

**RIGHT OF WAY EASEMENT FOR PUBLIC
RECREATIONAL TRAIL**

DRAFT

This Permanent Limited Easement Agreement for a public recreational trail (the "Agreement") is executed by and between **EBENEZER BRIGHAM, LLC**, a Wisconsin limited liability company ("Ebenezer"), as Grantor, and the **COUNTY OF DANE** ("the County"), as Grantee, to be effective when fully executed by the parties.

RECITALS

A. Ebenezer is the owner of certain real property in the Town of Blue Mounds, County of Dane, State of Wisconsin, and more particularly described on Exhibit A, attached hereto and made a part hereof, further identified as the "Property".

B. The County has requested that Ebenezer grant the County a non-exclusive Permanent Limited Easement (hereinafter "the Spur Trail Easement" or "the Permanent Limited Easement") over a portion of the Property for the public purposes of constructing and maintaining a portion of the multi-purpose recreational trail known as the Brigham Park Trail; said easement is more particularly described on Exhibit B, attached hereto and made a part hereof.

C. Ebenezer wishes to grant the Spur Trail Easement over a portion of the Property to the County, and the County wishes to accept the Spur Trail Easement, all on the terms and conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the above recitals, which are incorporated by reference, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

I. Ebenezer hereby grants to the County, its successors and assigns, the non-exclusive Spur Trail Easement over a portion of the Property for the public purpose of constructing, maintaining and managing a multi-purpose recreational trail for use by the public. In turn, the County accepts the responsibility and obligation to construct, maintain and manage the Spur Trail Easement, all in a manner that is consistent with or exceeds the standards for such trails located in the County of Dane. In order to meet its obligations hereunder, the County shall have the right of ingress and egress within the Spur Trail

RETURN TO

Mark B. Rooney, Attorney SC
1809 Springdale Street, Suite 204
Mount Horeb, WI 53572

Part 010/0606-053-9405-0

Easement, the right to operate necessary equipment on the Spur Trail Easement and the right and responsibility to preserve, protect, remove, or plant such vegetation on the Spur Trail Easement as the County officials deem necessary or desirable to satisfy its obligations hereunder.

2. Furthermore, Ebenezer and the County agree as follows:

- a. It is expressly understood that the Spur Trail Easement will be available for recreational use by the public, subject to the prior rights of Ebenezer and the provisions of this Agreement. The definition and control of the "recreational uses" on the Brigham Park Trail shall be as determined by the County as may be set forth in the Dane County Parks Ordinance.
- b. Subject to prior approval by Ebenezer and at the County's sole expense, the County shall have the right to erect signs necessary to identify the boundaries and uses of the Brigham Park Trail and the Spur Trail Easement.
- c. The County shall have the right to charge a usage fee if the Brigham Park Trail becomes part of a "permit required" trail system.
- d. Following written notice to Ebenezer, the County shall have the right to assign the County's interest in this Agreement to another public agency with the resources to construct, maintain and manage the Brigham Park Trail, including the State of Wisconsin Department of Natural Resources. Successors to the County's interest shall be bound by this Agreement.

3. The County shall maintain ~~that portion of the Brigham Park Trail constructed~~ **within** the Spur Trail Easement in good condition and repair. The surface of the ~~Brigham Park Trail~~ **Spur Trail Easement** shall be blacktop or another bicycle friendly ~~hard~~ surface as determined in the County's sole discretion. All routine maintenance, repair, and replacement costs associated with the Brigham Park Trail shall be at the County's sole expense.

4. This Agreement, and the rights granted and obligations undertaken hereunder, is perpetual and runs with the land. However, in the event that the portion of the Brigham Park Trail and improvements installed within the Spur Trail Easement are not ~~used~~ **operated as a public facility** for a period of ~~one (1) year~~ **two (2) years**, the Spur Trail Easement shall be deemed abandoned. Thereafter, at the request of Ebenezer, the Permanent Limited Easement granted by this Agreement shall terminate and ownership of all the improvements located within the Spur Trail Easement shall transfer to Ebenezer. In that event, the County shall execute and deliver to Ebenezer such document(s) as requested by Ebenezer for the purposes of terminating the Agreement and the rights granted hereby. The County's obligations hereunder shall continue until such time as the Agreement is terminated.

