

RESOLUTION
R 56-15

A RESOLUTION AUTHORIZING SIGNATURE
OF PRESIDENT AND CLERK ON AN AGREEMENT

WHEREAS, the Corporate Authorities of the Village of Lombard has received an Agreement between the Village of Lombard and Woodmoor Development, LLC regarding a Utility Service and Development Agreement relative to the property located at 1S601 South Finley Road, Lombard, Illinois, (previously known as the Ken Loch Golf Course Property); and

WHEREAS, the Corporate Authorities deem it to be in the best interest of the Village of Lombard to approve such Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS as follows:

Section 1: That the Village President be and hereby is authorized to sign on behalf of the Village of Lombard said Agreement as attached hereto.

Section 2: That the Village Clerk be and hereby is authorized to attest said Agreement as attached hereto.


Adopted this 16th day of July, 2015.

Ayes: Trustee Whittington, Fugiel, Foltyniewicz, Johnston, and Pike


Nays: None

Absent: Trustee Ware

Approved this 16th day of July, 2015.


Keith T. Giagnorio
Village President

ATTEST:


Sharon Kuderna
Village Clerk

**UTILITY SERVICE AND DEVELOPMENT AGREEMENT
KEN-LOCH GOLF COURSE PROPERTY
(1S601 SOUTH FINLEY ROAD - 31 ACRES)**

This Utility Service and Development Agreement (hereinafter, the "Agreement") is made and entered into as of July 27, 2015 (hereinafter, the "Effective Date"), by and between the Village of Lombard, an Illinois municipal corporation located in DuPage County, Illinois (hereinafter, the "Village"), and Woodmoor Development, LLC, an Illinois limited liability company (hereinafter, the "Developer") in accordance with authority granted by Article VII, Section 10(a) of the Illinois Constitution. References to "Developer" herein shall include any nominees, successors or successor entities of Woodmoor Development, LLC, as well as any joint ventures in relation to which Woodmoor Development, LLC is a party. The Village and the Developer are hereinafter sometimes referred to collectively as the "Parties," and are hereinafter sometimes referred to individually as a "Party."

RECITALS

- A. Developer is the contract purchaser and intended developer of the parcel of real estate in York Township, unincorporated DuPage County, that is approximately thirty-one (31) acres in size, and is legally described as set forth on Exhibit A attached hereto and made part hereof (hereinafter, the "Subject Property"). The Subject Property is located on the East side of Finley Road, approximately a quarter mile North of 22nd Street.
- B. The Subject Property is approved for R-6 zoning and development for mixed residential uses under DuPage County Ordinance Z13-040A (hereinafter, the "Ordinance"). The Subject Property will be developed in substantial conformity with the DuPage County R-6 Planned Unit Development Ordinance and the Planned Development Plan and Plat, all as approved by DuPage County (hereinafter, collectively, the "PUD Plan"). The PUD Plan allows development of the Subject Property with four (4) five (5) story apartment buildings, with a total of two hundred eighty-eight (288) dwelling units, and sixteen (16) two (2) story buildings, with a total of one hundred (100) townhome/coachhome units (hereinafter, the "Development").
- C. The Village and the Developer desire that the Development be implemented in accordance with the PUD Plan and the applicable DuPage County building codes and ordinances and, to the extent reasonably possible, in compliance with the Village's public improvements construction and engineering standards in effect as of the date of this Agreement, as set forth in Chapter 154 of the Lombard Village Code (hereinafter, the "Village Public Improvements Standards"), to the extent the Village Public Improvements Standards are more restrictive than DuPage County's public improvements construction and engineering standards, and provided the application of the Village Public Improvements Standards would not cause the Development to violate the terms of the PUD Plan. Maintenance guaranties in relation to public improvements shall be governed as set forth in this Agreement.
- D. The Village owns a municipal water distribution system, and provides potable water service to properties within and outside of the Village's corporate limits. The Village has established water rates, equipment charges, and connection fees in the Lombard Village

Code and Village ordinances.

- E. The Village also provides sanitary sewerage collection and treatment service to properties within and outside of the Village's corporate limits, through the Village's sanitary sewerage system and the Glenbard Wastewater Authority, an intergovernmental entity formed by the Village and the Village of Glen Ellyn to treat sanitary sewerage for the Village and the Village of Glen Ellyn. The Village has established sanitary sewerage service rates, equipment charges, and connection fees in the Lombard Village Code and Village ordinances.
- F. Developer agrees that improvements within the Finley Road right-of-way adjacent to the Subject Property, including a traffic signal at the intersection of Finley Road and the Northerly entrance to the Subject Property, as depicted on Exhibit B attached hereto and made part hereof, (hereinafter, the "Finley Road Improvements"), along with roadway, sidewalk, street lighting and storm sewer improvements in relation thereto, on the Subject Property, (hereinafter, the "On-Site Roadway Improvements"), necessary to serve the Development, as depicted on Exhibit C attached hereto and made part hereof, shall be installed by the Developer in the publicly dedicated right-of-way, in accordance with the Village Public Improvements Standards, to the extent doing so would not be in violation of York Township and/or DuPage County public improvements construction and engineering standards, all at no cost to the Village. The Finley Road Improvements and the On-Site Roadway Improvements are hereinafter collectively referred to as the "Roadway Improvements."
- G. Developer has agreed to connect the Development's potable water and sanitary sewerage systems to the Village's water and sanitary sewerage systems, and to purchase water and sanitary sewerage services from the Village at the Village's non-resident rates, so long as the Subject Property remains outside the Village's corporate limits. The Village warrants that its water and sanitary sewerage systems have capacity sufficient to serve the Development and that the Village is willing to allow such connections and provide potable water service and sanitary sewerage service to the Development under the terms of this Agreement.
- H. Developer agrees that the sanitary sewerage and potable water improvements necessary to serve the Development shall be installed by Developer, at no cost to the Village, in accordance with the Village Public Improvements Standards, and that upon completion in phases, from time to time, Developer will convey to the Village, at no cost, title to those sanitary sewerage mains and potable water mains, and appurtenances thereto (e.g., traps, valves, b-boxes, fire hydrants, etc.) that are located within publicly dedicated rights-of-way and/or easements in favor of the Village, as depicted on Exhibit D, attached hereto and made part hereof, and as described in greater detail in this Agreement (hereinafter, the "Water and Sewer Improvements").
- I. The Village and the Developer are in agreement that the Development will be completed with landscaping and screening along the East boundary of the Subject Property, as provided in this Agreement and as depicted on Exhibit E, attached hereto and made part hereof, in order to provide screening and buffering for residential properties located East of the Subject Property (hereinafter, the "Landscaping Improvements").

- J. The Village and the Developer are in agreement that the Development will include the improvement of a parcel of approximately six and thirty-seven hundredths (6.37) acres on the East side of the Subject Property, as depicted on Exhibit F attached hereto and made part hereof (hereinafter, the "Stormwater Relief and Pathway Parcel"), by the Developer, with stormwater detention and management facilities for the benefit of the residential properties located East of the Subject Property, the Pathway (as defined in subsection 6.1 below), and the Landscaping Improvements (collectively, the "SR&P Parcel Improvements") as well as wetlands, all as provided for in this Agreement, and depicted on Exhibit G attached hereto and made part hereof.
- K. The Village and the Developer are in agreement that the Stormwater Relief and Pathway Parcel will be improved with a Pathway (as defined in subsection 6.1 below) for shared use by owners, residents and invitees of the Development and the public in general, permitting access to the Lombard Park District property located North of the Subject Property, and providing direct access to Elizabeth Street at the Southeast corner of the Subject Property, as provided for in this Agreement and as depicted on Exhibit H, attached hereto and made part hereof.
- L. The Village and the Developer are in agreement that:
- (i) Developer will grant easements on the final plat relative to the Development, for Village, County and Township access, use, maintenance, repair and reconstruction of the improvements specified in subsection 2.10 below; and
 - (ii) To the extent that the wetlands maintenance period has not expired at the time, if any, that the Subject Property is annexed to the Village, Developer shall post a letter of credit with the Village, covering the time period left on the wetlands permit issued to the Developer relative to the wetlands on the Stormwater Relief and Pathway Parcel, in an amount, as determined by the Village, sufficient to cover the cost of any wetlands maintenance or restoration work necessary during said remaining wetlands permit period, so as to insure that funds are available to the Village during the remaining wetlands permit period to cover any such wetlands maintenance or restoration during said remaining wetlands permit period.
- M. The Village shall not involuntarily annex the Subject Property prior to June 1, 2019, unless mutually agreed to by the Parties hereto.
- N. If and when the Subject Property is annexed into the Village, the Village agrees to provide municipal services, including, but not limited to, public improvements maintenance, repair and replacement services, police, fire protection, emergency medical services, sanitary sewerage services at resident rates and potable water services at resident rates, as are generally provided to other residents and properties within the Village.
- O. A public hearing relative to this Agreement was held by the President and Board of Trustees of the Village (hereinafter, the "Corporate Authorities") on the 16th day of July, 2015, pursuant to a notice published in a newspaper of general circulation within the Village, at least fifteen (15) days prior to said public hearing.

- P. The current legal owner of the Subject Property, Kensinger Realty Investments, LLC, an Illinois limited liability company (hereinafter, "Kensinger"), has consented to the Village and the Developer entering into this Agreement, and has consented to the recording of this Agreement, with the DuPage County Recorder's Office, upon the approval and execution thereof by the Village, the Developer and Kensinger.
- Q. It is in the respective best interests of the Village and the Developer that they enter into this Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals, the covenants, conditions and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties hereby agree as follows:

1. RECITALS

- 1.1. The recitals set forth above are incorporated herein and made a part hereof as material terms of this Agreement, as if fully set forth in this Section 1.

