

001789 MAY 11 2005



WC3275217-011

### Storm Water Management Practice Maintenance Agreement

3275217

REGISTER'S OFFICE  
WAUKESHA COUNTY, WI  
RECORDED ON

05-11-2005 2:23 PM

MICHAEL J. HASSLINGER  
REGISTER OF DEEDS

REC. FEE: 24.00  
REC. FEE-CO: 5.00  
REC. FEE-ST: 2.00  
TRAN. FEE:  
TRAN. FEE-STATE:  
PAGES: 11

MLG REAL ESTATE 2002 LLC, as Owner of the property described below, in accordance with Chapter 14 Waukesha County Code, agree to ensure that storm water management practices located on the subject property are maintained and therefore continue serving their intended functions in perpetuity. This Agreement includes the following exhibits:

- Exhibit A:** Legal Description of the real estate for which this Agreement applies ("Property").
- Exhibit B:** Location Map(s) - shows an accurate location of each storm water management practice affected by this Agreement.
- Exhibit C:** Minimum Maintenance Requirements - prescribes those activities that must be carried out to maintain compliance with this Agreement.

Through this Agreement, the Owner hereby subjects the Property to the following covenants, conditions and restrictions:

1. MLG Real Estate 2002 LLC shall be responsible for the satisfactory establishment of the prairie areas shown in Exhibit B, Figures 2 and 3 for a period of three years after the initial seeding has been completed. Each individual lot owner in Mason Creek subdivision shall be responsible, in proportion to the total number of lots in the subdivision, for the routine maintenance of the prairie areas starting after year 3, and shall be responsible for the routine and extraordinary maintenance of the storm water management practice(s) identified in Exhibit B, immediately after acceptance of the improvements by the Town of Merton.
2. The Responsible Party shall maintain the storm water management practices and stormwater drainage easements in accordance with Exhibit C.
3. The Town of Merton, or its designee, is authorized to access the property as necessary to conduct inspections of the storm water management practices and stormwater drainage easements to ascertain compliance with the intent of this Agreement and the activities prescribed in Exhibit C.
4. Upon notification to the Responsible Party by the Town of Merton of maintenance problems that require correction, the specified corrective actions shall be performed by the Responsible Party, within a reasonable time frame as set by the Town of Merton.
5. The Town of Merton is authorized to perform the corrective actions identified in its inspection report or its notice if the Responsible Party does not make the required corrections within the specified time period. The costs and expenses of such corrective actions shall be billed to the responsible party; and if such charges are not paid by the responsible party, the costs and expenses of such corrective actions shall be entered on the tax roll as a special charge against the property, which charge shall become a lien upon the lots within the subdivision as provided in §66.0627, Wis. Stats., and shall be extended upon the tax rolls as a delinquent tax against the lots within the subdivision.
6. This Agreement shall run with the Property and be binding upon the successors and assigns. The Town of Merton shall have the sole authority to amend this agreement, including approving any physical modifications to the stormwater management practices and stormwater drainage easements described herein. The Town of Merton shall provide a 30-day notice to the titleholder(s) prior to approving any amendments to this agreement.

Name and Return Address

Timothy J. Wallen  
MLG Commercial  
13400 Bishop's Ln, Ste 100  
Brookfield, WI 53005

*Handwritten initials/signature*

MRTT 0313 995 006

MRTT 0313 994 002

Parcel Identification Number(s) - (PIN)

Dated this 11<sup>th</sup> day of MAY, 2005

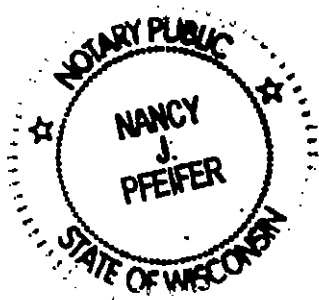
OWNER: MLG REAL ESTATE 2002 LLC


  
\_\_\_\_\_  
Timothy J. Wallen Authorized Signator

**Acknowledgements**

State of Wisconsin) :ss  
County of Waukesha)

Personally came before me this 11<sup>th</sup> day of MAY, 2005, the above named TIMOTHY WALLEN to me known to be the person who executed the foregoing instrument and acknowledged the same.



