

P.I.N.s:
07-01-15-101-050-0000
01-15-101-044 [part of]

PROPERTY ADDRESSES:
4232 Tower Court, Naperville, IL 60564
4231 Tower Court, Naperville, IL 60564

RETURN TO/PREPARED BY:
CITY OF NAPERVILLE
CITY CLERK'S OFFICE/
COMMUNITY SERVICES DEPARTMENT
400 SOUTH EAGLE STREET
NAPERVILLE, IL 60540

**GRANT OF EASEMENTS FOR MAINTENANCE AND CAPITAL
IMPROVEMENTS OF A STORMWATER MANAGEMENT FACILITY**

THIS GRANT OF EASEMENTS FOR MAINTENANCE AND CAPITAL IMPROVEMENTS OF A STORMWATER MANAGEMENT FACILITY (“**Agreement**”) by and between the Wheatland Township Board of Trustees, an Illinois township (“**Wheatland Township**”), the Wheatland Township Road District, an Illinois road district (“**Wheatland Township Road District**”), which entities have an address of 4232 Tower Court, Naperville, IL 60564 and are together hereinafter referenced as “**Wheatland Township**”; and the City of Naperville, a home rule unit of local government under the laws and Constitution of the State of Illinois having an address of 400 South Eagle Street, Naperville, IL 60540 (hereinafter “**City**” or the “**City Lot 3 Owner**”). Wheatland Township and the City of Naperville may be referenced herein individually as “**Party**” and together as “**Parties**”.

RECITALS

A. The City owns real property located at the southeast corner of Illinois Route 59 and 103rd Street on Tower Court in the City of Naperville in Will County which property has a common address of 4231 Tower Court, Naperville, IL 60564, is legally described on **Exhibit A**, and depicted on **Exhibit C** (hereinafter the “**City Lot 3 Property**”).

B. Wheatland Township owns real property located on the southern end of Tower Court and immediately to the east of and adjacent to the City Lot 3 Property in the City of Naperville in Will County, which property has a common address of 4232 Tower Court, is legally described on **Exhibit B** and depicted on **Exhibit C** (hereinafter the “**Township Property**”).

C. A stormwater detention area currently exists on the Southeastern portion of the City Lot 3 Property and on a portion of the western perimeter of the Township Property as depicted on **Exhibit C** (hereinafter the “**Southeastern Stormwater Management Facility**”) which serves the Township Property and to a lesser extent the City Lot 3 Property.

D. The purpose of this Agreement is to establish responsibilities between the Parties for the use, operation, maintenance, and upkeep of the Southeastern Stormwater Management Facility.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree that:

1. RECITALS INCORPORATED BY REFERENCE.

1.1 The Recitals set forth above are incorporated in this Section 1.1 in their entirety by reference.

2. SOUTHEASTERN STORMWATER MANAGEMENT FACILITY MAINTENANCE AND CAPITAL IMPROVEMENTS.

2.1 Ongoing Maintenance/Owner of City Lot 3. The City Lot 3 Owner shall be responsible, at its sole cost, for the day to day maintenance (or “**Ongoing Maintenance**” as defined in Section 2.3) of the Southeastern Stormwater Management Facility located on the City Lot 3 Property.

2.2 Ongoing Maintenance/Township. The Township shall be responsible, at its sole cost, for the Ongoing Maintenance, as defined in Section 2.3 hereof, of the Southeastern Stormwater Management Facility located on Township Property.

2.3 Ongoing Maintenance is defined herein as maintenance of the Southeastern Stormwater Management Facility so that it functions as it is intended and holds the volume indicated on the final engineering plans approved by the City Engineer of the City of Naperville, and shall include, but not be limited to mowing, maintaining and replacing vegetation, and ensuring that it stores and drains stormwater appropriately.

2.4 Long term Capital Improvements/Township. Wheatland Township shall be responsible, at its sole cost, for reconstruction, repair, and replacement as needed of capital improvements of the Southeastern Stormwater Management Facility (hereinafter “**Capital Improvements**”), including but not limited to dredging, regrading, seeding, reseeding, or adding vegetation to the Southeastern Stormwater Management Facility, and repairing, replacing the outlet sewer pipe on the north end of Lot 3, as determined by the City Engineer to be necessary for said Facility so that it functions as it is intended and holds the volume indicated on the final engineering plans approved by the City Engineer of the City of Naperville.

