

BECHER STREET MULTIFAMILY
EASEMENT AGREEMENT

Document Number

Document Title

This Easement Agreement (“**Agreement**”) is made as of _____, 20__ (“**Effective Date**”) by and between the CITY OF MILWAUKEE, a municipal corporation (“**City**”) and FS APARTMENTS, LLC, a Wisconsin limited liability company (“**Grantor**”). City and Grantor are each a “**Party**”; together, they are the “**Parties**.”

RECITALS

- A. WHEREAS, Grantor is the owner of the property known as the Becher Street Multifamily development located south of East Becher Street and north of East Lincoln Avenue in the City of Milwaukee, County of Milwaukee, State of Wisconsin, as legally described on the attached **Exhibit A** and referred to in such exhibit and herein as the “**Grantor Property**”.
- B. WHEREAS, City has requested that City and the public have an easement of ingress and egress on a non-exclusive basis in common with Grantor over and across a portion of land on the Grantor Property for public access on and across the **Grantor Property**.
- C. WHEREAS, Grantor is willing to grant such easement on the terms and conditions as set forth herein.
- D. WHEREAS, the City of Milwaukee Common Council by Resolution No. _____, adopted on _____ 2024, has approved this Agreement and authorized its execution.

Recording Area

Name and Return Address

Jordan M. Schettle, Esq.
Milwaukee City Attorney’s Office
841 North Broadway, 10th Floor
Milwaukee, WI 53202

See Exhibit A

Parcel Identification Number (PIN)

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Parties agree as follows:

- 1. GRANT OF PUBLIC EASEMENT. Grantor hereby grants to City a perpetual non-exclusive easement over, on, and across the easement area graphically depicted on the attached **Exhibit B** (“**Easement Area**”) for the purpose of providing bicycle and pedestrian access on and across the **Grantor Property** to and from East Becher Street and to and from East Lincoln Avenue.
- 2. USE OF PUBLIC EASEMENT. Subject to the terms of this Agreement, City and members of the public may use the **Easement Area** (in common with Grantor and its tenants, invitees, employees, licensees, customers, successors and assigns) for pedestrian and bicycle ingress and egress to and from East Becher Street and to and from East Lincoln Avenue, subject

to the provisions herein, except that City maintenance vehicles, Grantor vehicles, and emergency service vehicles may also use the **Easement Area**. The use of the **Easement Area** shall be for normal and customary access by City and the public in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations. The rights of City and the public to use the **Easement Area** shall not extend to any unusual uses such as loitering, heavy truck traffic (by trucks weighing more than three tons), vehicle use (except for City maintenance vehicles and emergency vehicles), or other types of uses that may constitute a public or private nuisance. Grantor reserves the right to grant to third parties additional easements for access and/or utilities affecting the **Easement Area** or portions thereof. Notwithstanding anything herein to the contrary, neither Party's use of the **Easement Area** shall unreasonably interfere with the use of the **Easement Area** by the other Party and its respective tenants, invitees, employees, licensees, customers, successors and assigns.

3. PUBLIC ACCESS. The **Easement Area** shall be available for public use at all times, except for such times as the **Easement Area** must be closed for maintenance or repair, to avoid the acquisition of adverse or prescriptive rights or for special events benefiting the public. Grantor shall have the right periodically to close off the **Easement Area** for any of these purposes, provided that Grantor obtain any and all permits required for same. Further, Grantor may, from time to time, vary or relocate the paved areas on the **Easement Area** available for use by the public and Grantor may, from time to time, restrict use of portions of the **Easement Area** by members of the public in favor of Grantor or its lessees, or Grantor's successors' or assigns' exclusive use; provided that, the prior written consent is obtained from the City.

4. MAINTENANCE AND REPAIR. City shall be solely responsible at its expense for the maintenance of the 12-foot wide concrete and asphalt portion of the **Easement Area** as reasonably determined by City in its discretion, which maintenance may include and not be limited to, sealing, striping, repaving, and snow removal, as determined by City in its discretion. Grantor shall be solely responsible at its expense for the maintenance of the remaining adjacent landscaping portions of the **Easement Area** not covered by concrete and asphalt.

