

001565 SEP 28

NE '14 SEC 31

3313324



WC3313324-014

STORMWATER INSPECTION &
MAINTENANCE AGREEMENT

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

09-02-2005 1:03 PM

MICHAEL J. HASSLINGER
REGISTER OF DEEDS

REC. FEE: 30.00
REC. FEE-CO: 5.00
REC. FEE-ST: 2.00
TRAN. FEE:
TRAN. FEE-STATE:
PAGES: 14

Recording Data

Return to:

Village of Menomonee Falls
Engineering Services
W156 N8480 Pilgrim Road
Menomonee Falls, WI 53051

8/19/05

Carter's Crossing Subdivision

Tax Key No. MNFV 121.999

0011566 SEP 22 2005
STORMWATER INSPECTION AND MAINTENANCE AGREEMENT

This Agreement, made and entered into this 14th day of June, 2005, by and between **TOMICH INVESTMENTS II, LLC**, here-in-after referred to as "DEVELOPER", and the **VILLAGE OF MENOMONEE FALLS**, a Municipal Corporation, located in the County of Waukesha and the State of Wisconsin, here-in-after referred to as "VILLAGE".

WITNESSETH:

WHEREAS, DEVELOPER is the owner of certain lands located in the Northeast Quarter (NE $\frac{1}{4}$) of Section 31, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin identified as Outlot 2, Outlot 4, and Outlot 5 in **CARTER'S CROSSING**, a recorded subdivision, and further shown in **Exhibit "A"** attached hereto, and which is here-in-after referred to as the "**PROPERTY**"; and

WHEREAS, the **VILLAGE** has approved the plat of **CARTER'S CROSSING** and the construction of storm water detention basins on the **PROPERTY**; and

WHEREAS, the **DEVELOPER** acknowledges that the stormwater detention facilities to be constructed and maintained under this agreement are for the benefit of the properties comprising **CARTER'S CROSSING**; and

WHEREAS, the **DEVELOPER** warrants and represents that it is the owner in fee of the **PROPERTY**, and that this real estate is free and clear of all liens and encumbrances; and

WHEREAS the **DEVELOPER** together with its respective heirs, personal representatives, and assigns, by separate document granted the **VILLAGE** and its assigns, certain permanent and perpetual easements for storm water detention basins and related facilities, including storm sewer inlets and manholes.

These easement rights include the right to build, construct, operate, inspect, maintain, repair, reconstruct and enlarge any and all presently existing and hereinafter constructed facilities, and the right of entry in, across, beneath, and above the real estate here-in-after more particularly described in **Exhibit "B"**; and

WHEREAS, **DEVELOPER** as a part of the development of the **CARTER'S CROSSING** Subdivision, has granted an easement for the storm water detention areas and has constructed storm water detention basins within the said easements on the **PROPERTY**; and

WHEREAS, the hydraulic volume design calculations of the said detention basins includes the easement areas, and requires the establishment of certain elevations and slopes in the easement areas of the **PROPERTY**; and

WHEREAS, the **VILLAGE** finds it necessary to insure that the design volume of the detention basins is not reduced by changes in the established elevations and slopes in the easement areas on the **PROPERTY**; and

WHEREAS, the **DEVELOPER** intends to establish a Homeowner's Association which is primarily responsible for the maintenance of the landscaping thereon, and the maintenance of the

stormwater detention basins within the **PROPERTY**; and

WHEREAS, the **VILLAGE** intends to reserve the right to enforce the requirement that the stormwater detention basin areas within said easements are maintained in a manner consistent with the lands maintained by the individual residents of **CARTER'S CROSSING**.

NOW THEREFORE, in consideration of the mutual covenants and agreements,
IT IS AGREED, as follows:

