

WAUKESHA COUNTY, WI
REGISTER OF DEEDS
James R Behrend

Recorded On: 04/08/2015 3:50:47 PM

Total Fee: \$30.00 Page(s): 22
Transfer Tax: \$0.00

AFFIDAVIT

Recording Area

Name and Return Address

First American Title Co.
10 W. Mifflin St., Ste 302
Madison, WI 53703

WAKC1007052

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT – DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

WRDA Rev. 12/22/2010

Affidavit

Re: Lot Seven (7) of Certified Survey Map No. 11104 recorded in Volume 109 of Certified Survey Maps, pages 34, as Document No. 4046895 located in the City of Waukesha, Waukesha County, Wisconsin.

Tax Parcel No. WAKC1007052

Patricia P. Katte, being duly sworn, states that:

1. She is a Manager/Authorized Signer of First American Title Insurance Company;
2. That she has custody of a closing file closed by First American Title for lease and financing closing on October 10, 2013;
3. That attached to this affidavit is a photocopy of an executed Driveway Agreement from the above referenced loan file;
4. That before recording, the original of said Driveway Agreement was misplaced and cannot be found;
5. That the Driveway Agreement is a valid easement effective as of September 12, 2013;
6. That this affidavit is being recorded for the purpose of putting all persons dealing with the above-referenced property on notice of the execution, delivery and existence of said Driveway Agreement.

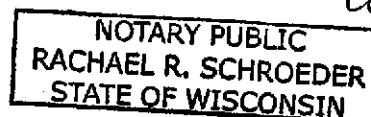
Dated this Rd 3rd day of ^{APRIL} March, 2015

Patricia P. Katte
By: PATRICIA P. KATTE

Personally came before me this Rd 3rd day of ^{APRIL} March, 2015 the above named ^{PATRICIA} P. KATTE to me known to be the person who executed the foregoing instrument.

Rachael R. Schroeder
Rachael R. Schroeder
My Commission Exp: 8/16/15

DANE COUNTY, STATE OF
WI



Beres Foods, LLC

By: Tammy A. Mervin
Cary S. Beres, President

Personally came before me this 3rd day of April, 2015 the above named
Cary S. Beres as President of Beres Foods, LLC to me known to be
the person who executed the foregoing instrument.

Tammy A. Mervin
Notary Public

My commission expires:

6/20/2016

Jelivann Waukesha, LLC

By: Bret A. Backus, Manger

TAMMY A. MERVIN
Notary Public
State of Wisconsin

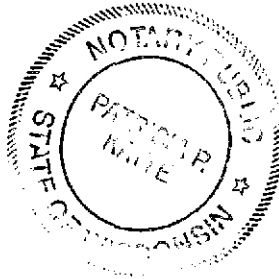
Personally came before me this 2nd day of April, 2015 the above named Bret A. Backus,
Manager, Jelivann Waukesha, LLC to me known to be the person who executed the
foregoing instrument.

Patricia P. Katt
Notary Public PATRICIA P. KATTE

My commission expires:

09/08/2017

Drafted by: Cathleen D.W. Heath



Beres Foods, LLC

By:

Personally came before me this _____ day of April, 2015 the above named _____ as _____ of Beres Foods, LLC to me known to be the person who executed the foregoing instrument.

Notary Public

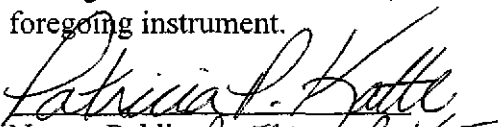
My commission expires: _____

Jelivann Waukesha, LLC



By: Bret A. Backus, Manger

Personally came before me this 2nd day of April, 2015 the above named Bret A. Backus, Manager, Jelivann Waukesha, LLC to me known to be the person who executed the foregoing instrument.


Notary Public *PATRICIA P. KATTE*

My commission expires: 09/08/2017

Drafted by: Cathleen D.W. Heath

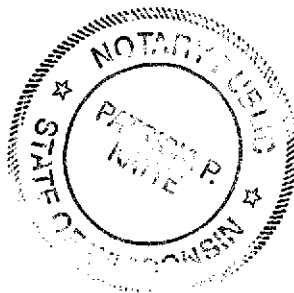


EXHIBIT C

DRIVEWAY AGREEMENT E/s 8-16

DOCUMENT NO.

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

JELIVANN WAUKESHA LLC
c/o Raven Property Group, Inc.
7818 Big Sky Drive, Suite 201
Madison, WI 53719

Property Identification Numbers:
See attached Exhibit A

THIS driveway agreement ("Agreement") is made and entered into as of the 17 day of September 2013, by JELIVANN WAUKESHA LLC, a Wisconsin limited liability company ("JW") and Beres Foods, LLC, ("BERES").

RECITALS

A. BERES has a leasehold interest in the middle 52,272 square feet (1.20 acres) of Lot 6 of Certified Survey Map No. 10945, recorded on February 3, 2012, in Book 106, Page 303-308, as Document No. 3891686, in the City of Waukesha, Waukesha County, State of Wisconsin (the "BERES Parcel"). A depiction of the BERES Parcel is contained in Exhibit A.

B. JW is the owner of Lot 6 of Certified Survey Map No. 10945, recorded on February 3, 2012, in Book 106, Page 303-308, as Document No. 3891686, in the City of Waukesha, Waukesha County, State of Wisconsin. For the purpose of this Agreement that portion of Lot 6 excluding the BERES Parcel and excluding the south 1.135 acres of Lot 6 shall be called the "JW Parcel". A depiction of the JW Parcel is contained in Exhibit A.

