Storm Water Management Practice Maintenance Agreement

Document Number

Fox Run 3, LLC, as "Owner" of the property described below, in accordance with Chapter 32 City of Waukesha Storm Water Management and Erosion Control, agrees to install and maintain storm water management practice(s) on the subject property in accordance with approved plans and Storm Water Management Plan conditions. The owner further agrees to the terms stated in this document to ensure that the storm water management practice(s) continues serving the 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: Maintenance Plan – prescribes those activities that must be carried out to maintain compliance with this Agreement.

Note: After construction verification has been accepted by the City of Waukesha, for all planned storm water management practices, an addendum(s) to this agreement shall be recorded by the Owner showing design and construction details. The addendum(s) may contain several additional exhibits, including certification by City of Waukesha of Storm Water and Erosion Control Permit termination, as described below.

Name and Return Address

City of Waukesha
130 Delafield Street
Waukesha, WI 53188

Parcel Identification Number(s) – (PIN)

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

1. The Owner shall be responsible for the routine and extraordinary maintenance and repair of the storm water management practice(s) and drainage easements identified in Exhibit B until Storm Water and Erosion Control Permit termination by the City of Waukesha in accordance with Chapter 32 of the City Code of Ordinances.
2. After Storm Water and Erosion Control Permit termination under 1., the current Owner(s) shall be solely responsible for maintenance and repair of the storm water management practices and drainage easements in accordance with the maintenance plan contained in Exhibit C.
3. The Owner(s) shall, at their own cost, complete inspections of the storm water management practices at the time intervals listed in Exhibit C, and conduct the inspections by a a qualified professional, file the reports with the City of Waukesha after each inspection and complete any maintenance or repair work recommended in the report. The Owner(s) shall be liable for the failure to undertake any maintenance or repairs. After the work is completed by the Contractor, the qualified professional shall verify that the work was properly completed and submit the follow-up report to the City within 30 days.
4. In addition, and independent of the requirements under paragraph 3 above, the City of Waukesha, or its designee, is authorized to access the property as necessary to conduct inspections of the storm water management practices or drainage easements to ascertain compliance with the intent of this Agreement and the activities prescribed in Exhibit C. The City of Waukesha may require work to be done which differs from the report described in paragraph 3 above, if the City of Waukesha reasonably concludes that such work is necessary and consistent with the intent of this agreement. Upon notification by the City of Waukesha of required maintenance or repairs, the Owner(s) shall complete the specified maintenance or repairs within a reasonable time frame determined by the City of Waukesha.
5. If the Owner(s) do not complete an inspection under 3. above or required maintenance or repairs under 4. above within the specified time period, the City of Waukesha is authorized, but not required, to perform the specified inspections, maintenance or repairs. In the case of an emergency situation, as determined by the City of Waukesha, no notice shall be required prior to the City of Waukesha performing emergency maintenance or repairs. The City of Waukesha may levy the costs and expenses of such inspections, maintenance or repair related actions as a special charge against the Property and collected as such in accordance with the procedures under s. 66.0627 Wis. Stats. or subch. VII of ch. 66 Wis. Stats.

6. This Agreement shall run with the Property and be binding upon all heirs, successors and assigns. After the Owner records the addendum noted above, the City of Waukesha shall have the sole authority to modify this agreement upon a 30-day notice to the current Owner(s).

Dated this ___ day of _____, 2020.

Owner:
Fox Run 3, LLC

_____
(Owners Signature)

_____
(Owners Typed Name)

Acknowledgements

State of Wisconsin:
County of Waukesha

Personally came before me this ___ day of _____, 2020, the above named ___[Owners name]_____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____.
[Name]
Notary Public, Waukesha County, WI
My commission expires:_____.

This document was drafted by:

Paul Jenswold, P.E.
Jahnke & Jahnke Associates LLC
711 W. Moreland Blvd
Waukesha, WI 53188

For Certification Stamp

City of Waukesha Common Council Approval

Dated this ___ day of _____, 2020.

_____

Shawn N. Reilly, Mayor

_____

Gina Kozlik, City Clerk

Acknowledgements

State of Wisconsin:
County of Waukesha

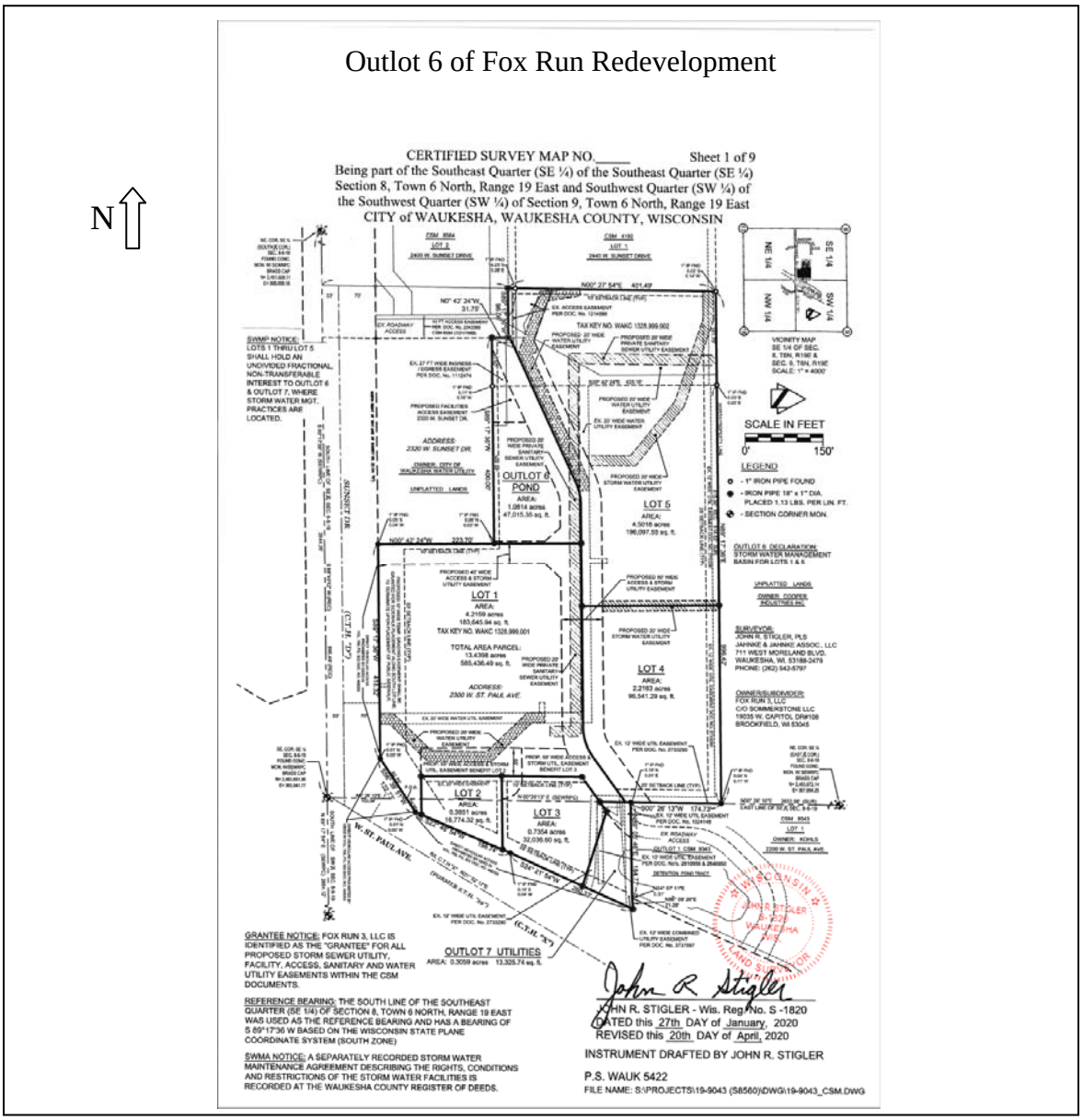
Personally came before me this ___ day of _____, 2020, the above named _____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____.
[Name]
Notary Public, Waukesha County, WI
My commission expires:_____.

