

000627 AUG 26 2008

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WC3595537-014

STORMWATER INSPECTION AND
MAINTENANCE AGREEMENT

DOCUMENT TITLE

COPY

REGISTER'S OFFICE
WAUKESHA COUNTY, WI
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08-26-2008 2:29 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

Tall Pines Condominium Development

Tax Key No. MNFV 0112.998.001

STORMWATER INSPECTION AND MAINTENANCE AGREEMENT

This Agreement, made and entered into by and between **TALL PINES CONDOMINIUM DEVELOPMENT, 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 Southwest Quarter (SW ¼) of the Southeast Quarter (SE ¼) of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin identified as parts of Tax Key No. 0112.998.001 in the Tall Pines Condominium Development, 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 a Development Plan as part of a PRD Agreement Resolution 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 of Tall Pines Condominium Development; 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 Tall Pines Condominium Development, 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 Condominium Association which is 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 PRD Agreement approved by the Village Board and the Architectural Control Board of the **VILLAGE**.

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

1. Each condominium unit in Tall Pines Condominium Development shall have attached to it an equal and undividable ownership in the storm water detention basin easement areas within the **PROPERTY**. Subject to the other terms of the agreement, the Condominium Association shall, as the agent of the **OWNERS** of condominium units (collectively, the **OWNER**), thereafter be primarily responsible for the landscaping, maintenance, and inspection of the stormwater detention basins located on the **PROPERTY**. 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.
2. The elevations and slopes that have been established in the storm water detention basin 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. **OWNER** shall not plant trees or shrubs in any easement area. Before they may plant trees or shrubs in the aforesaid easements, the 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. The Condominium Association may plant shrubs or trees in the easements only if approved by the **VILLAGE**.
5. The easement areas shall be maintained in a manner consistent with the PRD Agreement approved by the Village Board and the Architectural Control Board of the **VILLAGE**. 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 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 Condominium 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 PRD Agreement approved by the Village Board and the Architectural Control Board of the **VILLAGE**, the 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 inappropriate shrubs or trees; and maintaining the easement areas in a manner consistent with the PRD Agreement approved by the Village Board and the Architectural Control Board of the **VILLAGE**.
8. If the 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; or remove structures or inappropriate shrubs or trees, or maintain the easement area in a manner consistent with the PRD Agreement approved by the Village Board and the Architectural Control Board of the **VILLAGE**, the **VILLAGE** shall have the authority, upon thirty (30) days written notice to the **OWNER** or 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 condominium owner within Tall Pines Condominium Development, payable with the next succeeding tax roll.
9. Each and every condominium owner within Tall Pines Condominium Development shall be liable in accordance with such **OWNER'S** percentage interest in the common elements of the condominium 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 condominium owner within Tall Pines Condominium Development, and each and every condominium owner agrees to pay for any such special assessment for expenses incurred by the **VILLAGE**.

10. **OWNER** 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 easements. The **VILLAGE** shall have the right to defend any such claim and the **OWNER** and Condominium 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 Tall Pines Condominium Development, 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 the **PROPERTY** and shall inure to the benefit of, and be binding upon, the parties, their heirs, personal representatives, successors and assigns.
13. This Agreement shall become effective as of the date it is signed by the **DEVELOPER** or approved by the **VILLAGE**, whichever is later.

END OF TEXT. SIGNATURE PAGES AND EXHIBITS FOLLOW.

00632 AUG 26 2008

TALL PINES CONDOMINIUM DEVELOPMENT, LLC

IN WITNESS WHEREOF, **Tall Pines Condominium Development, LLC**, has caused this Agreement to be signed this 12th day of June, 2008.

Tall Pines Condominium Development, LLC

By:



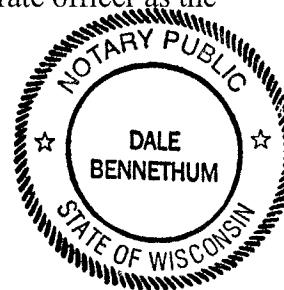
Thomas L. Richter, Manager

State of Wisconsin)
) SS
County of WAUKESHA)

Personally came before me this 12th day of June 2008, the above named Thomas L. Richter, to me known to be the person who executed the foregoing instrument in his respective official capacity as Manager of said corporation, and acknowledged that he executed the foregoing instrument as a corporate officer as the deed of said Corporation by its authority.

