plat approval and approval of all documents incorporated herein by reference shall be rescinded without further action on the part of the Town. Nothing contained herein shall prohibit the parties from extending the time by which the closing must take place by written amendment to this agreement.

M. INTEGRATION.

This Developer's Agreement, including the exhibits hereto, and such other documents as are incorporated herein embodies the entire agreement and understanding among the parties hereto and supersedes all prior agreements and understandings relating to the subject matter hereof.

N. CHOICE OF LAW AND VENUE.

This Developer's Agreement and all attached exhibits shall be construed and enforced according to the laws of the State of Wisconsin. The parties agree that any matter which may be brought or pursued in court hereunder shall brought and maintained only in the Circuit Court for Kenosha County, Wisconsin, and each party consents to such venue and the court's personal jurisdiction over each party.

O. WAIVER OF BREACH OR VIOLATION NOT DEEMED CONTINUING.

Either party may, to the extent legally allowed, (a) extend the time for performance of any of the obligations or other acts of the other party(s), (b) waive any inaccuracies in the representations or warranties of the other party(s) hereto contained herein, or in any document delivered pursuant hereto and (c) waive any compliance by any of the other parties hereto with any of the agreements or conditions contained herein. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any or other subsequent breach or violation of any provision hereof. No breach or violation of any provision hereof shall be waived exceed by an agreement in writing signed by the waiving party.

P. CONSTRUCTION.

Each party to this Agreement and their respective legal counsel acknowledge that they have had the opportunity to participate equally in the drafting of this Agreement and that in the event of a dispute, no party shall be treated, for any purpose as the author of this Agreement nor have any ambiguity resolved against it on account thereof.

Q. NOMENCLATURE.

The use of the male gender shall include the female, the individual shall include the corporate, and the singular shall include the plural, and visa versa, wherever such usage is appropriate to the context.

WITNESS OUR HANDS AND SEALS this 7 day of August, 2007.

TOWN OF SOMERS

By: James M. Smith
James M. Smith, Chairperson

Attest: Timothy Kitzman
Timothy Kitzman, Clerk/Treasurer

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

Personally came before me this 7 day of August, 2007, the above named James M. Smith, Chairperson and Timothy Kitzman, Clerk/Treasurer of the Town of Somers, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

Ann M Brumback
Notary Public; State of Wisconsin
My Commission expires 8-8-2010.

DEVELOPER
SOMERS MARKET CENTER, LLC

By: IRED - BRADFORD SOMERS, LLC
Its: Managing Member

By: IRED SOMERS, LLC
Its: Managing Member

By: INLAND RETAIL DEVELOPMENT, LLC
Its. Sole Member

By: Matthew G. Fiascone
Matthew G. Fiascone
President of Inland Retail Development, LLC, as
Sole Member of Ired Somers, LLC, as Managing
Member of Ired - Bradford Somers, LLC, as
Managing Member of Somers Market Center, LLC

STATE OF ILLINOIS)
) ss.
COUNTY OF COOK)

Personally came before me this 1 day of October, 2007, the above Matthew G. Fiascone, President of Inland Retail Development, LLC, as Sole Member of Ired Somers, LLC, as Managing Member of Ired - Bradford Somers, LLC, as Managing Member of Somers Market Center, LLC, a Delaware limited liability company, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Gina E. Mullinix
Printed Name: Gina E. Mullinix
Notary Public; Cook County, Illinois

My Commission expires 08/08/2011.

Drafted by:

Jeffrey J. Davison

P.O. Box 197
Somers, WI 53171



(262) 859-2822
Fax (262) 859-2331

Town of Somers

October 1, 2007

Somers Market Center, LLC
c/o Bradford Real Estate Services Corp.
Attention: Jay Eck
10 S. Wacker Drive, Suite 2935
Chicago, IL 60606

Sam's East, Inc.
Attention: Michael Thomas
2001 S.E. 10th Street
Bentonville, AR 72716-0550

Wal-Mart Stores East, LP
Attention: Michael Thomas
2001 S.E. 10th Street
Bentonville, AR 72716-0550

Re: Development Agreement Between the Town of Somers and Somers Market Center, LLC for 'Somers Market Center' a Proposed Planned Unit Development, as attached hereto and made a part ("Development Agreement")

Ladies and Gentlemen:

The Town of Somers is prepared to deliver that certain Developer's Agreement among the Town of Somers, the Town of Somers Utility District and Somers Market Center, LLC.

Since the date of the approved site plan for the Somers market center project, the Town acknowledges that the site plan has changed slightly as shown on Exhibit A attached hereto and made a part hereof the Town advises you that this change is not viewed as material by the Town and is acceptable, without further need of review or approval.

Additionally, there are a few changes to the Developer's Agreement that are scrivener in nature and have not been made, but by this letter are acknowledged to be included:

1. Page 24 item (f).

The illumination level at any exterior subdivision property line shall not exceed one-half (0.5') foot-candles above the ambient lighting conditions on a cloudless night.

2. Page 29 Paragraph J.

The exhibit V should be Exhibit U. The Exhibits P & U are the site plans.

3. Page 29 Paragraph K.

The exhibit V should be Exhibit U. The Exhibits P & U are the site plans.

4. Exhibit concerns.

Due to changes that have occurred in the site plans and others, some of the exhibits are not current. Attached as Exhibit B are the intended current Exhibits.

The Town of Somers hereby agrees that this letter modifies the Developer's Agreement as set forth above and is intended to be recorded as an appendage with the Developer's Agreement.

Sincerely,

TOWN OF SOMERS, WISCONSIN

By:

Its:

James M. Ansell
Chairperson

cc: Richard Martin, Esq., Wal-Mart Real Estate Business Trust
Gary A. Kravitz, Esq., Dawda, Mann, Mulcahy & Sadler, PLC
Anthony A. Cassacio, The Inland Real Estate Development Corporation
Elizabeth Corey, Esq., Foley & Lardner LLP



**CONSENT, JOINDER AND SUBORDINATION
OF LENDER**

The undersigned, Bank of America, N.A. ("Lender"), is the owner and holder of that certain Mortgage from Somers Market Place, LLC, a Delaware limited liability company (the "Mortgage") dated March 14, 2007, which is recorded in the records of Kenosha County, Wisconsin, as Document Number 1516451, as the same may have been further amended (the "Mortgage").

Lender, as the owner and holder of the Mortgage, hereby joins in, consents to and subordinates the Mortgage to, the foregoing:

1. Developer's Agreement by and between the Town of Somers and the Somers Market Center, LLC for "Somers Market Center" a Proposed Planned Unit Development Being a Part of Section 27, Town 2 North, Range 22 East;
2. Easements with Covenants and Restrictions Affecting Land made by and among Wal-Mart Stores East, LP, Sam's East, Inc., and Somers Market Center LLC; and
3. Declaration of Stormwater Facility Maintenance made by Somers Market Center LLC

(collectively, the "Agreements") to which this Consent, Joinder and Subordination is attached, and Lender agrees that all of its right, title and interest in and to the real property described therein existing by virtue of the Mortgage shall be bound by, subject to and subordinate to the easements and other terms and provisions of the foregoing Agreements, and the Agreements shall survive any foreclosure, deed in lieu of foreclosure and/or exercise of any remedy by Lender pursuant to the Mortgage.

LENDER:

Bank of America, N.A.,
a national banking association

By: Brenda L. Cooper
Name: Brenda L. Cooper
Its: Vice President

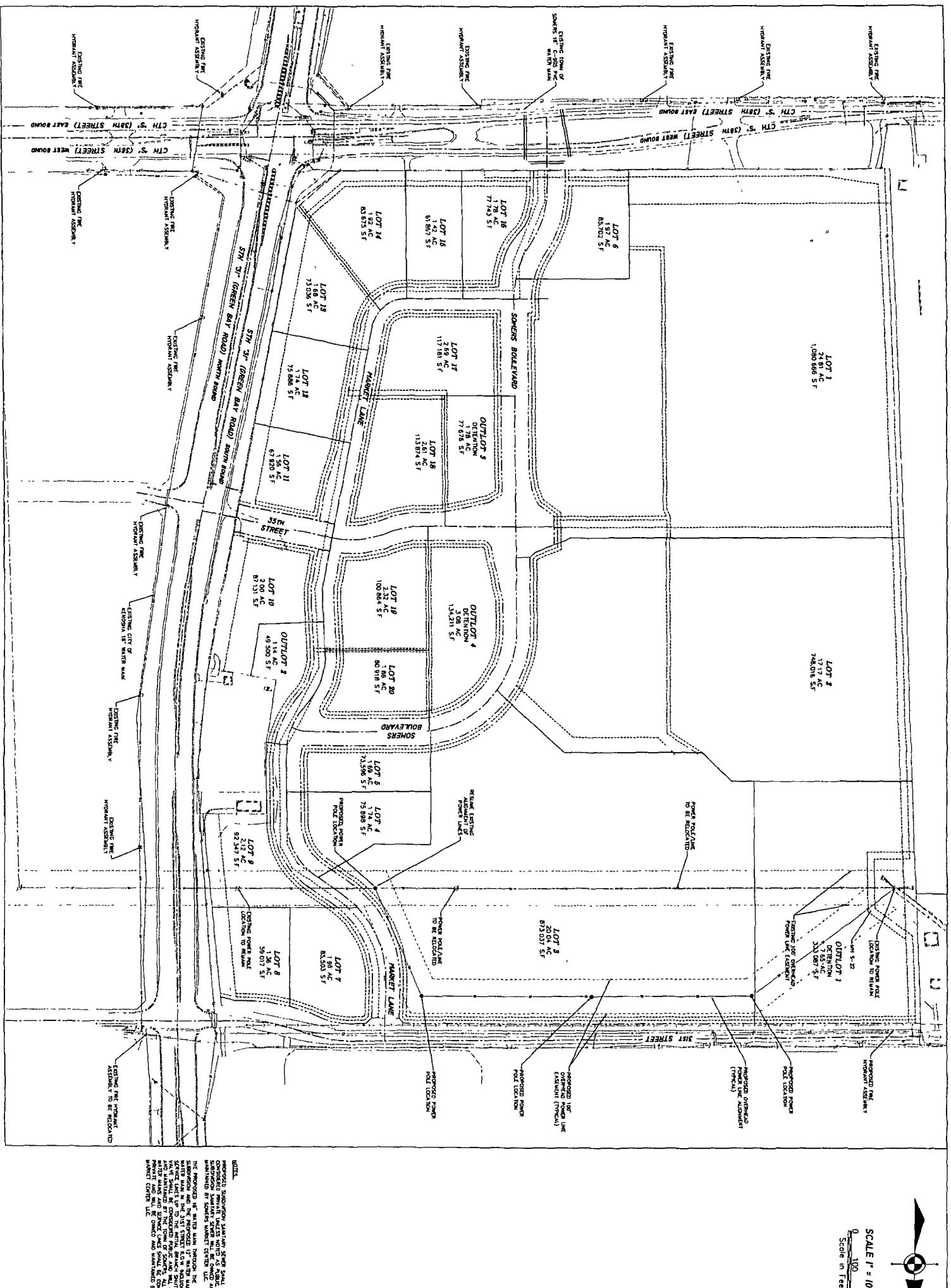
Attest: Linda J. Fairrow
Name: Linda J. Fairrow
Its: Assistant Vice President



Somers Market Center

Development Agreement Exhibits

May 11, 2007



NOTES:
PROPOSED SUBDIVISION LAND SHALL BE
CONSTRUCTED AND MAINTAINED AS PRIVATE
PROPERTY BY SOMERS MARKET CENTER, LLC.
THE PROPOSED WATER MAIN THROUH THE
SUBDIVISION AND THE PROPOSED WATER MAIN AND 10"
SQUARE DUCTILE IRON PIPE WILL BE OWNED
AND MAINTAINED BY SOMERS MARKET CENTER,
LLC. OTHER WATER MAINS AND DRAINAGE
WATER MAINS AND DRAINAGE DRAINS SHALL BE OWNED
AND MAINTAINED BY SOMERS MARKET CENTER, LLC.

SCALE 1' = 100'
0 100 200
Scale in Feet

EXHIBIT A - SUBDIVISION PLAT

TOWN OF SOMERS

55TH STREET TO 35TH STREET AT GREEN BAY ROAD

SOMERS, WI

JOB #4-15-01-008

FILE # VOL 058 SOMERS MARKET CENTER PLAT & DWG

SHEET REVIEW

AGENCY	DATE

REVISIONS

NO.	ITEM	DATE
		MAY 11 2007

SCALE	' x '
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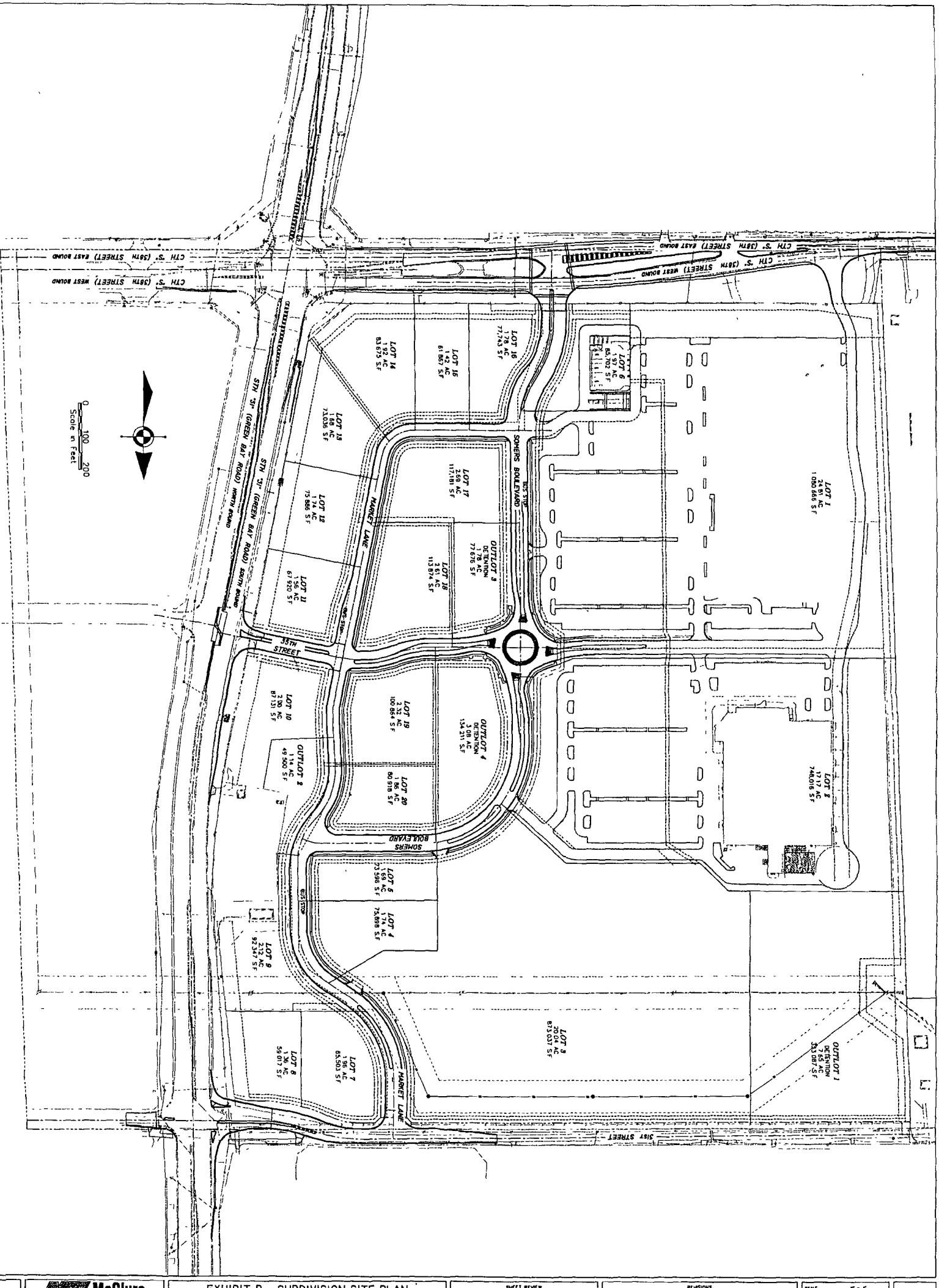
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0	200
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SCALE	' x '
D	100
0	200
Scale in Feet	

