

002017 SEP 18

SE 1/4 SEC 24

3417962



WC3417962-014

MAINTENANCE
AGREEMENT

DOCUMENT TITLE

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
RECORDED ON

09-07-2006 2:31 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

Lilly Creek Highlands IV
Lilly Creek, LLC

Tax Key No. MNFV 0096.980.004

37/14

002018 SEP 27 8

MAINTENANCE AGREEMENT

This Agreement, made and entered into this 5th day of September 2006, by and between **LILLY CREEK, 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:

- A. **DEVELOPER** is the owner of certain lands located in the Southeast Quarter (SE ¼) of Section 24, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin identified as Outlot 9, Outlot 10, and Outlot 11 in **LILLY CREEK HIGHLANDS IV**, a recorded subdivision, and further shown in **Exhibit "A"** attached hereto, and which is here-in-after referred to as the "**PROPERTY**"; and
- B. The **VILLAGE** has approved the plat of in **LILLY CREEK HIGHLANDS IV** and the construction of storm water detention basins on the **PROPERTY**; and
- C. The **DEVELOPER** acknowledges that the stormwater detention facilities to be constructed and maintained under this agreement are for the benefit of the properties comprising **LILLY CREEK HIGHLANDS IV**; and
- D. 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
- E. 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.
- F. 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
- G. The **DEVELOPER** as a part of the development of the **LILLY CREEK HIGHLANDS IV** 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
- H. 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
- I. 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
- J. The **DEVELOPER** intends to establish a Homeowner's Association and Condominium Association which are primarily responsible for the maintenance of the landscaping thereon, and the maintenance of the stormwater detention basins within the

PROPERTY; and

- K** 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 **LILLY CREEK HIGHLANDS IV**.

NOW THEREFORE, based on the above, the parties agree as follows:

1. **Interests and Obligations of Individual Lot Owners.**

- a. Interests of Individual Lot Owners. Each residential lot and each condominium in **LILLY CREEK HIGHLANDS IV** subdivision shall have attached to it an equal and undividable ownership in Outlot 9, Outlot 10, and Outlot 11 within the **PROPERTY** and each residential lot owner and each condominium owner shall be considered the "**OWNER**" of the stormwater detention basins in Outlot 9, Outlot 10, and Outlot 11 within the **PROPERTY**.
- b. Obligations of Individual Lot Owners. Each **OWNER** within **LILLY CREEK HIGHLANDS IV** shall be jointly and severally liable for any expense or cost incurred by the **VILLAGE** to inspect, preserve, maintain, or restore the stormwater detention facilities; and any Village actions regarding Outlot 9, Outlot 10, and Outlot 11. The **VILLAGE** shall be empowered, without notice or hearing, to levy a special assessment against each and every lot within **LILLY CREEK HIGHLANDS IV**, and each and every **OWNER** agrees to pay for any such special assessment for expenses incurred by the **VILLAGE**.
- c. Agreement of Developer and Lot Owners to Indemnify Village.
 - (i) **DEVELOPER, OWNER, Homeowner's Association, and Condominium 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 easement.
 - (ii) The **VILLAGE** shall have the right to defend any such claims and **DEVELOPER, OWNER, Homeowner's Association, and Condominium Association** shall reimburse the **VILLAGE** for any and all cost and/or expenses, including but not limited to attorney's fees, which the **VILLAGE** may incur as a result of such claims.

2. **Obligations Related to Storm Water Detention Facilities on Outlot 9, Outlot 10, and Outlot 11.**

- a. Grant of Stormwater Easement to Village.
 - (i) The **DEVELOPER** hereby warrants and represents that it is the owner in fee of the real estate described above, and that this real estate is free and clear of all liens and encumbrances.

- (ii) The **DEVELOPER** together with its respective heirs, personal representatives, and assigns, by separate document has granted unto the said Village of Menomonee Falls and its assigns, permanent and perpetual easement for storm water detention basin and related facilities, including storm sewer inlets and manholes in Outlot 9, Outlot 10, and Outlot 11.
- b. The elevations and slopes that have been established in the storm water detention easement 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**.
 - c. No Structure of any type will be allowed within the aforesaid easements.
 - d. Before either may plant trees or shrubs in the aforesaid easements, the **OWNER** or Homeowner's Association and Condominium 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 Homeowners Association and Condominium Association may plant shrubs or trees in the easements, unless approved by the **VILLAGE**.
 - e. Every five (5) years from the date of this agreement, the Homeowners Association and Condominium Association shall hire a licensed professional engineer to inspect and certify the storm water detention basin 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 structure, pond areas, access roads, etc. The conditions shall be noted in the inspection report. The **OWNER** or Homeowner's Association and Condominium Association must 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.
 - f. 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, the **OWNER** or Homeowner's Association and Condominium 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 and replacing shrubs and trees; and maintaining stormwater detention basin area.
 - g. If the **OWNER** or Homeowners Association and Condominium 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; removing and replacing shrubs and trees; or remove structures, or maintain stormwater detention basin area in a manner outlined in this document, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER**

or Homeowner's Association and Condominium 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 **LILLY CREEK HIGHLAND IV** payable with the next succeeding tax roll.