Dale Bennethum
Notary Public

WAUKESHA County, State of Wisconsin
My Commission Expires on 3-8-2009

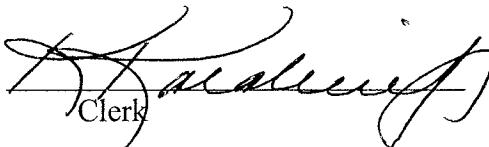


VILLAGE OF MENOMONEE FALLS

Approved by the Village Board of the Village of Menomonee Falls on the 4th day of August 2008.

By: Richard A. Rechlicz
Richard A. Rechlicz,
Village President

Attest:



Michael J. Morse
Clerk

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



EXHIBIT "A"

TALL PINES

PARCEL 2
C.S.M. #9256

N. LINE, S.W. 1/4, S.E. 1/4, SEC. 28-8-20

INDICATES 100 YEAR
FLOODPLAIN LINE

卷之三

**SUBJECT PROPERTY
(TALL PINES)**
1,447,851 S.F.
33.2381 Ac.

1,447,851 S.F.
33.2381 Ac.

60288. 116.

30°

—S02'00'05

118°39'55"E

782.64

S.W. CORNER,
S.E. 1/4.
SEC. 28-8-20

LOSIK ENGINEERING DESIGN GROUP

**3815 N. Brookfield Road Ste. 201
Brookfield, WI 53045**

Phone: (262) 790-1480
Fax: (262) 790-1481
E-mail: ledg@birwirr.com

NORTH

SCALE: 1" = 200'

THIS EXHIBIT WAS PREPARED BY MICHAEL J. LOSIK, PE, LS. (S-1065)

DATE: 8-31-06

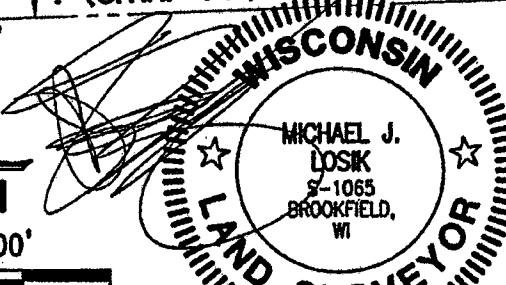


EXHIBIT "A" CONTINUED

TALL PINES

METES AND BOUNDS LEGAL DESCRIPTION:

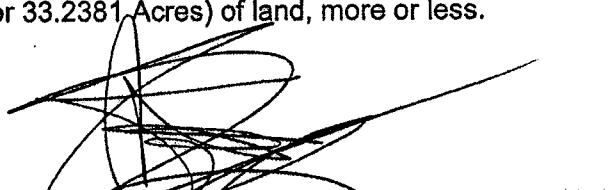
All that part of the Southwest 1/4 of the Southeast 1/4 of Section 28, Town 8 North, Range 20 East, in the Village of Menomonee Falls, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the Southwest corner of the said Southeast 1/4 Section; Thence North 00°31'51" West and along the West line of the said Southeast 1/4 Section and the Centerline of "Marcy Road", 130.00 feet to a point; Thence North 89°28'09" East, 30.00 feet to the place of beginning of lands hereinafter described;