Exhibit A – Legal Description

The following description and reduced copy map identifies the land parcel(s) affected by this Agreement. For a larger scale view of the referenced document, contact the Waukesha County Register of Deeds office.

Project Identifier: **Outlot 6 of Fox Run Redevelopment** Acres**: 13.44**
Date of Recording: **_____, 2020**
Map Produced By: **Jahnke and Jahnke Associates, LLC, 711 W. Moreland Blvd, Waukesha, WI**
Legal Description: **Outlot 6 of Fox Run Redevelopment, located in all that part of the Southwest Quarter (SW ¼) of Section 9, Township 6N, Range 19E (City of Waukesha) Waukesha County, Wisconsin.**



Drainage Easement Restrictions: The entire Outlot is a drainage easement for storm water collection, conveyance and treatment. No buildings or other structures are allowed in these areas. No grading or filling is allowed that may interrupt storm water flows in any way. See Exhibit C for specific maintenance requirements for storm water management practices within this area. See CSM ___ for details on location.

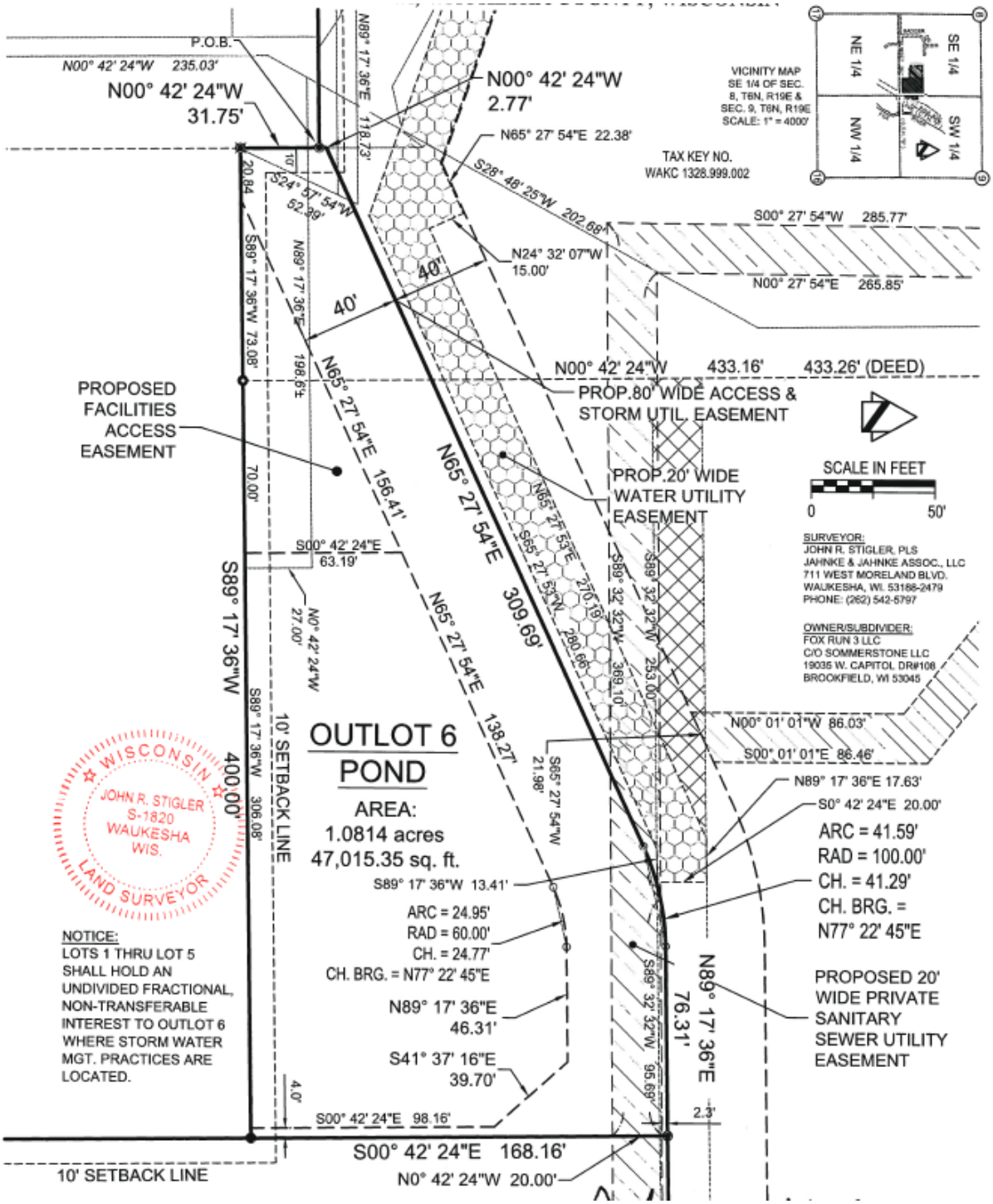

P.O.B.
N00° 42' 24"W 235.03'
N00° 42' 24"W 31.75'
N89° 17' 36"E 118.73'
N00° 42' 24"W 2.77'
N65° 27' 54"E 22.38'
S28° 48' 25"W 202.68'
S24° 57' 54"W 62.39'
20.84
S89° 17' 36"W 73.08'
N89° 17' 36"E 198.61'
40'
40'
N24° 32' 07"W 15.00'
S00° 27' 54"W 285.77'
N00° 27' 54"E 265.85'
N00° 42' 24"W 433.16' 433.26' (DEED)
PROP.80' WIDE ACCESS & STORM UTIL. EASEMENT
PROPOSED FACILITIES ACCESS EASEMENT
N65° 27' 54"E 156.41'
N65° 27' 54"E 309.69'
PROP.20' WIDE WATER UTILITY EASEMENT
70.00'
S00° 42' 24"E 63.19'
N0° 42' 24"W 27.00'
S89° 17' 36"W 400.00'
S89° 17' 36"W 306.08'
10' SETBACK LINE
OUTLOT 6
POND
AREA:
1.0814 acres
47,015.35 sq. ft.
N65° 27' 53"E 270.19'
S65° 27' 53"W 280.66'
S89° 32' 32"W 369.10'
S89° 32' 32"W 253.00'