C. Exhibit B depicts a private driveway (the "Driveway") which will be used for the benefit of the BERES Parcel and the JW Parcel to the extent provided in this Agreement. The location of the Driveway is shown on Exhibit B. A legal description of the driveway is attached as Exhibit C.

D. BERES has agreed to construct the Driveway and any utilities associated with the initial construction of the of the Driveway that will be installed under the Driveway (collectively, the "Driveway Construction Work") to be shared by the BERES Parcel and the JW Parcel, as depicted on Exhibit B attached hereto.

FOR CONSIDERATION, and intending to be legally bound, BERES and JW ratify and approve the Recitals and further agrees and declares:

1. Driveway Improvements:

In accordance with this Agreement, BERES hereby agrees to design, bid and construct, or engage a qualified contractor or contractors to construct, the Driveway at its sole cost with reimbursement from JW as set forth in Article 1.1 below. The Driveway Construction Work will be subject to the following terms and conditions:

- A. **Permits.** BERES's completion of the Driveway Construction Work will be subject to receipt of all necessary permits and government approvals necessary therefor. BERES will, at its own cost and expense and with the cooperation of JW, apply for all such permits and government approvals.
- B. **Construction License.** JW hereby grants to BERES, its agents, successors and assigns, a temporary license to enter onto the JW Parcel to the extent reasonably needed for the Driveway Construction Work.
- C. **Plan Approval and Contracts.** BERES will complete the Driveway Construction Work in a good and workmanlike manner, in compliance with all applicable laws, and according to City of Waukesha specifications and plans prepared by BERES and agreed upon by BERES and JW (the "Driveway Plans"). If JW fails to respond to BERES's request for approval of the Driveway Plans within ten (10) business days after JW's receipt thereof, the Driveway Plans will be deemed to be approved by JW. The Driveway Plans will be the joint property of BERES and JW, and each party will have the right to use the Driveway Plans to complete the Driveway Construction Work as provided herein. BERES shall use its best efforts to obtain and enforce construction warranties from all contractors employed by BERES for the Driveway Construction Work.
- Promptly after their execution, BERES shall give JW true copies of all contracts (the **Contracts**) for the Driveway Construction Work. Each Contract shall expressly provide that the Contract will be automatically assigned to JW if JW so elects in JW's exercise of its rights under this Agreement.
- D. **Schedule.** BERES will commence construction of the Driveway Construction Work on or before November 1, 2013 (the "Driveway Construction Commencement Date"), and complete the Driveway Construction Work prior to the opening of its restaurant on the BERES Parcel but no later than June 30, 2014 (the "Driveway Construction Completion Date"), subject to any delay in such commencement or completion caused in whole or in part by weather conditions, acts of God, or other factors beyond BERES's reasonable control, and to the terms of Subsections 1.A and 1.B above.
- E. **Lien Waivers.** After completion of the Driveway Construction Work by BERES, BERES will provide JW with copies of final lien waivers from all contractors engaged by BERES for the Driveway Construction Work.
- F. **Removal of Debris.** BERES will cause the construction area and surrounding property to be free from accumulation of waste materials and debris caused by the Driveway Construction Work completed by BERES, and restore the surface of the JW Parcel to its prior condition to the extent such condition is affected by the Driveway Construction Work completed by BERES. At completion of the construction of the Driveway by BERES, BERES will cause to be removed all waste materials, debris, rubbish, contractor tools, construction equipment, machinery and surplus materials at BERES's cost and leave the property in clean condition. If BERES fails to clean up or cause the property to be cleaned up as provided in this Section, JW may do so and the cost thereof will be charged to BERES.
- G. **Insurance.** BERES and any of BERES's contractors, consultants, and agents will not commence the Driveway Construction Work until BERES obtains or causes its contractors to obtain, at its own expense, all insurance required herein. Upon request, BERES will deliver to JW certificates or other evidence of the insurance required hereby. Such insurance must have the form stipulated in the following paragraphs:
- i. **Workers' Compensation Insurance** for all persons employed by BERES, or by contractors that BERES employs, involved in carrying out the Driveway Construction Work. This

insurance will be in strict accordance with the requirements of the most current and applicable State of Wisconsin Workers' Compensation Insurance Laws.

- ii. Full Commercial General Liability Insurance, naming JW and JW's mortgagee as an "additional insured" and providing coverage for both bodily injury and property damage with single limit coverage of not less than Two Million Dollars (\$2,000,000).
 - iii. Errors and Omissions Insurance providing coverage for errors attributed to any of BERES's consultants covering contract performance disputes and any other professional liability issues, in an amount not less than One Million Dollars (\$1,000,000).
- H. **Indemnity.** BERES will indemnify, defend and hold harmless JW, its successors and their respective agents and employees from any claims of third parties (including reasonable attorneys' fees and disbursements) arising out of the Driveway Construction Work completed by BERES due to negligent acts, errors or omissions, whether or not such claims are solely caused by BERES, its agents or employees, or any persons acting on their behalf as it relates solely to the Driveway Construction Work.
- I. **Reimbursement from JW.** JW agrees to reimburse BERES for 50% of BERES costs for the Driveway Construction Work up to and not exceeding \$5,000.00 within 10 days after the issuance of a building permit for the first building constructed on the remaining portion of Lot 6 that will use the Driveway and receipt of a statement and copies of reasonable backup documentation from BERES.