5. CITY'S ACCESS TO EXISTING FACILITIES. The Parties acknowledge that City has and may maintain any existing facilities (such as sewer or water mains) currently located in the **Easement Area** as set forth in other written easement agreements benefiting City and recorded against the Grantor's Property. City has the right to reasonably access such facilities for maintenance upon reasonable notice to Grantor, provided that City's access does not unreasonably interfere with Grantor's use or occupancy of Grantor's Property.

6. INDEMNIFICATION. City shall save Grantor harmless from any loss, damage, injury or liability resulting from negligence on the part of City in connection with the exercise of any rights of City hereunder; provided, however, that these provisions are subject to the legal defenses which, under law, City is entitled to raise.

7. INSURANCE. Grantor shall maintain a policy of comprehensive general liability insurance with respect to Grantor Property and the **Easement Area** consistent with that held by the owners of similarly situated properties subject to public easements in the City of Milwaukee.

8. NON-USE. Non-use or limited use of the **Easement Area** and the rights granted herein shall not deprive City from later use of such **Easement Area** and City's exercise of such rights to the fullest extent authorized under this Agreement.

9. GOVERNING LAW; VENUE. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court of Milwaukee County for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.

10. ENTIRE AGREEMENT; AMENDMENTS. This Agreement sets further the entire understanding of the Parties with respect to the subject matter hereof and may not be changed, modified, or amended, except by a written document executed and acknowledged by both Parties to this Agreement, which shall only become effective upon its recordation in the Office of the Register of Deeds for Milwaukee County, Wisconsin.

11. NOTICES. Any notice provided for herein or given pursuant to this Agreement, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, electronic mail ("e-mail"), or by receipted personal delivery to the Parties as follows:

To Grantor:

FS Apartments, LLC
c/o Bear Development, LLC
4011 80th Street
Kenosha, WI 53142

with a copy to:

To The City:

Department of Public Works – City of Milwaukee
Frank P. Zeidler Municipal Building
841 N Broadway, 5th Floor
Milwaukee, WI 53202

with a copy to:

City Attorney's Office – City of Milwaukee
Frank P. Zeidler Municipal Building
Attn: Jordan M. Schettle, Esq.
841 N Broadway, 7th Floor
Milwaukee, WI 53202

12. FORCE MAJEURE. If either Party is delayed or interrupted in the performance or completion of any of its obligations hereunder by any cause beyond its control, including, but not limited to, any act, neglect or default of the other Party or any agent or employee of the other Party (including any delay requested by the other Party), embargo, war, fire, flood, concealed conditions, cyclone, earthquake, epidemic or other calamity, act of God or of the public enemy, riots, insurrection or any strike, illegal walkout or secondary boycott, pandemic, public health emergency, or epidemic, then the delay shall be excused and the time of performance specified in this Agreement shall be extended for a period equal to the time lost as a consequence of the delay or interruption.

13. RECORDING. This Agreement shall be recorded in the office of the Register of Deeds of Milwaukee County.

14. HEADINGS. Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

15. WAIVER. One or more waivers of any covenant or condition by either Party shall not be construed as a waiver of a subsequent breach of the same covenant or condition. No breach of a covenant or condition of this Agreement shall be deemed to have been waived by either Party unless such waiver is in writing signed by both Parties. Wherever in this Agreement a Party's consent is required, such consent shall not be unreasonably withheld or delayed.

16. SEVERABILITY. If any term or provision of this Agreement is held invalid or unenforceable, then the remaining terms and provisions of this Agreement shall be affected thereby, but each remaining term and provision shall be valid.

17. ENFORCEMENT. Enforcement of this Agreement may be at law or equity against any person or persons violating or attempting or threatening to violate any provision hereof, either to restrain or prevent such violation or obtain other relief. In any suit or other action brought to enforce this Agreement, the prevailing Party in such or other action shall be entitled to recover its costs, including reasonable attorneys' fees, as are incurred by the prevailing Party from the non-prevailing Party in such suit or action. Nothing in this Agreement shall be deemed to be a waiver of the City's governmental immunity rights as stated under Wisconsin Statutory Law or under the laws of the City of Milwaukee.

