

(reserved for recording)

AMENDED AND RESTATED STORMWATER FACILITIES OPERATION, MAINTENANCE AND EASEMENT AGREEMENT

THIS AMENDED AND RESTATED STORMWATER FACILITIES OPERATION, MAINTENANCE AND EASEMENT AGREEMENT (the “Agreement”) is made and entered into as of the _____ day of _____, 2022, by and between **SCANNELL PROPERTIES #486, LLC**, an Indiana limited liability company (the “Owner”) and the **CITY OF ARDEN HILLS**, a Minnesota municipal corporation (the “City”).

RECITALS

A. Owner and the City entered into a Stormwater Facilities Operation and Maintenance Agreement dated February 8, 2021, recorded in the Office of the County Recorder of Ramsey County, Minnesota on April 28, 2021, as Document Number A04880172 (“Original Agreement”);

B. The Owner is the fee owner of certain real property located in Ramsey County, Minnesota, legally described in **Exhibit A** attached hereto (“Property”); and

C. The Owner is proceeding to build on and develop the Property, and requested approval of a Site Plan (collectively “Plans”) for the proposed development on the Property, Planning Case No. 21-025;

D. The final Plans, which are expressly made a part hereof, as approved or to be approved by the City, provides for piping, detention and filtration stormwater facilities (collectively “Stormwater Facilities”) as depicted on **Exhibit B** attached hereto; and

E. The Owner and City desire to amend and restate the Original Agreement to reflect changes to their original site plan for the Property approved as part of Planning Case No. 20-10 to provide a necessary parking area which required changes to the stormwater facilities originally planned for the development of the Property;

F. The City and the Owner agree that the health, safety, and welfare of the residents of the City of Arden Hills, Minnesota, require that on-site stormwater management facilities be constructed and maintained; and

G. The City requires that the Stormwater Facilities as shown on the Plans be constructed and adequately maintained and repaired by the Owner as a condition of final approval of the Plans.

NOW, THEREFORE, in consideration of mutual covenants of the parties set forth herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Construction of Stormwater Improvements.** Owner shall construct, inspect and maintain the Stormwater Facilities in accordance with the approved plans and specifications identified in the Plan. Inspection shall be performed by a City approved or appointed engineering consultant, including weekly inspection reports.

2. **Maintenance of Stormwater Improvements.**

A. The Owner shall adequately maintain the Stormwater Facilities in accordance with the Stormwater Maintenance Plan and the City engineering standards for stormwater treatment facilities attached hereto as **Exhibit D**. This includes all pipes, channels, and other conveyances built to convey stormwater for the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate maintenance is herein defined as good working condition so that these facilities are performing their design functions for the life of the system.

B. The Owner will perform the work necessary to keep these Stormwater Facilities in good working order as appropriate. Inspection, reporting and maintenance of the Stormwater Facilities shall conform to the BMP Maintenance Requirements attached hereto as **Exhibit E**. The schedule will be followed and comply with all federal, state, and local regulations relating to the disposal of material.

3. **Inspection and Reporting.** The Owner shall cause the Stormwater Facilities to be inspected and submit an inspection report annually to the City for review and approval (such approval not to be unreasonably withheld) and shall be responsible for the payment of any associated costs for the life of the facility. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, buffers, Contech underground pipe systems, pipes, manholes and flared ends within Minnesota Department of Transportation right of way, etc. Deficiencies shall be noted in the inspection report along with recommended and necessary maintenance items and repair. A storage treatment basin will be considered inadequate if it is not compliant with all requirements of the approved Plan and City engineering standards set forth in **Exhibit D**.

4. **City Access and Maintenance Rights.**

A. The Owner hereby grants permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management facilities during normal business hours (unless during an emergency that requires immediate access) as the City deems necessary. The City shall provide the Owner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary (“Inspection Report”).

B. In the event the Owner, its successors and assigns, fails to maintain the Stormwater Facilities in good working condition acceptable to the City and such failure continues for sixty (60) days after the City gives the Owner written notice of such failure, the City may enter upon the Property and take whatever steps necessary, including excavation and the storage of materials and equipment, to correct deficiencies. The City's notice shall specifically state which maintenance tasks are to be performed. The City may assess the City's costs to the Owner's property taxes, its successors and assigns. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said Stormwater Facilities, and in no event shall this Agreement be construed to impose any such obligation on the City. In addition, Owner agrees that it is, and will be, solely responsible to address complaints and legal claims brought by any third party with regard to the maintenance and operation from the Stormwater Facilities. The Owner expressly agrees to defend and hold the City harmless from any such third-party claim.