3. **Condominium Association Obligations**

- a. The **DEVELOPER** intends to establish a Condominium Association, which will be primarily responsible for the maintenance of the landscaping and the other obligations relating to Outlot 9 and Outlot 11, within the **PROPERTY**.
- b. Upon its creation, and subject to the other terms of this agreement, the Condominium Association shall, as the agent of the **OWNER**, thereafter be primarily responsible for the obligations of the individual lot owners of Lilly Creek Highlands IV under this agreement. If the Condominium Association is never created, is not responsive, or is dissolved, then the **OWNER** shall be responsible for all obligations in this agreement.
- c. If the **OWNER** or Condominium Association fails perform any obligation required under this agreement regarding Outlot 10 the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete such work. 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, **LILLY CREEK HIGHLAND IV** payable with the next succeeding tax roll.

4. **Homeowners Association Obligations.**

- a. The **DEVELOPER** intends to establish a Homeowner's Association, which will be primarily responsible for the maintenance of the landscaping and the other obligations relating to Outlot 10, within the **PROPERTY**.
- b. Upon its creation, and subject to the other terms of this agreement, the Homeowner's Association shall, as the agent of the **OWNER**, thereafter be primarily responsible for the obligations of the individual lot owners of Spencers Pass East under this agreement. If the Homeowners Association is never created, is not responsive, or is dissolved, then the **OWNER** shall be responsible for all obligations in this agreement.
- c. If the **OWNER** or Homeowners Association fails perform any obligation required under this agreement regarding Outlot 10, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or Homeowner's Association to complete such work. 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, **LILLY CREEK HIGHLAND IV** payable with the next succeeding tax roll.

5. **Obligations and Rights to Run with the land.** The rights and obligations created by this Agreement shall be covenants running with All Lots within and shall **LILLY CREEK HIGHLAND IV** inure to the benefit of, and be binding upon, the parties, their heirs, personal representatives, successors and assigns.

6. **Effective Date.** This agreement shall become effective on the date it is signed by the **DEVELOPER** or approved by the **VILLAGE**, whichever is later.

END OF TEXT. SIGNATURE PAGE FOLLOWS

LILLY CREEK, LLC

IN WITNESS WHEREOF, LILLY CREEK, LLC, has caused this Agreement to be signed this 22nd day of August, 2006.

LILLY CREEK, LLC

By: _____

P.J. Burbach, Managing Member

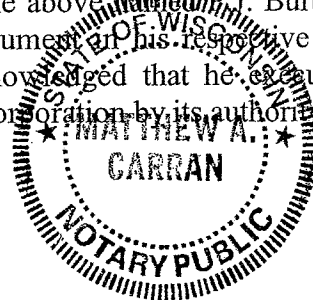
State of Wisconsin)

) SS

County of Waukesha)

Personally came before me this 22 day of August, 2006, the above named P.J. Burbach, 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.

Matthew A. Carran
Notary Public Waukesha County, State of Wisconsin
My Commission Expires on 7-22-07



VILLAGE OF MENOMONEE FALLS

Approved by the Village Board of the Village of Menomonee Falls on the 5th day of September, 2006.

By: _____

Richard A. Rechlicz,
President

Village

Attest: _____

Richard A. Farrenkopf,
Village Manager/Clerk-Treasurer

Approved as to Form: _____

Michael J. Morse, Village Attorney

This instrument was drafted by:
Jonathan Bretl
Civil Engineer I
Date: July 5, 2006



EXHIBIT "A"

LILLY CREEK HIGHLANDS IV

BEING A PART OF PARCEL 3, 4 AND VACATED STREET OF CSM #2088 BEING
A PART OF THE NORTHWEST ¼ OF THE SOUTHEAST ¼ OF SECTION 24, TOWN
8 NORTH, RANGE 20 EAST, IN THE VILLAGE OF MENOMONEE FALLS,
WAUKESHA COUNTY, WISCONSIN