18. ENCUMBRANCES. This Agreement is expressly made subject to all recorded easements and restrictions.

19. NO JOINT VENTURE. No provision hereof shall be deemed to constitute the Parties hereto as partners of one another or joint ventures of one another or in any way obligate any Party hereto for the performance of any obligation of the other Party hereto.

20. ASSIGNMENT. Neither Party shall assign its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.

21. PUBLIC RECORDS. The Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Grantor acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years after receipt of final payment under this Agreement.

22. NONDISCRIMINATION. The City hereby agrees that in its use of the **Easement Area** and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

23. COUNTERPARTS. This Agreement may be signed and executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

[Signature Page Follows]

CITY OF MILWAUKEE
a Wisconsin municipal company

By: _____
Jerrel Kruschke, Commissioner
Dept. of Public Works

And By: _____
James R. Owczarski, City Clerk

Countersigned:

By: _____
Bill Christianson, Comptroller

City Common Council Resolution File Number: _____

CITY ATTORNEY APPROVAL/AUTHENTICATION

Jordan M. Schettle, a member in good standing of the State Bar of Wisconsin, hereby authenticates the signatures of those City representatives/signatories per Wis. Stat. 706.06 so this document may be recorded per Wis. Stat. 706.05 (2)(b).

By: _____
Jordan M. Schettle, Assistant City Attorney
State Bar No. 1104571
Date: _____

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR PROPERTY

LOT 1 OF CERTIFIED SURVEY MAP NO. 9471 RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR MILWAUKEE COUNTY, WISCONSIN ON FEBRUARY 21, 2023, AS DOCUMENT NO. 11319070, BEING BLOCK 3 AND 4 IN THE PLAT OF PART OF THE EAST ¼, ALSO KNOWN AS REPLAT OF BLOCKS 3, 4, 5, AND 6 OF J.A. BECHER'S SUBDIVISION, LOCATED IN THE SOUTHEAST ¼ OF THE SOUTHEAST ¼ OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 22 EAST, IN THE CITY/VILLAGE OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN.

