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11/03/2015 10:32AMJOHN LA FAVE
REGISTER OF DEEDS
Milwaukee County, WI
AMOUNT: \$30.00

FEE EXEMPT #: 0

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***This document has been
electronically recorded and
returned to the submitter. ****LIMITED TERM CONSERVATION EASEMENT**

This LIMITED TERM CONSERVATION EASEMENT is granted on the 1st day of November 2015 by Milwaukee World Festival, Inc. (the Landowner) to the Milwaukee Metropolitan Sewerage District, a special-purpose municipal corporation established under Wis. Stat. §200.21 *et seq.* (the Easement Holder).

RECITALS

A. Property. The Landowner is the sole owner of property located in Milwaukee County, Wisconsin, which is described in Exhibit A and depicted on a map shown in Exhibit B (the Property). The Property is at 639 and 607 East Polk Street and 110 North Marshall Street, Milwaukee, Wisconsin 53202.

This Limited Term Conservation Easement applies only to certain areas of the Property that have conservation value. These areas contain infrastructure designed to capture and hold stormwater in place to reduce the quantity and improve the quality of runoff (green infrastructure). Exhibit C shows the areas within the Property that are subject to this Limited Term Conservation Easement.

B. Conservation Values. In its present state, the Property has conservation value because it has the following green infrastructure: 3,325 square feet of porous pavement, 4,500 square feet of bioswale, 629 square feet of green roof, and 18 trees, providing a total retention capacity of 44,804 gallons.

C. Baseline Documentation. The condition of the Property, and specifically the green infrastructure, is further documented in an inventory of relevant features, characteristics, and conservation values, which is on file at the office of the Easement Holder and incorporated into this Conservation Easement by reference. This Baseline Report consists of reports, maps, photographs and other documentation that both parties agree provides an accurate representation of the condition of the green infrastructure at the time of the conveyance of this Easement and which is intended to serve as an objective, but not exclusive, baseline for monitoring compliance with the terms of this Easement.

Recording Area

Name and Return Address:

Milwaukee Metropolitan
Sewerage District
Attention: Delbert Dettmann
260 West Seeboth Street
Milwaukee, Wisconsin 53204

Parcel Identification Number:

3922187113
3922187114
3922185113

- D. Public Policies.** Preserving the conservation values of the green infrastructure will serve the public policy set forth in Section 700.40 of the Wisconsin Statutes, which provides for the creation and conveyance of conservation easements to protect the natural, scenic and open space values of real property; assure its availability for agriculture, forestry, recreation or open space uses; protect natural resources; maintain or enhance air and water quality; and preserve archaeological sites.
- E. Qualified Organization.** The Easement Holder is qualified to hold conservation easements under Section 700.40(1)(b) because it is a governmental body empowered to hold an interest in real property under the laws of the State of Wisconsin.
- F. Conservation Intent.** The Landowner and Easement Holder share the common purpose of preserving the conservation values for a period of ten years. The Landowner will restrict the use of the green infrastructure to protect the conservation values. In addition, the Landowner intends to convey to the Easement Holder and the Easement Holder agrees to accept the right to monitor and enforce these restrictions.
- G. Funding Provided by Easement Holder.** The Easement Holder has provided funding to the Landowner for the installation of the green infrastructure. The Landowner acknowledges the receipt and sufficiency of this funding.

GRANT OF CONSERVATION EASEMENT

In consideration of the facts recited above, the mutual covenants contained in this Easement, the funding provided by the Easement Holder, and the provisions of Section 700.40 of the Wisconsin Statutes, the Landowner voluntarily grants and conveys to the Easement Holder a Conservation Easement (the Easement) for a period of ten years over, in, and to the green infrastructure. This Easement consists of the following terms, rights, and restrictions:

- 1. Purpose.** The purpose of this Easement is to require the Landowner to keep, preserve, and maintain the green infrastructure, which consists of 3,325 square feet of porous pavement, 4,500 square feet of bioswale, 629 square feet of green roof, and 18 trees, providing a total retention capacity of 44,804 gallons.
- 2. Effective Dates.** This Easement becomes effective on November 1, 2015, and terminates on November 1, 2025.
- 3. Recording of Easement.** The Easement Holder will record this Easement at the Easement Holder's expense.
- 4. Operation and Maintenance.** The Landowner will operate and maintain the green infrastructure so that it remains functional for the entire term of this Easement. The Landowner is solely responsible for operation, maintenance, and evaluating performance.
- 5. Additional Reserved Rights of the Landowner.** The Landowner retains all rights associated with ownership of the Property, including the right to use the Property, and invite others to use the Property, in any manner that is not expressly restricted or prohibited by the Easement or inconsistent with the purpose of the Easement. However, the Landowner may not exercise

these rights in a manner that would adversely impact the conservation values of the green infrastructure.

The Landowner expressly reserves the right to sell, give, bequeath, mortgage, lease, or otherwise encumber or convey the green infrastructure, provided that:

- 5.1 The encumbrance or conveyance is subject to the terms of this Easement.
- 5.2 The Landowner incorporates the terms of this Easement by reference in any subsequent deed or other legal instrument by which the Landowner transfers any interest in all or part of the green infrastructure.
- 5.3 The Landowner notifies the Easement Holder of any conveyance in writing within fifteen days after the conveyance and provides the Easement Holder with the name and address of the recipient of the conveyance and a copy of the legal instrument transferring rights.
- 5.4 Failure of the Landowner to perform any act required in Subparagraphs 5.2 and 5.3 does not impair the validity of this Easement or limit its enforceability in any way.

6. Easement Holders Rights and Remedies. To accomplish the purpose of this Easement, the Landowner expressly conveys to the Easement Holder the following rights and remedies:

- 6.1 Preserve Conservation Values. The Easement Holder has the right to preserve and protect the conservation values of the green infrastructure.
- 6.2 Prevent Inconsistent Uses. The Easement Holder has the right to prevent any activity or use of the green infrastructure that is inconsistent with the purpose of this Easement and to require the restoration of green infrastructure damaged by any inconsistent activity or use, pursuant to the remedies set forth below.
- 6.3 Enter the Property. The Easement Holder has the right to enter the Property to: inspect it and monitor compliance with the terms of this Easement; obtain evidence for use in seeking judicial or other enforcement of the Easement; and otherwise exercise its rights under the Easement. The Easement Holder will: provide prior notice to the Landowner before entering the Property, comply with all of the Landowner's safety rules, and avoid unreasonable disruption of the Landowner's business activities.

7. Remedies for Violations. The Easement Holder has the right to enforce the terms of this Easement and prevent or remedy violations through appropriate legal proceedings.

- 7.1 Notice of Problems. If the District identifies problems with the green infrastructure, then the District will initially attempt to resolve the problems collaboratively. The Easement Holder will notify the Landowner of the problems and request remedial action within a reasonable time.

- 7.2 **Notice of Violation and Corrective Action.** If the Easement Holder determines that a violation of the terms of this Easement has occurred or is threatened and attempts at collaboration have failed to remedy the violation, then the Easement Holder will give written notice of the violation or threatened violation and allow at least thirty (30) days to correct the violation. If the Landowner fails to respond, then the Easement Holder may initiate judicial action. The requirement for an initial notice of violation does not apply if, in the discretion of the Easement Holder, immediate judicial action is necessary to prevent or mitigate significant damage to the green infrastructure or if good faith efforts to notify the Landowner are unsuccessful.
- 7.3 **Remedies.** When enforcing this Easement, the Remedies available to the Easement Holder include: temporary or permanent injunctive relief for any violation or threatened violation of the Easement, the right to require restoration of the green infrastructure to its condition at the time of the conveyance of this Easement, specific performance or declaratory relief, and recovery of damages resulting from a violation of the Easement or injury to any of the conservation values of the green infrastructure.
- 7.4 **Non-Waiver.** A delay or prior failure of the Easement Holder to discover a violation or initiate enforcement proceedings does not waive or forfeit the right to take any action necessary to assure compliance with the terms of this Easement.
- 7.5 **Waiver of Certain Defenses.** The Landowner hereby waives any defense of laches, such as failure by the Easement Holder to enforce any term of the Easement, or estoppel, such as a contradictory statement or action on the part of the Easement Holder.
- 7.6 **Acts Beyond the Landowner's Control.** The Easement Holder may not bring any action against the Landowner for any injury or change in the green infrastructure resulting from causes beyond Landowner's control, including, but not limited to, natural disasters such as fire, flood, storm, natural earth movement and natural deterioration, or prudent actions taken by the Landowner under emergency conditions to prevent or mitigate damage from such causes, provided that the Landowner notifies the Easement Holder of any occurrence that has adversely impacted or interfered with the purpose of the Easement.

