

EASEMENT AGREEMENT

DOC. #  
8613100

REGISTER'S OFFICE | SS  
Milwaukee County, WI

RECORDED AT 9:43 AM

09-04-2003

JOHN LA FAVE  
REGISTER OF DEEDS

AMOUNT 43.00

DOCUMENT NO.

This Easement Agreement ("Agreement") is entered into by and between Aurora Health Care Metro, Inc. ("Aurora") GRANTEE and Milwaukee County ("County") GRANTOR as of the 20<sup>th</sup> day of AUGUST, 2003.

RECITALS:

WHEREAS, County is the fee simple owner of a certain parcel of land commonly known as a portion of the Kinnickinnic River Parkway shown on EXHIBIT A attached hereto ("KK River Parcel").

WHEREAS, Aurora is the fee simple owner of a certain parcel of land adjacent to the KK River Parcel and shown on EXHIBIT A attached hereto ("SLMC Parcel").

WHEREAS, the KK River Parcel and the SLMC Parcel are together called the "Property".

WHEREAS, Aurora intends to construct on the combined KK River Parcel and the SLMC Parcel a six-story parking structure and material management facility, a subterranean utility duct bank, and an on-grade medical gasses storage area office Improvements collectively called the "Improvements" as shown on Exhibit A.

WHEREAS, the parties desire to create certain easements over, upon and across the KK River Parcel for the benefit of the SLMC Parcel and to set forth certain other agreements regarding the Property.

NOW, THEREFORE, for compensation as delineated within the Memorandum of Understanding attached hereto and incorporated by reference and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as set forth below.

1. Improvement Easement. County hereby grants and conveys to Aurora, for the benefit of the SLMC Parcel, an easement on, over and across that portion of the KK River Parcel depicted and legally described on EXHIBIT B attached hereto (the "Improvement Easement Area") for the construction, maintenance and operation of:

1. A parking structure and material management facility including six (6) levels above grade combining one level of approximately 20,000 square feet of combined material handling and shipping and receiving areas including six (6) truck docks, and 5 levels of parking for approximately 485 cars.
2. Relocated utilities and utility extensions installed within a duct package consisting of (16) 5" ducts within a 4 x 4 bank

THIS SPACE RESERVED FOR RECORDING DATA

NAME AND RETURN ADDRESS

KEVIN HALEY  
MILWAUKEE COUNTY PARKS  
9480 WATERTOWN PLANK ROAD  
WALWATOSA, WI 53226

510-9998-111

Parcel Identification Number

3. Expansion of the existing Central Electrical Plant building extending into the Improvement Easement Area by approximately 12' for a distance of 75'
4. Approximately 22 surface parking stalls and vehicle circulation areas adjacent to the loading dock
5. An enclosed medical gas storage facility of approximately 2,300 square feet including liquid oxygen and nitrogen tanks, associated back-up tanks and vaporizer units residing on a 4" slab on grade
6. A fire hydrant to be owned and maintained by the City of Milwaukee
7. Landscaping and other site amenities to screen improvements and enhance the streetscape along the Kinnickinnic River Parkway and other adjacent lands in the area

2. Landscape Easement. County hereby grants and conveys to Aurora, for the benefit of the SLMC Parcel, an easement ("Landscape Easement") on, over and across the KK River Parcel ("Landscape Easement Area") depicted and legally described on EXHIBIT C, for the purpose of aesthetically integrating the boundary between the SLMC Parcel, the KK River Parkway and other adjacent lands. This Landscape Easement shall include the right, at Aurora's sole cost to make improvements to the landscaping along the property boundary for aesthetic purposes and providing for the free flow of pedestrian traffic between the KK River Parcel and the SLMC Parcel (the Improvements). Aurora will design, construct and maintain the landscaping, paving, site improvements and ingress/egress curb cuts and driveways providing access to the SLMC property and parking structure in accordance with plans and specifications submitted to and approved by the County in writing prior to the commencement of any such work. Notwithstanding the foregoing, County may, but shall not be obligated to, install landscaping, paving, walkways or other improvements it deems appropriate within the Landscape Easement Area.

3. Maintenance, Repair and Replacement Easement. County hereby grants and conveys to Aurora and its agents, employees and contractors, for the benefit of the Improvements, non-exclusive rights of access to, on, over and across the Improvement Easement Area and Landscape Easement Area for the maintenance, repair and replacement of the Improvements and related appurtenances. Aurora shall be solely responsible for maintaining, repairing and replacing all of the Improvements, including, but not limited to building, utility, landscape and other site improvements installed by Aurora pursuant to Sections 1 and 2 above. Aurora agrees to apply for a right of entry permit from Milwaukee County Department of Parks, Recreation and Culture (as well as any other necessary permits as applicable), unless otherwise agreed to by and between County and Aurora in writing, at least forty-eight (48) hours before conducting any construction or repairs in the Improvement and/or Landscape Easement Area, except in the event of an emergency repair (i.e. when there is an imminent threat to public health and/or safety) where no advance communication shall be required; provided that Aurora shall give County written notice of any such emergency requiring such emergency repair within twenty-four (24) hours of such event. Aurora shall use commercially reasonable efforts to minimize interference with the County's use of the Parkway and, subject to the alterations and improvements made pursuant to Sections 1 and 2 herein, shall restore the Improvement Easement Area and the Landscape Easement Area to reasonably the same condition as existed immediately prior to any entry pursuant to this Agreement, including the repair by Aurora at Aurora's sole cost and expense of any damage to improvements of the County located within the KK River Parcel resulting from Aurora's activities within the Improvement Easement Area and the Landscape Easement Area. In conducting any maintenance, repairs or replacements to the County's improvements located upon the KK River Parcel, County shall use its good faith efforts, at no incremental cost to County, to minimize interference with Aurora's use of the SLMC Parcel and the easement areas granted herein. It is hereby agreed that County shall have reciprocal access for maintenance and repair purposes pertaining to its own property across and upon the SLMC

Property under similar requirements to obtain advance permission from Aurora. Grants of right of access by both parties shall be at no cost.