5. **Grant of Easement.** Owner hereby grants to the City, its successors and assigns, a permanent non-exclusive easement for the purpose of accessing and maintaining the Stormwater Facilities pursuant to the terms of this Agreement over, on, across, under and through the Easement Area as described in **Exhibit C**. The easement shall include the rights, but not the obligation, of the City, its contractors, agents, servants, and assigns, to enter upon the Easement to construct, reconstruct, inspect, repair, and maintain said private Stormwater Facilities together with the right to grade, level, fill, drain, pave, and excavate the Easement Areas, and the further right to remove trees, bushes, undergrowth, and other obstructions interfering with the location, construction, and maintenance of said private Stormwater Facilities systems.

6. **Reimbursement of Costs.** The Owner agrees to reimburse the City for all costs incurred by the City in the enforcement of this Agreement, or any portion thereof, including court costs and reasonable attorneys' fees.

7. **Indemnification.** This Agreement imposes no liability of any kind whatsoever on the City. The Owner hereby agrees to indemnify and hold harmless the City and its agents and employees against any and all claims, demands, losses, damages, and expenses (including reasonable attorneys' fees) arising out of or resulting from the Owner's or the Owner's agents or employees negligent or intentional acts, or any violation of any safety law, regulation or code in the performance of this Agreement, without regard to any inspection or review made or not made by the City, its agents or employees or failure by the City, its agents or employees to take any other prudent precautions. In the event the City, upon the

failure of the Owner to comply with any conditions of this Agreement, performs said conditions pursuant to its authority in this Agreement, the Owner shall indemnify and hold harmless the City, its employees, agents and representatives for its own negligent acts in the performance of the Owner's required work under this Agreement, but this indemnification shall not extend to intentional or grossly negligent acts.

8. **Insurance.** The Owner shall maintain its own policies of public liability insurance with regard to the use of the Easement Areas by Owner, its respective officers, agents, employees, members, invitees, contractors and assigns and such insurance shall have limits consistent with City requirements.
9. **Notice.** All notices required under this Agreement shall either be personally delivered or be sent by certified or registered mail or via overnight courier service (such as FedEx or UPS) and addressed as follows:

To the Owner: Scannell Properties #486, LLC
 294 Grove Lane, Suite 140
 Wayzata, MN 55391
 Attn: Tim Elam

With a copy to: Scannell Properties #486, LLC
 8801 River Crossing Blvd., Suite 300
 Indianapolis, IN 46240
 Attn: Jeffrey Cromer, Counsel

To the City: City of Arden Hills
 1245 West Highway 96
 Arden Hills, MN 55112
 Attn: City Administrator

All notices given hereunder shall be deemed given when personally delivered or two business days after being sent by certified or registered mail or one day after being sent by overnight courier service, properly addressed as provided herein.

10. **Successors/Covenants Run with Property.** All duties and obligations of Owner under this Agreement shall also be duties and obligations of Owner's successors and assigns. The terms and conditions of this Agreement shall run with the Property.

*Remainder of page intentionally left blank.
Signature pages follow.*

OWNER:
SCANNELL PROPERTIES #486, LLC,
an Indiana limited liability company

By: _____
Marc D. Pflieger, Its Manager

STATE OF INDIANA)
) ss.
COUNTY OF MARION)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by **Marc D. Pflieger**, the Manager of **Scannell Properties #486, LLC**, an Indiana limited liability company, on behalf of said entity.

Notary Public

CITY:
CITY OF ARDEN HILLS

By: _____
David Grant, Mayor

And: _____
Dave Perrault, Its City Manager

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by **David Grant** and **Dave Perrault**, respectively, the Mayor and City Manager, of the **City of Arden Hills**, a Minnesota municipal corporation, on behalf of the corporation and pursuant to the authority granted by its City Council.

Notary Public

THIS INSTRUMENT WAS DRAFTED BY:
CAMPBELL KNUTSON
Professional Association
Grand Oak Office Center I
860 Blue Gentian Road, Suite 290
Eagan, Minnesota 55121
Telephone: (651) 452-5000
AMP

**EXHIBIT A
TO AMENDED AND RESTATED
STORMWATER FACILITIES OPERATION, MAINTENANCE AND EASEMENT
AGREEMENT**

Legal Description of the Property

Lot 1, Block 1, Gateway Interstate, Ramsey County, Minnesota, according to the recorded plat thereof.