1. Each lot in **CARTER'S CROSSING** shall have attached to it an equal and undividable ownership in Outlot 2, Outlot 4, and Outlot 5 within the **PROPERTY** and each and every lot owner shall be considered the "**OWNER**" of the stormwater detention basins in Outlot 2, Outlot 4, and Outlot 5 within the **PROPERTY**. Subject to the other terms of the agreement, the Homeowner's Association shall, as the agent of the **OWNER**, thereafter be primarily responsible for the landscaping, maintenance, and inspection of the stormwater detention basins located on the **PROPERTY**. If the Homeowner's Association is never created, is not responsive, or is dissolved, then the **OWNER** shall be responsible for all obligations in this agreement.
2. The elevations and slopes that have been established in the storm water detention easements on the **PROPERTY**, as identified on **Exhibit "C"**, shall not be altered from those designed, established and constructed, without the specific written approval of the **VILLAGE**.
3. No Structure of any type will be allowed within the aforesaid easements.
4. Before either may plant trees or shrubs in the aforesaid easements, the **OWNER** or Homeowner's Association must obtain a permit from the Village of Menomonee Falls Department of Public Works. The Department of Public Works shall have the right to determine which species of trees and shrubs are or are not appropriate for planting within the aforesaid easements. Neither the **OWNER** nor Homeowner's Association may plant shrubs or trees in the easements, unless approved by the **VILLAGE**.
5. The easement areas shall be maintained in a manner consistent with the lands maintained by the individual residents of **CARTER'S CROSSING**. This includes the obligation to maintain the slopes and elevations at the originally designed, established and constructed elevations and slopes within the easement areas; to and make all the necessary repairs and/or improvements to correct damages, both natural and man made; and to resolve any complaints.
6. Every five (5) years from the date of this agreement, the Homeowner's Association shall hire a licensed professional engineer to inspect and certify the storm water detention basins on the **PROPERTY** and submit an inspection report to the **VILLAGE** as proof of compliance. The Inspection Report form provided by the **VILLAGE** shall be used to determine the condition of the storm water detention basins. The purpose of the inspection is to assure safe and proper functioning of the storm water detention basins. The inspection shall cover the entire facility such as berms, outlet structures, pond areas,

access roads, etc.. The conditions shall be noted in the inspection report.

7. Should the **VILLAGE** find that the aforesaid elevations and slopes have been altered, changed or for any reason deviate from those designed, established and constructed; or, if structures are found in the aforesaid easements; or, if shrubs or trees which have not been approved by the **VILLAGE** have been planted in the aforesaid easements; or, if the easement areas are not being maintained in a manner consistent with the lands maintained by the individual residents of **CARTER'S CROSSING**, the Homeowner's Association shall be responsible for the cost and expense of returning the slopes and elevations to the originally designed, established and constructed elevations and slopes; removing structures; removing inappropriate shrubs or trees; and maintaining the easement areas in a manner consistent with the lands maintained by the individual residents of **CARTER'S CROSSING**.
8. If the Homeowner's Association fails to conduct or submit an inspection certifying the basins; or, fails to return the slopes and elevations to the originally designed, established and constructed elevations and slopes, and make all the necessary repairs and/or improvements to correct damages, both natural and man made; or remove structures or inappropriate shrubs or trees, or maintain the easement area in a manner consistent with the lands maintained by the individual residents of **CARTER'S CROSSING**, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete said work as described above. In addition, the **VILLAGE** shall be empowered without notice of public hearing, to impose a special assessment for the cost of said work upon each and every lot within **CARTER'S CROSSING**, payable with the next succeeding tax roll.
9. Each and every lot owner within **CARTER'S CROSSING** shall be jointly and severally liable for any expense or cost incurred by the **VILLAGE** to inspect, preserve, maintain, or restore the aforesaid easement areas on the **PROPERTY**, or landscaping thereon. The **VILLAGE** shall be empowered, without notice of hearing, to levy a special assessment against each lot owner within **CARTER'S CROSSING**, and each and every lot owner agrees to pay for any such special assessment for expenses incurred by the **VILLAGE**.
10. **OWNER** and Homeowner's Association agree to indemnify and hold harmless the **VILLAGE**, its board members, employees, agents, and officers from any costs, damages, loss, claim, suit, liability or award which may arise, come, be brought or incurred or assessed because of the existence of, any action or failure to act with respect to the storm water detention basins, and the storm water easements on the **PROPERTY** or because of any adverse effect upon any person or property related or alleged to be related to the storm water detention basins and storm water easements. The **VILLAGE** shall have the right to defend any such claim and the **OWNER** and Homeowner's Association shall reimburse the **VILLAGE** for any and all costs and/or expenses, including but not limited to attorney's fees, which the **VILLAGE** may incur as a result of such claims.
11. As long as the **DEVELOPER** possesses any interest in any property in **CARTER'S CROSSING**, the **DEVELOPER** shall be considered an **OWNER** as that term is used in this Agreement, and shall be subject to all the obligations of an **OWNER** under this

Agreement

12. The rights and obligations created by this Agreement shall be covenants running with All Lots within **CARTER'S CROSSING** and shall inure to the benefit of, and be binding upon, the parties, their heirs, personal representatives, successors and assigns.