2. **JW's Option to Construct.**

In the event BERES fails to commence construction of the Driveway Construction Work on or before the Driveway Construction Commencement Date, or complete the Driveway Construction Work on or before December 31, 2013, JW will have the right to complete all Driveway Construction Work upon notice to BERES. All Driveway Construction Work completed by JW will be subject to the following:

- A. In the event that JW elects to undertake the completion of the Driveway Construction Work, JW will be obligated to:
- i. Acquire all necessary permits and approvals referenced in Section 1.A of this Agreement that have not been previously acquired by BERES.
 - ii. Construct the Driveway in accordance with the Driveway Plans. JW shall use its best efforts to obtain and enforce construction warranties from all contractors employed by JW for the Driveway Construction Work.
 - iii. Provide BERES with copies of final lien waivers from all contractors engaged by JW for all Driveway Construction Work completed by JW.
 - iv. Indemnify, defend and hold harmless BERES, its agents and its employees, successors and assigns from any claims of third parties (including reasonable attorneys' fees and disbursements) arising out of all Driveway Construction Work completed by JW due to negligent acts, errors or omissions, whether such claims are caused by JW, its agents or employees, or any persons acting on their behalf.
 - v. Cause the construction area and surrounding property to be free from accumulation of waste materials and debris caused by the Driveway Construction Work completed by JW,

and restore the surface of the BERES Parcel to its prior condition to the extent such condition is affected by the Driveway Construction Work completed by JW. At completion of the construction of the Driveway by JW, JW will cause to be removed all waste materials, debris, rubbish, contractor tools, construction equipment, machinery and surplus materials at JW's cost and leave the property in clean condition. If JW fails to clean up or cause the property to be cleaned up as provided in this Section, the then-owner of the BERES Parcel may do so and the cost thereof will be charged to JW.

B. JW and any of JW's contractors, consultants, and agents will not commence any Driveway Construction Work until JW obtains, at its own expense or causes its contractors to obtain, all insurance required herein. Upon request, JW will deliver to BERES certificates or other evidence of the insurance required hereby. Such insurance must have the form stipulated in the following paragraphs:

- i. Workers' Compensation Insurance for all persons employed by JW, or by contractors that JW employs, involved in carrying out the Driveway Construction Work. This insurance will be in strict accordance with the requirements of the most current and applicable State of Wisconsin Workers' Compensation Insurance Laws.
- ii. Full Commercial General Liability Insurance naming BERES as an "additional insured" and providing coverage for both bodily injury and property damage with single limit coverage of not less than Two Million Dollars (\$2,000,000).
- iii. Errors and Omissions Insurance providing coverage for errors attributed to any of JW's consultants covering contract performance disputes and any other professional liability issues, in an amount not less than One Million Dollars (\$1,000,000).

C. If JW exercises its rights under this Section 2, BERES shall and hereby does grant JW a license to enter the BERES Parcel comparable in all respects to the license granted BERES in Section 1B.

D. If JW exercises its rights under this Section 2, BERES agrees to reimburse JW for 50% of JW reasonable costs for the Driveway Construction Work up to and not exceeding \$5,000 within 10 days after receipt of a statement and copies of reasonable backup documentation from JW.

3. Ingress and Egress Easements.

(a) BERES and JW hereby grant, create and establish for the benefit the BERES Parcel and The JW Parcel a non-exclusive, perpetual easement over the Driveway for ingress and egress to the roadway contained in Outlot 1 of Certified Survey Map No. 10944, recorded on February 3, 2012, in Vol. 106, Pages 292-302, as Document No. 3891685 in the City of Waukesha, Waukesha County, State of Wisconsin for pedestrians, truck and other motor vehicles. In addition, each party shall have the right to grant utility easements under the Driveway for underground utilities for the benefit of the BERES Parcel and the JW Parcel, and to install such underground utilities provided that any party (or their agents or contractors) constructing such underground utilities shall: (i) provide all parties with reasonable notice prior to the start of construction; (ii) diligently complete the construction; and (iii) do so in such manner that does not close any portion of the Driveway for ingress and egress and does not interfere with the use of the Driveway; and (iv) only use the procedure commonly known as directional boring to install such utilities. The parties benefitting from the easement shall only have the right to repair and maintain such utilities on the Driveway under the same conditions as above. Subsequent to the commencement of the Driveway Construction Work, neither party shall allow the Driveway to be used for construction access to its parcel and shall notify all contractors of this prohibition.

(b) Except for the construction and repair of underground utilities as provided in Section 3(a), no party shall permanently alter, obstruct, close or block the Driveway without the prior written consent of all parties, which consent may be withheld at such parties' sole discretion. But BERES or any other party repairing and maintaining the Driveway shall have the right to temporarily close the affected portion of the Driveway, provided that the person gives the other party reasonable advance notice of the temporary closure and proceeds to perform the repair or maintenance diligently and in such manner to reasonably minimize interference with use of the Driveway.

(c) No party shall have the right to use the Driveway except as expressly provided in this Agreement.

4. Repair and Maintenance of the Driveway.

(a) Except as otherwise provided in this Agreement, BERES at its sole expense shall repair, replace and maintain and remove snow and debris from the Driveway (the "Driveway Costs"). With regard to the repair, replacement and maintenance of the Driveway, BERES shall observe the following:

- i. Maintain and repair as needed the surface of the Driveway to keep it smooth and evenly covered with the type of surfacing materials originally installed, or such substitutes as shall be in all respects equal the original materials in quality, appearance and durability.
- ii. Maintain and replace as needed the sub-surface of the Driveway, including any utilities located under the Driveway which have been installed for the mutual benefit of both the BERES Parcel and the JW Parcel.
- iii. Remove all debris, filth and refuse and sweep and remove snow and ice as required.
- iv. Repaint striping, markers, directional signs and any similar items as necessary to maintain them in first class condition.
- v. Provide power to the streetlights along the Driveway, and replace light bulbs as needed.

