

ACCESS AND MAINTENANCE AGREEMENT

This Agreement is made and entered into on the _____ day of _____, 2017, by and between the City of Waukesha, a Wisconsin municipal corporation (hereinafter referred to as the "City"), and the Robert F. and Carol O. Smart Family Trust and Carol O. Smart Survivor's Trust (hereinafter referred to as the "Trusts"). Together, the City and the Trusts shall be referred to as the "Parties".

WHEREAS, pursuant to Certified Survey Map No. _____ (the "CSM"), which is attached hereto and marked as Exhibit "A", the Trusts have dedicated a parcel known as "Outlot 1" to the City (hereinafter referred to as the "Property"); and

WHEREAS, prior to the dedication of the Property to the City, the Trusts were the owner of the Property and installed certain landscaping features and other plantings in and around the storm water quality and infiltration ponds (the "Ponds") which the Trusts constructed on the Property; and

WHEREAS, the Trusts are the owners of other properties adjacent to and near the Property and, therefore, have an interest in seeing that the landscaping features and other plantings on the Property and in around the Ponds are maintained; and

WHEREAS, the Trusts, their successors and assigns are desirous of having the ability to maintain such landscaping features and other plantings as set forth in this Agreement; and

WHEREAS, the City is desirous of giving the Trusts, their successors and assigns the ability to maintain the landscaping features and other plantings as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do covenant and agree as follows:

1. The recitals as set forth above are incorporated herein as though fully set forth.
2. The City does hereby grant permission to the Trusts, their agents, contractors, subcontractors, successors and/or assigns to enter the Property for the purpose of performing maintenance measures on the Property which may include, but are not necessarily limited to, removal of waste; maintenance, removal and replacement of landscaping features and other plantings on the Property; and maintenance, removal and replacement of aquatic plants, algae and other conditions which affect the appearance and water quality of the Ponds. In the event the Trusts, their successors and/or assigns enter the Property for the purposes set forth in this Agreement, all such activities shall be performed at the sole cost and expense of the Trusts, their successors, and assigns.
3. In the event the Trusts, their successors and/or assigns enter the Property for the purposes set forth in this Agreement, they agree to take such measures required to maintain the safety of the area and the public, and that they shall restrict access to only those persons involved in the activities authorized by this Agreement.

4. In the event the Trusts, their successors and/or assigns enter the Property for the purposes set forth in this Agreement, they agree to indemnify and save the City harmless from and against any and all liability, liens, claims, demands, damages, causes of action, expenses, fees, including actual attorney's fees, fines, penalties, suits, proceedings and actions of any and every kind or nature arising or growing out of or in any way connected with the activities conducted on the Property by them, their agents, employees, contractors or subcontractors.

5. The Trusts, their successors and assigns agree not to permit any liens to be placed on the Property and shall promptly pay any and all costs and fees for the activities and work conducted on the Property by their agents, employees, contractors or subcontractors. The Trusts, their successors and assigns shall obtain lien waivers from any contractors or material suppliers as may be required, and supply copies of such lien waivers to the City upon request.

6. In the event that, in the sole reasonable discretion of the City, the maintenance or other activities of the Trusts, their successors or assigns adversely impact the ability of the City to otherwise maintain the Property or the storm water facilities located thereon, or otherwise adversely impact the City's ability to complete other projects in the areas adjacent to the Property, the City may temporarily rescind the permission granted herein until such time that the City determines, in its sole reasonable discretion, that such activities may resume.

7. Nothing contained in this Agreement shall be construed as creating any type of business relationship between the Parties. The Parties shall not be deemed partners, employees, joint venturers or agents of the other by virtue of this Agreement. Neither Party shall have any right, power or authority to act in any way in the name of the other or to bind the other Party to any obligation unless specifically authorized by the other Party in writing to do so. Neither Party shall be, and shall not represent to third parties that it is, authorized or entitled to execute or agree on behalf of the other or bind the other to any agreement (whether oral or written), instrument or document of any kind whatsoever. Nothing in this Agreement shall be construed as a transfer of any ownership interest in the Property from the City to the Trusts, their successors and assigns.

8. The Parties expressly agree and understand that this Agreement is nothing more than a grant of authority from the City to the Trusts, their successors and assigns, to enter onto the Property for the purposes contemplated herein. This Agreement creates no duties or other obligations for the Trusts, their successors or assigns to, in fact, engage in such activities. Instead, the Trusts, their successors and assigns, shall have sole discretion to determine when, from time to time, they engage in the activities on the Property which are contemplated by this Agreement. Likewise, the Trusts, their successors and assigns shall have no duties or obligations to ensure that the storm water quality and infiltration ponds, or any of their components, operate properly or as they are intended to operate. The Trusts, their successors and assigns agree to take no actions which would impair or prohibit the proper operation of the storm water quality and infiltration ponds.

9. This Agreement shall be binding upon and inure to the benefit of the Parties, as well as their successors and assigns.

10. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

11. It is stated and warranted that the persons executing this Agreement have authority to make this Agreement and that no other terms or conditions exist except as otherwise stated herein.

12. Regardless of any other provision of this Agreement, the City does not waive any of the notice and immunity provisions of Wis. Stats. Sec. 893.80.

IN WITNESS WHEREOF, the Trusts and the City have executed this Agreement as of the date first written above.

Dated this 5th day of July, 2017.