TOMICH INVESTMENTS II, LLC

IN WITNESS WHEREOF, Tomich Investments II, LLC, has caused this Agreement to be signed this 14th day of June, 2005.

Tomich Investments II, LLC

By:

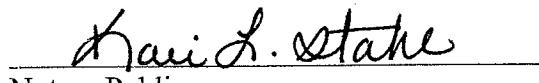


Carl Tomich, Managing Member

State of Wisconsin)
) SS

County of Waukesha

Personally came before me this 14th day of June, 2005, the above named Carl Tomich, to me known to be the person who executed the foregoing instrument in his respective official capacity as Managing Member of said corporation, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said Corporation by its authority.



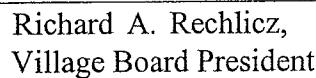
Notary Public

Waukesha County, State of Wisconsin
My Commission Expires on June 8, 2008

VILLAGE OF MENOMONEE FALLS

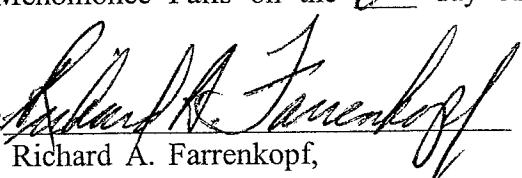
Approved by the Village Board of the Village of Menomonee Falls on the 6th day of June, 2005.

By:



Richard A. Rechlicz,
Village Board President

Attest:



Richard A. Farrenkopf,
Village Manager/Clerk-Treasurer

Approved as to Form: Michael J. Morse
Michael J. Morse, Village Attorney

This instrument was drafted by:

Brian C. Hornickel, P.E.
Senior Civil Engineer
Date: March 15, 2005

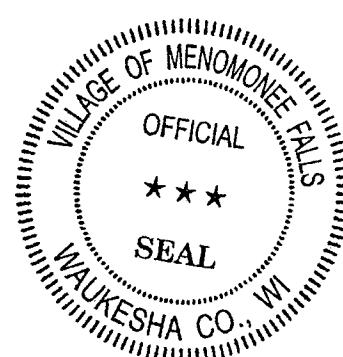


EXHIBIT "B"

BEING ALL OF OUTLOT 2 OF CARTER'S CROSSING, LOCATED IN THE NE
 1/4 OF SEC. 31 T.8N, R.20E, VILLAGE OF MENOMONEE FALLS,
 WAUKESHA COUNTY, WISCONSIN

N 1/4 CORNER
 SECTION 31-8-20
 N88°42'25"E
 313.39'
 1/4 OF SECTION 31-8-20

NORTH LINE OF THE NE

1/4 OF SECTION 31-8-20

CARTER'S CROSSING
 CIRCLE CROSSING

S01°17'35"E
 661.58'
 20.00'

40

S81°24'33"E 230.83'
 N81°24'33"W 182.00'

39

291.77'
 N08°35'27"E

38

37

36

35
 N62°40'23"W
 138.43'
 S71°24'46"N
 21.82'

34

33
 N47°53'51"W 182.00'
 S42°06'00"W

OUTLOT 2

19
 S66°49'30"E 205.39'
 N66°49'30"E 205.39'

18

S62°06'20"E 205.39'

S18°20'46"E
 94.85'

17
 STORM WATER DETENTION
 BASIN EASEMENT

19
 N65°00'50"N 346.88'
 S65°00'50"N 346.88'

32

S32°46'27"E 136.18'
 S32°46'27"E 136.18'

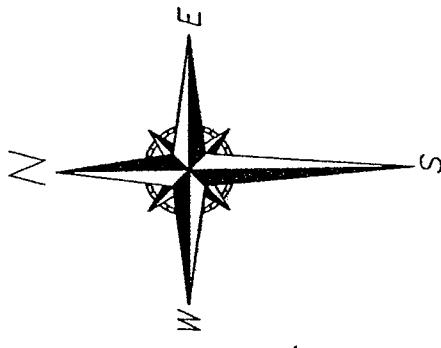
Chord: 68.43'
 Course: S49-39-51W
 Arc Length: 68.63'
 Radius: 260.00'
 Delta: 15-07-24