  
\_\_\_\_\_  
Notary Public, Waukesha County, WI  
My commission expires: 11-13-05

**This document was drafted by:**

**Debra A. Tarnow, P.E.  
Jahnke & Jahnke Associates Inc.  
711 West Moreland Boulevard  
Waukesha, WI 53188**

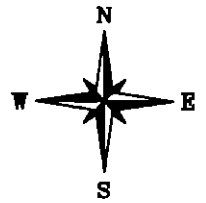
# EXHIBIT A - LEGAL DESCRIPTION

THE FOLLOWING DESCRIPTION AND REDUCED COPY MAP IDENTIFIES THE LAND PARCELS AFFECTED BY THIS AGREEMENT. FOR A LARGER SCALE VIEW OF THE REFERENCED DOCUMENT, CONTACT THE WAUKESHA COUNTY REGISTER OF DEEDS OFFICE.

SUBDIVISION NAME: MASON CREEK

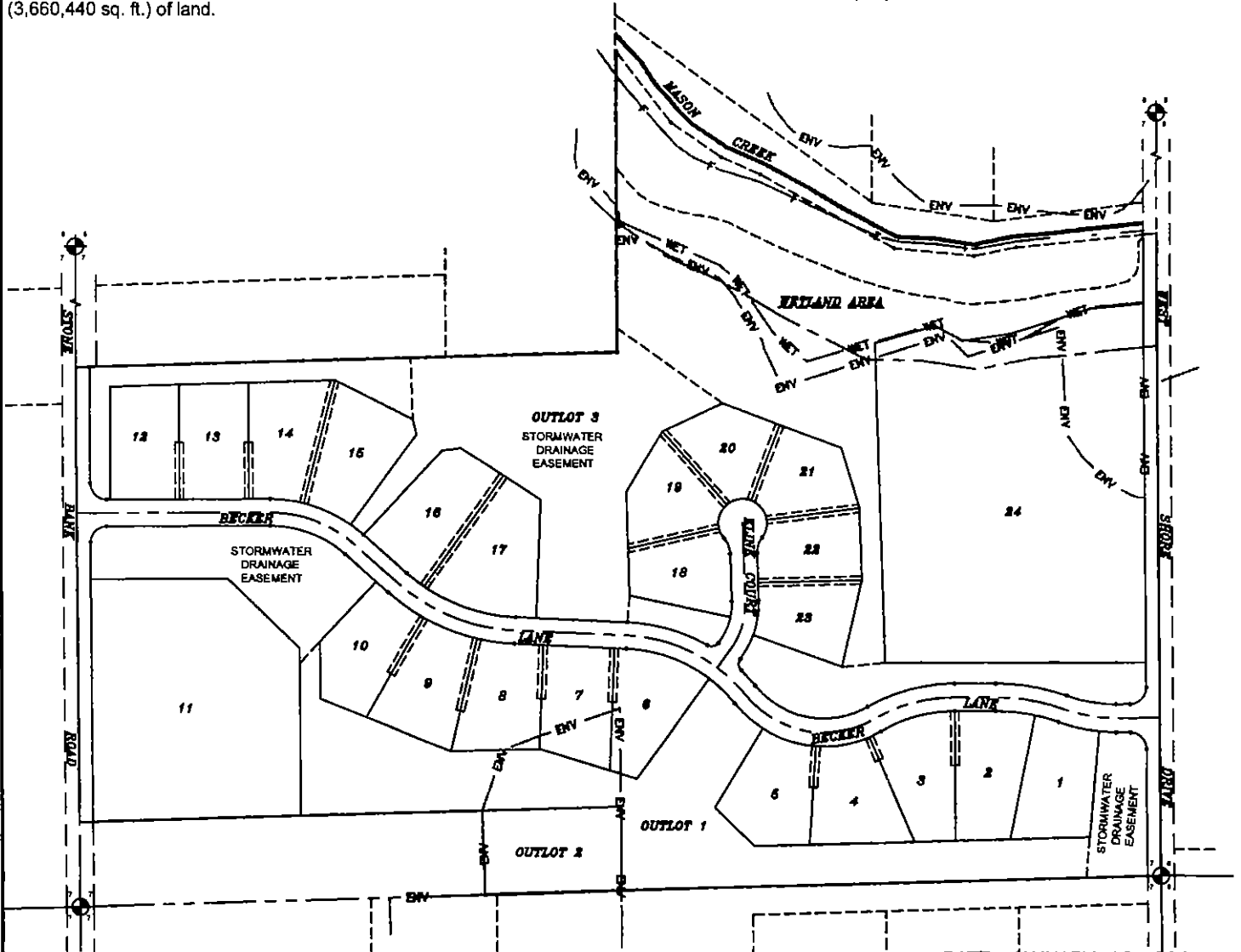
MAP PRODUCED BY: JAHNKE & JAHNKE ASSOCIATES, INC.  
711 W. MORELAND BLVD. WAUKESHA, WI. 53188