Thence South 69°07'28" East and along the North Right-of-Way line of "Silver Spring Drive" (C.T.H. "VV"), 75.08 feet to a point; Thence North 87°59'55" East and along the said North Right-of-Way line being parallel to and at a right angle distance of 100.00 feet from the South line of the said Southeast 1/4 Section, 441.85 feet to a point; Thence South 02°00'05" East and along the said North Right-of-Way line, 40.00 feet to a point; Thence North 87°59'55" East and along the said North Right-of-Way line being parallel to and at a right angle distance of 60.00 feet from the said South line of the said Southeast 1/4 Section, 782.64 feet to a point on the East line of the said Southwest 1/4 of the said Southeast 1/4 Section; Thence North 00°13'32" West and along the said East line, 521.52 feet to a point; Thence North 73°32'44" West, 59.27 feet to a point; Thence North 80°42'30" West, 37.95 feet to a point; Thence North 28°59'35" West, 52.31 feet to a point; Thence South 71°25'22" West, 67.78 feet to a point; Thence North 38°13'35" West, 44.95 feet to a point; Thence North 09°38'13" West, 63.80 feet to a point; Thence North 10°38'55" West, 53.46 feet to a point; Thence North 32°38'56" East, 52.81 feet to a point; Thence North 00°49'52" East, 27.52 feet to a point; Thence North 11°18'42" East, 59.97 feet to a point; Thence North 26°59'22" West, 34.05 feet to a point; Thence North 22°13'34" East, 35.35 feet to a point; Thence North 20°25'01" West, 46.38 feet to a point; Thence North 36°25'15" West, 35.74 feet to a point; Thence North 03°20'44" East, 35.86 feet to a point; Thence North 49°53'08" West, 86.56 feet to a point; Thence North 79°39'11" West, 80.64 feet to a point; Thence North 31°43'34" East, 58.00 feet to a point; Thence North 75°51'20" West, 15.90 feet to a point; Thence North 31°23'08" West, 44.25 feet to a point; Thence North 52°40'42" East, 31.21 feet to a point; Thence North 46°42'53" East, 80.72 feet to a point on the North line of the said Southwest 1/4 of the said Southeast 1/4 Section; Thence South 88°04'21" West and along the said North line, 1006.00 feet to a point on the East Right-of-Way line of said "Marcy Road"; Thence South 00°31'51" East and along the said East Right-of-Way line being parallel to and at a right angle distance of 30.00 feet from the said West line of the said Southeast 1/4 Section, 1198.98 feet to the point of beginning of this description.

Said Parcel contains 1,447,851 Square Feet (or 33.2381 Acres) of land, more or less.

Date: 8-31-06



Michael J. Losik, P.E., L.S.

President

LOSIK ENGINEERING DESIGN GROUP, LTD.

3815 N. Brookfield Rd. - Suite 201

Brookfield, WI 53045

Phone: (262)790-1480 Fax:(262)790-1481

CENTER OF
SECTION 28-8-20

EXHIBIT "B"