EXHIBIT A CONTINUED

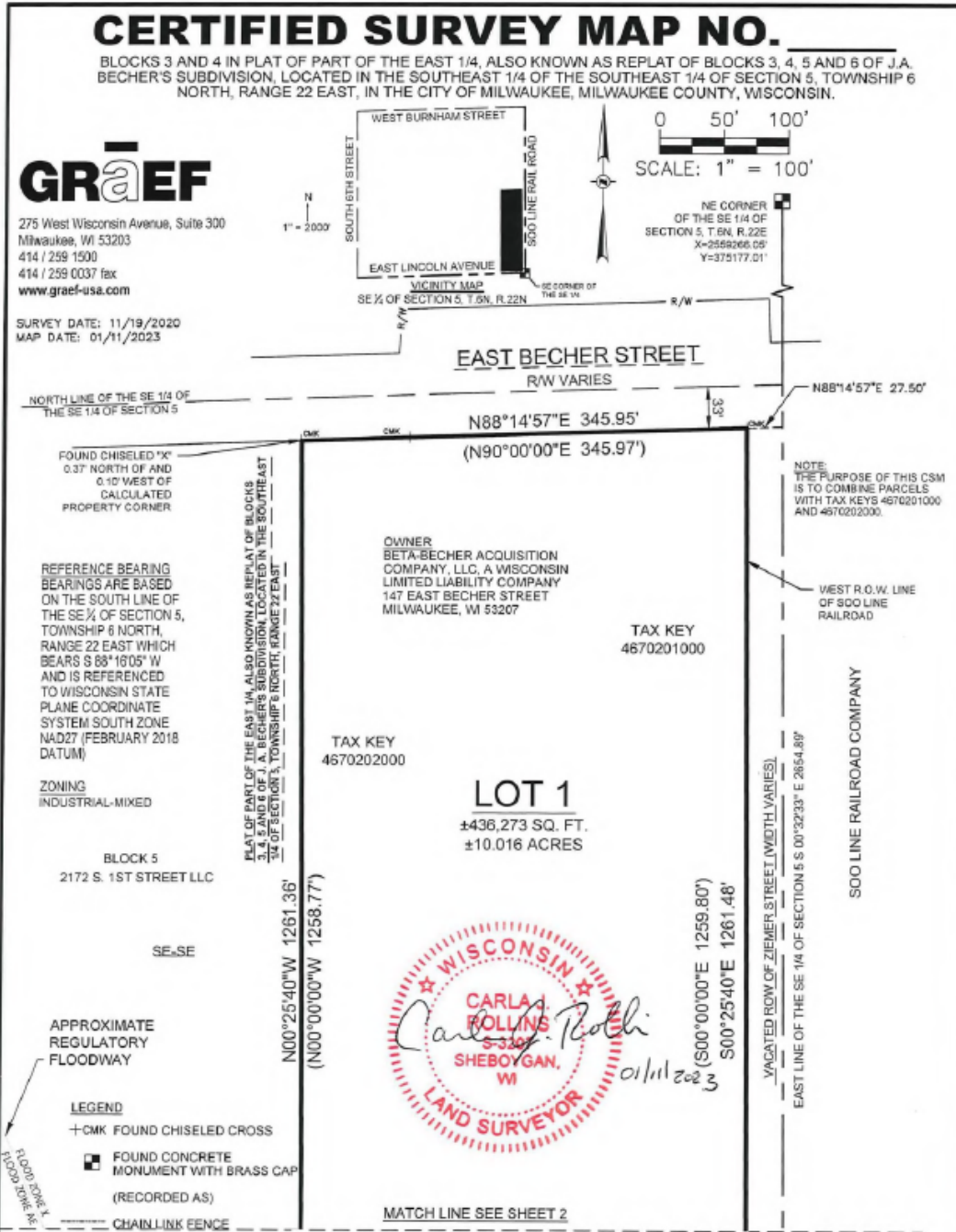


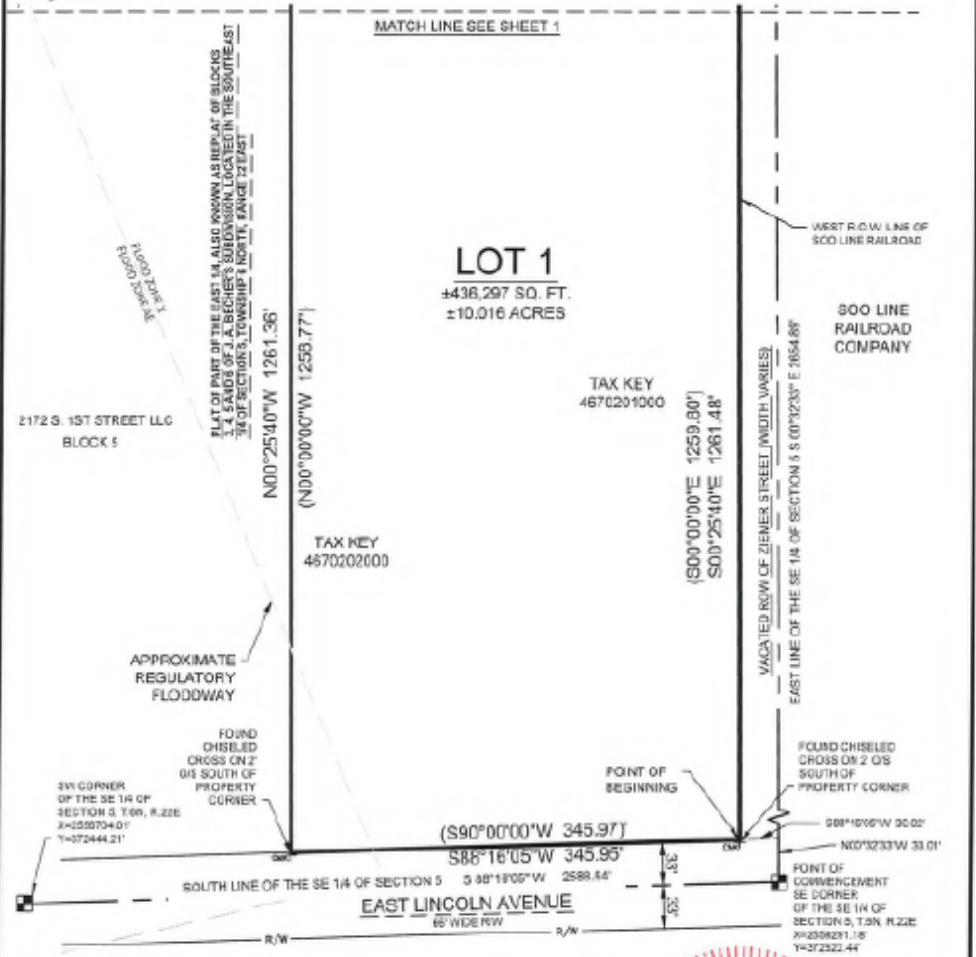
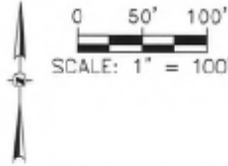
EXHIBIT A CONTINUED