2. OWNERSHIP AND DEVELOPMENT OF THE SUBJECT PROPERTY GENERALLY

- 2.1. The Developer shall acquire fee simple title to the Subject Property and shall obtain DuPage County final plat approval relative to the Development on the Subject Property, in accordance with DuPage County Zoning Code, the Ordinance and the PUD Plan, on or before December 31, 2016, or this Agreement shall be null and void, and of no further force and effect.
- 2.2. Subject to *force majeure* (which shall include, but not be limited to, work stoppage, labor strikes and material shortages outside Developer's reasonable control), the Developer shall substantially complete the Finley Road Improvements, the Water and Sewer Improvements, the SR&P Parcel Improvements, the Off-Site Stormwater Facilities (as defined in subsection 5.1 below), and the On-Site Roadway Improvements by December 31, 2017, with any claim of *force majeure* not to extend said completion deadline beyond December 31, 2018, or this Agreement shall be null and void, and of no further force and effect.
- 2.3. Should this Agreement become null and void pursuant to either subsection 2.1 or 2.2 above, all easements granted by Developer to the Village shall immediately terminate (and the Village shall sign any documents necessary to effectuate said termination), any dedications by Developer in favor of the Village shall be immediately re-conveyed by the Village to the Developer, and any financial surety posted by Developer with the Village shall be immediately refunded to Developer
- 2.4. The Developer shall develop the Subject Property, if at all, with the Development, in substantial conformity with the Ordinance, the PUD Plan, and the terms and provisions of this Agreement.
- 2.5. The Developer shall construct the Roadway Improvements, the Water and Sewer Improvements, and the SR&P Parcel Improvements in compliance with the Village

Public Improvements Standards, to the extent doing so would not be in violation of the public improvements construction and engineering standards of DuPage County as to the Water and Sewer Improvements and the SR&P Parcel Improvements, or in violation of the public improvements construction and engineering standards of York Township as to the On-Site Roadway Improvements portion of the Roadway Improvements. The Off-Site Improvements (as defined in subsection 5.1 below), that portion of the Pathway (as defined in subsection 6.1 below) to be constructed in the rights-of-way under the Village's jurisdiction, and the Finley Road Improvements shall be constructed in compliance with the Village Public Improvements Standards.

- 2.6. The Village agrees not to involuntarily annex the Subject Property prior to June 1, 2019, unless mutually agreed to by the Parties hereto. Notwithstanding the foregoing, the Village shall have no obligation under this Agreement to voluntarily or involuntarily annex the Subject Property to the Village.
- 2.7. If and when the Subject Property is annexed into the Village, the Village shall provide municipal services, including, but not limited to, Village police service, fire protection service, emergency medical services, sanitary sewerage service and potable water service, as are generally provided to other residents and properties within the Village, as well as maintenance, repair and replacement of any public rights-of-way (streets, sidewalks and street lighting) within the Subject Property.
- 2.8. As part of any future annexation of the Subject Property by the Village, the Village shall take the appropriate and necessary actions to eliminate any zoning related legal non-conformities resulting from the Subject Property being made subject to the Village's Zoning Ordinance (Chapter 155 of the Lombard Village Code), as a result of the annexation thereof by the Village (the "Village Zoning Action"). The Village Zoning Action shall address both the existing uses on the Subject Property at the time of the annexation, as well as any future uses of the Subject Property as authorized by the zoning approvals granted by DuPage County prior to the annexation of the Subject Property by the Village.
- 2.9. During the term of this Agreement, the Village shall not rescind, amend or abrogate the permits issued and approvals granted by the Village in accordance with this Agreement, without the written consent of Developer.
- 2.10. The final PUD plat/plat of subdivision relative to the Development on the Subject Property shall grant the following easements to the Village:
 - (A) A watermain easement, to the extent that the watermain to be owned by the Village, after construction by the Developer, is not located in a publicly dedicated right-of-way;
 - (B) A sanitary sewerage main easement, to the extent that the sanitary sewerage main to be owned by the Village, after construction by the Developer, is not located in a publicly dedicated right-of-way; and
 - (C) An easement for the right, but not the obligation, consistent with the form

required by Chapter 154 of the Lombard Village Code, to access, use, maintain, repair and reconstruct the SR&P Parcel Improvements and the Off-Site Stormwater Facilities (as defined in subsection 5.1 below) located on the Stormwater Relief and Pathway Parcel.

In addition, the final PUD plat/plat of subdivision relative to the Development on the Subject Property shall provide that the easement granted to DuPage County, for the right, but not the obligation, to access, use, maintain, repair and reconstruct any stormwater detention ponds located on the Subject Property, other than on the Stormwater Relief and Pathway Parcel (hereinafter, the "Other Detention Ponds"), is assignable to the Village in the event that the Subject Property is ever annexed to the Village.

- 2.11 To the extent that the wetlands maintenance period has not expired at the time, if any, that the Subject Property is annexed to the Village, the Developer shall post a letter of credit with the Village, covering the time period left on the wetlands permit issued to the Developer relative to the wetlands on the Stormwater Relief and Pathway Parcel, in an amount, as determined by the Village, sufficient to cover the cost of any wetlands maintenance or restoration work necessary during said remaining wetlands permit period, so as to insure that funds are available to the Village during the remaining wetlands permit period to cover any such wetlands maintenance or restoration during said remaining wetlands permit period.
- 2.12. As of the Effective Date, the Developer shall maintain the Subject Property and the parkway along Finley Road adjacent to the Subject Property, or cause the Subject Property and the parkway along Finley Road adjacent to the Subject Property to be maintained, in a condition that is in compliance with the property maintenance codes of the Village, to the extent said Village property maintenance codes are more restrictive than DuPage County's property maintenance codes, and provided the application of the Village's property maintenance codes would not cause the Subject Property, or the parkway along Finley Road adjacent to the Subject Property, to be put in a condition that violates DuPage County's property maintenance codes.
- 2.13. Construction in relation to the Development on the Subject Property, including construction of the Roadway Improvements, Water and Sewer Improvements, and SR&P Parcel Improvements, shall only occur during those hours of construction as permitted under the Lombard Village Code or the ordinances of DuPage County, whichever is more restrictive.
- 2.14. Upon completion of the construction of the Roadway Improvements, the Water and Sewer Improvements, the SR&P Parcel Improvements and the Off-Site Stormwater Facilities (as defined in subsection 5.1 below), the Developer shall provide the Village with a set of "as-built" plans for same, in electronic format.
- 2.15. Developer shall comply with all applicable DuPage County impact fee rules, regulations and ordinances, applicable to the Development, as determined by DuPage County, unless agreed to otherwise by the Developer, DuPage County and those school districts or units of local government that will benefit from said impact

fee rules, regulations and ordinances.

3. WATER AND SANITARY SEWERAGE SERVICE

- 3.1. The Village warrants and agrees that its fire protection and potable water supply and conveyance systems, and its sanitary sewerage conveyance and treatment systems, are presently available and adequate to service the Development. The Developer shall, at Developer's sole cost and expense, obtain any easements necessary to extend Village potable water and/or sanitary sewerage systems to the Subject Property. Developer shall install, at its sole cost and expense, all potable water and sanitary sewerage pipelines and appurtenances necessary to service the Development.
- 3.2. Private water wells may be maintained on the Subject Property for landscape irrigation purposes only, provided that the installation and use of same has been approved by DuPage County, and same have been installed prior to the annexation of the Subject Property to the Village.
- 3.3. Upon completion of construction, from time to time, and approval of same by DuPage County and the Village, the Village shall accept conveyance from Developer, without charge or compensation, pursuant to a proper bill of sale, of all Water and Sewer Improvements, subject to the two (2) year maintenance guaranty as required by Chapter 154 of the Lombard Village Code relative to the installation of public improvements by private developers.
- 3.4. The Village shall allow the connection of the Water and Sewer Improvements to the Village's potable water and sanitary sewerage systems, provided the Water and Sewer Improvements, the Finley Road Improvements, the SR&P Parcel Improvements, and the Off-Site Stormwater Facilities are substantially complete and operational, and, to the extent there are punch list items left to complete, because of only substantial completion and not actual completion, the Developer has posted a letter of credit with the Village, in the amount of one hundred fifteen percent (115%) of the estimated cost of completing the punch list items.
- 3.5. Unless and until the Subject Property is annexed into the Village, Developer shall pay the Village's generally applicable non-resident rates for potable water and sanitary sewerage services. Upon annexation of the Subject Property into the Village, Developer and the residents of the Subject Property shall pay generally applicable Village resident rates for potable water and sanitary sewerage services, as well as for other municipal services, provided to the Subject Property.

4. LANDSCAPING AND SCREENING

- 4.1. Developer shall, at its sole cost and expense, install and maintain the Landscaping Improvements on the Subject Property to screen the residential properties to the East, in conformity with Exhibit E, or as otherwise approved by the Village; provided, however, the Developer's cost to proceed with, and install the landscaping pursuant to, any alternate buffer landscaping plan approved by the Village shall not exceed \$20,000.00.