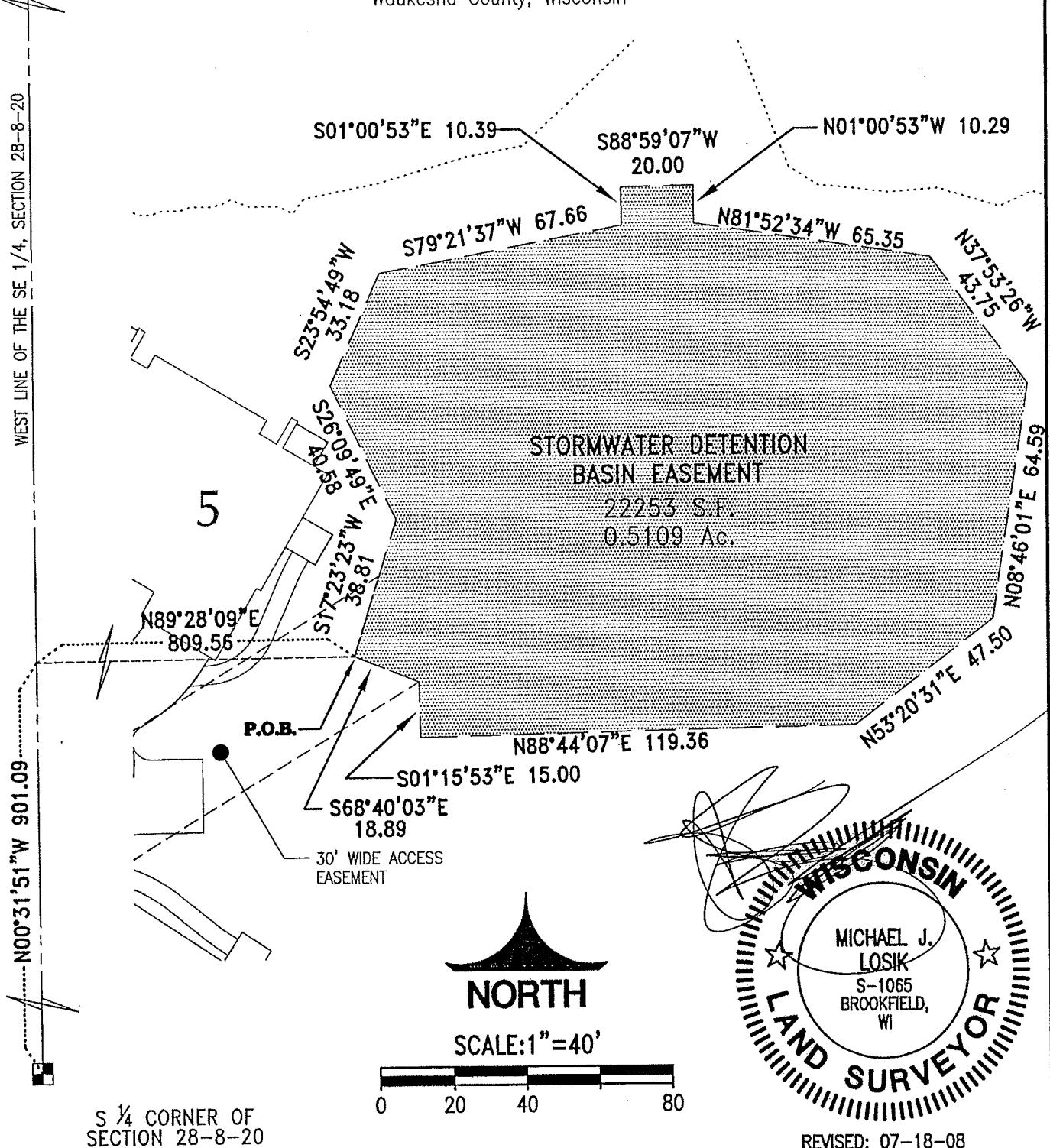
Stormwater Detention Basin Easement
Part of the SE $\frac{1}{4}$ of Section 28, Town 8 North,
Range 20 East, Village of Menomonee Falls,
Waukesha County, Wisconsin

EXHIBIT "B – CONTINUED"

Stormwater Detention Basin Easement

All that part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 28, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, now Being more particularly bounded and described as follows:

Commencing at the South $\frac{1}{4}$ corner of said Section 28; Thence North 00°31'51" West along the West line of said Southeast $\frac{1}{4}$ Section, 901.09 feet to a point; Thence North 89°28'09" East, 809.56 feet to a point in the Easterly line of a 30 foot wide Access Easement and the place of beginning of lands hereinafter described;

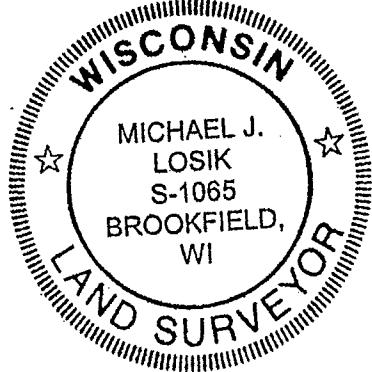
Thence South 68°40'03" East and along said Easement, 18.89 feet to a point;

Thence South 01°15'53" East, 15.00 feet to a point; Thence North 88°44'07" East, 119.36 feet to a point; Thence North 53°20'31" East, 47.50 feet to a point; Thence North 08°46'01" East, 64.59 feet to a point; Thence North 37°53'26" West, 43.75 feet to a point; Thence North 81°52'34" West, 65.35 feet to a point; Thence North 01°00'53" West, 10.29 feet to a point; Thence South 88°59'07" West, 20.00 feet to a point; Thence South 01°00'53" East, 10.39 feet to a point; Thence South 79°21'37" West, 67.66 feet to a point; Thence South 23°54'49" West, 33.18 feet to a point; Thence South 26°09'49" East, 40.58 feet to a point; Thence South 17°23'23" West and then along said Easement, 38.81 feet to the point of beginning of this description.