SCALE	' x '
-------	-------



Somers Market Center

Exhibit B - Subdivision Site Plan

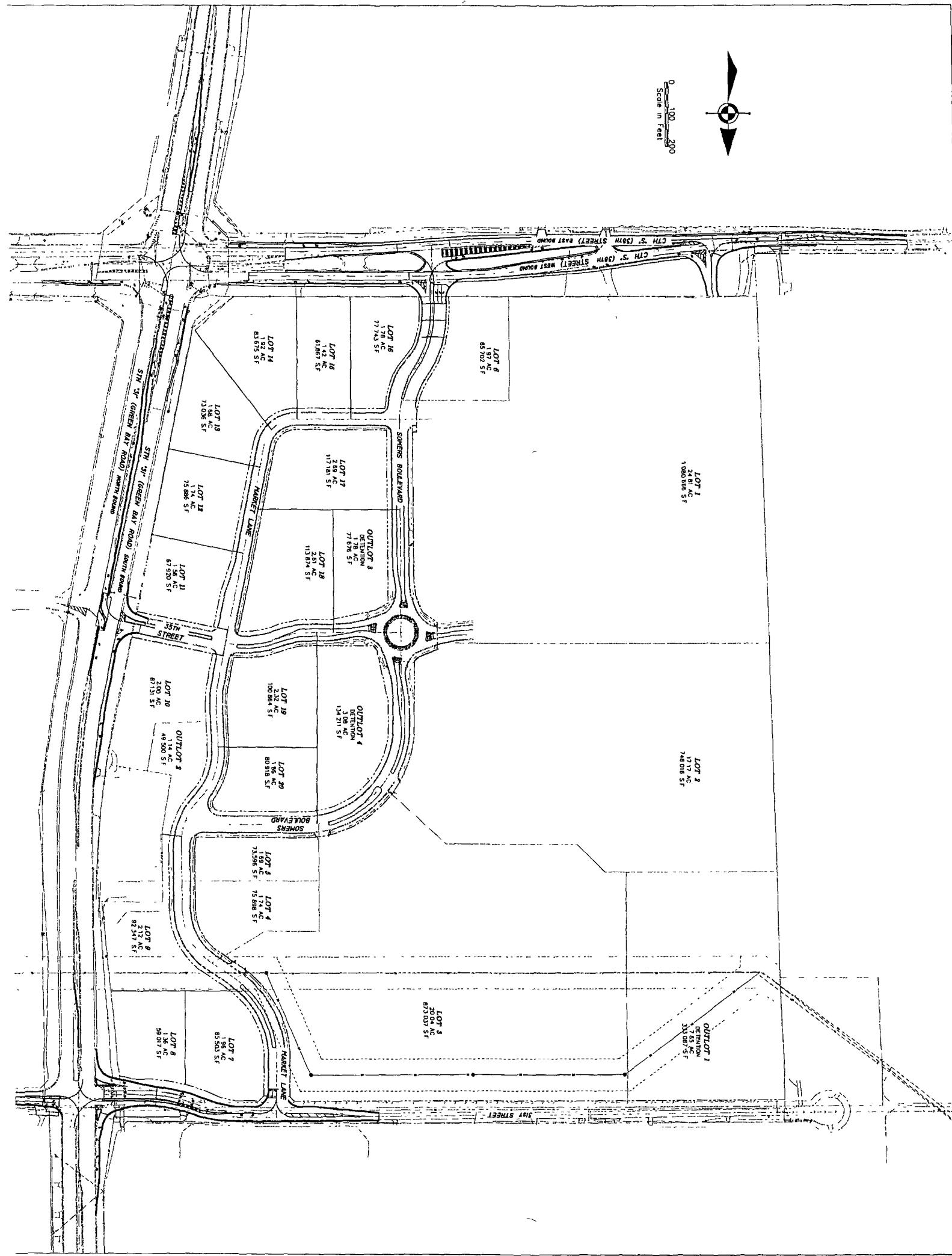


EXHIBIT C - SUB OFF-SITE IMPROVEMENTS PLAN

TOWN OF SOMERS

34TH STREET TO 31ST STREET AT GREEN BAY ROAD

SCHEM. M

FILE # 10A-058 SOMERS-MHIDE SIGNBOARDING SHEAHMITS.CDG

JOB NO. 15-02-058

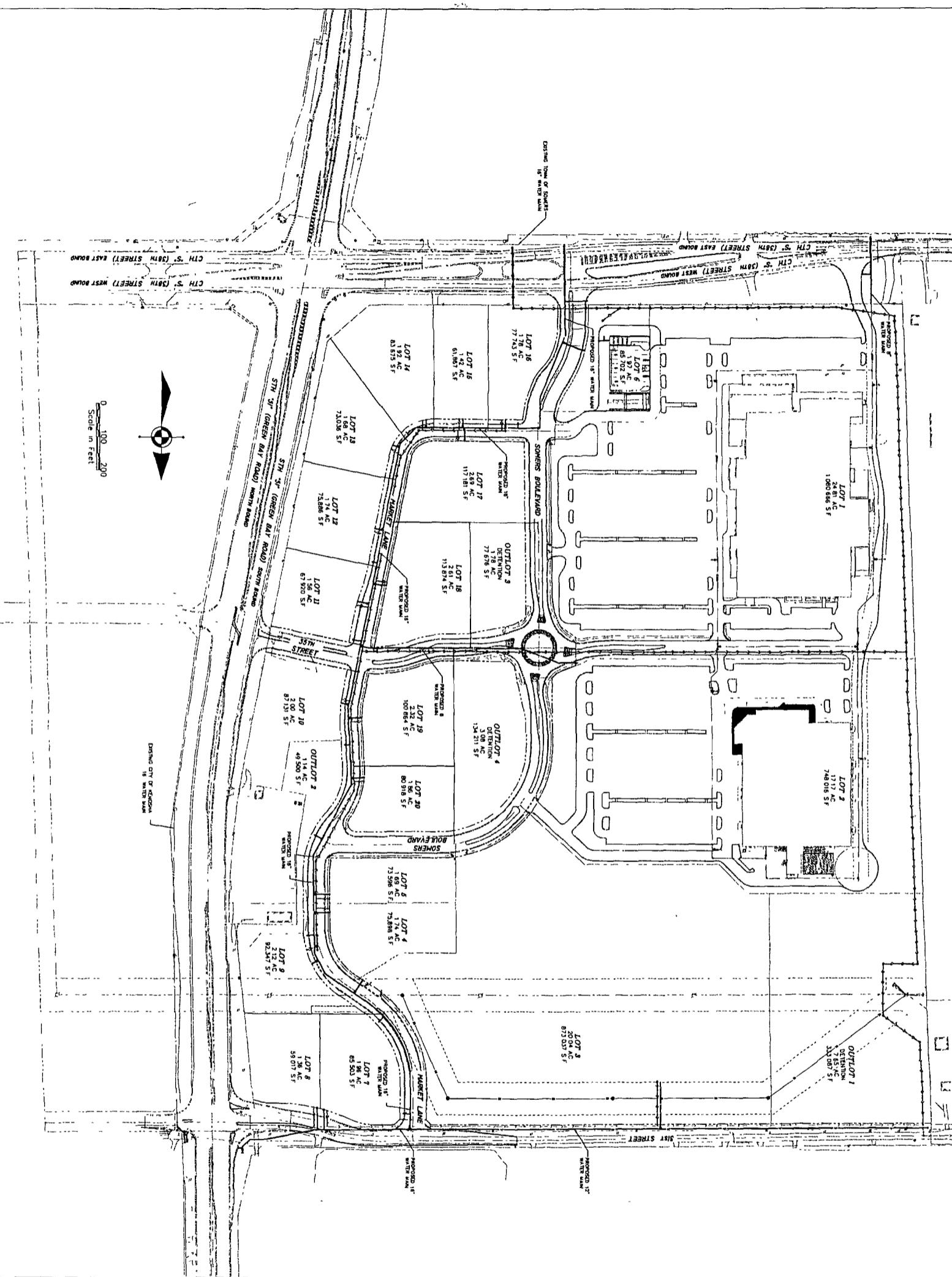
SHEET REVIEW	
AGENCY	DATE

REVISIONS		
NO.	ITEM	DATE
	UPDATED EXHIBITS	MAY 11, 2007

SCALE	$\frac{X}{x} = \frac{Y}{y}$	
GRAPH BY	ME	
CHECKED BY	PM	
DATE	2/14/2007	

Somers Market Center

Exhibit C - Subdivision Off-Site Improvements Plan



TOWN
8TH STREET TO 31ST STREET AT GREEN BAY ROAD

FILE # LOC 058 SOMERS-WHITESIDE DRAWINGS EXHIBIT 50 DWG

SHEET REVIEW	
AGENCY	DATE

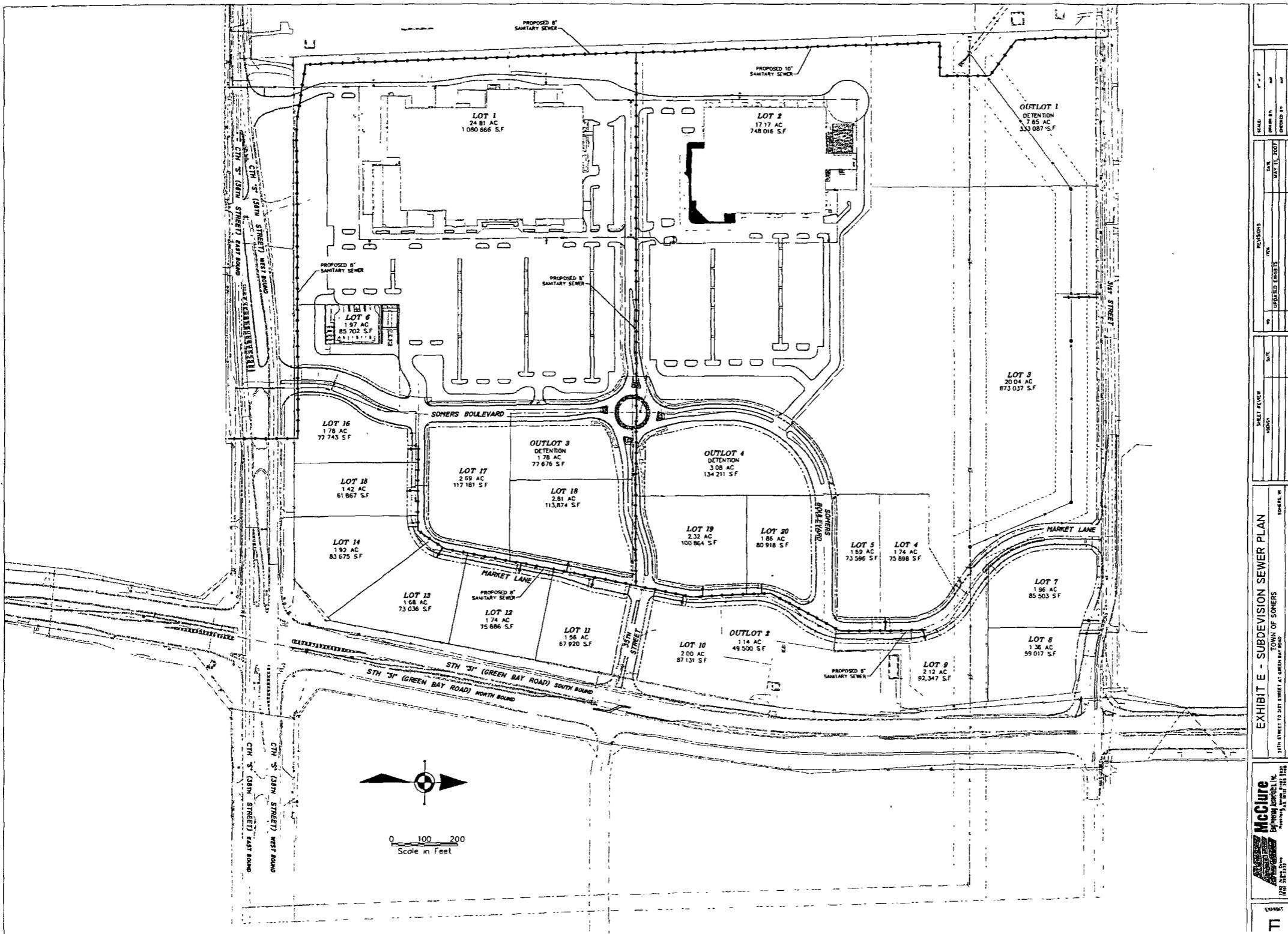
EE	$E' = E$
WBT	WBT
CWD BT	CWD
L	3/4/2007

Somers Market Center

Exhibit D - Subdivision Water Main Plan

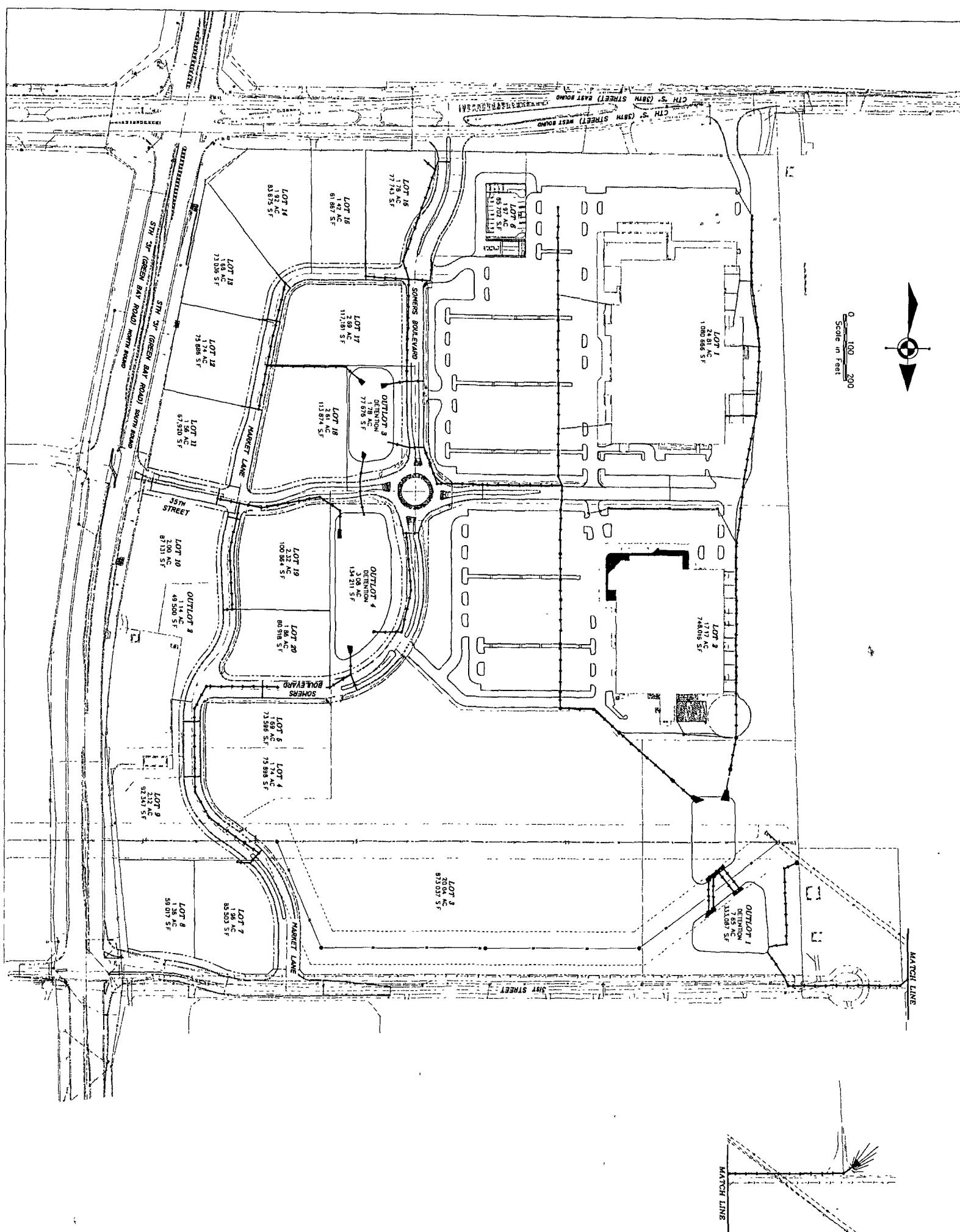
Somers Market Center

Exhibit E - Subdivision Sewer Plan



Somers Market Center

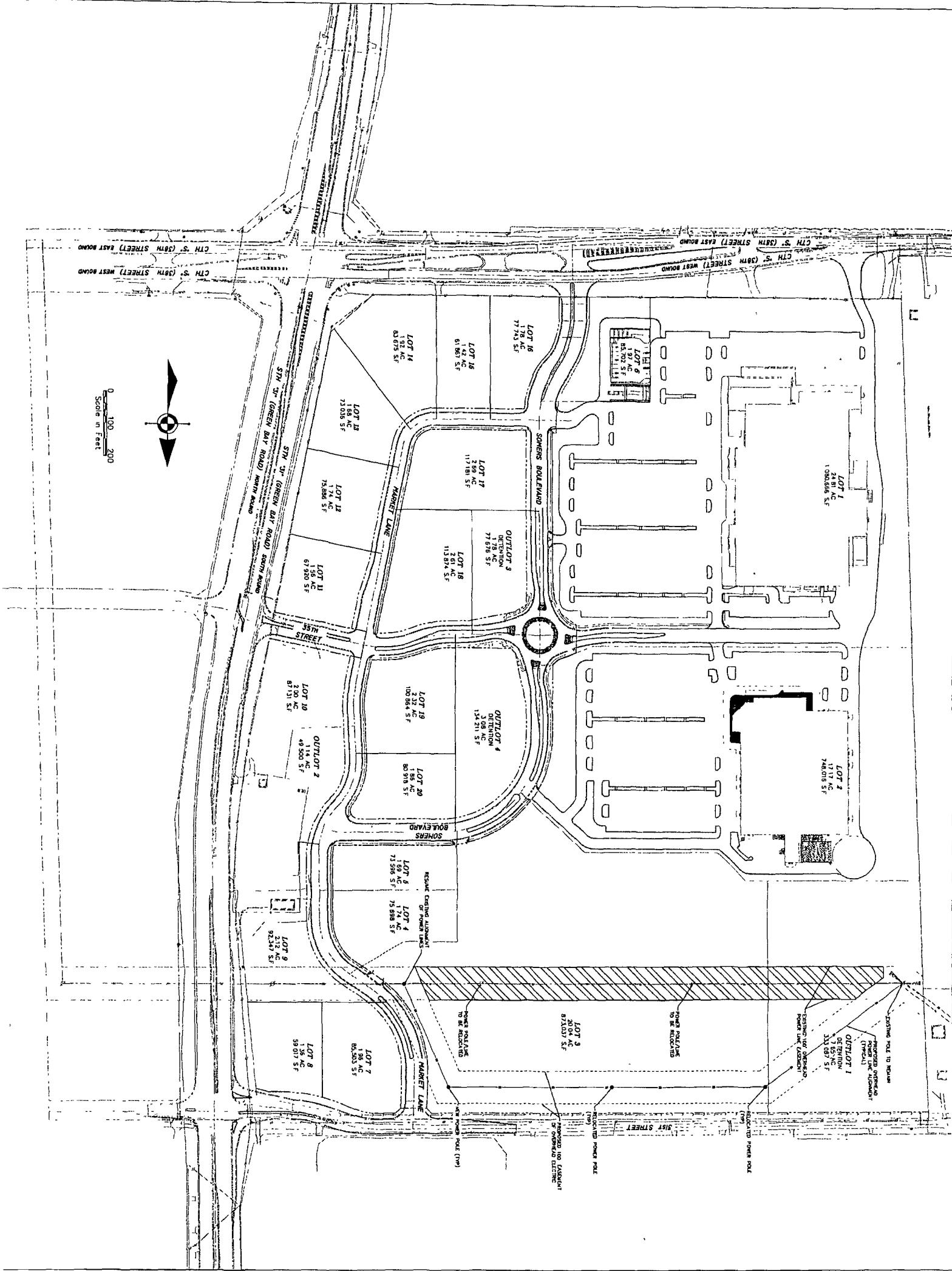
Exhibit F - Off-Site Sewer Plan



DRAWN BY	McClure Engineering Associates Inc. New York, NY 100-0000 FAX (212) 592-2222	EXHIBIT G - SUBDIVISION STORM WATER PLAN			REVISIONS	SCALE
		TOWN OF SOMERS	SOMERS, NY	ITEM		
FILE #	VA-010 SOMERS INFORMATION DRAWINGS LEAD-B16.DWG	JOB #	10-01-001	UPDATED EXHIBITS	MAY 11, 2007	1" = 1'

Somers Market Center

Exhibit G - Subdivision Storm Water Plan

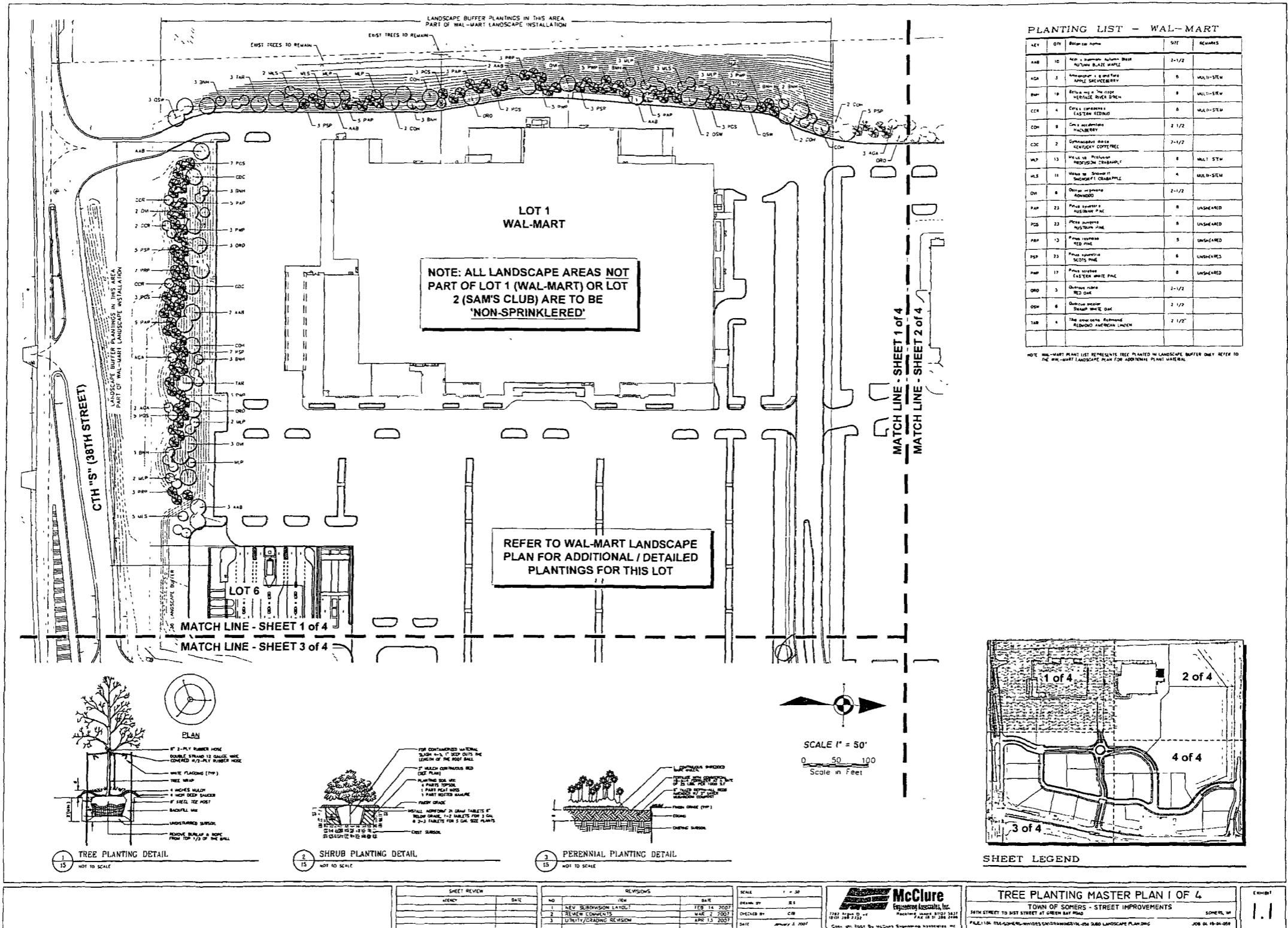


Somers Market Center

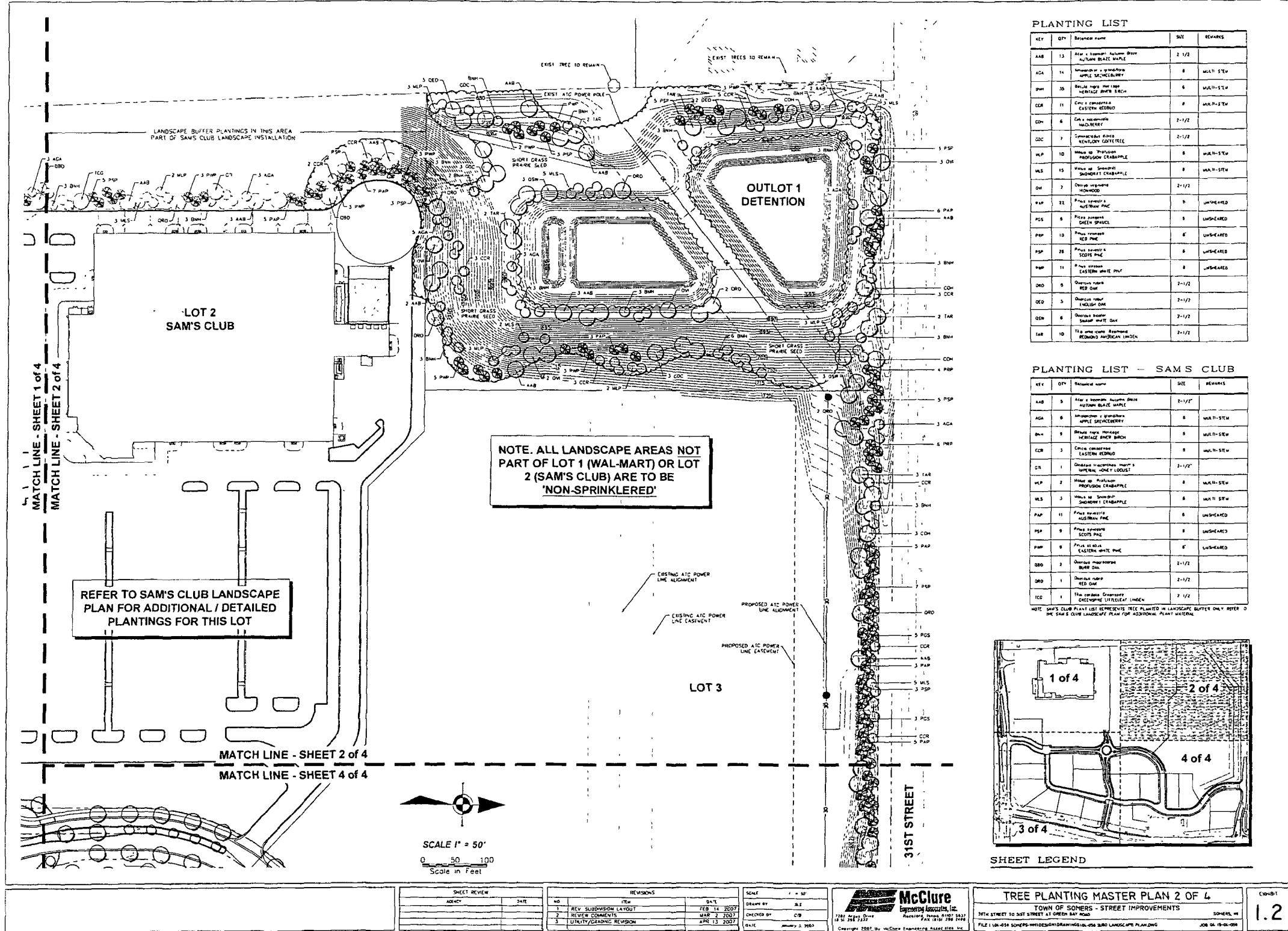
Exhibit H - Subdivision ATC Overhead Electric Plan