S65° 27' 54"W 21.98'
S89° 17' 36"W 13.41'
ARC = 24.95'
RAD = 60.00'
CH. = 24.77'
CH. BRG. = N77° 22' 45"E
N89° 17' 36"E 46.31'
S41° 37' 16"E 39.70'
S89° 32' 32"W 95.69'
N89° 17' 36"E 76.31'
2.3'
4.0'
S00° 42' 24"E 98.16'
S00° 42' 24"E 168.16'
N0° 42' 24"W 20.00'
10' SETBACK LINE
N00° 01' 01"W 86.03'
S00° 01' 01"E 86.46'
N89° 17' 36"E 17.63'
S0° 42' 24"E 20.00'
ARC = 41.59'
RAD = 100.00'
CH. = 41.29'
CH. BRG. = N77° 22' 45"E
PROPOSED 20' WIDE PRIVATE SANITARY SEWER UTILITY EASEMENT
WISCONSIN
JOHN R. STIGLER S-1820 WAUKESHA WIS.
LAND SURVEYOR
NOTICE:
LOTS 1 THRU LOT 5 SHALL HOLD AN UNDIVIDED FRACTIONAL, NON-TRANSFERABLE INTEREST TO OUTLOT 6 WHERE STORM WATER MGT. PRACTICES ARE LOCATED.
VICINITY MAP
SE 1/4 OF SEC. 8, T6N, R19E & SEC. 9, T6N, R19E
SCALE: 1" = 4000'
NE 1/4
SE 1/4
NW 1/4
SW 1/4
TAX KEY NO.
WAKC 1328.999.002
SCALE IN FEET
0
50'
SURVEYOR:
JOHN R. STIGLER, PLS
JAHNKE & JAHNKE ASSOC., LLC
711 WEST MORELAND BLVD.
WAUKESHA, WI. 53188-2479
PHONE: (262) 542-5797
OWNER/SUBDIVIDER:
FOX RUN 3 LLC
C/O SOMMERSTONE LLC
19035 W. CAPITOL DR#108
BROOKFIELD, WI 53045

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 a portion of the construction plans, as shown below. The practices include one bio-retention basin and all associated pipes, earthen berms and other components of these practices. All of the noted storm water management practices are located within a drainage easement in Outlot 6 of the CSM, as noted in Exhibit A.

Subdivision Name**:** **Outlot 6 of Fox Run Redevelopment**
Storm water Practices**:** **Wet Detention Basin**
Location of Practices**:** **All of Outlot 6**
Owners of Outlot 7: **Each owner of Lots 1 through 5 shall have equal (1/5) undividable interest in Outlot 6**

Figure 1
Plan View of Storm Water Practices

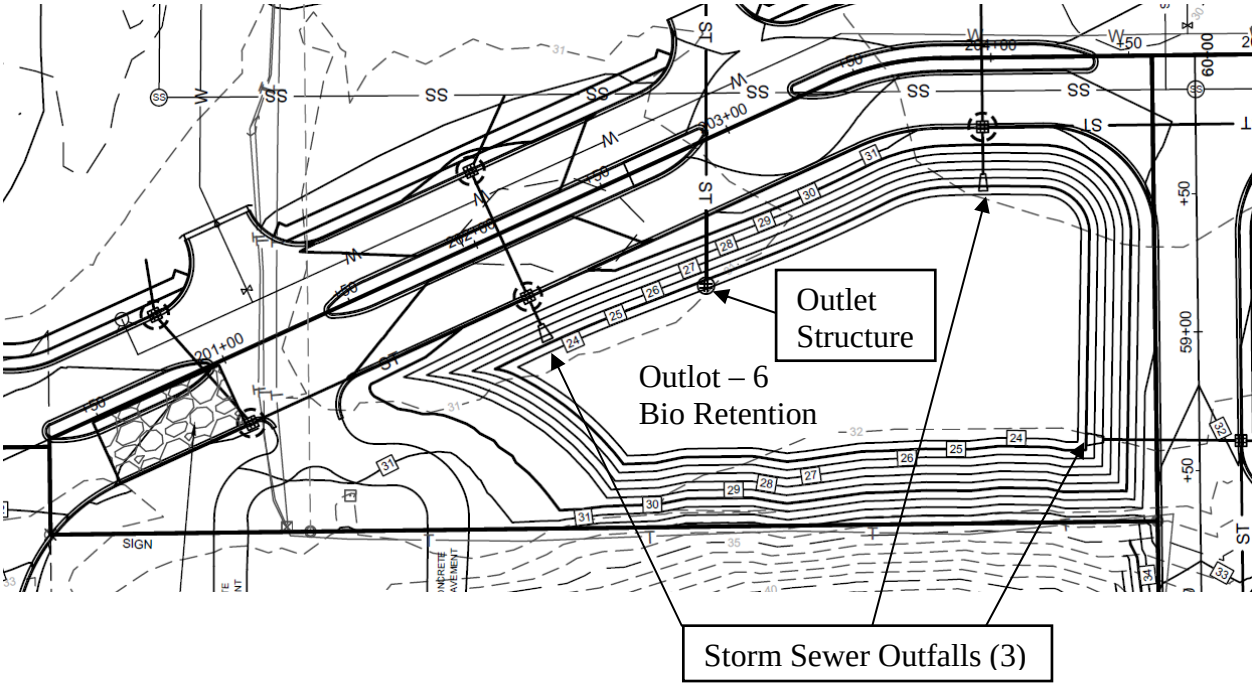


Exhibit B – Figure 1 (A)