ROBERT F. AND CAROL O. SMART
FAMILY TRUST

Dated this 5th day of July, 2017.

CAROL O. SMART SURVIVOR'S TRUST

By: Carol O. Smart, trustee
Carol O. Smart, Trustee

By: Carol O. Smart, trustee
Carol O. Smart, Trustee

The above Agreement is accepted by the City of Waukesha, by duly authorized Resolution of the Common Council of the City of Waukesha.

By: _____
Shawn N. Reilly, Mayor

By: _____
Gina Kozlik, City Clerk

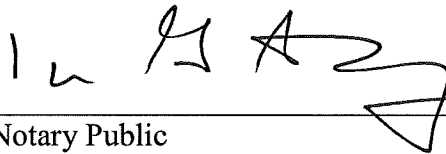
Approved as to form:

By: _____
Brian Running, City Attorney

STATE OF Wisconsin)
) ss:
COUNTY OF Waukesha)

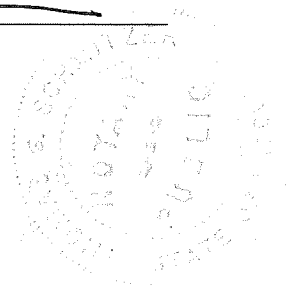
On this 5th day of July, 2017, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Carol O. Smart, Trustee of the Robert F. and Carol O. Smart Family Trust and Carol O. Smart Survivor's Trust, who is personally known to me to be the same person(s) who executed the foregoing Access and Maintenance Agreement.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.



Notary Public

My Commission ~~expires~~ is permanent



STATE OF Wisconsin)
) ss:
COUNTY OF Waukesha)

On this _____ day of _____, 2017, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Shawn N. Reilly, Mayor, and Gina Kozlik, City Clerk, of the City of Waukesha, Wisconsin, who are personally known to me to be the same persons who executed the foregoing Access and Maintenance Agreement on behalf of the City of Waukesha, Wisconsin.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal the day and year last above written.

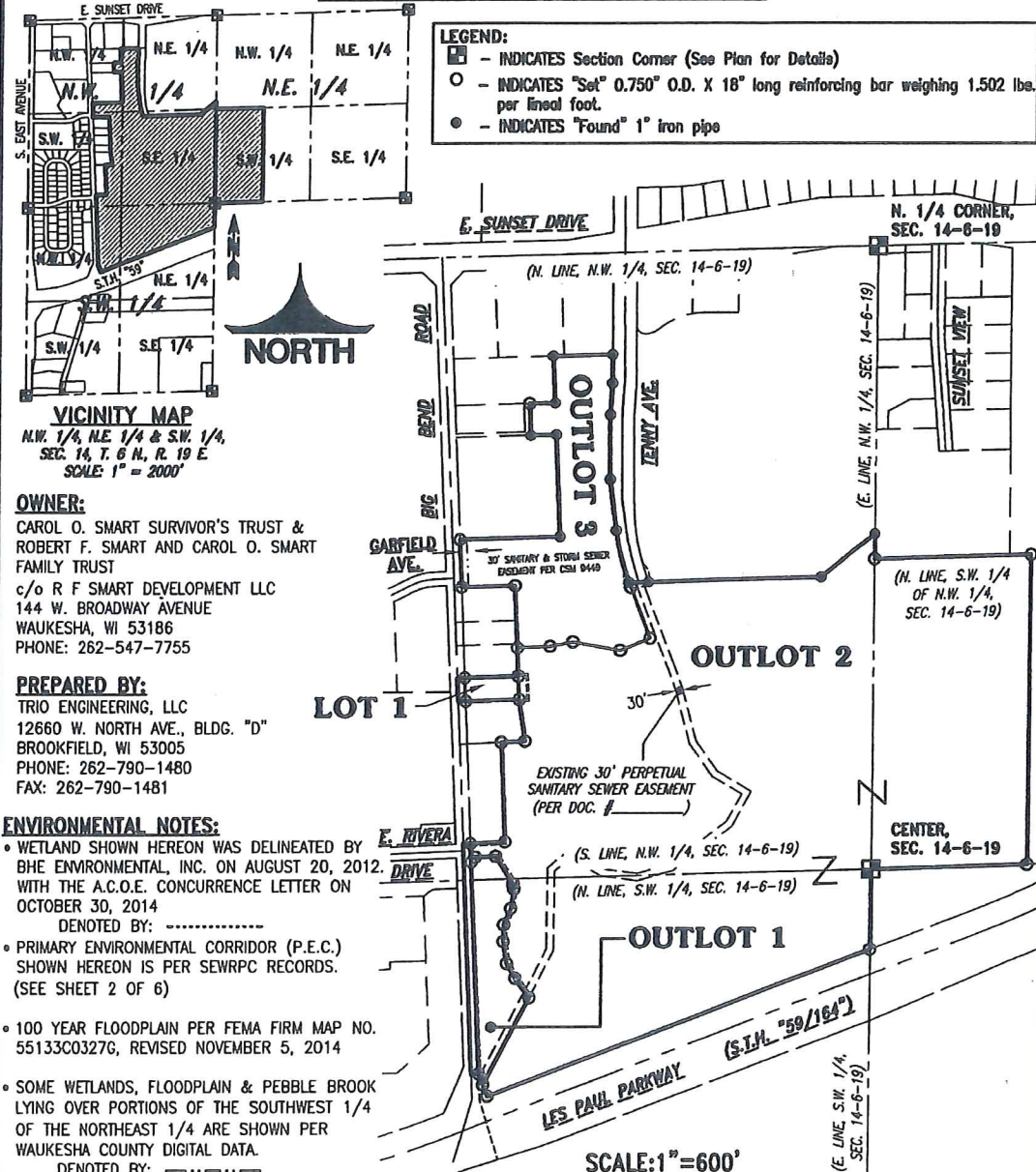
Notary Public

My Commission expires: _____

CERTIFIED SURVEY MAP NO.