5. STORMWATER DETENTION AND MANAGEMENT

- 5.1. Developer shall develop the Subject Property with on-site stormwater detention basins to service the stormwater management needs of the Development other than on the Stormwater Relief and Pathway Parcel (the "Other Detention Ponds", as referenced in subsection 2.10 above), and shall construct additional stormwater facilities consisting of: (A) an on-site stormwater relief basin and two (2) new storm sewers connecting same to the off-site storm sewers and detention basins to the East of the Subject Property, on the Stormwater Relief and Pathway Parcel; (B) the abandonment of an off-site storm sewer between 17th Place and 18th Street; (C) the construction of a storm sewer to the existing off-site detention basin between 17th Street and 17th Place, just East of Elizabeth Street, including the construction of a storm sewer connecting same to the aforementioned on-site stormwater relief basin; and (D) a storm sewer in 18th Street, from Elizabeth Street to East of Lincoln Street; to provide additional stormwater detention for stormwater run-off from developed residential properties East of the Subject Property, all as depicted and further described on Exhibit I attached hereto and made part hereof (hereinafter, collectively, the "Off-Site Stormwater Facilities"). That portion of the Off-Site Stormwater Facilities, located within the Subject Property, shall be located within an easement on the Stormwater Relief and Pathway Parcel depicted on Exhibit F hereto. The Village shall obtain all temporary construction and permanent easements, if any are needed, for the construction of the portion of the Off-Site Stormwater Facilities that are not constructed on the Stormwater Relief and Pathway Parcel. The Village and the Developer agree that the installation of the Off-Site Stormwater Facilities will be completed in compliance with the requirements of the Village Public Improvements Standards.
- 5.2. Subject to Section 13.1 of this Agreement, Developer shall retain ownership of the Other Detention Ponds, the Stormwater Relief and Pathway Parcel, the SR&P Parcel Improvements and the Off-Site Stormwater Facilities that are located within the Subject Property. Developer shall, at Developer's sole cost and expense, maintain, repair and reconstruct the Other Detention Ponds, the SR&P Parcel Improvements and the Off-Site Stormwater Facilities that are located within the Subject Property, as necessary to keep the same in good working order. Developer shall, at Developer's sole cost and expense, provide routine maintenance (grass cutting and clean-out of intake and outflow pipes) of the SR&P Parcel Improvements and the Off-Site Stormwater Facilities located within the Subject Property. The Village shall be responsible for Off-Site Stormwater Facilities not located on the Subject Property. Upon completion and acceptance thereof by the Village, Developer shall convey to the Village, by bill of sale, those Off-Site Stormwater Facilities that are not located on the Subject Property. Off-site Stormwater Facilities not located on the Subject Property shall be maintained, repaired and reconstructed by the Village at the Village's expense, subject to the two (2) year maintenance guaranty, as required by Chapter 154 of the Lombard Village Code, relative to the installation of public improvements by private developers.

5.3. The Developer shall provide an access point from the On-Site Roadway Improvements onto the Stormwater Relief and Pathway Parcel, as approved by the Village, with said access point consisting of “grasscrete”, or an alternate hard surface, so that trucks and machinery can access the Stormwater Relief and Pathway Parcel without getting stuck thereon.

6. SHARED PEDESTRIAN PATHWAY

6.1. In its development of the Stormwater Relief and Pathway Parcel, Developer shall develop a pedestrian pathway located partly within the Subject Property, and partly outside the Subject Property on the Elizabeth Street right-of-way, and located so as to allow connectivity between the Southeast boundary of the Subject Property and the Lombard Park District property immediately to the North of the Subject Property, all as generally depicted on Exhibit H (hereinafter, the “Pathway”). The Pathway shall be for the shared use by owners, residents and invitees of the Development and the public in general, and shall be designed and constructed to the standards as set forth in Exhibit J, attached hereto and made part hereof. The part of the Pathway located within the Subject Property shall be located on the Stormwater Relief and Pathway Parcel as depicted on Exhibit H. That part of the Pathway located outside the Subject Property shall be on the Elizabeth Street right-of-way adjacent to the Subject Property. The Village shall grant Developer or its successors or assigns whatever license or easements are necessary and appropriate for Developer to construct the Pathway outside the Subject Property, and, upon completion of construction of the Pathway, Developer or its successors or assigns, as the case may be, shall maintain the part of the Pathway located within the Subject Property, at its sole cost and expense, and the Village shall maintain the part of the Pathway located outside the Subject Property, at its sole cost and expense.

7. COMPENSATION

7.1. As compensation for the costs incurred by the Developer relative to the Off-Site Stormwater Facilities, including the cost of the on-site stormwater relief basin and the value of the land encumbered with a Village interest relative to the on-site stormwater relief basin on the Stormwater Relief and Pathway Parcel (\$589,000.00); the Pathway (\$32,500.00); and the Landscaping Improvements (\$20,000.00); Developer shall receive a credit against Village engineering review and inspection fees under subsection 16.3(A)(iii) below and Village potable water and sanitary sewerage tap-on/connection fees arising from apartment and townhome/coachhome building connections within the Subject Property, in the total amount of \$641,500.00. The credit shall be applied first against any Village engineering review and inspection fees under subsection 16.3(A)(iii) below, that may be imposed upon Developer, then against the potable water and sanitary sewerage system tap on/connection fee payments for the apartment buildings and the townhome/coachhome buildings as they become due to the Village.

8. COOPERATION AND MUTUAL ASSISTANCE

8.1. Village and Developer agree to do all things necessary or appropriate to carry out and

to expedite the terms and provisions of this Agreement, and to aid and assist each other in carrying out the terms and objectives of this Agreement and the intentions of the Parties as reflected by said terms, including, without limitation, the giving of such notices; the holding of meetings or hearings; the enactment or grant by the Village of consents, approvals, ordinances and resolutions as may be necessary to enable the Parties' compliance with the terms and provisions of this Agreement and to give effect to the terms and objectives of this Agreement; and communication with adjacent property owners concerning work and work design, hours and overall orderliness of construction, work progress and scheduling, and other related matters. Neither the annexation of the Subject Property to the Village nor any legal action by the Developer to effectuate such annexation shall be a condition to the rights and obligations of the Parties herein.

9. REMEDIES

9.1. Any Party to this Agreement may by civil action, mandamus, injunction or other proceeding, enforce and compel performance of this Agreement or obtain money damages for breach thereof. Before any action is taken to enforce and compel performance of this Agreement, the Party claiming a default shall notify, in writing, the Party alleged to have failed in performance under this Agreement and specify the alleged failure and demand performance. Absent an emergency situation, no lawsuit or claim shall be filed upon a breach of this Agreement until thirty (30) days after demand for performance has been made to the alleged breaching Party. The prevailing Party in any proceeding shall be awarded reasonable attorney's fees and other costs of litigation as determined by the presiding judge. Such award may be recovered in the same or a separate proceeding. The "prevailing Party" is the Party that obtains or defeats the relief sought, as the case may be, whether by judgment or the other Party's abandonment of its claim or defense, as determined by the presiding judge.

10. TERM OF AGREEMENT

10.1. This Agreement shall be in full force and effect for a term of twenty (20) years from and after the Effective Date. The expiration of the term of this Agreement shall not affect the continuing validity of any Village ordinance enacted pursuant to this Agreement.

11. AMENDMENT

11.1. This Agreement, and the exhibits attached hereto, may be amended only by the mutual written consent of the Parties or their successors-in-interest.

12. SEVERABILITY

12.1. If any provision, covenant, agreement or portion of this Agreement or its application to any person, entity or property is held invalid, such invalidity shall not affect the application or validity of any other provisions, covenants or portions of this Agreement, and to that end, all provisions, covenants, agreements and portions of this

Agreement are declared to be severable. If for any reason any portion of this Agreement is ruled invalid, in whole or in part, the Parties shall, as soon as possible, take such actions (including the holding of such public hearings and the adoption of ordinances) as may be necessary to give effect to the spirit and intent of this Agreement and the objectives of the Parties, as set forth in this Agreement.

13. SUCCESSORS AND ASSIGNS

13.1. This Agreement shall be binding upon Developer's successors in title to the Subject Property, or any part thereof, and their respective successors, grantees, lessees, and assigns, including owners' associations, and upon successor corporate authorities of the Village, and its successor municipalities. The rights and obligations of Developer under this Agreement may be assigned without Village approval and, upon such assignment and acceptance by an assignee, the assignor shall have no further obligation hereunder. If any portion of the Subject Property is sold, the seller thereof shall be deemed to have assigned to the purchaser thereof any and all rights and obligations the seller may have under this Agreement which may affect the portion of the Subject Property sold or conveyed and thereafter the seller thereof shall have no further obligations under this Agreement as it relates to the portion of the Subject Property conveyed.

14. ENTIRE AGREEMENT

14.1. This Agreement and the exhibits hereto set forth all the promises, inducements, agreements, conditions and understandings among the Parties hereto, and there are no promises, agreements, conditions or understandings, either oral or written, express or implied, between the Parties hereto other than as are set forth in this Agreement and the exhibits hereto.

15. NOTICES

15.1. Any notice required or permitted by the provisions of this Agreement shall be in writing and sent by certified mail, return receipt requested, overnight delivery by FedEx or UPS, or personally delivered to the Parties at the following addresses, or at such other addresses as the Parties may, by notice, designate:

If to Village:

VILLAGE OF LOMBARD
255 E. Wilson Avenue
Lombard, IL 60148
Attention: Village Manager

With a copy to:

Klein, Thorpe and Jenkins, Ltd
20 N. Wacker Drive, Suite 1660
Chicago, IL 60606
Attention: Thomas P. Bayer and Jason A. Guisinger

If to Developer:

WOODMOOR DEVELOPMENT, LLC
6432 Joliet Road, Suite B
Countryside, IL 60525
Attention: Scott A. Stevens, Manager
Attention: Donald A. Stevens, Member

With a copy to:

Ice Miller, LLP
2300 Cabot Drive - Suite 455
Lisle, IL 60532
Attention: Michael Roth

16. GENERAL PROVISIONS

16.1 Survival of Representations: Each of the Parties agrees that the representations, warranties and recitals set forth in the preambles to this Agreement are material to this Agreement, and the Parties hereby confirm and admit their truth and validity and hereby incorporate such representations, warranties and recitals into this Agreement and the same shall continue during the period of this Agreement.

16.2 Captions and Subsection Headings: The captions and subsection headings used herein are for convenience only and are not a part of this Agreement and shall not be used in construing it.

16.3 Reimbursement of Village for Legal and Other Fees and Expenses:

- (A) The Developer shall, on the Effective Date, or, as to subsections (ii) and (iii) below, when incurred, reimburse the Village for the following expenses incurred in the preparation, review and recording of this Agreement, and any ordinances, letters of credit, plats, easements or other documents relating to the Subject Property:
- (i) sixty-seven percent (67%) of all reasonable attorneys' fees incurred by the Village in connection with this Agreement and the actions contemplated by this Agreement;
 - (ii) fifty percent (50%) of the recording fees as provided for in Section 16.6 below; and
 - (iii) prior to starting construction of the Development, the Village's engineering review and inspection fees for: (a) the Water and Sewer Improvements; (b) the Finley Road Improvements; (c) the SR&P Parcel Improvements; and (d) the On-Site Roadway Improvements, to the extent the engineering review and inspection services are not provided by the County or the Township relative to the On-Site Roadway

Improvements.