8. General Provisions.

- 8.1 **Amendment.** The Landowner and Easement Holder may amend this Easement in a written instrument executed by both parties and recorded in the Office of the Register of Deeds for the county in which the Property is located, provided that no amendment will be allowed if, in the judgment of the Easement Holder it:
- a. diminishes the conservation values of the green infrastructure,

- b. is inconsistent with the purpose of the Easement,
- c. affects the duration of the Easement, or
- d. affects the validity of the Easement under Section 700.40 of the Wisconsin Statutes.

8.2 Assignment. The Easement Holder may convey, assign or transfer its interests in this Easement to a unit of federal, state or local government or to an organization that is (a) qualified within the meaning of Section 170(h)(3) of the Internal Revenue Code and in the related regulations or any successor provisions then applicable, and (b) qualified to hold conservation easements under Section 700.40 of the Wisconsin Statutes. As a condition of any assignment or transfer, any future holder of this Easement is required to carry out its purpose for the remainder of its term. The Easement Holder will notify the Landowner of any assignment at least thirty (30) days before the date of such assignment. However, failure to give such notice does not affect the validity of assignment or limit its enforceability in any way.

8.3 Captions. The captions in this Easement have been inserted solely for convenience of reference and are not part of the Easement and have no effect on construction or interpretation.

8.4 Controlling Law and Liberal Construction. The laws of the State of Wisconsin govern the interpretation and performance of this Easement. Ambiguities in this Easement will be construed in a manner that best effectuates the purpose of the Easement and protection of the conservation values of the green infrastructure.

8.5 Counterparts. The Landowner and Easement Holder may execute this Easement in two or more counterparts. Each counterpart will be equally valid as an original instrument. In the event of any disparity between the counterparts produced, the recorded counterpart will be controlling.

8.6 Entire Agreement. This instrument sets forth the entire agreement of the Landowner and Easement Holder with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

8.7 Extinguishment. This Easement may be terminated or extinguished prior to the expiration of its term, whether in whole or in part, only through judicial proceedings in a court of competent jurisdiction. Furthermore, the Easement may be extinguished only under the following circumstances: (a) all or part of the Property is taken by exercise of the power of eminent domain or acquired by purchase in lieu of condemnation, or (b) the Landowner and Easement Holder agree that a subsequent, unexpected change in the condition of or surrounding the Property makes accomplishing the purpose of the Easement impossible.

8.8 Joint Obligation. The obligations imposed by this Easement upon the Landowner are joint and several.

8.9 Ownership Responsibilities, Costs and Liabilities. The Landowner retains all responsibilities and will bear all costs and liabilities related to the ownership of the green infrastructure, including, but not limited to, the following:

- a. *Operation, upkeep and maintenance.* The Landowner is responsible for the operation, upkeep and maintenance of the green infrastructure.
- b. *Control.* In the absence of a judicial decree, nothing in this Easement establishes any right or ability in the Easement Holder to:
 - (i) exercise physical or managerial control over the day-to-day operations of the green infrastructure;
 - (ii) become involved in the management decisions of the Landowner regarding the generation, handling or disposal of hazardous substances; or
 - (iii) otherwise become an operator of the green infrastructure within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), or similar laws imposing legal liability on the owner or operator of real property.
- c. *Permits.* The Landowner remains solely responsible for obtaining applicable government permits and approvals for any construction or other activity or use permitted by this Easement, and all such construction, other activity, or use will be undertaken in accordance with applicable federal, state and local laws, regulations and requirements.
- d. *Indemnification.* The Landowner releases and will hold harmless, indemnify, and defend the Easement Holder and its members, directors, officers, employees, agents and contractors and the heirs, personal representatives, successors and assigns of each of them (collectively “Indemnified Parties”) from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, judgments or administrative actions, including, without limitation, reasonable attorneys’ fees, arising from or in any way connected with:
 - (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or around the green infrastructure, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties;

- (ii) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation, including without limitation, CERCLA, by any person other than the Indemnified Parties, in any way affecting, involving or related to the green infrastructure;
- (iii) the presence or release in, on, from, or about the green infrastructure, at any time, of any substance now or hereafter defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, unless caused solely by any of the Indemnified Parties.

e. *Taxes.* The Landowner will pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the green infrastructure by competent authority (collectively "Taxes"), including any taxes imposed upon or incurred as a result of this Easement, and will furnish the Easement Holder with satisfactory evidence of payment upon request.

8.10 Recording. The Easement Holder will record this Easement in the Office of the Register of Deeds for the county in which the Property is located, and may re-record it or any other document necessary to protect its rights under this Easement.

8.11 Severability. If any provision or specific application of this Easement is found to be invalid by a court of competent jurisdiction, then the remaining provisions or specific applications of this Easement will remain valid and binding.

8.12 Successors. This Easement is binding upon, and inures to the benefit of, the Landowner and Easement Holder and their respective personal representatives, heirs, successors and assigns, and will continue as a servitude running with the Property for the term of the Easement.

8.13 Terms. The terms "Landowner" and "Easement Holder," wherever used in this Easement, and any pronouns used in their place, include Landowner's and Easement Holder's respective personal representatives, heirs, successors, and assigns.

8.14 Warranties and Representations. The Landowner warrants and represents that:

- a. The Landowner and the Property are in compliance with all federal, state and local laws, regulations, and requirements applicable to the Property and its use;
- b. No civil or criminal proceedings or investigations are pending or threatened that would in any way affect, involve, or relate to the Property. No facts or circumstances exist that the Landowner might reasonably expect to form the basis for any proceedings, investigations, notices, claims, demands or orders.

GRANT OF INTEREST TO EASEMENT HOLDER

As Chief Administrative Officer and General Counsel of Milwaukee World Festival, Inc., I execute the foregoing Limited Term Conservation Easement and acknowledge the same on this 27th day of October, 2015.

By: Frank Nicotera
Frank Nicotera
Chief Administrative Officer and General Counsel
Milwaukee World Festival, Inc.

STATE OF WISCONSIN

MILWAUKEE COUNTY

On this 27 day of October, 2015, the person known as Frank Nicotera came before me and executed the foregoing instrument and acknowledged the same.

Jane Ceralyn Zehro
Signature of Notary Public Jane Ceralyn Zehro
Notary Public, State of WISCONSIN
My Commission is expires 8/21/2016.



ACCEPTANCE OF EASEMENT HOLDER'S INTEREST

The foregoing Limited Term Conservation Easement is accepted by the Milwaukee Metropolitan

Sewerage District on this 30th day of October, 2015.

By: *Kevin L. Shafer*
Kevin L. Shafer, P.E.
Executive Director

Approved as to Form: *Thomas A. Nowicki*
Attorney of the District

STATE OF WISCONSIN

MILWAUKEE COUNTY

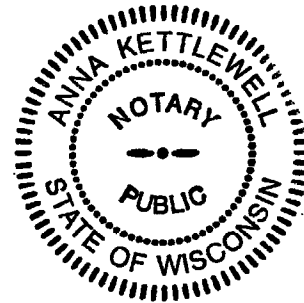
On this 30th day of October, 2015, the person known as

Kevin L. Shafer came before me and executed the foregoing instrument and acknowledged the same.

