

#19

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2009 021353

2009 APR -2 PM 2: 24

MICHAEL A. BROWN
RECORDER

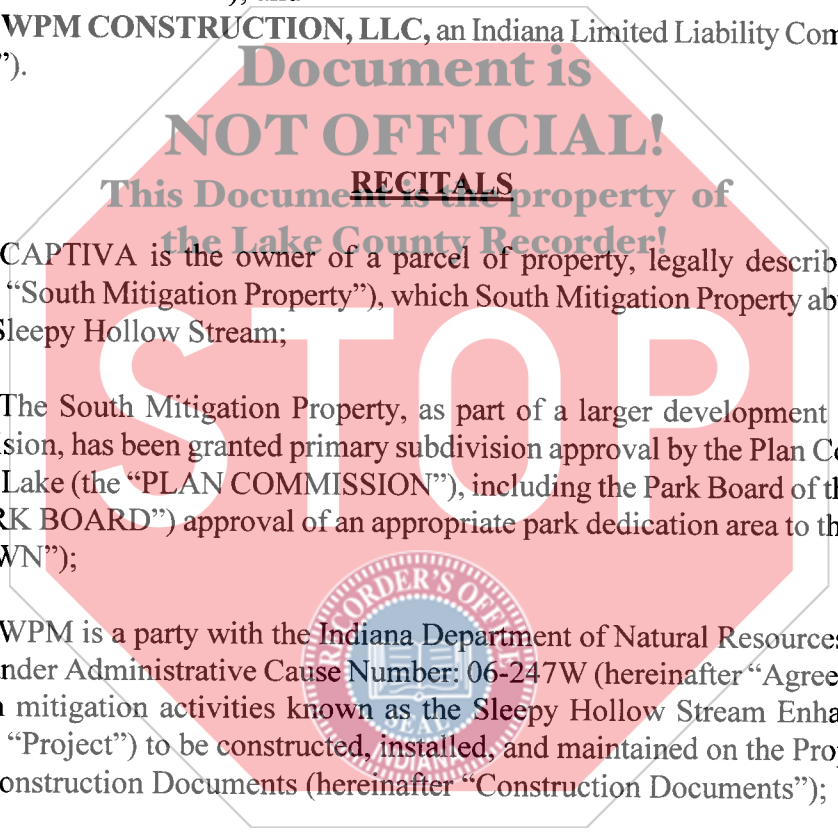
FILED

APR - 2 2009

PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR **OPTION TO MITIGATE ON CAPTIVA PROPERTY**

This **OPTION TO MITIGATE ON CAPTIVA PROPERTY** (hereinafter "Agreement") is entered into this 10th day of MARCH, 2009, by and between:

- (1) **CAPTIVA DEVELOPMENT, LLC**, an Indiana Limited Liability Company (hereinafter "CAPTIVA"); and
- (2) **WPM CONSTRUCTION, LLC**, an Indiana Limited Liability Company (hereinafter "WPM").



RECITALS

- 1. CAPTIVA is the owner of a parcel of property, legally described on Exhibit A (hereinafter the "South Mitigation Property"), which South Mitigation Property abuts and includes a portion of the Sleepy Hollow Stream;
- 2. The South Mitigation Property, as part of a larger development known as Union Station Subdivision, has been granted primary subdivision approval by the Plan Commission of the Town of Cedar Lake (the "PLAN COMMISSION"), including the Park Board of the Town of Cedar Lake (the "PARK BOARD") approval of an appropriate park dedication area to the Town of Cedar Lake (the "TOWN");
- 3. WPM is a party with the Indiana Department of Natural Resources ("IDNR") to an Agreed Order under Administrative Cause Number: 06-247W (hereinafter "Agreed Order"), which requires certain mitigation activities known as the Sleepy Hollow Stream Enhancement Project (hereinafter the "Project") to be constructed, installed, and maintained on the Property pursuant to the approved Construction Documents (hereinafter "Construction Documents");
- 4. Provided WPM exercises the Option (as defined hereinafter), WPM, at its sole expense, and in consideration of CAPTIVA allowing the Project to occur, will, extend the Sanitary

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WA

002354

Sewer Line from the point designated as "SAMH 125" on Sheet G1, 10 of 50, Grading Plan -1, Union Station to a point at the edge of the utility easement between Lots 50 and 51 in the Union Station subdivision on the South Mitigation Property pursuant to the approved engineering plans for Union Station Subdivision and will repair or replace the existing bridge over Sleepy Hollow Stream from the South Mitigation Property, pursuant to the standards of the PARK BOARD (hereinafter collectively the "Utilities");

5. Prior to WPM being able to exercise the Option, CAPTIVA must be assured that it has the approval of the PLAN COMMISSION and PARK BOARD that the Union Station Subdivision (or the land comprising same), after completion of the Project will be in compliance with the TOWN's park dedication requirements consistent with the subdivision primary plat approval as the Project modifies what was approved by the PLAN COMMISSION.

6. That, CAPTIVA, and WPM seek to guard against potential conflicts, problems, or disagreements by setting forth hereafter the terms for the Option and, if so exercised, the completion of the Project.

COVENANTS

NOW, THEREFORE, for and in consideration of Ten Dollars (\$10.00), the mutual promises contained herein, the performance thereof, and other good and valuable consideration, the receipt of which is hereby acknowledged by the Parties, the Parties agree as follows:

1. **Recitals Incorporated.** The Parties agree that the Recitals set forth hereinabove in this Agreement are an inherent part of, and are incorporated herein. Further, the Recitals shall be used to interpret this Agreement hereafter.

2. **Grant of Option.** CAPTIVA hereby grants WPM the option to utilize the South Mitigation Property for the Project, subject to the terms, covenants and conditions herein (the "Option"). In order to Exercise the Option, WPM must first secure from the TOWN, the PLAN COMMISSION and/or the PARK BOARD, on behalf of CAPTIVA, the approvals or other considerations set forth in Recital 5 above. The Option may be exercised at any time by WPM by written notice to CAPTIVA, no later than December 31, 2009. If CAPTIVA does not receive such notice on or before December 31, 2009, the Option shall expire and be of no further force and effect and this Agreement shall terminate.