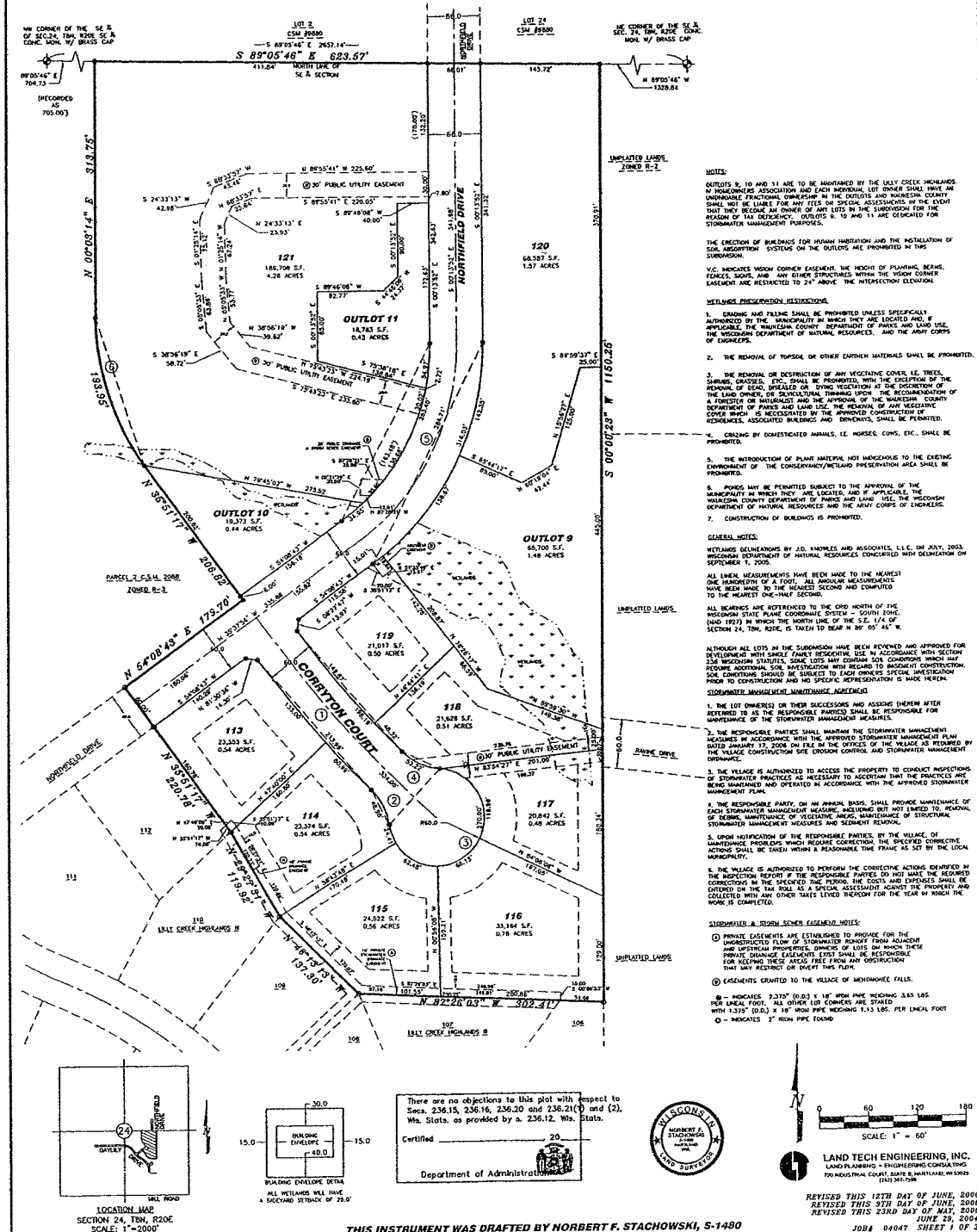


EXHIBIT 'B'