BEING A REDIVISION OF OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 9449 AND LANDS LOCATED IN A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, THE SOUTHWEST 1/4, SOUTHEAST 1/4, NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 AND NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWN 6 NORTH, RANGE 19 EAST, IN THE CITY AND TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN.

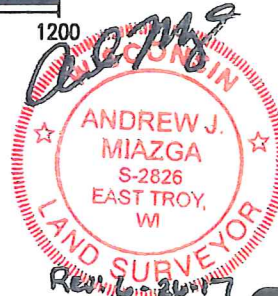
OVERALL DETAIL SHEET



NOTES:

- ALL BEARINGS ARE REFERENCED TO GRID NORTH OF THE WISCONSIN STATE PLANE COORDINATE SYSTEM, SOUTH ZONE (NAD-27), IN WHICH THE EAST LINE OF THE N.W. 1/4 OF SECTION 14, TOWN 6 NORTH, RANGE 19 EAST, BEARS S00°15'16"W.
- OUTLOT 1 SHALL BE DEDICATED TO THE CITY OF WAUKESHA FOR STORMWATER DRAINAGE PURPOSES. OUTLOT 2 TO BE RETAINED FOR FUTURE DEVELOPMENT.
- TELEPHONE LINES, ELECTRIC LINES, CABLE TELEVISION LINES, TELECOMMUNICATIONS LINES, AND OTHER SIMILAR UTILITY SERVICES SHALL BE PLACED UNDERGROUND UNLESS THE APPLICANT OR UTILITY CAN DEMONSTRATE THAT UNDERGROUNDING IS NOT FEASIBLE.
- PROPOSED STELLA DORO ACRES SUBDIVISION IS CURRENTLY IN FOR REVIEW, NOT YET RECORDED.
- STORM SEWER EASEMENT ON SHEET 3 IS FOR DRAINAGE OF STORMWATER FROM LOTS 1-5 OF PROPOSED STELLA DORA ACRES SUBDIVISION
- SEE SHEET 4 OF 9 FOR AREA TABLE

DRAFTED THIS 26th DAY OF OCTOBER, 2016
THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826



Rev. L. 2017

JOB NO. 12-011-88
SHEET 1

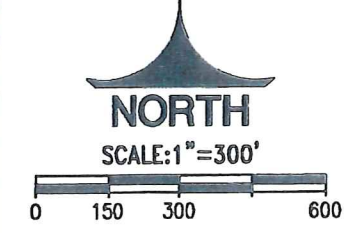
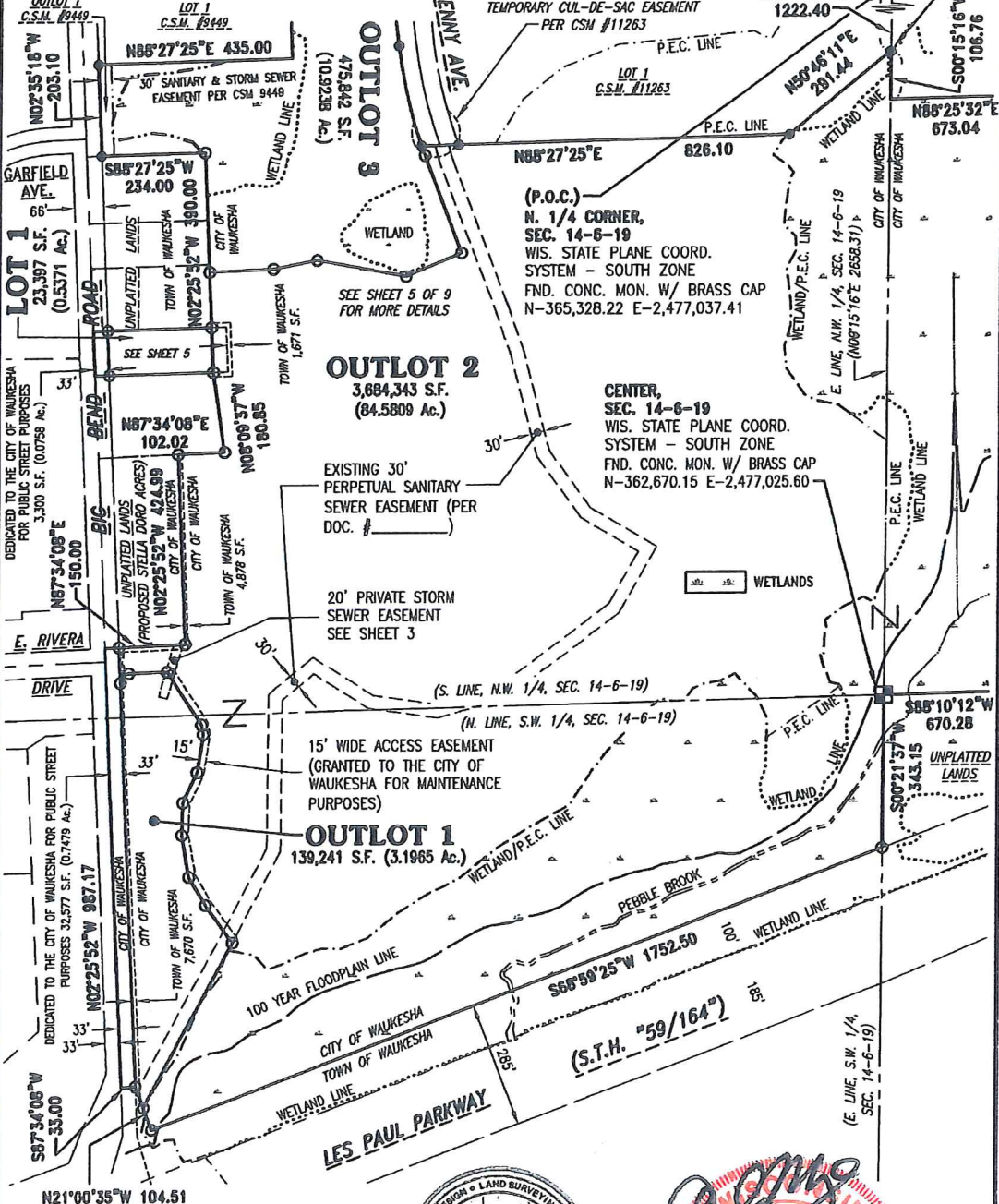
EXHIBIT