- (B) **Developer Maintenance Guaranty:** The Village and the Developer are in agreement that, upon completion of each of the Finley Road Improvements, the Water and Sewer Improvements, the SR&P Parcel Improvements and the Off-Site Stormwater Facilities, and approval thereof by the Village, the Developer shall post a two (2) year surety maintenance guaranty bond or letter of credit with the Village, as provided for in the Village Public Improvements Standards.
 - (C) **Third Party Litigation.** In the event that any third party or parties institute any legal proceedings against the Developer and/or the Village, which relate to the terms of this Agreement, then, in that event, each Party shall assume, fully and vigorously, their own defense of such lawsuit and all expenses of whatever nature relating thereto; provided, however, the Parties shall cooperate in providing their respective defenses so as to reduce the costs of defense and to provide a unified defense, when possible, and further provided neither Party shall make any settlement or compromise of the lawsuit, or fail to pursue any available avenue of appeal of any adverse judgment, without the approval of the other Party.
- 16.4 **No Waiver or Relinquishment of Right to Enforce Agreement:** Failure of either Party to this Agreement to insist upon the strict and prompt performance of the terms, covenants, agreements and conditions herein contained, or any of them, upon the other Party imposed, shall not constitute or be construed as a waiver or relinquishment of either Party's right thereafter to enforce any such term, covenant, agreement or condition, but the same shall continue in full force and effect.
- 16.5 **Village Approval or Direction:** Where Village approval or direction is required by this Agreement, such approval or direction means the approval or direction of the Corporate Authorities of the Village unless otherwise expressly provided herein or required by law, and any such approval may be required to be given only after and if all requirements for granting such approval have been met unless such requirements are inconsistent with this Agreement.
- 16.6 **Recording:** A copy of this Agreement and any amendments thereto shall be recorded by the Village, and same shall be rerecorded, with a cover sheet acknowledging the Parties' agreement to be bound hereby, upon Developer becoming the fee title owner of the Subject Property.
- 16.7 **Authorization to Execute:** The individual executing this Agreement on behalf of the Developer warrants that he has been lawfully authorized by Developer to execute this Agreement on behalf of said Developer. The individuals executing this Agreement on behalf of Kensinger warrant that they have been lawfully authorized by Kensinger to execute this Agreement on behalf of Kensinger. The Village President and Clerk of the Village hereby warrant that they have been

lawfully authorized by the Corporate Authorities of the Village to execute this Agreement. The Developer, Kensinger and the Village shall deliver to each other, upon request, copies of all bylaws, joint venture agreements, resolutions, ordinances or other documents required to legally evidence the authority to so execute this Agreement on behalf of each of them.

- 16.8 Counterparts: This Agreement may be executed in three (3) or more counterparts, each of which, taken together, shall constitute one and the same instrument.
- 16.9 Definition of Village: When the term Village is used herein, it shall be construed as referring to the Corporate Authorities of the Village, unless the context clearly indicates otherwise.
- 16.10 Execution of Agreement: The date on which the last of the Village, the Developer or Kensinger signs this Agreement shall be inserted on page 1 hereof, which date shall be the Effective Date of this Agreement.
- 16.11 Venue: The Parties hereto agree that, for purposes of any lawsuit(s) between them concerning this Agreement, its enforcement or the subject matter thereof, venue shall be in DuPage County, Illinois, and the laws of the State of Illinois shall govern the cause of action.

**THE REMAINDER OF THIS PAGE
HAS INTENTIONALLY BEEN LEFT BLANK.**

IN WITNESS WHEREOF, the Parties have caused this Utility Service and Development Agreement to be executed as of the date first above written.

**Village of Lombard,
an Illinois municipal corporation**

**Woodmoor Development, LLC,
an Illinois limited liability company**

By: _____
Keith Giagnorio
Village President

By: Scott A. Stevens
Scott A. Stevens
Manager

Date: _____

Date: July 22, 2015

ATTEST:

Sharon Kuderna
Village Clerk

Date: _____

Kensinger Realty Investments, LLC, an Illinois limited liability company, as fee title owner of the Subject Property, hereby approves of and consents to this Utility Service and Development Agreement, between the Village and the Developer, and hereby authorizes the Village and the Developer to record same against title to the Subject Property.

**Kensinger Realty Investments, LLC,
an Illinois limited liability company**

By: Richard E. Kensinger
Richard E. Kensinger
Manager

Date: July 27, 2015

IN WITNESS WHEREOF, the Parties have caused this Utility Service and Development Agreement to be executed as of the date first above written.

**Village of Lombard,
an Illinois municipal corporation**

**Woodmoor Development, LLC,
an Illinois limited liability company**

By: 
Keith Giagnorio
Village President

By: _____
Scott A. Stevens
Manager

Date: July 16, 2015

Date: _____

ATTEST:


Sharon Kuderna
Village Clerk

Date: July 16, 2015

Kensinger Realty Investments, LLC, an Illinois limited liability company, as fee title owner of the Subject Property, hereby approves of and consents to this Utility Service and Development Agreement, between the Village and the Developer, and hereby authorizes the Village and the Developer to record same against title to the Subject Property.

**Kensinger Realty Investments, LLC,
an Illinois limited liability company**

By: _____
Richard E. Kensinger
Manager

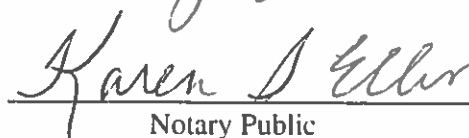
Date: _____

ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY that Keith Giagnorio, personally known to me to be the Village President of the Village of Lombard, and Sharon Kuderna, personally known to me to be the Village Clerk of said municipal corporation, and personally known to me to be the same persons whose names are subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that as such Village President and Village Clerk, they signed and delivered the said instrument and caused the corporate seal of said municipal corporation to be affixed thereto, pursuant to authority given by the Corporate Authorities of said municipal corporation, as their free and voluntary act, and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal, this 17th day of July, 2015.



Notary Public

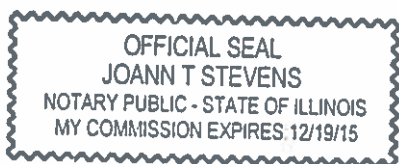


ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

The undersigned Notary Public, in and for the County and State aforesaid, does hereby certify that Scott A. Stevens, personally known to me as Manager of Woodmoor Development, LLC, an Illinois limited liability company, acknowledged to me that he signed and delivered the foregoing instrument on behalf of said company as his own free and voluntary act for the uses purposes therein set forth.

Given under my hand and official seal, this 22 day of July, 2015.





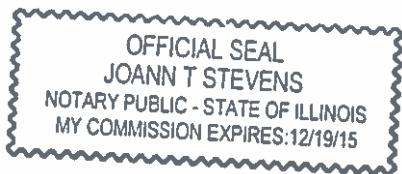
Notary Public

ACKNOWLEDGMENT

State of Illinois)
) SS
County of DuPage)

The undersigned Notary Public, in and for the County and State aforesaid, does hereby certify that Richard E. Kensinger, personally known to me as the Manager of Kensinger Realty Investments, LLC, an Illinois limited liability company, acknowledged to me that he signed and delivered the foregoing instrument on behalf of said company as his own free and voluntary act for the uses purposes therein set forth.

Given under my hand and official seal, this 27 day of July, 2015.





Notary Public

Exhibit A

Legal Description of Subject Property

PARCEL 1: THAT PART OF THE NORTH 31 ACRES OF THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 LYING SOUTH OF THE NORTH 660 FEET OF SAID WEST HALF OF THE SOUTHEAST QUARTER, IN SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID NORTH 31 ACRES WITH THE EAST LINE OF FINLEY ROAD AS HERETOFORE DEDICATED BY DOCUMENT R69-42444; THENCE NORTH ALONG THE EAST LINE OF FINLEY ROAD, A DISTANCE OF 523.75 FEET FOR A PLACE OF BEGINNING, THENCE CONTINUING NORTH ALONG THE EAST LINE OF FINLEY ROAD A DISTANCE OF 164.38 FEET; THENCE EAST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET; THENCE SOUTH PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 164.38 FEET; THENCE WEST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS; AND

PARCEL 2: THE NORTH 31 ACRES OF THAT PART OF THE WEST HALF OF THE SOUTHEAST 1/4 OF SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN LYING SOUTH OF THE NORTH 660 FEET OF SAID WEST HALF OF THE SOUTHEAST 1/4, EXCEPT THE FOLLOWING: THAT PART OF THE NORTH 31 ACRES OF THAT PART OF THE WEST 1/2 OF THE SOUTHEAST 1/4 LYING SOUTH OF THE NORTH 660 FEET OF SAID WEST HALF OF THE SOUTHEAST QUARTER, IN SECTION 19, TOWNSHIP 39 NORTH, RANGE 11, EAST OF THE THIRD PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS: COMMENCING AT THE POINT OF INTERSECTION OF THE SOUTH LINE OF SAID NORTH 31 ACRES WITH THE EAST LINE OF FINLEY ROAD AS HERETOFORE DEDICATED BY DOCUMENT R69-42444; THENCE NORTH ALONG THE EAST LINE OF FINLEY ROAD, A DISTANCE OF 523.75 FEET FOR A PLACE OF BEGINNING, THENCE CONTINUING NORTH ALONG THE EAST LINE OF FINLEY ROAD A DISTANCE OF 164.38 FEET; THENCE EAST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET; THENCE SOUTH PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 164.38 FEET; THENCE WEST PERPENDICULAR TO THE LAST DESCRIBED LINE A DISTANCE OF 265.0 FEET TO THE PLACE OF BEGINNING, IN DUPAGE COUNTY, ILLINOIS.