002024 SEP 27 06

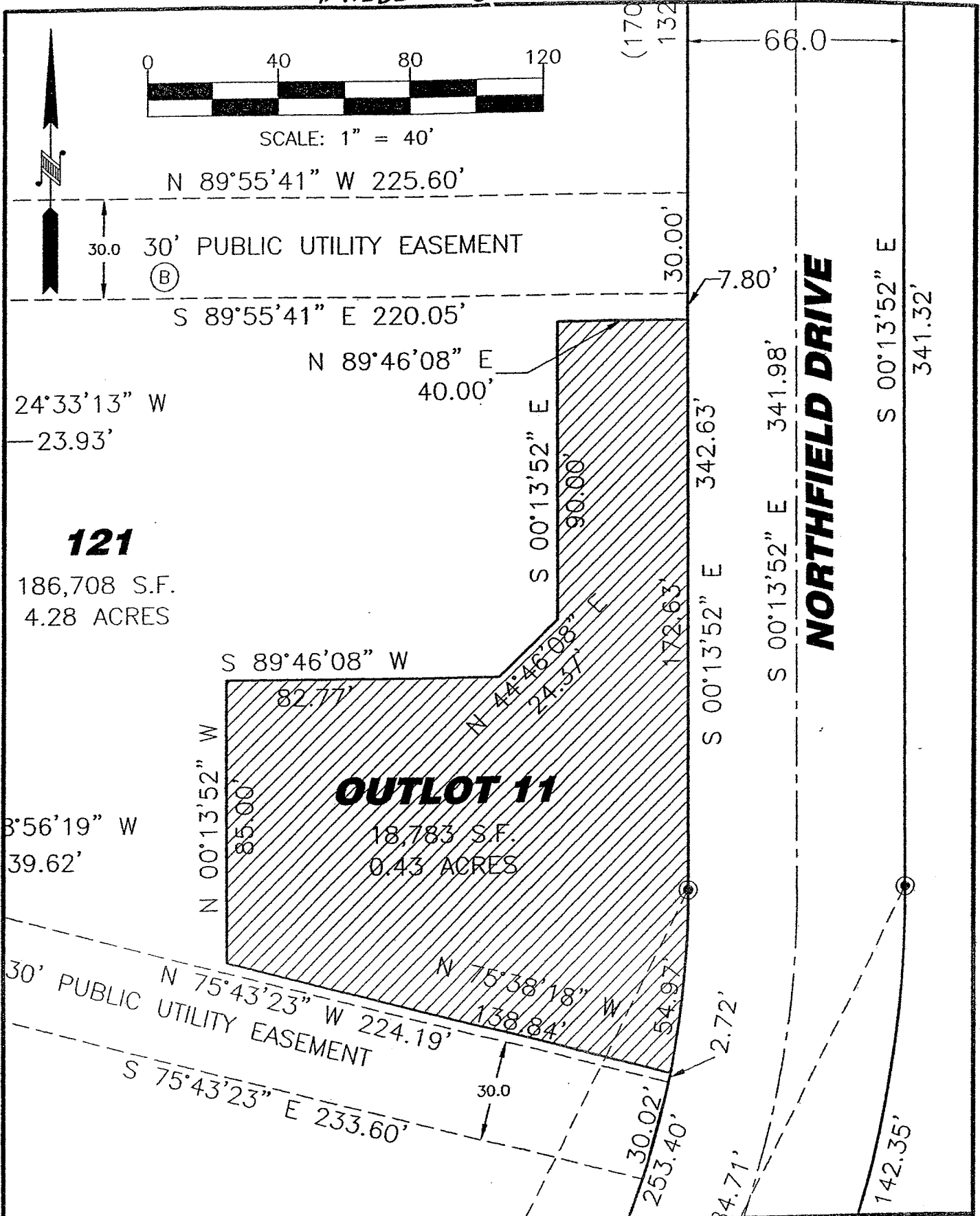


EXHIBIT 4
STORMWATER MANAGEMENT
EASEMENT



LAND TECH ENGINEERING, INC.
 LAND PLANNING • ENGINEERING CONSULTING
 720 INDUSTRIAL COURT, SUITE B, HARTLAND, WI 53029
 PH: (262) 367-7599 FAX: (262) 367-6726

002025 SEP 27 06

**LEGAL DESCRIPTION 4
OF A STORMWATER MANAGEMENT EASEMENT
BEING OUTLOT 11 OF
OF LILLY CREEK HIGHLANDS IV**

Being a stormwater management easement, being Outlot 11 of Lilly Creek Highlands IV, being a part of parcel 3, 4 and Vacated Street of C.S.M. No. 2088 and lands being a part of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 24, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, Bounded and described as follows:

Commencing at the Northeast corner of said Southeast $\frac{1}{4}$ Section; thence running North $89^{\circ}05'46''$ West along the North line of said Southeast $\frac{1}{4}$ Section, 1540.57 feet to a point on the Northerly line of "Lilly Creek Highlands IV"; thence South $00^{\circ}13'52''$ East, 170.00 feet to the point of beginning:

Thence South $89^{\circ}46'08''$ West, 40.00 feet to a point; thence South $00^{\circ}13'52''$ East, 90.00 feet to a point; thence South $44^{\circ}46'08''$ West, 24.37 feet to a point; thence South $89^{\circ}46'08''$ West, 82.77 feet to a point; thence South $00^{\circ}13'52''$ East, 85.00 feet to a point; thence South $75^{\circ}38'18''$ East, 138.84 feet to a point on a curve; thence Northeasterly 54.97 feet along the arc of said curve whose center lies to the Northwest, whose radius is 267.00 feet, and whose chord bears North $05^{\circ}40'00''$ East, 54.87 feet to a point; thence North $00^{\circ}13'52''$ West, 172.63 feet to the point of beginning.

Contains 0.43 acres more or less

Prepared by Norbert F. Stachowski, RLS # S-1480

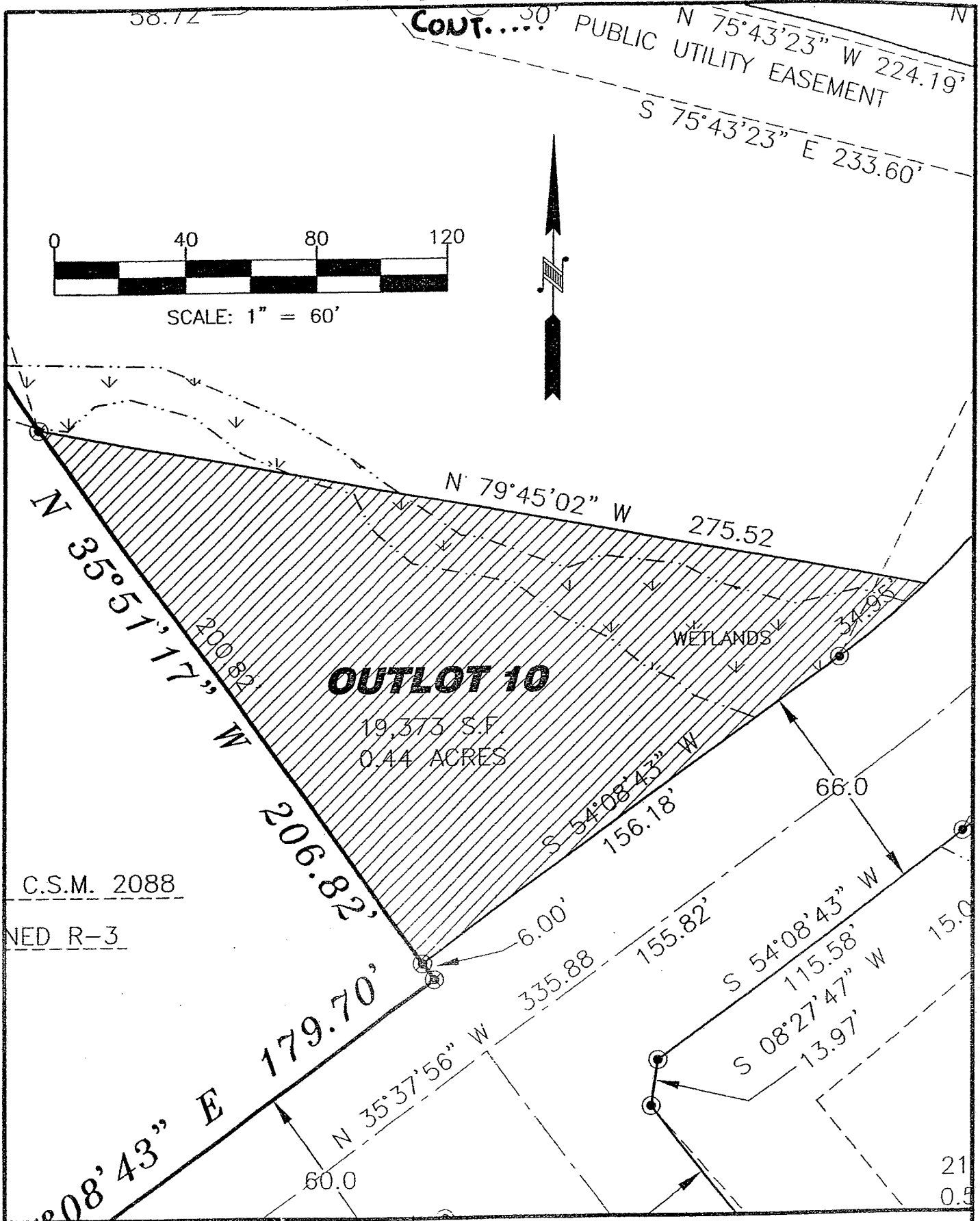


EXHIBIT 5
STORMWATER MANAGEMENT
EASEMENT



LAND TECH ENGINEERING, INC.
LAND PLANNING • ENGINEERING CONSULTING
720 INDUSTRIAL COURT, SUITE B, HARTLAND, WI 53029
PH: (262) 367-7599 FAX: (262) 367-6726

EXHIBIT 'B'
CONT...