(b) BERES as the owner of the BERES Parcel and any successor owner of the BERES Parcel, not the owners of the JW Parcel, shall have the sole obligation to repair and maintain and remove snow and debris from the Driveway, but the owners of the JW Parcel shall contribute toward the payment of Driveway Costs. The owners of the JW Parcel shall initially pay BERES a total annual payment of \$1,000.00 in advance on the first day of each calendar year commencing on the earlier of (i) January 1 of the year following the issuance of a building permit for the first building constructed on the JW Parcel, and (ii) January 1, 2018 (in either event, the "Payment Commencement Date"). On January 1 of each fifth year following the Payment Commencement Date, the annual payment shall be adjusted. The adjusted payment shall be the payment owing immediately prior to the applicable January 1 times 110%. Any such annual payment due from the owner of the JW Parcel which is not paid within fifteen (15) days following its scheduled due date shall bear interest from the due date until paid at the rate of 12% per year. The annual payment described above shall represent the owner the JW Parcel's contribution towards the Driveway Costs for maintenance described in Section 4(a) (i) - 2(a)(v) above. However, any maintenance, repair, and replacement costs incurred by the owner of the BERES Parcel (the "Other Costs") for work not described in Section 4(a)(i) - 2(a)(v) (Other Costs include but are not limited to any costs for pavement removal, replacement and overlays or reconstruction) shall be shared between the owner of the BERES

Parcel and the owner of the JW Parcel beginning on the Payment Commencement Date. The owner of the JW Parcel shall reimburse the owner of the BERES Parcel for fifty percent (50%) of the Other Costs upon receipt of copies of paid invoices for all such work. Any such payment due from the owner of the JW Parcel for the Other Costs which is not paid within fifteen (15) days following its scheduled due date shall bear interest from the due date until paid at the rate of 12% per year.

Each owner of the JW Parcel shall pay a fractional share of all such payments. The fraction of each owner shall be measured by a fraction, the numerator of which shall be the area of the owner's portion of the JW Parcel, and the denominator of which shall be the area of the JW Parcel. The fraction shall be adjusted effective the first day of the first month following a change in any such area.

(c) Notwithstanding any other provision of this Agreement, if the owner of the BERES Parcel or the JW Parcel grant any easements for utilities or otherwise cause to be installed or repaired any utilities resulting in any damage to the Driveway, or its agents or employees negligently or willfully damages the Driveway, that owner shall be solely responsible for all costs of repairing the damage.

(d) Each owner of the JW Parcel hereby grants BERES a lien against the owner's portion of the JW Parcel to secure all such payments. If any owner does not make its payment within 15 days following its scheduled due date, BERES shall have the right to record a statement of lien against the owner's portion with the Register of Deeds for Waukesha County. BERES shall have the right to enforce any such lien by any procedure from time to time allowed by Wisconsin law for the foreclosure of mortgages.

Upon the sale, exchange or other conveyance of all or a portion of the JW Parcel, the grantor shall not have any liability for the payments which accrue after the date of recording of the conveyance. But the grantor shall remain liable for any payment which accrued to the date of such recording.

Upon the voluntary conveyance of all or a portion of the JW Parcel, the grantee shall be jointly and severally liable with the grantor for all installments of the payment which are unpaid as of the date of conveyance. The grantee shall have the right to recover the amount of such unpaid assessments from the grantor, subject to any contrary agreement between grantor and grantee allocating responsibility for the annual payments.

The owner of any portion of the JW Parcel and any prospective grantee of such an owner shall have the right to request a written statement from BERES setting forth the amount of any unpaid payment. A grantee shall not be liable for any unpaid payments which are in excess of the amounts stated in BERES's statement, nor shall the property acquired by the grantee be subject to a lien for any such unpaid amount. But the grantor shall continue to be liable for any such excess.

(e) If the holder of any mortgage which is superior to a lien recorded by BERES forecloses the mortgage, or accepts a deed in lieu of foreclosure, the lien of BERES's shall be automatically extinguished, without the need to name BERES's as defendant in the foreclosure and without the need to take any other action. The mortgagor, however, shall continue to be personally liable for payment of the amounts secured by the lien. For the purpose of determining priority, a lien in favor of BERES shall be deemed to arise and be effective on the date of its recording.

(f) Except as otherwise expressly provided in this Agreement, BERES and JW shall be fully responsible for the care and maintenance of its Parcel and shall have no responsibility whatsoever for the care and maintenance of the other's Parcel.

(g) If there is a failure by BERES to perform its obligations under this Agreement which continues for 15 days, or in situations involving potential danger to the health or safety of persons in, on

or about the Driveway, JW, after giving BERES 10 days written notice of the default, may, at its election, cure such failure or breach on behalf of BERES. In case of any emergency, such as the need to remove snow and debris, JW may elect to cure promptly without waiting for such 15 or 5 days, and need only give BERES such oral or written notice as is feasible under the circumstances. Any amount which JW shall reasonably expend for such cure of BERES's default shall be paid by BERES to JW on demand without contest, upon delivery of its invoice, together with interest at the lower of (1) the rate of 12% per year, or (2) the maximum rate permissible from time to time under applicable law, from the date of the expenditure or the date when it shall have become due to the date of payment in full. As used in this Agreement, "JW" shall mean any owner from time to time of a portion of the JW Parcel. BERES hereby grants JW a lien against the BERES Parcel to secure BERES's obligations under this Subsection 4(g). Sections 4(d) and 4(e) shall apply to this lien.

