

EXHIBIT E: TRAIL EASEMENT

Document Number	Document Title
-----------------	----------------

**PUBLIC ACCESS, MAINTENANCE AND
TEMPORARY CONSTRUCTION
EASEMENT**

THIS PUBLIC ACCESS, MAINTENANCE AND TEMPORARY CONSTRUCTION EASEMENT (hereinafter referred to as "Easement") made as of _____, 2023 (the "Effective Date") by and between West River Lofts LLC (hereinafter referred to as "Grantor") and the City of Two Rivers (hereinafter referred to as the "Grantee").

RECITALS

WHEREAS, Grantor is the owner of certain real property located in City of Two Rivers, Manitowoc County, Wisconsin as more particularly described on Exhibit A attached hereto and made a part hereof by this reference (the "Premises"); and

WHEREAS, Grantor is developing and operating a multi-family residential housing development on the Premises (hereinafter referred to as the "Project") with frontage along the West Twin River; and

WHEREAS, the Grantee has had an unrecorded easement agreement with the previous owner of the Premises, Eggers Industries, in which Eggers Industries granted to the Grantee an easement over and across a "twelve foot strip of land running along the edge of the West Twin River over the entire length of the property," a copy of said easement is attached hereto as Exhibit B; and

WHEREAS, the Grantee wishes to retain public access along the west bank of the West Twin River via a pedestrian trail (the "Trail") situated on a portion of the Premises as shown on Exhibit C attached hereto (the "Permanent Trail Easement Area"), and to make certain improvements to the seawall along the west bank of the West Twin River immediately adjacent to the Premises (the "Seawall"); and

WHEREAS, Grantee will require access to a portion of the Premises for the purposes of constructing the Trail and making the Seawall improvements, as more particularly depicted on Exhibit C attached hereto (the "Temporary Construction Easement Area," and together with the Permanent Trail Easement Area, the "Easement Area"); and

Recording Area
Return: City of Two Rivers
City Manager's Office
1717 E. Park Street, P.O. Box 87
Two Rivers, WI 54241

Parcel Identification Number (PIN):

WHEREAS, Grantor desires to grant an access and maintenance easement to Grantee upon, across and along the Easement Area so that Grantee may construct, access and maintain the Trail and Seawall, as hereinafter provided.

NOW THEREFORE, in consideration of the mutual promises and agreements set forth herein, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which is hereby acknowledged, Grantor and Grantee hereby covenant and agree as follows:

1. **Recitals.** The Grantor and the Grantee confirm and agree that the recitals set forth above are true and correct and incorporate the same herein for all purposes.

2. **Term.** The rights, easement and obligations established in this Easement shall be binding upon Grantor, Grantee, their respective successors and assigns, and the Grantor Property.

3. **Grant of Easements.**

a. **Temporary Construction Easement.** Grantor hereby grants and conveys to Grantee a temporary construction easement over, upon, across, on and through the Temporary Construction Easement Area only as required for the purpose of constructing the Trail and making the Seawall improvements (together, the "Trail and Seawall Work"). The terms for the completion of such work are more particularly set forth in Section 4 below. Grantee shall have the right to enter the Temporary Construction Easement Area as is reasonably necessary in the course of performing the Trail and Seawall Work (and all activities reasonably related thereto). This temporary construction easement shall commence as of the Effective Date and terminate upon the completion of (i) the Trail and Seawall Work and (ii) Grantee's restoration of the Easement Area as further described hereafter, but in no event later than December 31, 2024.

b. **Trail Easement.** Grantor hereby grants, creates, establishes, and conveys to and for the benefit of Grantee and Grantee's employees, agents, contractors, and invitees (collectively, the "Users") a non-exclusive pedestrian access easement over, upon and across the Trail as depicted in Exhibit C. The Trail shall not be a public sidewalk according to state or local law, but will be used and maintained by Grantee as a recreation trail for pedestrians.