3. **WPM Consideration and Obligations.** In the event WPM exercises the Option:

(a) WPM, at its sole expense, will install, construct, and complete the Project on the South Mitigation Property pursuant to the Agreed Order and the Construction Documents;

(b) Once completed, WPM, at its sole expense, will maintain the Project improvements on the South Mitigation Property for a period of five (5) years from approval

by IDNR;

(c) WPM, at its sole expense, will install the Utilities on the South Mitigation Property; and

(d) WPM agrees to indemnify and hold CAPTIVA, its employees, representatives, agents, and officers, free and harmless from any and all liability, loss, costs, damages or expenses, including attorney's fees, which CAPTIVA may suffer or incur as a result of any claims, demands, lawsuits, actions, judgments and executions which may be made by any persons and/or entity, caused by WPM, its agents, contractors, subcontractors or employees, while on the South Mitigation Property or adjoining real estate exercising the Option granted by CAPTIVA to WPM herein, whether such claims are based on negligence, breach of contract or agreement, breach of warranty, absolute liability, or otherwise. WPM, at its sole cost and expense, shall defend CAPTIVA from all claims covered by this indemnity with counsel reasonably satisfactory to CAPTIVA.

(e) WPM and any subcontractors performing work on the Project shall carry general liability insurance, with a liability limit of no less than Five Million and No/100 Dollars (\$5,000,000). CAPTIVA shall be named as an additional insured on such policy or policies. Prior to performing work on the Project, WPM shall deliver a certificate of insurance evidencing the coverage required herein to CAPTIVA, which certificate shall require that the insurance company provide CAPTIVA with no less than 30 days notice prior to any discontinuance or non-renewal of coverage, except in the case of cancellation due to non-payment of premiums, in which case such notice shall be 10 days. The \$5,000,000 of coverage required may be by \$1,000,000 primary insurance, and the remainder may be an excess liability policy with a combined aggregate limit of \$4,000,000.

4. **CAPTIVA Consideration and Obligations.** Provided WPM exercises the Option:

(a) CAPTIVA does hereby grant and convey to WPM a non-exclusive, permanent easement, over, under, and across the South Mitigation Property for the purpose of installing and completing the Project improvements, installation of Utilities, and inspecting, maintaining, repairing, and replacing any of the Project improvements. Further, CAPTIVA does hereby grant and convey to WPM a non-exclusive Easement on, over, under, and across CAPTIVA's real property adjacent to the South Mitigation Property for the limited purposes of completing the Project and installation of the Utilities;

(b) Pursuant to the terms of the Agreed Order, CAPTIVA will designate and record a conservation easement on the South Mitigation Property by the recorded Final Plat or by a separate recorded easement document;

(c) CAPTIVA on or before the time of Final Plat approval will dedicate and convey the South Mitigation Property to the Park Department of the TOWN, provided the Town agrees to accept same.

5. **Further Assurances and Cooperation.** The Parties agree to amend this Agreement or execute any and all necessary documents in furtherance of this Agreement in order to comply with IDNR regulations, requirements, the Agreed Order or reasonable modifications requested by the

TOWN, the PARK BOARD or the PLAN COMMISSION.

6. **Default.** In the event that any Party breaches any representation or warranty or fails to comply with or perform any one or more of the covenants, terms and conditions to be complied with or performed by it under this Agreement, then, and in any such event, the other Party shall have all rights and remedies available at law, including the right to seek specific performance of this Agreement.

7. **Notice.** All notices and other communications in connection with this Agreement shall be in writing and shall be deemed made, given or delivered to the addressee thereof (i) upon receipt, if delivered by personal delivery, or (ii) one (1) business day after deposit with any nationally recognized courier delivery service (delivery charges prepaid), or (iii) when sent by facsimile (but only if the deliverer has obtained confirmation of such transmission and a copy is sent as provided in clause (ii) above):

For notices to WPM:
WPM Construction, LLC
Paul Misch
1000 E. 80th Place, Suite 555 N
Merrillville, IN 46410
Fax No.: (219) 641-7192

With a copy to:
Jason Weisler
1000 E. 80th Place
Suite 700 North
Merrillville, IN 46410
Fax No.: (219) 680-4255

For notices to CAPTIVA:
Captiva Development, LLC
Jim Hawk
1313 White Hawk Drive
Crown Point, IN 46307
Fax No.: (219) 661-1093

With a copy to:
Captiva Development, LLC
Todd Kleven
1313 White Hawk Drive
Crown Point, IN 46307
Fax No.: (219) 661-1093

Any party may be given notice in accordance with the terms hereof and change its address for purposes of delivery of notices.

8. **Entire Agreement; Amendments.** This Agreement represents the entire understanding of the parties hereto with respect to this subject matter of this transaction and supersedes any prior understanding between the Parties, whether oral or written. Any amendments to this Agreement shall be in writing and shall be signed by all of the parties hereto.

9. **Attorney's Fees.** In the event it is necessary for either Party to this Agreement to initiate any action for the purpose of interpretation or enforcement, the prevailing Party shall be entitled to recover in addition to all its rights and remedies at law or in equity, its costs, including reasonable attorney's fees.

10. **Parties Bound.** The Parties agree that the terms and conditions of this Agreement will be binding upon the parties hereto, their heirs, administrators, executors, assigns, transferees, and any successors in interest.

11. **Entity Authority.** The undersigned person or persons executing this Agreement on behalf of any entity, represent and certify that they are duly elected, appointed, or authorized officers, representatives, or members of said entity, and are fully empowered to execute and deliver this Agreement, and that all necessary entity actions for the making of this Agreement has been taken and done or will be taken and done.

12. **Governing Law and Invalidity.** This Agreement shall be governed and enforced by the laws of the State of Indiana, and it is agreed that Indiana courts shall have exclusive jurisdiction of any dispute under this Agreement. Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law or, if invalid under such law, said provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

13. **Consent to Jurisdiction; Waiver of Jury Trial.** The Parties agree that they will bring any action or proceeding for the enforcement of any right, remedy, obligation or liability arising under or in connection with this Agreement in state courts located in Lake County, Indiana, and each of the parties irrevocably submits to the exclusive jurisdictions of each such respective court in any such proceeding, and waives any objection it may now or hereafter have to venue or to convenience of forum. Each party hereby irrevocably waives its right to bring any action or proceeding against the other except in accordance with the preceding sentences. **Each of the parties irrevocably waives any right to a jury trial with respect to any matter arising out of or in connection with this Agreement.**

14. **Counterparts.** This Agreement may be executed in separate counterparts, each of which when so executed shall be an original, but all of such counterparts shall together constitute but one (1) and the same instrument.

[Signature page follows]



WPM

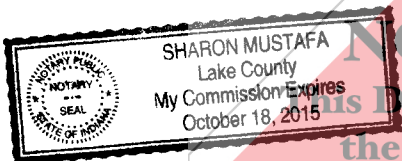
WPM Construction, LLC
an Indiana Limited Liability Company.