Somers Market Center

Exhibit I.1 - Subdivision Master Tree Planting Plan

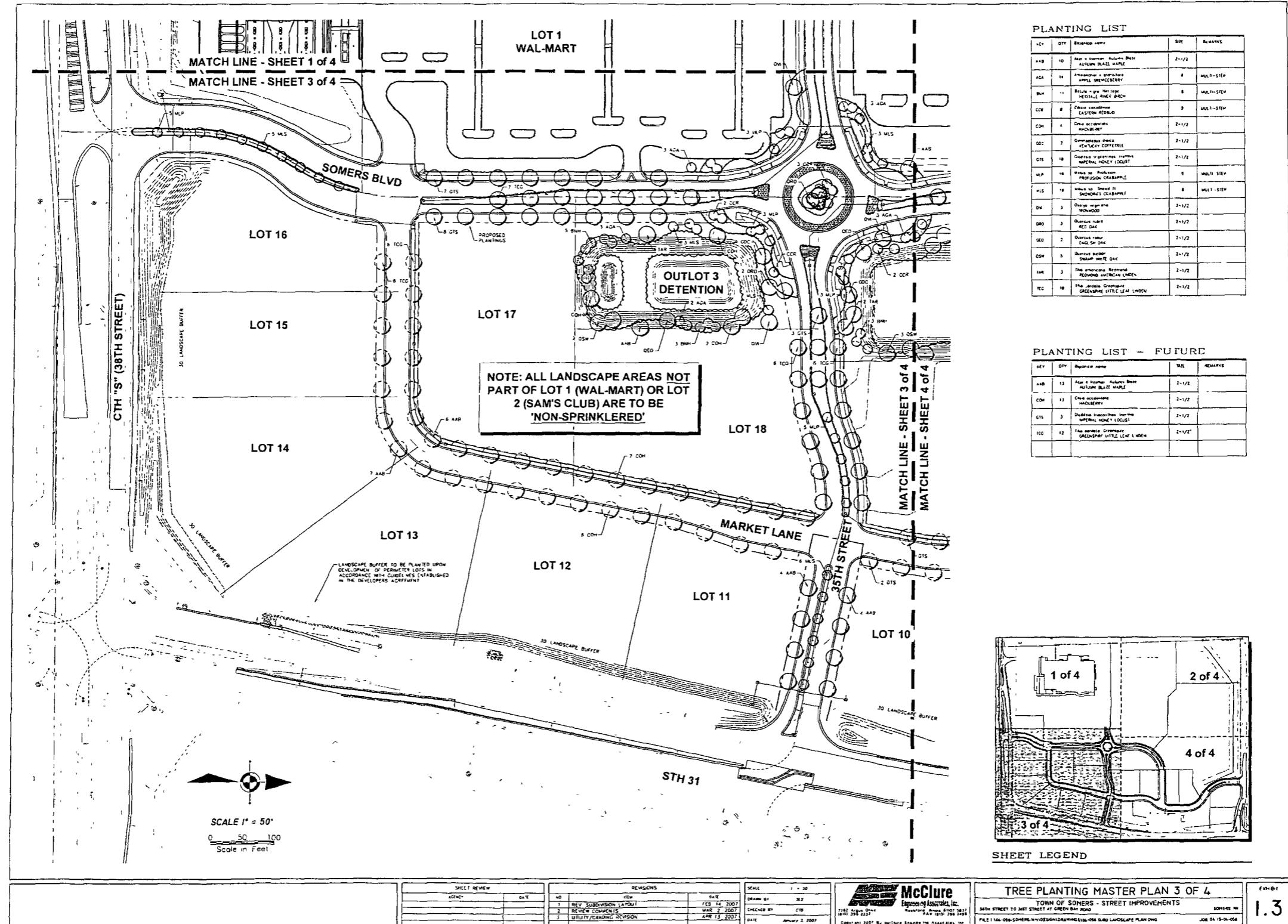


Somers Market Center Exhibit I.2 - Subdivision Master Tree Planting Plan



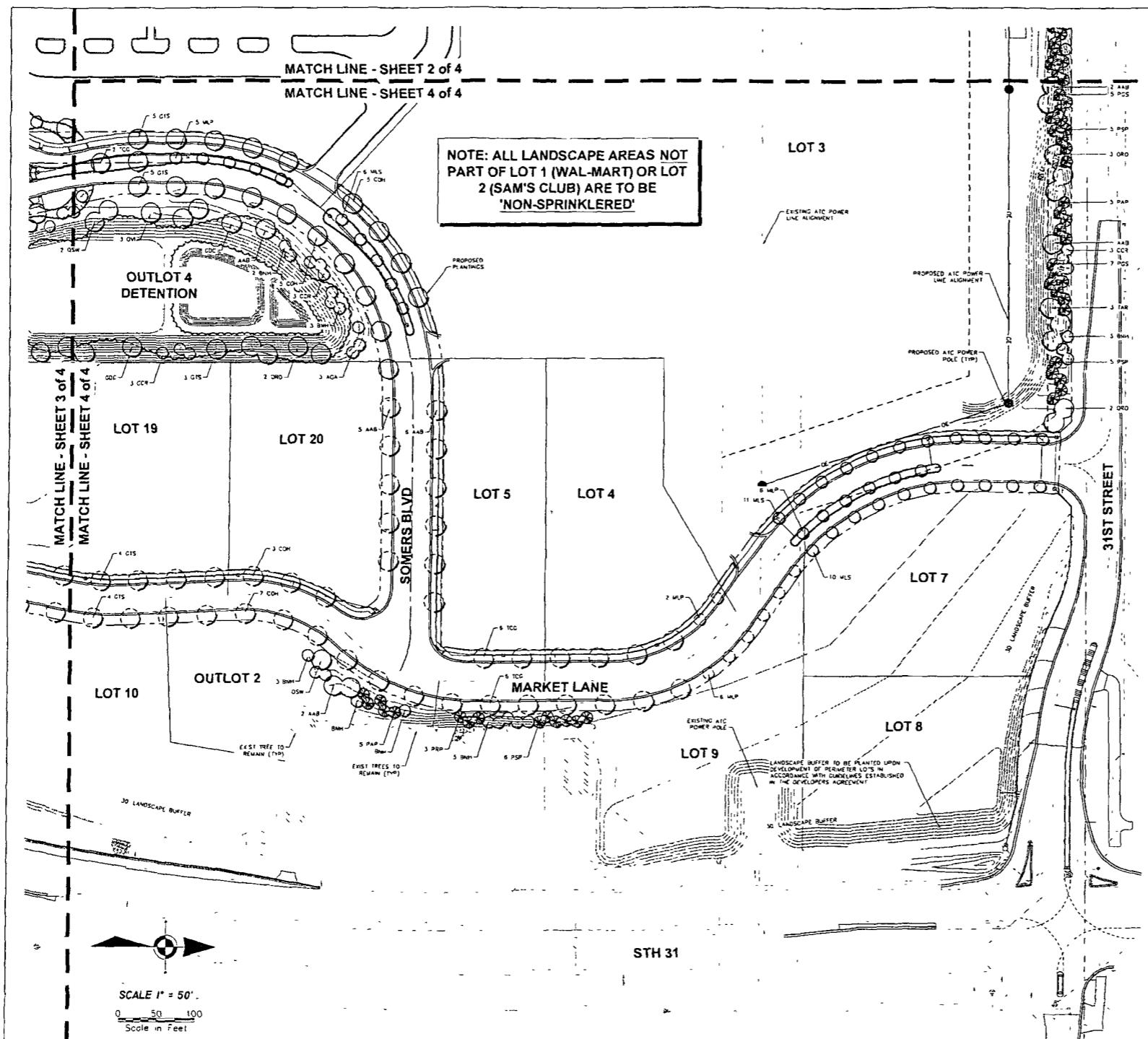
Somers Market Center

Exhibit I.3 - Subdivision Master Tree Planting Plan



Somers Market Center

Exhibit I.4 - Subdivision Master Tree Planting Plan



SHEET REVIEW		REVISIONS			SCALE		McClure		TREE PLANTING MASTER PLAN 4 OF 4			EXHIBIT	
AGENCY	DATE	NO.	REV.	DATE	1:50	CHANGED BY	DES.	CHANGED BY	DES.	FILE #	DATE	1.4	
1. NEW SUBDIVISION LAYOUT	FEB 14 2007	1	1	MAR 2 2007	JAN 2007	JAN 2007	JAN 2007	JAN 2007	JAN 2007	34TH STREET TO 31ST STREET AT GREEN BAY ROAD	SOMERS, NY		
2. REVIEW CHANGES										FILE #104-050-SOMERS-WHITESIDE MARKETING INC.-0102 LANDSCAPE PLAN.DWG	JOB #104-050-000		

Somers Market Center

Exhibit J - Subdivision Typical Sections

EXHIBIT J - SUBDIVISION ROADWAY TYPICALS

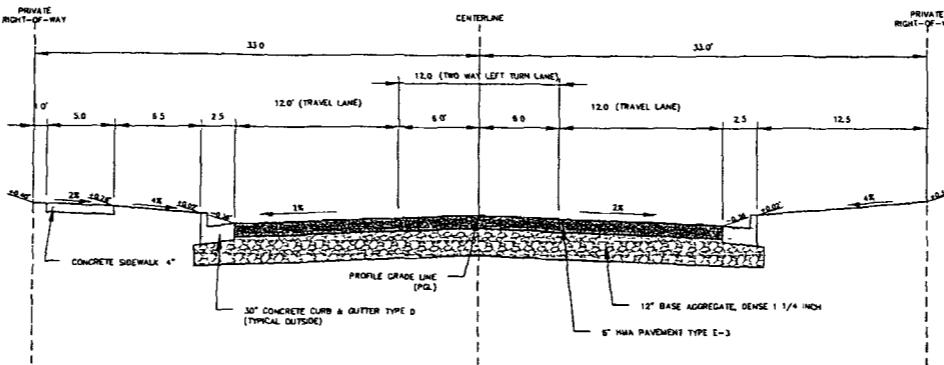
TOWN OF SOHRS
THIRTY STREET TO 301 STREET AT GREEN BAY ROAD

1/4 MI. E VIA C69 SOHRS HIGHWAY ORANGE & WHITE LINE

SOMERS, WI
JUN 04 19 1989

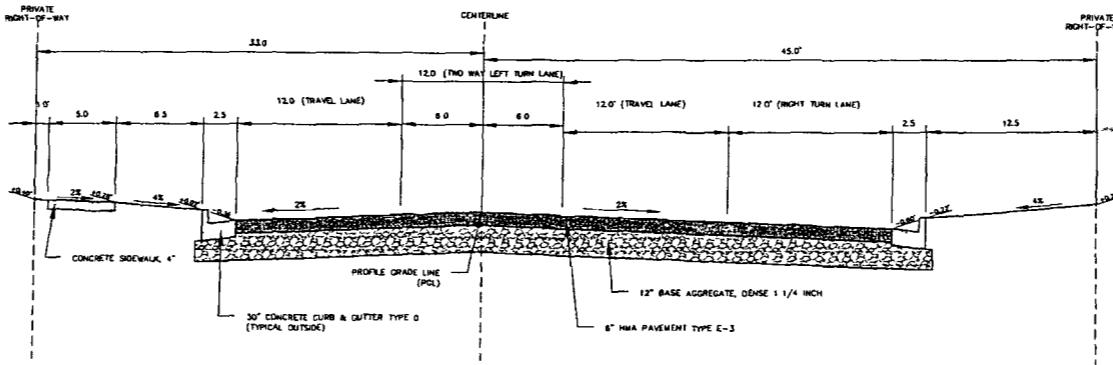
EXHIBIT
J1

SHEET NUMBER		REASON		E & F	
AGENCY	DATE	UPDATED	ITEM	DATE BY	EXPIRED BY
		ENR B-15		MAY 11, 2007	JUN 11, 2007
				DATE	2/P-2007



**TYPICAL SECTION
(MARKET LANE)**

STA 260+24 - 261+24



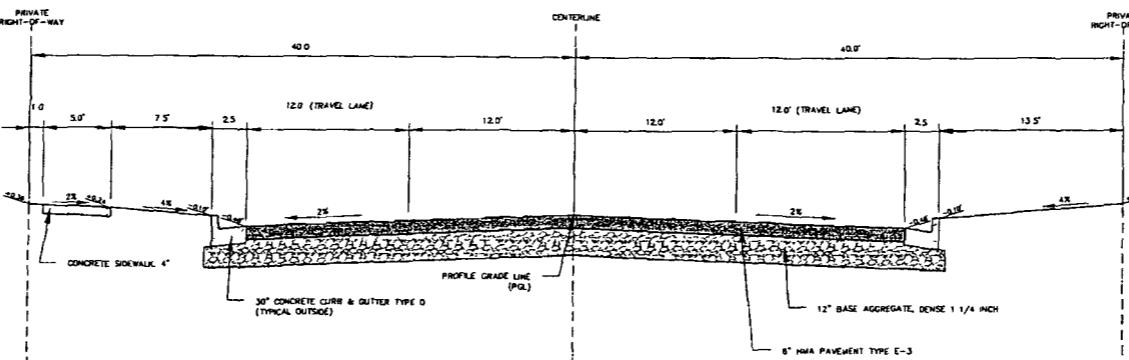
**TYPICAL SECTION
(MARKET LANE)**

STA 268+40 - 273+40

STA 275+55 - 276+89

(SOMER'S BLVD.)

STA 418+82 - 423+26

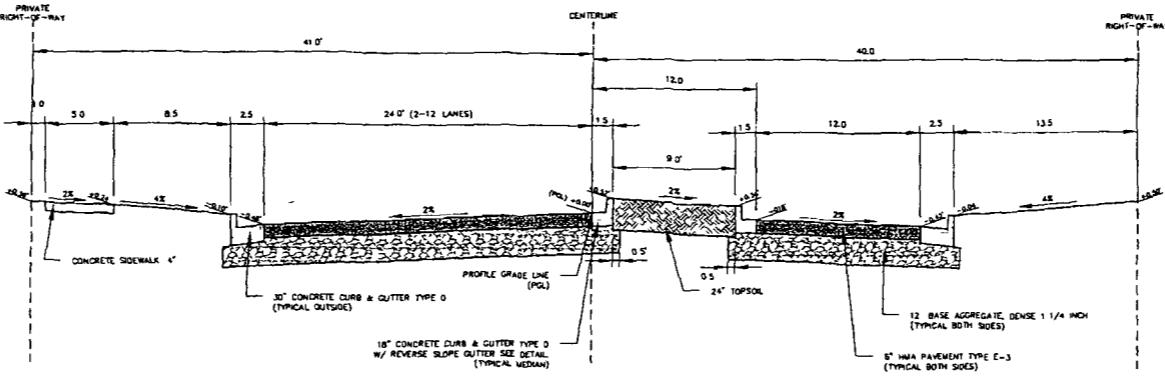


Somers Market Center

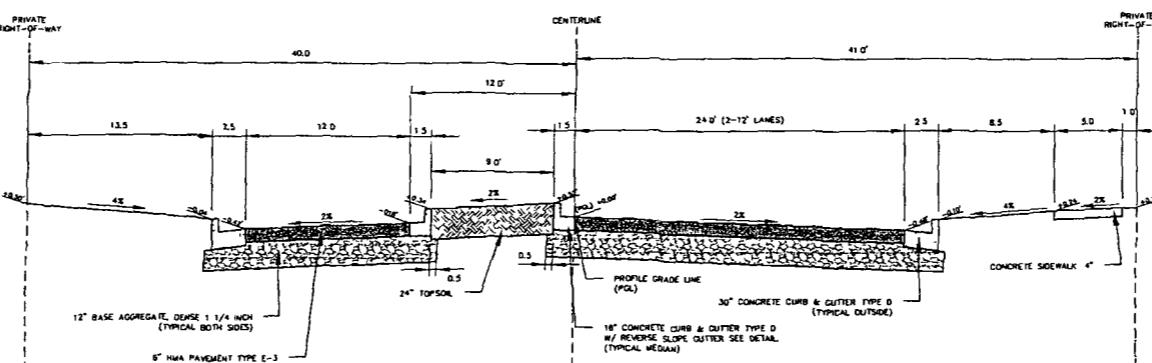
Exhibit J - Subdivision Typical Sections

SECTION	R'DWY	RDWY	RDWY	RDWY	RDWY
MARKET LANE	405+83	406+67	407+00	407+33	408+00
SOMER'S BLVD.	273+40	275+55	276+00	276+33	277+00
35TH STREET	414+92	418+82	419+00	419+23	420+00
STATION	1273	1275	1276	1277	1278

**TYPICAL SECTION
(MARKET LANE)
STA 273+40 - 275+55
(SOMER'S BLVD.)
STA 405+83 - 406+67**



**TYPICAL SECTION
(SOMER'S BLVD.)
STA 414+92 - 418+82
(35TH STREET)
STA 494+72 - 495+67**



**TYPICAL SECTION
(SOMER'S BLVD.)
STA 408+11 - 409+72**

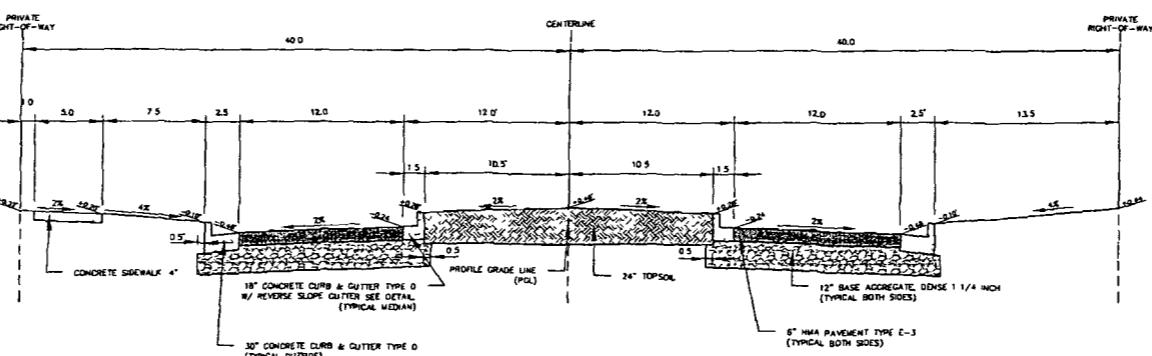


EXHIBIT J - SUBDIVISION ROADWAY TYPICALS		TOWN OF SOMERS		SOMERS MARKET CENTER	
STREET TO SITE AT SOMERS MARKET ROAD	STREET TO SITE AT SOMERS MARKET ROAD	STATION	STATION	STATION	STATION
FA.T. NO. 101 SOMERS MARKET CENTER ELEMENTS.Dwg	FA.T. NO. 101 SOMERS MARKET CENTER ELEMENTS.Dwg	1273	1275	1276	1277
DATE 10/22/2007	DATE 10/22/2007	10/22/2007	10/22/2007	10/22/2007	10/22/2007