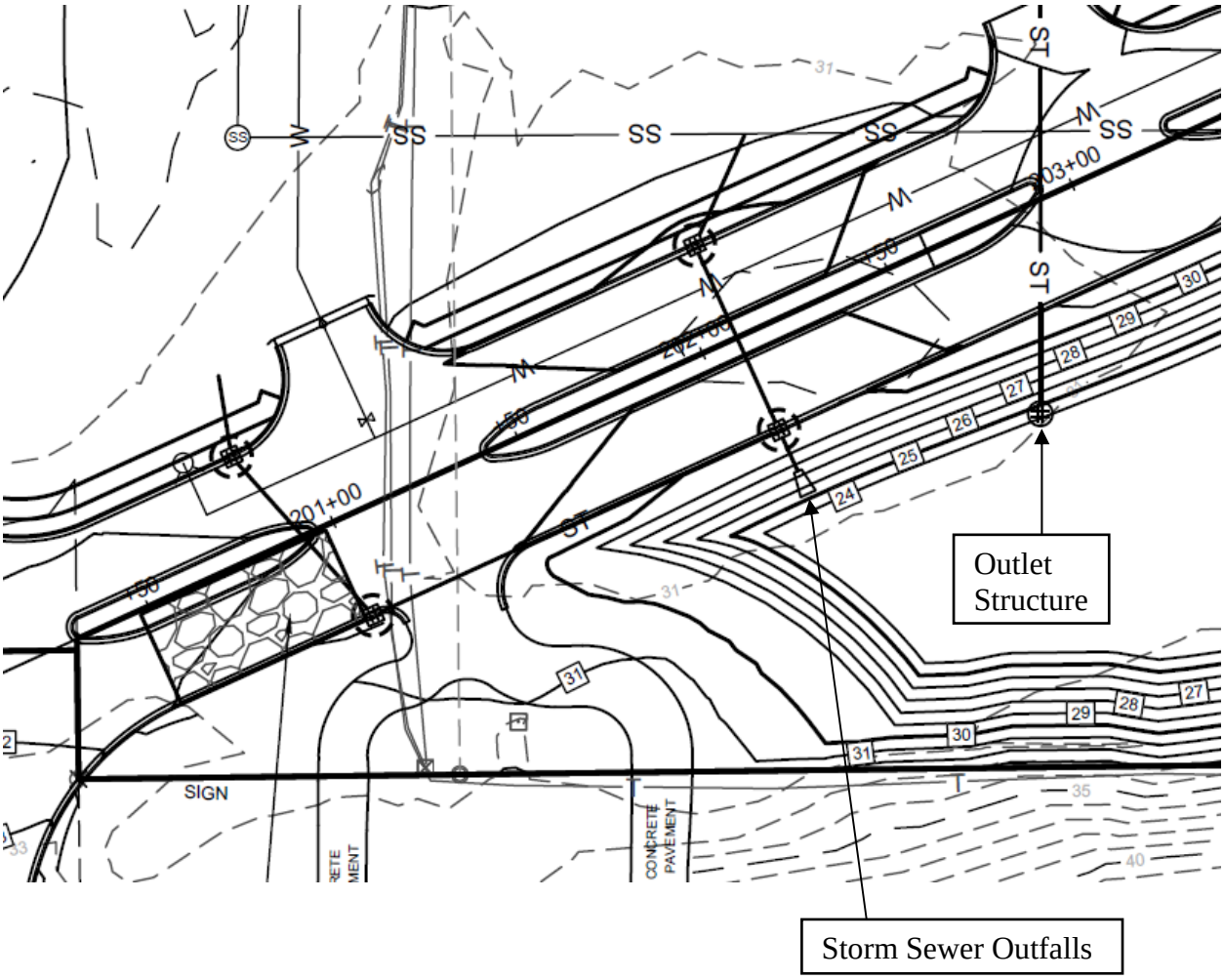


Exhibit B – Figure 1 (B)