CIRCLE
 CROSSING
 CIRCLE
 CROSSING

SCALE: 1" = 100'

0 50 100 200

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26
 S77°31'15"E
 12.84'
 25
 27
 28
 24
 N76°44'07"E 174.85'
 S21°47'09"W
 66.42'
 S39.07'33"W
 66.42'
 29
 30
 23
 N60°51'16"E
 22.85'
 21
 N29°50'46"E 22.85'
 2
 N15°46'00"E 205.39'

20
 N15°46'00"E 205.39'

31
 S65°00'50"N 346.88'

30
 S65°00'50"N 346.88'

29
 S65°00'50"N 346.88'

28
 S65°00'50"N 346.88'

27
 S65°00'50"N 346.88'

26
 S65°00'50"N 346.88'

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4
 S65°00'50"N 346.88'

3
 S65°00'50"N 346.88'

2
 S65°00'50"N 346.88'

1
 S65°00'50"N 346.88'

0
 S65°00'50"N 346.88'

EXHIBIT "B" (Continued)

BEING ALL OF OUTLOT 4 OF CARTER'S CROSSING, LOCATED IN THE NE
1/4 OF SEC. 31 T.8N. R.20E. VILLAGE OF MENOMONEE FALLS,
WAUKESHA COUNTY, WISCONSIN