By: _____
Printed: Paul Misch
Title: President

STATE OF INDIANA)
) ss.
COUNTY OF LAKE)

Before me, the undersigned, a Notary Public in and for said County and State, this 12th day of March, 2009 personally appeared Paul Misch, the President of WPM Construction, LLC, who acknowledged the execution of the foregoing OPTION TO MITIGATE ON CAPTIVA PROPERTY on behalf of WPM Construction, LLC.

In witness whereof, I have hereunto subscribed my name and affixed my official seal.



Sharon Mustafa
Notary Public in and for the State of Indiana
Name: Sharon Mustafa
Resident County: Lake

I affirm, under the penalties of perjury, that I have taken reasonable care to redact each Social Security Number in this document, unless required by law.

JSW
Jason S. Weisler

This instrument prepared by and after recording please mail to:

Jason Weisler, Attorney at Law
1000 E. 80th Place, Suite 700 North
Merrillville, IN 46410

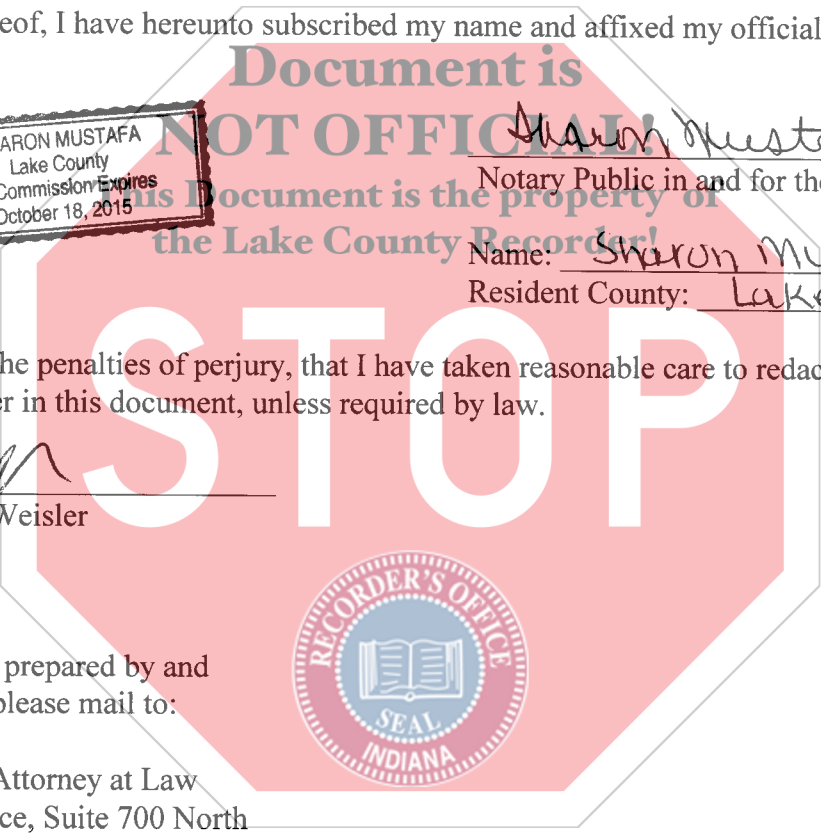
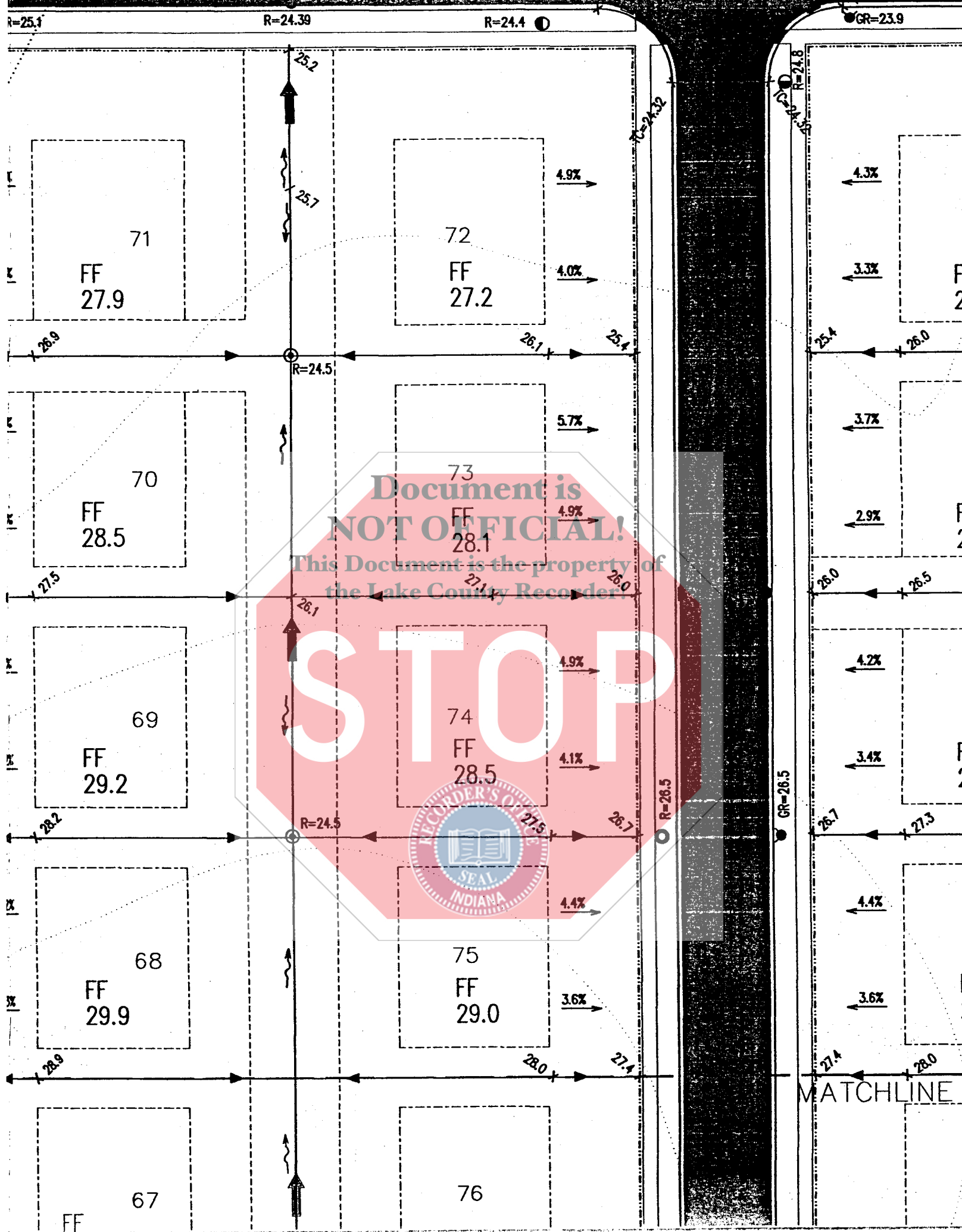