5. Restrictions/County Approvals. Notwithstanding anything contained in this Agreement to the contrary, Aurora shall indemnify and hold County harmless from any and all loss, liability, damage or expense, including reasonable attorneys' fees, incurred by County arising out of any damage to the County's improvements attributable to Aurora, its employees, agents and other individuals and entities working for or on behalf of Aurora and its successors or any City of Milwaukee, Public Works, Police or Fire Department access upon or use of the easement areas in violation of this Section 5. Aurora and any successor owner of the SLMC parcel may pursue constructing such new improvements upon the Premises and/or may change the use the easement is put to as it deems necessary or appropriate from time to time, provided that, during the conceptual and planning phases of any such improvements or changes of use, Aurora and any successor owner shall keep the Director of the Milwaukee County Department of Parks, Recreation and Culture (DPRC), or the person in charge of any successor Department or authority, advised on an on-going basis and obtain input from the DPRC (or successor) as alternatives are being considered. The final conceptual plans and the final construction plans shall require the review and written approval of the DPRC (or successor), which approvals must be obtained prior to changing the use and/or bidding out and awarding any contracts to commence construction. As a condition to issuance of approval, the DPRC (or successor) may require reasonable proof that adequate private or public funding exists for the construction and the subsequent operation, maintenance and repair of the new improvements. Notwithstanding anything contained herein to the contrary, if any routine cleaning or maintenance to the Landscape Easement Area will require that Aurora restrict access to the Landscape Easement Area, Aurora will obtain County's approval prior to conducting any such routine maintenance and repairs, which request for approval County agrees shall be processed in a reasonably prompt manner. It is hereby agreed that County shall have reciprocal access for maintenance and repair purposes pertaining to its own property across and upon the SLMC Property under similar requirements to obtain advance permission from Aurora. Grants of right of access by both parties shall be at no cost. Any approvals granted by the DPRC shall be pursuant to the provisions contained in Section 12 (n) herein.

6. Insurance.

(a) Liability Insurance. Aurora shall, during the entire term of this Agreement, keep in full force and effect a policy of commercial general liability insurance with respect to Aurora's activities in and around the Property in an amount of not less than \$1,000,000.00 combined single limit or such higher limit as may be reasonably requested in writing by County's Director of Department of Administrative Services, and as may be reasonably necessary from time to time to protect County, to the extent Aurora has such obligation hereunder. Aurora shall also maintain insurance coverage for worker's compensation claims as required by the State of Wisconsin, including employer's liability. Aurora shall also maintain or cause its general contractor to maintain a general liability policy of insurance coverage, written on an occurrence basis, with completed operations and explosion, collapse and underground (XCU Coverage) with the completed operations coverage applicable for three years after completion of the Improvements construction and providing for limits of \$10,000,000. Aurora shall also cause its general contractor to maintain an environmental impairment liability insurance policy with limits of \$1,000,000, for a 12 month extended reporting period after completion of the Improvements construction. All liability insurance policies required hereunder shall be issued by a responsible

insurance company or companies with a rating of "A-" or better by Best's Rating Service or a comparable rating from an equivalent rating service if Best's shall cease publishing such ratings and shall name County as an additional insured. Such insurance shall contain a clause that the insurer will notify County at least thirty (30) days prior to any cancellation or material change in the insurance. The insurance shall be with an insurance company licensed to do business in Wisconsin and a copy of the paid-up policies evidencing such insurance or a certificate of insurance shall be delivered to County prior to commencement of the term of this Agreement, and such delivery shall also be made upon renewal of such policies. If Aurora is permissibly self-insured under Wisconsin State Statutes, then evidence of such relevant self-insurance levels may be submitted in a form acceptable to the Milwaukee County Department of Administrative Services and accepted in lieu of the required policies and certifications of insurer specified above as proof of insurance.

(b) Waiver of Subrogation. County and Aurora hereby waive and release all right of recovery against each other by way of subrogation or otherwise for any insured or self-funded loss by fire, extended coverage or other property coverage existing for the benefit of County or Aurora with respect to the Property. Such subrogation waivers shall apply to any property insurers and if required by insurers, notice of this waiver shall be given the insurers and said waiver obtained.

(c) Liability Release. To the fullest extent permitted by law, Aurora and County shall be liable for their own acts and negligence and each agrees to hold the other harmless for any losses, damages, costs, or expense including but not limited to reasonable attorneys fees and litigation expenses paid or sustained by reason of tort and/or legal liabilities of the other.

7. Indemnification/Release. Aurora shall indemnify and hold County harmless from and against any and all loss, liability, damage or expense incurred by County for or in any way arising out of any and all claims or causes of action brought by third parties for or on account of personal injury or property damage caused by Aurora or its agents, employees or contractors in the course or in any way as the result of construction of the Improvements or the subsequent entry upon the Easement Area, or the Landscape Easement Area by Aurora or its tenants, their agents, employees or contractors pursuant to the easements granted in this Agreement. The parties acknowledge that the improvements now located on the KK River Parcel as such improvements are currently configured may affect the SLMC Parcel and improvements thereon, including but not limited to, as a result of water runoff from the KK River Parcel onto the SLMC Parcel. Aurora agrees to consider such existing improvements and anticipate the potential water runoff and other impacts resulting therefrom when designing the Improvements and related improvements on the SLMC Parcel; and Aurora hereby releases County from any and all loss, liability, damage or expense incurred by Aurora arising out of water runoff from the KK River Parcel onto the SLMC Parcel or other impacts due to the location of existing improvements as currently configured on the KK River Parcel and as subsequently reconfigured or modified, provided that any such reconfiguration or modification does not significantly change the quantity or substantive impact of such improvements upon the SLMC Parcel. It is expressly understood that Aurora shall not construct anything that would affect the flow of water onto or off of the KK River Parcel until it has provided the plans and specifications to County's Department of Public Works and obtained approval to proceed, in writing, from the Director of the County's Department of Public Works, which approval shall not be unreasonably withheld.