PINS: 06-19-400-011, -030 and -031.

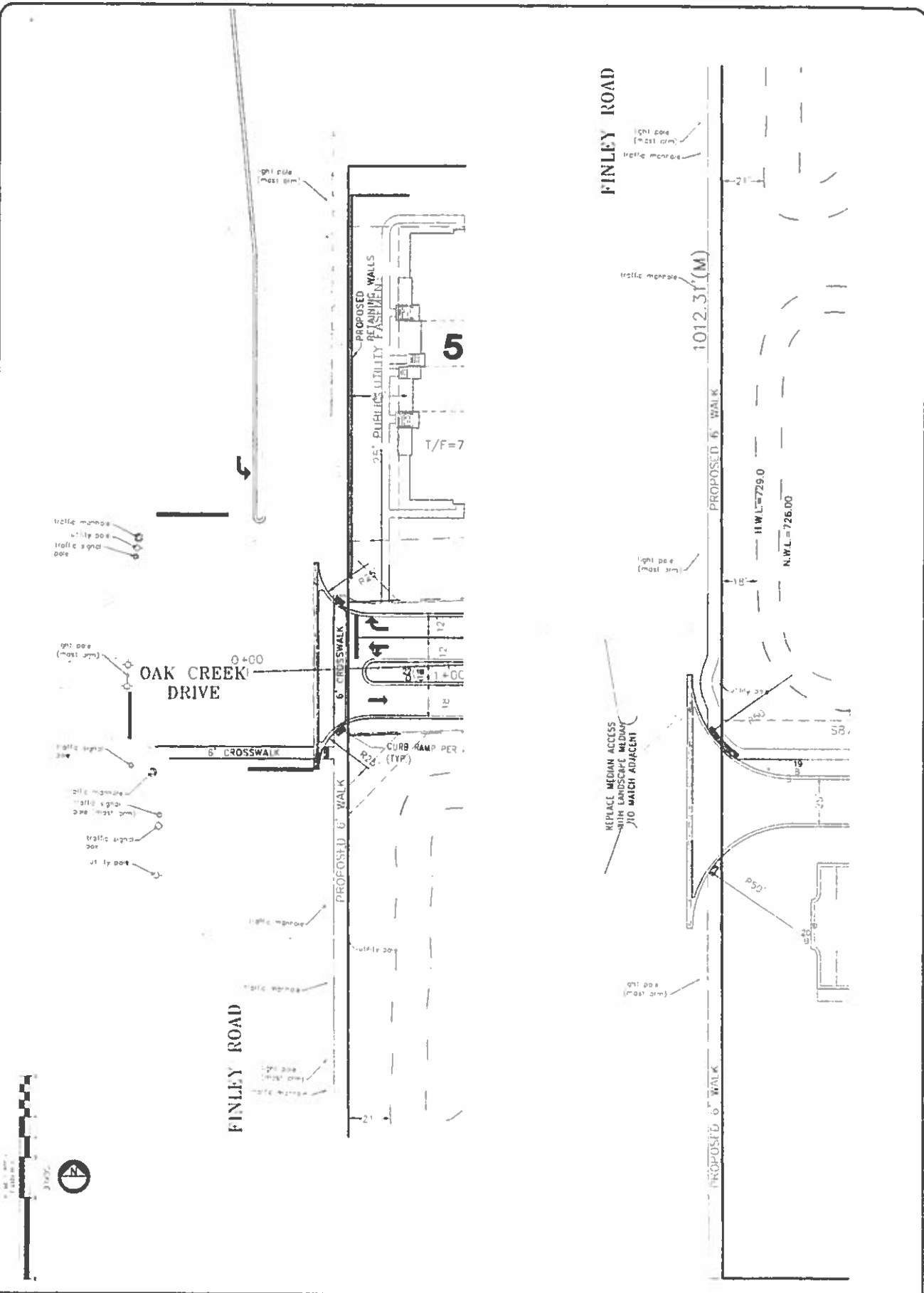
Exhibit B

Depiction of the Finley Road Improvements
(attached)

Geometric Plan by IG Consulting, Inc.

Page 3 of 21

Dated 07/08/2015



1 of 1
PROJECT No. 7059

WOODMOOR RESIDENTIAL DEVELOPMENT
FINLEY ROAD
 DuPAGE COUNTY, ILLINOIS

IG CONSULTING, INC.
 INFRACON & GEORCON
 CONSULTING CIVIL ENGINEERS, PLANNERS & LAND SURVEYORS
 300 WILSON AVENUE, WILSON, ILLINOIS 60092 PH (847) 215-1133 FAX (847) 215-1177

EXHIBIT B

DESIGN: K.C.L.	DRAFTING: S.R.M.
SCALE: 1"=20'	DATE: 07/08/15

REVISIONS		
DATE	DESCRIPTION	BY

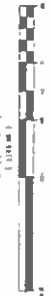
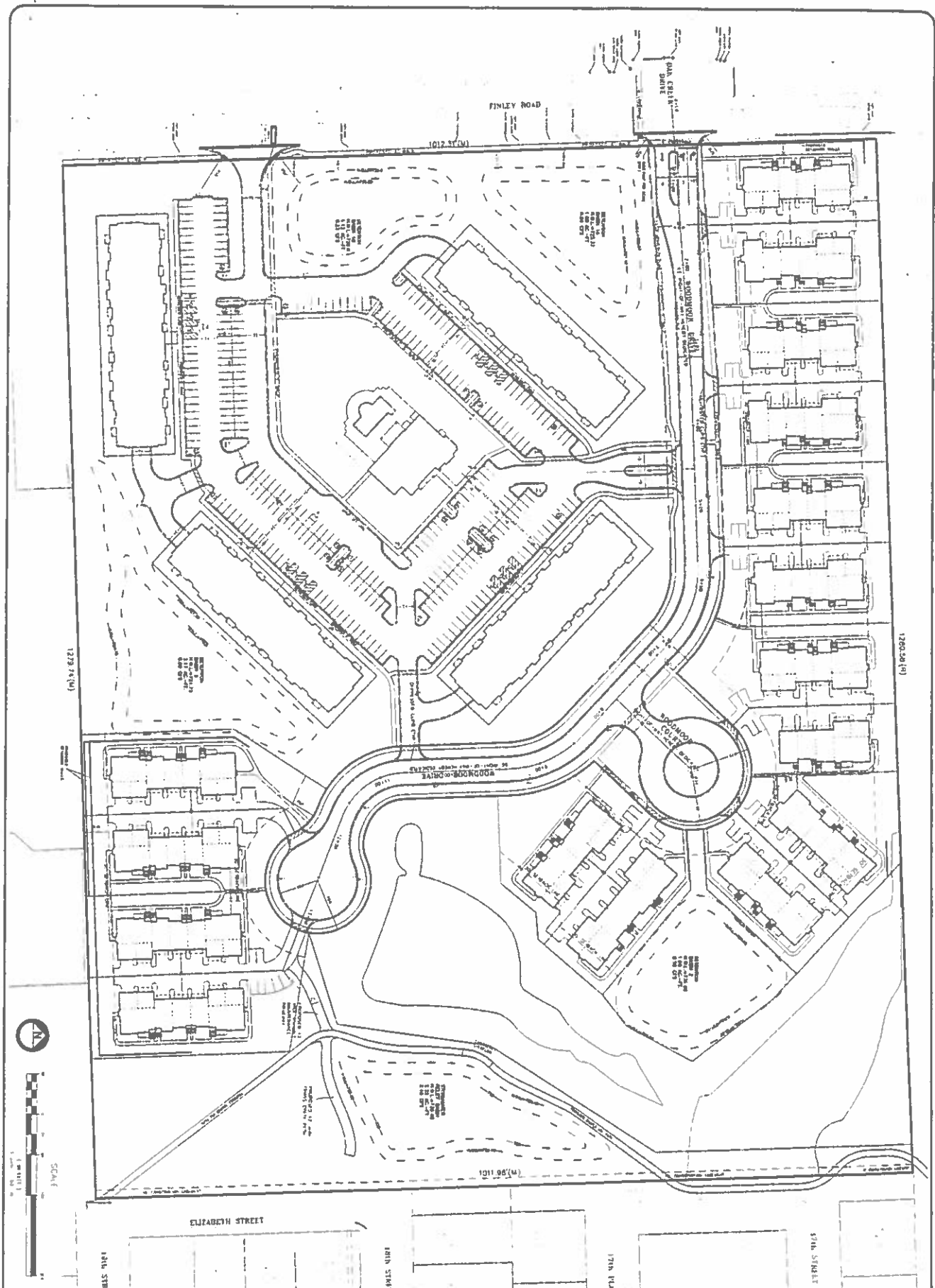
Exhibit C

Depiction of the On-Site Roadway Improvements
(attached)

Geometric Plan by IG Consulting, Inc.

Page 3 of 21

Dated 07/08/2015



PROJECT No.
7059
1 of 1

WOODMOOR RESIDENTIAL DEVELOPMENT
FINLEY ROAD
DuPAGE COUNTY, ILLINOIS

IG CONSULTING, INC.
INFRACON & GEOSCON
 CONSULTING CIVIL ENGINEERS, PLANNERS & LAND SURVEYORS
 300 WILSON AVENUE, WILSON, ILLINOIS 60191 TEL: (630) 215-1133 FAX: (630) 215-1171
EXHIBIT C DESIGN: K.E.L. DRAFTING: S.R.M.
 SCALE: 1"=50' DATE: 07/08/15

REVISIONS		
NO.	DESCRIPTION	DATE

Copyright © 2015 IG CONSULTING, INC.
 C:\CL\7059\14\7059.dwg

Exhibit D

Depiction of the Water and Sewer Improvements

(attached)

Finley Road Improvements

Utility Plan by IG Consulting, Inc.