5. The County shall defend, protect and hold Ebenezer harmless from and against, any and all loss, costs (including reasonable attorneys' fees), injury, death or damage to persons or property which at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with any County-authorized activities conducted within the Spur Trail Easement or which result from the County's negligence in maintaining the Brigham Park Trail. "County-authorized activities" are those activities associated with any use of the Brigham Park Trail within the Spur Trail Easement, but excluding nonrecreational use of the Spur Trail Easement by Ebenezer and Ebenezer's agents, employees and contractors. With respect to such nonrecreational use by Ebenezer, Ebenezer remains solely liable for any and all loss, costs (including reasonable attorneys' fees), injury, death or damage to persons or property which at any time during the term of this Agreement may be suffered or sustained by any person or entity in connection with Ebenezer's nonrecreational use of the Spur Trail Easement, unless the same result from the County's negligence in constructing, maintaining or managing the Spur Trail Easement.

6. All of the terms, conditions, covenants and other provisions contained in this Agreement, including the benefits and burdens described herein, shall run with the land and shall be binding upon and inure to the benefit of and be enforceable by Ebenezer and the County and their respective successors and assigns. A fee simple owner shall cease to have any liability under this Agreement with respect to facts or circumstances arising after such party has transferred its fee simple interest in the Property. This Agreement is subject to existing and future easements in favor of public utilities for underground utility service.

7. After completion of any utility work that takes place on the Property by Ebenezer, its successor, assign or agent, or by any other entity holding an easement in favor of public utilities for underground utility service on that portion of the Property located within the Spur Trail Easement, the surface of the Brigham Park Trail located within the Spur Trail Easement shall be restored to the condition prior to the commencement of the work and at the sole expense of the entity holding an easement in favor of public utilities that was responsible for the work.

8. This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.

9. This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the Office of the Register of Deeds of Dane County, Wisconsin.

10. All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, to the addresses listed below. Either party may change its address for notice by written notice to the other party.

County of Dane, Real Estate
Coordinator
5201 Fen Oak Drive, Room 208
Madison, WI 53718

Ebenezer Brigham LLC
Mark B. Rooney, Manager
300 N Second Street
Mount Horeb, WI 53572

11. If any term, covenant or condition of this Agreement or the application thereof to any person, entity or circumstance shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons, entities or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

12. No delay or omission by any party in exercising any right or power accruing upon any default, non-compliance or failure of performance of any of the provisions of this Agreement shall be construed to be a waiver thereof. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms, covenants or conditions of this Agreement.

13. Enforcement of this Agreement may be by proceedings at law or in equity against any person(s) or entity(ies) violating or attempting or threatening to violate any provision hereof, either to restrain or prevent such violation or to obtain any other relief. In the event a lawsuit is commenced to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney's fees, from the non-prevailing party.

14. This Agreement is by and between the parties hereto and does not grant standing or any rights whatsoever to third-parties.

IN WITNESS WHEREOF, the undersigned has entered into this Agreement as of _____, 2017.

EBENEZER BRIGHAM, LLC
Grantor

BY: _____
Mark B. Rooney, Manager

STATE OF WISCONSIN)
)ss
COUNTY OF DANE)

Personally, came before me this _____ day of _____, 2017, the above-named Mark B. Rooney, Manager of Ebenezer Brigham, LLC, a Wisconsin limited liability company, known to me to be the person who executed the above and foregoing instrument and acknowledged that he executed the foregoing as such officer as the deed of such limited liability company, by its authority.

Print Name _____
Notary Public, State of Wisconsin
My commission expires: _____

COUNTY OF DANE, WISCONSIN
Grantee

BY: _____
Print Name _____

STATE OF WISCONSIN)
)ss
COUNTY OF DANE)

Personally came before me this _____ day of _____, 2017, the above-named _____, _____ of County of Dane, Wisconsin, known to me to be the person who executed the above and foregoing instrument and acknowledged that he/she executed the foregoing as such officer as the deed of such corporation, by its authority.