A

PENGAD 800-631-6969

CERTIFIED SURVEY MAP NO.

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12660 W. North Avenue
 Building "D"
 Brookfield, WI 53005
 Phone: (262) 790-1450
 Fax: (262) 790-1451

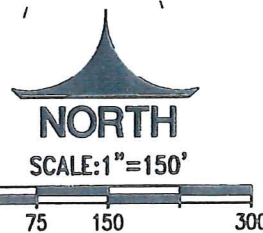
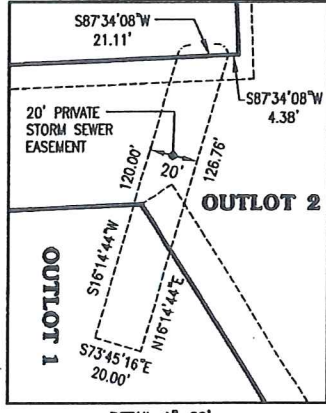
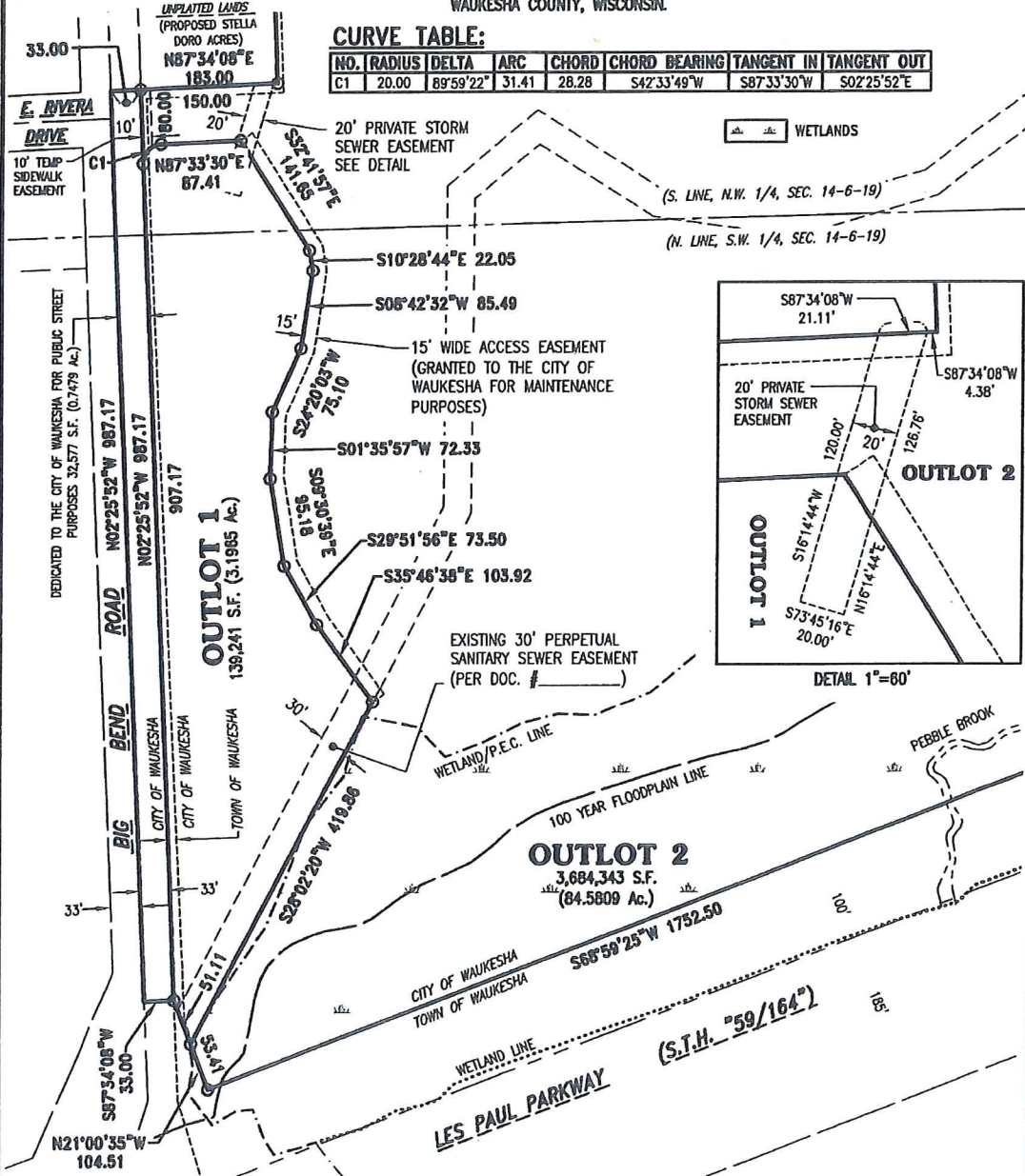