3. MUTUAL GRANT OF EASEMENTS.

3.1 The City hereby grants a perpetual nonexclusive easement to Wheatland Township (the “**City Lot 3 Easement**”) on that portion of the Southeastern Stormwater Management Facility located on the Lot 3 Property as depicted on Exhibit C (the “**City Lot 3 Easement Premises**”) for Wheatland Township to access the City Lot 3 Property as necessary to:

(i) construct, reconstruct, repair and replace Capital Improvements of the Southeastern Stormwater Management Facility to ensure that said Facility functions as it is intended and holds the volume indicated on the final engineering plans approved by the City Engineer of the City of Naperville; and (ii) undertake Ongoing Maintenance of the Southeastern Stormwater Management

Facility located on the City Lot 3 Easement Premises if the Township reasonably determines that the City Lot 3 Owner has failed to perform said Ongoing Maintenance thereon so that the Southeastern Stormwater Management Facility functions as it is intended and holds the volume indicated on the final engineering plans approved by the City Engineer of the City of Naperville.

Before undertaking Ongoing Maintenance on the City Lot 3 Easement Premises, Wheatland Township shall first give the owner of the City Lot 3 Easement Premises written notice and a reasonable opportunity to cure, which shall not be less than thirty (30 days) unless there are emergency conditions which require immediate action.

3.1.1 Wheatland Township shall give the City Lot 3 Owner not less than thirty (30) days' prior written notice of its intent to utilize the City Lot 3 Easement granted herein to construct, reconstruct, repair and replace Capital Improvements of the Southeastern Stormwater Management Facility Capital Improvement. Said notice shall include a description of the nature, extent, and timing of the Capital Improvement work to be performed.

3.1.2 All plans and specifications for Capital Improvements shall be shared by Wheatland Township with the City Lot 3 Owner and shall be subject to the City Lot 3 Owner's prior approval. Capital Improvements performed by Wheatland Township on the Lot 3 Easement Premises shall be completed in a good and workmanlike manner in accordance with all applicable laws and regulations and in compliance with any approved plans and specifications for said Capital Improvements. Wheatland Township shall obtain any permits required for the performance of said work and the City Lot 3 Owner shall cooperate to the extent needed. After completion of any work related to Capital Improvements, Wheatland Township shall restore the Lot 3 Easement Premises in a neat, clean, and workmanlike manner to the same or better condition that existed prior said work, or such other condition as necessitated by the nature of the Capital Improvements, or as otherwise approved by the City Lot 3 Owner.

3.1.3 Wheatland Township shall require any contractor retained by it to perform Capital Improvements on the Lot 3 Property to provide insurance for said work in types and amounts approved by the City Lot 3 Owner and a certificate of insurance and additional insured endorsement naming the City Lot 3 Owner and its officers and employees as additional insureds on said insurance where permitted. To the extent permitted by law, the above-referenced insurance shall provide that it will:

- (1) Be primary and non-contributory to any other insurance carried by the City Lot 3 Owner;
- (2) Contain cross-liability coverage as provided under standard ISO Forms' separation of insureds clause; and
- (3) Provide for a waiver of all rights of subrogation which Wheatland Township, or its Contractors' insurance carrier might exercise against the City Lot 3 Owner; and
- (4) Provide that any Excess or Umbrella liability coverage will not require contribution before it will apply.

3.1.4 The City Lot 3 Owner's rights in and to the City Lot 3 Easement Premises are and shall remain superior to Wheatland Township's easement rights granted hereunder. The City Lot 3 Owner reserves the right to use the City Lot 3 Easement Premises and to grant additional easements and rights to third parties in the City Lot 3 Easement Premises so long as there is no material adverse impact on the Township's rights in and use of the City Lot 3 Easement Premises.

3.1.5 Wheatland Township's use of the City Lot 3 Easement Premises for performance of work related to Capital Improvements shall be conducted in a manner that does not conflict or interfere with the City Lot 3 Owner's operation of the City Lot 3 Property.