8. Easement Fee. Aurora shall, in consideration for the easements granted herein, compensate the County as delineated within the Memorandum of Understanding attached hereto and incorporated by reference. The County may allocate the easement fee among various departments within the County as the County may determine in its sole discretion.

9. Term. Subject to the exceptions set forth in this section, the term of this Agreement shall continue for so long as the Improvements shall remain in place without expansion. The commencement of this easement is subject to and contingent upon County's Department of Public Works receipt, review and approval of a report ("Report") to be provided by qualified engineering consultants retained and paid for by Aurora at its sole expense, detailing the plan and method of construction proposed by Aurora for development of the Improvements, the possible impacts such construction may have on the KK River Parcel improvements and the steps recommended to insure that such construction will not have any adverse impact on the KK River Parcel improvements. The Report shall at a minimum (i) set forth the manner in which Aurora and its contractors/consultants will establish a baseline condition survey of the existing improvements and structures of the KK River Parcel, (ii) set forth the plan and method of constructing the Improvements, including soil retention and dewatering procedures and construction vibration control, (iii) provide an assessment of any structural or foundation concerns regarding the construction on the SLMC Parcel vis-à-vis the KK River Parcel improvements and present a proposed remediation plan for any such concerns, and (iv) establish a plan for monitoring the KK River Parcel structure for a reasonable period of time (not to exceed three years) following the completion of construction on the Improvements. The Report shall also address site dewatering procedures and establish whether vibration monitoring will be required. Upon receipt of the Report, the Director of the County's Department of Public Works, in consultation with the County Parks Department and/or other consultants, shall review the Report and notify Aurora of any objections or clarifications required by the County. The parties agree to work in good faith to address any concerns of the County or its consultants. Aurora will reimburse the County for its reasonable costs of reviewing Aurora's Report, including time expended by County personnel as well as costs of retaining any consultants, provided that the total cost required to be reimbursed by Aurora shall not exceed \$10,000.00. Once the Report is approved by the Director of the County's Department of Public Works, Aurora shall perform or cause to be performed all work called for in the Report and shall otherwise proceed with development of the Improvements in accordance with the plan and method of operations set forth in the Report. Notwithstanding anything preceding in this paragraph, and regardless of any review and/or approval given Aurora by the Director of County's Department of Public Works, it is expressly understood that Aurora is taking and will retain full responsibility for any damage sustained at any time by the KK River Parcel as a result of the construction of the Improvements, regardless of when the damage occurs or is discovered. Further, Aurora shall reimburse all mitigation of damages to KK River Parcel attributable to the construction of the Improvements, regardless of when the mitigation occurs to County, at no risk or expense to County.

For purposes of this Section 9, the term "Termination Trigger Event" is defined as any of the following:

- (i) development of the Improvements is not commenced within eighteen (18) months from the commencement date set forth above, or
- (ii) the Improvements are at any time partially or totally razed or modified beyond the footprint as initially constructed.

If a Termination Trigger Event occurs, then the then current owner of the KK River Parcel and the then current owner of the SLMC Parcel shall each have the right to terminate this Agreement by delivering written notice to the other party and this Agreement shall terminate on the ninetieth (90<sup>th</sup>) day following the date of receipt of any such termination notice. If the Improvements are razed as a result of fire or other casualty occurring during the first fifty (50) years of the term of this Agreement, then the owner of the Improvements shall have a right to extend the term of the easements granted hereunder and nullify any notice of termination that may have been given by the County provided that:

(i) written notice of such extension is given to the County within the earlier to occur of (a) sixty (60) days after the date of receipt of the County's notice of termination or (b) one (1) year after the date of such casualty;

(ii) reconstruction of the Improvements is commenced, subject to all of the construction terms and conditions of this easement and particularly the County review and approval provisions, within one (1) year after the date of the extension notice and reconstruction of the Improvements is completed within eighteen (18) months after the start of construction;

(iii) the reconstructed Improvements shall not exceed the height of the original Improvements, nor extend beyond the footprint of the original Improvements as initially constructed nor otherwise have any greater impact on the KK River Parcel; and

(iv) the term of this Agreement shall continue so long as the reconstructed Improvements remains in place.

Nothing in this provision is to be construed as granting advance permission by County to Aurora to construct a building more than six stories tall or to modify the building beyond the footprint as initially constructed.

10. Notice. All notices delivered in connection with this Agreement shall be given in writing and shall be considered to have been delivered: (a) when personally delivered; (b) when sent by telecopy or facsimile transmission with confirmation of completed transmission and a copy of the notice deposited in the United States mail within forty-eight (48) hours after such transmission; (c) three (3) days after deposit in the United States mail, certified mail, return receipt requested and postage prepaid; or (d) one (1) day after deposit with a nationally recognized overnight courier service. The current notice address for each party is as follows:

If to Aurora:

Aurora Health Care Metro Inc.

3000 WEST MONTANA

MILWAUKEE, WI 53215

~~With a copy to:~~

ATTN: EXECUTIVE VICE PRESIDENT/  
CHIEF FINANCIAL OFFICER

If to County:

Milwaukee County

Department of Parks, Recreation and Culture

9480 Watertown Plank Road

Wauwatosa, Wisconsin 53226

Attention: Parks Director

With copies to:

Milwaukee County  
Office of Corporation Counsel  
901 North 9<sup>th</sup> Street  
Courthouse, Room 303  
Milwaukee, Wisconsin 53233

and

Milwaukee County  
Department of Public Works  
2711 West Wells Street  
Milwaukee, Wisconsin 53233

Any party may change their designated notice address by delivering proper written notice of such address change to the other party.