CERTIFIED SURVEY MAP NO.

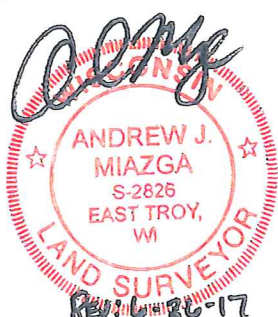
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CURVE TABLE:

NO.	RADIUS	DELTA	ARC	CHORD	CHORD BEARING	TANGENT IN	TANGENT OUT
C1	20.00	89°59'22"	31.41	28.28	S42°33'49"W	S87°33'30"W	S02°25'52"E



12660 W. North Avenue
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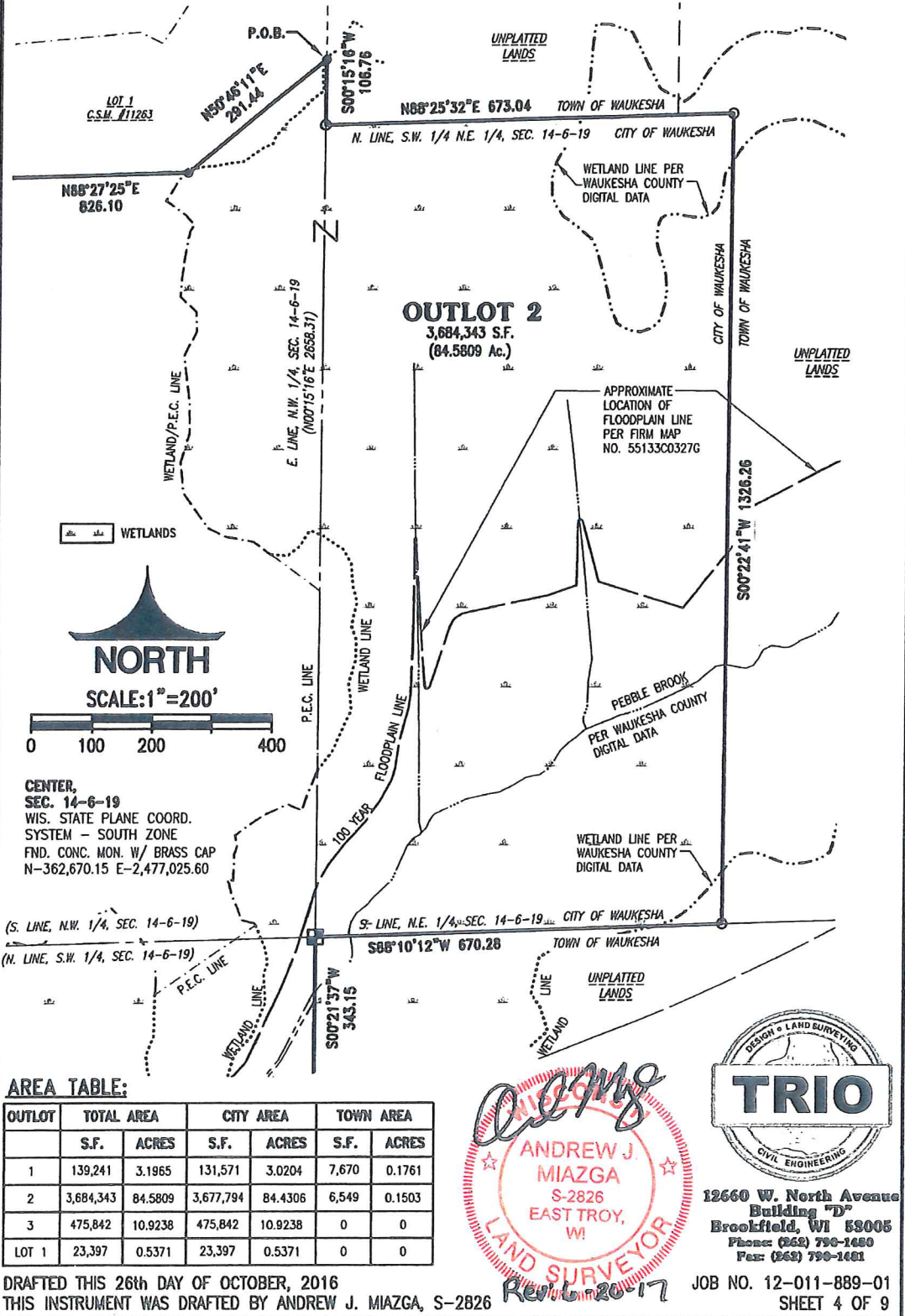


DRAFTED THIS 26th DAY OF OCTOBER, 2016
 THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826
 JOB NO. 12-011-889-01
 SHEET 3 OF 9

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CERTIFIED SURVEY MAP NO. _____

BEING A REDVISION OF OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 9449 AND LANDS LOCATED IN A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, THE SOUTHWEST 1/4, SOUTHEAST 1/4, NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 AND NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWN 6 NORTH, RANGE 19 EAST, IN THE CITY AND TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN.