(without storm)

Page 6 of 21

Dated 07/08/2015

Exhibit E

Depiction of the Landscaping Improvements
on the East Side of the Subject Property
(attached)

Landscape Plan by Laffin Design Group

Page 1 of 2

Dated 03/06/2015



34W338 Courier Ave. Unit #11
 St. Charles, Illinois 60174
 o-630.761.8450
 info@lafdsgroup.com

prepared for:
Donven Homes
 6432 Joffe Road
 Countryside, Illinois 60625

project:
Woodmoor Residential Development
 Stormwater Management/EMP
 Site Restoration
 Finley Road
 DuPage County, Illinois

legend:

- Existing Wetland
- Upland Slope Seed Mix
- Emergent Slope Seed Mix
- Stormwater Seed Mix
- Emergent Plug Mix
- Low Profile Native Seed Mix
- 4' Mowed Strip Adjacent to Walk

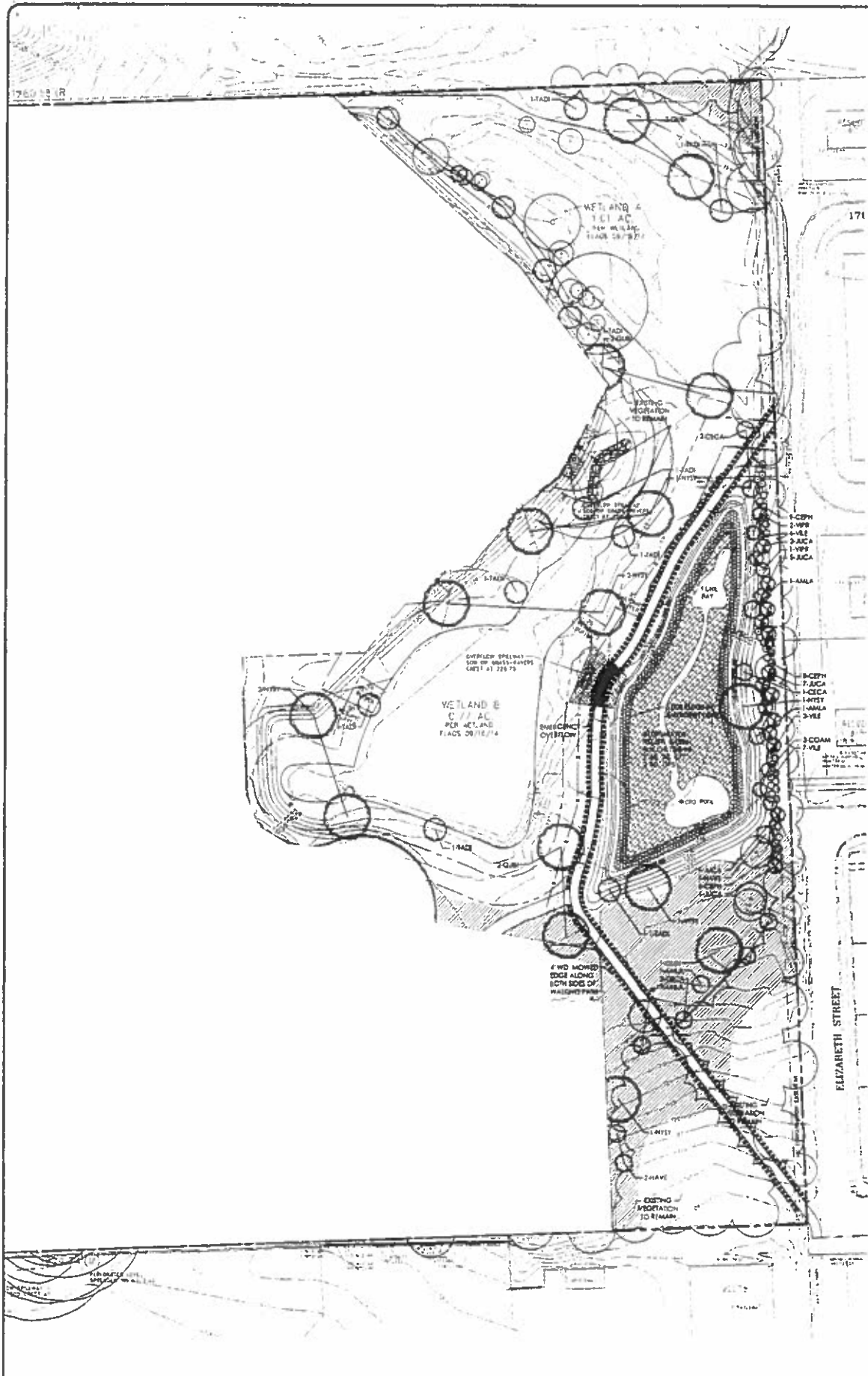
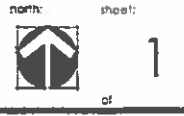
NOTE: Emergent Plug Mix placed within 24" of the normal water line in areas to be determined in the field.

sheet title:
Planting & Site Restoration Plan

project # 2850
 issue date 03/04/15
 checked by KLL
 drafted by KLL
 file# 2850_2015-03-06.dwg
 plot: 3CA42

revisions:

no.	date	description	by



1 of 1	WOODMOOR RESIDENTIAL DEVELOPMENT FINLEY ROAD DUPAGE COUNTY, ILLINOIS	CONSULTING, INC. EMERSON & GEORGE CONSULTING CIVIL ENGINEERS & LAND SURVEYORS 200 WOODROW WILSON, SUITE 2000 CHICAGO, IL 60604 TEL: 312.251.1100 FAX: 312.251.1119 DESIGN E DESIGNER: K.E.L. DRAWING: S.R.M. SCALE: 1"=40' DATE: 03/04/15	REVISIONS <table border="1"> <thead> <tr> <th>NO.</th> <th>DATE</th> <th>DESCRIPTION</th> <th>BY</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	NO.	DATE	DESCRIPTION	BY				
NO.	DATE	DESCRIPTION	BY								

Exhibit F

Depiction of the Stormwater Relief and Pathway Parcel

(attached)

On-site Easements covenant for
Off-site Stormwater & Pathway Easement

over

Lots 1 and 2 of

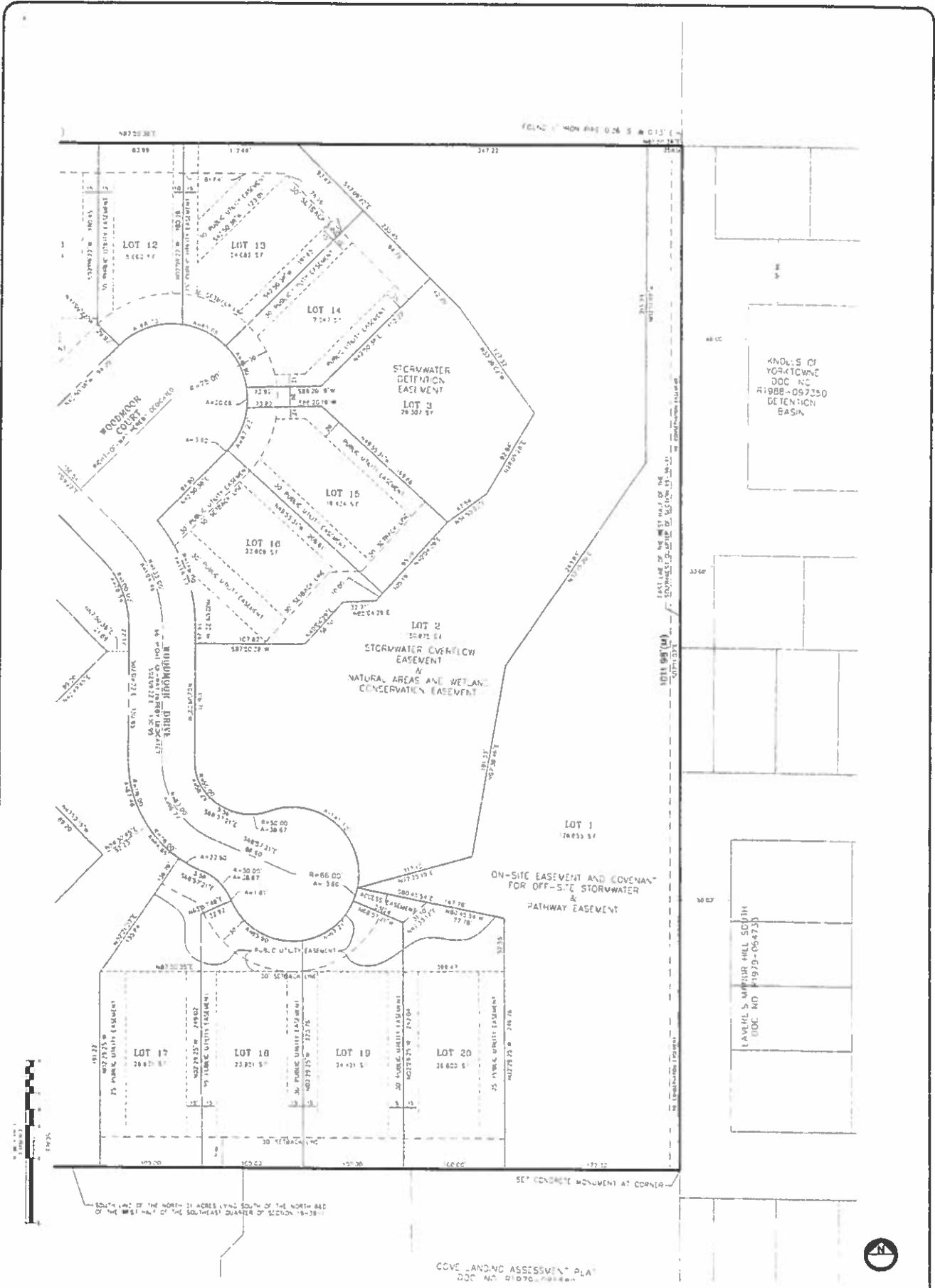
Final Plat of Subdivision of

Woodmoor Subdivision

by IG Consulting, Inc.

