

Park Easement Agreement

Document Number

Recording Area

Name and Return Address

Sarah O. Jelencic
Foley & Lardner
777 East Wisconsin Avenue
Suite 3600
Milwaukee, WI 53202

Parcel Identification Number (PIN)

PARK EASEMENT AGREEMENT

This Park Easement Agreement is made as of _____, 2005, by and between River's Crest LLC ("Grantor") and the City of Milwaukee and/or permitted assignees ("Grantee").

WHEREAS, Grantor is the owner of certain property located along N. Commerce Street in the City of Milwaukee, State of Wisconsin more particularly described as Lot 1 of Certified Survey Map No. 7369 as set forth on **EXHIBIT A** attached hereto (the "Property"); and

WHEREAS, pursuant to the General Plan Development (file No. 020633) and the Detailed Plan Development (File No. 020632) for RiverCrest Condominiums adopted by the City of Milwaukee, Grantor agrees to grant to Grantee a nonexclusive easement for public park purposes on and across that portion of the Property designated as the "River View Park" on **EXHIBIT B** attached hereto and more particularly described on **EXHIBIT C** attached hereto (the "Park Parcel");

NOW, THEREFORE, in consideration of the above recitals, the Grantor and Grantee agree as follows:

1. **Park Easement.** Grantor hereby conveys to Grantee, a nonexclusive easement upon and across the Park Parcel, subject to the limitations set forth in Paragraph 3 of this Agreement and solely to the extent reasonably necessary to carry out the activities described below, for the purpose of providing a public park for the benefit of the public; provided, however, that public use shall be limited to pedestrian and recreational uses appropriate for a public park of the size and scope of the Park and otherwise in accordance with the terms of this Agreement and provided further that the public access and rights granted herein shall exclude any vendor or other commercial activities or operations not expressly permitted by Grantor.

2. **Insurance.** Throughout the term of this Agreement, Grantor, or its permitted successors and assigns (collectively referred to herein as "Grantor"), shall maintain comprehensive liability insurance in connection with the Park, naming the Grantee and its officers, agents, employees and permitted assigns as additional insureds against all claims, demands, actions for personal injury to or death in an amount not less than \$1,000,000 for each personal injury to or death of one person in any one accident; \$5,000,000 for personal injury or death of more than one person in any one accident; and in an amount not less than \$5,000,000 for damage to property in any one accident. Grantor shall have the right to maintain the insurance coverage(s) required to be maintained hereunder under umbrella or blanket insurance coverage(s) covering other premises so long as such umbrella or blanket insurance policies expressly provide coverage for the requirements provided under this Agreement. At the option of the Grantee, the aforesaid minimum amounts may be reviewed and increased or decreased every ten (10) years, with any such adjustment being proportionate to the then current economic conditions but any resulting increase in such coverage must be

commercially reasonable and prudent based on coverage(s) provided for similar private open space areas as reasonably determined by Grantor and Grantee.

Grantor shall provide Grantee with a certificate(s) of insurance, naming the Grantee as an additional insured for purposes of this Agreement, and providing that the insurance company will furnish the Grantee with a thirty (30) days written notice of cancellation, non-renewal, or material change.

3. Maintenance: Park. Grantor shall be responsible to maintain the Park in accordance with maintenance standards generally applied to public parks in the City of Milwaukee. If Grantor fails to maintain the Park Parcel in the condition required by this Agreement, Grantee may provide Grantor with a written notice setting forth the maintenance or repair work that Grantee reasonably determines has not been done. If Grantor does not commence such maintenance or repair work within thirty (30) days from the date of receipt of the aforesaid written notice, and such failure to commence such maintenance or repair work is not as a result of causes beyond Grantor's reasonable control, then Grantee may, upon thirty (30) days written notice to Grantor, perform such work and shall be reimbursed by Grantor for all reasonable costs incurred in performing such work. Should Grantor fail to reimburse the Grantee for such work within thirty (30) days after written demand therefore, the Grantee shall be entitled to record a lien against the Property. In the event the City of Milwaukee ("City") as Grantee performs such work, the Grantor hereby agrees that the City shall have the right to specially charge the Property under the 66.60(16), Stats. provisions (to be renumbered as 66.0627, Stats., and as the same may be renumbered from time to time). Should the City need to proceed with such special charges under 66.60(16), Stats. (to be renumbered as 66.0627, Stats., and as the same may be renumbered from time to time), Grantor hereby waives notice and hearing on such charges. Grantee shall notify Grantor in advance of Grantee's needs to enter upon the Property, specifying the scope and duration of such entry. Subject to compliance with the applicable provisions of the Urban Renewal Plan and the City Code of Ordinances, Grantor shall have the right, from time to time and at any time, to place or install amenities on the Park Parcel consistent with the use of the Park as a public park, including, without limitation, tables, chairs, gazebos, bike racks, tents, landscaping and similar facilities and amenities at Grantor's sole discretion and Grantor shall have the right to remove the same at any time and from time to time.