11. Environmental. Aurora shall be responsible for any required repair, clean-up, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the KK River Parcel or surrounding areas by Aurora, its agents or guests, or disturbed as a result of Aurora's construction on, at or near the KK River Parcel. Aurora shall indemnify, defend and hold County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Aurora shall be responsible for the investigation/remediation of any other pre-existing Hazardous Materials discovered within, under or upon the KK River Parcel during construction activity relating to the Improvements and/or in the course of Aurora's entry upon the KK River Parcel. Aurora shall have the continuing obligation to pay for costs associated with investigation and remediation of pollutants, contaminants and Hazardous Materials that have migrated or threaten to migrate from the SLMC Parcel, and, to the extent construction requires dewatering and/or the Improvements design includes a permanent dewatering system for the external perimeter of the Improvements, Aurora shall have the continuing obligation to pay for costs associated with investigation and remediation of Hazardous Materials migrating to the SLMC Parcel.

"Hazardous Materials" means any substance: (i) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

County hereby warrants and represents to Aurora that to the best of the County's knowledge, there are no Hazardous Materials located within, under or upon the KK River Parcel and the County during the time that the County has owned the KK River Parcel has not stored or disposed upon the KK River Parcel any Hazardous Materials.

12. Miscellaneous.

(a) No Joint Venture. Nothing in this Agreement shall be construed to make the parties hereto partners or joint venturers, or to render any of said parties liable for the debts or obligations of any other.

(b) Headings. Paragraph and subparagraph headings herein 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 of the parties hereto 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 thereof. A waiver by any of the parties hereto of any of the covenants, conditions or agreements hereof to be performed by another, shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement contained herein.

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

(e) Amendments or Further Agreements to be in Writing. No agreement or amendment shall be effective to add to, change, modify, waive or discharge this Agreement in whole or in part, unless such agreement is in writing and signed by all parties bound hereby.

(f) Partial Invalidity. If any provisions, or portions thereof, of this Agreement or the application thereof 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 thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Conveyance. Upon conveyance of all of its interest in the SLMC Parcel or the KK River Parcel, as applicable, a party shall be relieved of any further liability under this Agreement arising on and after the date of transfer and such transferee shall be deemed to have assumed all rights and obligations of the transferor hereunder arising on and after the date of transfer. It is expressly understood that the transferor shall notify the other party to this easement of any such conveyance.

(h) Covenants Running With the Land All of the covenants set forth in this Agreement are intended to be and shall be construed as covenants running with the land for the term set forth herein, binding upon, inuring to the benefit of, and enforceable by the parties hereto and their respective heirs, successors and assigns.

(i) Counterparts. This Agreement may be signed in counterparts, which, when taken together, shall be deemed an original for all purposes.

(j) Prohibited Practices. During the term of this Agreement, Aurora shall not hire, retain or utilize for compensation any member, officer or employee of the County or any person who, to the actual knowledge (without inquiry) of Aurora, has a conflict of interest.

(k) Code of Ethics. Aurora hereby acknowledges that portion of County's Code of Ethics, which states in part: "No person may offer to give to any County officer or employee or his immediate family, and no County officer or employee or his immediate family may solicit or receive anything of value pursuant to an understanding that such officers or employees vote, official actions or judgment would be influenced thereby."



(l) No Responsibility. There is no responsibility/liability on the County except for acts by the County or agents of the County, and then only to the extent of actual cost of repair, which the County may have verified by a mutually agreed upon independent third party.

(m) Permits. The County has no responsibility to secure for, or on behalf of Aurora any building permits, zoning changes or other permits which are needed by Aurora for their proposed business operation, future installations and/or maintenance unless and only to the extent that the County is the Agency that issues such building permits, zoning changes or other permits. At Agreement inception, Right of Entry Permits to Park Land are the only items of this nature that the County issues.

(n) Approvals. All approvals are subject to there being no conflicts with other existing zoning regulations, laws, applicable rules or regulations, or other factors beyond the reasonable control of the Parks Department. Notwithstanding anything contained in this agreement, the Director of Parks, Recreation and Culture is authorized, but not required, to act on behalf of the County to approve, in writing, changes in the use of the KK River Parcel which the Director determines are not detrimental to Milwaukee County as long as such uses benefit the use of the adjacent SLMC Parcel. Aurora will indemnify the County for actions taken by Aurora or Aurora's agents in this regard.

(o) Utilities. Aurora is to be responsible for locating and plotting utilities and other infrastructure of the County and others that may be present in the area and which may be impacted by Aurora's operations and activities. Aurora is also responsible for any damage to these items caused by operations and programming and also maintenance and repair work done by the Aurora under cover of this Agreement.

(p) Safety and Security. The Aurora assumes full responsibility for safety and security of the Easement Areas whenever Aurora is conducting activities on the Easement Areas.

(q) No Alterations by County. Nothing set forth anywhere in this Agreement shall be construed to obligate County to remove or modify any existing improvements in, on or under the areas within or adjacent to the Easement Area. Any alterations to the KK River Parcel recommended by the approved Report to limit the exposure of the KK River Parcel to damage due to the proposed SLMC Parcel improvements or construction practices shall be implemented at Aurora's sole expense prior to Aurora's proceeding with construction. Alternatives to the original proposed design of the Aurora development that will limit the adverse impact on KK River Parcel may be pursued at Aurora's option.

(r) Authority. Each of the parties hereby represents and warrants that the individual executing this Easement Agreement on its behalf has full power and authority to bind such party to the terms and conditions hereof. The parties shall each, at all times, provide the other party with written notice as to the contact person regarding this Agreement.

(s) Further Assurances. The parties hereto agree to execute immediately upon presentation and deliver such additional documentation as may be required from time to time by either of the parties hereto to further evidence and/or as are necessary to carry out the terms and conditions of this Agreement.