Containing 22,253 Square Feet (0.5109 Acres) of land, more or less.

Revised: 07/18/08

Date: 5/12/08



A handwritten signature in black ink, appearing to read "Michael J. Losik, P.E., L.S." followed by a large, stylized, handwritten signature.

Michael J. Losik, P.E., L.S.
President
LOSIK ENGINEERING DESIGN GROUP, LTD.
19035 W. Capitol Dr. - Suite 201
Brookfield, WI 53045
Phone: (262)790-1480 Fax:(262)790-1481

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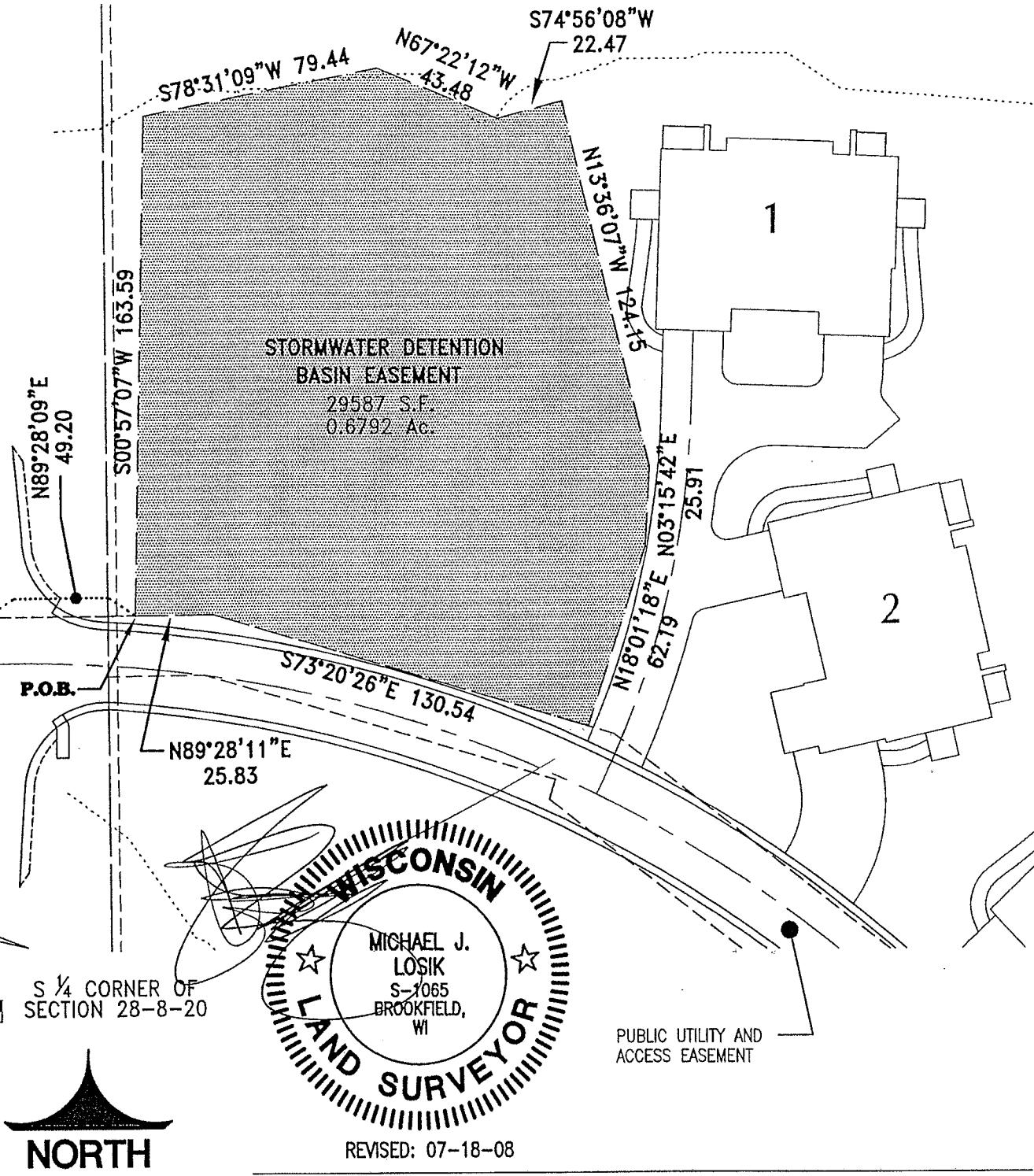
CENTER OF
SECTION 28-8-20