LOCATION: Being a subdivision of part of the Northeast Quarter (NE 1/4), Southeast Quarter (SE 1/4) and Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of Section 7, Town 8 North, Range 18 East in the Town of Merton, Waukesha County, Wisconsin, bounded and described as follows:



SCALE: 1" = 400'

Beginning at the Southeast corner of the Northeast Quarter (NE 1/4) of said Section 7, being marked by a concrete monument with a brass cap; thence South 88°16'47" West along the south line of the Northeast Quarter (NE 1/4) of said Section 7, 1659.150 feet to Lot One (1) of Certified Survey Map No. 9012 recorded in Volume 81 of Certified Survey Maps on page 45-48 as Document No. 2575002 and to a found and accepted 1" iron pipe; thence North 01°43'13" West along east line of said Lot One(1), 204.936 feet to a found and accepted 1" iron pipe; thence South 88°16'47" West along the north line of Lot One(1), 983.015 feet to the west line of the Northeast Quarter (NE 1/4) of said Section 7 and to the centerline of Stone Bank Road; thence North 00°17'36" West along the west line of the Northeast Quarter (NE 1/4) of said Section 7 and the centerline of Stone Bank Road, 1115.160 feet to the north line of the Southwest Quarter (SW 1/4) of the Northeast Quarter (NE 1/4) of said Section 7; thence North 88°11'57" East along the north line of the Northeast Quarter (NE 1/4) of said Section 7; thence North 00°16'40" West along the west line of the Northeast Quarter (NE 1/4) of the Northeast Quarter (NE 1/4) of said Section 7, 734.447 feet to a meander line to Mason Creek; thence along said meander line the following courses: thence South 38°06'14" East, 219.955 feet; thence South 55°42'56" East, 149.938 feet; thence South 66°27'25" East, 106.198 feet; thence South 61°39'33" East, 370.610 feet; thence South 84°45'22" East, 194.245 feet; thence North 78°11'53" East, 105.556 feet; thence North 84°07'21" East, 347.679 feet to the centerline to West Shore Drive and the terminus of said meander line and to the east line of the Northeast Quarter (NE 1/4) of said Section 7 and to the centerline of West Shore Drive, 1580.279 feet to the place of beginning. Also including all those lands lying between the above described meander line and the side lot lines, as extended to the centerline of Mason Creek. Containing in all a gross area of 87.0382 acres (3,791,383 sq. ft.) of land and a net area of 84.0321 acres (3,660,440 sq. ft.) of land.



DATE: JANUARY 18, 2005

# EXHIBIT B - LOCATION MAP

## STORM WATER MANAGEMENT PRACTICES COVERED BY THIS AGREEMENT

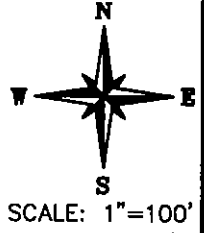
THE STORM WATER MANAGEMENT PRACTICES COVERED BY THIS AGREEMENT ARE DEPICTED IN THE REDUCED COPY OF THE CONSTRUCTION PLANS, AS SHOWN BELOW. THE PRACTICES INCLUDE ONE INFILTRATION PRAIRIE, TWO GRASS SWALES (CONVEYING STORM WATER TO THE PRAIRIE) AND ALL ASSOCIATED PIPES, ROCK RIP-RAP AND OTHER COMPONENTS OF THESE PRACTICES. ALL OF THE NOTED STORM WATER MANAGEMENT PRACTICES ARE LOCATED WITHIN A DRAINAGE EASEMENT OF THE SUBDIVISION PLAT, AS NOTED IN EXHIBIT A.