004573 SEP 22 19

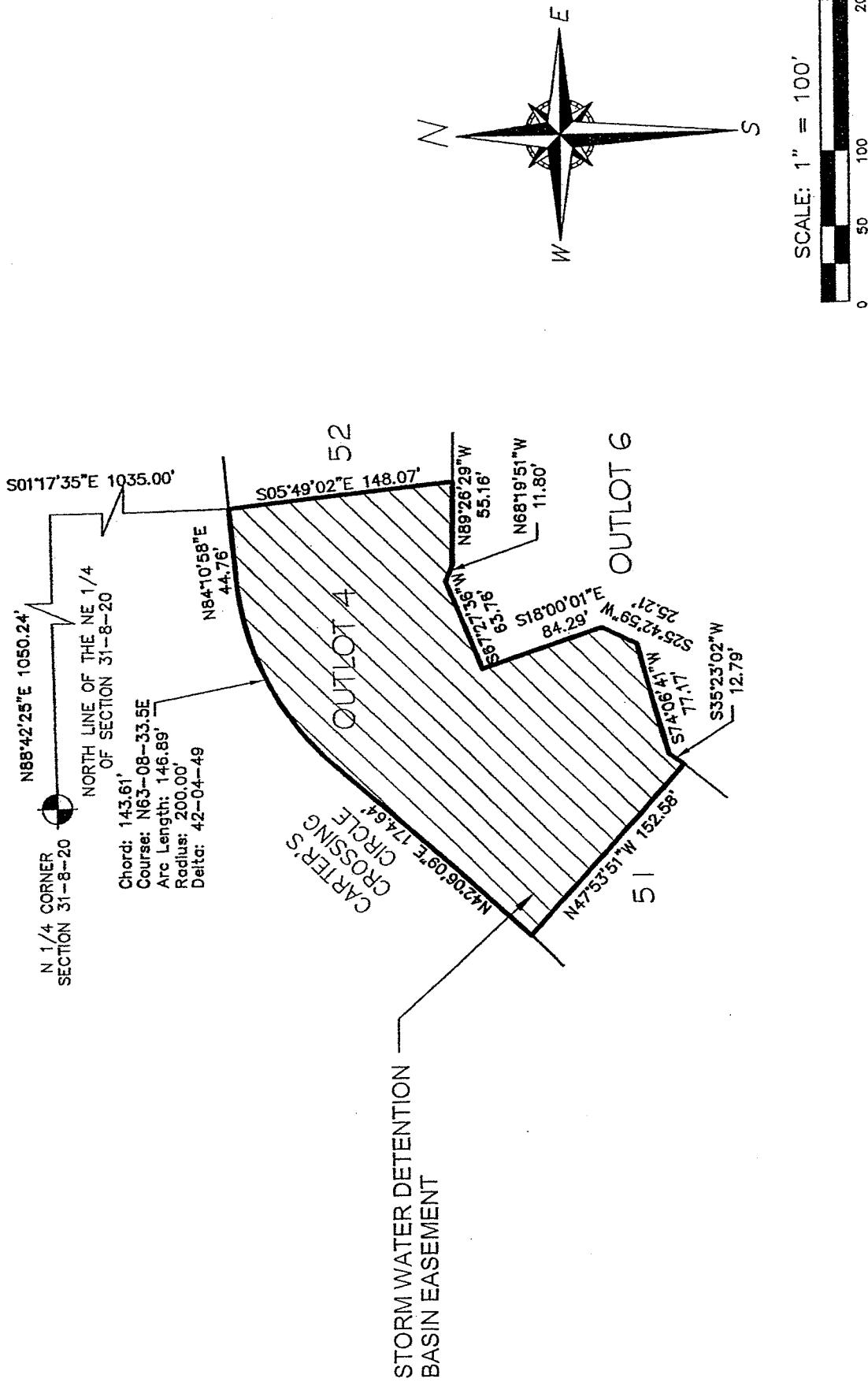


EXHIBIT "B" (Continued)

BEING ALL OF OUTLOT 5 OF CARTER'S CROSSING, LOCATED IN THE NE 1/4 OF SEC. 31 T.8N, R.20E, VILLAGE OF MENOMONEE FALLS, WAUKESHA COUNTY, WISCONSIN