Grantee shall have the right to regulate the hours when public use of such Trail is allowed, and to close the Trail to public use during the winter season or at any time when Grantee, in its sole discretion, deems conditions to be unsafe for public use. In addition, Grantee shall have the right to allow, prohibit, and/or regulate fishing from the Permanent Trail Easement Area, in its sole discretion. Within the Permanent Trail Easement Area, Grantee shall have the right to:

- (i.) construct, maintain and repair the Trail and to surface it with asphalt, concrete, gravel, stone or other materials of Grantee's choosing;
- (ii.) remove existing pavement and sub-base materials as Grantee deems appropriate for construction and maintenance of such Trail;
- (iii.) install, maintain and repair site furnishings, which may include by way of example but not limitation, benches and waste receptacles;
- (iv.) install, maintain, repair and operate lighting along the Trail; and

- (v.) install, maintain and repair public signage, including trail identification signage, directional signage, informational signage and regulatory signage, and signage to minimize Users' interference with the Premises.

4. Obligations of the Grantee. Grantee shall be responsible for completing the Trail and Seawall Work, at Grantee's sole cost and expense; provided, however, with respect to any Trail and Seawall Work improvements that are funded by Tax Incremental District 17 ("TID 17") funds, Grantee shall have the right to use City of Two Rivers personnel and equipment or contractors selected by the City in its sole discretion, based on publicly let contracts. The Trail and Seawall Work shall include the following:

- a. **Trail and Seawall.** Grantee shall resurface the portion of the Trail lying in the Permanent Trail Easement Area located on the Premises, in the location more particularly shown on Exhibit C. In addition, Grantee shall evaluate the condition of the Seawall and complete the Seawall repairs to the portion of the Seawall located immediately adjacent to the Premises as Grantee deems appropriate in its reasonable discretion. Grantee's Trail and Seawall work described in this Section 4(a) shall be completed by December 31, 2024. Grantee shall include in its 2024 budget for TID 17 the sum of \$400,000.00 for such work.
- b. **Fencing.** Within five (5) business days after the Effective Date, but in any event prior to commencing the Trail and Seawall Work, Grantee, at Grantee's sole cost and expense, shall install and maintain fencing at least four (4) feet in height around the outer perimeter of the Easement Area (except for that portion bordering the West Twin River), whenever Grantee engages in any activity that involves use of construction equipment within the Easement Area, for activities addressed in this Easement. Such fencing shall be removed from around the Phase 1 Section not later than December 31, 2024.
- c. **Trail Maintenance.** Following completion of the Trail improvements described above, Grantee shall be responsible for the following maintenance activities on the Trail:
 - (i.) **Sweeping.** The Trail shall be swept periodically to remove any dirt or other debris.
 - (ii.) **Trash pickup.** Any trash receptacles placed by the Grantee along the Trail shall be regularly emptied and maintained in good condition.
 - (iii.) **Lighting.** Any lighting installed by Grantee shall be maintained in good and operable condition; Grantee shall be responsible for paying the utility bills associated with such lighting.
 - (iv.) **Fencing and Site Furnishings.** Any fencing and site furnishing installed within the Easement Area by Grantee shall be maintained in a safe condition and good repair.
- d. **Progress Reports.** During its performance of the Trail and Seawall Work, Grantee shall provide Grantor with a monthly written report on the status of such work, which report may be delivered to Grantor via e-mail.

5. Maintenance. Grantee, at Grantee's sole cost and expense, shall at all times maintain the Easement Area in good condition and repair, including, but not limited to, cleaning, snow plowing, resurfacing, replacing and maintaining proper drainage from the Easement Area, all in accordance with applicable laws, ordinances and regulations of any governmental authority having jurisdiction over the Easement Area. Grantee shall restore the surface of any portion of the Premises, including without limitation the Easement Area, disturbed by any construction, reconstruction, maintenance, access,

operation, repair, replacement or removal activities by Grantee and the general public to the condition such surface was in before such disturbance. After Grantee's completion of the Trail and Seawall Work, Grantee shall not be required to maintain, repair or replace any sheet piling or other shoreline structures or treatments (such as stone rip-rap) along the river's edge. Grantee may choose to undertake maintenance, repairs or replacement of such shoreline structures and treatments, in its sole discretion and with the written approval of Grantor.