(h) The typical hours of operation for the restaurant on the BERES Parcel are Monday thru Friday from 10 am to 11 pm, Saturday from 10 am to 11 pm and Sunday from 10 am to 11 pm. The restaurant is closed on Christmas, Easter, Thanksgiving. BERES's obligation to remove snow and ice from the Driveway shall not extend beyond those necessary to remove snow and ice from the Driveway during their typical hours of operation. If the business(es) located on the JW Parcel have typical hours of operation that are different than those of BERES, then JW, at JW's sole expense, shall have the right to remove snow and ice from the Driveway as to accommodate that business(es). LW, PLEASE INSERT HOURS.

5. Curb Cuts to Driveway.

Neither BERES nor JW shall have the right to construct a curb cut to the Driveway other than the curb cuts depicted on Exhibit B.

6. Use.

(a) BERES's and JW's tenants, customers, employees, agents and invitees shall have the non-exclusive right to use the Driveway in common with each other only for the purpose of obtaining the pedestrian, truck and vehicular access described in Section 3 and for the installation, use and repair of utilities as provided in Section 3.

(b) BERES and JW shall not obstruct or interfere with the free flow of pedestrian, truck and vehicular traffic over and upon the Driveway, except as expressly allowed in this Agreement.

7. Taxes. BERES (pursuant to the terms of the Land Lease dated September 12, 2013, between BERES and JW), and JW shall pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Driveway owned by such party.

8. Miscellaneous.

(a) Intentionally omitted.

(b) Headings. Section and sub-Section headings are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

(c) Waiver. No delay or omission by any party to exercise any right or power occurring upon any non-compliance or failed performance by another party under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver. A waiver by any of the parties of any of the covenants, conditions or agreements of this Agreement, to be performed by another shall not be

construed to be a waiver of any succeeding breach or of any other covenant, condition or agreement in this Agreement.

(d) Notices. If at any time, it is necessary or convenient for one of the parties to serve any notice, demand or communication upon the other party, such notice, demand or communication must be in writing, signed by the party serving notice, sent by a nationally recognized overnight carrier or registered or certified United States mail, return receipt requested and postage or other charges prepaid. If intended for BERES, the notice must be addressed to:

Beres Foods LLC
Attn: Gary J. Beres
N28W30219 Red Hawk Ct.
Pewaukee, WI 53072-4270

If intended for JW, the notice must be addressed to:

JELIVANN WAUKESHA LLC
c/o Raven Property Group, Inc.
Attn: Manager
7818 Big Sky Dr., Ste. 201
Madison, WI 53719

(e) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.

(f) Time. Time shall be of the essence for all deadlines stated in this Agreement

(g) Covenants Running With the Land. Except as otherwise expressly provided, all of the easements and provisions set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the parties and their respective successors and assigns. This Agreement shall create equitable servitudes in favor of each Property benefited by this Agreement.

(h) Partial Invalidity. If any provisions or portions of this Agreement or their application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such provision or portion to any other persons or other circumstances shall not be affected; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(i) Conveyance. Upon a party's conveyance of all or a portion of its interest in its Property, the transferring party shall be relieved of any further liability under this Agreement arising on and after the date of transfer and the transferee shall be deemed to have assumed all obligations of the transferor arising on and after the date of transfer, provided that the transferring party must deliver notice to the other party setting forth the date of transfer, and the name and address of the transferee.

(j) Force Majeure. The parties shall be excused from performing any obligation under this Agreement, except obligations to pay sums of money, in the event and so long as the performance of such obligation is prevented, delayed, retarded or hindered by the following: act of God; fire; earthquake; flood; explosion; action of the elements; war; invasion; insurrection; riot; mob violence; sabotage; inability to procure or general shortage of labor; equipment facilities, materials or suppliers in the open market; failure of transportation; strike; lockout; action of labor union; condemnation; requisition; law; orders of

governmental, civil, military or naval authorities; or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of the obligated party.

(k) Partnership. Neither anything contained in this Agreement nor any acts of the parties shall be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between the parties, nor to make any party liable for any debt or obligation of any other party.

(l) Not a Public Dedication. Nothing contained shall be deemed to be a gift or dedication to the general public for any public purpose whatsoever. This Agreement shall be strictly limited to and for its express purposes. Each party hereby reserves the right to eject or cause the ejection from Property of any person or persons not authorized, empowered or privileged to use the Driveway. Additionally, each party hereby reserves the right to close its portion of the BERES Parcel and the JW Parcel for such reasonable periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by any third parties; provided, however, that prior to closing off any such portion, the party seeking to close shall give notice to all other parties, and shall conduct the closing in such manner to reasonably minimize interference with use of the Driveway for ingress and egress.

(m) Attorneys' Fees. In case of any litigation in connection with this Agreement, the prevailing party or parties shall have the right to collect their reasonable attorneys' fees and disbursements from the other parties.

(n) Estoppel Certificates. Each owner or tenant of any Property, within 20 days after receipt of a written request from any other owner or tenant, shall from time to time provide the requesting party a certificate binding upon such owner or tenant stating: (a) to the best of such owner's or tenant's knowledge, whether any party to this Agreement is in default or violation of this Agreement and, if so, identifying such default or violation; and (b) that this Agreement is in full force and effect and identifying any amendments to the Agreement as of the date of such certificate.