4. Public Rights. Grantor shall, at all times, make the Park available for use by members of the public, except for such times as the Park, or any portion thereof, must be closed for maintenance or repair or to avoid the acquisition of adverse or prescriptive rights. Grantor shall have the right periodically (i.e., not more than once a year and not more than 24 hours at a time) to close off the Park in order to prevent the acquisition of any adverse or prescriptive rights.

5. Rules and Regulations. Grantee shall have the right to formulate reasonable rules and regulations regarding the use of the Park by the public; provided, however, that such rules and regulations shall be consistent with the generally applied rules and regulations promulgated for public parks within the Milwaukee County Park System for similar parks with

similar facilities. Grantor shall have the right to reasonable enforcement of such rules and regulations. Grantor shall have the right to promulgate and enforce its own rules and regulations governing the use of the Park by the public; provided, however, Grantor's rules and regulations shall not be inconsistent nor conflict with the terms of EXHIBIT D or any rules and regulations promulgated by Grantee in accordance with the terms hereof. In the event of any such conflict, the terms of EXHIBIT D or the rules and regulations promulgated by Grantee shall control.

6. Operating Costs: Park. Grantor shall pay for all maintenance costs for the Park including, but not limited to, all electricity, water and other utilities used for lighting, cleaning and watering of flowers and other plant materials on the Property, if any.

7. Alterations. Grantor shall not make any structural alterations or modifications to the Park without the prior written consent of Grantee, which shall not be unreasonably withheld, conditioned or delayed.

8. Assignment. Grantee shall not assign this Agreement without the written consent of Grantor. Until such time as the construction of the Park is substantially completed, Grantor shall not assign its interests or obligations in this Agreement without the written consent of the Authority; provided, however, that Grantor may assign all or any part of its interests and obligations hereunder to an affiliate of Grantor with an interest in the Property, to any holder of a mortgage on any part of the Property, and/or to condominium unit owners and/or to a condominium association yet to be formed with an interest in all or any part of the Property.

9. Run with the Land. This Agreement is a permanent public access easement which shall run with the land, and shall be binding on and shall inure to the benefit of the parties hereto and to their respective heirs, successors and assigns.

10. Notices. All notices to be given by one party to the other under this Agreement shall be in writing and given either by personal delivery or certified mail, postage prepaid, to the addresses set forth in this paragraph. A notice shall be deemed delivered either upon actual receipt or upon refusal by a party to accept delivery. Either party may change its address for purposes of receiving notice by delivering written notice thereof in accordance with the requirements of this paragraph.

To Grantor:

River's Crest LLC
c/o Mandel Group, Inc.
111 East Wisconsin Avenue
Suite 1700
Milwaukee WI 53202
Attn: Barry R. Mandel

GRANTEE:
CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

Attest: _____
Ronald D. Leonhardt, City Clerk

Countersigned by: _____
Comptroller's Office
Name Printed: _____
Title: _____

CITY ATTORNEY'S OFFICE (ORD. § 304-21)

Approved by: _____
Gregg C. Hagopian, Assistant City Attorney

This document was drafted by Sarah Jelencic and after recording should be returned to:
Sarah Jelencic
Foley and Lardner
777 E. Wisconsin Avenue
Milwaukee, WI 53202