EXHIBIT	J
12	12

Somers Market Center

Exhibit J - Subdivision Typical Sections

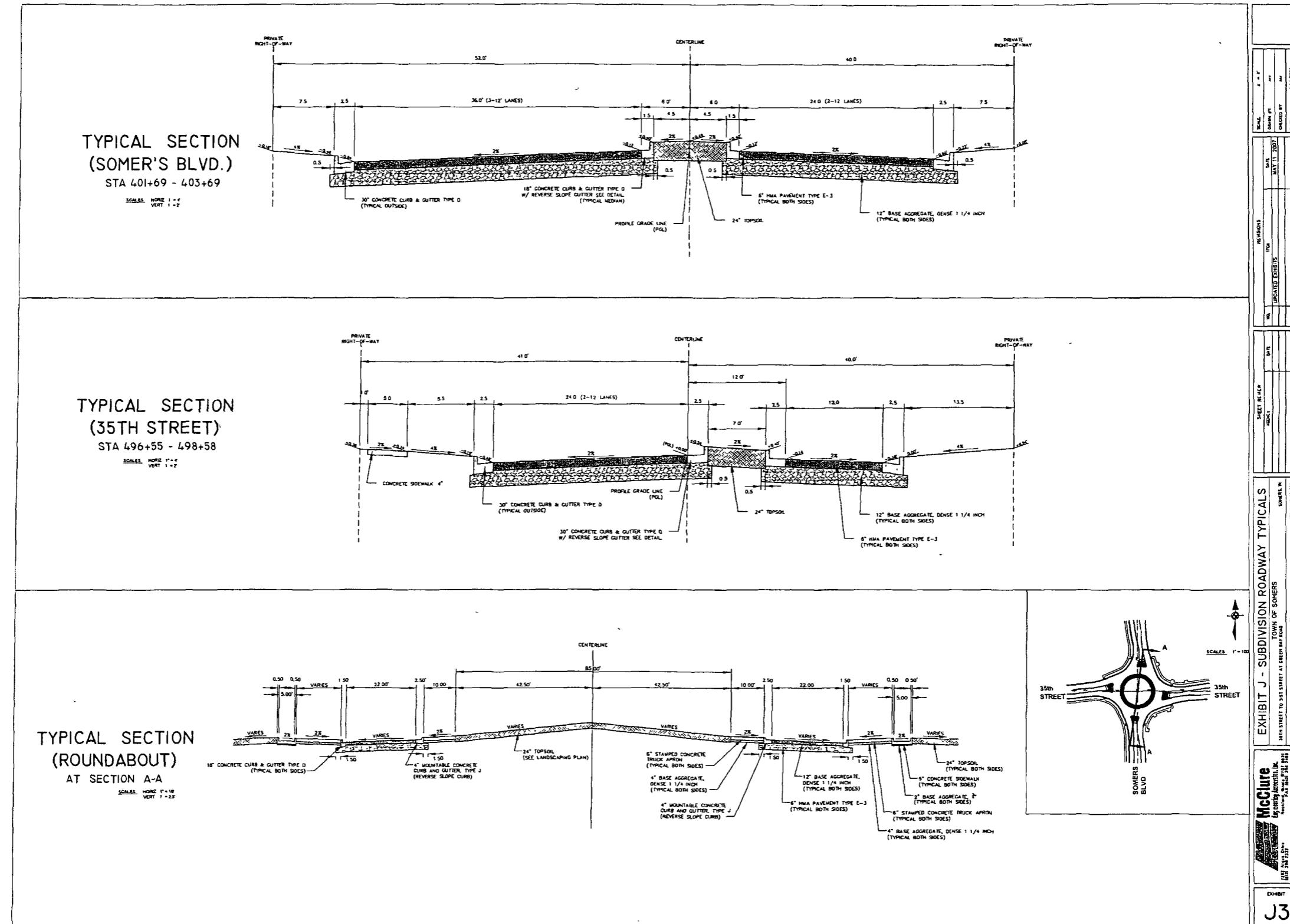
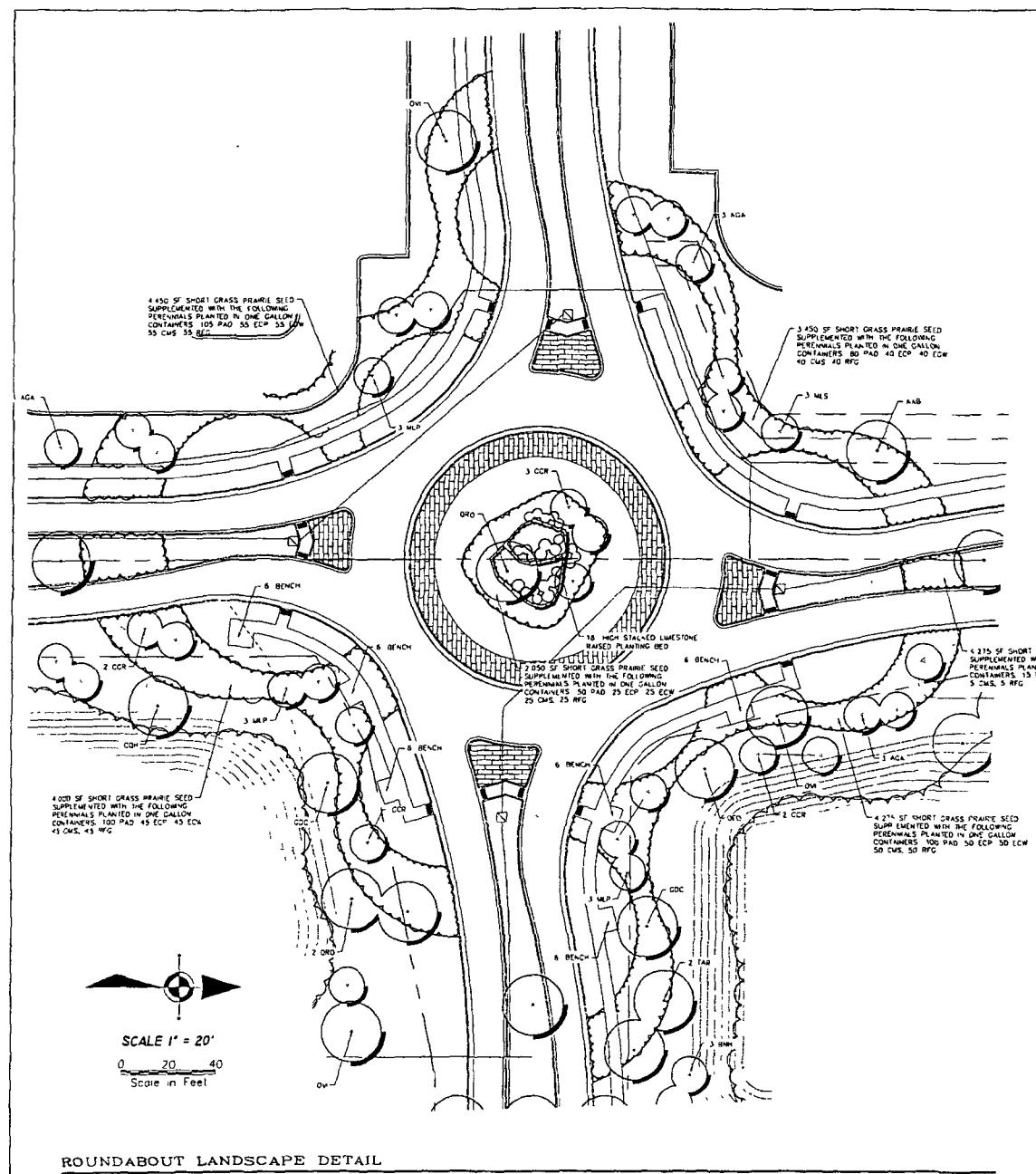


Exhibit K - SubdivisionRoundabout Plan



ROUNDABOUT LANDSCAPE DETAIL

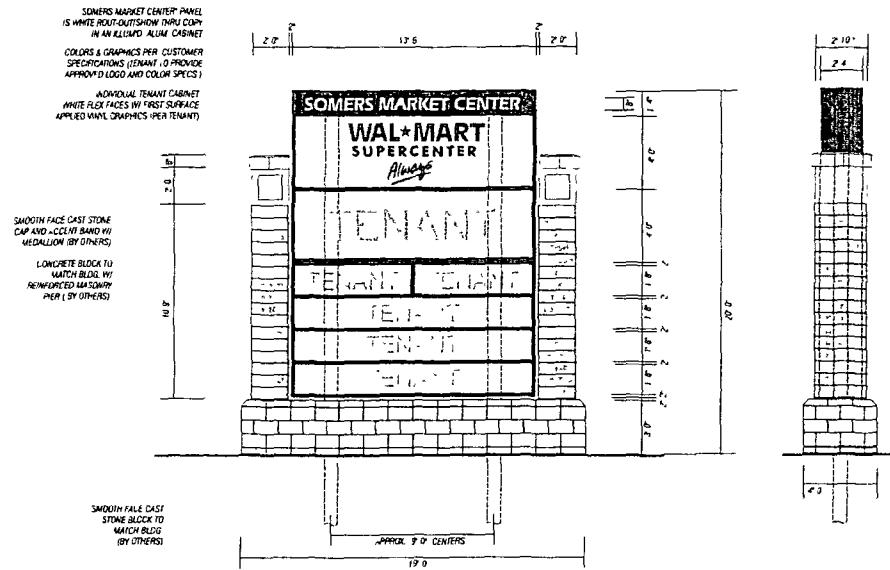
PLANTING LIST - ROUNDABOUT				
KEY	QTY	Botanical Name	SIZE	REMARKS
AAB	1	<i>Acer x freemanii Autumn Blaze</i> AUTUMN BLAZE MAPLE	2-1/2"	
ACA	9	<i>Amaranthus x grandiflorus</i> APEX BLACKBERRY	2 1/2"	
CWS	225	<i>Ostrya virginiana</i> VIRGINIA SNAKEWOOD	1 GAL	
CCR	6	<i>Cercidiphyllum japonicum</i> EASTERN KEDDOO	8	MULTI-STEM
COM	1	<i>Acer x negundo</i> Autumn Blaze HACKBERRY	2-1/2"	
FCD	225	<i>Eryngium planum</i> Negroni PURPLE CONEFLOWER	1 GAL	
ECR	225	<i>Eryngium planum</i> White Swan PURPLE CONEFLOWER	1 GAL	
GDC	2	<i>Gymnospermium</i> doorei NEWFOUND GINGERBREAD	2-1/2"	
HLP	9	<i>Morus sp.</i> PROLIFERUS PROLIFERUS CRAMPTREE	8	MULTI-STEM
MES	3	<i>Morus sp.</i> SUMMER FL	8	MULTI-STEM
EWI	2	<i>Ostrya virginiana</i> VIRGINIA SNAKEWOOD	2-1/2"	
PAD	150	<i>Polygonatum multiflorum</i> GOLDEN FOUNTAIN GRASS	1 GAL	
WFG	225	<i>Rubus fruticosus</i> Golden KELCH EYED SUSAN	1 GAL	
OEO	1	<i>Quercus rubra</i> ENGLISH OAK	2-1/2"	
BRS	5	<i>Quercus rubra</i> RED OAK	2-1/2"	
TAB	2	<i>Populus tremuloides</i> REGAL AMERICAN LINDEN	2-1/2"	

TREES LISTED IN THIS PLANTING LIST ALSO APPEAR ON TREE PLANTING MASTER PLAN
SHEET 3 OF 4

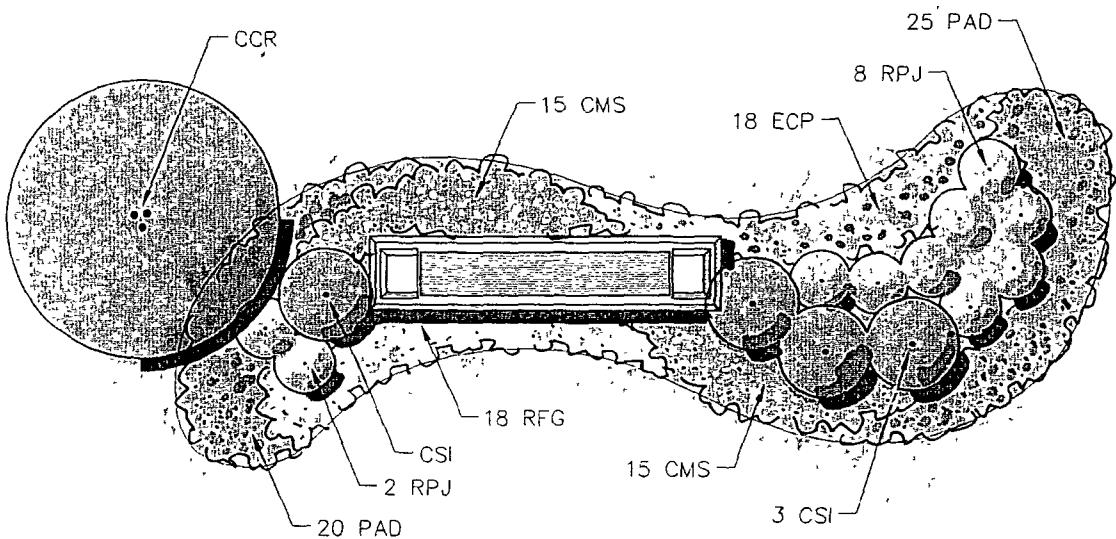
NOTE. ALL LANDSCAPE AREAS NOT PART OF LOT 1 (WAL-MART) OR LOT 2 (SAM'S CLUB) ARE TO BE 'NON-SPRINKLERED'

SHEET REVIEW		REVISIONS		McClure		ROUNDABOUT TREE PLANTING DETAILS		EXHIBIT
AGENCY	DATE	NO.	REV	DATE	DRAWN BY	ASSOCIATES, INC.	TOWN OF SOMERS - STREET IMPROVEMENTS	K
		1	SUBD LAYOUT: PRELIM REVIEW COMMENTS	FEB 14 2007	CHEC'D BY	1300 BROADWAY, SUITE 100 WHITE PLAINS, NY 10601-3238 PHONE (914) 273-2357 FAX (914) 273-2356	3RD STREET TO 5TH STREET AT GREEN RD & 10TH	
					APPROVED BY	CHIEF ENGR. 2007 BY MCCLURE ENGINEERS AND ASSOCIATES, INC.	SOMERS NY	
					AMENDED	FILE # 104-108 SOMERS-MINDESKON DRAMING-SUB 3RD LANDSCAPE PLANTING	2007-02-14-008	

Somers Market Center Exhibit L - Subdivision Entry Feature Plan



SUBDIVISION MONUMENT SIGN

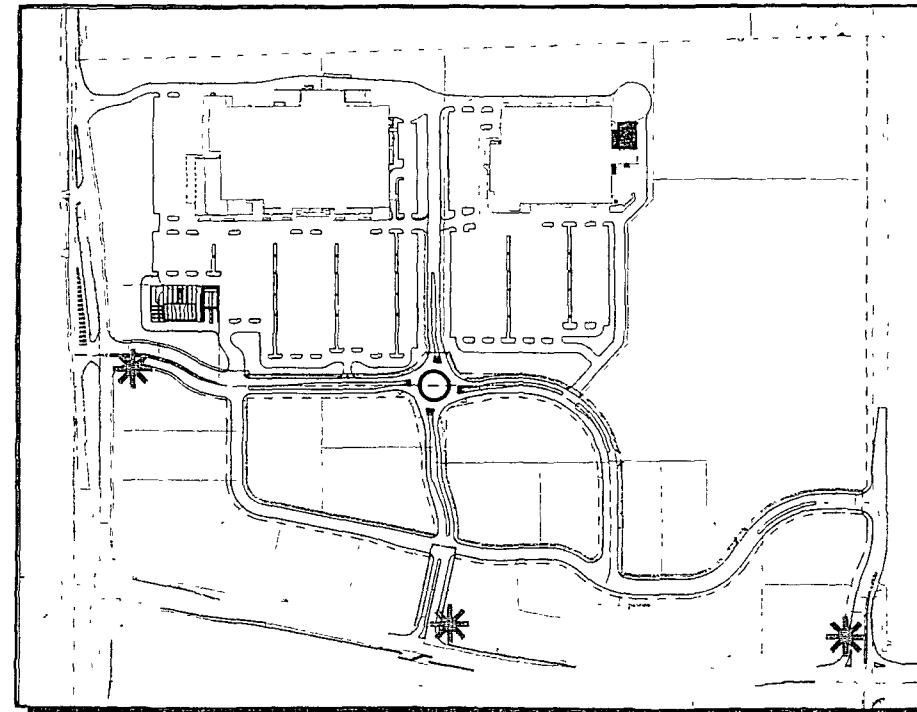


MONUMENT SIGN LANDSCAPE PLAN

PLANTING LIST

KEY	QTY	Botanical name	SIZE	REMARKS
CCR	3	Cercis canadensis EASTERN REDBUD	8'	MULTI-STEM
CMS	90	Chrysanthemum maximum SHASTA DAISY	1 GAL	
CSI	12	Chrysanthemum maximum ISANTI RED TWIG DOGWOOD	36"	
ECP	54	Echinacea purpurea 'Magnus' PURPLE CONEFLOWER	1 GAL	
PAD	135	Pennisetum alopecuroides 'Hummel' DWARF FOUNTAIN GRASS	1 GAL	
RFG	54	Rudbeckia fulgida 'Goldsturm' BLACK EYED SUSAN	1 GAL	
RPJ	30	Rhododendron x 'P.J.M.' PJM RHODODENDRON	30"	

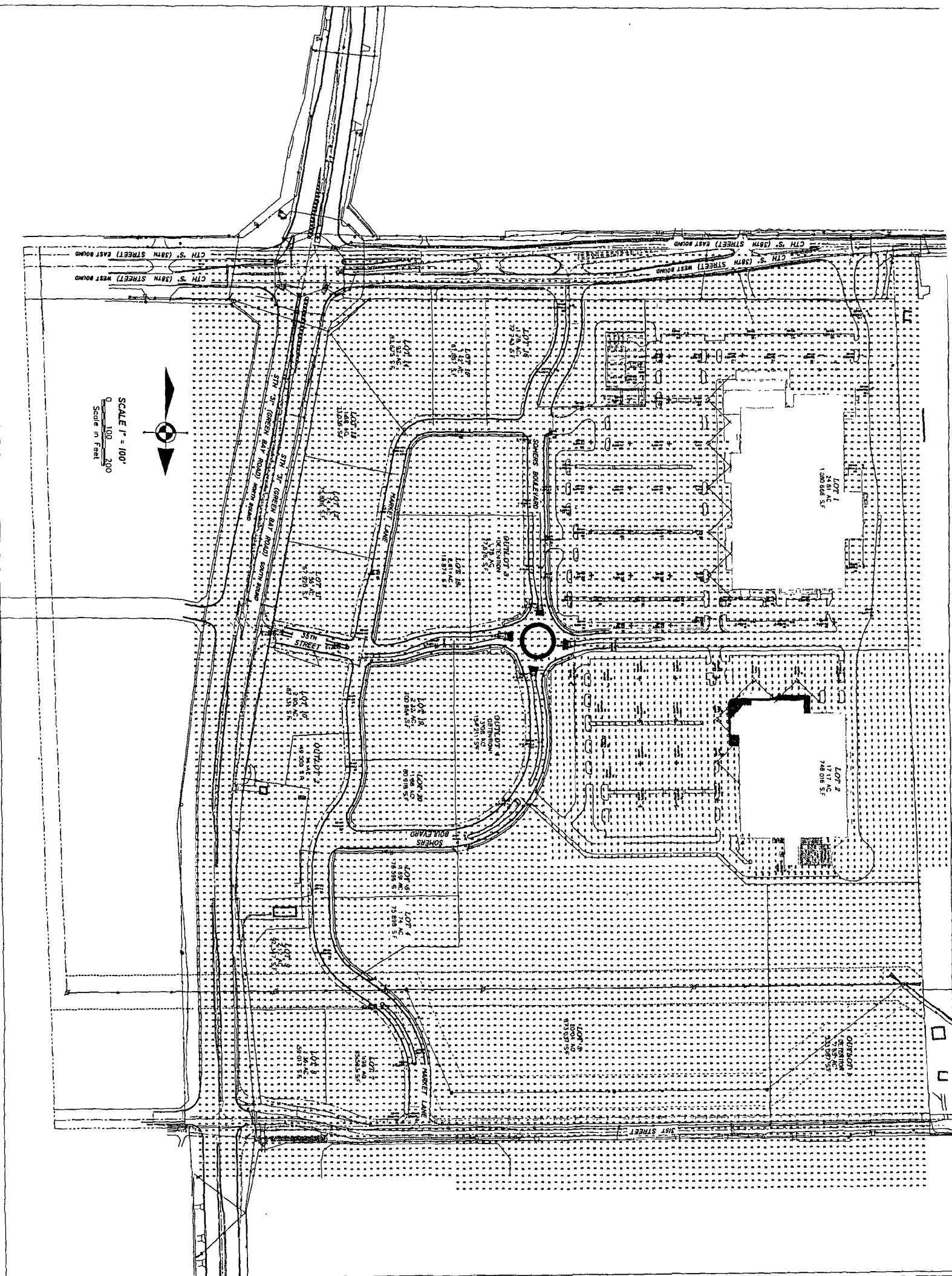
* QUANTITIES REFLECT TOTALS FOR ALL THREE BED SIGN LOCATIONS



SIGN LOCATION MAP

I \04-058-SOMERS-WM\DESIGN\DRAWINGS\Exhibits\Y.dwg, Model, 5/7/2007 1:47:15 PM,
0mm, 1 1 07087

Somers Market Center
Exhibit M - Subdivision Signage Plan



z



EXHIBIT N - SUB LIGHTING-PHOTOMETRIC PLAN

TOWN OF SOMERS

SOMERS NY

26TH STREET TO 105TH STREET AT GREEN BAY ROAD

FILE # 104-038 SOMERS-WHITFIELD DRAWINGS & EXHIBITS INC DPC

JOB DL 15-01-058

REVISIONS		SCALE	1" = 100'
NO.	ITEM	DATE	DRAWN BY
	UPDATED ERHIBITS	MAY 11, 2007	PCH
			CDB
			DATE 02/13/2007

Somers Market Center

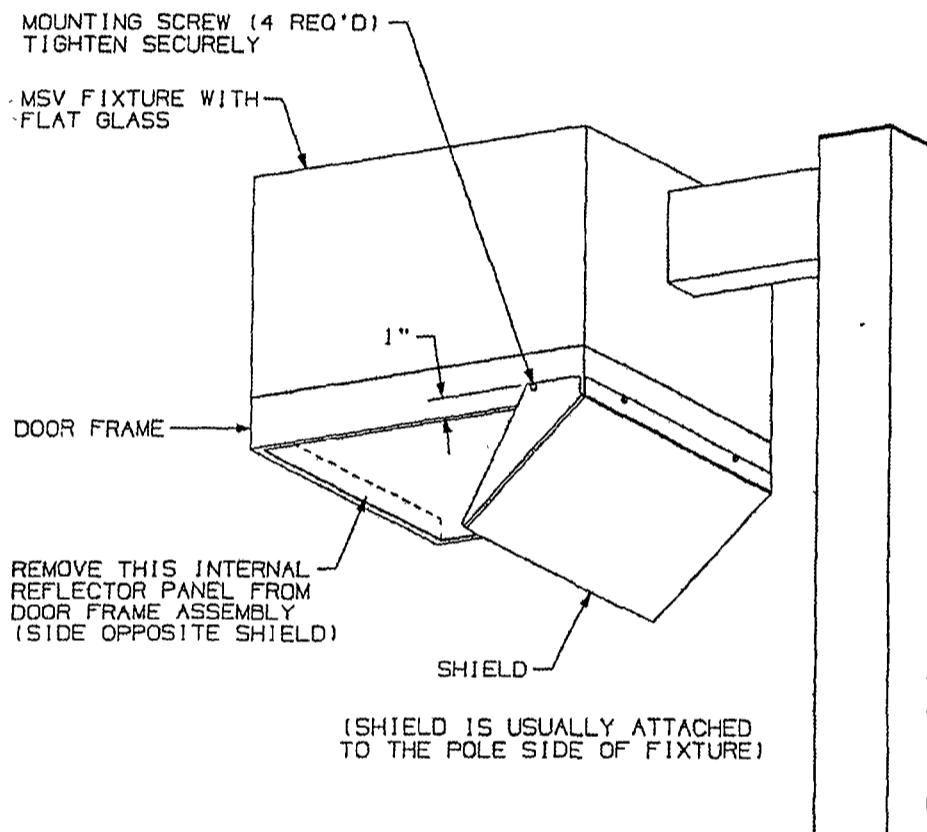
Exhibit N - Subdivision Lighting/Photometric Plan

I:\04-058-SOMERS-WM\DESIGN\DRAWINGS\Exhibits\Y.dwg, Model, 5/7/2007 1:47:43 PM,
0mm, 1 1 07087

Somers Market Center

Exhibit O - Subdivision Lighting Fixtures (7 sheets total)

INSTALLATION INSTRUCTIONS FOR MSV FLAT GLASS GLARE SHIELD



WARNINGS!

- * DISCONNECT POWER BEFORE INSTALLATION OR SERVICING
- * ADDING THIS SHIELD WILL INCREASE EPA. VERIFY THAT POLE IS SIZED PROPERLY.