SUBDIVISION NAME: MASON CREEK

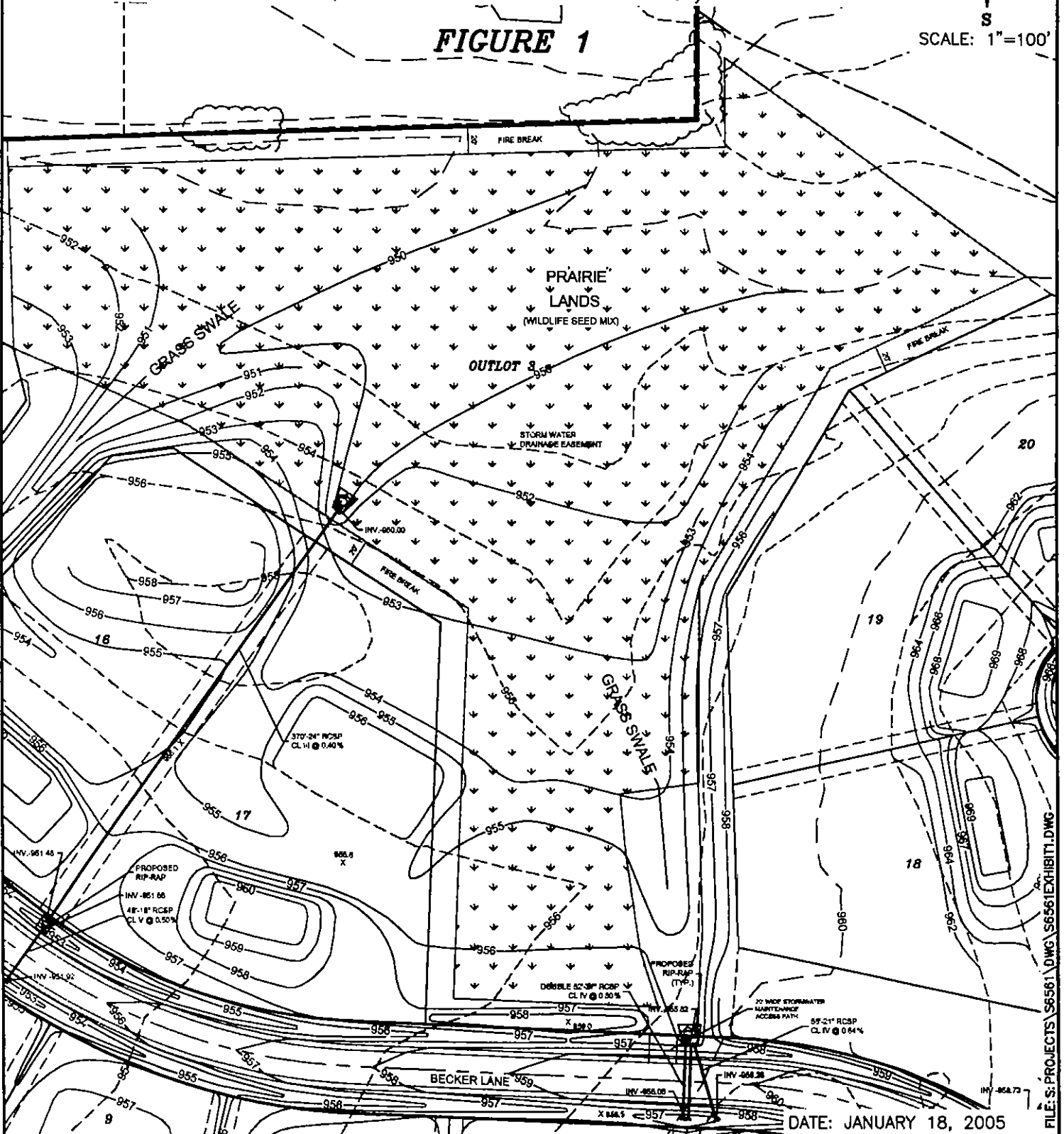
STORM WATER PRACTICES: INFILTRATION PRAIRIE AND GRASS SWALES

LOCATION OF PRACTICES: OUTLOT 3 AND STORMWATER DRAINAGE EASEMENTS

OWNERS: OWNERS OF LOTS 1-24 (MASON CREEK HOMEOWNERS ASSOCIATION)



### FIGURE 1



FILE: S:\PROJECTS\56561\DWG\56561EXHIBIT1.DWG

DATE: JANUARY 18, 2005



# EXHIBIT B - LOCATION MAP

## STORM WATER MANAGEMENT PRACTICES COVERED BY THIS AGREEMENT

THE STORM WATER MANAGEMENT PRACTICES COVERED BY THIS AGREEMENT ARE DEPICTED IN THE REDUCED COPY OF THE CONSTRUCTION PLANS, AS SHOWN BELOW. THE PRACTICES INCLUDE ALL ASSOCIATED PIPES, EARTHEN BERMS, ROCK RIP-RAP AND OTHER COMPONENTS OF THESE PRACTICES. ALL OF THE NOTED STORM WATER MANAGEMENT PRACTICES ARE LOCATED WITHIN A DRAINAGE EASEMENT OF THE SUBDIVISION PLAT, AS NOTED IN EXHIBIT A.