(o) Bankruptcy. In the event of any bankruptcy affecting any owner or occupant of any Property, this Agreement shall, to the maximum extent permitted by law, be considered an agreement that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person.

(p) Enforcement. In case of a default, the enforcing owner or owners shall have any rights of self-help expressly provided in this Agreement, and shall also have all rights and remedies allowed by applicable law, including claims for damages and injunctive relief.

(q) No Termination for Default. Notwithstanding any other provision of this Agreement, no default under this Agreement shall entitle any owner to cancel, rescind, or otherwise terminate this Agreement. No default under this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust upon any Property made in good faith for value, but this Agreement shall be binding upon and effective against any owner of such Property covered by this Agreement whose title is acquired by foreclosure, trustee's sale, or otherwise.

(r) Counterparts. This Agreement may be signed in counterparts.

9. Indemnity. The owner of each Property as indemnitor (the Indemnitor) shall defend, indemnify and hold the owner of the other Property harmless from and against all claims, liabilities and expenses (including reasonable attorneys' fees) relating to accidents, injuries, loss or damage of or to any person or property to the extent caused by negligent, intentional or willful acts or omissions of the Indemnitor, its contractors, employees, agents, or others acting on behalf of the Indemnitor.

10. Amendment and Termination.

(a) Amendment. This Agreement may be amended from time to time by a written amendment signed by all of the owners of the BERES Parcel and the JW Parcel and recorded with the Register of Deeds for Waukesha County, Wisconsin, provided that no such amendment shall materially and adversely affect the vested rights of any party to this Agreement without the written consent of that party.

(b) Term/Termination. The term of this Agreement shall commence on the date that this Agreement is filed of record with the Register of Deeds office for Waukesha County, Wisconsin, and except as otherwise herein specifically provided, shall continue in perpetuity. Notwithstanding the foregoing, this Agreement may be terminated by recording with the Register of Deeds office for Waukesha County, Wisconsin, a written instrument of termination signed by all of the then-owners of the BERES Parcel and the JW Parcel.

11. Insurance. During the term of this Agreement the owners of the BERES Parcel and the JW Parcel shall each keep in effect a general policy of liability insurance for their respective parcels with such limits of coverages as are then commercially reasonable, but not less than single-limit coverage of \$2,000,000.

12. Exhibits. The exhibits to this Agreement are:

A: Parcel Identification Numbers for and Depictions of the BERES Parcel and the JW Parcel.

B: Depiction of the Driveway

C: Legal description of the Driveway

Beres Foods, LLC

By: [Signature]
Gary J. Beres, President

Date: 9-12-13

JELIVANN WAUKESHA LLC

By: [Signature]
Bret A. Backus, Manager

Date: 20 SEP 13

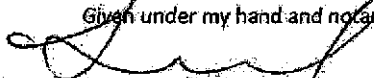
ACKNOWLEDGMENT - BERES FOODS LLC
(Attestation required)

STATE OF WISCONSIN }
 } SS
COUNTY OF WAUKESHA }

I, Lisa Wood, a Notary Public in and for the county and state aforesaid, CERTIFY that Gary J. Beres, as Manager, of Beres Foods, LLC, a Wisconsin limited liability company, who is personally known to me to

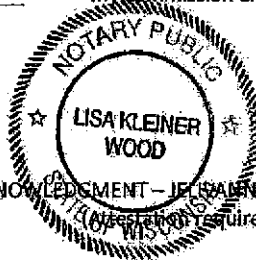
be the same person whose name is subscribed to the foregoing instrument as such authorized parties appeared before me this day in person and acknowledged that they signed, sealed and delivered this instrument as their free and voluntary act as such authorized parties and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 12 day of September 2013



Notary Public

My commission expires is permanent



STATE OF WISCONSIN)

) SS:

COUNTY OF DANE)

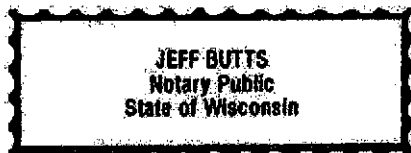
I, JEFF BUTTS, a Notary Public in and for the county and state aforesaid, CERTIFY that Bret Backus, as Manager, of JELIVANN WAUKESHA, LLC, a Wisconsin limited liability company, who is personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such authorized parties appeared before me this day in person and acknowledged that they signed, sealed and delivered this instrument as their free and voluntary act as such authorized parties and as the free and voluntary act of the company for the uses and purposes therein set forth.

Given under my hand and notarial seal, this 10th day of September 2013



Notary Public

My commission expires 7.17.16



CONSENT OF MORTGAGEE

Undersigned Woodman's Food Market, Inc., the mortgagee of the BERES Parcel and the JW Parcel, hereby consents to this Agreement and further subordinates the lien of its mortgage to this Agreement.

Dated September 10, 2013

Woodman's Food Market, Inc.

By: 
Bret Backus, Vice President-Real Estate

STATE OF WISCONSIN

)

) ss.

COUNTY OF DANE

)

Personally came before me this ____ day of _____, 2013 the above-named Bret Backus to me known to be the Vice President-Real Estate of Woodman's Food Market, Inc., and the person who executed the foregoing instrument on behalf of such lender, by its authority, and acknowledged the same.