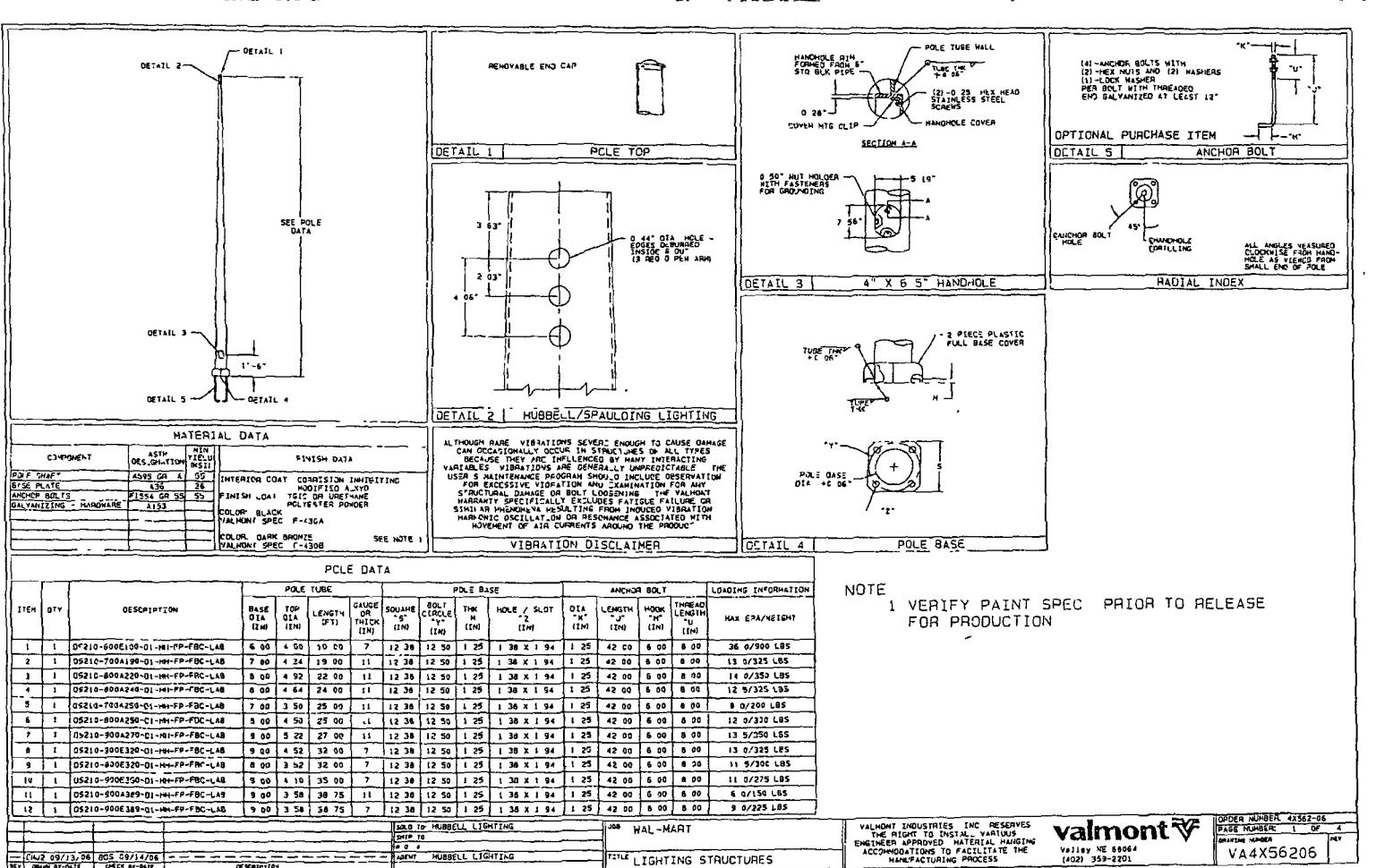
INSTALLATION:

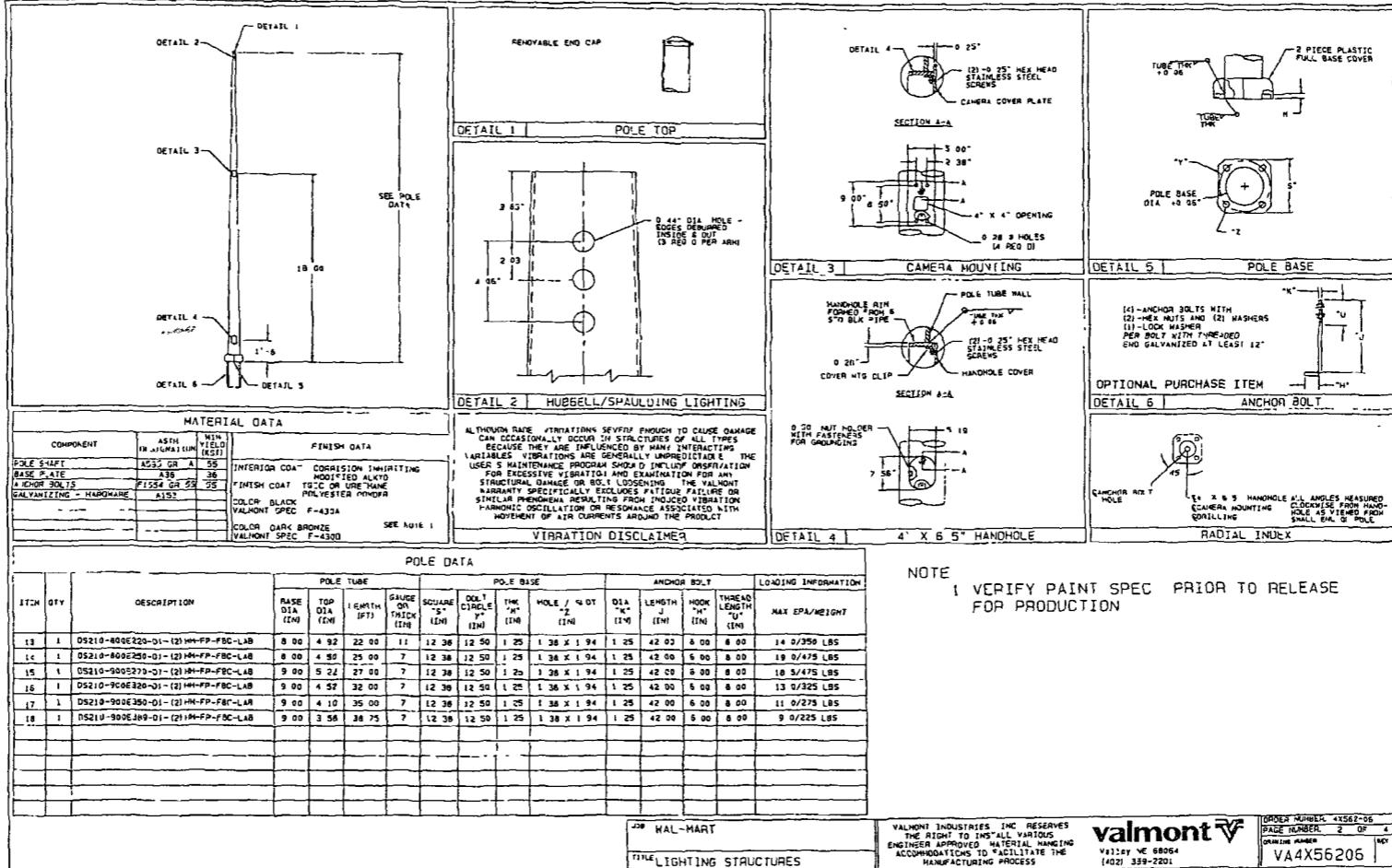
- * USE SHIELD AS A TEMPLATE FOR MARKING HOLE LOCATIONS
- * DRILL .136" Ø HOLES (.3/8" DEEP MAX) IN DOOR FRAME
- * ATTACH SHIELD TO DOOR FRAME WITH SCREWS PROVIDED
- * REMOVE INTERNAL REFLECTOR PANEL (SEE DIAGRAM)



Hubbell Lighting, Inc.
© A Subsidiary of Hubbell Incorporated
2000 Electric Way
Christiansburg, VA 24073-2500
(540) 382-6111
FAX (540) 382-1526

268-1254-9901





MAGNUSQUARE® II SERIES

Vertical Lamp
Flat Glass

MSV

Job Wal-Mart	Type																																																																																																		
<table border="1"> <tr> <th colspan="2">Dimensions</th> <th colspan="2">Specifications</th> </tr> <tr> <td colspan="2"> </td> <td colspan="2"> </td> </tr> <tr> <td colspan="2"> MSV <table border="1"> <tr> <td>A</td> <td>B</td> </tr> <tr> <td>14 9"</td> <td>21 0" sq</td> </tr> <tr> <td>378 mm</td> <td>533 mm</td> </tr> </table> </td> <td colspan="2"> Housing Rugged one piece aluminum, formed and welded, allows no access to weather Lens / Door Frame Extruded aluminum door with sealed tempered flat glass lens. Door is hinged and has gasketed seal to housing when secured with two Hubbell Gard® Fasteners Ballast Mounted to a galvanized steel end support, which ties into arm for secure support Optical Full cutoff performance with maximum uniformity Segmented reflector system produces excellent pole spacing capability Additional Features Lekrocote® powder coat finish provides protection to aluminum construction and lasting appearance. All units supplied with lamp for installation convenience. UL and CSA NRTL/C certified for wet locations. Multiple optical capabilities and mounting accessories are available </td> </tr> </table>		Dimensions		Specifications						MSV <table border="1"> <tr> <td>A</td> <td>B</td> </tr> <tr> <td>14 9"</td> <td>21 0" sq</td> </tr> <tr> <td>378 mm</td> <td>533 mm</td> </tr> </table>		A	B	14 9"	21 0" sq	378 mm	533 mm	Housing Rugged one piece aluminum, formed and welded, allows no access to weather Lens / Door Frame Extruded aluminum door with sealed tempered flat glass lens. Door is hinged and has gasketed seal to housing when secured with two Hubbell Gard® Fasteners Ballast Mounted to a galvanized steel end support, which ties into arm for secure support Optical Full cutoff performance with maximum uniformity Segmented reflector system produces excellent pole spacing capability Additional Features Lekrocote® powder coat finish provides protection to aluminum construction and lasting appearance. All units supplied with lamp for installation convenience. UL and CSA NRTL/C certified for wet locations. Multiple optical capabilities and mounting accessories are available																																																																																	
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Submitted by

Hubbell Lighting, Inc., 2000 Electric Way, Christiansburg, Virginia 24073, (540) 382-6111 • Fax (540) 382-1526

Architectural Cutoff

OTD 2-5/01

MSV/Flat

MAGNUSQUARE® II SERIES

Vertical Lamp
Flat Glass

MSV

Ordering Information

ACCESSORY - Must be ordered separately

Catalog Number	Description	Weight	EPA
		lbs	kg
		ft ²	m ²
FLUSH MOUNT HARDWARE			
MAL-FM	Flush mount hardware - must order when no arm or adapter is desired on a pole	25	1
ARMS			
MSV-4-X	4" rigid arm	2	9
MSV-10-X	10" rigid arm	5	23
MAL-KF-X	Adjustable arm for flat surfaces (10" Length)	57	26
KNUCKLE			
MAL-K-X	2 3/8" OD tenon slipfitter for one fixture	5	23
MAL-TK-X	2 3/8" OD tenon slipfitter for two fixtures 180°	7	32
TENON ADAPTERS			
SSP-90-X	Square - slipfitter for 2 3/8" or 2 7/8" OD tenons - drilled for four fixtures (10" arm required for 90° configurations)	20	90
RSD-3120-X	2 3/8" - 2 7/8" OD slipfitter for max three fixture (120°) (10" Arms Required)	20	90
RSD-80-X	For 10" arms only - four fixtures max 90° - 4" OD (must order RSD-04 for each luminaire)	20	90
WALL PLATE			
MAL-WP-X	Cast wall plate with fixture hardware, mounts over recessed 4" outlet boxes - lag hardware by others	57	26
POLE ADAPTER			
RSD-04-X	Nominal 4" OD pole adapter provides a flat surface for arm of fixture mounting	15	7
RSD-05-X	Nominal 5" OD pole adapter provides a flat surface for arm of fixture mounting	17	8
GLARE SHIELD			
MSV-FGGS-2	Extreme glare shield for flat glass units only Mounts to housing Restricts lighting to any one side of fixture Black finish is standard	18	8

Note Specify Finish - Replace X = 1 - Bronze, 2 - Black, 3 - Gray and 4 - White



MAL-FM



MSV-4-X
MSV-10-X



MAL-KF-X



MAL-K-X



MAL-TK-X



SSP-90-X



MAL-WP-X



RSD-04/05-X



MSV-FGGS-2



Lighting, Inc.

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MAGNUSQUARE® II SERIES

Vertical Lamp
Flat Glass

MSV

Job Wal-Mart	Type																																																																														
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Architectural Cutoff
OTD 2-5/01
MSV/Flat

MAGNUSQUARE® II SERIES

Vertical Lamp
Flat Glass

MSV

Ordering Information

ACCESSORY - Must be ordered separately

Catalog Number	Description	Weight	EPA
		lbs	kg
		ft ²	m ²
FLUSH MOUNT HARDWARE			
MAL-FM	Flush mount hardware - must order when no arm or adapter is desired on a pole	25	1
ARMS			
MSV-4-X	4" rigid arm	2	9
MSV-10-X	10" rigid arm	5	23
MAL-KF-X	Adjustable arm for flat surfaces (10" Length)	5.7	2.6
KNUCKLE			
MAL-K-X	2 3/8" OD tenon slipfitter for one fixture	5	23
MAL-TK-X	2 3/8" OD tenon slipfitter for two fixtures 180°	7	32
TENON ADAPTERS			
SSP-90-X	Square - slipfitter for 2 3/8" or 2 7/8" OD tenons - drilled for four fixtures (10" arm required for 90° configurations)	20	90
RSD-3120-X	2 3/8" - 2 7/8" OD slipfitter for max three fixture (120°) (10" Arms Required)	20	90
RSD-90-X	For 10" arms only - four fixtures max 90° - 4" OD (must order RSD-04 for each luminaire) 2 3/8" or 2 7/8" OD tenons	20	90
WALL PLATE			
MAL-WP-X	Cast wall plate with fixture hardware, mounts over recessed 4" outlet boxes - lag hardware by others	5.7	2.6
POLE ADAPTER			
RSD-04-X	Nominal 4" OD pole adapter provides a flat surface for arm of fixture mounting	1.5	7
RSD-05-X	Nominal 5" OD pole adapter provides a flat surface for arm of fixture mounting	1.7	8
GLARE SHIELD			
MSV-FGGS-2	Extreme glare shield for flat glass units only Mounts to housing Restricts lighting to any one side of fixture Black finish is standard	1.8	8
Note: Specify Finish - Replace X = 1 - Bronze, 2 - Black, 3 - Gray and 4 - White			