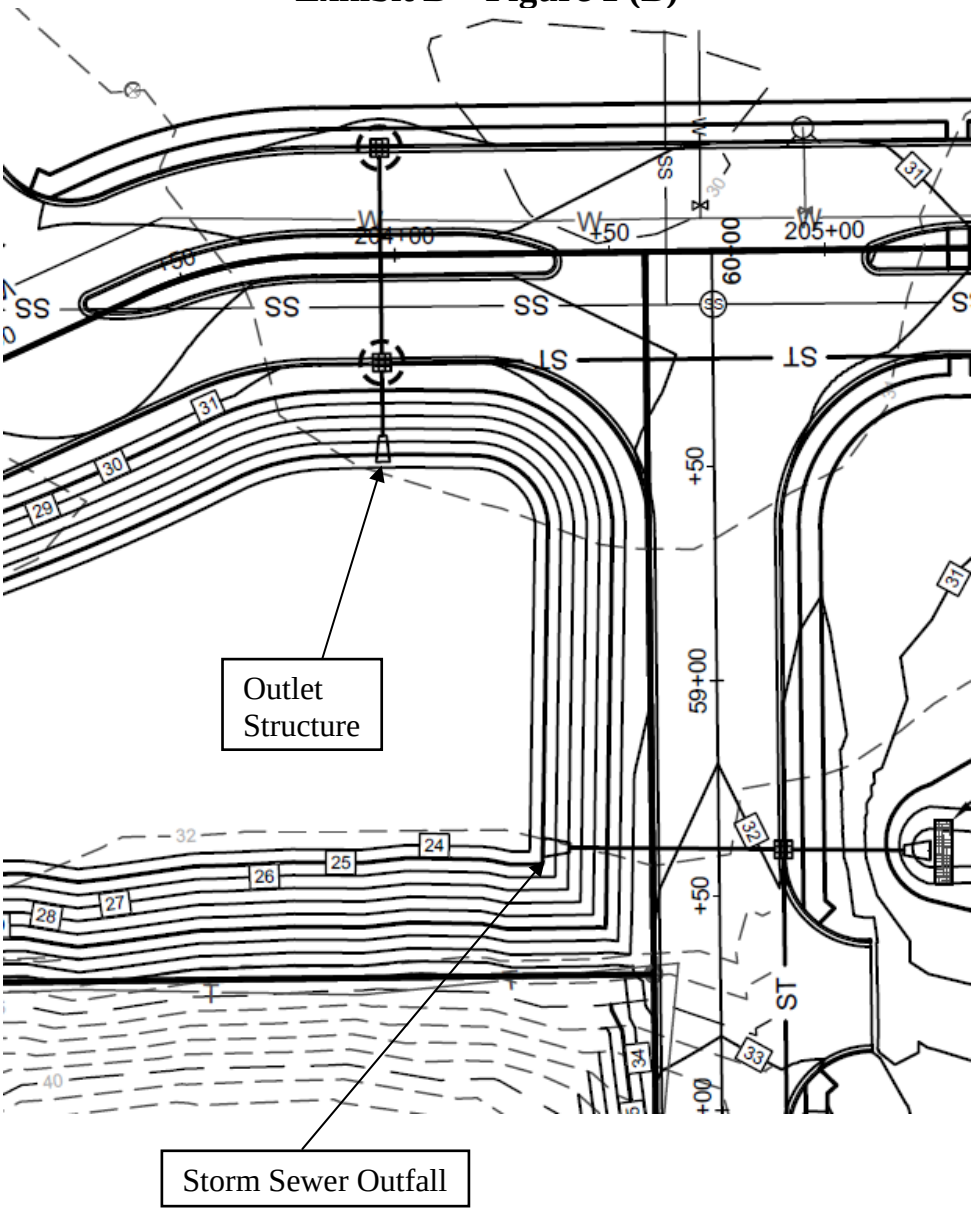


Exhibit C
Storm Water Practice Maintenance Plan

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 Owner(s) to enforcement of the provisions listed on page 1 of this Agreement by the City of Waukesha.

System Description:
Bio-Retention basins are designed to reduce runoff volumes from a site after development by intercepting the runoff and allowing it to slowly seep (infiltrate) into the underlying soil and groundwater. Most are designed to infiltrate the first 1/2" to 1" of runoff in an attempt to meet average annual predevelopment runoff volumes. The drainage areas served by an bio-retention basin is usually 2-50 acres.

Minimum Maintenance Requirements:
To ensure the proper function of storm water bio-retention basin, the following list of maintenance activities are recommended:

1. A minimum of 70% soil cover made up of native grasses must be maintained on the basin bottom to ensure bio-retention rates. Periodic burning or mowing is recommended to enhance establishment of the prairie grasses (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:
    - For the first year, cut to a 6" height three times – once each in June, July and early August. To prevent damage to the native grasses, do not mow below a 6" height. Remove excessive accumulation of clippings to avoid smothering next year's seedlings.
    - After the first year, mowing may only be needed in early June each year to help control the spread of cool season plants. The mowing should also be raised to 10-12" to avoid damage to the warm season plants.
    - Burning may also be used to manage weeds in 2-5 years intervals. Late spring burns (mid-late May) provide maximum stimulus to warm season grasses and work well to control cool season grasses. Burn when the cool season grasses are growing and the warm season plants are just barely starting to grow to get maximum control of cool season species.
    - Any major bare areas or areas taken over by nonnative species must be reseeded. To clear area of weeds and cool season grasses, treat with an herbicide that contains glysophosphate in accordance with manufacture's instructions. Ensure a firm seedbed is prepared to a depth of 3 inches (a roller is recommended). Seeding should occur in early-mid June. Seed with Big Bluestem, Indian Grass, Little Blue Stem or Switchgrass (preferably an equal mix of all four types). A companion crop of oats is recommended. Seed must be placed at a depth of 1/4 – 1/2" and a minimum rate of 1/4 pound per 100 square feet. If broadcast seeding by hand, drag leaf rake over soil surface after seeding. Then roll it again and cover with a light layer of mulch and staked erosion control netting to hold it in place until germination. For other planting details, see NRCS standard 342 (Critical Area Planting).
2. Invasive plant and animal species shall be managed in compliance with Wisconsin Administrative Code Chapter NR 40. This may require eradication of invasive species in some cases.
3. The basin and all components (inlets, outlets, etc.) should be inspected after each heavy rain, but at a minimum of once per year. If the basin is not draining properly (within 72 hours), further inspection may be required by persons with expertise in storm water management and/or soils.
    - If soil testing shows that the soil surface has become crusted, sealed or compacted, some deep tillage should be performed. Deep tillage will cut through the underlying soils at a 2-3 foot depth, loosening the soil and improving infiltration rates, with minimal disturbance of the surface vegetation. Types of tillage equipment that can be used include a subsoiler or straight, narrow-shanked chisel plow.
    - If sedimentation is determined to be causing the failure, the accumulated sediment must be removed and the area reseeded in accordance with the notes above.

- If inspection of the monitoring well shows that groundwater is regularly near the surface, additional design features may need to be considered, such as subsurface drainage or conversion to a wetland treatment system.

4. All outlet pipes, stone trenches and other flow control devices must be kept free of debris. Any blockage must be removed immediately.
5. Any eroding areas must be repaired immediately to prevent premature sediment build-up in the system. Erosion matting is recommended for repairing grassed areas.
6. Heavy equipment and vehicles must be kept off of the bottom and side slopes of bio-retention basins to prevent soil compaction. Soil compaction will reduce infiltration rates and may cause failure of the basin, resulting in ponding and possible growth of wetland plants.
7. No trees are to be planted or allowed to grow on the earthen berms of the bottom of the basin. On the berms, tree root systems can reduce soil compaction and cause berm failure. On the basin bottom, trees may shade out the native grasses. The basin must be inspected annually and any woody vegetation removed.
8. No grading or filling of the basin or berms other than for sediment removal is allowed.
9. Periodic mowing of the grass slopes will encourage rigorous grass cover and allow better inspections for erosion. Waiting until after August 1 will avoid disturbing nesting wildlife.
10. Any other repair or maintenance needed to ensure the continued function of the bio-retention basin as ordered by the City of Waukesha under the provisions listed on page 1 of this Agreement.
11. The titleholder(s) or their designee must document all inspections as specified above. Documentation shall include as a minimum: (a) Inspectors Name, Address and Telephone Number, (b) Date of Inspections, (c) Condition Report of the Storm Water Management Practice, (d) Corrective Actions to be Taken and Time Frame for Completion, (e) Follow-up Documentation after Completion of the Maintenance Activities. All documentation is to be delivered to the attention of the City Engineer at the City of Waukesha Engineering Department on January 10th and July 10th each year.

Addendum 1
Storm Water Management Practice Maintenance Agreement

Document number

The purpose of this addendum is to record verified "as-built" construction details, supporting design data and permit termination documentation for the storm water management practice(s) located on Outlot 6 of the Fox Run Redevelopment, described as being all that part of the Southwest Quarter (SW ¼) of Section 9, Township 6N, Range 19E (City of Waukesha) Waukesha County, Wisconsin. This document shall serve as an addendum to document # _____, herein referred to as the "Maintenance Agreement". This addendum includes all of the following exhibits:

Exhibit D: Design Summary – contains a summary of key engineering calculations and other data used to design the wet detention basin.
Exhibit E: As-built Survey – shows detailed "as-built" cross-section and plan view of the wet detention basin.
Exhibit F: Engineering/Construction Verification – provides verification from the project engineer that the design and construction of the wet detention basin complies with all applicable technical standards and Waukesha County ordinance requirements.
Exhibit G: Storm Water Management & Erosion Control Permit Termination – provides certification by the City of Waukesha that the Storm Water and Erosion Control Permit for the above noted site has been terminated.