EXHIBIT A - SOUTH
MITIGATION PROPERTY

SOUTH MITIGATION AREA - AREA SOUTH OF SLEEPY HOLLOW DITCH

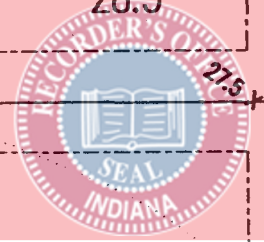
P 1/2

PART OF THE SOUTHWEST 1/4 OF SECTION 27, TOWNSHIP 34 NORTH, RANGE 9 WEST OF THE 2ND PRINCIPAL MERIDIAN, IN LAKE COUNTY, INDIANA, LYING SOUTH OF THE CENTERLINE OF THE SLEEPY HOLLOW DITCH AND WEST OF THE WESTERLY RIGHT-OF-WAY OF THE MONON RAILROAD, DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHWEST CORNER OF A TRACT OF LAND RECORDED IN DOCUMENT #2005 040657 DATED MAY 18, 2005 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, SAID POINT BEING THE POINT OF COMMENCEMENT; THENCE NORTH 89°56'15" EAST ALONG SAID NORTH LINE OF THE SOUTHWEST 1/4 A DISTANCE OF 518.94 FEET TO THE WESTERLY RIGHT-OF-WAY OF THE MONON RAILROAD; THENCE SOUTH 02°10'38" WEST (BEING THE BASIS OF BEARING) ALONG SAID WESTERLY RIGHT-OF-WAY A DISTANCE OF 436.36 FEET TO THE CENTERLINE OF THE SLEEPY HOLLOW DITCH BEING THE POINT OF BEGINNING; THENCE CONTINUING ALONG THE WESTERLY RIGHT-OF-WAY A DISTANCE OF 48.63 FEET; THENCE NORTH 90°00'00" WEST A DISTANCE OF 688.60 FEET; THENCE NORTH 41°26'55" WEST A DISTANCE OF 58.36 FEET; THENCE NORTH 54°15'57" WEST A DISTANCE OF 60.33 FEET; THENCE NORTH 77°27'44" WEST A DISTANCE OF 80.48 FEET; THENCE SOUTH 77°54'14" WEST A DISTANCE OF 81.80 FEET; THENCE SOUTH 53°56'46" WEST A DISTANCE OF 80.47 FEET; THENCE SOUTH 30°04'25" WEST A DISTANCE OF 40.17 FEET; THENCE NORTH 90°00'00" WEST A DISTANCE OF 50.58 FEET TO A LINE THAT IS 40 FEET EAST BY PERPENDICULAR MEASUREMENT AND PARALLEL WITH THE WEST LINE OF SECTION 27; THENCE NORTH 00°00'00" EAST PARALLEL WITH THE WEST LINE OF SECTION 27, A DISTANCE OF 237.09 FEET TO THE POINT ON THE SOUTH LINE OF CAMELOT AS PER PLAT THEREOF RECORDED IN PLAT BOOK 70, PAGE 24 IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA. THENCE SOUTH 64°25'58" EAST ALONG THE SOUTH LINE OF SAID CAMELOT, A DISTANCE OF 222.10 FEET TO THE SOUTHEAST CORNER OF SAID CAMELOT; THENCE NORTH 89°56'11" EAST A DISTANCE OF 99.00 FEET TO THE CENTERLINE OF THE AFORESAID SLEEPY HOLLOW DITCH; THENCE ALONG SAID CENTERLINE OF THE SLEEPY HOLLOW DITCH FOR THE FOLLOWING 8 COURSES: SOUTH 60°01'07" EAST A DISTANCE OF 93.03 FEET; SOUTH 87°16'00" EAST A DISTANCE OF 43.00 FEET; SOUTH 14°33'00" EAST A DISTANCE OF 58.00 FEET; SOUTH 87°26'00" EAST A DISTANCE OF 63.00 FEET; NORTH 65°30'00" EAST A DISTANCE OF 65.00 FEET; NORTH 89°14'00" EAST A DISTANCE OF 269.00 FEET; THENCE NORTH 86°23'00" EAST A DISTANCE OF 128.00 FEET; SOUTH 79°43'00" EAST A DISTANCE OF 118.00 FEET TO THE POINT OF BEGINNING.