EXHIBIT B
TO AMENDED AND RESTATED STORMWATER FACILITIES OPERATION,
MAINTENANCE AND EASEMENT AGREEMENT

Depiction of Stormwater Facilities

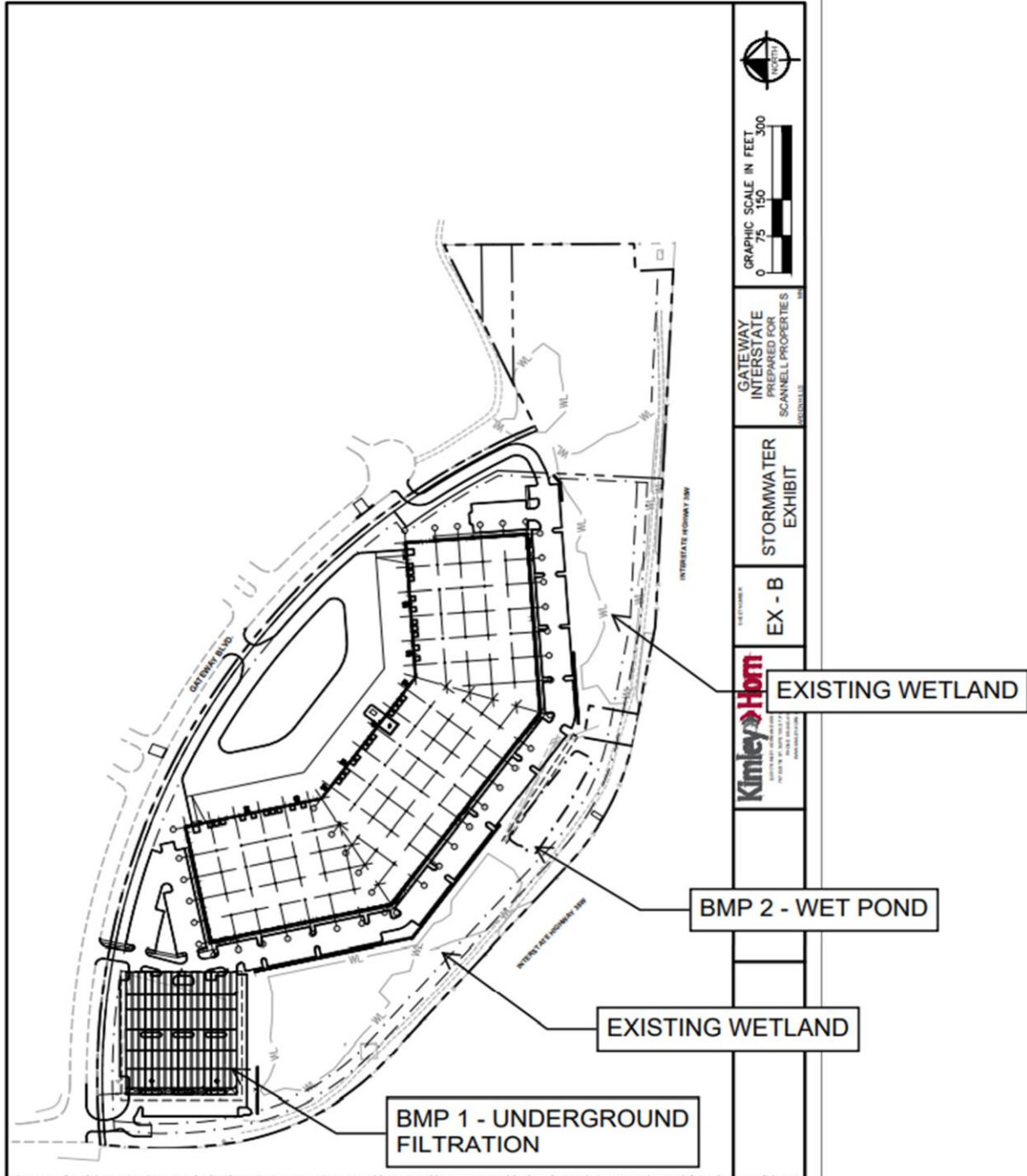


EXHIBIT C
TO AMENDED AND RESTATED STORMWATER
FACILITIES OPERATION, MAINTENANCE AND EASEMENT AGREEMENT

Legal Description of Easement Areas

A permanent easement for drainage and utility purposes over, under, across and through the following parcels:

Parcel 1: That part of Lot 1, Block 1, GATEWAY INTERSTATE, according to the recorded plat thereof, Ramsey County, Minnesota, described as commencing at the northwest corner of said Lot 1; thence on an assumed bearing of South 4 degrees 21 minutes 08 seconds West, along the west line of said Lot 1, a distance of 50.64 feet to a point of curvature in said west line of Lot 1; thence southerly 200.64 feet, along said west line of Lot 1, being a tangential curve concave to east, having a radius of 844.93 feet and a central angle of 13 degrees 36 minutes 21 seconds to a point of compound curvature in said west line of Lot 1; thence southeasterly 355.19 feet, along said west line of Lot 1, being a tangential curve concave to the northeast, having a radius of 526.62 feet and a central angle of 38 degrees 38 minutes 39 seconds to a point of tangency in said west line of Lot 1; thence South 47 degrees 53 minutes 52 seconds East, along said west line of Lot 1, a distance of 502.78 feet; thence North 31 degrees 50 minutes 16 seconds East 51.26 feet to the point of beginning of the easement to be described; thence continuing North 31 degrees 50 minutes 16 seconds East 90.04 feet; thence South 52 degrees 29 minutes 40 seconds East 252.96 feet; thence South 29 degrees 17 minutes 46 seconds West 64.63 feet; thence North 61 degrees 52 minutes 54 seconds West 117.33 feet; thence North 55 degrees 12 minutes 05 seconds West 137.69 feet to the point of beginning.