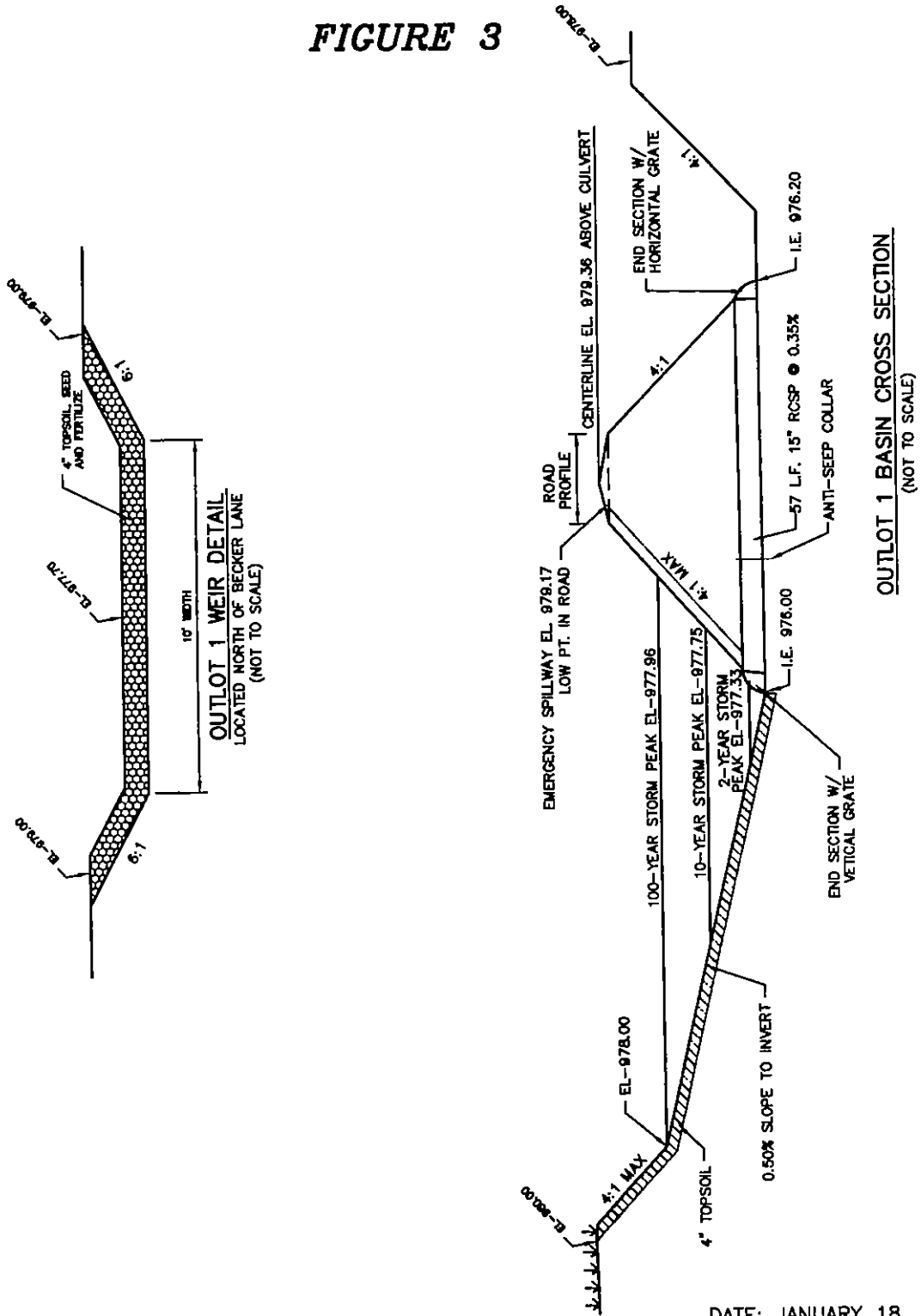
SUBDIVISION NAME: MASON CREEK

STORM WATER PRACTICES: INFILTRATION PRARIE WEIR DETAIL AND OUTLOT 1 CROSS SECTION

LOCATION OF PRACTICES: OUTLOT 1, OUTLOT 3 AND STORMWATER DRAINAGE EASEMENTS

OWNERS: OWNERS OF LOTS 1-24 (MASON CREEK HOMEOWNERS ASSOCIATION)

### FIGURE 3



DATE: JANUARY 18, 2005

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# EXHIBIT B - LOCATION MAP

## STORM WATER MANAGEMENT PRACTICES COVERED BY THIS AGREEMENT

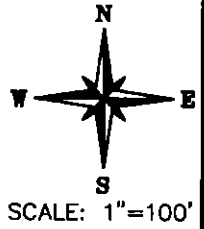
THE STORM WATER MANAGEMENT PRACTICES COVERED BY THIS AGREEMENT ARE DEPICTED IN THE REDUCED COPY OF THE CONSTRUCTION PLANS, AS SHOWN BELOW. THE PRACTICES INCLUDE ONE STORMWATER MAINTENANCE EASEMENT AND ALL ASSOCIATED PIPES, ROCK RIP-RAP AND OTHER COMPONENTS OF THESE PRACTICES. ALL OF THE NOTED STORM WATER MANAGEMENT PRACTICES ARE LOCATED WITHIN A DRAINAGE EASEMENT OF THE SUBDIVISION PLAT, AS NOTED IN EXHIBIT A.