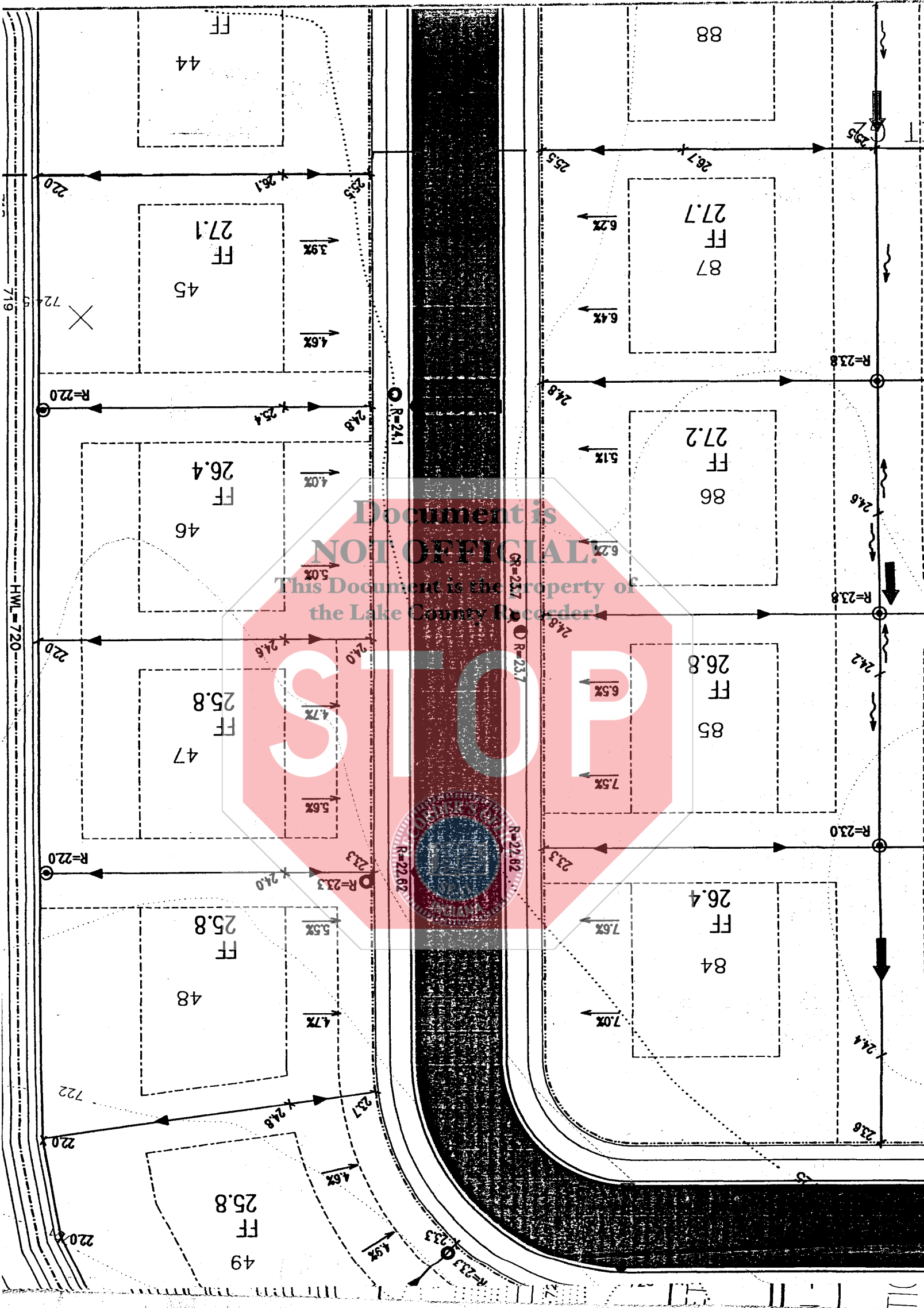


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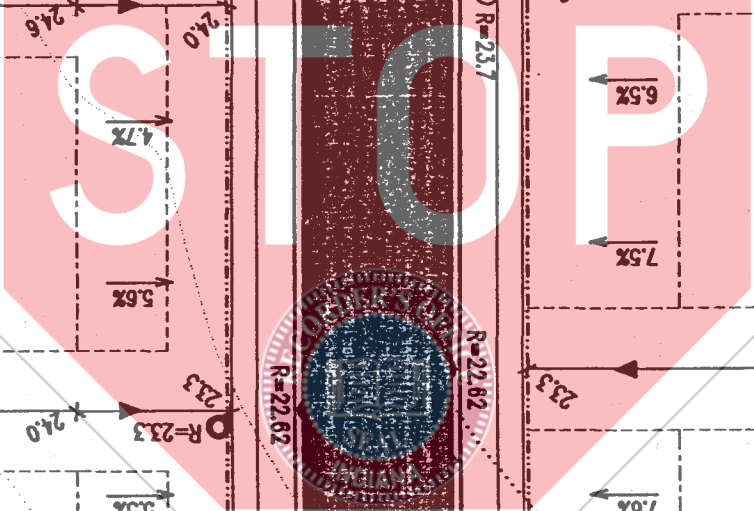
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MATCHLINE



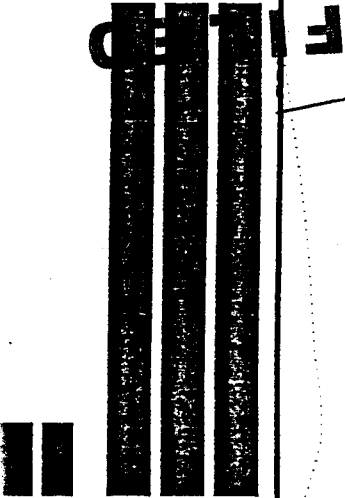
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PEGGY HOLINGA KATONA
LAKE COUNTY AUDITOR