AREA TABLE:

OUTLOT	TOTAL AREA		CITY AREA		TOWN AREA	
	S.F.	ACRES	S.F.	ACRES	S.F.	ACRES
1	139,241	3.1965	131,571	3.0204	7,670	0.1761
2	3,684,343	84.5809	3,677,794	84.4306	6,549	0.1503
3	475,842	10.9238	475,842	10.9238	0	0
LOT 1	23,397	0.5371	23,397	0.5371	0	0

DRAFTED THIS 26th DAY OF OCTOBER, 2016
THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826 *Rev. 6-20-17*



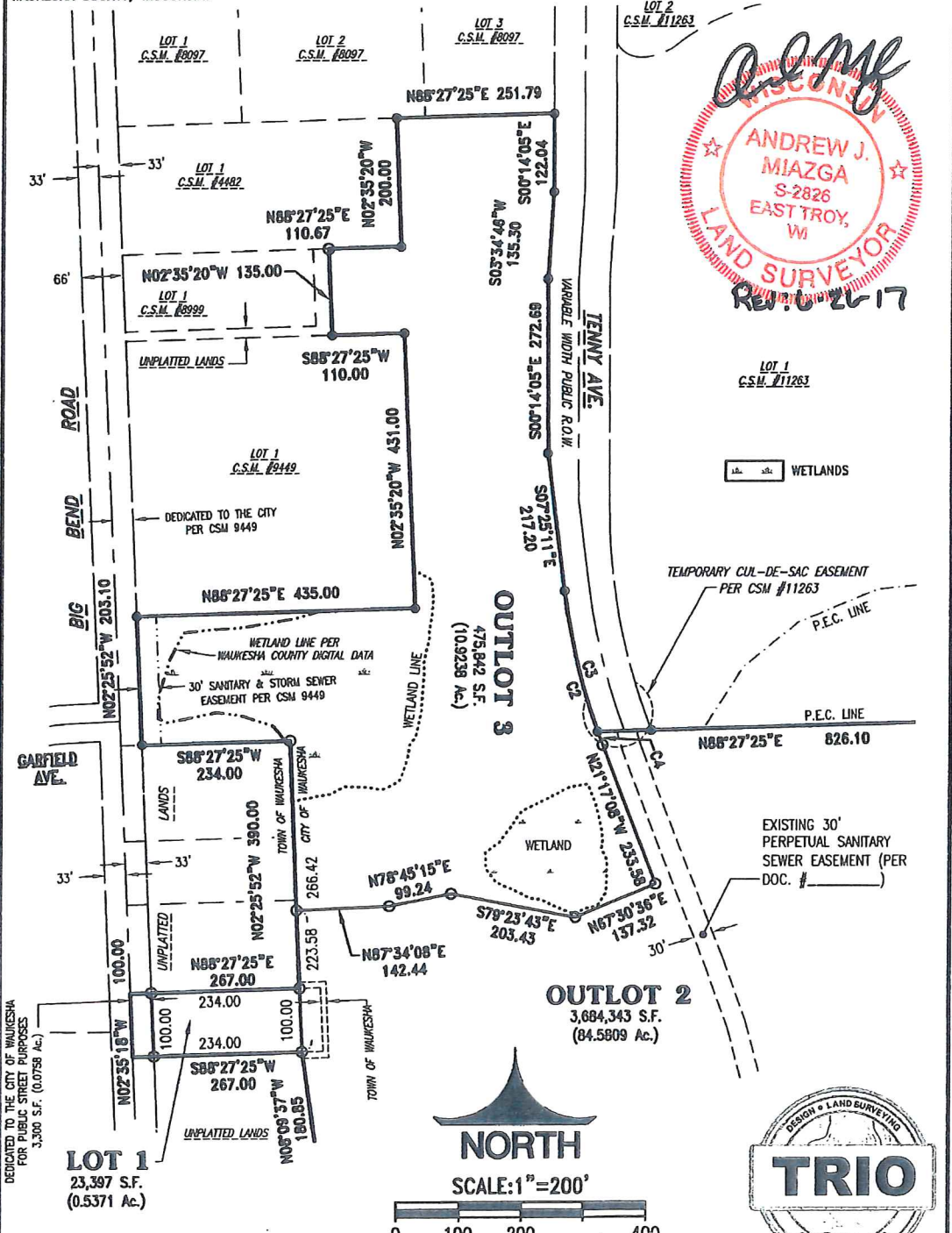
12660 W. North Avenue
Building "D"
Brookfield, WI 53005
Phone: (262) 790-1480
Fax: (262) 790-1481

JOB NO. 12-011-889-01
SHEET 4 OF 9

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CERTIFIED SURVEY MAP NO. _____