SUBDIVISION NAME: MASON CREEK

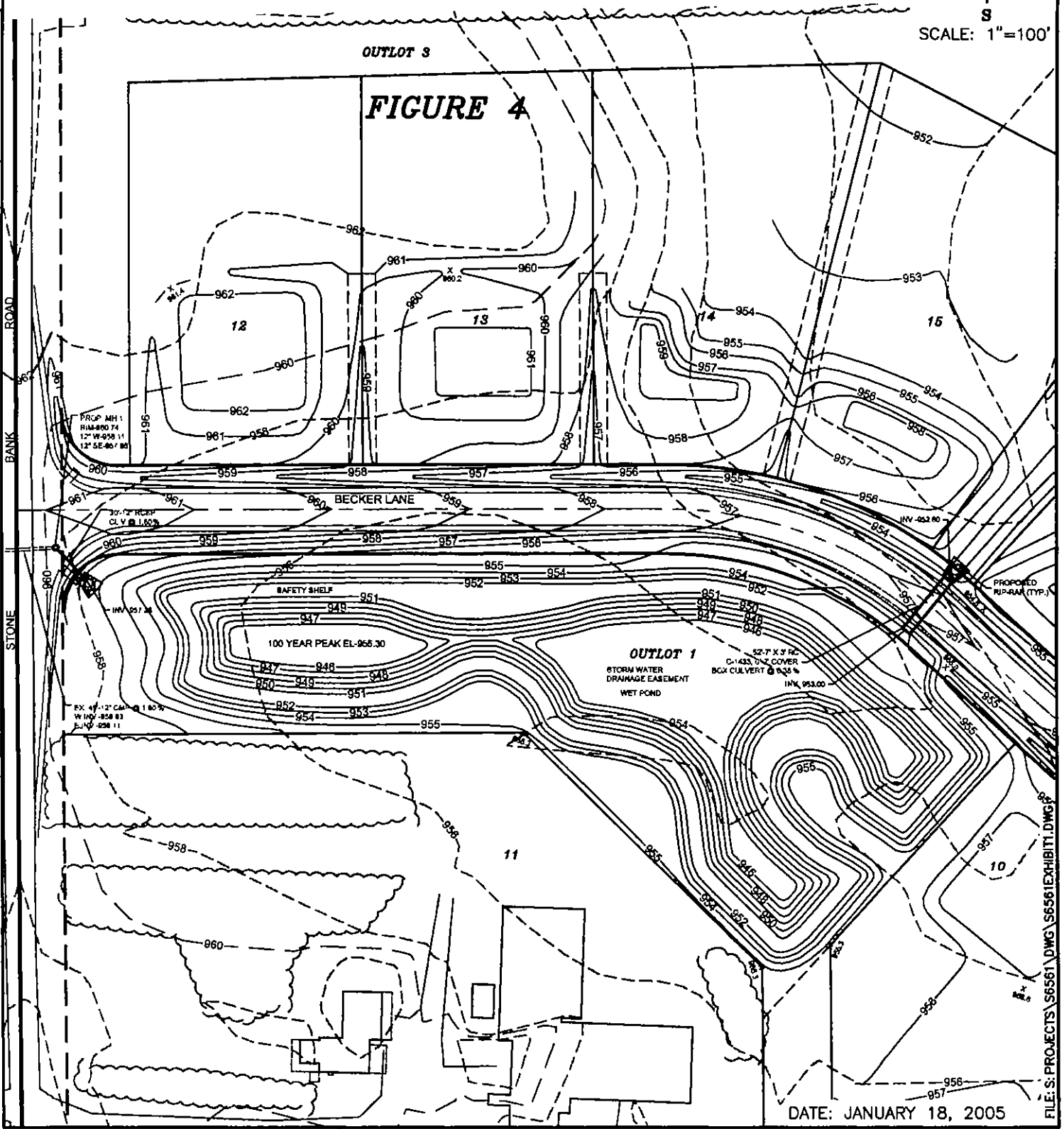
STORM WATER PRACTICES: STORM WATER DRAINAGE EASEMENT AND AESTHETIC POND

LOCATION OF PRACTICES: OUTLOT 1 AND STORMWATER DRAINAGE EASEMENTS

OWNERS: OWNERS OF LOTS 1-24 (MASON CREEK HOMEOWNERS ASSOCIATION)