LEGAL DESCRIPTION 5
OF A STORMWATER MANAGEMENT EASEMENT
BEING OUTLOT 10 OF
OF LILLY CREEK HIGHLANDS IV

Being a stormwater management easement, being Outlot 10 of Lilly Creek Highlands IV, being a part of parcel 3, 4 and Vacated Street of C.S.M. No. 2088 and lands being a part of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 24, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, Bounded and described as follows:

Commencing at the Northeast corner of said Southeast $\frac{1}{4}$ Section; thence running North $89^{\circ}05'46''$ West along the North line of said Southeast $\frac{1}{4}$ Section, 1952.41 feet to the Northwest corner of "Lilly Creek Highlands IV"; thence South $00^{\circ}03'14''$ West along the Westerly line of "Lilly Creek Highlands IV", 313.75 feet to a point on a curve; thence Southeasterly 193.95 feet along the arc of said curve, whose center lies to the Northeast, whose radius is 309.47 feet and whose chord bears South $17^{\circ}01'01.5''$ East, 190.79 feet to the point of beginning:

Thence South $79^{\circ}45'02''$ East, 275.52 feet to a point on a curve; thence Southwesterly 34.95 feet along the arc of said curve, whose center lies to the Northwest, whose radius is 267.00 feet and whose chord bears South $29^{\circ}06'17.5''$ West, 34.93 feet to a point; thence South $54^{\circ}08'43''$ West, 156.18 feet to a point on the Westerly line of "Lilly Creek Highlands IV"; thence North $35^{\circ}51'17''$ West along said line, 200.82 feet to the point of beginning.

Contains 0.44 acres more or less

Prepared by Norbert F. Stachowski, RLS # S-1480

EXHIBIT "B" CONT....



SCALE: 1" = 60'

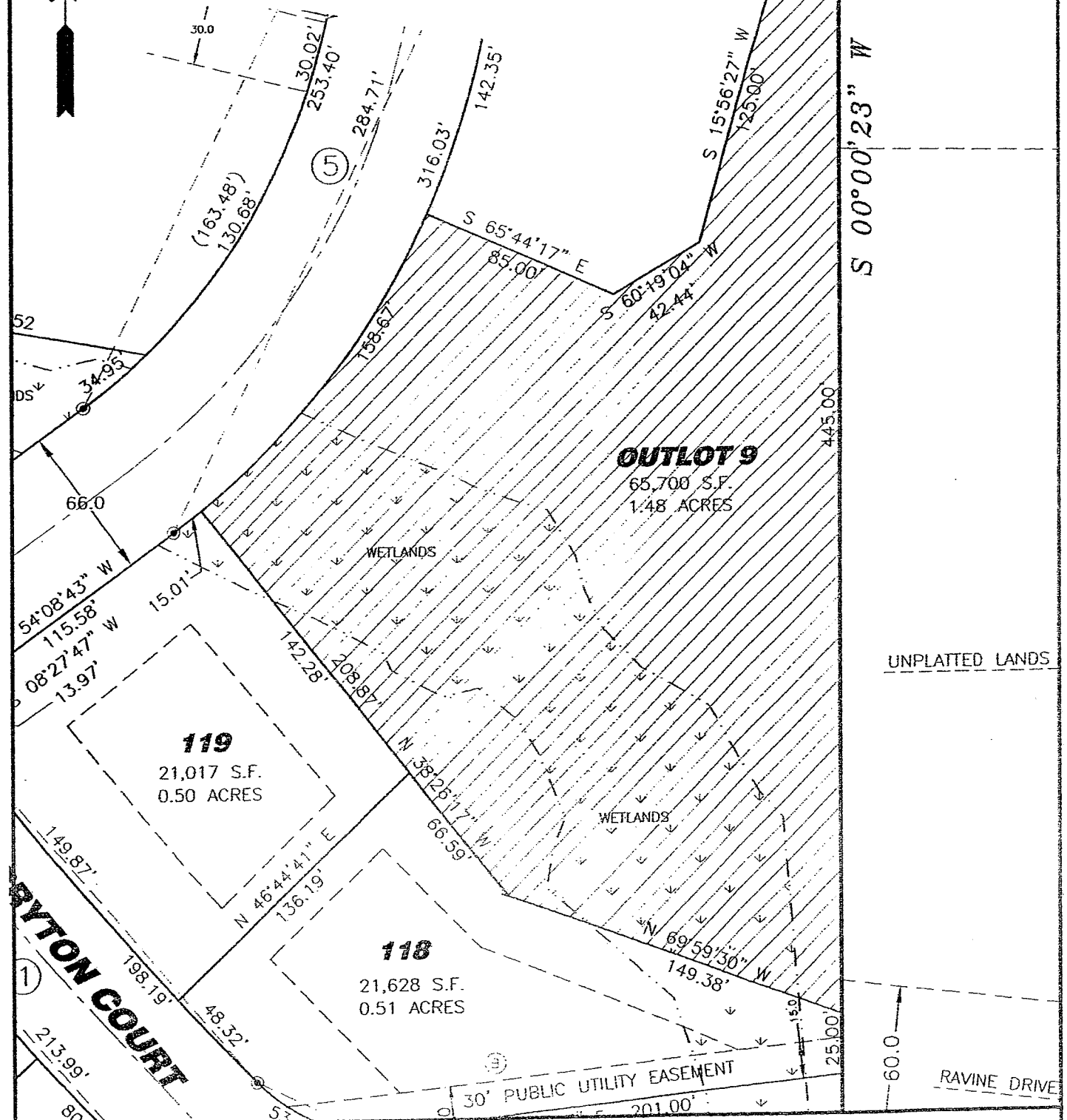
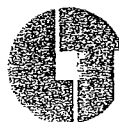