Notary Public, State of Wisconsin

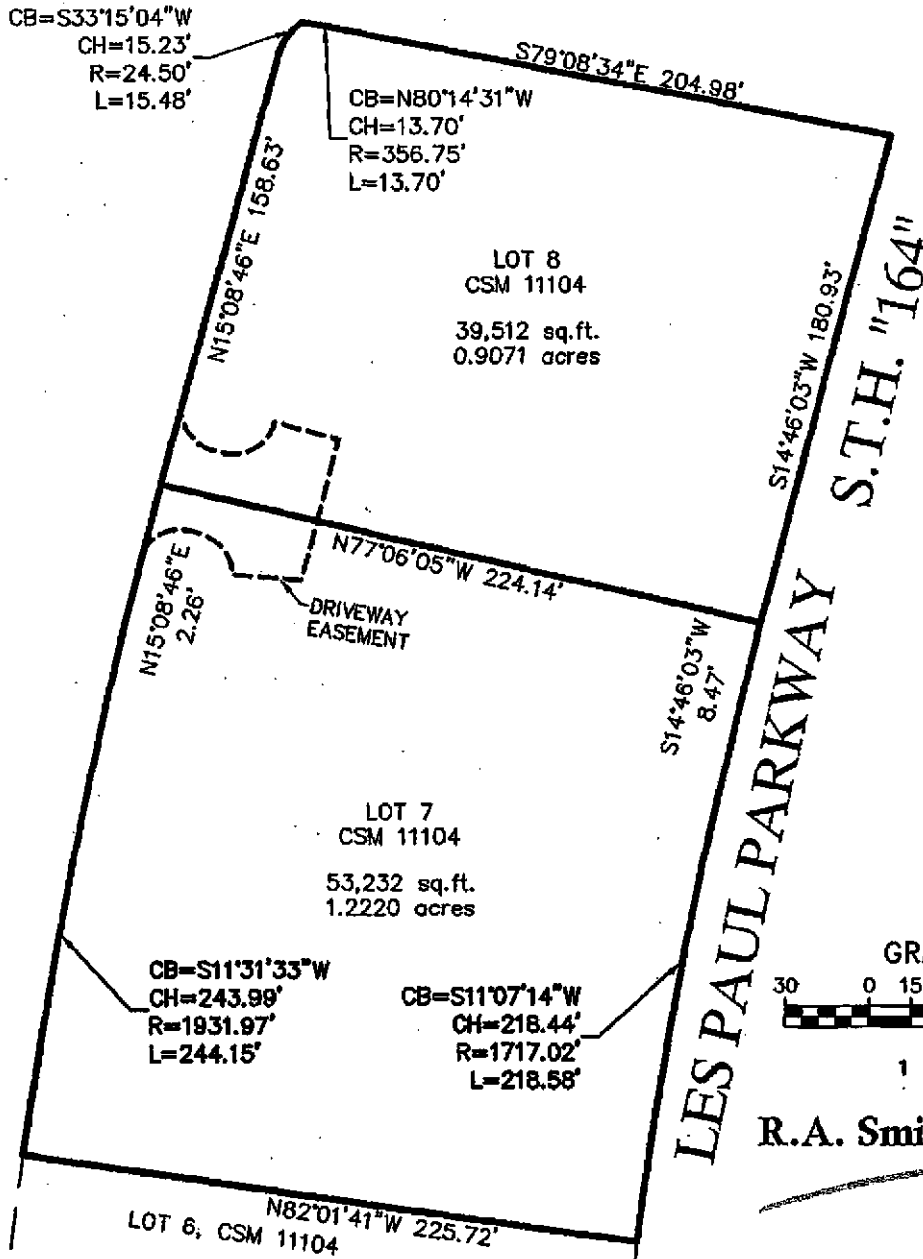
My Commission Expires: _____

EXHIBIT A
Parcel Identification Numbers and Depictions of the BERES Parcel and the JW Parcel:

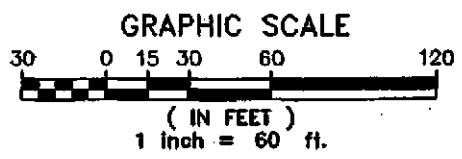
The BERES Parcel:
The JW Parcel:

EXHIBIT A

Part of Lots 7 & 8, Certified Survey Map No. 11104, being in the Northwest 1/4 of the Southwest 1/4 of Section 36, all in Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin.



R.A. Smith National, Inc.



R.A. Smith National, Inc.

*Beyond Surveying
and Engineering*

16745 W. Bluemound Road, Brookfield WI 53005
262-781-1000 Fax 262-797-7373 www.rasmithnational.com
Appleton, WI Orange County, CA Pittsburgh, PA

S:\165825\dwg\
FX201B.dwg\MAIN STREET

EXHIBIT B
Depiction of Driveway

EXHIBIT B

Part of Lots 7 & 8, Certified Survey Map No. 11104, being in the Northwest 1/4 of the Southwest 1/4 of Section 36, all in Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin.