Page 1 of 2

Dated 06/09/2015



1 of 1
PROJECT NO.
7059

WOODMOOR RESIDENTIAL DEVELOPMENT
FINLEY ROAD
DuPAGE COUNTY, ILLINOIS

CONSULTING, INC.
CONSULTING CIVIL ENGINEERS, PLANNERS & LAND SURVEYORS
300 WILSON AVENUE, WILSON, ILLINOIS 60090 PH (630) 215-1113 FAX (630) 215-1117
EXHIBIT F DESIGN: K.C.L. DRAFTING: S.R.M. SCALE: 1"=40' DATE: 08/09/15

REVISIONS		
NO.	DESCRIPTION	DATE

Exhibit G

Depiction of the SR&P Parcel Improvements on the
Stormwater Relief and Pathway Parcel
(attached)

Depiction of Wetlands, Stormwater Relief Basin and Grading
Grading Plan by IG Consulting, Inc.

Page 4 of 21

Dated 07/08/2015

over

Lots 1 and 2 of

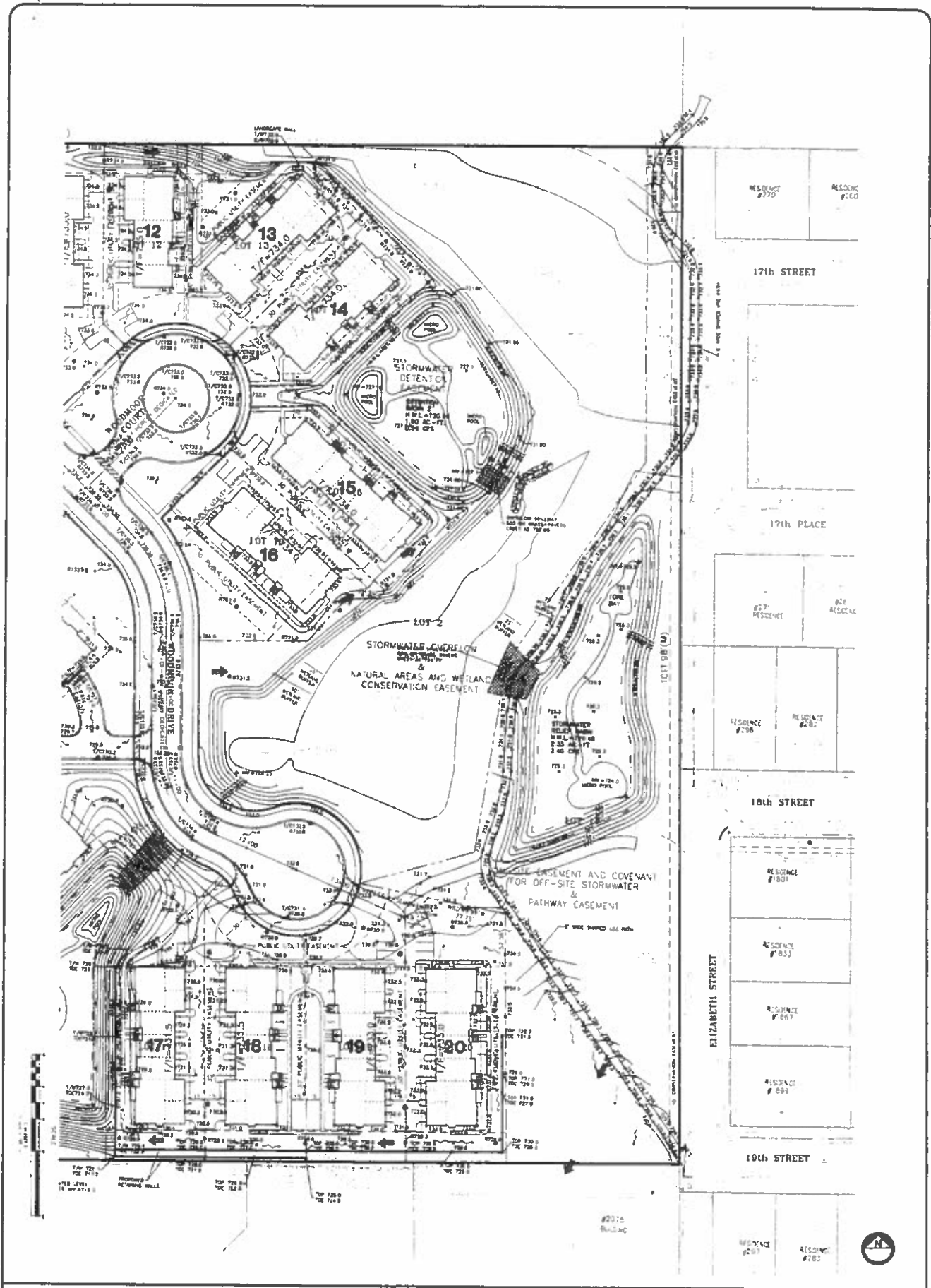
Final Plat of Subdivision of

Woodmoor Subdivision

by IG Consulting, Inc.

Page 1 of 2

Dated 06/09/2015



1
of
1

PROJECT No.
7059

WOODMOOR RESIDENTIAL DEVELOPMENT
FINLEY ROAD
DuPAGE COUNTY, ILLINOIS

IC CONSULTING, INC.
 INFRACON & GEORCON
 CONSULTING CIVIL ENGINEERS, PLANNERS & LAND SURVEYORS
 200 WILSON DRIVE WHEATON, ILLINOIS 60187 PH (630) 215-1133 FAX (630) 215-1177

EXHIBIT G DESIGN: K.C.L. DRAFTING: S.N.M.
 SCALE: 1"=40' DATE: 07/08/15

REVISIONS	
DATE	DESCRIPTION

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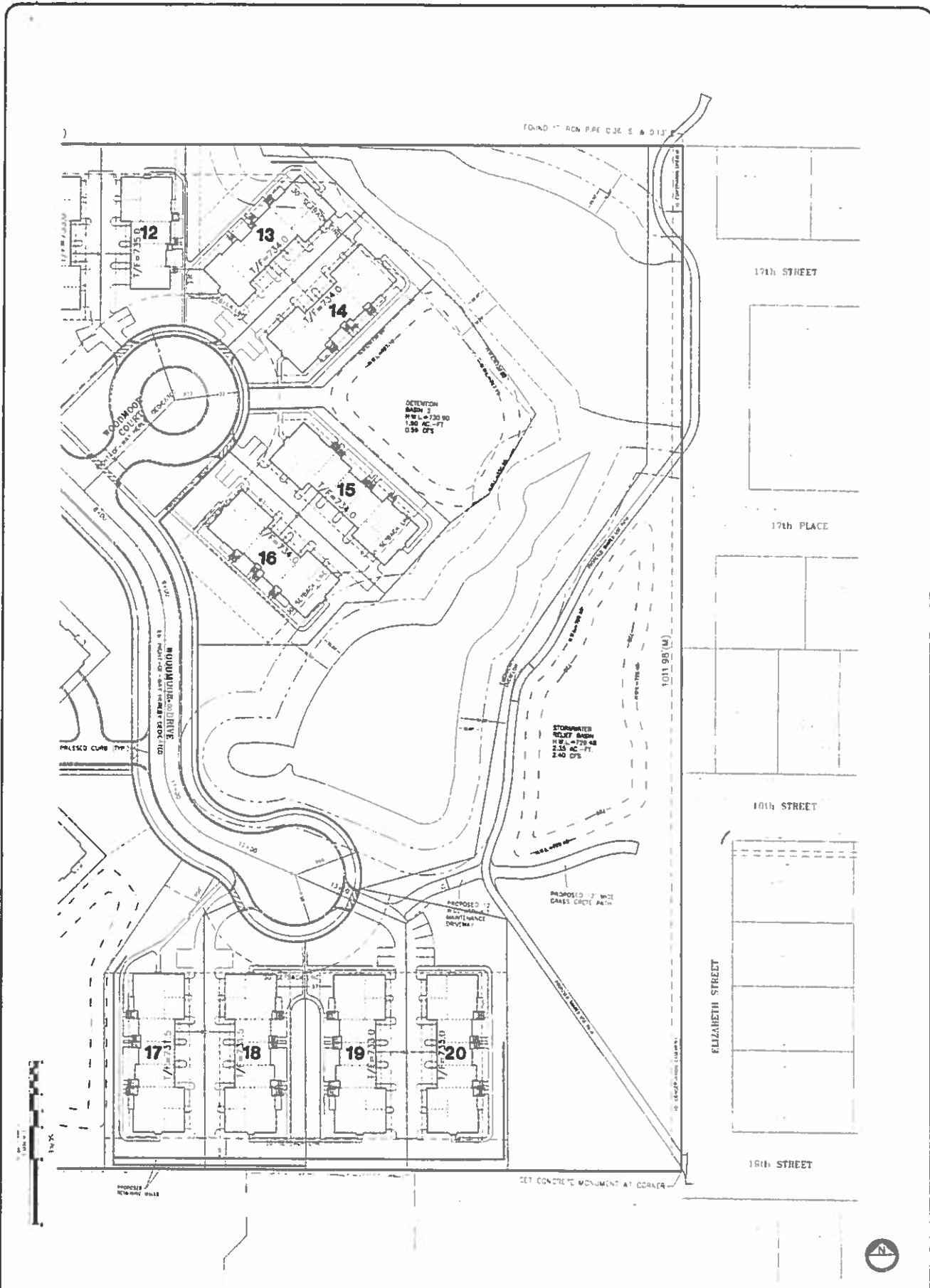
Exhibit H

Depiction of the Pathway
on the Stormwater Relief and Pathway Parcel
(attached)

Shared Use Path
Geometric Plan by IG Consulting, Inc.