3.2 Wheatland Township hereby grants a perpetual nonexclusive easement to the City Lot 3 Owner (the "**Wheatland Township Easement**") on that portion of the Southeastern Stormwater Management Facility located on Wheatland Township Property as depicted on **Exhibit C** (the "**Township Easement Premises**") for the City Lot 3 Owner to access the Township Property as necessary to: i) construct, reconstruct, repair and replace Capital Improvements of the Southeastern Stormwater Management Facility if the City Lot 3 Owner reasonably determines that Wheatland Township has failed to perform said obligation on the Township Easement Premises to ensure that said Facility functions as it is intended and holds the volume indicated on the final engineering plans approved by the City Engineer of the City of Naperville; and (ii) undertake Ongoing Maintenance of the Southeastern Stormwater Management Facility located on the Township Property if the City Lot 3 Owner reasonably determines that Wheatland Township has failed to perform said Ongoing Maintenance thereon so that the Southeastern Stormwater Management Facility functions as it is intended and holds the volume indicated on the final engineering plans approved by the City Engineer of the City of Naperville.

Before undertaking either Capital Improvements or Ongoing Maintenance on the Township Easement Premises, the City Lot 3 Owner shall first give Wheatland Township written notice and a reasonable opportunity to cure, which shall not be less than thirty (30 days) unless there are emergency conditions which require immediate action. If the City Lot 3 Owner undertakes work related to Capital Improvements on the Township Easement Premises: (i) the insurance requirements set forth in Section 3.1.3 above shall apply equally to the City Lot 3 Owner; and (ii) such work shall be conducted in a manner that does not conflict or interfere with Wheatland Township's operation of the Township Property.

3.2.1 Wheatland Township's rights in and to the Township Easement Premises are and shall remain superior to the Lot 3 Owner's rights granted hereunder. Wheatland Township reserves the right to use the Township's Easement Premises and to grant additional easements and rights to third parties in the Township Easement Premises so long as there is no material adverse impact on the Lot 3 Owner's rights in and use of the Township Easement Premises.

3.3 The term of the easements granted herein shall be perpetual, unless sooner terminated in accordance with the provisions of this Agreement, and shall commence as of the Effective Date set forth in Section 8.14 of this Agreement.

3.4 The City Lot 3 Owner accepts the condition of the Township Easement Premises in its AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS. No representations as to the

condition of the Township Easement Premises have been made by Wheatland Township. The City Lot 3 Owner shall be conclusively presumed to have accepted the condition of the Township Easement Premises by the use thereof.

3.5 Wheatland Township accepts the condition of the City Lot 3 Easement Premises in its AS-IS, WHERE-IS CONDITION, WITH ALL FAULTS. No representations as to the condition of the City Lot 3 Easement Premises have been made by the City Lot Owner. Wheatland Township shall be conclusively presumed to have accepted the condition of the City Lot 3 Easement Premises by the use thereof.

3.6 The City Lot 3 Owner agrees that it will not cause or permit any lien (including without limitation, any mechanic's lien) to be asserted against the Township Easement Premises or the Township Property as a result of its use of the Township Easement Premises as provided herein.

3.7 Wheatland Township agrees that it will not cause or permit any lien (including without limitation, any mechanic's lien) to be asserted against the City Lot 3 Easement Premises as a result of its use of the City Lot 3 Easement Premises or the City Lot 3 Property as provided herein.

4. DEFENSE AND INDEMNIFICATION.

4.1 Any Party performing Capital Improvements or Ongoing Maintenance of the Southeastern Stormwater Management Facility on either the City Lot 3 Property or the Township Property shall defend, indemnify and hold the other Party or Parties and their officials, officers, employees, and agents harmless from and against all liabilities, claims, suits, demands, proceedings, and actions arising from or related to, any loss, damage, injury, death, or damage to property resulting from, or connected to the performance of said work to the extent caused by the negligent or willful misconduct of the performing Party or their employees, agents, or contractors, except to the extent caused by the negligent or willful misconduct of the other Party or Parties.

Each Party's liability to the other Party or Parties for any loss, cost, claim, injury, liability, or expense, including but not limited to reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall any Party be liable to the other Parties for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever.

There are no third party beneficiaries of these defense and indemnification provisions to either Party. Nothing contained herein shall be construed as a limitation or waiver of defenses available and their officers, agents, and employees, including, but not limited to the Illinois Local Government and Local Governmental Employees Tort Immunity Act.