Name and Return Address

_____
Parcel Identification Number(s) – (PIN)

Dated this ___ day of _____, 2020.

Owner:

_____
[Owners Signature – per the Maintenance Agreement]

_____
[Owners Typed Name]

Acknowledgements

State of Wisconsin County of Waukesha

Personally came before me this ___ day of _____, 2020, the above named ___[Owners name]_____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____.
[Name]
Notary Public, Waukesha County, WI
My commission expires:_____.

This document was drafted by:

Paul Jenswold, P.E.
Jahnke & Jahnke Associates LLC
711 W. Moreland Blvd
Waukesha, WI 53188

For Certification Stamp

Exhibit D
Design Summaries for Wet Detention Basin

Project Identifier: Fox Run Redevelopment **Project Size:** 13.44 Acres **No. of Lots:** 7
Number of Runoff Discharge Points: 2 **Watershed (ultimate discharge)**: Pebble Creek
Watershed Area (including off-site runoff traveling through project area): 10.84 acres

Watershed Data Summary. The following table summarizes the watershed data used to determine peak flows and runoff volumes required to design wet detention basin.

Summary Data Elements	Subwatershed A		Subwatershed B (off-site)	
	Pre-develop	**Post-develop**	**Pre-develop**	**Post-develop**
Watershed Areas *(in acres) (see attached map)*	10.72 acres	10.84 acres		
Average Watershed Slopes (%)	1.5-5%	1-5%		
Land Uses *(% of each)*	85% Commercial 15% Grass	50% Commercial 20% Grass 30% Residential		
Runoff Curve Numbers	RCN = 93	RCN = 88		
Conveyance Systems Types	Sheet flow and storm sewer	Sheet flow and storm sewer		
Summary of Average Conveyance System Data	Sheet flow 1.5% paved	Sheet flow 1.5% paved or 4% grass		
Time of Concentration *(Tc)*	6.0 Minutes	8.2 Minutes		
25% of 2-yr 24-hr Runoff Volume	0.41 ac-ft	0.37 ac-ft		
1-year/24 hour Runoff Volume	1.42 ac-ft	1.25 ac-ft		
2-yr./24 hour Peak Flow	34.39 cfs	15.59 cfs		
10-yr./24 hour Peak Flow	52.52 cfs	19.36 cfs		
100-yr./24 hour Peak Flow	91.51 cfs	21.61 cfs		

Exhibit D (continued)

Practice Design Summary. The following table summarizes the data used to design wet detention basin.

Design Element	Design Data
Site assessment data: (see attached maps)	
Contributing drainage area to basin (subwatershed A & B)	10.84 acres
Distance to nearest private well (including off-site wells)	> 100 feet
Distance to municipal well (including off-site wells)	> 100 feet
Wellhead protection area involved?	No
Ground slope at site of proposed basin	average 1.5%
Any buried or overhead utilities in the area?	Yes
Proposed outfall conveyance system/discharge (w/ distances)	24" Storm Sewer to Pebble Creek
Any downstream roads or other structures? (describe)	Yes, Storm Sewer is 2000'+/- to Pebble Creek
Floodplain, shoreland or wetlands?	No
Soil investigation data (see attached map & soil logs):	
Number of soil investigations completed	3
Do elevations of test holes extend 3 ft. below proposed bottom?	Yes
Average soil texture at pond bottom elevation (USDA)	SICL and LS
Distance from pond bottom to bedrock	> 10'
Distance from pond bottom to seasonal water table	> 10'
General basin design data (see attached detailed drawings):	
Permanent pool surface area	13,100 sf
Design permanent pool water surface elevation	elev. 24
Top of berm elevation (after settling) and width	elev. 30.5 / width varies
Length/width (dimensions/ratio)	210 ft. (L) x 100 ft. (W) = 2.1:1
Safety shelf design (length, grade, max. depth)	None (Bio-Retention)
Ave. water depth (minus safety shelf/sediment)	None (Bio-Retention)
Sediment forebay size & depth	None, Sumps in last catch basin
Sediment storage depth & design maintenance	None (Bio-Retention)

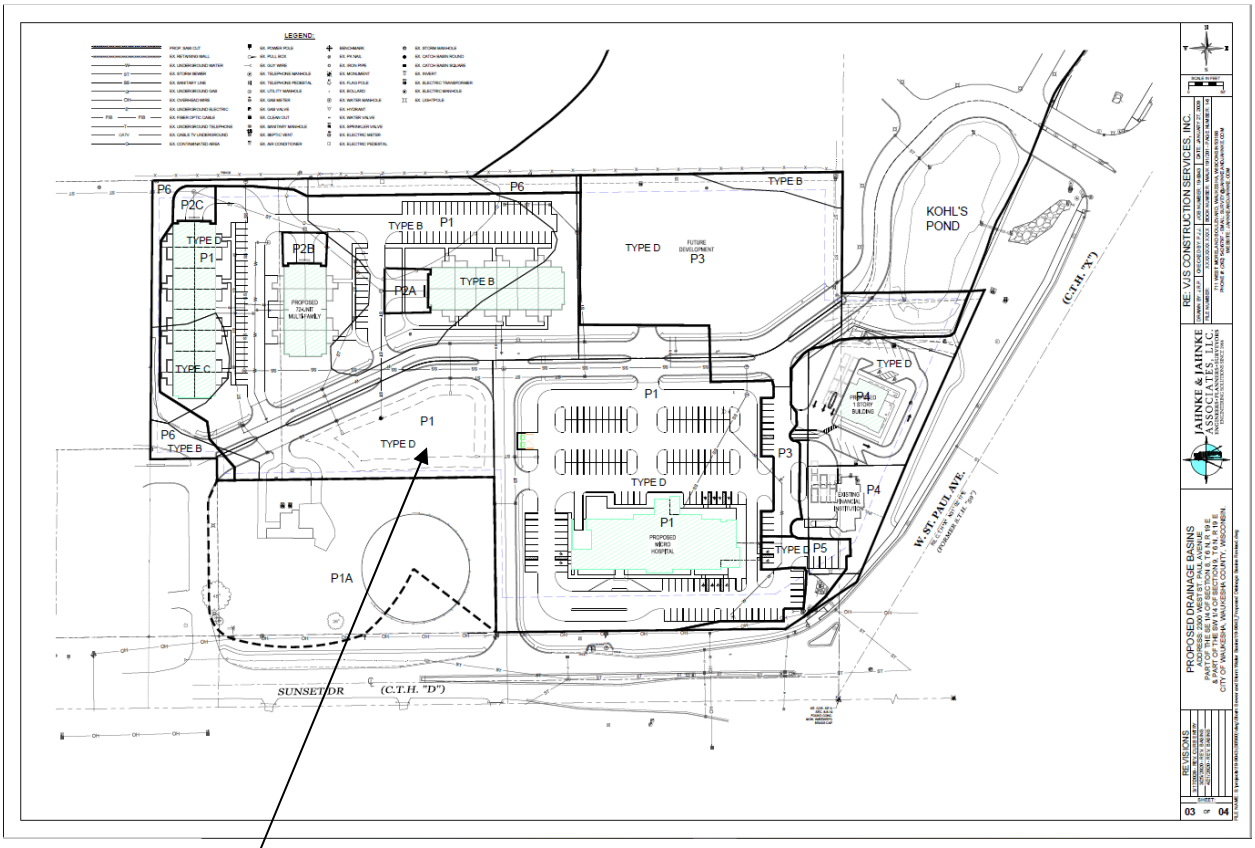
Design Basin Inflow, Outflow & Storage Data
(see attached hydrographs and detail drawings)