### 13. ENGINEERING

(a) Restoration of Property. In the event the existing Kinnickinnic River improvements or the existing site utilities are damaged during the construction of the Improvements, the said improvements or the existing site utilities will be repaired and restored at Aurora's expense as nearly as it is reasonably possible given the baseline condition existing prior to any disturbance by Aurora. Aurora shall also repair or restore at Aurora's expense any damage to the surface of the KK River Parcel caused during construction of the Improvements. Aurora shall also repair or restore at Aurora's expense any negative change caused by the impact of stormwater flows that directly results from the Improvements development.

(b) Maintenance and Restoration of Property. In the event the surface or sub-surface of the soil of the KK River Parcel outside of the Landscape Easement Area is disturbed in the construction, operation, use, maintenance and repair of the SLMC Parcel improvements, said surface or subsurface shall be restored as nearly as it is reasonably possible given the baseline condition existing prior to such construction by Aurora. Aurora shall also repair or restore, at Aurora's sole expense, any negative change in the current condition (as detailed in the baseline condition survey) of that portion of the KK River Parcel, which negative change is caused by Aurora's development of the SLMC Parcel. In the furtherance of the maintenance and restoration activities provided for herein, County shall notify Aurora in writing upon any occurrence of a materially detrimental change within the KK River Parcel. In the event Aurora disagrees as to its responsibility for any change to the KK River Parcel, Aurora and County shall jointly retain and share the costs for a mutually agreed upon engineer or other professional, to inspect the condition of the Property for any materially detrimental changes due to the impact of Aurora's development of the SLMC Parcel. In the event any materially detrimental changes are observed by the engineer or other professional which are determined to be caused by Aurora's development of the SLMC Parcel, Aurora shall repair or restore same to the condition it was prior to construction of the SLMC Parcel improvements.

### 14. This Easement Grant is Further Subject to the Following Terms and Special Conditions:

- a) The COUNTY reserves to itself, its successors and assigns the right to make use of the land included in the above-mentioned landscape legal description and to erect buildings or other structures thereon, as will not injure or disturb the facilities or related appurtenances, provided, however that plans for said improvements shall be reviewed and approved by the GRANTEE. Said approval shall not be unreasonably withheld and the review will be made in a timely fashion at no charge to the COUNTY.
- b) It is further understood and agreed that the COUNTY may construct in, upon or along said landscape easement such improvements (the Improvements) relating to vehicular traffic or public usage (including but not limited to driveways, roadways, parking areas, walkways, trails, signage and lighting) as the COUNTY may deem appropriate provided such improvements do not damage the facilities and appurtenances thereto installed by the GRANTEE.
- c) The GRANTEE shall provide written notice to the Director of the Milwaukee County Department of Parks, Recreation and Culture prior to the commencement of any construction work within the easement area by the GRANTEE. Said notice shall indicate the anticipated start date and duration of the proposed work and include; plans and specifications showing the location, depth, type of installation, trees and shrubs within line or easement, drawings and specifications detailing construction methodology, the erosion and sedimentation control plan and the preservation and

restoration methods to be employed. These shall be reviewed and approved by the COUNTY prior to commencing any construction activities. Said approval shall not be unreasonably withheld and the review will be made in a timely fashion at no charge to the GRANTEE.

- d) The GRANTEE shall secure and pay for all permits required by any governing body or agency, including but not limited to, the Milwaukee County Department of Parks, Recreation and Culture before any substantial construction, repair or maintenance work commences. All construction, operation and repairs of the facilities installed within this easement shall be completed at no expense to the COUNTY.
- e) No trees, shrubs or vegetation within or adjacent to the easement area shall be removed, trimmed or damaged without the written permission of the Department of Parks, Recreation and Culture. In that regard, a specific construction and restoration landscaping plan will be reviewed and approved by said department of Milwaukee County.
- f) It is an express condition of the granting of this easement that as much of the surface and subsurface of the soil and as much of the Improvements as may be disturbed or damaged in the construction, operation, use, maintenance and repair of the purpose for which this easement is granted will, at the expense of the GRANTEE, be replaced or repaired to essentially the same condition, or better, as existed immediately prior to the occurrence of such damage, to the satisfaction of the Milwaukee County Department of Parks, Recreation and Culture.
- g) The COUNTY and GRANTEE hereby expressly agree to defend, hold harmless and indemnify each other from and against any and all claims, actions, liabilities, damages, expenses and judgments, including but not limited to, reasonable attorneys fees, reasonable investigative and discovery costs, court costs, and all other sums on account of any injury to any persons, loss of life or damage to property occurring on the Easement Areas and on the ways immediately adjoining the Easement Areas caused by the active or passive negligence or willful misconduct of such Party, its employees, agents or servants; provided that no Party shall be required to indemnify any other Party against any injury to persons, to the extent it is caused by the active or passive negligence or willful misconduct of that Party, its agents, servants or employees.
- h) This easement shall terminate upon the abandonment or non-use of the facilities herein authorized to be constructed in, under, over, and along said easement. Prior to abandonment or upon non-use, the facilities and related structures shall be abandoned in accordance with "Wisconsin State Standards for Facilities and Water Construction" and other applicable standards. The site shall be restored to the satisfaction of the County.
- i) The Milwaukee County Department of Public Works utilizing available data has reviewed this easement, but in no way can the COUNTY assure complete accuracy. The GRANTEE shall comply with all state and local laws regarding location and protection of existing utilities. The GRANTEE shall contact Diggers Hotline, the Park Maintenance Division of the Milwaukee County Department of Parks, Recreation and Culture and all applicable municipalities prior to commencing any construction to verify all pertinent easements and existing utility locations within the easement boundaries. Punitive damages will be charged, if easements are not strictly adhered to, for additional personal charges and subsequent property damages.