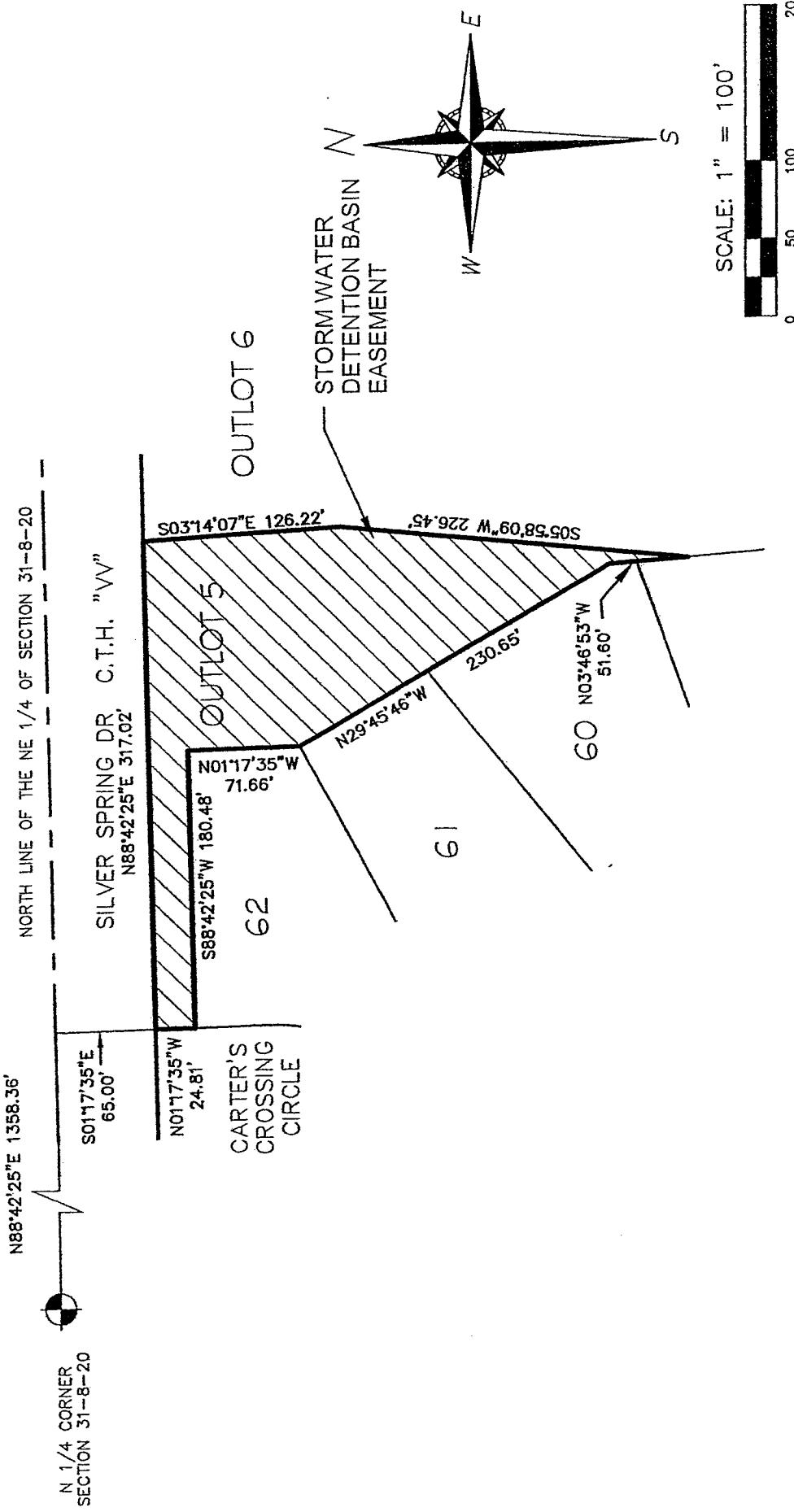


EXHIBIT "C"