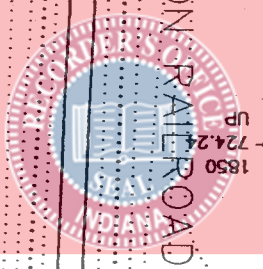
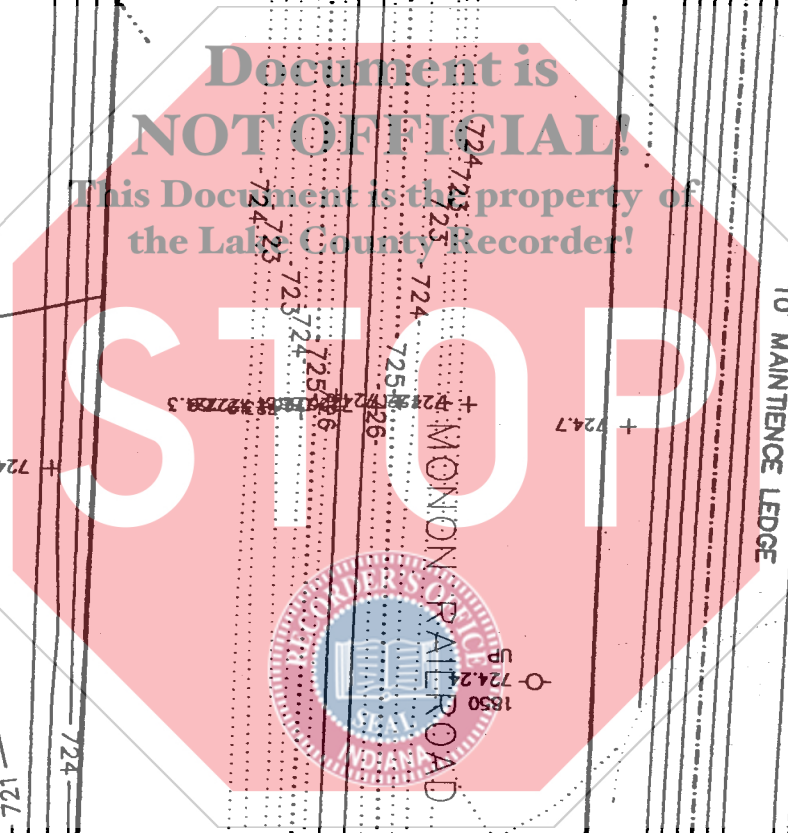
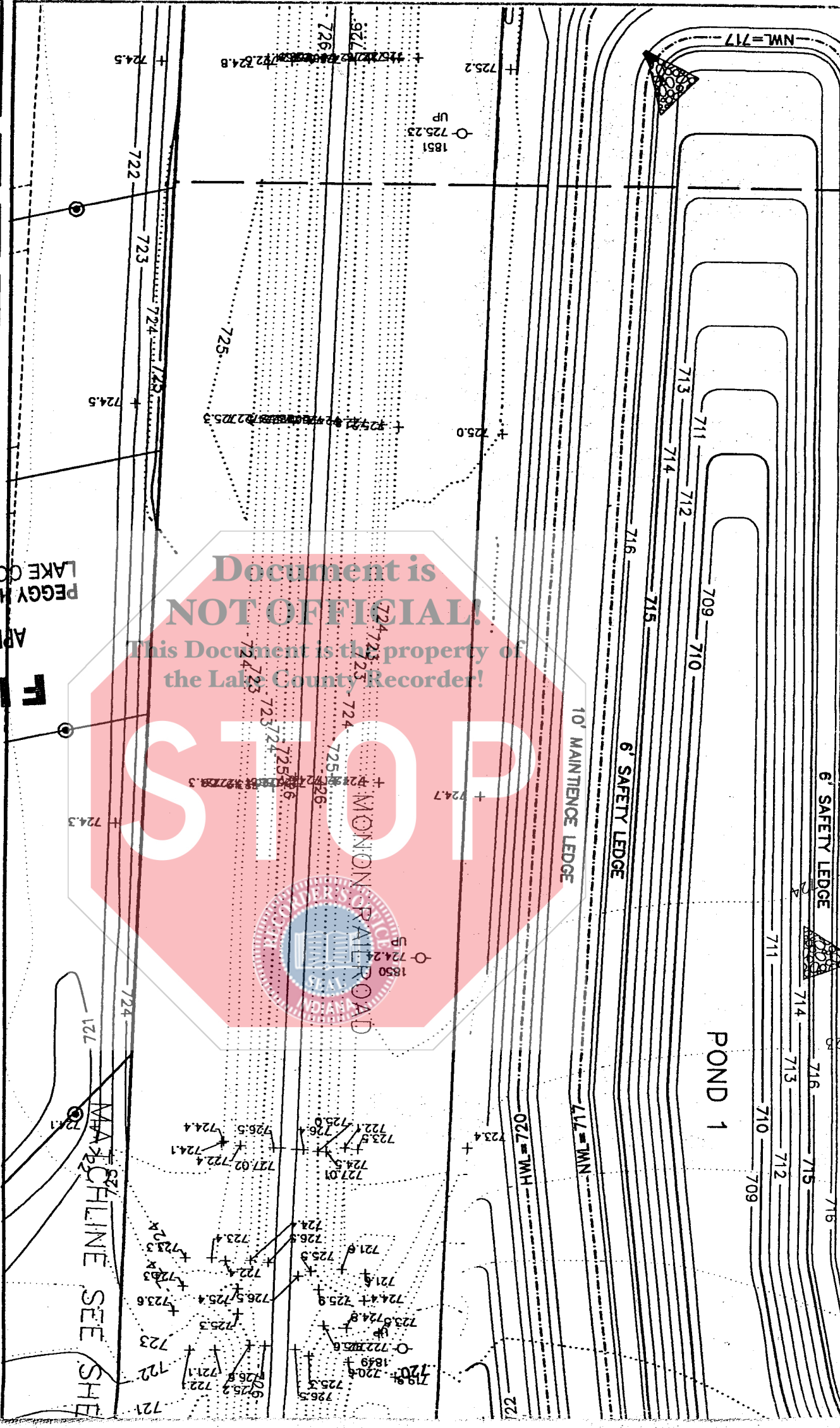
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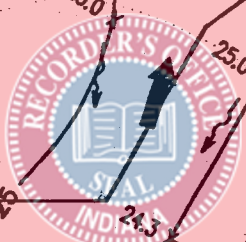


R=723.24
I=719.82,E,6"PVC
I=716.94,NE,8"PVC
I=714.82,SE,6"PVC
I=712.97,NW,15"RPC
I=711.62,S,18"

1.11 AC

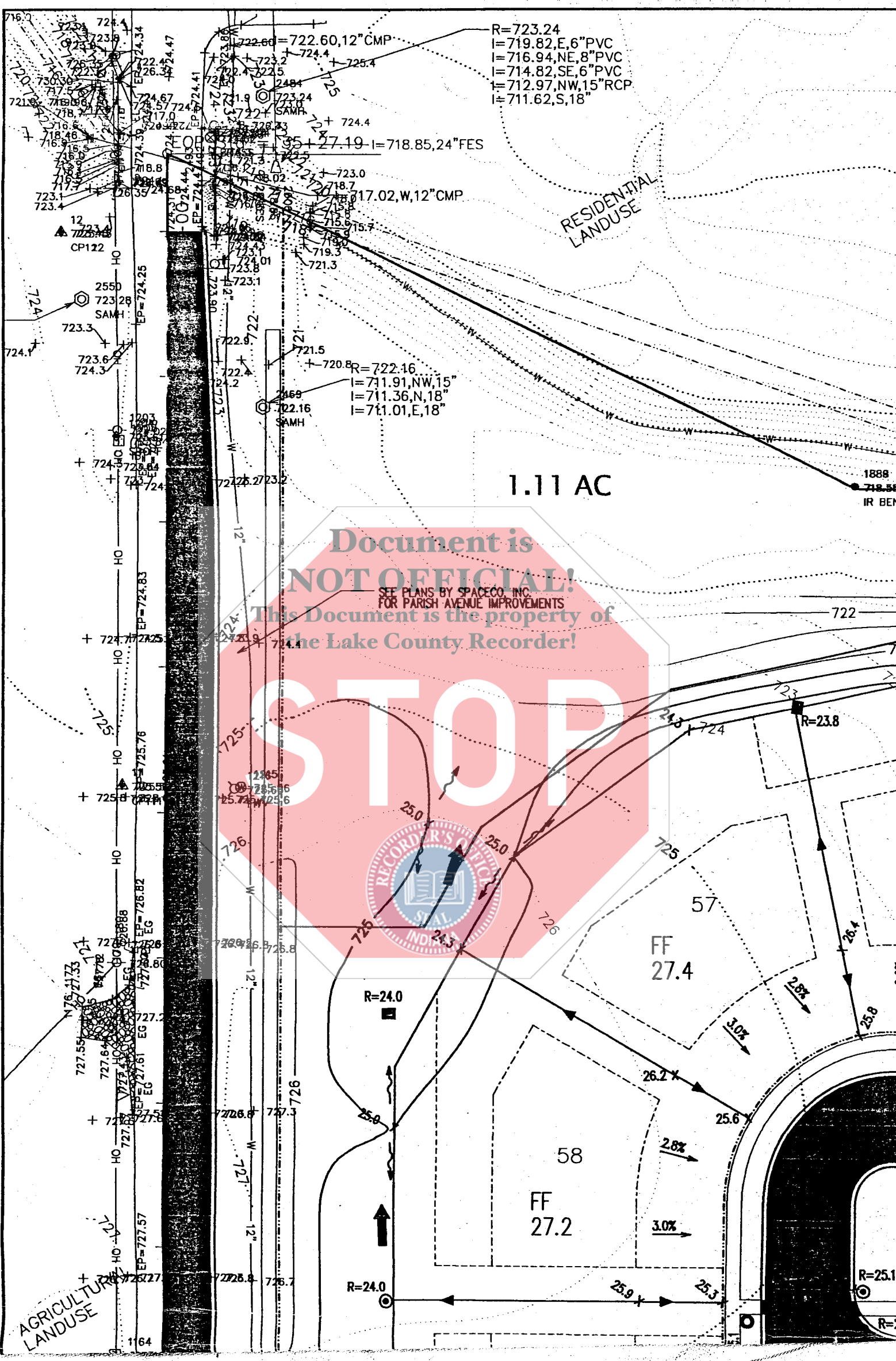
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SEE PLANS BY SPACECO, INC.
FOR PARISH AVENUE IMPROVEMENTS
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STOP