CERTIFIED SURVEY MAP NO. _____

BLOCKS 3 AND 4 IN PLAT OF PART OF THE EAST 1/4, ALSO KNOWN AS REPLAT OF BLOCKS 3, 4, 5 AND 6 OF J.A. BECHER'S SUBDIVISION, LOCATED IN THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN.



275 West Wisconsin Avenue, Suite 300
Milwaukee, WI 53203
414 / 259 1600
414 / 259 0037 fax
www.graef-usa.com



FLOOD ZONE INFORMATION	
MAP NUMBER:	55079C0693 E
DATE OF FIRM:	06/26/2018
COMMUNITY NUMBER:	62071
NAME:	060
FIRM ZONE:	X AND AE
SUFFIX:	E

A PORTION OF PARCEL LOCATED AT 123-127 EAST BECHER STREET LIES IN FLOOD ZONE AE. SEE MAP FOR SCALED LOCATION FROM FEMA FLOOD INSURANCE RATE MAP. NO BUILDINGS ON SUBJECT PARCELS LIE IN FLOOD ZONE AE.



01/11/2023

EXHIBIT B

LEGAL DESCRIPTION OF EASEMENT AREA

LEGAL DESCRIPTION

PART OF LOT 1 OF CERTIFIED SURVEY MAP NO. 9471, BEING PART OF THE SOUTHEAST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 5, TOWNSHIP 6 NORTH, RANGE 22 EAST, IN THE CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN, THE CENTERLINE OF A 12' EASEMENT BOUNDED AND DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID 1/4 SECTION; THENCE N00°54'20"E ALONG THE EAST LINE OF SAID 1/4 SECTION 33.01 FEET TO A POINT ON THE NORTH LINE OF EAST LINCOLN AVENUE; THENCE S89°43'00"W ALONG THE SAID NORTH LINE AND PARALLEL WITH THE SOUTH LINE OF SAID 1/4 SECTION 219.49 FEET TO THE POINT OF BEGINNING OF LANDS TO BE DESCRIBED; THENCE N01°01'15"E 345.07 FEET; THENCE NORTHEASTERLY 52.49 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 106.00 FEET AND WHOSE CHORD BEARS N15°12'28"E 51.96 FEET; THENCE NORTHERLY 31.69 FEET ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER LIES TO THE WEST, WHOSE RADIUS IS 64.00 FEET AND WHOSE CHORD BEARS N15°12'28"E 31.37 FEET; THENCE N01°01'15"E 5.00 FEET; THENCE NORTHERLY 30.89 FEET ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER LIES TO THE WEST, WHOSE RADIUS IS 64.00 FEET AND WHOSE CHORD BEARS N12°48'26"W 30.59 FEET; THENCE NORTHWESTERLY 51.17 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER LIES TO THE NORTHEAST, WHOSE RADIUS IS 106.00 FEET AND WHOSE CHORD BEARS N12°48'26"W 50.67 FEET; THENCE N01°01'15"E 247.35 FEET; THENCE NORTHEASTERLY 51.17 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER LIES TO THE SOUTHEAST, WHOSE RADIUS IS 106.00 FEET AND WHOSE CHORD BEARS N14°50'56"E 50.67 FEET; THENCE NORTHERLY 30.89 FEET ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER LIES TO THE WEST, WHOSE RADIUS IS 64.00 FEET AND WHOSE CHORD BEARS N14°50'56"E 30.59 FEET; THENCE N01°01'15"E 5.00 FEET; THENCE NORTHERLY 31.69 FEET ALONG THE ARC OF A CURVE TO THE LEFT WHOSE CENTER LIES TO THE WEST, WHOSE RADIUS IS 64.00 FEET AND WHOSE CHORD BEARS N13°09'58"W 31.37 FEET; THENCE NORTHWESTERLY 52.49 FEET ALONG THE ARC OF A CURVE TO THE RIGHT WHOSE CENTER LIES TO THE NORTHEAST, WHOSE RADIUS IS 106.00 FEET AND WHOSE CHORD BEARS N13°09'58"W 51.96 FEET; THENCE N01°01'15"E 339.60 FEET TO A POINT ON THE SOUTH LINE OF EAST BECHER STREET AND THE POINT OF TERMINUS.