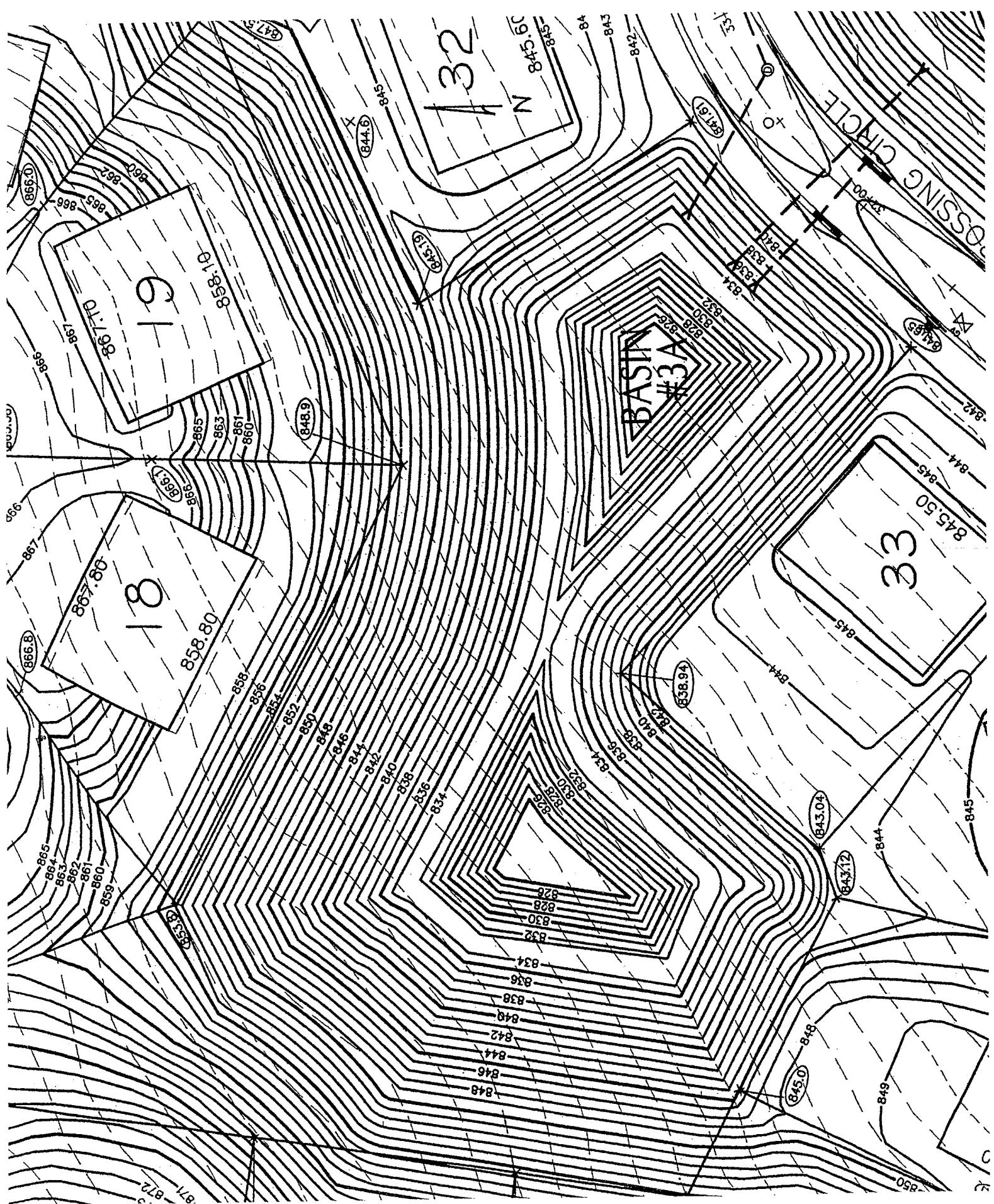


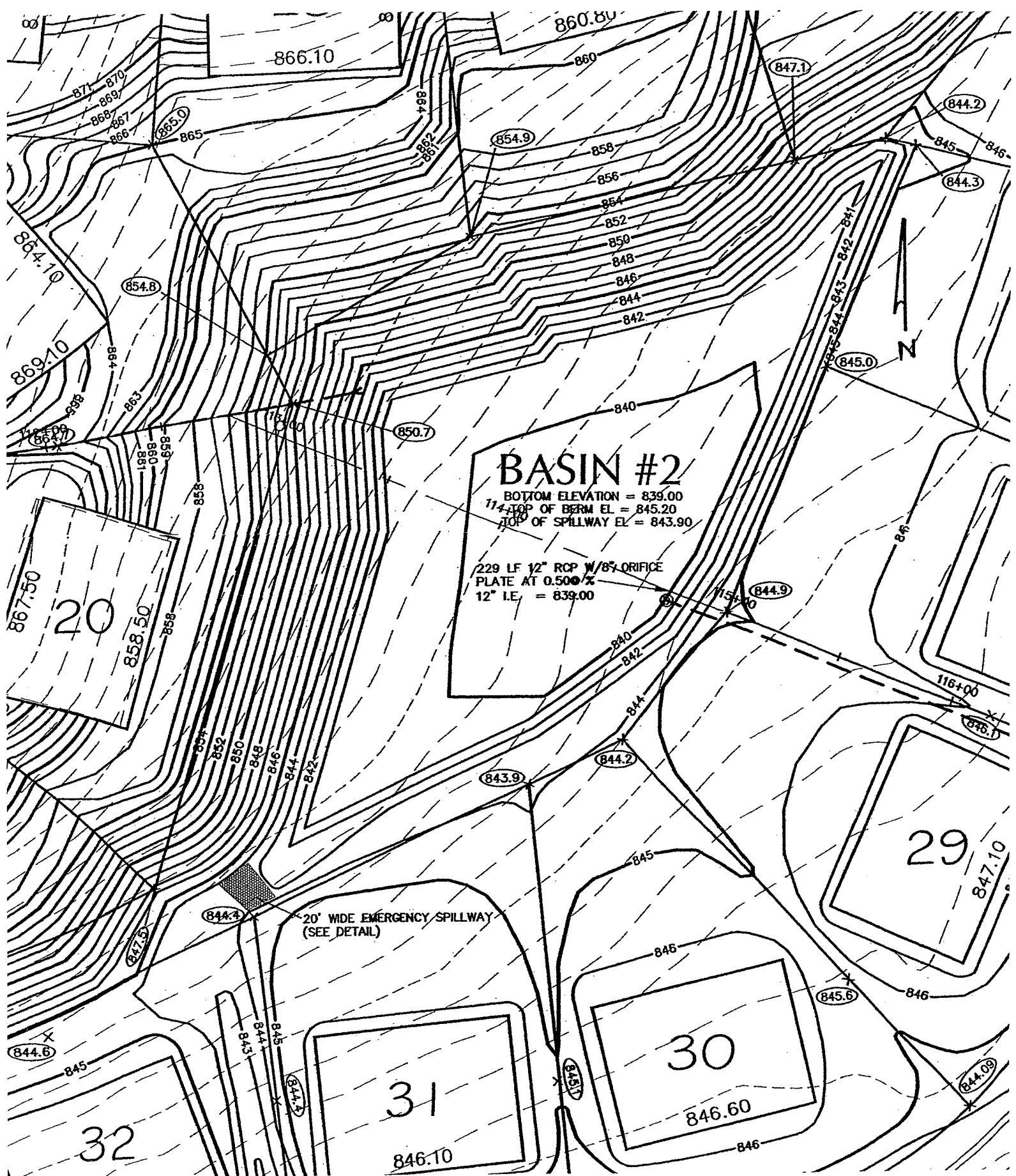
EXHIBIT "C" (Continued)