MAL-FM



MSV-4-X
MSV-10-X



MAL-KF-X



MAL-K-X



MAL-TK-X



SSP-90-X



MAL-WP-X



RSD-04/05-X

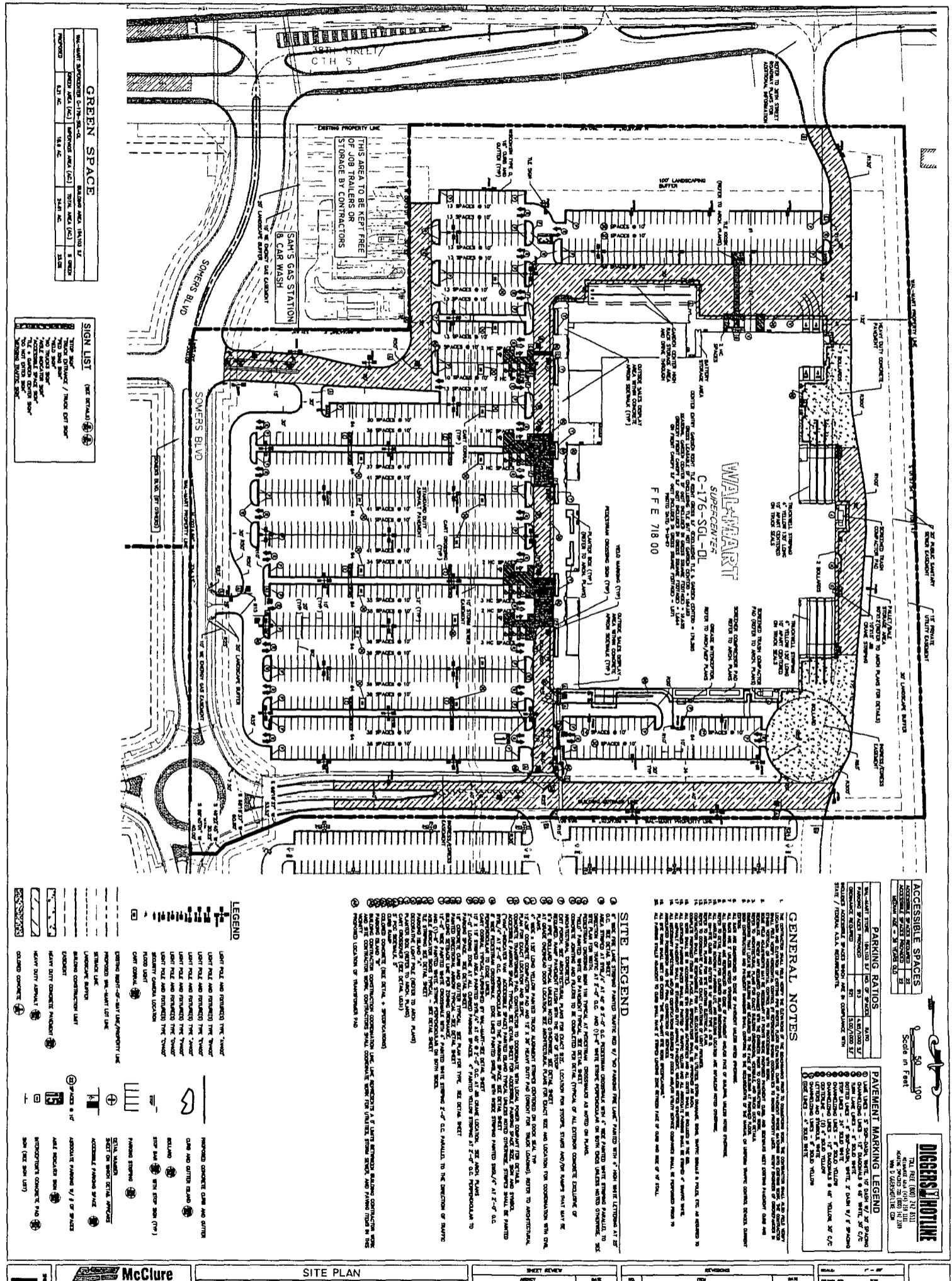


MSV-FGGS-2



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Somers Market Center

Exhibit P - Wal-Mart Site Plan

Somers Market Center

Exhibit Q - Wal-Mart Landscape Plan

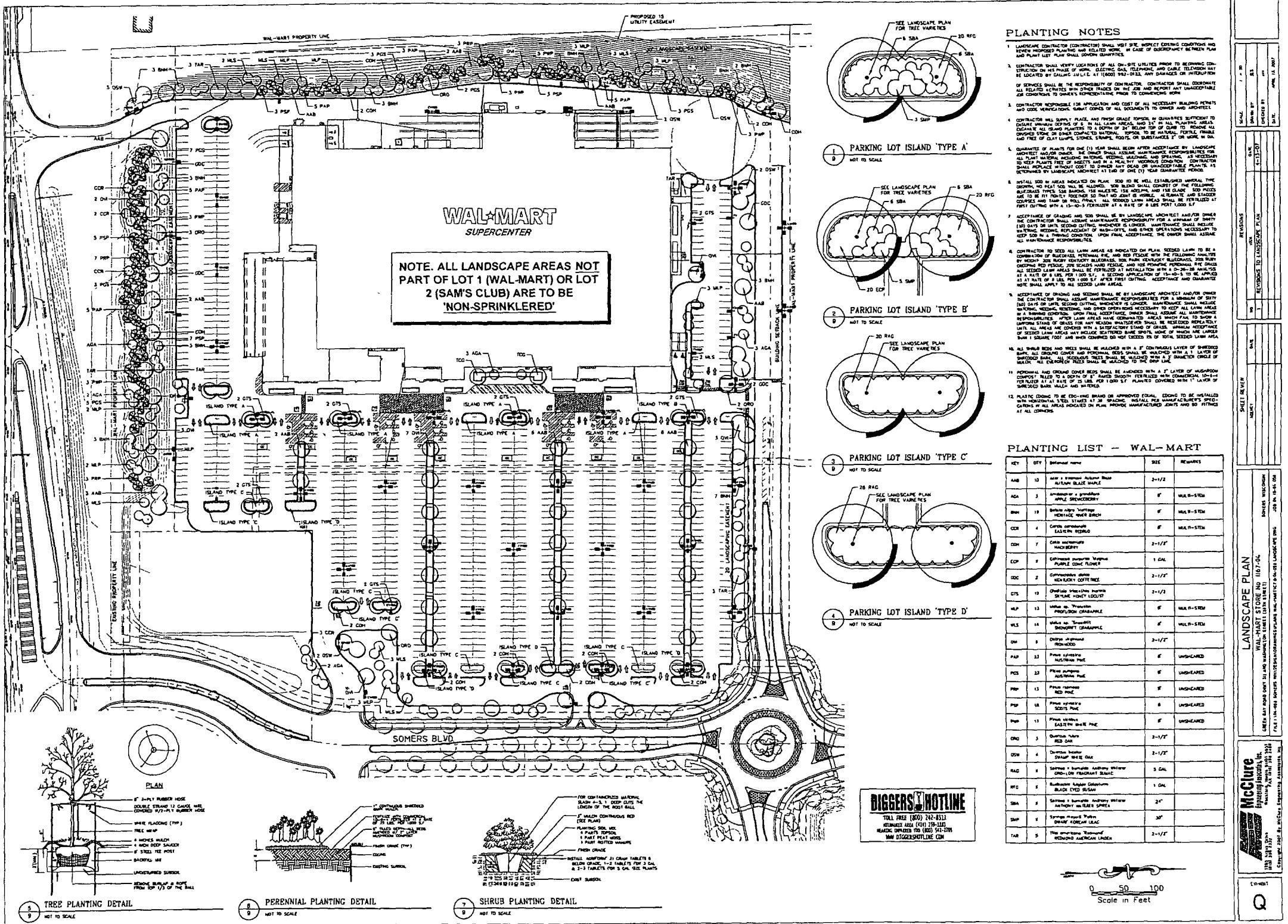
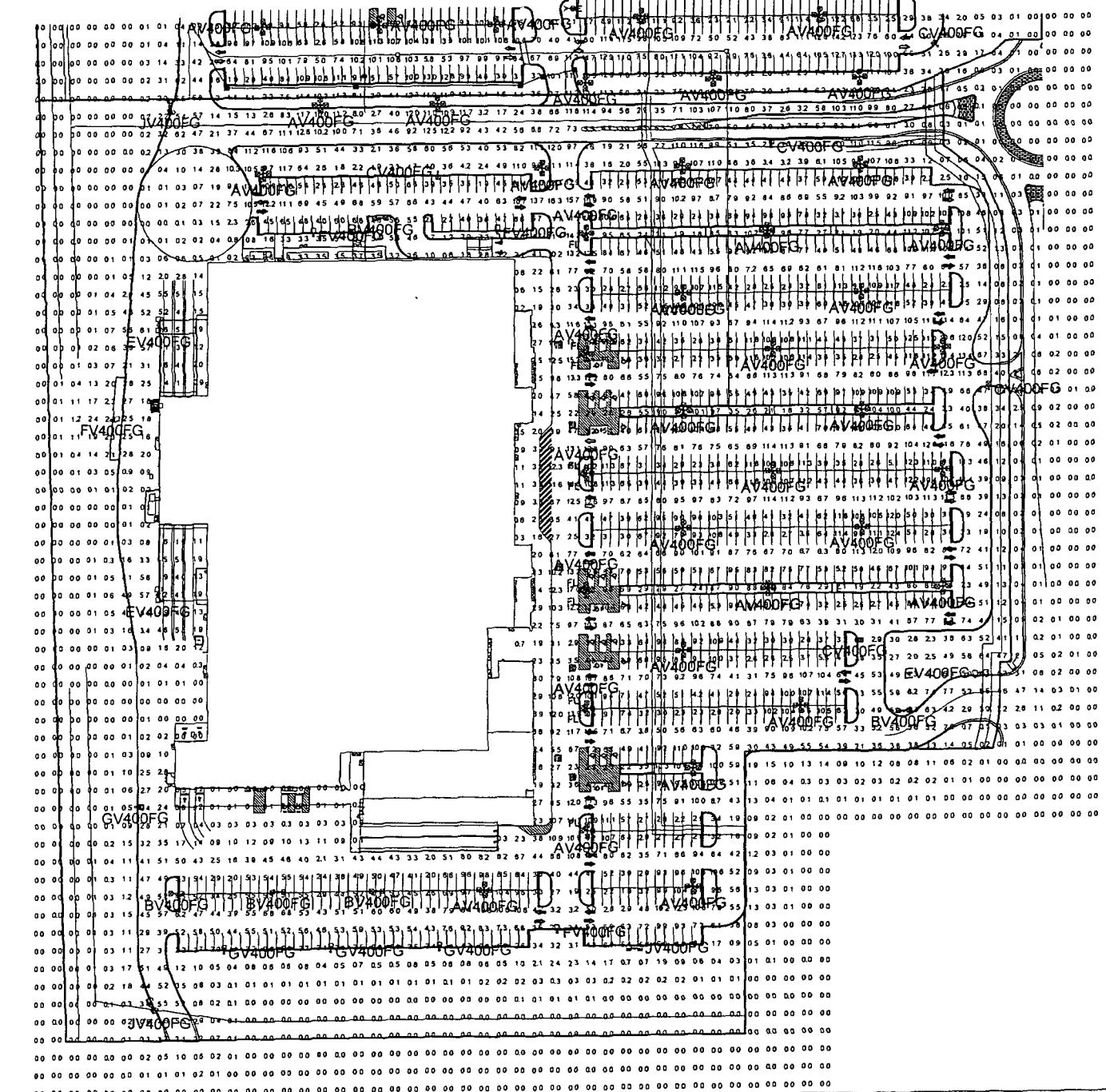


Exhibit R - Wal-Mart Lighting/Photometric Plan

Somers Market Center



VAL-MART OVERALL GRID
1078 points at z=0 sd 20ft by 20ft
HORIZONTAL FOOTCANDLES
Average 29
Maximum 170
Minimum 0
Avg Lum N/A
Max Lum N/A
Min Lum 0
Diff Var 0
UnifGrid N/A

VAL-MART PARKING GRID
1078 points at z=0 sd 20ft by 20ft
HORIZONTAL FOOTCANDLES
Average 58
Maximum 170
Minimum 18
Avg Lum 945
Max Lum 944
Min Lum 944
Diff Var 0
UnifGrid 441

HUBBELL Catalog No: HSBVA400P-FPxAR
2 luminaires per location, cordelle file: HSBVA400P-FPxAR
1 (luminaire) per luminaire, 44000 initial lumens per lamp
Light Loss Factor = 0.750, watts per luminaire = 452
number locations: 39 number luminaire: 136
Wk all locations: 176

HUBBELL CATALOG NO: HSBVA400P-FPxARIES
2 luminaires per location, cordelle file: HSBVA400P-FPxARIES
1 (luminaire) per luminaire, 44000 initial lumens per lamp
Light Loss Factor = 0.750, watts per luminaire = 452
number locations: 25 number luminaire: 6
Wk all locations: 27

HUBBELL CATALOG NO: HSBVA400P-FPxARGS
copper file: HSBVA400P-FPxARGS
2 luminaires per location, cordelle file: HSBVA400P-FPxARGS
1 (luminaire) per luminaire, 44000 initial lumens per lamp
Light Loss Factor = 0.750, watts per luminaire = 452
mounting height: 25 ft
number locations: 4 number luminaire: 4
Wk all locations: 12

HUBBELL CATALOG NO: HSBVA400P-FPxAR
cordelle file: HSBVA400P-FPxAR
2 luminaires per location, cordelle file: HSBVA400P-FPxAR
1 (luminaire) per luminaire, 44000 initial lumens per lamp
Light Loss Factor = 0.750, watts per luminaire = 452
mounting height: 25 ft
number locations: 3 number luminaire: 3
Wk all locations: 1

HUBBELL CATALOG NO: HSBVA400P-FPxAR
cordelle file: HSBVA400P-FPxAR
2 luminaires per location, cordelle file: HSBVA400P-FPxAR
1 (luminaire) per luminaire, 44000 initial lumens per lamp
Light Loss Factor = 0.750, watts per luminaire = 452
mounting height: 25 ft
number locations: 6 number luminaire: 6
Wk all locations: 27

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Wk all locations: 23

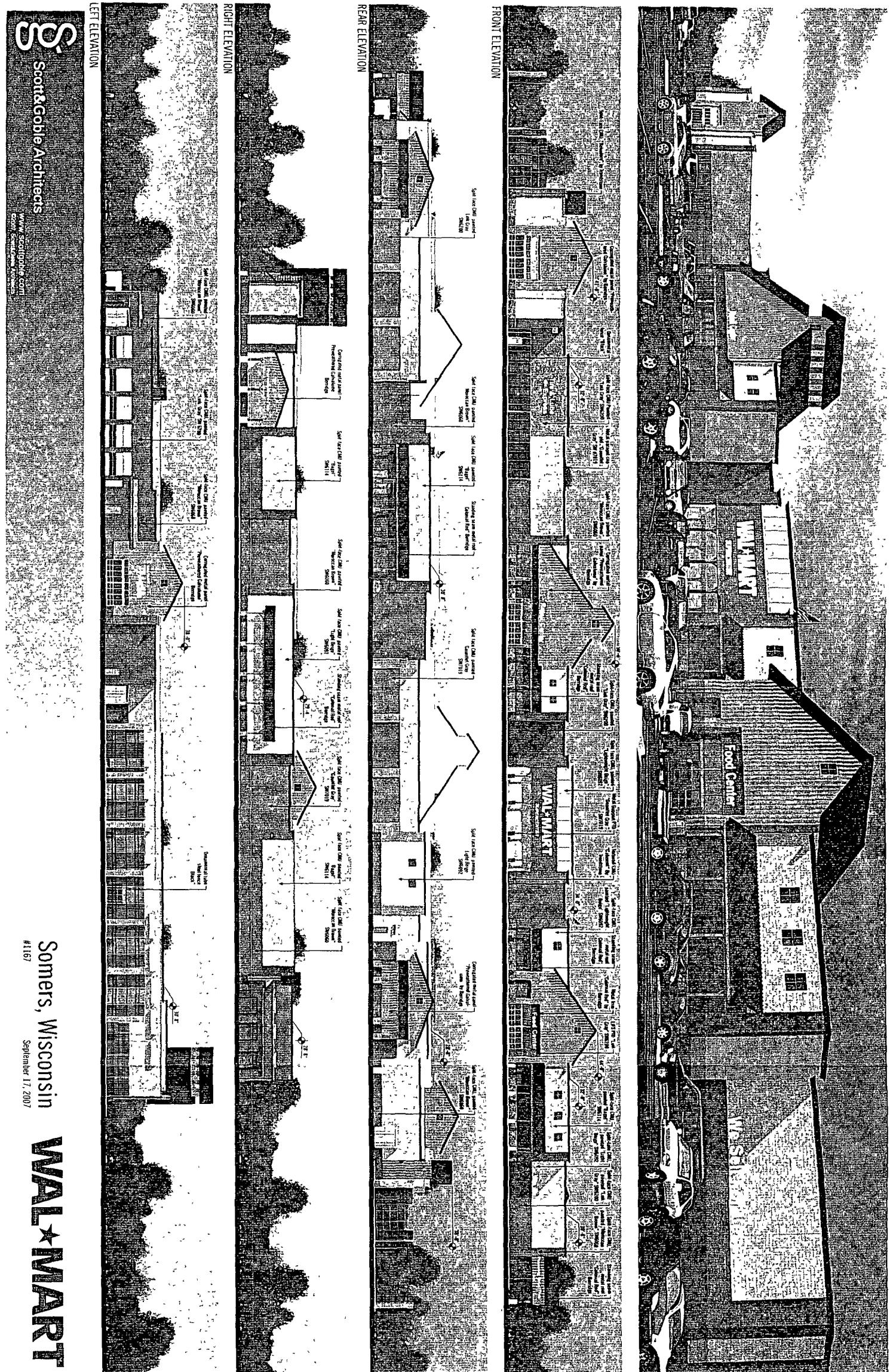
HUBBELL CATALOG NO: HSBVA400P-FPxAR
cordelle file: HSBVA400P-FPxAR
2 luminaires per location, cordelle file: HSBVA400P-FPxAR
1 (luminaire) per luminaire, 44000 initial lumens per lamp
Light Loss Factor = 0.750, watts per luminaire = 452
mounting height: 25 ft
number locations: 5 number luminaire: 10
Wk all locations: 10

NOTES:

1 FIXTURES SHOWN IN MAGENTA ARE SHOWN FOR CONTRIBUTION ONLY THEY ARE ALSO INCLUDED IN THE SCHEDULE

2 SEE 0735082A FOR WAL-MART (SAM'S) #6331



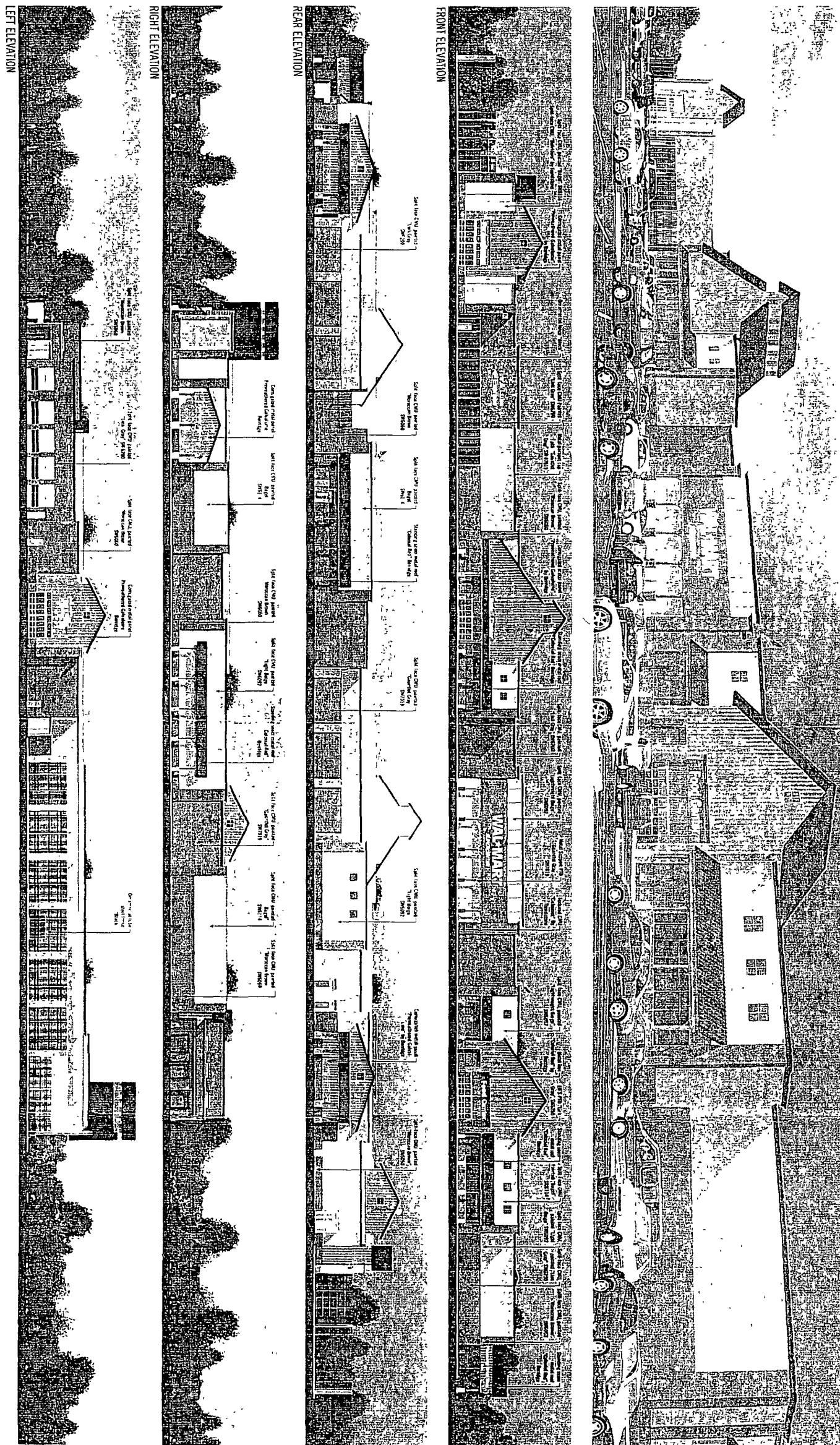


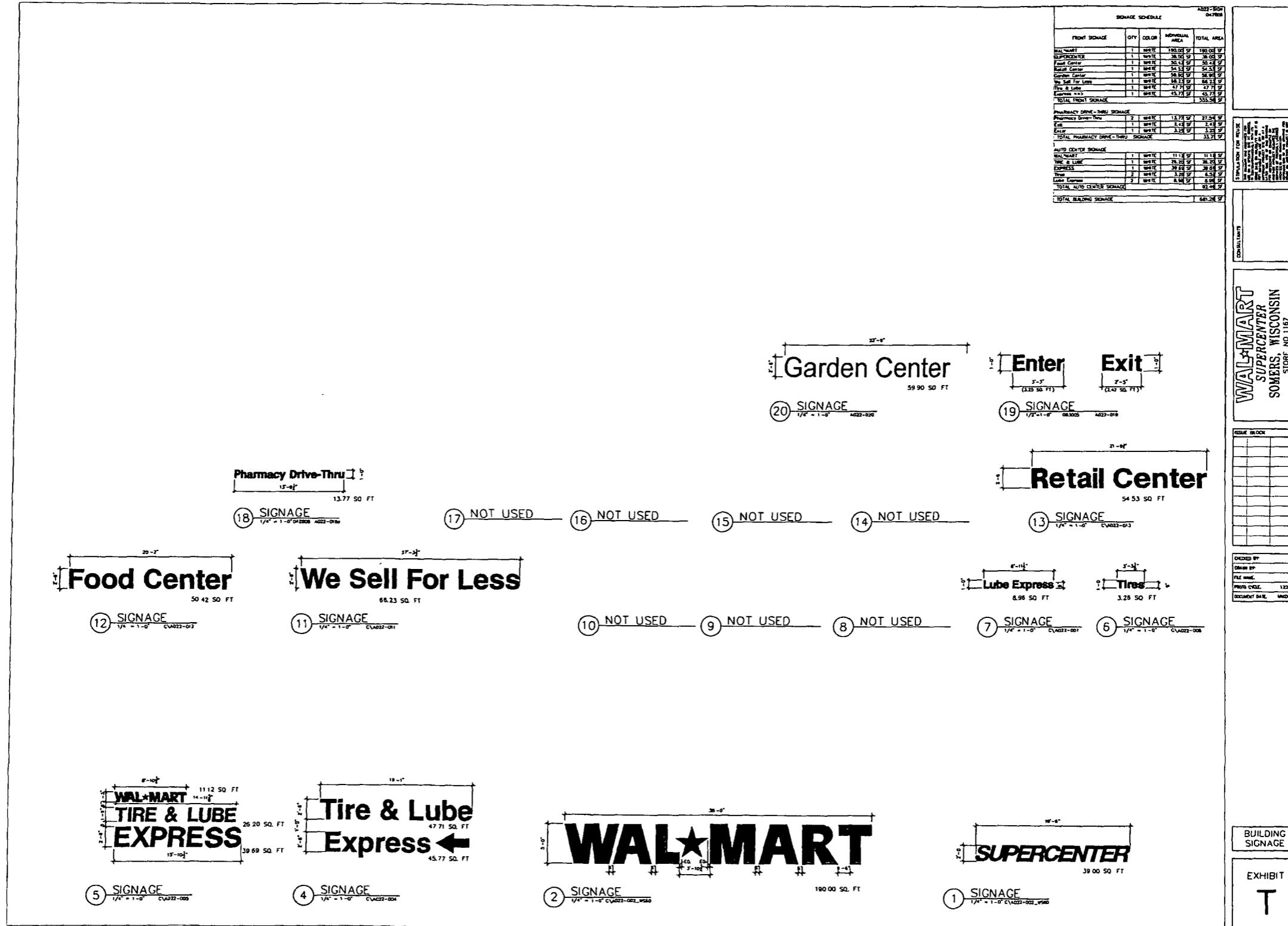
Somers Market Center

Exhibit S - Wal-Mart Building Elevations

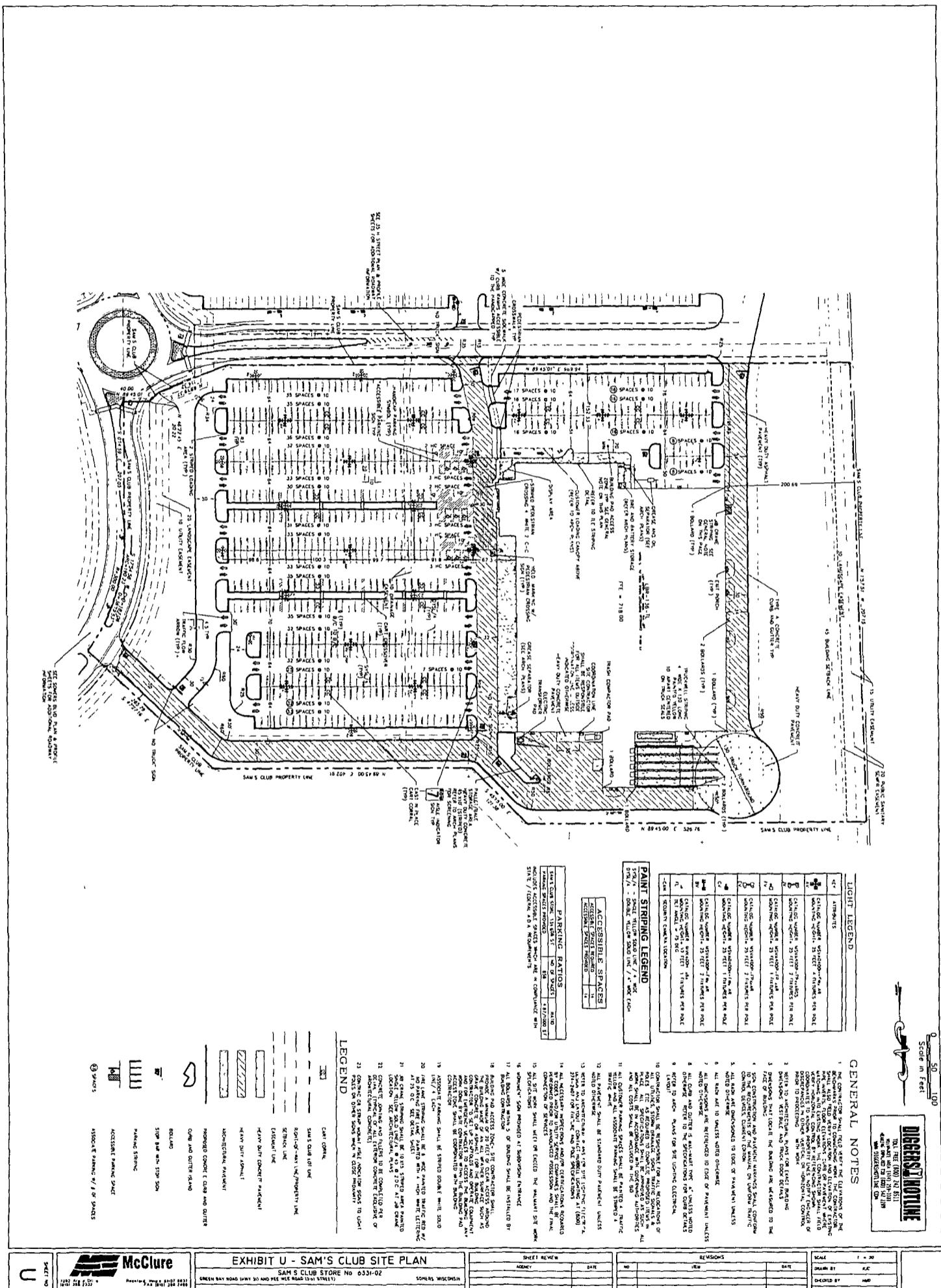
Somers, Wisconsin

Wal-Mart
January 4, 2007
#1167



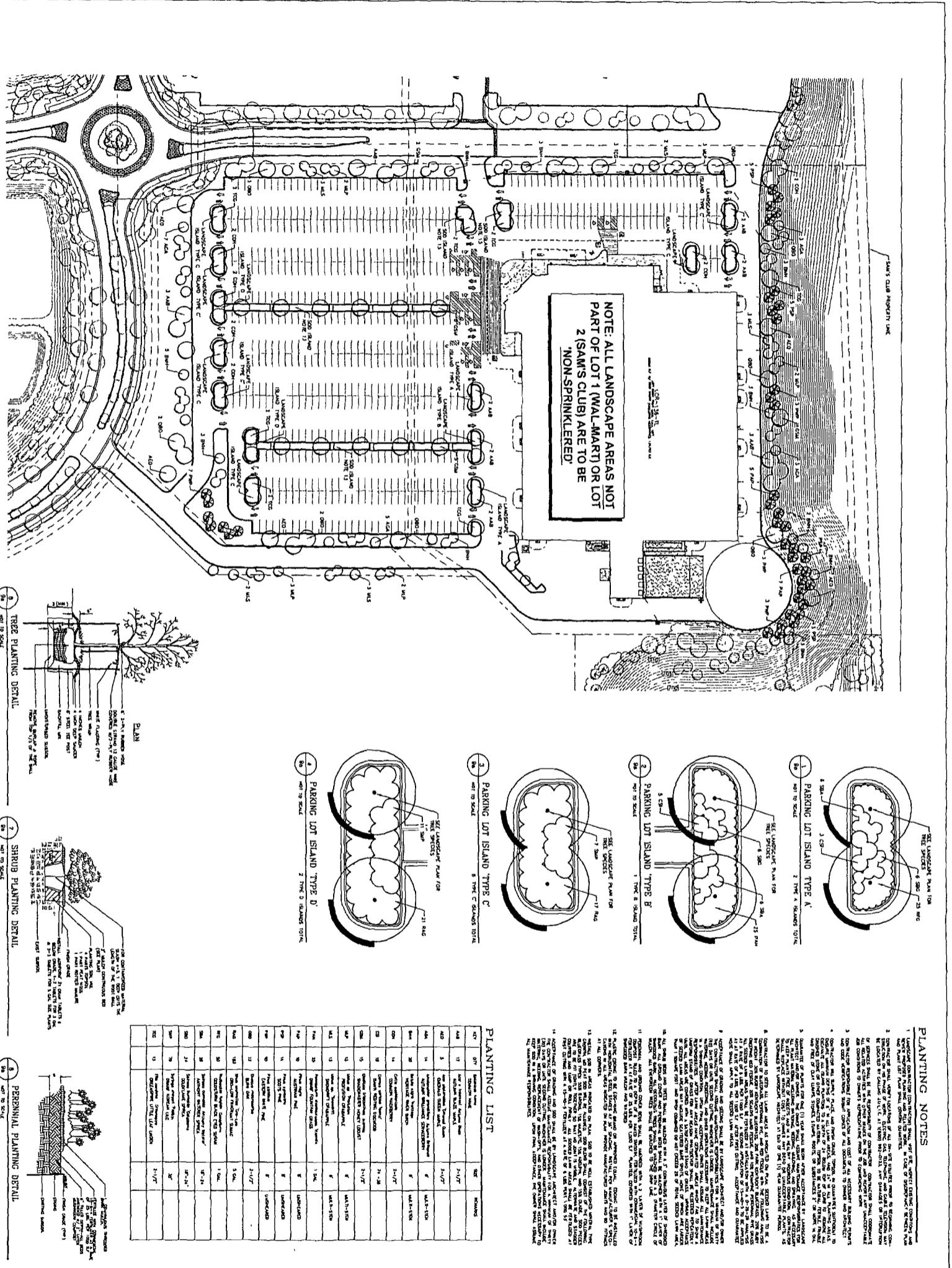


Somers Market Center
Exhibit T - Wal-Mart Building Signage



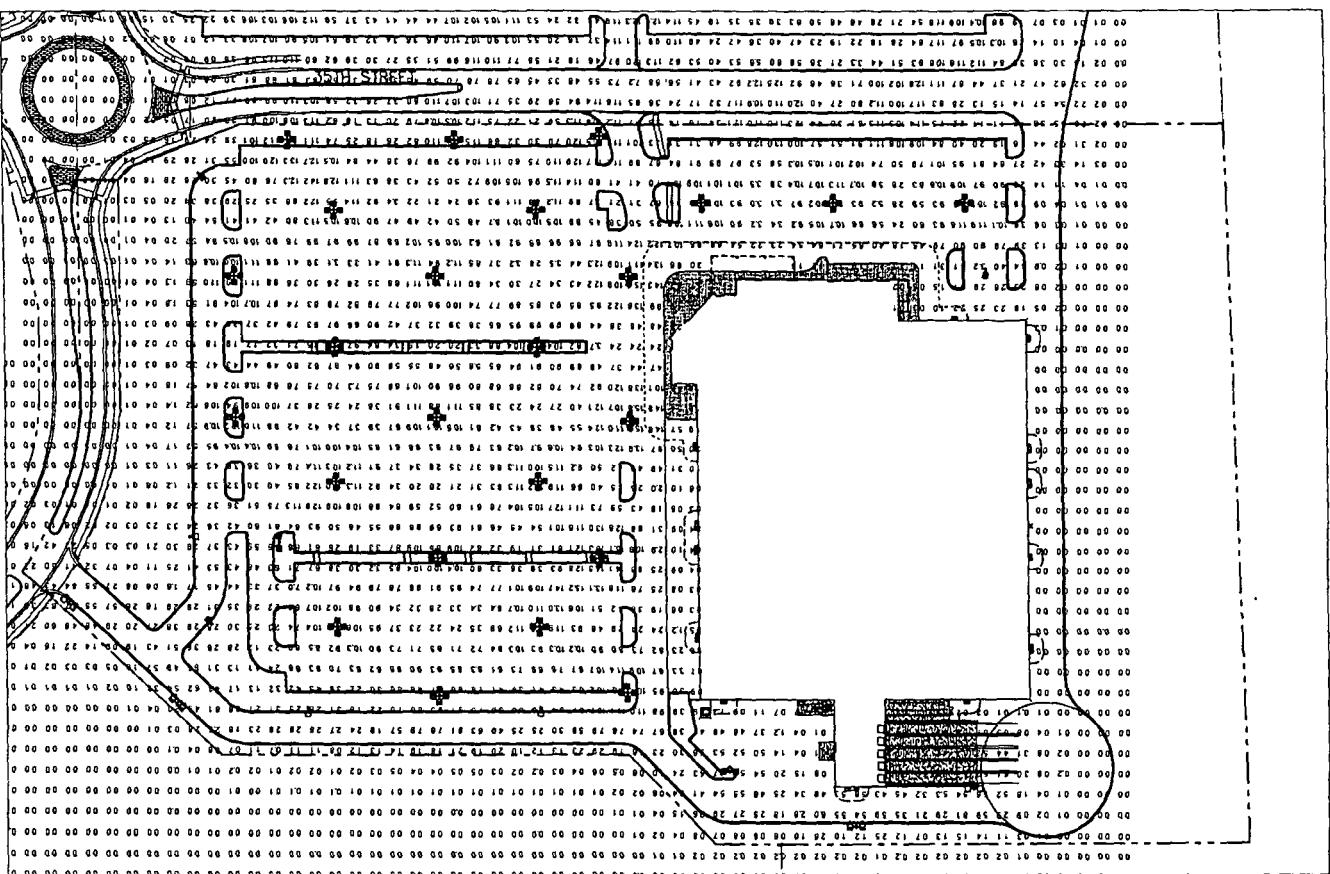
Somers Market Center

Exhibit U - Sam's Club Site Plan



Somers Market Center

Exhibit V - Sam's Club Landscape Plan



Luminaire Schedule					
Symbol	Qty	Label	Arrangement	Lumens	L.F.
35	1	AV40FG	4 @ 90 DEGREES	40000	0.750
3	1	M40FG	TWIN	40000	0.750
5	1	FV40FG	SINGLE	40000	0.750
2	1	EV40FG	TWIN	40000	0.750
5	1	CW40FG	SINGLE	40000	0.750
3	1	BV40FG	BACK-BACK	40000	0.750
PL	1	SINGLE	36000	0.750	MSV40DF-FWMLR

Statistical Area Summary					
Avg	Max	Min	Avg/Min	Max/Min	
7.6	16.1	1.8	4.2	8.94	

Luminaire Schedule					
Symbol	Qty	Label	Arrangement	Lumens	L.F.
35	1	AV40FG	4 @ 90 DEGREES	40000	0.750
3	1	M40FG	TWIN	40000	0.750
5	1	FV40FG	SINGLE	40000	0.750
2	1	EV40FG	TWIN	40000	0.750
5	1	CW40FG	SINGLE	40000	0.750
3	1	BV40FG	BACK-BACK	40000	0.750
PL	1	SINGLE	36000	0.750	MSV40DF-FWMLR

Scale in Feet
0 50 100

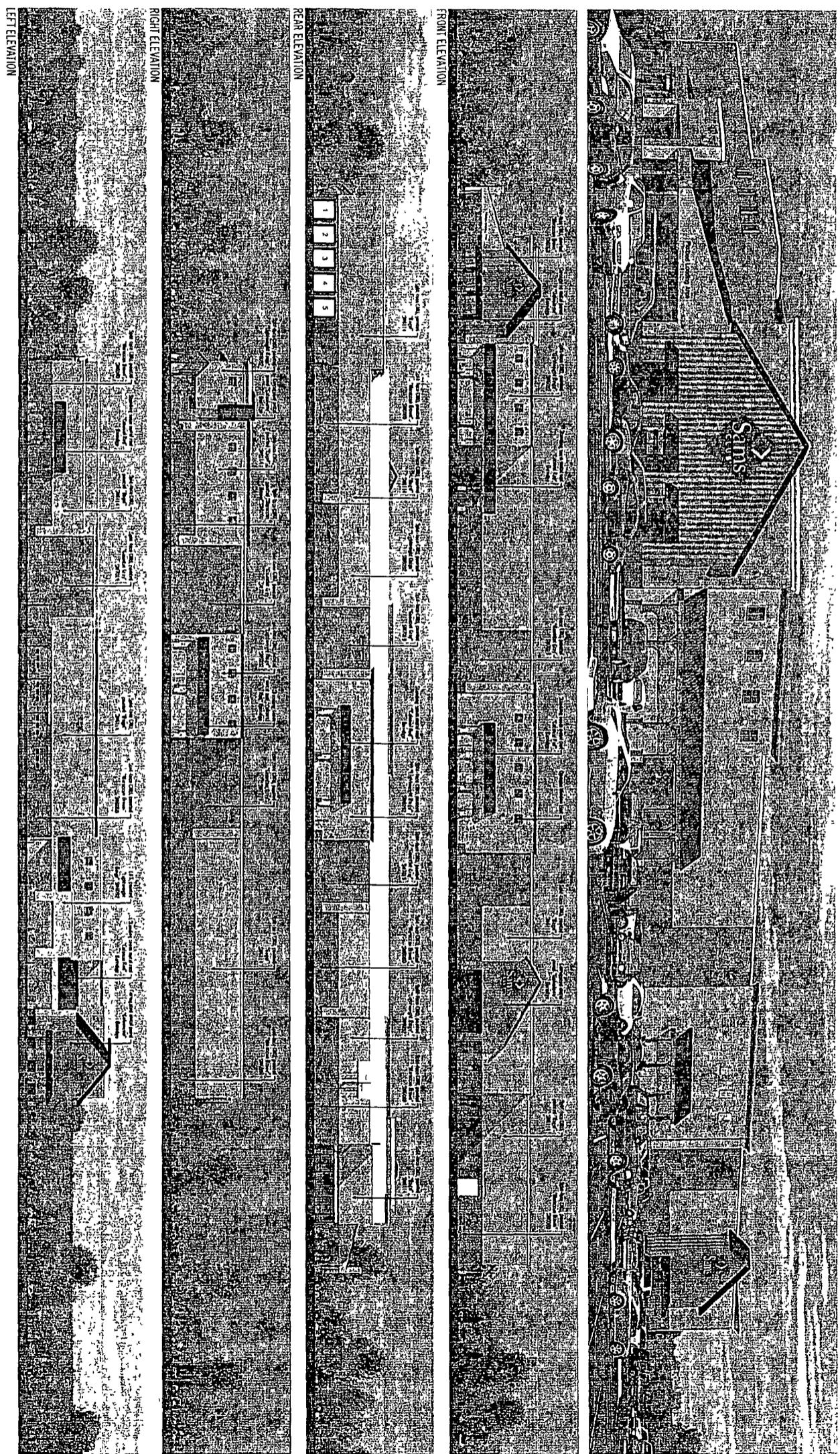
McClure	Exhibit W - S-C LIGHTING-PHOTOMETRIC PLAN	Sheet Review	Revisions	Scale
Design By:	Reviewed By:	Date:	Date:	A.F.C.
DATE: 10/15/07	DATE: 10/15/07			
FILE NUMBER: 000000000000	FILE NUMBER: 000000000000			

Somers Market Center

Exhibit W - Sam's Club Lighting/Photometric Plan

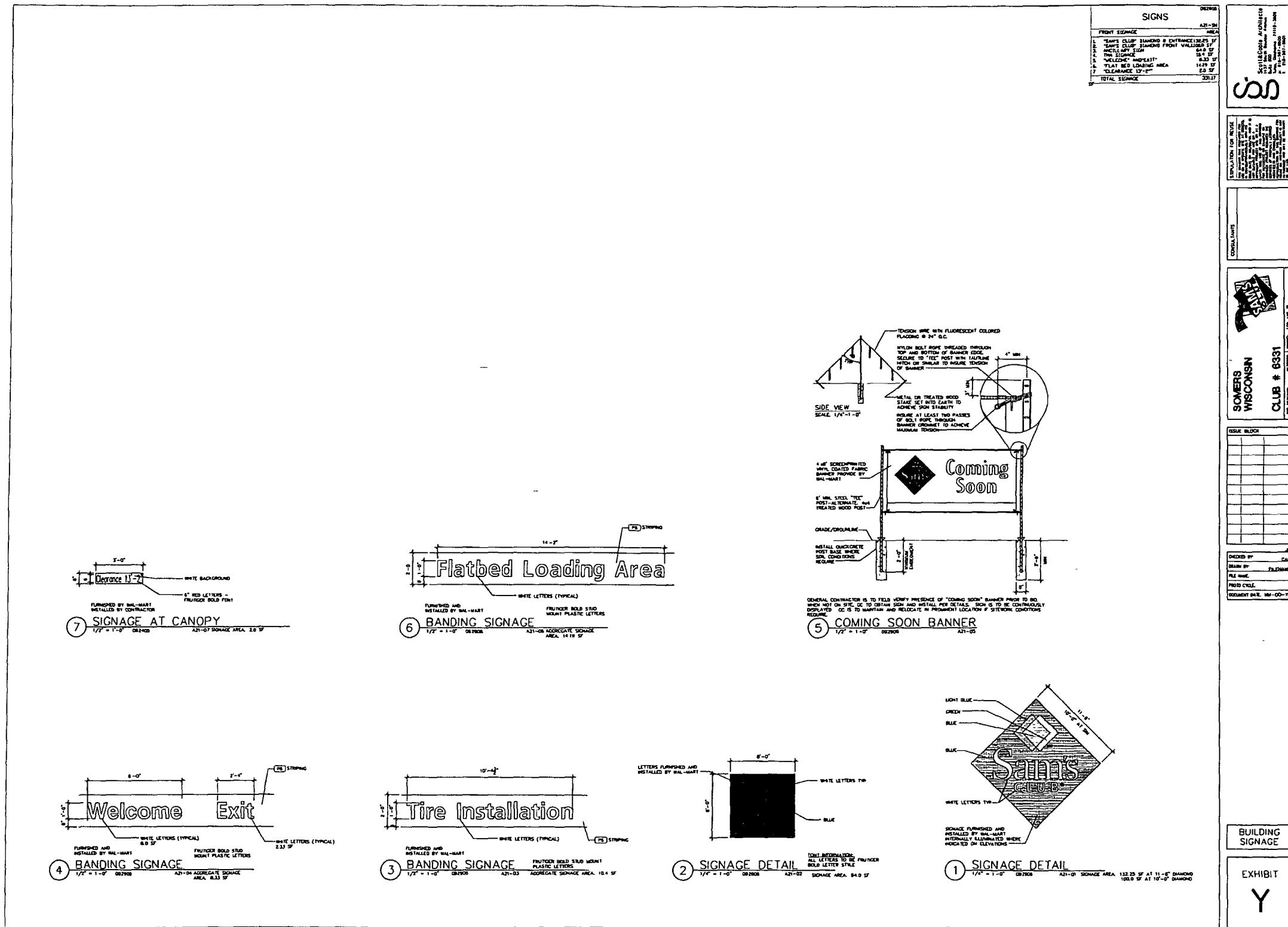
Somers Market Center
Exhibit X - Sam's Club Building Elevations

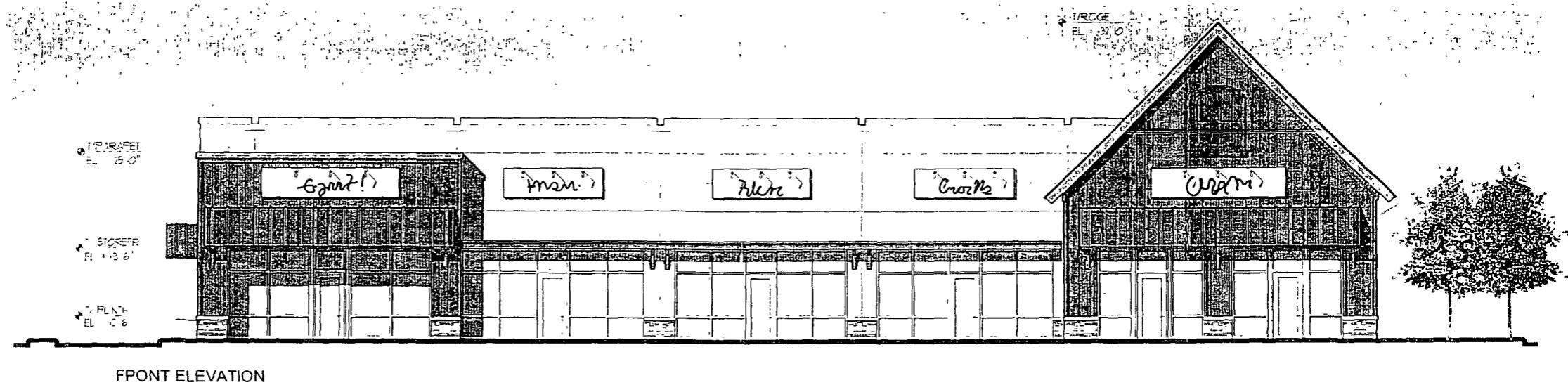
Somers, Wisconsin
#6331
April 11, 2007



Somers Market Center

Exhibit Y - Sam's Club Building Signage





RETAIL BUILDING ELEVATIONS

SCALE 3/32 = 1'-0"

SOMERS MARKETPLACE
SOMERS, WISCONSIN

Somers Market Center
Exhibit Z - Typical Retail Building Elevation

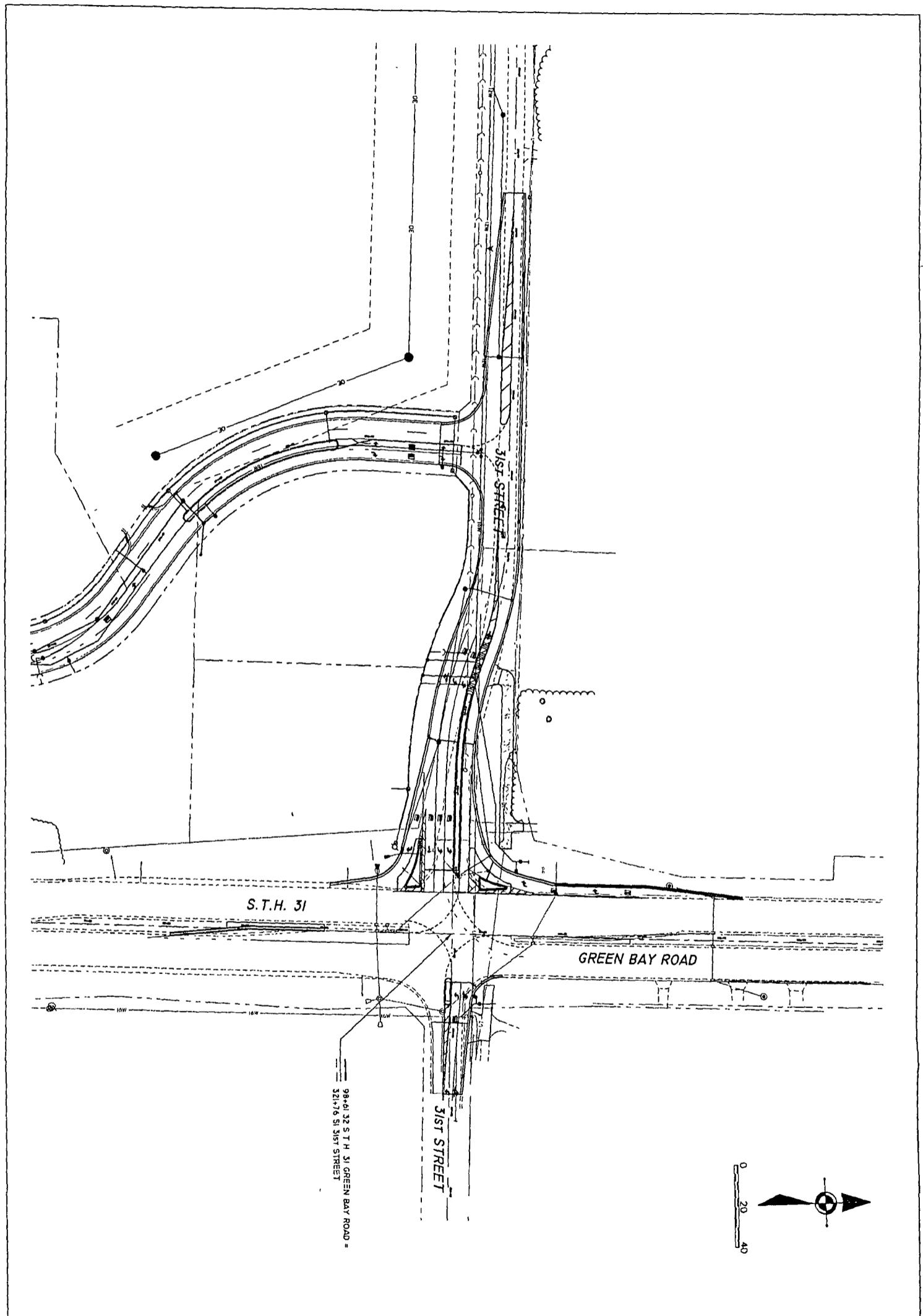
BRADFORD REAL ESTATE

OKW

OKW Architects

DATE JANUARY 10 2007

PROJECT NUMBER 06086



AA
EXHIBIT

McClure
Engineering Associates, Inc.
1751 Argus Drive
Rockford, Illinois, 61102-8227
Ordnance Prod. License: Illinois 104-GG010
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31ST STREET IMPROVEMENTS EXHIBIT CC.3