Anna Kettlewell
Signature of Notary Public

Notary Public, State of Wisconsin

My Commission is expires 6-12-16.



Thomas A. Nowicki, Staff Attorney, Milwaukee Metropolitan Sewerage District, drafted this conservation easement.

ATTACHMENTS

EXHIBIT A Description of the Property

EXHIBIT B Property Map

EXHIBIT C Areas within the Property that are Subject to the Limited Term Conservation Easement

EXHIBIT A

DESCRIPTION OF PROPERTY

Legal Description of the lands contained in 639 E. Polk Street and 110 N. Marshall Street, including the now vacated East ½ of N. Marshall Street and the North ½ of vacated E. Harbor Place

PARCEL A**Legal Description of 639 E. Polk Street:**

Lots 1, 2 and 3, in Block 170, in Subdivision of Lots 1 and 2 of Section 33, in Town 7 North, Range 22 East, also including all that part of the accretions to and Easterly of the aforesaid Lots, which lies Westerly of a straight line running Southerly from a point which is 331.3 feet Easterly from the East line of N. Jackson Street, measured along the center line of E. Polk Street extended Easterly, to a point in the extended South line of Lot 3, Block 174, in said Subdivision, which is 271 feet Easterly from the Easterly line of E. Erie Street, vacated, and also including a piece a land adjoining on the East, described as follows: Commencing at a point on the intersection of the center line of E. Polk Street and the Easterly line of N. Jackson Street; thence North 85° 16' 47" East 331.3 feet along the center line of E. Polk Street to a point, said point being on the Easterly property line of the Chicago and Northwestern Railway Company; thence South 9° 40' 29" East 40.15 feet to the point of beginning; thence North 85° 16' 47" East 35.84 feet to a point; thence South 4° 47' 55" East 180 feet to a point; thence South 85° 16' 47" West 20.48 feet to a point; thence North 9° 40' 29" West 180.68 feet to the point of beginning. Also the East ½, (33.00') of vacated N. Marshall Street. Said premises are located in the Northwest ¼ of Section 33, in Town 7 North, Range 22 East.

Tax Key: 3922187113

ALSO:**Legal Description of 110 N. Marshall Street:**

Lots 4, 5, 6 and 7, in Block 170, in Subdivision of Lots 1 and 2 of Section 33, Town 7 North, Range 22 East; also including all that part of the accretions to and Easterly of the aforesaid lots, which lies Westerly of a straight line running Southerly from a point which is 331.3 feet Easterly from the East line of N. Jackson Street, measured along the center line of E. Polk Street extended Easterly to a point in the extended South line of Lot 3, Block 174, in said Subdivision, which is 271 feet Easterly from the Easterly line of E. Erie Street vacated, and also including a triangular piece of land adjoining on the East described as follows: Commencing at a point on the intersection of the center line of E. Polk Street and the Easterly line of N. Jackson Street; thence North 85° 16' 47" East 331.30 feet along the center line of E. Polk Street to a point, said point being on the Easterly property line of the Chicago and Northwestern Railway Company; thence South 9° 40' 29" East 220.83 feet to the point of beginning; thence North 85° 16' 47" East 20.48 feet to a point; thence South 4° 47' 55" East 240 feet to a point; thence North 9° 40' 29" West 240.90 feet to the point of beginning. Also, the East ½, (33.00') of vacated N. Marshall Street adjoining said lots and all of the North ½, (40.00') of vacated E. Harbor Place adjoining said land on the South. These premises are located in the Northwest ¼ of Section 33, in Town 7 North, Range 22 East.