6. **Pedestrian Access.** Public access within the Permanent Trail Easement Area shall be limited to foot, bicycle or wheelchair travel only. This Easement does not grant any Users the right to operate motor vehicles in any manner or method on the Premises or Easement Area.

7. **Continued Use.** Grantor reserves the right to use the Easement Areas for purposes which will not interfere with the Grantee's full enjoyment of the Easement hereby granted, including, but not limited to the development and operation of the multi-family residential housing development on the Property.

8. **Location Notification.** Grantee may publish the location of the Trail electronically or by depicting the location of the Trail on a map for the purpose of directing Users to the location of the Easement Area; provided however, such publication shall include language that the Premises is private property, and except for the Easement Area, should not be used by Users.

9. **Entire Agreement.** This Easement sets forth the entire understanding of the Grantor and Grantee and may not be modified or amended except by a written document executed and acknowledged by Grantor and Grantee, and the successors and assigns in ownership to the Premises, respectively and duly recorded in the office of the Register of Deeds of Manitowoc County, Wisconsin.

10. **Severability.** If any term or condition of this Easement shall be deemed invalid or unenforceable, the remainder of this Easement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.

11. **Attorneys' Fees.** It is intended that this Easement shall be construed as being an adequate and legally enforceable agreement. Enforcement of this Easement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Easement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Easement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

12. **Termination.** Grantee shall have the ability, without cause and for any reason, to terminate this Easement upon sixty (60) days advance written notice to Grantor, at any time following the seventeenth (17th) anniversary of the Effective Date. Grantee shall have no further obligations or responsibilities relative to the Easement Area following such termination.

13. **Governing Law.** This Easement shall be construed and enforced in accordance with the laws of the

State of Wisconsin.

14. **Covenants Running with the Land.** All of the terms and conditions in this Easement, including the benefits and burdens, are covenants running with the land and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. **Indemnification.** To the extent allowed by law and without waiving its rights to rely on municipal limitations and immunities available to it under the provisions of the Wis. Stat. § 893.80, 893.52 and other such statutes, the Grantee agrees to fully indemnify and hold harmless the Grantor from any and all losses, liabilities, damages, or costs, which may be incurred by Grantor as a result of the acts or omissions of the Grantee, its agents, employees and contractors in the exercise of Grantee's rights and obligations under this Easement or arising from the use by Users of the Easement Area, except those which are caused by the willful misconduct of the Grantor, its agents, employees or invitees.

16. **Notices.** All notices to any party to this Easement shall be sent either by certified mail, postage prepaid, return receipt requested, or personal delivery, or electronic delivery and addressed as follows:

Grantor: West River Lofts LLC
1402 West Center Street, Suite 2
Milwaukee, WI 53206
Attn: Melissa N. Allen

Grantee: City of Two Rivers
1717 East Park Street
Two Rivers, WI 54241
Attn: Greg Buckley

17. **Interpretation.** The terms Grantor and Grantee may be singular or plural and shall include all successors and assigns.

18. **Insurance.** Grantee shall maintain property and liability insurance coverage related to its use of and activities in the Easement Area. The liability insurance coverage shall be in an amount not less than \$1,000,000 per occurrence/\$2,000,000 annual aggregate. Grantee's insurance policy shall name Grantor as an additional insured. Grantee without request therefor shall provide Grantor with evidence of such insurance on no less than an annual basis.

19. **No Third-Party Beneficiaries.** The terms of this Easement are for the benefit of Grantor and Grantee, and no other person shall have any rights hereunder nor shall they be entitled to enforce its terms.

20. **Self-Help.** In addition to all other remedies available at law or in equity, upon the failure of Grantee to cure a breach of this Easement within thirty (30) days following written notice thereof by Grantor, Grantor shall have the right to perform such obligations contained in this Easement on behalf of Grantee and be promptly reimbursed by Grantee upon demand for the reasonable

costs thereof together with interest at the Prime Rate charged from time to time by US Bank N.A. (its successors or assigns) as published in *The Wall Street Journal* plus three percent (3%) per annum (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of an emergency, Grantor may provide for forty-eight (48) hour advance notice, or if not practicable, as soon as possible thereafter, cure the same and be reimbursed by Grantee upon demand for the reasonable cost thereof together with interest at the Prime Rate, plus three percent (3%), as above described.