[20,492 square feet]

Parcel 2: That part of Lot 1, Block 1, GATEWAY INTERSTATE, according to the recorded plat thereof, Ramsey County, Minnesota, described as commencing at the northwest corner of said Lot 1; thence on an assumed bearing of South 4 degrees 21 minutes 08 seconds West, along the west line of said Lot 1, a distance of 50.64 feet to a point of curvature in said west line of Lot 1; thence North 78 degrees 05 minutes 41 seconds East 96.50 feet to the point of beginning of the easement to be described; thence on a bearing of East 262.00 feet; thence on a bearing of South 240.00 feet; thence on a bearing of West 262.00 feet; thence on a bearing of North 240.00 feet to the point of beginning.

Parcel 3: That part of Lot 1, Block 1, GATEWAY INTERSTATE, according to the recorded plat thereof, Ramsey County, Minnesota, described as commencing at the northwest corner of said Lot 1; thence on an assumed bearing of South 4 degrees 21 minutes 08 seconds West, along the west line of said Lot 1, a distance of 50.64 feet to a point of curvature in said west line of Lot 1; thence southerly 200.64 feet, along said west line of Lot 1, being a tangential curve concave to east, having a radius of 844.93 feet and a central angle of 13 degrees 36 minutes 21 seconds to a point of compound curvature in said west line of Lot 1; thence South 58 degrees 21 minutes 29 seconds East 105.31 feet to the point of beginning of the easement to be described; thence South 4 degrees

53 minutes 50 seconds East 99.03 feet; thence South 42 degrees 11 minutes 16 seconds East 491.19 feet; thence South 54 degrees 52 minutes 06 seconds East 139.23 feet; thence North 30 degrees 36 minutes 39 seconds East 102.48 feet; thence North 53 degrees 09 minutes 59 seconds West 237.76 feet; thence North 12 degrees 21 minutes 43 seconds West 300.34 feet; thence North 88 degrees 27 minutes 22 seconds West 121.71 feet; thence South 79 degrees 29 minutes 57 seconds West 58.21 feet; thence North 69 degrees 53 minutes 35 seconds West 75.47 feet to the point of beginning.

[88,519 square feet]

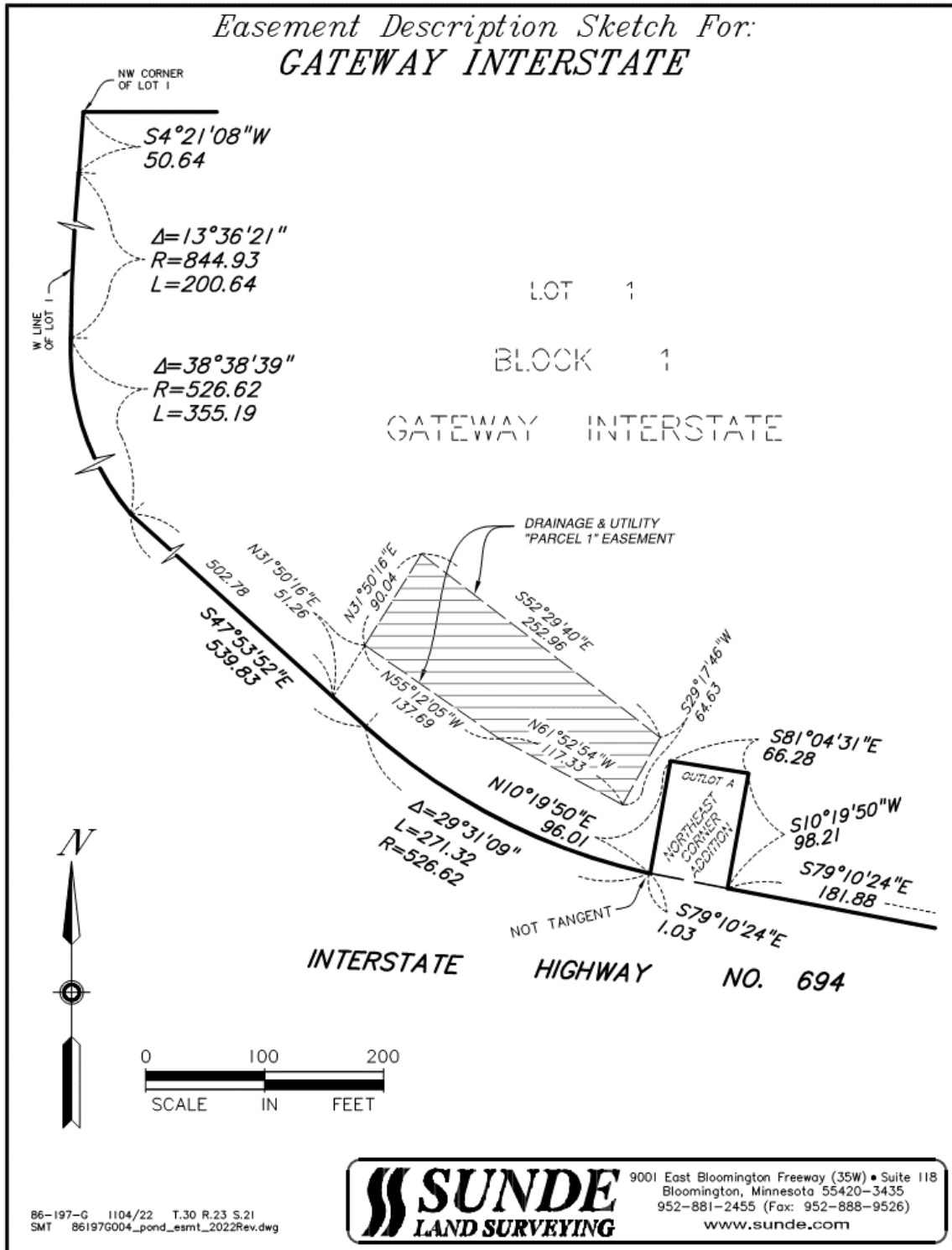
Parcel 4: That part of Lot 1, Block 1, GATEWAY INTERSTATE, according to the recorded plat thereof, Ramsey County, Minnesota, lying southerly and easterly of a line described as commencing at the southeast corner of said Lot 1; thence on an assumed bearing of North 2 degrees 49 minutes 00 seconds East, along the east line of said Lot 1, a distance of 209.15 feet to the point of beginning of the line to be described; thence South 63 degrees 11 minutes 03 seconds West 43.11 feet; thence South 85 degrees 44 minutes 54 seconds West 346.44 feet; thence North 89 degrees 25 minutes 39 seconds West 78.09 feet; thence South 9 degrees 57 minutes 51 seconds West 119.09 feet to a southerly line of said Lot 1 and said line there terminating.