Tax Key: 3922187114

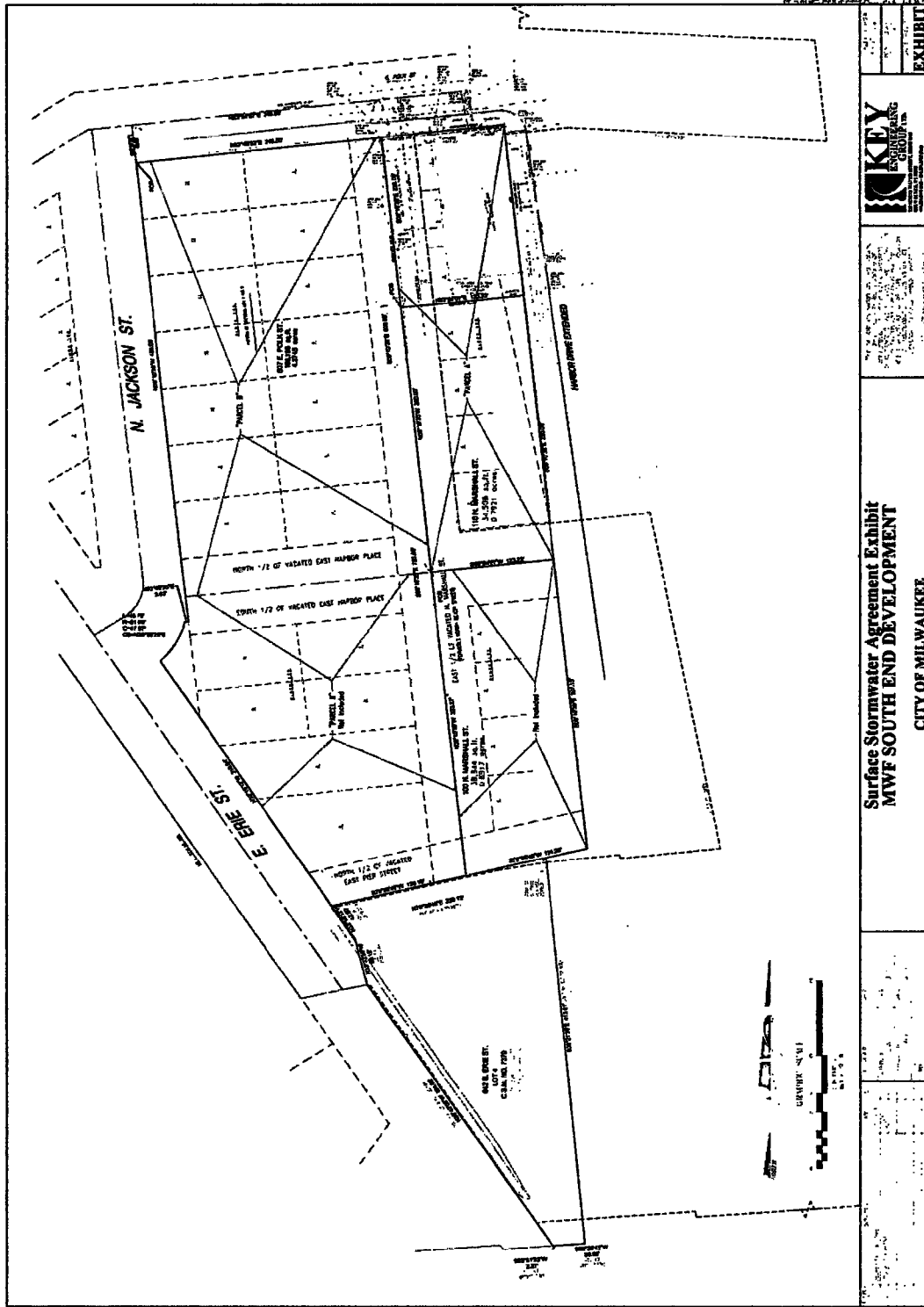
PARCEL B

Legal of 607 E. Polk Street

Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14, Block 169, Partition of Fractional Lots 1 and 2, in Section 33, Town 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, together with the North ½ of vacated East Harbor Place lying Southerly of and abutting said Lots 7 and 8 and the West ½ of vacated North Marshall Street.

Tax Key: Part of 3922185113

EXHIBIT B
PROPERTY MAP



EXHIBIT

KEY
EXHIBITING
GROUP, INC.

Surface Stormwater Agreement Exhibit
MWF SOUTH END DEVELOPMENT
CITY OF MILWAUKEE