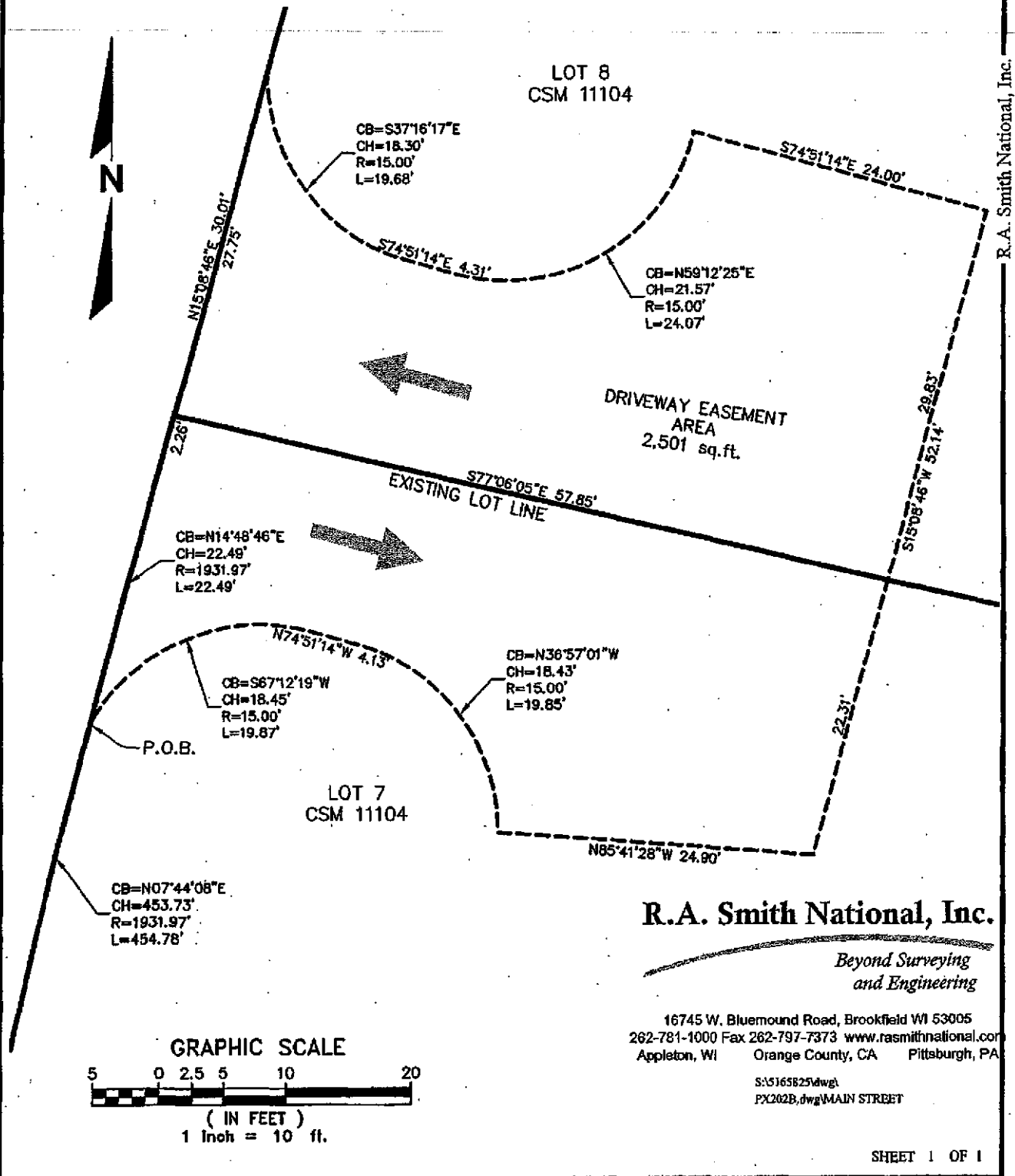


EXHIBIT C
Legal Description of Driveway

EXHIBIT C

LEGAL DESCRIPTION OF DRIVEWAY EASEMENT

Part of Lots 7 & 8 of Certified Survey Map No. 11104, being in the Northwest 1/4 of the Southwest 1/4 of Section 36, all in Town 7 North, Range 19 East, in the City of Waukesha, Waukesha County, Wisconsin, bounded and described as follows:

Commencing at the Southwesterly corner of Lot 6 of Certified Survey Map No. 11104, thence Northeasterly 454.78 feet along the West line of Lots 6 & 7 of said Map and the arc of a curve whose center lies to the Southeast, whose radius is 1931.97 feet and whose chord bears North 07°44'08" East 453.73 feet to the point of beginning of lands to be described; thence Northeasterly 22.49 feet along said West line and the arc of a curve whose center lies to the Southeast, whose radius is 1931.97 feet and whose chord bears North 14°48'46" East 22.49 feet to a point; thence North 15°08'46" East along said West line 2.26 feet to the North line of said Lot 7; thence North 15°08'46" East along the West line of Lot 8 a distance of 27.75 feet to a point; thence Southeasterly 19.68 feet along the arc of a curve whose center lies to the Northeast, whose radius is 15.00 feet and whose chord bears South 37°16'17" East 18.30 feet to a point; thence South 74°51'14" East 4.31 feet to a point; thence Northeasterly 24.07 feet along the arc of curve whose center lies to the Northwest, whose radius is 15.00 feet and whose chord bears North 59°12'25" East 21.57 feet to a point; thence South 74°51'14" East 24.00 feet to a point; thence South 15°08'46" West 29.83 feet to a proposed division line; thence continuing South 15°08'46" west 22.31 feet to a point; thence North 85°41'28" West 24.90 feet to a point; thence Northwesterly 19.85 feet along the arc of a curve whose center lies to the Southwest, whose radius is 15.00 feet and whose chord bears North 36°57'01" West 18.43 feet to a point; thence North 74°51'14" West 4.13 feet to a point; thence Southwesterly 19.87 feet along the arc of a curve whose center lies to the Southeast, whose radius is 15.00 feet and whose chord bears South 67°12'19" West 18.45 feet to a point of beginning.

Containing 2,501 Square feet.

Prepared By: John Casucci

Project No.: 165825

Date: 10/07/13