EXHIBIT 6
STORMWATER MANAGEMENT
EASEMENT



LAND TECH ENGINEERING, INC.
LAND PLANNING • ENGINEERING CONSULTING
720 INDUSTRIAL COURT, SUITE B, HARTLAND, WI 53029
PH: (262) 367-7599 FAX: (262) 367-6726

CONTINUED

**LEGAL DESCRIPTION 6
OF A STORMWATER MANAGEMENT EASEMENT
BEING OUTLOT 9 OF
OF LILLY CREEK HIGHLANDS IV**

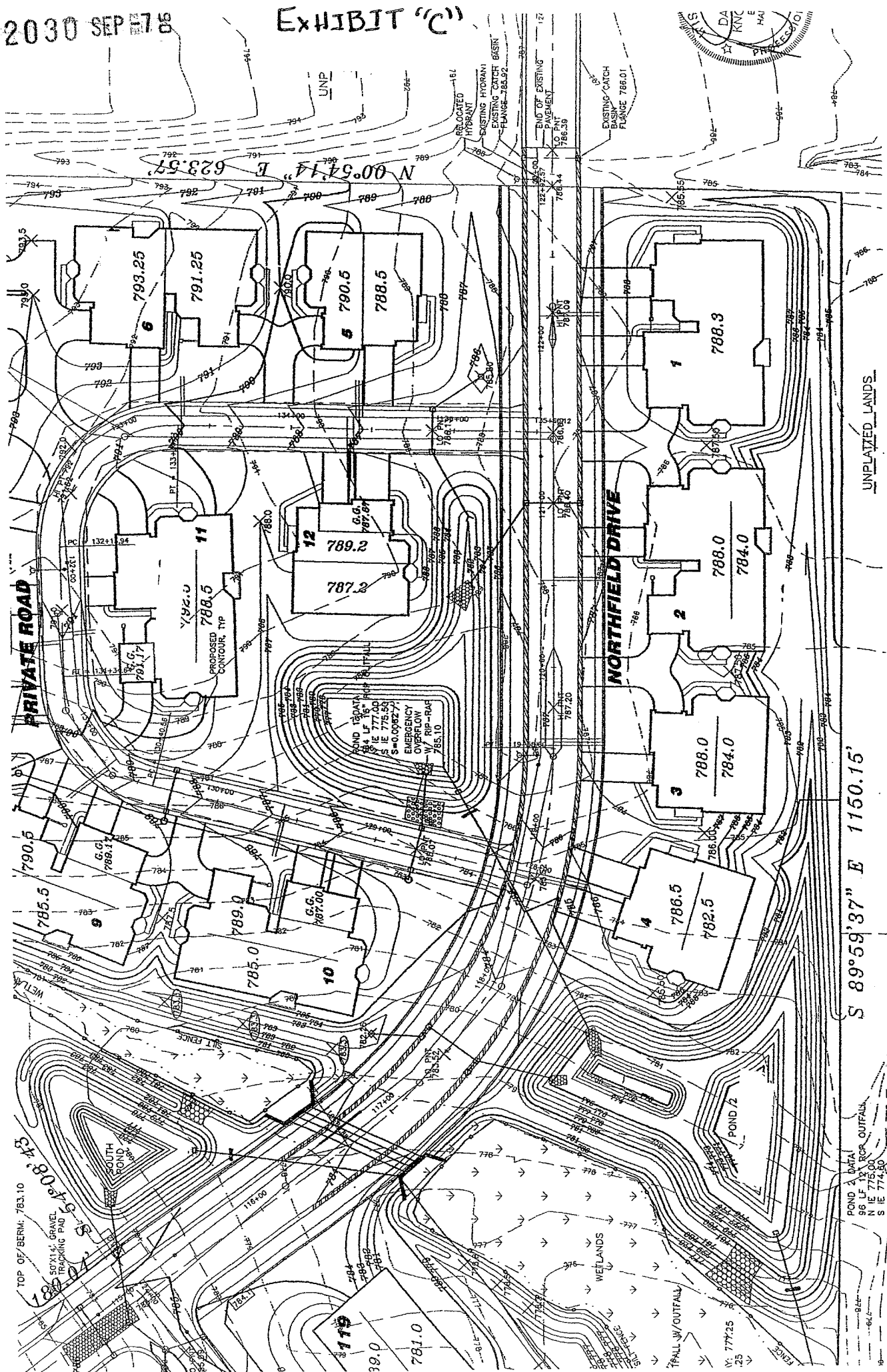
Being a stormwater management easement, being Outlot 9 of Lilly Creek Highlands IV, being a part of parcel 3, 4 and Vacated Street of C.S.M. No. 2088 and lands being a part of the Northwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 24, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, Bounded and described as follows:

Commencing at the Northeast corner of said Southeast $\frac{1}{4}$ Section; thence running North $89^{\circ}05'46''$ West along the North line of said Southeast $\frac{1}{4}$ Section, 1328.84 feet to a point; thence South $00^{\circ}00'23''$ East along the Easterly line of "Lilly Creek Highlands IV", 370.91 feet to the point of beginning;

Thence continuing South $00^{\circ}00'23''$ West, 445.00 feet to a point; thence North $69^{\circ}59'30''$ West, 149.38 feet to a point; thence North $38^{\circ}26'17''$ West, 208.87 feet to a point on a curve; thence Northeasterly 158.67 feet along the arc of said curve, whose center lies to the Northwest, whose radius is 333.00 and whose chord bears North $37^{\circ}54'43''$ East, 157.17 feet to a point; thence South $65^{\circ}44'17''$ East, 85.00 feet to a point; thence North $60^{\circ}19'04''$ East, 42.44 feet to a point; thence North $15^{\circ}56'27''$ East, 125.00 feet to a point; thence South $89^{\circ}59'37''$ East, 25.00 feet to the point of beginning.

Contains 1.48 acres more or less

Prepared by Norbert F. Stachowski, RLS # S-1480





Village of Menomonee Falls
W156 N8480 Pilgrim Road
Menomonee Falls, WI 53051-3140
Telephone: (262) 532-4200

September 29, 2006

Lilly Creek, LLC
2645 N. Mayfair Road
Suite 130
Wauwatosa, WI 53226-1304

Attn: P.J. Burbach

**Re: Lilly Creek Highlands IV—
Abutment Easement
Storm Sewer Easement
Storm Water Detention Basin Easement
Water Main & Sanitary Sewer Easement
Maintenance Agreement
Tax Key Nos. 0096.980
0096.980.004**

Dear P.J.,

Please find enclosed an original signed copies and a recorded copies of the above-mentioned easements and agreement for the Lilly Creek Highlands IV Subdivision for your records. It contains recording information showing proof of recording by the Waukesha County Register of Deeds.

Should you have any questions or require additional information, please do not hesitate to contact either Jon Bretl at (262) 532-4414 or myself at (262) 532-4418.

Sincerely,

VILLAGE OF MENOMONEE FALLS

Linda I. Losiniecki
Administrative Assistant III
Engineering Services

Enclosures

Cc: Arlyn R. Johnson, Director of Public Works/Engineering
Jonathan M. Bretl, Civil Engineer I
Easement/Acquisition File
Vault