EXHIBIT "B - CONTINUED"

Stormwater Detention Basin Easement

Part of the SE $\frac{1}{4}$ of Section 28, Town 8 North,
Range 20 East, Village of Menomonee Falls,
Waukesha County, Wisconsin

WEST LINE OF THE SE $\frac{1}{4}$, SECTION 28-8-20



Losik Engineering Design Group
Consulting Engineering
Land Surveying
Land Planning

LOSIK ENGINEERING
DESIGN GROUP

19035 W. Capitol Dr. Suite 201
Brookfield, WI 53045

(262) 790-1480
FAX: (262) 790-1481
EMAIL: ledg@losikengineering.com

00638 AUG 26 8

EXHIBIT "B - CONTINUED"

Stormwater Detention Basin Easement

All that part of the Southwest $\frac{1}{4}$ of the Southeast $\frac{1}{4}$ of Section 28, Town 8 North, Range 20 East, Village of Menomonee Falls, Waukesha County, Wisconsin, now Being more particularly bounded and described as follows:

Commencing at the South $\frac{1}{4}$ corner of said Section 28; Thence North 00°31'51" West along the West line of said Southeast $\frac{1}{4}$ Section, 956.62 feet to a point; Thence North 89°28'09" East, 49.20 feet to a point in the North line of a Public Utility and Access Easement and the place of beginning of lands hereinafter described;

Thence North 89°28'11 East and along said Easement, 25.83 feet to a point; Thence South 73°20'26" East and along said Easement, 130.54 feet to a point; Thence North 18°01'18" East, 62.19 feet to a point; Thence North 03°15'42" East, 25.91 feet to a point; Thence North 13°36'07" West, 124.15 feet to a point; Thence South 74°56'08" West, 22.47 feet to a point; thence North 67°22'12" West, 43.48 feet to a point; Thence South 78°31'09" West, 79.44 feet to a point; Thence South 00°57'07" West, 163.59 feet to the point of beginning of this description.

Containing 29,587 Square Feet (0.6792 Acres) of land, more or less.

Revised: 07/18/08

Date: 5/12/08

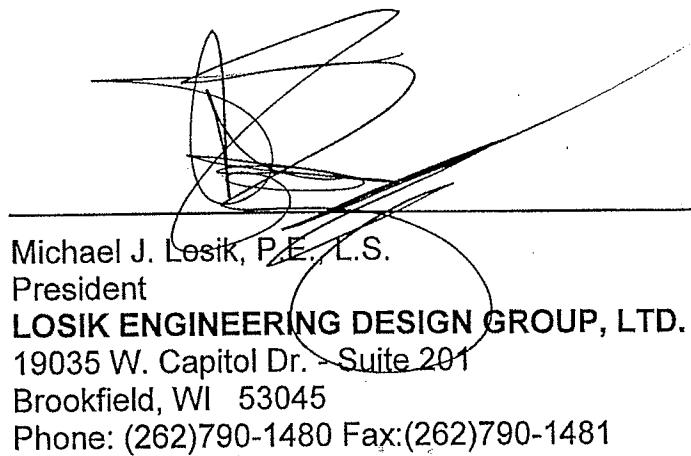
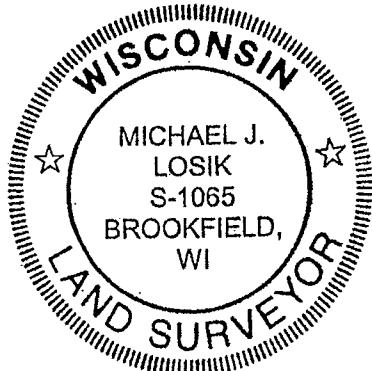