5. TERMINATION.

5.1 This Agreement may be terminated by agreement of the Parties.

6. REMEDIES.

6.1 If one of the Parties hereto defaults on any material obligation hereunder, and after issuance of written notice of said default to the defaulting Party and a reasonable opportunity to cure, which shall not be less than sixty (60 days) unless there are emergency conditions which require immediate action, if there is no cure the non-defaulting Party or Parties may:

(a) take any and all corrective actions the non-defaulting Party deems necessary or appropriate to cure such default and charge the cost thereof to the defaulting Party together with interest thereon at the rate equal to nine (5%) per annum.

(b) take any other remedy available at law or in equity, including without limitation specific performance of the defaulting Party's obligations hereunder. No waiver of any breach of any of the provisions of this Agreement shall be construed, taken or held to be a waiver of any other breach, or as a waiver, acquiescence in or consent to any further or succeeding breach of the same covenant.

7. ADDRESSES FOR NOTICES REQUIRED BY THIS AGREEMENT.

7.1 Whenever notice is required to be given pursuant to this Agreement, the same shall be in writing, and either personally delivered, sent by a nationally recognized overnight delivery service, postage prepaid, or sent via United States certified mail, return receipt requested, postage prepaid, and addressed to the Parties at their respective addresses as set forth below or at such other addresses as any Party, by written notice in the manner specified above to the other Party hereto, may designate from time to time. All notices shall be deemed to have been given upon receipt (or refusal of receipt) thereof.

IF TO THE CITY LOT 3 OWNER:

WITH COPIES TO:

IF TO WHEATLAND TOWNSHIP:

WITH COPIES TO:

IF TO THE WHEATLAND TOWNSHIP ROAD DISTRICT:

WITH COPIES TO:

8. GENERAL PROVISIONS.

8.1 Binding Effect. The City of Naperville, Wheatland Township, and the Wheatland Township Road District, which comprise the Parties hereto, acknowledge and agree that the terms contained herein shall be binding upon and inure to the benefit of said Parties and their respective successors, assigns, and transferees, and any subsidiary, affiliate or parent of said Parties.

8.2 Severability. It is mutually understood and agreed that all agreements and covenants herein are severable and that in the event any of them shall be held to be invalid by any court of competent jurisdiction, this Agreement shall be interpreted as if such invalid agreement or covenant were not contained herein.

8.3 Recordation. This Agreement will be recorded with the office of the DuPage County Recorder.

8.4 Assignment. This Agreement, including but not limited to the easements granted herein, may not be assigned by any Party without the written consent of the other Party.

8.5 Choice of Law and Venue. This Agreement shall in all respects be subject to and construed in accordance with and governed by the laws of the State of Illinois. Venue for any action arising out of the terms or conditions of this Agreement shall be proper only in the Circuit Court for the Eighteenth Judicial Circuit, DuPage County, Illinois.

8.6 Ambiguity. If any term of this Agreement is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

8.7 Amendment. The agreements, covenants, terms and conditions herein contained may be modified only through the written mutual consent of the Parties hereto.

8.8 Entire Agreement. This Agreement and the Exhibits hereto contain the entire agreement between the City, Wheatland Township, and the Wheatland Township Road District regarding the subject matter hereof, and supersedes all written or oral agreements and understandings between said Parties pertaining to such subject matter.

8.9 Survival. The following terms and conditions shall survive the expiration or termination of this Agreement or the easements granted hereunder: Sections 1.1, 3.4, 3.5, 3.6, 3.7, 4.1, 6.1, 8.1, 8.2, 8.4, 8.5, 8.6, 8.8, and 8.9. Any claim for costs that accrued prior to the expiration or termination of this Agreement or the easements granted hereunder shall survive the expiration or termination of this Agreement.

8.10 Authority to Execute/City of Naperville. The undersigned warrants and represents on behalf of the City of Naperville that they are the owner of the City Lot 3 Property, or the duly authorized representative of such owner, and that they have full power and authority to sign this Agreement and to bind the City hereto.

8.11 Authority to Execute/Wheatland Township. The undersigned warrants and represents on behalf of Wheatland Township that Wheatland Township owns the Township Property jointly with the Wheatland Township Road District, and that the undersigned is the duly

authorized representative of Wheatland Township and has full power and authority to sign this Agreement and to bind Wheatland Township hereto.