[Signature Page to Follow]

IN WITNESS WHEREOF, Grantor grants this Easement and has caused this instrument to be executed on its behalf as of the day and year first set above written.

WEST RIVER LOFTS LLC

By: West River Lofts MM LLC, its
Managing Member

By: MQ Ventures Two LLC, its Manager

By: _____
Melissa N. Allen, Manager

State of Wisconsin)
) ss.
_____ County)

Personally came before me this _____ day of _____, 2023, the above named Melissa N. Allen, the Manager of MQ Ventures Two LLC, which is the Manager of West River Lofts, MM LLC, which is the Managing Member of West River Lofts LLC, to me known to be the person who executed the foregoing instrument and acknowledged the same.

*Notary Public, State of Wisconsin
My commission (expires)(is) _____

IN WITNESS WHEREOF, the Grantee has caused this instrument to be executed on its behalf as of the day and year first set above written.

THE CITY OF TWO RIVERS, WISCONSIN

By: Gregory E. Buckley
Title: City Manager

By: Amanda Baryenbruch
Title: City Clerk

State of Wisconsin)
) ss.
_____ County)

Personally came before me this _____ day of _____, 2023, the above-named Amanda Baryenbruch, the City Clerk of the City of Two Rivers, Wisconsin, to me known to be the person who executed the foregoing instrument and acknowledging the same

Notary Public, State of Wisconsin
My Commission (expires)(is) _____

Exhibit A

Legal Description

[LOT 2 OF CERTIFIED SURVEY MAP RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS FOR MANITOWOC COUNTY, WISCONSIN ON JANUARY 04, 2022 IN VOLUME 35 OF CERTIFIED SURVEY MAPS, PAGE 307 AS DOCUMENT NO. 1245957, SAID CERTIFIED SURVEY MAP BEING A REDIVISION OF LOTS 1-6, BLOCK 83, LOTS 1-5, EXCEPT THE WEST 15 FEET OF LOT 5, BLOCK 84 AND LOTS 1-4 & 8-12, BLOCK 87, & LOTS 1-4, BLOCK 88, ORIGINAL PLAT CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN.]

EXHIBIT B

Unrecorded Easement

file in Eggers

EASEMENT

~~This Agreement is entered into by and between the City of Two Rivers, hereinafter referred to as the City and Eggers Industries, hereinafter referred to as Eggers.~~

~~WHEREAS, the City has received a 1984 Small Cities Community Development Block Grant from the Wisconsin Department of Development for the purpose of economic development; and~~

~~WHEREAS, Eggers desires to expand its manufacturing business; and~~

~~WHEREAS, the City and Eggers have previously entered into an agreement dated January 17, 1984 containing certain contingencies based upon Community Development Block Grant funding. A copy of said agreement is attached hereto as Exhibit A.~~

~~WHEREAS, the City is desirous of constructing a pedestrian walkway along the river's edge on the Eggers property and is desirous of providing for a winter snow dump area on another portion of the Eggers property adjacent to the river; and the parties desire to enter into an agreement setting forth their rights and responsibilities relating thereto;~~

~~NOW, THEREFORE, in addition to all of the understandings and obligations set forth in the agreement of January 17, 1984 between the City and Eggers, it is mutually agreed as follows:~~

- ~~1. Eggers grants to the City an easement over and across a twelve-foot strip of land running along the edge of the West Twin River over the entire length of property owned by Eggers together with a six-foot access easement along the west boundary between~~

14th Street and the river. The City shall have the right to install and maintain fencing, landscaping, sidewalk, benches and waste containers and hold said area open for the use of the general public as a public walkway and recreation area. The City shall be required to maintain said area and shall keep the same free of all waste and debris. It is specifically understood that the City shall not be required to maintain any sheet piling along the river's edge nor shall it be required to maintain the bituminous concrete on the Eggers parking lot and shall not be required to replace any of the items initially placed upon the easement area by the City.