001795 MAY 11 05



DATE: JANUARY 18, 2005

FILE: S:\PROJECTS\S6561\DWG\S6561EXHIBIT1.DWG

### **Exhibit C**

## **Minimum Storm Water Practice Maintenance Requirements**

This exhibit explains the basic function of each of the storm water practices listed in Exhibit B and prescribes the minimum maintenance requirements to remain compliant with this Agreement. The maintenance activities listed below are aimed to ensure these practices continue serving their intended functions in perpetuity. The list of activities is not all-inclusive, but rather indicates the minimum type of maintenance that can be expected for this particular site. Access to the stormwater practices for maintenance vehicles is shown in Exhibit B. Any failure of a storm water practice that is caused by a lack of maintenance will subject the responsible party to enforcement of the provisions listed on page 1 of this Agreement by the Town of Merton.

### **System Description:**

The prairies, ditches, storm water drainage easements, and swales have been designed to capture and treat a majority of the post development runoff. This will be accomplished by maintaining post-developed peak flow rates to less than pre-developed peak flow rates, and with uniform level flow through the prairie fields prior to discharge. Pollutants and sediments contained within the stormwater runoff are managed by routing runoff over grass filtration areas, such as the prairies, swales, and ditches. The prairies, swales, and roadside ditches are designed to trap a minimum 80% of runoff sediment on an annual basis. To accomplish the purpose of the storm water management plan, the prairies, swales and storm water drainage easements must be maintained as specified in this agreement (see Exhibit B Figures 1, 2, 3 and 4).

The prairie located in Outlot 3 receives runoff from a 115.0 acre drainage area (58.4 acres within the subdivision and 56.6 acres offsite drainage from the south and west). The prairie consists of "Prairie Nursery Wildlife Prairie seed mix for medium soils" containing at least 15 wildflowers and legumes and 2 or more grasses. During high rainfall or snow melt events, stormwater drainage will slowly travel across the prairie for removal of pollutants and sediment. During frost-free periods, the prairie will infiltrate and absorb stormwater runoff. See Exhibit B Figure 1.

The prairie located in the east side of Outlot 1 receives runoff from a 9.3 acre drainage area (7.0 acres within the subdivision and 2.3 acres offsite from the south). The prairie seed mix consists of "Prairie Nursery Moist Meadow" seed mix containing at least 12 wildflowers and 4 grasses and sedges. During high rainfall or snow melt events, the water level temporarily rises and slowly decreases until the area is dry. The water level is controlled through infiltration, absorption, and an earthen weir located on the north side of Becker Road (See Exhibit B Figures 2 and 3).

The stormwater drainage easement in the west side of Outlot 1 (with the wet pond) receives runoff from 58.29 acres (12.9 acres within the subdivision and 45.39 acres offsite drainage from the south and west). The easement has been designed to manage stormwater runoff within the Outlot. This was accomplished by creating a low area (pond) for temporary storage of stormwater within the pond. During high rainfall or snow melt events, the water level within the pond will temporarily rise and slowly drain down to the elevation of the box culvert. The water



level is controlled by a 7 feet wide by 3 feet high road crossing box culvert located in the Town of Merton right of way (see Exhibit B Figure 4). The planned peak water level elevations in the pond are: EL. 953.00 for the permanent pond elevation, EL. 953.88 feet MSL for the 2 year storm, EL. 954.54 feet MSL for the 10 year storm, and EL. 955.31 feet MSL for the 100 year storm. The purpose of the wet pond was as a permanent landscape feature and borrow pit for the original subdivision construction.

All elevations in the figures below represent planned values and are presented in feet above mean sea level (NAD 1929). These are required to be field verified upon construction. Actual elevations (and more detailed information on the designs) can be obtained by contacting the Waukesha County Department of Parks and Land Use or the Town of Merton, and can be used as a reference point during maintenance inspections.