[75,093 square feet]

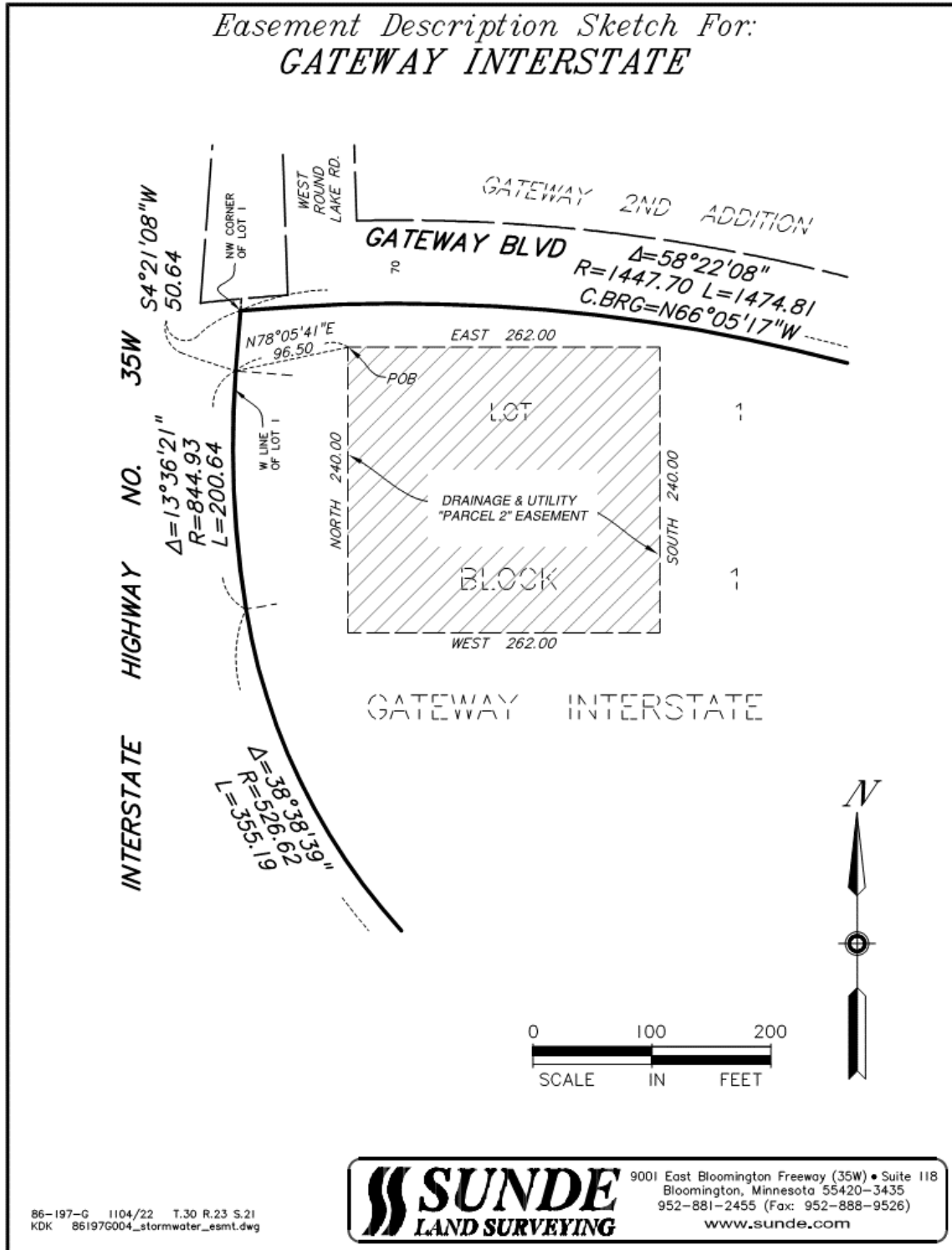
EXHIBIT C
TO AMENDED AND RESTATED STORMWATER FACILITIES OPERATION,
MAINTENANCE AND EASEMENT AGREEMENT
[Continued]