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Andrew J. Miazga
ANDREW J. MIAZGA
 S-2826
 EAST TROY, WI
LAND SURVEYOR
 REV. 10 26-17

WETLANDS

TEMPORARY CUL-DE-SAC EASEMENT PER CSM #11263

P.E.C. LINE

EXISTING 30' PERPETUAL SANITARY SEWER EASEMENT (PER DOC. # _____)



12660 W. North Avenue
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 Brookfield, WI 53005
 Phone: (262) 790-1460
 Fax: (262) 790-1461

JOB NO. 12-011-889-01
 SHEET 5 OF 9

CURVE TABLE:

NO.	RADIUS	DELTA	ARC	CHORD	CHORD BEARING	TANGENT IN	TANGENT OUT
C2	1040.00	13°51'57"	251.68	251.07	S14°21'09.5"E	S07°25'11"E	S21°17'08"E
C3	1040.00	12°37'21"	229.12	228.65	S13°43'51.5"E	S07°25'11"E	S20°02'32"E
C4	1040.00	1°14'36"	22.57	22.57	S20°39'50"E	S20°02'32"E	S21°17'08"E

DRAFTED THIS 26th DAY OF OCTOBER, 2016
 THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826

DEDICATED TO THE CITY OF WAUKESHA FOR PUBLIC STREET PURPOSES 3,300 S.F. (0.0758 Ac.)
 WA (CS00) (889) (2011-01) Survey (CS) (A) (S) (CS) (S) (M) (3) (8) (9)

CERTIFIED SURVEY MAP NO.

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SURVEYOR'S CERTIFICATE:

STATE OF WISCONSIN)
)ss
COUNTY OF WAUKESHA)

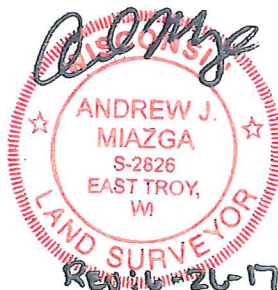
I, Andrew J. Miazga, Registered Land Surveyor, do hereby certify:

That I have surveyed, divided, mapped and dedicated a redivision Outlot 1 of Certified Survey Map No. 9449 and lands being located in a part of the Southwest 1/4 of the Northeast 1/4, the Southwest 1/4, Southeast 1/4 and Northeast 1/4 of the Northwest 1/4 and the Northwest 1/4 and Northeast 1/4 of the Southwest 1/4 of Section 14, Town 6 North, Range 19 East, in the City and Town of Waukesha, Waukesha County, Wisconsin, now being more particularly bounded and described as follows:

Commencing at the North 1/4 Corner of said Section 14, Thence South 00°15'16" West along the East line of said Northwest 1/4 Section a distance of 1222.40 feet to the place of beginning of lands hereinafter described;

Thence continuing South 00°15'16" West along said East line 106.76 feet to a point on the North line of the Southwest 1/4 of the Northeast 1/4 of said Section; Thence North 88°25'32" East along said North line 673.04 feet to a point; Thence South 00°22'41" West 1326.26 feet to a point on the South line of the Northeast 1/4 of said Section; Thence South 88°10'12" West along said South line 670.28 feet to a point marking the Center of said Section 14; Thence South 00°21'37" West along the East line of said Southwest 1/4 a distance of 343.15 feet to a point on the North Right-of-Way line of "S.T.H. 59/164" (Les Paul Parkway); Thence South 68°59'25" West along said North Right-of-Way line 1752.50 feet to a point on the East Right-of-Way line of "Big Bend Road"; Thence North 21°00'35" West 104.51 feet to a point; Thence South 87°34'08" West 33.00 feet to a point on the centerline of said "Big Ben Road". Thence North 02°25'52" West along said centerline 987.17 feet to a point; Thence North 87°34'08" East 183.00 feet to a point; Thence North 02°25'52" West 424.99 feet to a point; Thence North 87°34'08" East 102.02 feet to a point; Thence North 08°09'37" West 180.85 feet to a point; Thence South 88°27'25" West 267.00 feet to the centerline of "Big Ben Road"; Thence North 02°25'52" West along said centerline 100.00 feet to a point; Thence North 88°27'25" East 267.00 feet to a point; Thence North 02°25'52" West 390.00 feet to a point; Thence South 88°27'25" West 234.00 feet to a point on the East Right-of-Way line of "Big Ben Road"; Thence North 02°35'18" West along said East line 203.10 feet to a point on the South line of Lot 1 of Certified Survey Map No. 9449; Thence North 88°27'25" East along said South line 435.00 feet to a point on the East line of said Lot; Thence North 02°35'20" West along said East line 431.00 feet to a point on the North line of said Lot; Thence South 88°27'25" West along said North line 110.00 feet to a point on the East line of Unplatted lands; Thence North 02°35'20" West along said East line 135.00 feet to a point on the South line of Lot 1 of Certified Survey Map No. 8999; Thence North 88°27'25" East along said South line 110.67 feet to a point on the East line of said Lot; Thence North 02°35'20" West along said East line 200.00 feet to a point on the South line of Certified Survey Map No. 8097; Thence North 88°27'25" East along said South line 251.79 feet to a point; on the West Right-of-Way line of "Tenny Avenue"; Thence South 00°14'05" East along said West line 122.04 feet to a point; Thence South 03°34'46" West along said West line 135.30 feet to a point; Thence South 00°14'05" East along said West line 272.69 feet to a point; Thence South 07°25'11" East along said West line 217.20 feet to a point; Thence Southeasterly 229.12 feet along the arc of a curve whose center lies to the Northeast, whose radius is 1040.00 feet and whose chord bears South 13°43'51.5" East 228.65 feet to a point on the Westerly extension of the Southerly line of Lot 1 of Certified Survey Map No. 11263; Thence North 88°27'25" East along said Southerly line and its extension 826.10 feet to a point; Thence North 50°46'11" East along said Southerly line 291.44 feet to the point of beginning of this description.