NOW, THEREFORE, it is further agreed that the GRANTEE in consideration of the easement so granted to it through all the land previously described, hereby covenants and agrees with the Grantor(s) that it will construct and maintain said facilities in good order and condition and that, in and during the construction of said facilities and thereafter in and about their operation, maintenance, repair or reconstruction, will indemnify and save harmless the Grantor(s), its successors and assigns, from all loss or injury to its property due to such construction, operation, maintenance, repair and reconstruction, and that no special charge will be made against said land, for the cost of such construction, operation, maintenance, repair and reconstruction. The GRANTOR(s)

reserves unto itself, its successors and assigns, all mineral rights and the right to make such use of the land included in the previously described permanent easement and to erect such buildings or other structures thereon as will not injure or disturb said facilities provided, however, that plan for said improvements be reviewed and approved by the GRANTEE prior to construction. Said approval will not be unreasonably withheld and the review will be made in a timely fashion for no charge to the GRANTOR.

TO HAVE AND TO HOLD the same to the only proper use and benefit, of the GRANTEE, its successors and assigns forever, and the foregoing shall bind the successors and assigns of the COUNTY and the GRANTEE.

IN WITNESS WHEREOF, the parties have executed this Agreement as the day and year first above written.

AURORA HEALTH CARE METRO, INC.

By: David Egan  
Its UP Finance

MILWAUKEE COUNTY

By: [Signature]  
Its COUNTY EXECUTIVE

Attest: Jamie A. Secna  
Its Deputy Co. Clerk

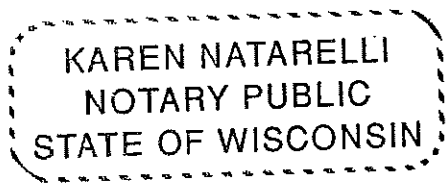
Reviewed by Risk Management

By: John R. Plath  
Approved by Corporation Counsel

By: Jamie Secna 8/11/03

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF Milwaukee )

Personally came before me this 26<sup>th</sup> day of August, 2003, the above-named David Eger, as VP Finance of Aurora Health Care Metro Inc., to me known to be the person who executed the foregoing document and acknowledged the same on behalf of Aurora Health Care Metro, Inc.

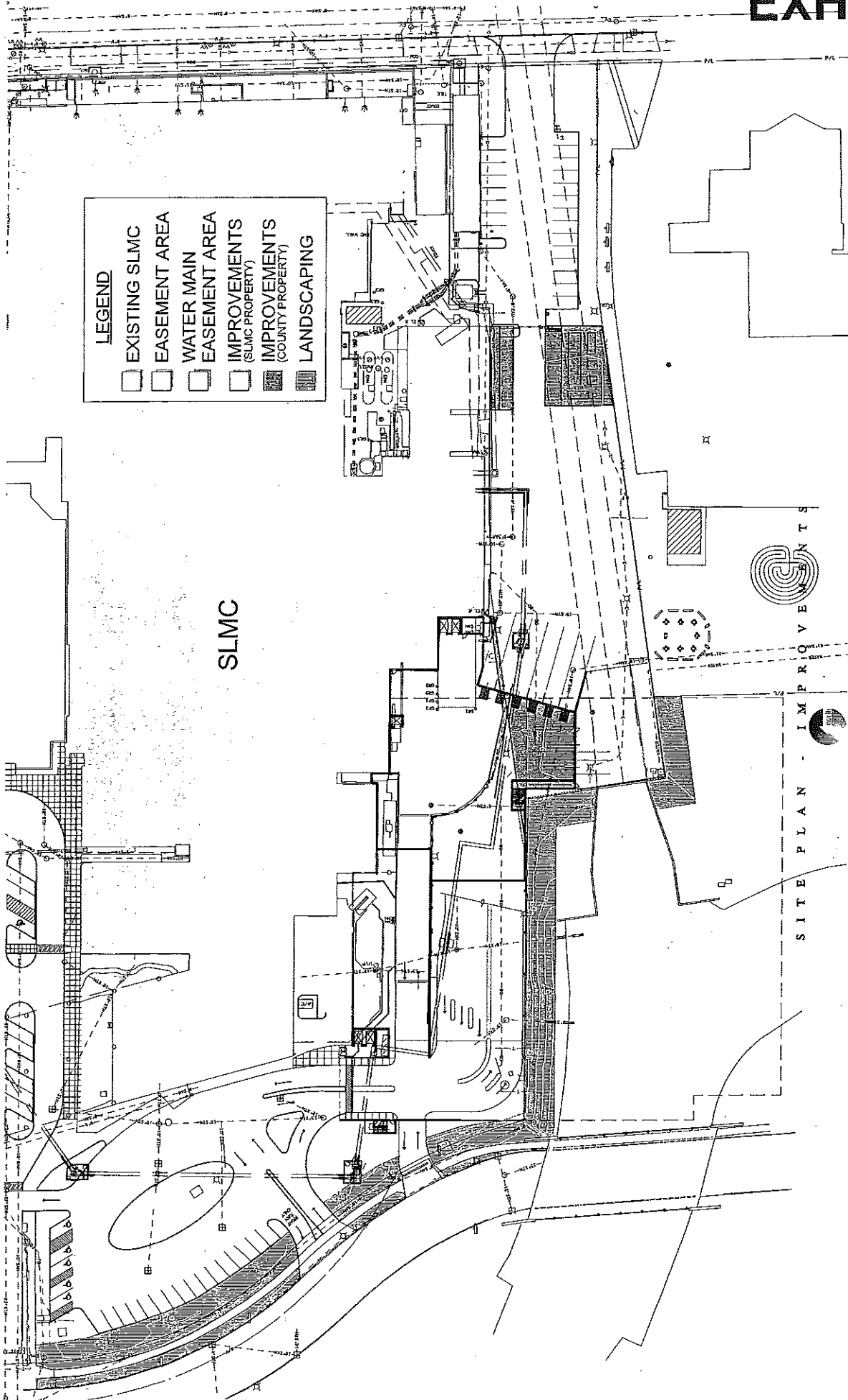


Karen Natarelli  
\* KAREN NATARELLI  
Notary Public, State of WISCONSIN  
My commission: ends MAY 2004

STATE OF WISCONSIN )  
 ) SS  
COUNTY OF Milwaukee )

Personally came before me this 11<sup>th</sup> day of August, 2003, the above-named Scott Spacker and Janine A. Sicora, as County Executive and deputy County Clerk of Milwaukee County, to me known to be the persons who executed the foregoing document and acknowledged the same on behalf of Milwaukee County.