Inflow Peak/Volume	Maximum Outflow Rate	Max. Water Elevation	Storage Volume at Max. Elev. (above perm. pool)	Outflow Control Structures*
1.23 ac-ft 1-yr./24 hr. (volume)	10.70 cfs	25.48 ft.	0.49 acre feet	#1
29.30 cfs (Post 2-yr./24 hr. peak)	15.71 cfs	25.63 ft.	0.54 acre feet	#1
46.61 cfs (Post 10-yr./24 hr. peak)	19.42 cfs	26.38 ft.	0.83 acre feet	#1
83.73 cfs (Post 100-yr./24 hr. peak)	21.74 cfs	28.18 ft.	1.61 acre feet	#1

* #1 = 36 inch diameter weir – flow line elevation 25.00
#2 = asymmetric weir (Curb of Street) – flow line elevation 29.60

Exhibit D (continued)

Watershed Map. The watershed map shown below was used to determine the post-development data contained in this exhibit. The post-developed watershed areas are the same as the pre-development watershed areas for this project.



Outlot – 6
Bio Retention

Exhibit D - Figure 1 (A)

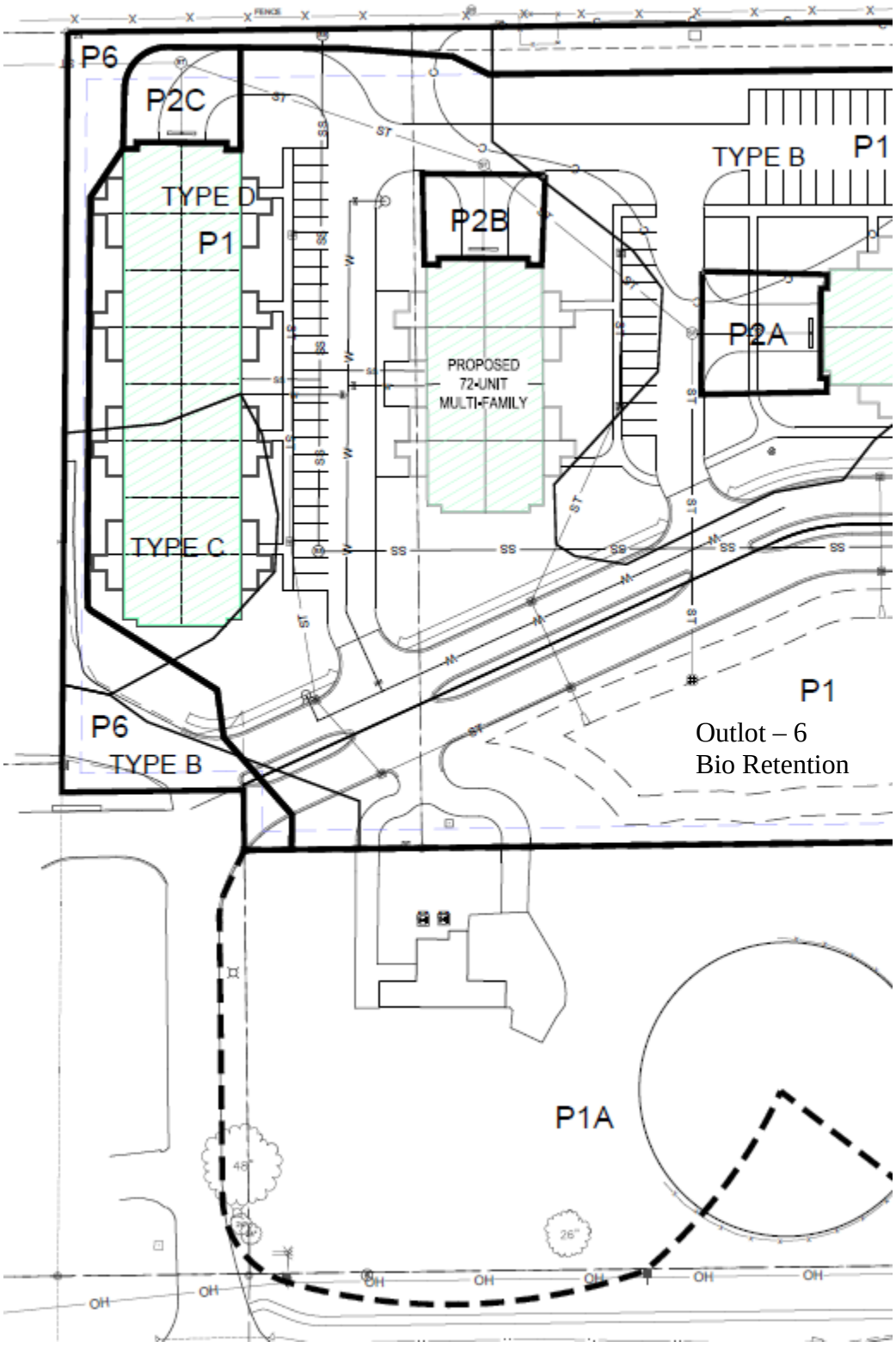


Exhibit D – Figure 1 (B)