Continued on Sheet 7 of 9.



Drafted this 26th Day of October, 2016

THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826

Job. No. 12-011-889-01

SHEET 6 OF 9

CERTIFIED SURVEY MAP NO.

BEING A REDIVISION OF OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 9449 AND LANDS LOCATED IN A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, THE SOUTHWEST 1/4, SOUTHEAST 1/4 AND NORTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 AND NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWN 6 NORTH, RANGE 19 EAST, IN THE CITY AND TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN.

SURVEYOR'S CERTIFICATE: (Cont'd)

Said Parcel contains 4,358,700 Square Feet (or 100.0619 Acres) of land, more or less.

That I have made such survey, land division and map by the direction of **CAROL O. SMART SURVIVOR'S TRUST AND ROBERT F. AND CAROL O. SMART FAMILY TRUST, c/o R F SMART DEVELOPMENT LLC**, owners of said lands.

That such map is a correct representation of all the exterior boundaries of the land surveyed and the land division thereof made.

That I have fully complied with the provisions of Chapter 236 of the Wisconsin Statutes and the Platting Ordinances of the City and Town of Waukesha in surveying, dividing and mapping the same.

Dated this 26th day of October, 20 17.

REV: 6-26-17




Andrew J. Miazga, P.L.S.
Registered Land Surveyor, S-2826
TRIO ENGINEERING, LLC
12660 W. North Avenue, Bldg. "D"
Brookfield, WI 53005
Phone: (262)790-1480 Fax: (262)790-1481

Drafted this 26th Day of October, 2016

THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826

Job. No. 12-011-889-01

SHEET 7 OF 9

CERTIFIED SURVEY MAP NO.

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OWNER'S CERTIFICATE OF DEDICATION:

CAROL O. SMART SURVIVOR'S TRUST AND ROBERT F. AND CAROL O. SMART FAMILY TRUST, c/o R F SMART DEVELOPMENT LLC, as owners, do hereby certify that it caused the land described on this map to be surveyed, divided, mapped and dedicated as represented on this map in accordance with the provisions of Chapter 236 of the Wisconsin Statutes and the Platting Ordinances of the City and Town of Waukesha, this day of _____, 20 _____.

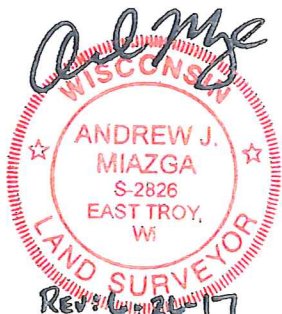
CAROL O. SMART SURVIVOR'S TRUST AND ROBERT F. AND CAROL O. SMART FAMILY TRUST, c/o R F SMART DEVELOPMENT LLC

Carol O. Smart, Trustee

STATE OF WISCONSIN)
) ss
COUNTY OF)

Personally came before me this _____ day of _____, 20_____, the above named Carol O. Smart, Trustee of the Carol O. Smart Survivor's Trust and Robert F. Smart and Carol O. Smart Family Trust, c/o R F Smart Development, LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same, on behalf of the Trust.

Print Name: _____
Notary Public, _____ County, WI
My commission expires: _____



Drafted this 26th Day of October, 2016
THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826

Job. No. 12-011-889-01
SHEET 8 OF 9

CERTIFIED SURVEY MAP NO. _____

BEING A REDIVISION OF OUTLOT 1 OF CERTIFIED SURVEY MAP NO. 9449 AND LANDS LOCATED IN A PART OF THE SOUTHWEST 1/4 OF THE NORTHEAST 1/4, THE SOUTHWEST 1/4, SOUTHEAST 1/4 AND NORTHEAST 1/4 OF THE NORTHWEST 1/4 AND THE NORTHWEST 1/4 AND NORTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 14, TOWN 6 NORTH, RANGE 19 EAST, IN THE CITY AND TOWN OF WAUKESHA, WAUKESHA COUNTY, WISCONSIN.

PLAN COMMISSION APPROVAL:

Approved by the Planning Commission of the City of Waukesha on this _____ day of _____, 20 _____.

Shawn N. Reilly, Chairman

COMMON COUNCIL APPROVAL:

Approved by the Common Council of the City of Waukesha on this _____ day of _____, 20 _____, by Resolution No. _____.

Shawn N. Reilly, Mayor

Gina Kozlik, City Clerk

TOWN OF WAUKESHA TOWN BOARD APPROVAL:

Approved by the Town Board of the Town of Waukesha on this _____ day of _____, 20 _____.

Kathy Nickolaus, Town Clerk

John Marek, Town Chairman



Drafted this 26th Day of October, 2016 *REV. 6-26-17*
THIS INSTRUMENT WAS DRAFTED BY ANDREW J. MIAZGA, S-2826
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Job. No. 12-011-889-01
SHEET 9 OF 9