8.12 Authority to Execute/Wheatland Township Road District. The undersigned warrants and represents on behalf of the Wheatland Township Road District that the Wheatland Township Road District owns the Township Property jointly with Wheatland Township, and that the undersigned is the duly authorized representative of the Wheatland Township Road District and has full power and authority to sign this Agreement and to bind the Wheatland Township Road District hereto.

8.13 Counterparts. This Agreement may be executed by the Parties in counterparts. Each such counterpart shall be deemed an original and all counterparts, taken together, shall constitute one and the same agreement.

8.14 Effective Date. The effective date of this Agreement (“**Effective Date**”) shall be the date upon which it is fully executed by both Parties hereto.

SCHEDULE OF EXHIBITS:

Exhibit A – Legal Description of City Lot 3 Property

Exhibit B – Legal Description of Wheatland Township Property

Exhibit C – Depiction of City Lot 3 Property, Wheatland Township Property, Location of the Southeastern Stormwater Management Facility, Location of the City Lot 3 Easement Premises, and Location of the Township Easement Premises

IN WITNESS WHEREOF, the Parties hereto set their hands and seals as of the Effective Date set forth in Section 8.14 hereof.

/SIGNATURES ON FOLLOWING PAGES/

WHEATLAND TOWNSHIP

By: Michael Crowner
Title: Township Supervisor

Michael Crowner

State of Illinois)
)SS
County of Will)

The foregoing instrument was acknowledged before me by Michael Crowner, Township Supervisor of the Wheatland Township this _____ day of _____, 2025.

Given under my hand and official seal this ____day of _____, 2025.

Notary Public

-Seal-

My Commission Expires: _____

WHEATLAND TOWNSHIP ROAD DISTRICT

By: Tom Wieser
Title: Wheatland Township Highway Commissioner

State of Illinois)
)SS
County of Will)

The foregoing instrument was acknowledged before me by Tom Wieser, Highway Commissioner of the Wheatland Township Road District this _____ day of _____, 2025.

Given under my hand and official seal this ____day of _____, 2025.

Notary Public

-Seal-

My Commission Expires: _____

CITY OF NAPERVILLE

By: _____
Douglas A. Krieger
City Manager

ATTEST

By: _____
Dawn C. Portner
City Clerk

State of Illinois)
)SS
County of DuPage)

The foregoing instrument was acknowledged before me by Douglas A. Krieger, City Manager of the City of Naperville and Dawn C. Portner, City Clerk for the City of Naperville this ____ day of _____, 2025.

Notary Public

Print Name

-seal-

EXHIBIT A

LEGAL DESCRIPTION OF CITY LOT 3 PROPERTY

Lot 3 in Naperville-South Forty Lots 4, 5, 6 and 7 Resubdivision, a Subdivision of the Northwest quarter of the Northwest Quarter of Section 15, Township 37 North, Range 9 East of the Third Principal Meridian, according to the Plat thereof recorded _____ as Document Number R2025-_____ in Will County, Illinois.

Address: 4231 Tower Court, Naperville, IL 60564

PIN:

EXHIBIT B

LEGAL DESCRIPTION OF TOWNSHIP PROPERTY

EXHIBIT A

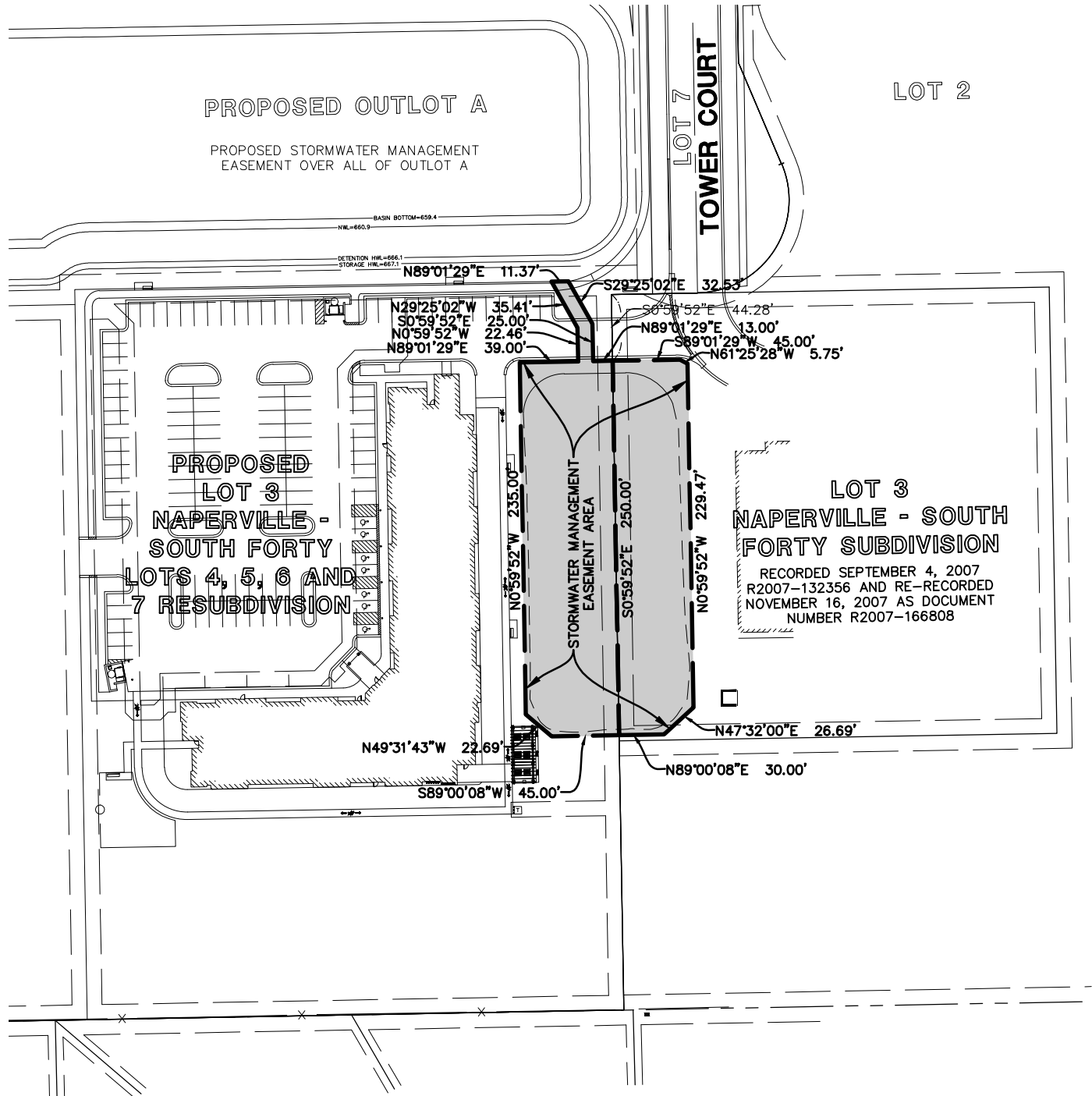
Lot 3 in Naperville - South Forty· Subdivision, a Subdivision of the Northwest Quarter of the Northwest Quarter of Section 15, Township 37 North, Range 9 East of the Third Principal Meridian, According to the Plat Thereof Recorded September 4, 2007 as Document Number R2007-132356, and Re-Recorded November 16, 2007 as Document Number R2007-166808, in Will County, Illinois.

Address : 4232 Tower Court, Naperville, IL 60564

PIN: 07-01-15-101-050-0000

EXHIBIT C

DEPICTION OF THE TCN AND WHEATLAND LOTS SHOWING THE STORMWATER FACILITY AND EASEMENT



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One Overlook Point, Suite 250, Lincolnshire, IL 60069 ph: 847.834.5550 fx: 847.834.0085 manhard.com
Civil Engineers - Surveyors - Water Resources Engineers - Water & Wastewater Engineers
Construction Managers - Environmental Scientists - Landscape Architects - Planners

DEPICTION OF THE TCN AND WHEATLAND LOTS SHOWING
THE STORMWATER FACILITY AND EASEMENT

NAPERVILLE, ILLINOIS

PROJ. MGR.: JDB

DATE: 02/28/25

EXHIBIT BAS

SCALE: 1"=100'

EXHIBIT
LTFNVIL01

C