John Scitapan  
\* JOHN SCITAPAN  
Notary Public, State of WISCONSIN  
My commission: IS PERMANENT



- LEGEND**
- EXISTING SLMC
  - EASEMENT AREA
  - WATER MAIN EASEMENT AREA
  - IMPROVEMENTS (SLMC PROPERTY)
  - ▨ IMPROVEMENTS (COUNTY PROPERTY)
  - LANDSCAPING

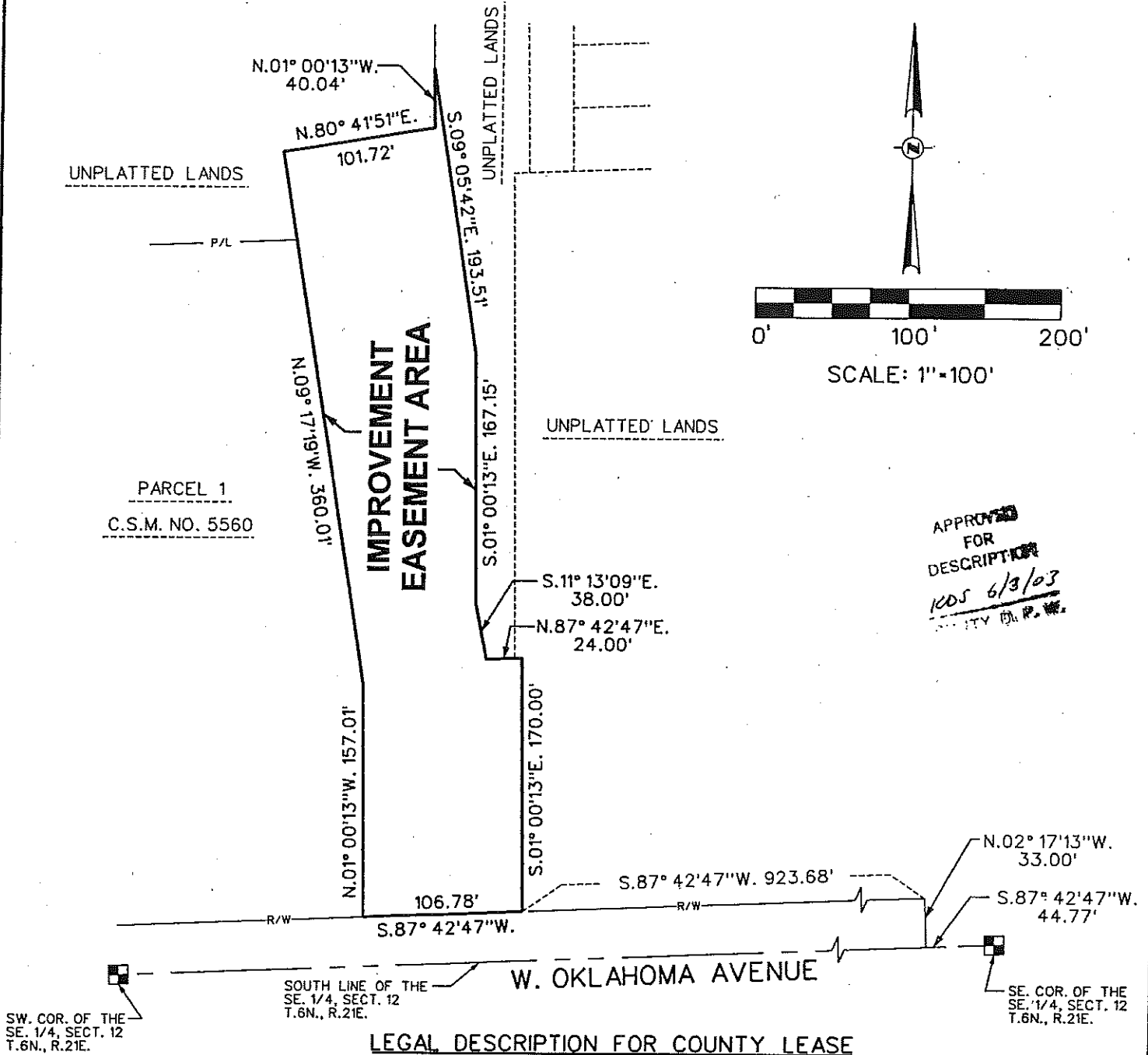
SLMC

SITE PLAN - IMPROVEMENTS

MATERIALS MANAGEMENT & PARKING STRUCTURE

# KK River Parcel

## COUNTY LEASE EXHIBIT



### LEGAL DESCRIPTION FOR COUNTY LEASE

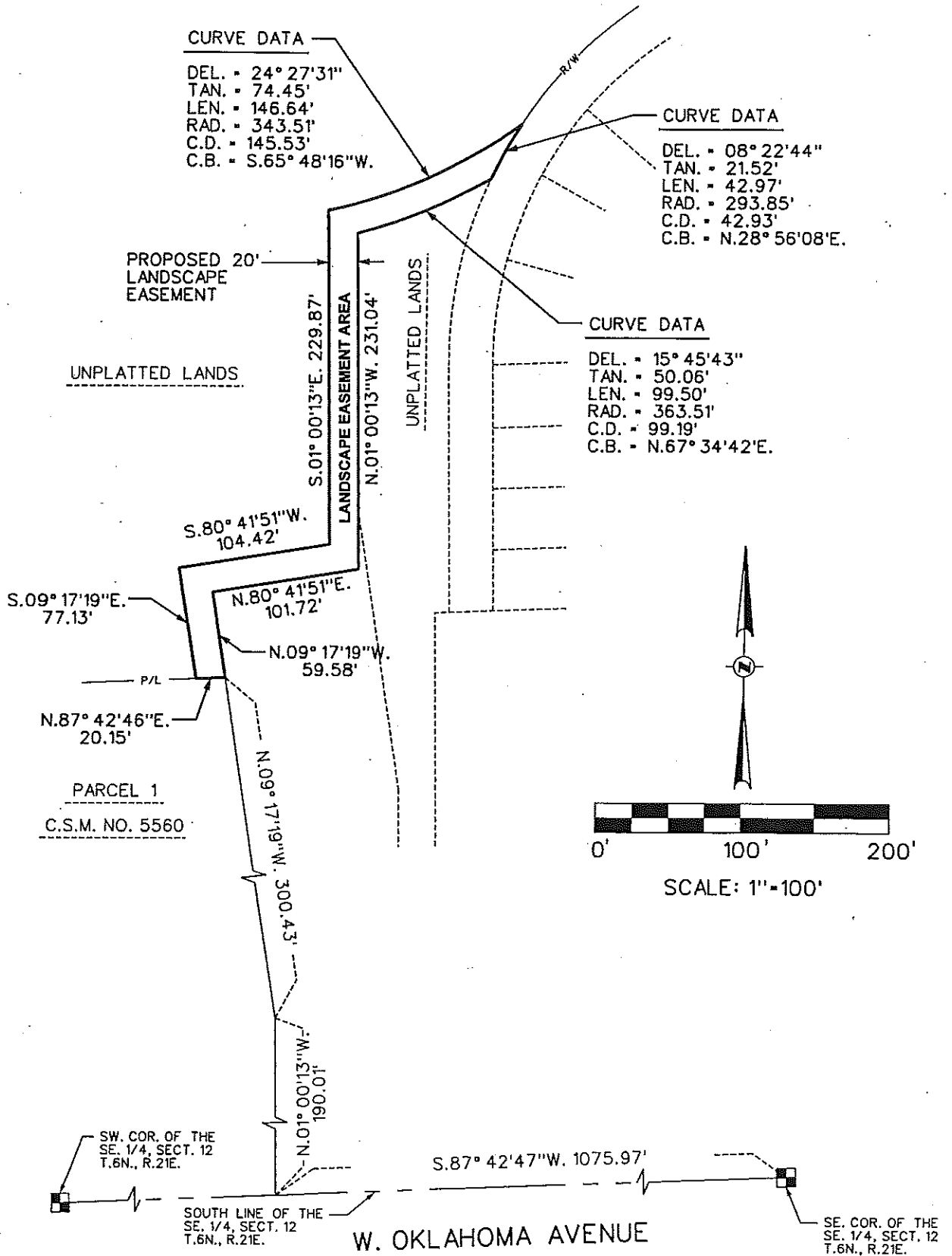
That part of the Southeast 1/4 of the Southeast 1/4 of Section 12, Township 6 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at a concrete monument with a brass cap at the southeast corner of said Southeast 1/4; thence South 87° 42' 47" West, on and along the south line of said Southeast 1/4, 44.77 feet; thence North 02° 17' 13" West, at a right angle to said south line, 33.00 feet to the north right of way line of West Oklahoma Avenue; thence South 87° 42' 47" West, on and along said north right of way line, 923.68 feet to the point of beginning; thence continuing South 87° 42' 47" West, on and along said north right of way line, 106.78 feet to the southeast corner of Parcel 1 of C.S.M. No. 5560; thence North 01° 00' 13" West, on and along the east line of said Parcel 1, 157.01 feet; thence North 09° 17' 19" West, on and along said east line, 360.01 feet; thence North 80° 41' 51" East, 101.72 feet; thence North 01° 00' 13" West, 40.04 feet; thence South 09° 05' 42" East, 193.51 feet; thence South 01° 00' 13" East, 167.15 feet; thence South 11° 13' 09" East, 38.00 feet; thence North 87° 42' 47" East, 24.00 feet; thence South 01° 00' 13" East, 170.00 feet to the point of beginning;