#### **Minimum Maintenance Requirements:**

To ensure the proper function of stormwater management facilities, the following list of maintenance activities are recommended:

1. A minimum of 80% soil cover made up of prairie wildflowers and grasses must be maintained on Outlots 1 and 3 as shown on Exhibit B figures 1 and 2. Periodic burning or mowing is recommended to enhance establishment of the prairie (which may take 2-3 years) and maintain the minimum native cover. To reduce competition from cool season grasses (bluegrass, fescues, quack, etc.) and other weeds:
  - a) For the first year, cut the prairie meadow to a height of 6" once a month during the growing season until early August. To prevent damage to the native grasses, do not mow below a 6" height. Remove excessive accumulation of clippings to avoid smothering seedlings.
  - b) Do not pull weeds in the first year.
  - c) In midspring of the second year, the prairie planting should be mowed right down to the ground, and the cuttings raked off. Do not burn the second year of the prairie meadow to control weeds as this could kill new seedlings.
  - d) During the second year, if weeds are a problem they should be mowed in late June at a height of one foot.
  - e) After the second year, the prairie should be burned or mowed in midspring. The best time to burn most prairies is generally when the buds of the Sugar Maple tree are just opening in spring, or when you mow your lawn for the first time. A midspring prairie fire sets back undesirable "cool-season" weeds and encourages earlier soil warming and typically increases growth, flowering, and seed production of the native flowers and grasses.
  - f) Although not quite as effective as burning, mowing and raking off the cut material can be performed instead of burning. The prairie should be mowed right down to the soil surface, or at least within one inch of the ground. Rake off all the cuttings to expose the soil to the sun. It is important to remove the mowed material to expose the soil surface and encourage soil warming.
  - g) Do not mow or burn after new plant growth has reached on foot or taller, as this could damage your prairie plants.
  - h) Rotational burning or mowing of one-half of the prairie meadow every other year is recommended, for a variety of reasons.

- 1) The burned or mowed portions will have a different appearance from the unburned or unmowed portions, increasing the landscape interest and diversity of habitat for wildlife.
  - 2) Leaving unburned sections preserves over-wintering butterfly, moth and other invertebrate pupae and eggs.
  - 3) Variation in management prevents any given species from gaining overall dominance in the planting, thus maximizing species diversity.
- i) A few perennial weeds may require spot treatment or removal. These include such things as Canada Thistle, Canada Goldenrod, Horsenettle and Spotted Knapweed. Canada Thistle and Horsenettle are tap-rooted weeds, and cannot be effectively pulled, as they resprout relentlessly. The only effective way to control these problem weeds is to hand-treat them with herbicides. Hand treat using an "herbicide glove" which consists of a rubber glove with a large absorbent cotton glove over one of the rubber gloves. Mix a strong solution of Roundup or other appropriate herbicide in a small spray bottle or other non-spill container. Carefully saturate the cotton glove with the herbicide solution, and grab the leaves and stem of the offending weed to apply the herbicide on the plant only. Do not touch other adjacent desirable plants, as they can be killed too. Use this method only on cool, windless days.
  - j) Any major bare areas or areas taken over by nonnative species or weeds must be reseeded. To clear the area of weeds and cool season grasses, treat with an herbicide that contains glyphosphate in accordance with manufacture's instructions. After all weeds have been killed by the herbicide, lightly till the soil to create a seedbed. Level the seedbed prior to planting to create a smooth, even surface for broadcasting the seed. Mix the prairie seed into a large volume of slightly damp sawdust or peat moss to serve as a dilutant and carrier during seeding. Use two bushels of carrier per 1000 square feet of area. Hand broadcast the diluted seed mixture onto the prepared seedbed. Fling the seed in a broad arc to scatter it widely and evenly across the soil or use no-till planter for larger areas. The seed mix should consist of a short prairie for medium soils seed mix (Prairie Nursery).
2. The buffer surrounding the prairie must be kept free of trees and shrubs.
    - a) The buffer should be inspected annually, and all woody vegetation should be removed.
    - b) Periodic mowing of the grass buffer should be performed throughout the growing season to control weeds and woody vegetation, and maintain a firebreak around the prairie.
  3. Grass swales located within stormwater drainage easements shall be preserved to allow free flowing of surface runoff in accordance with the approved grading plans. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may disrupt flows in any way.
  4. Periodic mowing of swales will encourage rigorous grass cover and allow better inspections for erosion. Waiting until after August 1 will avoid disturbing nesting wildlife.
  5. Inspect all prairies/pond areas at least twice annually, once in the Spring and once in the Fall. Conduct inspections during wet weather conditions to determine if the prairies/pond

areas are functioning properly. At a minimum, visually inspect and document the following:

- a) Embankments for erosion, cracking and woody plant material growth.
  - b) The adequacy of upstream and downstream swale erosion protection measures.
  - c) Pond and swales side slope integrity.
  - d) Insure that prairie grass areas used for stormwater purposes are fully vegetated and growing properly.
6. Sediment may accumulate in the bottom of the pond. It is recommended to remove sediment from the pond one every 10 to 20 years to maintain the aesthetic appearance of the pond.
  7. Any other repair or maintenance needed to ensure the continued function of the prairies as ordered by the Town of Merton under the provision listed on page 1 of this Agreement.