Depictions of Easement Areas

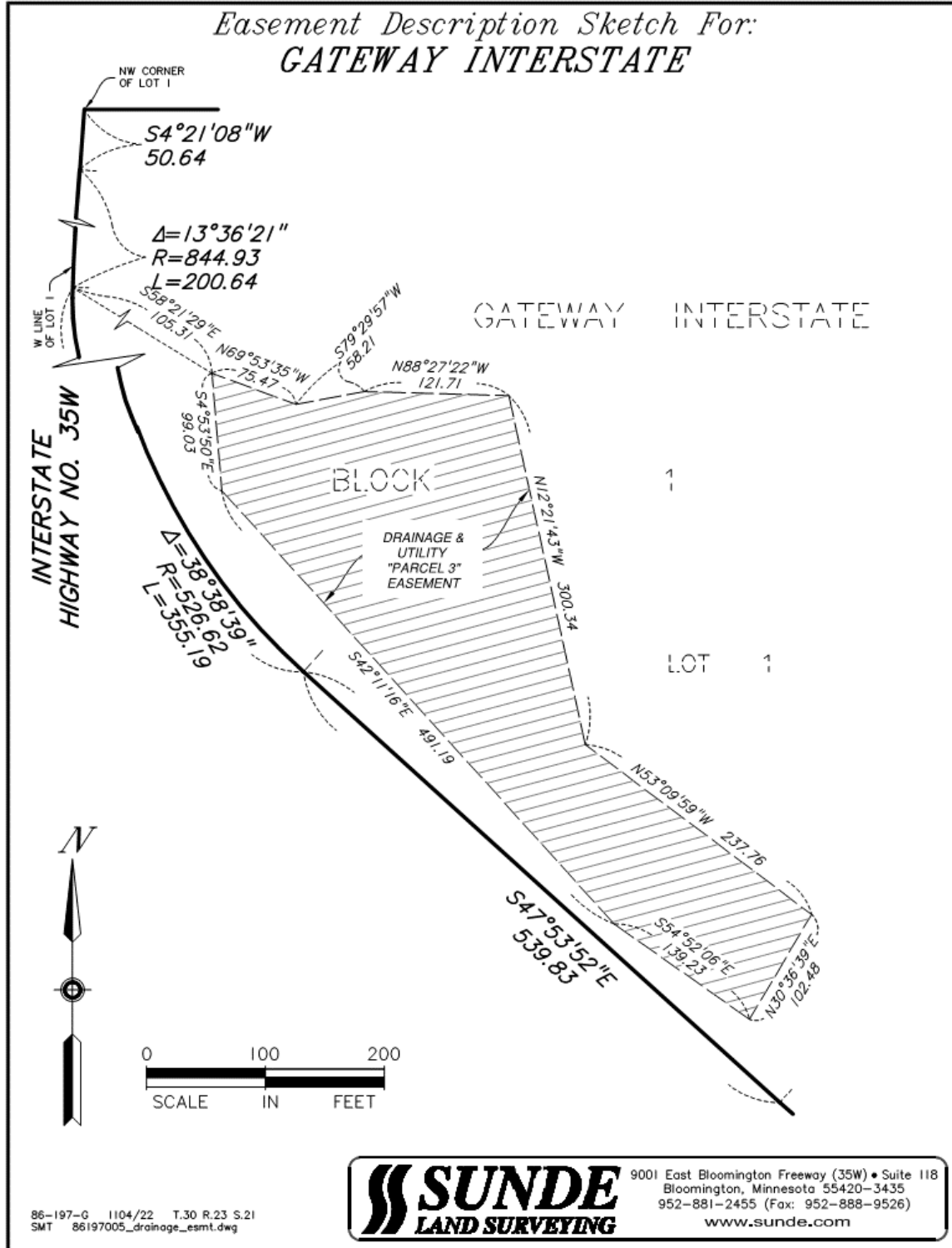
Parcel 1:



Parcel 2:



Parcel 3:



Parcel 4:

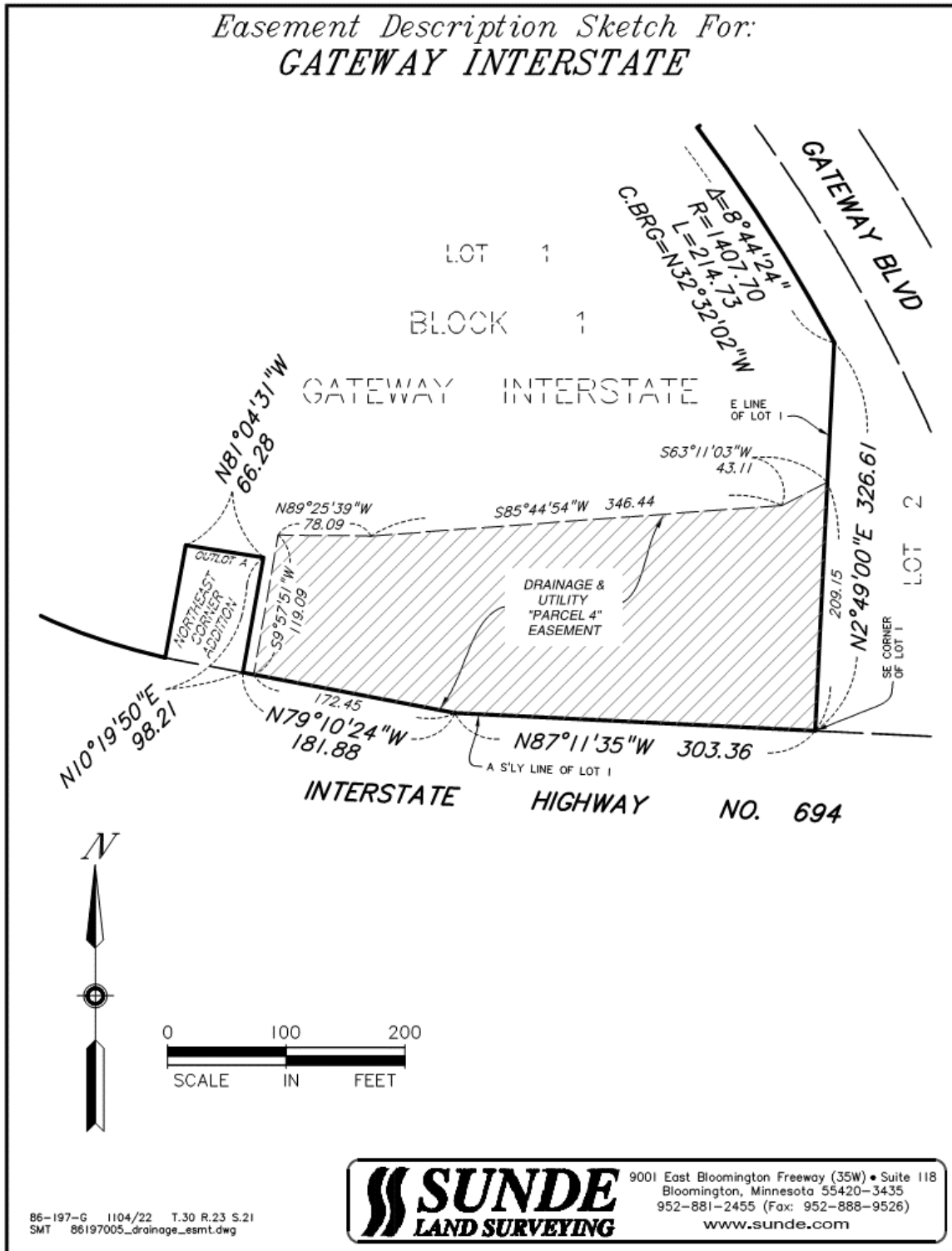


EXHIBIT D
TO AMENDED AND RESTATED STORMWATER FACILITIES OPERATION,
MAINTENANCE AND EASEMENT AGREEMENT

STORMWATER FACILITY INSPECTIONS

The Owner, at its expense, shall be responsible for the inspection and maintenance of stormwater drainage and management facilities (Facilities) located on the Property or directly associated with the property improvements to ensure Facilities function properly in accordance with standards established by the City of Arden Hills, Rice Creek Watershed District, and the Minnesota Stormwater Manual.

Owner shall inspect the Facilities annually and submit a written inspection report to the Arden Hills City Engineer for review. Owner shall promptly complete maintenance and repairs to the Facilities based on finding from the annual inspection or as directed by the City Engineer. Inspections shall be completed by a qualified person with formal training and education in the design and maintenance of stormwater management practices. A summary of inspector qualifications shall be provided with the annual report.