LIST OF EXHIBITS

EXHIBIT A: Legal Description of the Property

EXHIBIT B: Depiction of Park

EXHIBIT C: Legal Description of Park

EXHIBIT D: Rules and Regulations

EXHIBIT A
Park Easement Agreement

Description of Property

OVERALL LEGAL DESCRIPTION
SITUATED ON NORTH COMMERCE STREET, CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

THAT PART OF LANDS BEING ALL OF PARCEL 2 AND 4 VACATED PORTIONS OF NORTH RIVERBOAT ROAD AS PLATTED ON CERTIFIED SURVEY MAP NUMBER 6527 BEING A REDIVISION OF PARCELS 1 AND 2 OF CERTIFIED SURVEY MAP NUMBER 5633 IN THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 21, TOWNSHIP 7 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY.
ALL BEING BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING ON THE NORTHWEST CORNER OF SAID 1/4 SECTION; THENCE NORTH 89°04'24" EAST ALONG THE NORTH LINE OF THE SAID 1/4 SECTION 50.00 FEET TO A POINT; THENCE SOUTH 00°18'59" EAST AND PARALLEL WITH THE WEST LINE OF SAID 1/4 SECTION 708.02 FEET TO A POINT ON THE SOUTHERLY LINE OF NORTH COMMERCE STREET AND THE POINT OF BEGINNING OF THE LANDS TO BE DESCRIBED; THENCE SOUTH 89°46'49" EAST ALONG SAID SOUTHERLY LINE 191.77 FEET TO A POINT; THENCE 230.50 FEET EASTERLY, ALONG SAID SOUTHERLY LINE AND THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTH, WHOSE RADIUS IS 430.00 FEET, AND WHOSE CHORD BEARS NORTH 74°51'47.5" EAST 227.75 FEET TO A POINT; THENCE NORTH 59°30'24" EAST ALONG SAID SOUTHERLY LINE 158.13 FEET TO A POINT; THENCE 150.60 FEET NORTH EASTERLY ALONG SAID SOUTHERLY LINE AND THE ARC OF A CURVE WHOSE CENTER LIES TO THE NORTH WEST, WHOSE RADIUS IS 145.00 FEET, AND WHOSE CHORD BEARS NORTH 29°45'12" EAST 143.92 FEET TO A POINT; THENCE DUE NORTH ALONG SAID EASTERLY LINE 49.33 FEET TO A POINT, ON THE SOUTHERLY LINE OF EAST GARFIELD STREET; THENCE DUE EAST ALONG THE SAID SOUTHERLY LINE 145.50 FEET TO A POINT; THENCE NORTH 60.00 FEET TO A POINT; THENCE WEST 145.50 FEET TO A POINT; THENCE NORTH ALONG THE EASTERLY LINE OF NORTH COMMERCE STREET 299.18 FEET TO A POINT ON THE SOUTH LINE OF EAST NORTH AVENUE; THENCE NORTH 85°38'23" EAST ALONG THE SOUTHERLY LINE 144.38 FEET TO A POINT; THENCE NORTH 89°04'24" EAST 70.49 FEET TO A POINT; THENCE SOUTH 04°31'36" EAST 247.21 FEET TO A POINT; THENCE SOUTH 24°03'24" WEST 291.65 FEET TO A POINT; THENCE SOUTH 47°40'26" WEST ALONG SAID LINE 135.53 FEET TO A POINT; THENCE SOUTH 46°25'26" WEST ALONG SAID LINE 47.64 FEET TO A POINT; THENCE SOUTH 53°25'26" WEST ALONG SAID LINE 43.43 FEET TO A POINT; THENCE SOUTH 62°25'28" WEST ALONG SAID LINE 144.97 FEET; THENCE SOUTH 65°40'26" WEST ALONG SAID LINE 47.13 FEET; THENCE SOUTH 69°25'30" WEST ALONG SAID LINE 46.51 FEET TO A POINT; THENCE SOUTH 74°11'22" WEST ALONG SAID LINE 44.26 FEET; THENCE SOUTH 83°23'59" WEST ALONG SAID LINE 42.77 FEET; THENCE NORTH 89°46'49" WEST ALONG SAID LINE 264.18 FEET TO A POINT, ON THE EASTERLY LINE OF NORTH HUMBOLDT AVENUE; THENCE NORTH 00°18'59" WEST ALONG SAID EASTERLY LINE 97.00 FEET TO THE POINT OF BEGINNING.
CONTAINING 166,259 SQUARE FEET OR 3.8168 ACRES