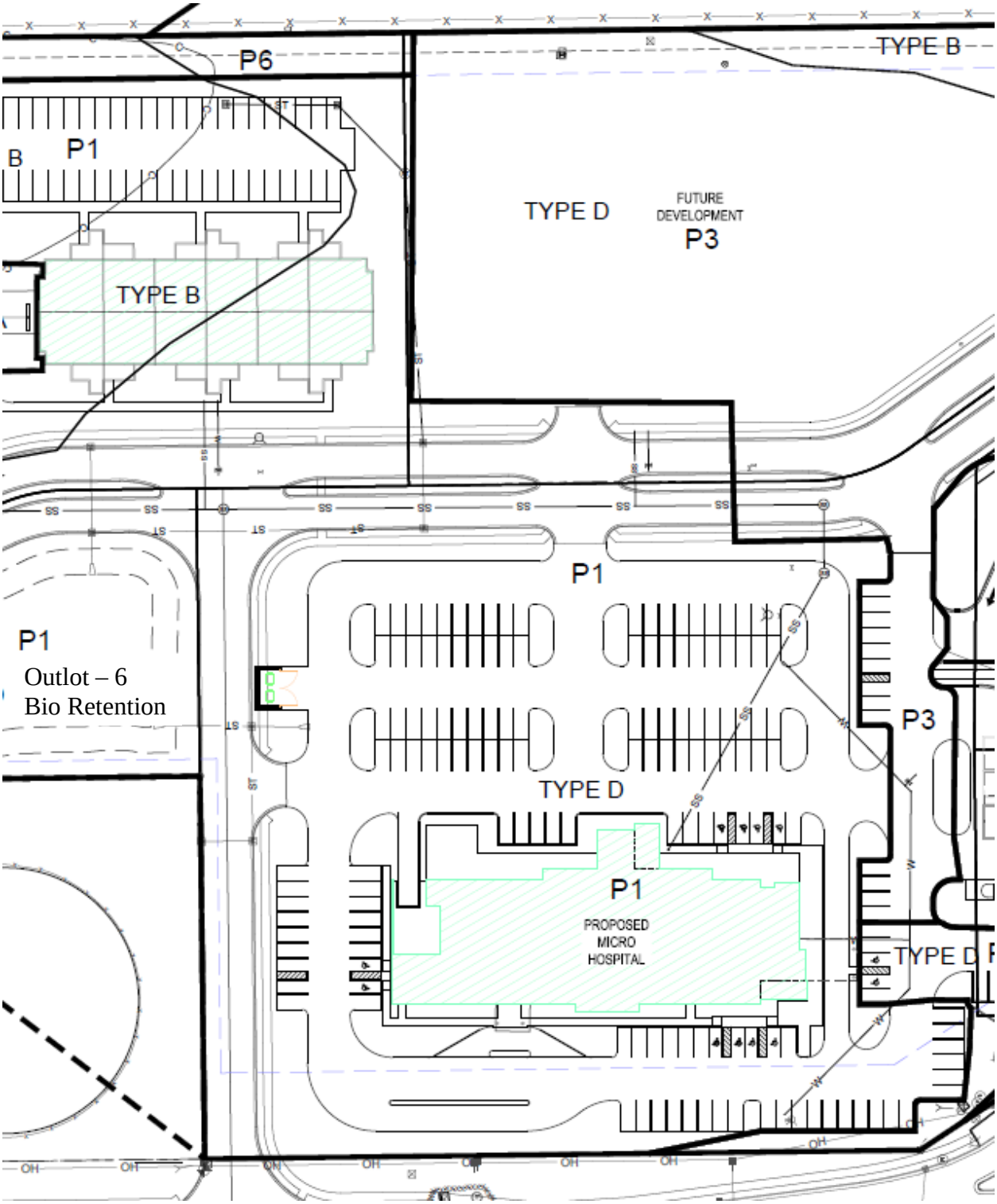


Exhibit E
As-built Survey for Wet Detention Basin

The wet detention basin depicted in Figure 1 is a reduced copy of the as-built plan.

Project Identifier**:** **Fox Run Redevelopment**
Storm water Practice**:** **Bio-Retention Basin**
Location of Practice**:** **All of Outlot 6 of CSM ____; Fox Run Redevelopment:**
Owners of Outlot 6: **Each owner of Lots 1-5 shall have equal (1/5) undividable interest in Outlot 6.**

Exhibit "F"
Engineering/Construction Verification

DATE: _____

TO: City of Waukesha

FROM: Paul Jenswold, P.E., Jahnke & Jahnke Associates, LLC

RE: Engineering/Construction Verification for the following project:

Project Name: Fox Run Redevelopment

Section 9 T6N R19E, City of Waukesha

Storm Water Management & Erosion Control Permit # N/A

Storm Water Management Practices: Wet Pond

For the above-referenced project and storm water management practices, this correspondence shall serve as verification that: 1) all site inspections outlined in approved inspection plans have been successfully completed; and 2) the storm water management practice design data presented in Exhibit D, and the "as-built" construction documentation presented in Exhibit E comply with all applicable state and local technical standards, in accordance with the City of Waukesha Storm Water Management and Erosion Control Ordinance.

Any design or construction changes from the originally approved construction plans are documented in Exhibits D and E and have been approved by the City of Waukesha.

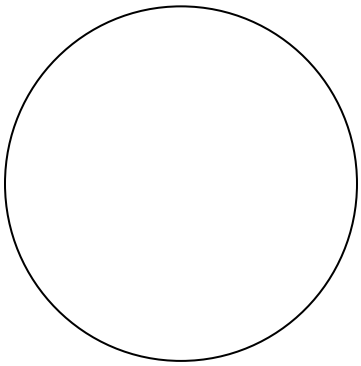


Exhibit G

Storm Water Management and Erosion Control Permit Termination

Project Identifier: Fox Run Redevelopment

Location: Part of the Southwest Quarter (SW ¼) of Section 9, Township 6N, Range 19E (City of Waukesha)

Storm Water Management and Erosion Control Permit Holder's Name:

_____

Storm Water Management & Erosion Control Permit #: _____

Chapter 32 – City of Waukesha Storm Water Management and Erosion Control requires that all newly constructed storm water management practices be maintained by the Storm Water and Erosion Control Permit Holder until permit termination, after which maintenance responsibilities shall be transferred to the responsible party identified on the CSM and referenced in this Maintenance Agreement.

Upon execution below, this exhibit shall serve to certify that the Storm Water Permit Holder has satisfied all requirements of the Storm Water Management and Erosion Control Ordinance and that the City of Waukesha has terminated the Storm Water Management and Erosion Control Permit for the property covered by this Maintenance Agreement.

Dated this ___ day of _____, 2020.

City of Waukesha representative:

_____
(Signature)

_____

(Typed Name and Title)

Acknowledgements

State of Wisconsin
County of Waukesha

Personally came before me this ___ day of _____, 2020, the above named _____ to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____.
[Name]
Notary Public, Waukesha County, WI
My commission expires: _____