TOWN OF SOMERS

SOMERS, WI

FILE I:\04-05\OMERS-WM\DESIGN\DRAWINGS\EXHIBIT CC DWG

JOB 04-18-04 088

REVISIONS		
NO.	ITEM	DATE

SCALE	1:1
DRAINED BY:	JWS
CHECKED BY:	JWS
DATE:	5/14/2007

Exhibit "BB"
31st Street Sanitary Sewer
Benefited Properties
Town of Somers

<u>Parcel</u>	<u>Owner</u>
80-4-272-0103	Jeffrey W. & Dawn M. Zorn 6421 31 st Street Kenosha, WI 53144
80-4-223-0250	Clifford J. & Edna F. Mico 6420 361 st Street Kenosha, WI 53144
80-4-224-0410	Roger W. & Marianne Rozinski 6321 31 st Street Kenosha, WI 53144
80-4-224-0420	Jeffrey P. Zanzucchi & Bridget D. Carpenter 6314 31 st Street Kenosha, WI 53144
80-4-224-0430	Michelle M. Stricklund 6306 31 st Street Kenosha, WI 53144
80-4-224-0440	George T. & Barbara M. Godlewski 6226 31 st Street Kenosha, WI 53144
80-4-224-0451	Francisco & Giuliana Ruffolo 6218 31 st Street Kenosha, WI 53144
80-4-224-0401	George T. & Barbara Godlewski Maciej A. & Shari J. Godlewski 6120 31 st Street Kenosha, WI 53144
80-4-224-0500	Phyllis J. Rozinski Revocable Trust 3024 Green Bay Road Kenosha, WI 53144

Crispell-Snyder, Inc.
Professional Consultants
June 2007

Exhibit CC-1

List of Benefitted Properties for Roadway Improvement Recapture

The total estimated costs for the intersection/entranceway from Green Bay Road (S.T.H. 31) and 31st Street are in the sum of One Million Two Hundred Seventeen Thousand Four Hundred Sixty-five and 71/100 (\$1,217,465.71) Dollars, as itemized in the attached exhibit which is incorporated herein by reference. These costs, which are exclusive of the cost of signalization of this intersection, create a “benefit” to various parcels both presently and into the future.

From this benefit amount (100% of benefit cost divided by benefitted parcels) 50% of the benefit is attributable to parcels on the east side of Green Bay Road (S.T.H. 31) which are located within the City of Kenosha and which are therefore unassessable by the Town. The remaining benefitted parcels which are located in the Town are comprised of 3 parcels: the parcel of land comprising Somers Market Center of 110 acres in dimension together with two parcels identified hereafter comprising a total of approximately 26.35 acres. Of the remaining 50% of assessable benefit (estimated construction costs of \$1,217,465.71 ÷ 2 = \$608,732.86), 80.67% (136.35 benefitted acres – 110 acres = 80.67%) are attributable to the Somers Market Development. Since Somers Market Development is undertaking all of the construction costs for the benefit, no further assessment is to be imposed against the development for these improvements. The remaining 19.33% of benefit will be imposed as a deferred special assessment on the remaining assessable benefitted parcels as described below:

Owner(s):George T. & Barbara M.
Godlewski (50% interest) and Maciej A. &
Shari J. Godlewski (50% interest)
Parcel No. 80-4-222-224-0401
Number of Acres: 22.35
Total Estimated Assessment: \$136,051.60

Owner(s):Phyllis Rozinski as Trustee of
Phyllis J. Rozonski Revocable Trust Dated
2/29/2000
Parcel No. 80-4-222-224-0500
Number of Acres: 4
Total Estimated Assessment: \$24,349.00

Actual special assessments will be levied following determination of actual construction costs and will be levied pursuant to the foregoing formula.

Opinion of Probable Cost
Somer Market Center

Exhibit CC-2

	Quantity	Unit	Unit Cost	Current Total
31st STREET OFFSITE IMPROVEMENTS				
(Sta. 312+05 to Sta. 319+40)				
Earthwork				
COMMON EXCAVATION	2,239	C Y	\$9 00	\$20,151 00
UNSUITABLE MATERIAL (HAUL-OFF)	0	C Y	\$12 00	\$0 00
BORROW (HAUL-IN)	133	C Y	\$14 75	\$1,961 75
GRANULAR BACKFILL Storm Sewer Trench	229	C Y	\$15 00	\$3,435 00
Sub-total				\$25,547 75
Removal Items				
REMOVING BITUMINOUS PAVEMENT	1,889	S Y	\$6 75	\$12,750 75
Sub-total				\$12,750 75
Pavement Items				
CONCRETE DRIVEWAY PAVEMENT, 10-INCH	396	S Y	\$44 50	\$17,622 00
5" HMA PAVEMENT, TYPE E-1	933	TONS	\$52 50	\$48,982 50
CONCRETE CURB AND GUTTER 18-INCH, TYPE D, 6" BARRIER	122	L F	\$22 50	\$2,745 00
CONCRETE CURB AND GUTTER 30-INCH, TYPE D, 6" BARRIER	1,395	L F	\$15 00	\$20,925 00
BITUMINOUS DRIVEWAY	11	TONS	\$52 50	\$577 50
CONCRETE MEDIAN SIDEWALK, 4"	496	S F	\$5 00	\$2,480 00
AGGREGATE BASE COURSE	2,642	TONS	\$20 64	\$54,530 88
5" P C C MEDIAN NOSE PAVEMENT	3	S Y	\$20 00	\$60 00
CONCRETE CORRUGATED MEDIAN	66	S Y	\$12 00	\$792 00
Sub-total				\$148,714 88
Drainage Items				
EROSION CONTROL SYSTEM	1	L S	\$20,000 00	\$20,000 00
APRON ENDWALLS FOR CULVERT PIPE REINFORCED CONCRETE, 15-INCH	1	EACH	\$1,500 00	\$1,500 00
STORM SEWER PIPE REINFORCED CONCRETE CLASS III, 12"	112	L F	\$29 50	\$3,304 00
STORM SEWER PIPE REINFORCED CONCRETE CLASS III, 15"	518	L F	\$33 00	\$17,094 00
INLETS, TYPE 3	6	EACH	\$2,000 00	\$12,000 00
INLETS COVERS, TYPE H	6	EACH	\$800 00	\$4,800 00
MONHOLES, TYPE 1	3	EACH	\$2,275 00	\$6,825 00
MANHOLES COVERS, TYPE J	3	EACH	\$2,300 00	\$6,900 00
Sub-total				\$72,423 00
Pavement Marking Items				
PAVEMENT MARKING, 4-INCH	3,453	L F	\$1 00	\$3,453 00
PAVEMENT MARKING, 8-INCH	714	L F	\$1 81	\$1,292 34
PAVEMENT MARKING, 12-INCH	116	L F	\$2 81	\$325 96
PAVEMENT MARKING STOP LINE, 18-INCH	26	L F	\$4 20	\$109 20
PAVEMENT MARKING SYMBOLS	9	EACH	\$60.00	\$540 00
Sub-total				\$5,720 50
		Sub-total		\$265,156 88
31st STREET & STH 31 OFFSITE IMPROVEMENTS				
(East of Sta. 319+40)				
Earthwork (Intersection)				
COMMON EXCAVATION	1,643	C Y	\$9 00	\$14,787 00
UNSUITABLE MATERIAL (HAUL-OFF)	0	C Y	\$12 00	\$0.00
BORROW (HAUL-IN)	58	C Y	\$14 75	\$855 50
GRANULAR BACKFILL Strom Sewer Trench	71	C Y	\$15 00	\$1,065 00
Sub-total				\$16,707 50
Removal Items (Intersection)				
REMOVING CONCRETE PAVEMENT	82	C Y	\$119 00	\$9,758 00
REMOVING BITUMINOUS PAVEMENT	537	S Y	\$6 75	\$3,624 75
REMOVING CONCRETE DRIVEWAY PAVEMENT	98	S.Y,	\$14 20	\$1,391 60
REMOVING CURB AND GUTTER	214	L F	\$5 00	\$1,070 00
REMOVING INLETS	2	EACH	\$250 00	\$500 00
REMOVING STORM SEWER, 12-INCH	33	L F	\$16.00	\$528 00
REMOVING APRON HEADWALL	1	EACH	\$250 00	\$250 00
Sub-total				\$17,122 35

Pavement Items (Intersection)

CONCRETE PAVEMENT, 10-INCH
 CONCRETE CURB AND GUTTER 18-INCH, TYPE A, 6" BARRIER
 CONCRETE CURB AND GUTTER 24-INCH, TYPE A, 6" BARRIER
 CONCRETE CURB AND GUTTER 30-INCH, TYPE A, 6" BARRIER
 CONCRETE CURB AND GUTTER 36-INCH, TYPE A, 6" MOUNTABLE
 CONCRETE MEDIAN SIDEWALK, 4"
 AGGREGATE BASE COURSE
 5" P C C MEDIAN PAVEMENT
 AGGREGATE BASE COURSE, OPEN GRADED
 TIE BARS

Sub-total

Quantity	Unit	Unit Cost	Current Total
2,206	S Y	\$44.50	\$98,167.00
368	L F	\$22.50	\$8,280.00
358	L F	\$25.00	\$8,950.00
185	L F	\$27.00	\$4,995.00
481	L F	\$26.00	\$12,506.00
1,142	S F	\$5.00	\$5,710.00
1,230	TONS	\$20.64	\$25,387.20
195	S Y	\$20.00	\$3,900.00
5,756	TONS	\$20.64	\$118,803.84
595	EACH	\$4.00	\$2,380.00
			\$289,079.04

Drainage Items (Intersection)

EROSION CONTROL SYSTEM
 APRON ENDWALLS FOR CULVERT PIPE REINFORCED CONCRETE, 15-INCH
 APRON ENDWALLS FOR CULVERT PIPE REINFORCED CONC, 24x38 HE SALVAGED
 STORM SEWER PIPE REINFORCED CONCRETE CLASS III, 24x38 HE
 STORM SEWER PIPE REINFORCED CONCRETE CLASS III, 12"
 STORM SEWER PIPE REINFORCED CONCRETE CLASS III, 15"
 INLETS, TYPE 3
 INLETS COVERS, TYPE HM
 MANHOLES, TYPE 1
 MANHOLES, RECONSTRUCT
 MANHOLES COVERS, TYPE J
 MANHOLES COVERS, OPEN LID

Sub-total

1	L S	\$5,000.00	\$5,000.00
1	EACH	\$1,500.00	\$1,500.00
1	EACH	\$2,000.00	\$2,000.00
8	L F	\$75.00	\$600.00
213	L F	\$29.50	\$6,283.50
187	L F	\$33.00	\$6,171.00
3	EACH	\$2,000.00	\$6,000.00
3	EACH	\$800.00	\$2,400.00
1	EACH	\$2,275.00	\$2,275.00
1	EACH	\$3,000.00	\$3,000.00
1	EACH	\$2,300.00	\$2,300.00
1	EACH	\$2,300.00	\$2,300.00
			\$39,829.50

Pavement Marking Items (Intersection)

PAVEMENT MARKING EPOXY, 4-INCH
 PAVEMENT MARKING EPOXY, 8-INCH
 PAVEMENT MARKING EPOXY, 12-INCH
 PAVEMENT MARKING STOP LINE EPOXY, 18-INCH
 PAVEMENT MARKING SYMBOLS EPOXY

Sub-total

1,519	L F	\$1.00	\$1,519.00
1,300	L F	\$1.81	\$2,353.00
228	L F	\$2.81	\$640.68
131	L F	\$4.20	\$550.20
15	EACH	\$60.00	\$900.00
			\$5,962.88

Sub-total \$368,701.27

31st STREET & STH 31 OFFSITE COMBINED IMPROVEMENTS**Utility Items**

RELOCATING UNDERGROUND GAS
 RELOCATING UTILITY POLES
 RELOCATING TELEPHONE PEDESTALS / UNDERGROUND PHONE LINE

Sub-total

1	L S	\$20,000.00	\$20,000.00
5	EACH	\$50,000.00	\$250,000.00
1	L S	\$20,000.00	\$20,000.00

\$290,000.00

Restoration Items

TOPSOIL, 6-INCH
 SEEDING, NO. 30
 FERTILIZER, TYPE B
 MULCHING

Sub-total

819	C Y	\$32.00	\$26,208.00
97	LBS	\$250.00	\$24,250.00
310	CWT	\$200.00	\$620.00
4,911	S Y	\$5.00	\$24,555.00

\$75,633.00

Traffic Control Items

TRAFFIC SIGNALS
 SIGNAGE
 TRAFFIC CONTROL AND PROTECTION

Sub-total

1	L S	\$120,000.00	\$120,000.00
1	L S	\$15,000.00	\$15,000.00
1	L S	\$25,000.00	\$25,000.00

\$160,000.00

31st Street Offsite Sub-total

5% Contingency

\$1,159,491.15

\$57,974.56

31st STREET OFFSITE TOTAL**\$1,217,465.71**

Exhibit DD ***Management Maintenance Plan***

INTRODUCTION

Purpose: The purpose of this section is to detail on how Developer or its approved designee shall care for the turf grass, landscape, plantings, irrigation, and snow & ice at the facility at all times, to maintain the landscape in a fashion that meet these requirements.

Developer shall provide the Town of Somers with a semi-annual maintenance report outlining compliance with all items as listed within this Exhibit DD.

PARKING LOT SWEEPING & PROPERTY DEBRIS & PARKING LOT MAINTENANCE

Inspection/ Maintenance:

Occurrence: Weekly

Procedure: Inspect the parking areas and property for loose sediment and debris. Sweep all parking areas and hard surfaces clean. Pick up all debris throughout the property.

Disposal:

Occurrence: After maintenance

Procedure: Sediment and debris collected during the maintenance of paved surfaces shall be disposed of by Developer's contractor in accordance with all federal, state, and local laws. Loose sediments must not be disposed to the storm sewer system.

Repairs:

Occurrence: Annually

Procedure: Inspect and replace/repair all loose asphalt (i.e. potholes filled etc.)

STORM SEWER AND CATCH BASINS

Inspection:

Occurrence: Annual Spring inspection (May)

Procedure: Inspect each catch basin to ensure proper function in. Repair if necessary.

Maintenance:

Occurrence: Annual Spring maintenance (May)

Procedure: Remove all oil and sediment and debris within the catch basin.

Disposal:

Occurrence: After maintenance

Procedure: Disposed of in accordance with all federal, state, and local regulations.

WET DETENTION BASINS

Inspection:

- Occurrence: Semi-Annual Spring inspection (May and October)
- Procedure: The following items will be inspected;
- Review the *Wet Detention Basin Detail(s)* to ensure general conformance. Repair if necessary.
 - Drain basin (if necessary) and conduct soil probes to determine the depth of sediment stratification. Conduct at least 3 probes – 1 adjacent to the outflow structure, 1 to the furthest extent away from the outflow structure, and 1 in the middle of the basin. Conduct additional probes as may be necessary to define extent of sedimentation. Probes must be conducted using common hand soil sampling equipment such as; spade, hand probe, hand auger, bucket auger, Oakfield probe, etc...
 - Planting and seeding to ensure proper vegetative cover within the detention basin. Replant and repair if necessary. Wet Basin seeding shall be maintained by qualified individual.

Maintenance:

- Occurrence: When any of the soil probes indicate sediment stratification in excess of 18" in depth, or every 5 years, which ever occurs first.
- Procedure: Drain basin and remove sediment. The basin must be re-established to the original design.

Disposal:

- Occurrence: After maintenance
- Procedure: Disposed of in accordance with all federal, state, and local regulations.

WET BASIN OUTFLOW STRUCTURE

Inspection/ Maintenance:

- Occurrence: After large storm event, minimum 3 times a year exceeding 1.5".
- Procedure: The following items will be inspected;
- Outflow structure to ensure proper function in accordance with the *Outflow Structure Detail(s)*. Repair if necessary.

MOWING & TRIMMING

Height of Cut:

All turf grass will be mowed at a 2-3.5" height. The height of cut within this range will be determined by the time of year, and by prevailing weather conditions. The cutting height will be shortest during cool, rainy periods in spring and fall, and longest during warm, dry periods in summer.

Mowing Frequency:

All turf grass will be mowed at least 28 times during the growing season, provided that such mowing is warranted during dry weather that would otherwise not precipitate turf grass growth.. This will normally be done on a seven-day rotation, beginning the last week of April, and continuing through the end of October.

Grass Clippings:

When possible and practical, all grass clippings will be left in place, and allowed to filter down to the soil surface where they will decompose.

Grass Trimming and Edging:

Each mowing operation will include trimming the turf grass at the base of structures and fixtures. Walks and curbs will be edged not less than once a season with power edger. This edging will be done in such a way that crisp; straight lines are maintained along all edged surfaces.

Cleanup:

Each service visit will include the collection of litter and other debris from all landscape areas.

WEED CONTROL

Crabgrass & Other Annual Weeds:

All primary grass areas will be treated with a pre-emergent herbicide in early spring. To the extent possible, application will be made just prior to weed seed germination, as determined by soil temperature, growing degree-days. If required, a post-emergent herbicide will be used from late spring through early summer on those annual weeds.

Grass Trimming and Edging:

Each mowing operation will include trimming the turf grass at the base of structures and fixtures. Walks and curbs will be edged not less than once a season with power edger. This edging will be done in such a way that crisp; straight lines are maintained along all edged surfaces.

Cleanup:

Each service visit will include the collection of litter and other debris from all landscape areas.

TREES, SHRUBS, GROUNDCOVERS & PERENNIALS

Pruning:

All trees and shrubs on the site at least once a year shall be pruned. Trained personnel using professional-grade hand pruning tools, in accordance with those pruning recommendations advocated and promoted by professional landscape maintenance-related organizations, will do all pruning.

Types of branches: Developer's contractor will concentrate on the following kinds of branches when pruning:

- Dead branches.
- Broken branches.
- Stubs from broken or previously miss-pruned branches.

DAVISON & MULLIGAN, LTD.

1207 55th Street, Kenosha, Wisconsin 53140

Telephone No. (262) 657-5165 Fax No. (262) 657-5517 E-mail: dmltd@sbcglobal.net

- Suckers (on those trees that grow them, including flowering crabs).
- Watersprouts (on those trees that grow them, including flowering crabs and lindens).
- The inferior of two or more conflicting branches, especially when they are rubbing.
- Multiple leaders (on those trees that are prone to growing them, including maples and ash).
- Weak branches, especially those inside the plant's crown.
- Prominent branches growing toward the inside of the plant's crown.
- Certain insect-infested or disease-infected branches (such as tent caterpillar).
- Hazard branches, such as those blocking road signs or hanging over walks at eye level.
- Nuisance branches, such as those rubbing against buildings and signs.
- Branches growing well beyond the outline of the plant's crown.

All pruning debris will be removed from the site, and properly disposed of by Developer's contractor.

Fertilization:

All trees, shrubs, groundcovers and perennials will be fertilized once each year, either in early to mid-spring, or in late fall, if necessary.

Weed Control:

Tree circles, and all shrub, groundcover and perennial beds, will be kept weed-free at all times. The weeds will be removed by hand-pulling, cultivation, or through the careful application of a glyphosate-containing herbicide, such as Roundup. The weeds that are hand-pulled will be removed from the site, and properly disposed of.

Mulch Maintenance:

Shredded bark mulch in tree circles and planting beds will be kept neat and attractive. Care will be taken to keep the mulch one inch or less thick at the base of the tree trunks and shrub stems. If weed barrier fabric is present beneath the shredded bark mulch, areas of underlying weed barrier fabric that become visible, as the mulch shifts will be covered up, using the existing mulch.

In the early to mid spring, all mulched areas will be top dressed with one inch of mixed hardwood mulch.

All stone mulch areas will be kept free of litter and weeds. If weed barrier fabric is present beneath the stone mulch, areas of underlying weed barrier fabric that become visible as the stone shifts will be covered up, using the existing stone.

LAWN IRRIGATION SYSTEM

Spring System Startup:

Includes charging the system, inspecting for leaks, inspecting each head for adjustment and operation, testing delay devices (if installed), setting the irrigation clock.

Seasonal Adjustments:

Includes adjusting the irrigation clock during weekly service visits to suit current weather conditions.

Fall System Service:

Includes clearing water from the lines to prevent freeze damage, closing and taping valves to prevent accidental system recharge, and disconnecting power to the clock.

MISCELLANEOUS

Spring Cleanup:

Cleanup will include all landscape areas as soon as possible in spring. All accumulated plant debris (branches, leaves, flower stalks, etc.) and litter will be removed from the site, and properly disposed.

Fall Cleanup:

Cleanup will include all landscape areas in fall. Depending on the property, this cleanup will begin when frost kills some or all of the annual flowers, or when significant amounts of fallen leaves begin to accumulate in lawn areas or planting beds. Fall cleanup work will continue, as needed, until all fall cleanup-related work is done.