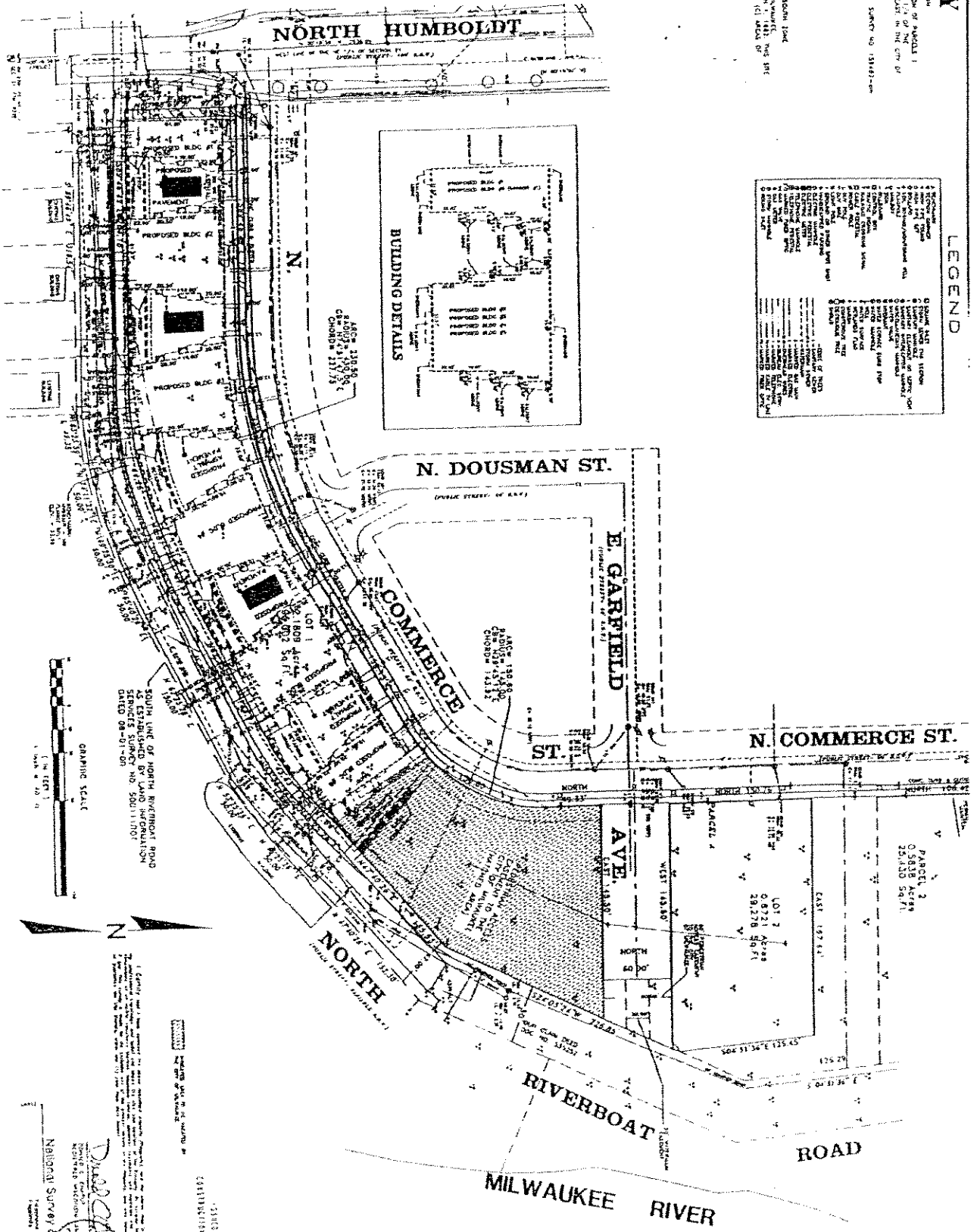
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PLAT OF SURVEY