RESIDENTIAL
LANDUSE

AGRICULTURAL
LANDUSE



NOTES:

1. ALL RIM ELEVATIONS SHOWN FOR DRAINAGE STRUCTURES IN THE CURB AND GUTTER ARE GUTTER FLOW LINE ELEVATIONS.
2. ALL NON-PAVEMENT AND NON-STRUCTURE AREAS TO HAVE A MINIMUM OF 6" TOPSOIL RESPREAD.
3. ALL DRIVEWAY SLOPES SHALL BE LESS THAN 8%
4. GARAGE FLOOR ELEVATION = TF - 0.67' OR FF - 0.67
FINISH GRADE AROUND THE BUILDING = FF - 0.50'
5. EXISTING TREES IN THE R.O.W. SHALL BE REMOVED. TREES LOCATED INSIDE LOTS AND AROUND RAVINE SHALL BE REMOVED ONLY IF REQUIRED FOR GRADING PURPOSES. ALL REMAINING TREES SHALL BE PROTECTED FROM DISTURBANCE.
6. THERE IS NO EXISTING FLOODPLAIN/FLOODWAY ON SITE.
7. A 2.5' BERM SHALL BE BUILT AT ALL LOCATIONS WHERE DETENTION PONDS ARE ADJACENT TO A PUBLIC RIGHT OF WAY.

OUGH SITE GRADING WORK INCLUDING
F OVERFLOW DRAINAGE CHANNELS AND
DRAINAGE SWALES SHALL BE COMPLETED
ER AND APPROVED BY THE TOWN OF
OR TO ISSUANCE OF ANY BUILDING PERMIT
N'S SUBDIVISION ORDINANCE.

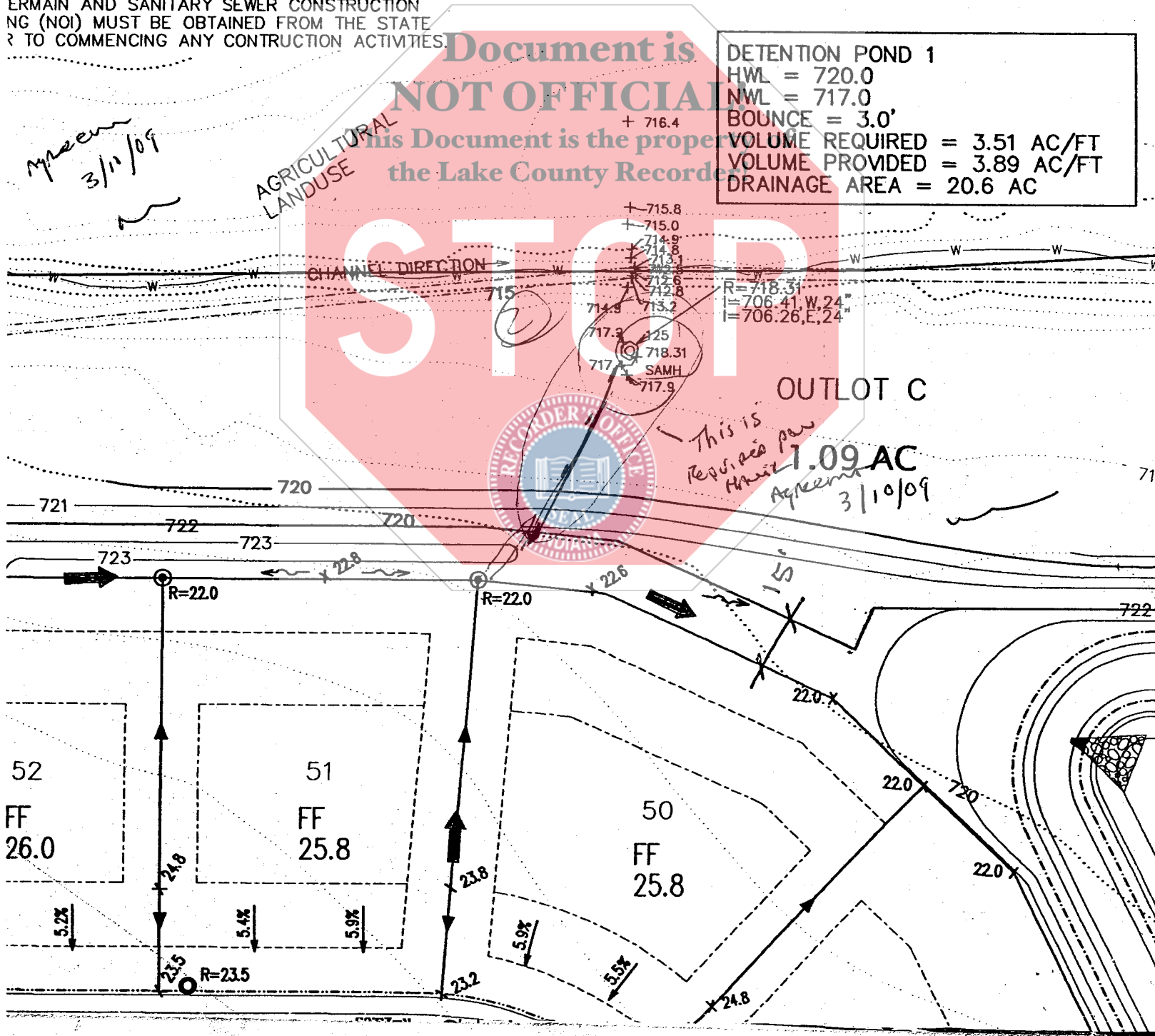
ATIONS AND TOP OF FOUNDATION (TF)/FF
SHOWN, ARE THOSE THAT CONFORM WITH
GRADING AND DRAINAGE PLAN. PRIOR TO
A BUILDING PERMIT BY THE TOWN OF
HOME BUILDER SHALL SUBMIT TO THE
OVAL, AN INDIVIDUAL LOT SITE AND
SAID SITE AND GRADING PLAN SHALL
ER'S PROPOSED HOUSE OUTLINE, TOP OF
ATIONS AND LOT SITE GRADING AND
CONFORMS WITH THE OVERALL SUBDIVISION
AINAGE PLANS.