2. In addition to the above, Eggers grants to the City an easement to go upon and use the parcel of land known as the Old Mirro Plant 4 site, both east and west of Monroe Street for the purpose of dumping snow during the snow season. The City shall not be allowed to dump snow in that part of this area which Eggers requires for its own use. In exchange for the exclusive snow dump use, the City will maintain the snow dump area during the necessary maintenance months by mowing lawn, pruning trees, and collecting trash, but shall not be required to replace any vegetation unless damaged by the City. The City agrees to plow the parking lot north and west of the Eggers building, but shall not be required to haul away any snow.

3. In the event any utilities are installed along the river easement area and Eggers makes use of any electricity or water, Eggers shall pay the City an amount equal to the metered rate for

the use of such utilities.

4. The easements granted herein may be terminated by either party upon 180 days written notice. In the event the river access easement is terminated by Eggers, the City shall have the right to remove any and all property placed thereon by the City, but shall not be required to remove any of such items unless the City so chooses.

5. The City agrees to carry liability insurance covering the easement area. In addition, the City shall indemnify and hold Eggers harmless of and from claims, demands, judgments and other liabilities arising from personal injuries, deaths or property damages arising or to arise out of the City's or the public's use of the easement area herein described. This indemnity and hold harmless shall also include reasonable attorneys' fees and litigation costs.

6. This agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, and assigns.

Dated this 5th day of May, 1986.