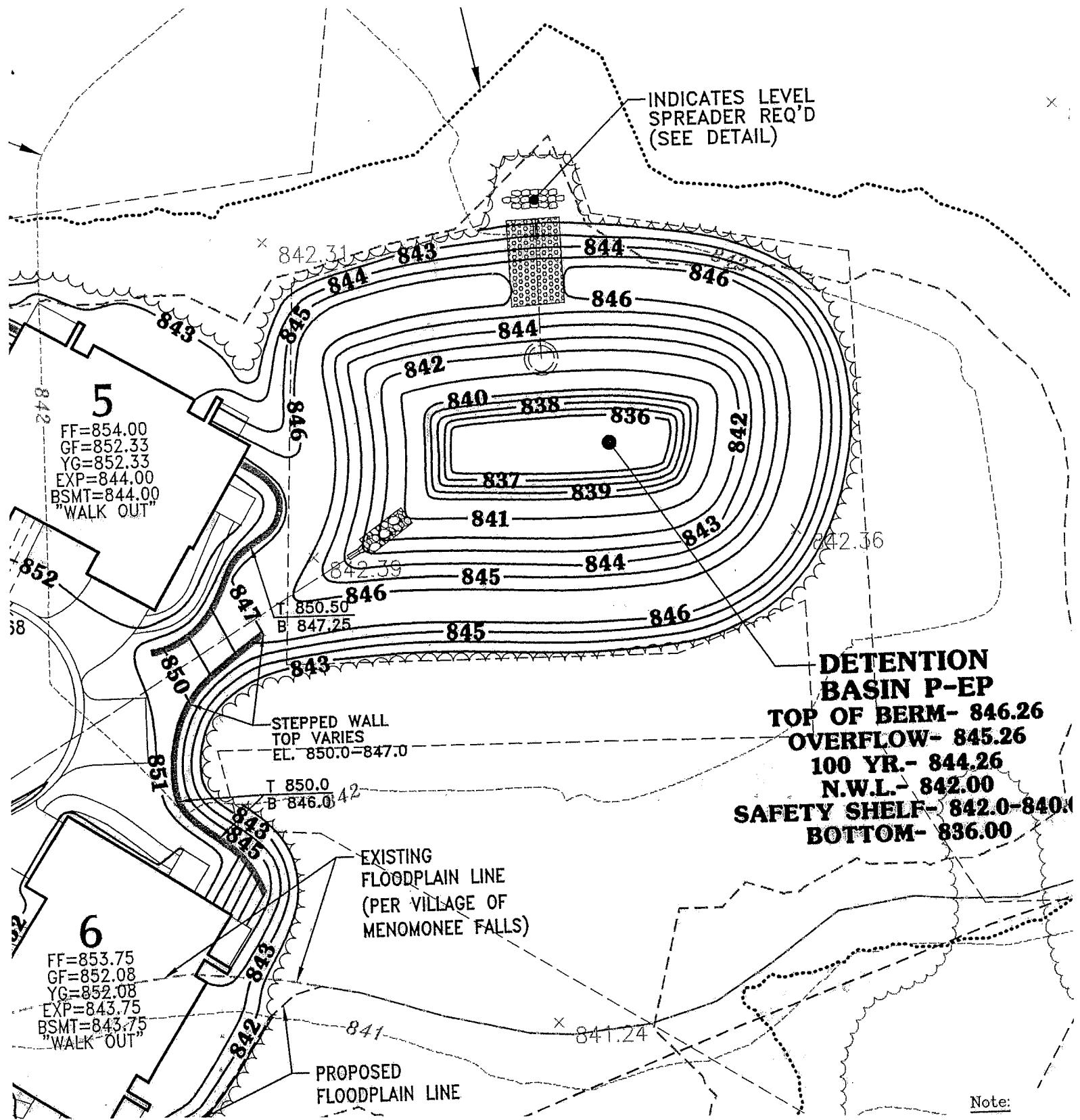
EXHIBIT "C"

EXHIBIT "C" (Continued)