Containing 53,167 square feet (1.22 acres) more or less.

SHEET 1 OF 1

## COUNTY LANDSCAPE EASEMENT





## LEGAL DESCRIPTION FOR COUNTY LANDSCAPE EASEMENT

That part of the Southeast 1/4 of Section 12, Township 6 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of said Southeast 1/4, thence South 87° 42' 47" West, on and along the south line of said Southeast 1/4, 1075.97 feet, thence North 01° 00' 13" West, on and along the east line of Parcel 1 of C.S.M. No. 5560 and its extension, 190.01 feet; thence North 09° 17' 19" West, on and along said east line, 300.43 feet to the northeast corner of said Parcel 1 and the point of beginning; thence continuing North 09° 17' 19" West, 59.58 feet; thence North 80° 41' 51" East, 101.72 feet; thence North 01° 00' 13" West, 231.04 feet to the beginning of a curve to the left, having a radius of 363.51 feet and a long chord of North 67° 34' 42" East, 99.19 feet; thence Northeasterly, on and along the arc of said curve, 99.50 feet to the beginning of a curve to the right, having a radius of 293.85 feet and a long chord of North 28° 56' 08" East, 42.93 feet; thence Northeasterly, on and along the arc of said curve, 42.97 feet to the beginning of a curve to the right, having a radius of 343.51 feet and a long chord of South 65° 48' 16" West, 145.53 feet; thence Southwesterly, on and along the arc of said curve, 146.64 feet; thence South 01° 00' 13" East, 229.87 feet; thence South 80° 41' 51" West, 104.42 feet; thence South 09° 17' 19" East, 77.13 feet; thence North 87° 42' 46" East, 20.15 feet to the point of beginning.

Containing 10,463 square feet (0.24 acres), more or less.

APPROVED  
FOR  
DESCRIPTION  
*KDS 6/3/03*  
QUINTY D. P. W



**GRAEF  
ANHALT  
SCHLOEMER**  
*and Associates Inc.*