CITY OF TWO RIVERS

EGGERS INDUSTRIES


CITY MANAGER


PRESIDENT

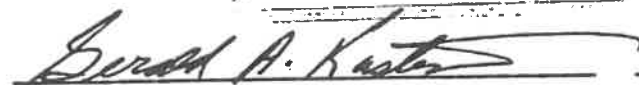

CITY CLERK



Exhibit C
Permanent Trail Easement Area

29902105.3

CERTIFIED SURVEY MAP NO. _____

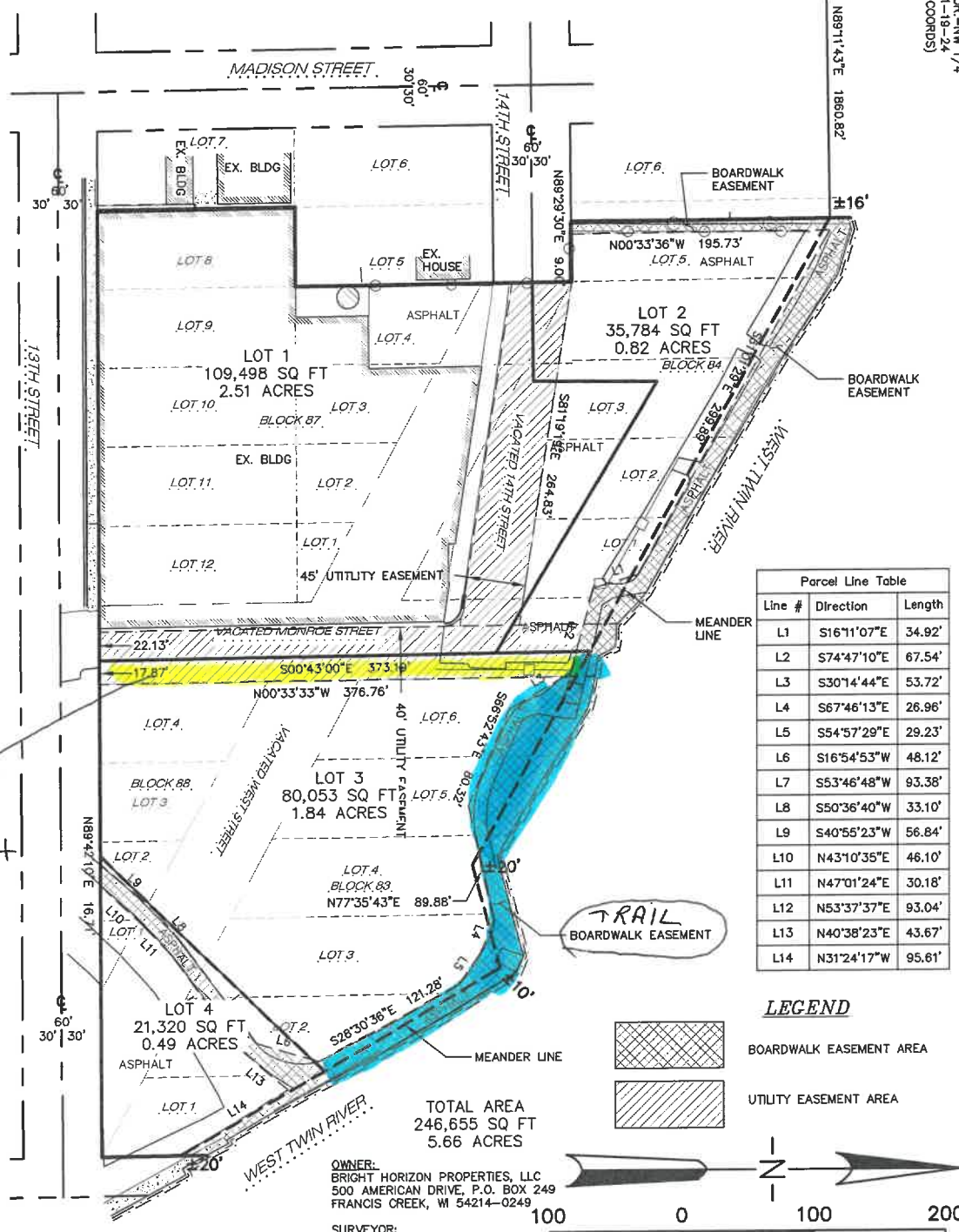
FOR
BRIGHT HORIZON PROPERTIES, LLC
 CSM RECORDED AS DOCUMENT NO. 1245957, BEING PART OF
 LOTS 1-6, BLOCK 83, LOTS 1-5, EXCEPT THE WEST 15 FEET
 OF LOT 5, BLOCK 84, LOTS 1-4 & 8-12, BLOCK 87,
 & LOTS 1-4, BLOCK 88, ORIGINAL PLAT
 CITY OF TWO RIVERS, MANITOWOC COUNTY, WISCONSIN

PROJECT NUMBER: 9.5296
 DATE: OCTOBER 4, 2023

SW COR.-NW 1/4
 SEC. 1-19-24
 (PK NAIL FOUND)

W. LINE-NW 1/4-SEC. 1-19-24
 N00°48'17"W 2737.73'
 209.62'

CERTIFIED SURVEY MAP # _____
 VOLUME _____
 PAGE _____
 SHEET 2 OF 4 SHEETS



Temporary
 Const.
 Easement

Line #	Direction	Length
L1	S16°11'07"E	34.92'
L2	S74°47'10"E	67.54'
L3	S30°14'44"E	53.72'
L4	S67°46'13"E	26.96'
L5	S54°57'29"E	29.23'
L6	S16°54'53"W	48.12'
L7	S53°46'48"W	93.38'
L8	S50°36'40"W	33.10'
L9	S40°55'23"W	56.84'
L10	N43°10'35"E	46.10'
L11	N47°01'24"E	30.18'
L12	N53°37'37"E	93.04'
L13	N40°38'23"E	43.67'
L14	N31°24'17"W	95.61'

LEGEND

	BOARDWALK EASEMENT AREA
	UTILITY EASEMENT AREA

OWNER:
 BRIGHT HORIZON PROPERTIES, LLC
 500 AMERICAN DRIVE, P.O. BOX 249
 FRANCIS CREEK, WI 54214-0249

SURVEYOR:
 J.E. ARTHUR & ASSOCIATES
 548 PRAIRIE ROAD
 FOND DU LAC, WI 54935

TOTAL AREA
 246,655 SQ FT
 5.66 ACRES