GRADES ALONG LOT LINES AND AT
E TO BE MET BY INDIVIDUAL BUILDER.
O GRADES ARE SUGGESTED GRADES
IED FROM AS REQUIRED BY EACH BUILDER.
CHANGE GRADES ALONG AN ADJACENT
T PRIOR APPROVAL FROM THE OVERALL

ERMAIN AND SANITARY SEWER CONSTRUCTION
NG (NOI) MUST BE OBTAINED FROM THE STATE
R TO COMMENCING ANY CONSTRUCTION ACTIVITIES.

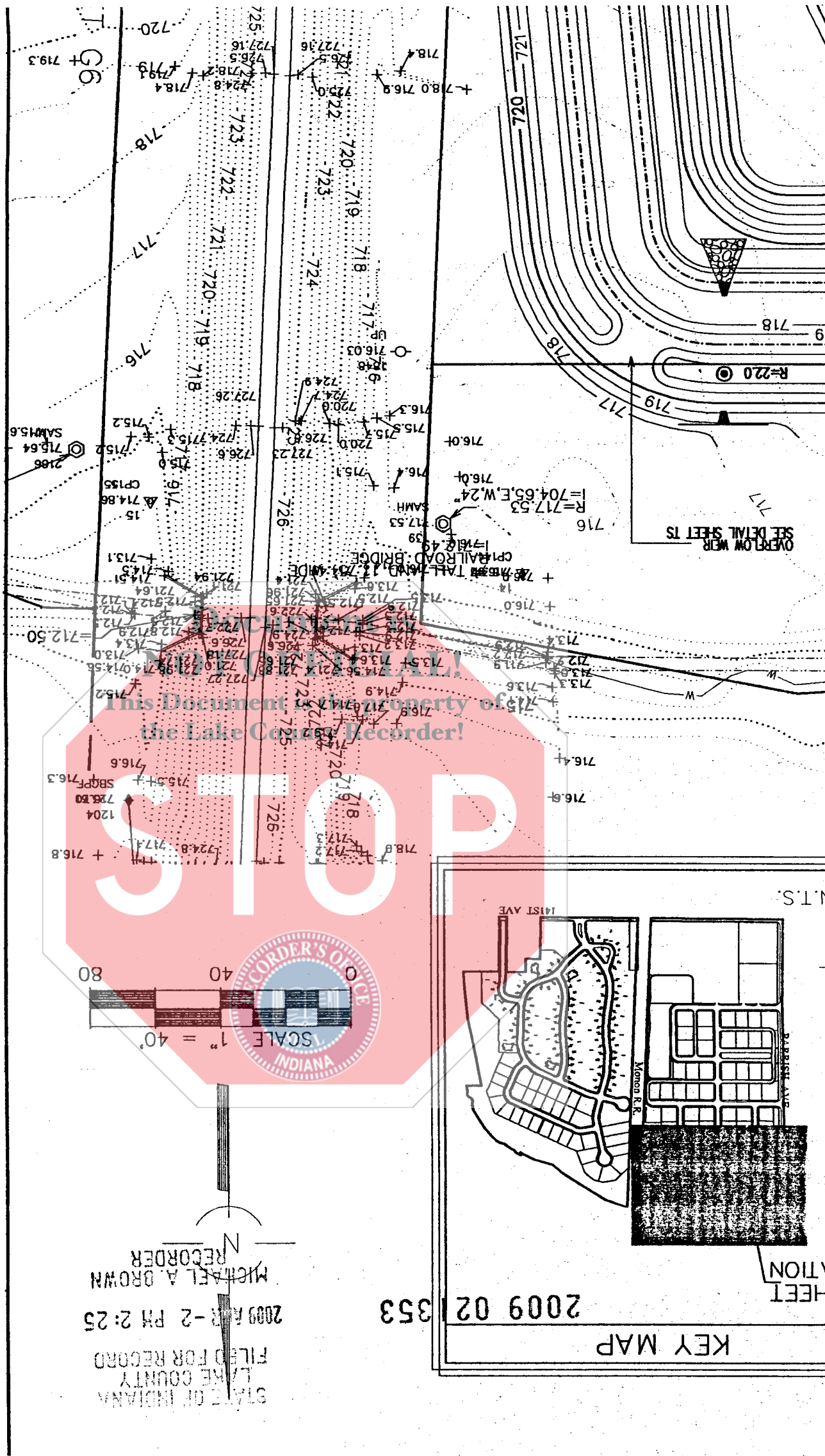
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DETENTION POND 1
HWL = 720.0
NWL = 717.0
BOUNCE = 3.0'
VOLUME REQUIRED = 3.51 AC/FT
VOLUME PROVIDED = 3.89 AC/FT
DRAINAGE AREA = 20.6 AC



| | | |
|---|----------|-------------------------------|
| 4 | 12/15/06 | PER CEDAR LAKE/UTILITIES INC. |
| 2 | 10/17/06 | PER CEDAR LAKE |
| 1 | 09/12/06 | PER SPACECO |

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KEY MAP

2009 02 1353

STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD
2009 APR - 2 PM 2:25
MICHAEL A. BROWN
RECORDER

SCALE 1" = 40'

RECORDER'S OFFICE
INDIANA

KEY MAP showing site location relative to 1st Ave, Karen R.R., and various lots.

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STOP

OVERFLOW WEIR
SEE DETAIL SHEETS

SHEET LOCATION