Page 3 of 21

Dated 07/08/2015



1 OF 1
 PROJECT No. 7059

WOODMOOR RESIDENTIAL DEVELOPMENT
FINLEY ROAD
DuPAGE COUNTY, ILLINOIS

IC CONSULTING, INC.
 IMFRACON & GIBSON
 CONSULTING CIVIL ENGINEERS, PLANNERS & LAND SURVEYORS
 330 WILSONWAY DRIVE, WILSONVILLE, ILLINOIS 60090 PH: (630) 215-1111 FAX: (630) 215-1177

DESIGN: K.C.L. DRAFTING: S.R.M.
 SCALE: 1"=40' DATE: 07/08/15

EXHIBIT H

REVISIONS		
DATE	DESCRIPTION	BY/REV

Exhibit I

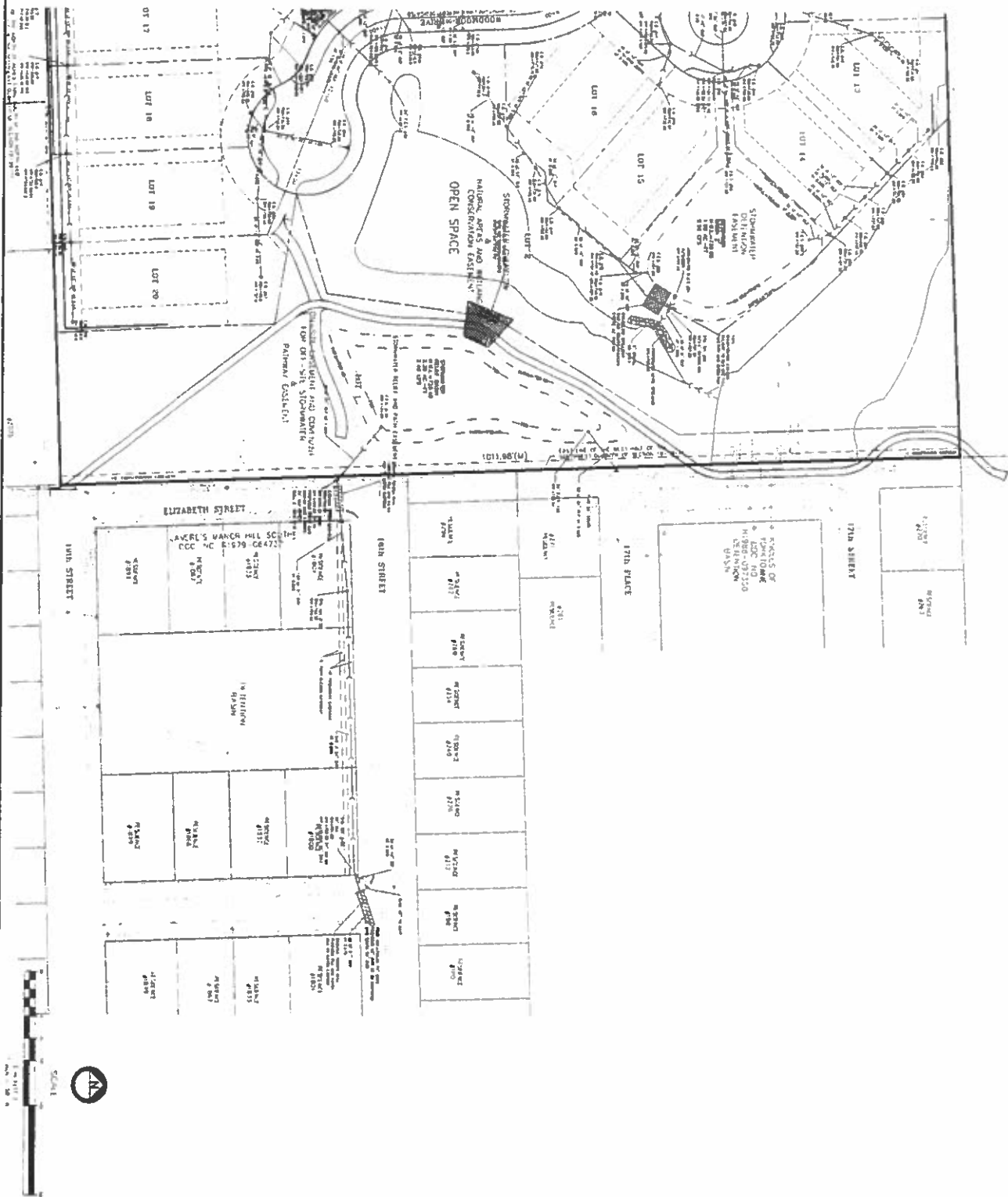
Depiction of the Off-Site Stormwater Facilities

(attached)

Utility Plan by IG Consulting, Inc.

Page 6 of 21

Dated 07/08/2015



PROJECT No.
7059
1 of 1

WOODMOOR RESIDENTIAL DEVELOPMENT
FINLEY ROAD
 DuPAGE COUNTY, ILLINOIS

IC CONSULTING, INC.
INFRACON & GEORCON
 CONSULTING CIVIL ENGINEERS, PLANNERS & LAND SURVEYORS
 300 WASHINGTON DRIVE #400, IL. 60103-8003 PH (847) 215-1133 FAX (847) 215-1177

DESIGN: K.C.L. DRAFTING: S.R.M.
 SCALE: 1"=50' DATE: 07/08/15

EXHIBIT 1

REVISIONS	
DATE	DESCRIPTION

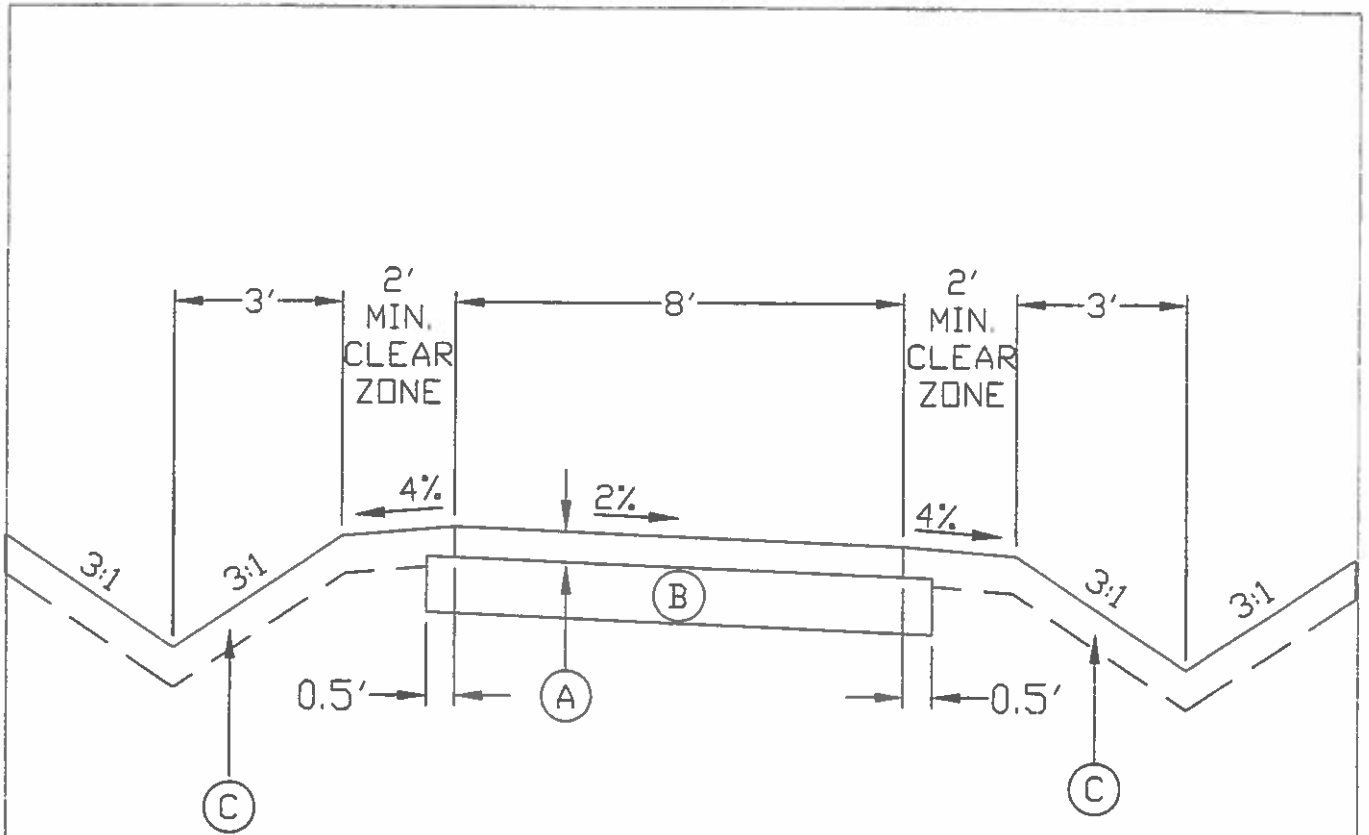
Exhibit J

Pathway Design and Construction Standards
(attached)

Detail Page by IG Consulting, Inc.

Page 12 of 21

Dated 07/08/2015



- (A) 3" HOT-MIX ASPHALT SURFACE COURSE, MIX "D", N50
- (B) AGGREGATE BASE COURSE, TYPE B 6"
- (C) FURNISHING AND PLACING TOPSOIL, 4", and SEEDING, CLASS 2A or SODDING

DESIGN NOTE:

If the Bike path is being constructed in conjunction with the road improvement, then the Hot-Mix Asphalt mixes shall be the same as those used on the road in order to avoid multiple mix requirements.

SCALE:
 VERTICAL 1"=2'
 HORIZONTAL 1"=4'

REV.:	REV.:
REV.:	REV.:
DRAWN BY:	DATE:

8' HMA MULTIUSE PATH

VILLAGE OF LOMBARD

PAVEMENT 16