CONTAINING 15,294 SQUARE FEET OR 0.3511 ACRES

CURVE TABLE					
CURVE	LENGTH	RADIUS	DELTA	CHORD	CHORD BEARING
C1	52.49'	106.00'	28°22'26"	51.96'	N15°12'28"E
C2	31.69'	64.00'	28°22'26"	31.37'	N15°12'28"E
C3	30.89'	64.00'	27°39'22"	30.59'	N12°48'26"W
C4	51.17'	106.00'	27°39'22"	50.67'	N12°48'26"W
C5	51.17'	106.00'	27°39'22"	50.67'	N14°50'56"E
C6	30.89'	64.00'	27°39'22"	30.59'	N14°50'56"E
C7	31.69'	64.00'	28°22'26"	31.37'	N13°09'58"W
C8	52.49'	106.00'	28°22'26"	51.96'	N13°09'58"W

LINE TABLE		
LINE	BEARING	DISTANCE
L1	N0°54'20"E	33.01'
L2	S89°43'00"W	219.49'
L3	N1°01'15"E	345.07'
L4	N1°01'15"E	5.00'
L5	N1°01'15"E	247.35'
L6	N1°01'15"E	5.00'
L7	N1°01'15"E	339.60'

File: C:\GIS\2013\20130515\1313103 Property Exhibit-Area Boundary Layout 08/27/13 User: dpharis Date: 08/27/13 10:29:48 AM