EXHIBIT "C" (Continued)

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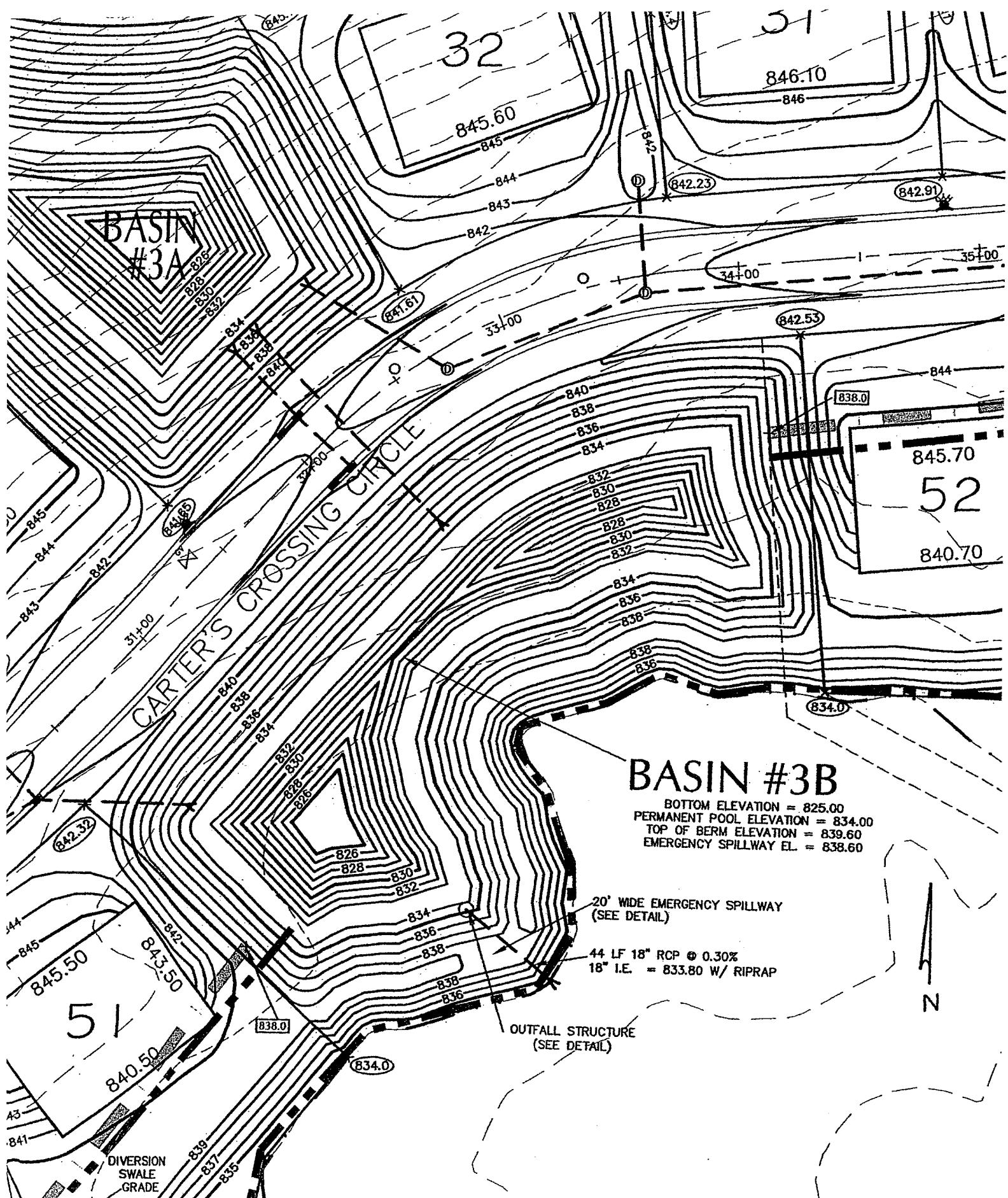


EXHIBIT "C" (Continued)

0011578 SEP 25