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EXHIBIT B Park Easement Agreement Depiction of Park



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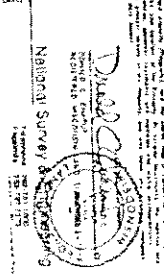


EXHIBIT C

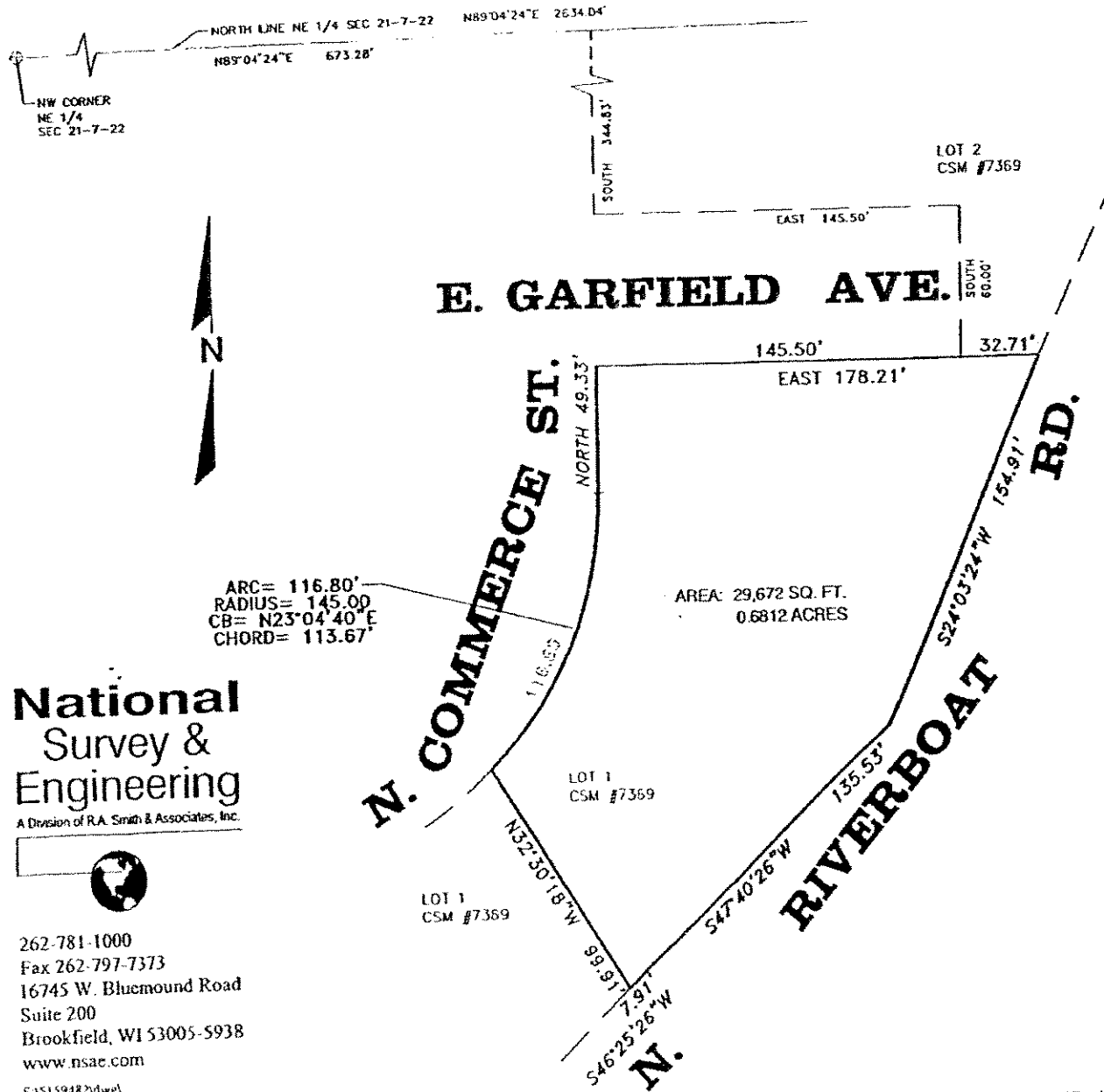
SITUATED ON EAST GARFIELD AVENUE IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN

PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 7369, BEING PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 21, TOWN 7 NORTH, RANGE 22 EAST IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN, BOUNDED AND DESCRIBED AS FOLLOWS:
COMMENCING AT THE NORTHWEST CORNER OF SAID 1/4 SECTION, THENCE NORTH 89°04'24" EAST ALONG THE NORTH LINE OF SAID 1/4 SECTION 673.28 FEET TO A POINT; THENCE SOUTH 344.83 FEET TO A POINT ON THE NORTH LINE OF EAST GARFIELD AVENUE; THENCE EAST ALONG SAID NORTH LINE 145.50 FEET TO A POINT; THENCE SOUTH 60.00 FEET TO THE POINT OF BEGINNING OF THE LANDS TO BE DESCRIBED; THENCE EAST 32.71 FEET TO A POINT ON THE NORTHWESTERLY LINE OF NORTH RIVERBOAT ROAD; THENCE SOUTH 24°03'24" WEST ALONG SAID NORTHWESTERLY LINE 154.91 FEET TO AN ANGLE POINT; THENCE SOUTH 47°40'26" WEST ALONG SAID NORTHWESTERLY LINE 135.53 FEET TO AN ANGLE POINT; THENCE SOUTH 46°25'26" WEST ALONG SAID NORTHWESTERLY LINE 7.91 FEET TO A POINT; THENCE NORTH 135.53 FEET TO AN ANGLE POINT; THENCE SOUTH 46°25'26" WEST ALONG SAID NORTHWESTERLY LINE OF NORTH COMMERCE STREET; THENCE NORTHEASTERLY 116.80 FEET 32°30'18" WEST 99.91 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF NORTH COMMERCE STREET; THENCE NORTHEASTERLY 116.80 FEET ALONG SAID SOUTHEASTERLY LINE AND THE ARC OF A CURVE, WHOSE CENTER LIES TO THE NORTHWEST, WHOSE RADIUS IS 145.00 FEET AND WHOSE CHORD BEARS NORTH 23°04'40" EAST 113.67 FEET TO A POINT OF TANGENCY; THENCE NORTH ALONG SAID SOUTHEASTERLY LINE 49.33 FEET TO A POINT ON THE SOUTH LINE OF EAST GARFIELD AVENUE; THENCE EAST ALONG SAID SOUTH LINE 145.50 FEET TO THE POINT OF BEGINNING.
SAID PARCEL CONTAINS 29,672 SQUARE FEET OR 0.6812 ACRES.

DRAWING NO. 159482-CLH

AUGUST 30, 2004

MANDEL GROUP



National Survey & Engineering

National Survey & Engineering
A Division of R.A. Smith & Associates, Inc.



262-781-1000
Fax 262-797-7373
16745 W. Bluemound Road
Suite 200
Brookfield, WI 53005-5938
www.nsae.com

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SHEET 1 OF 1

DRAWING SCALE 1 INCH = 60 FEET

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EXHIBIT D

Rules and Regulations

1. Open for use at all times except as it relates to adverse possession and times of maintenance and repair.
2. Keep Property generally clean of litter on a daily basis.
 - Empty trash receptacles as necessary
3. Keep benches and other amenities in good, safe repair at all times.
4. Paint railings, benches and other amenities as necessary to maintain a pleasing aesthetic quality, consistent with approved color schemes.
 - Remove graffiti as soon as practical (as weather permits).
5. Properly maintain all landscaping consistent with industry standard practices.
6. Any other criteria or rules and regulations shall be consistent with the generally applied criteria and rules and regulations promulgated by the Milwaukee County Park System for similar parks with similar facilities.