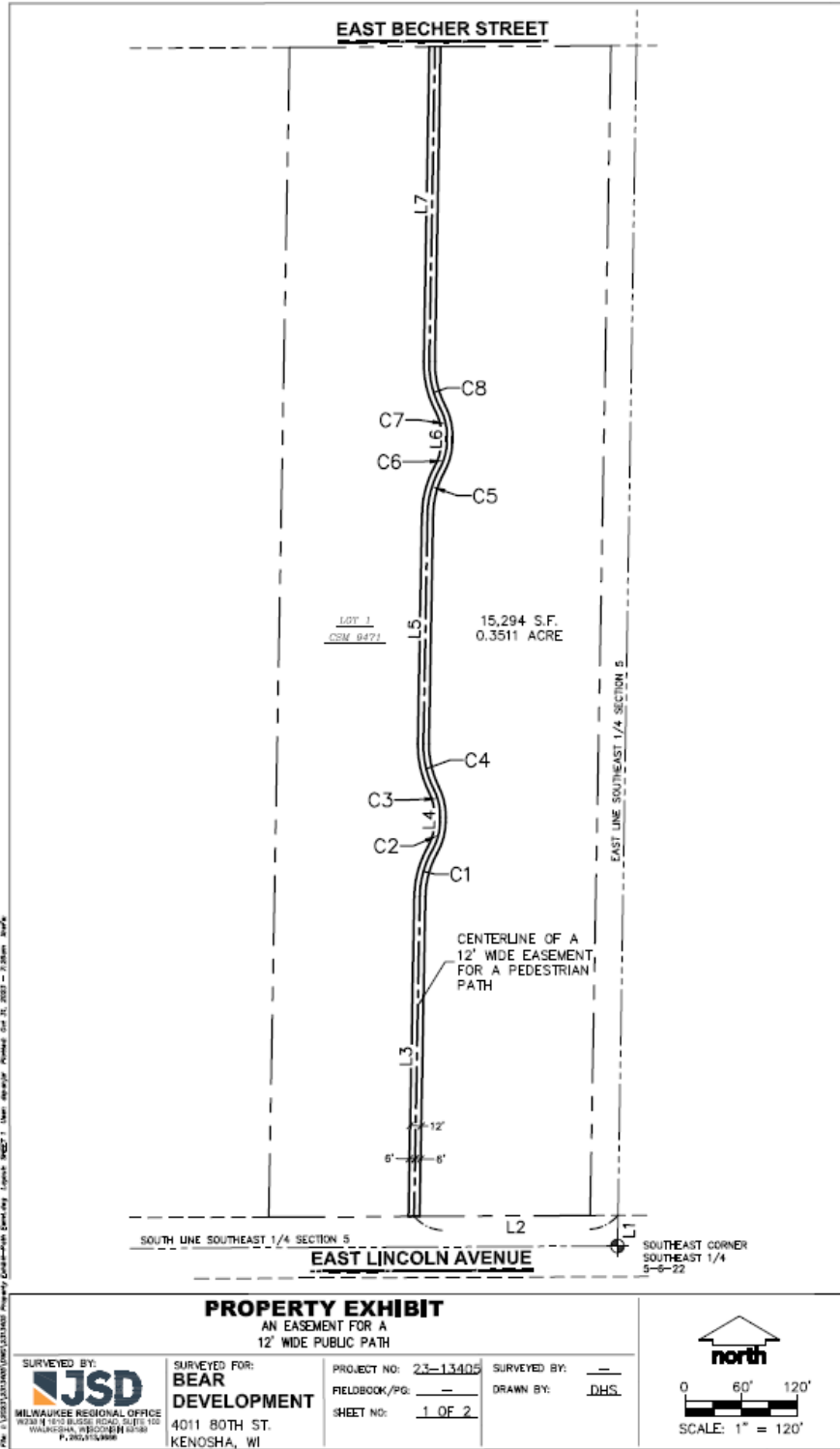
PROPERTY EXHIBIT			
AN EASEMENT FOR A 12' WIDE PUBLIC PATH			
SURVEYED BY:  JSD MILWAUKEE REGIONAL OFFICE <small>2000 N 1630 BLVD, SUITE 100 MILWAUKEE, WISCONSIN 53212 P. 262.415.4400</small>	SURVEYED FOR: BEAR DEVELOPMENT 4011 80TH ST. KENOSHA, WI	PROJECT NO: <u>23-13405</u> FIELDBOOK/PG: <u>—</u> SHEET No: <u>2 OF 2</u>	SURVEYED BY: <u>—</u> DRAWN BY: <u>DHS.</u>

EXHIBIT B CONTINUED



PROPERTY EXHIBIT AN EASEMENT FOR A 12' WIDE PUBLIC PATH

SURVEYED BY:

JSD
 MILWAUKEE REGIONAL OFFICE
 7320 N. HESS BLVD. ROOM 301E 100
 WILKESHA, WISCONSIN 53190
 P. 262.755.9999

SURVEYED FOR:
**BEAR
 DEVELOPMENT**
 4011 BOTH ST.
 KENOSHA, WI

PROJECT NO: 23-13405
FIELDBOOK/PG: —
SHEET NO: 1 OF 2

SURVEYED BY: —
DRAWN BY: DHS.