Stormwater facility inspections shall include, but are not limited to, the following items.

1. Access: Adequate access is provided for inspection, maintenance, and landscaping upkeep, including the ability to access areas by appropriate equipment and vehicles.
2. Sediment Removal: Accumulated sediment is removed as recommended by the manufacturer or every five years, whichever is more frequent, and whenever sediment volume has exceeded design parameters.
3. Vegetation: Mowing of the pond buffer, shoreline or base elevation, and the embankment is completed a minimum of once per year. All areas of bare soil and erosive gullies are repaired and stabilized. All noxious weeds are treated and/or removed from the Facility area twice per year or per the City of Arden Hills Ordinance for noxious weeds, whichever is more often.
4. Debris: All trash, litter and debris is removed from within the 100-year high water level of the facility, including fallen trees, limbs and other floatable materials.
5. Infiltration: The surface of infiltration areas are free of accumulated sediment and continue to provide the design infiltration and permeability rates in accordance with the original hydraulic design. Standing water does not exist after 24 hours following a rain event. Subsurface drainage pipes are free of debris and are not clogged with material.
6. Conveyance and Outlet Works: Inlet pipes, outlet pipes, outlet control devices and emergency overflow paths are free of debris or other potential blockages. Pipes and structures are secured and show no signs of significant deterioration or damage. Trash guards are secured and free of blockage. Rip rap and energy dissipation items are maintained in proper working order in accordance with design requirement and City maintenance standards.
7. Embankments: Areas of embankment are inspected to identify erosion, instability, including cracks, horizontal or vertical movement, slope failure, or seepage.

EXHIBIT E
TO AMENDED AND RESTATED STORMWATER FACILITIES OPERATION,
MAINTENANCE AND EASEMENT AGREEMENT

BMP Maintenance Requirements

Name & Location

Project Name: Scannell – Gateway Interstate
 Address: 35W & 694 interchange–Arden Hills, MN

Site Data

Total Site Area: 26.22 AC
 Impervious Area Before Construction: 0.29
 AC Impervious Area After Construction: 13.17 AC

BMP Information

The designer shall provide, on the plan set, the following information on post-construction stormwater BMPs:

BMP ID	TYPE OF BMP
BMP 1	Underground Detention w/ Sand Filtration
BMP 2	Wet Pond

Routine Maintenance and Tasks Schedule

Operations and Maintenance of Underground Detention w/ Sand Filtration (BMP 1)

Task	Schedule
Ensure that contributing area, facility, inlets and outlets are clear of debris.	Monthly for first 6 months. Quarterly thereafter
Ensure that the contributing area is stabilized and mowed, with clippings removed.	Monthly for first 6 months. Quarterly thereafter
Remove trash and debris.	Quarterly
Ensure that activities in the drainage area minimize oil/grease and sediment entry to the system.	Quarterly
Check to see that the filter bed is clean of sediment and the sediment chamber is not more than 6 inches of sediment. Remove sediment as necessary.	Quarterly
Make sure that there is no evidence of deterioration, spalling or cracking of concrete.	Annually
Inspect inlets, outlets and overflow spillway to ensure good condition and no evidence of erosion and general proper operation.	
Repair or replace any damaged structural parts.	
Ensure that flow is not bypassing the facility.	
Ensure that no noticeable odors are detected outside the facility.	

Inspection reports should be completed and kept on file with the Inspector or Owner. Reports should be kept for a minimum of five years. Reference the manufacturer specifications for additional maintenance requirements.

Operations and Maintenance of Wet Pond (BMP 2)

Task	Schedule
Ensure that contributing area, facility, inlets and outlets are clear of debris.	Quarterly
Ensure that the contributing area is stabilized and mowed, with clippings removed.	
Remove trash and debris.	
Check to ensure that the pond is drawing down/draining out (also check after storms greater than about 1"). Is the water level at/below the inlet elevation of all flared end sections?	
Ensure that activities in the drainage area minimize oil/grease and sediment entry to the system.	
Check to see that the filter bed is clean of sediment and the sediment chamber is not more than 6 inches of sediment. Remove sediment as necessary.	Annually
Make sure that there is no evidence of deterioration, spalling or cracking of concrete.	
Inspect inlets, outlets and overflow spillway to ensure good condition and no evidence of erosion and general proper operation.	
Repair or replace any damaged structural parts.	
Stabilize any eroded areas.	
Ensure that flow is not bypassing the facility.	2 to 7 years or As Needed
Ensure that no noticeable odors are detected outside the facility.	
Remove Sediment every 2 to 7 years or after 50% of the volume capacity has been lost from the permanent pool settling area	

Inspection reports should be completed and kept on file with the Inspector or Owner. Reports should be kept for a minimum of five years.