Print Name _____
Notary Public, State of Wisconsin
My commission expires: _____

DOCUMENT DRAFTED BY:
Mark B. Rooney, Attorney SC
1809 Springdale Street, Suite 204
Mount Horeb, WI 53572
Ph.: (608) 437-5591
Fax: (608) 437-5593
Email: Mark@mrooneylaw.com

Exhibit "A"
PROPERTY LEGAL DESCRIPTION

Part of the South $\frac{1}{2}$ of the Southwest $\frac{1}{4}$ of Section 5 and the North $\frac{1}{2}$ of the Northwest $\frac{1}{4}$ of Section 8, Township 6 North, Range 6 East, Town of Blue Mounds, described as follows: Commencing at the Southwest corner of Section 5, Township 6 North, Range 6 East, proceeding North 90 degrees 00'00" East along the South line of said Section, 900.00 feet to the point of beginning; thence North 0 degrees 0'00" East, 100.00 feet; thence North 45 degrees 00'00" East, 282.84 feet; thence North 90 degrees 00'00" East, 400.00 feet; thence South 45 degrees 00'00" East, 282.84 feet; thence South 0 degrees 00'00" East, 350.00 feet; thence South 90 degrees 00'00" West, 800.00 feet; thence North 0 degrees 00'00" West, 250.00 feet to the point of beginning.

Together with Sewer Easement recorded in Vol. 7780 of Records, page 13, #1921163.

Subject to Conservation Easement recorded November 12, 2004 as Document No. 3990015

Exhibit "B"
EASEMENT DESCRIPTION

A Permanent Limited Easement for the right to construct and maintain the components associated with a proposed multi-use trail, including for such purpose the right to operate the necessary equipment thereon and the right of ingress and egress as long as required for such public purpose, including the right to preserve, protect, remove, or plant thereon any vegetation that Dane County officials may deem necessary or desirable, in and to the following tracts of land in Dane County, State of Wisconsin described as:

The centerline of a 30 foot wide trail easement being located in part of the SE ¼ of the SW ¼ of Section 5, T6N, R6E, Town of Blue Mounds, Dane County, Wisconsin and more particularly described as follows:

Commencing at the SW Corner of said Section 5; Thence N 01°09'38" E along the west line SW 1/4 of Section 5 299.52 feet; Thence S 89°56'04" E 1339.85 feet to the east right of way line of Cave of the Mounds Road and the parcel described as part of parcel F in document number 3648825; Thence S 23°43'42" E along the said east right of way of Cave of the Mounds Road and said parcel F, 59.27 feet; Thence continue along said right of way and along the arc of a curve concaved northeasterly having a radius of 407.0 feet and a long chord bearing of S 33°07'43" E and a long chord distance of 132.94' to the Point of Beginning (P.O.B) of the Centerline of a 30 feet wide trail easement; Thence along said centerline and along the arc of a curve concaved southeasterly having a radius of 28.65 feet and a long chord bearing of S 88°59'43" E and a long chord distance of 32.29 feet; Thence S 48°36'26" E along said centerline 77.21 feet; Thence along said easement and along the arc of a curve concaved northeasterly having a radius of 153.77 feet and long chord bearing of S 66°01'50" E and a long chord distance of 74.99 feet; Thence S 84°18'30" E along said centerline 99.73 feet more or less to the easterly line of said parcel F as described in document number 3648825.

The above Permanent Limited Easement is defined as non-exclusive, and appurtenant.

EXHIBIT "B-1"



WILLIAMSON SURVEYING & ASSOCIATES, LLC

104 A WEST MAIN STREET, WAUNAKEE, WISCONSIN, 53597.

NDA T. PRIEVE & CHRIS W. ADAMS

REGISTERED LAND SURVEYORS

PHONE: 608-255-5705 FAX: 608-849-9760 WEB: WILLIAMSONSURVEYING.COM

EXHIBIT MAP

PREPARED FOR:

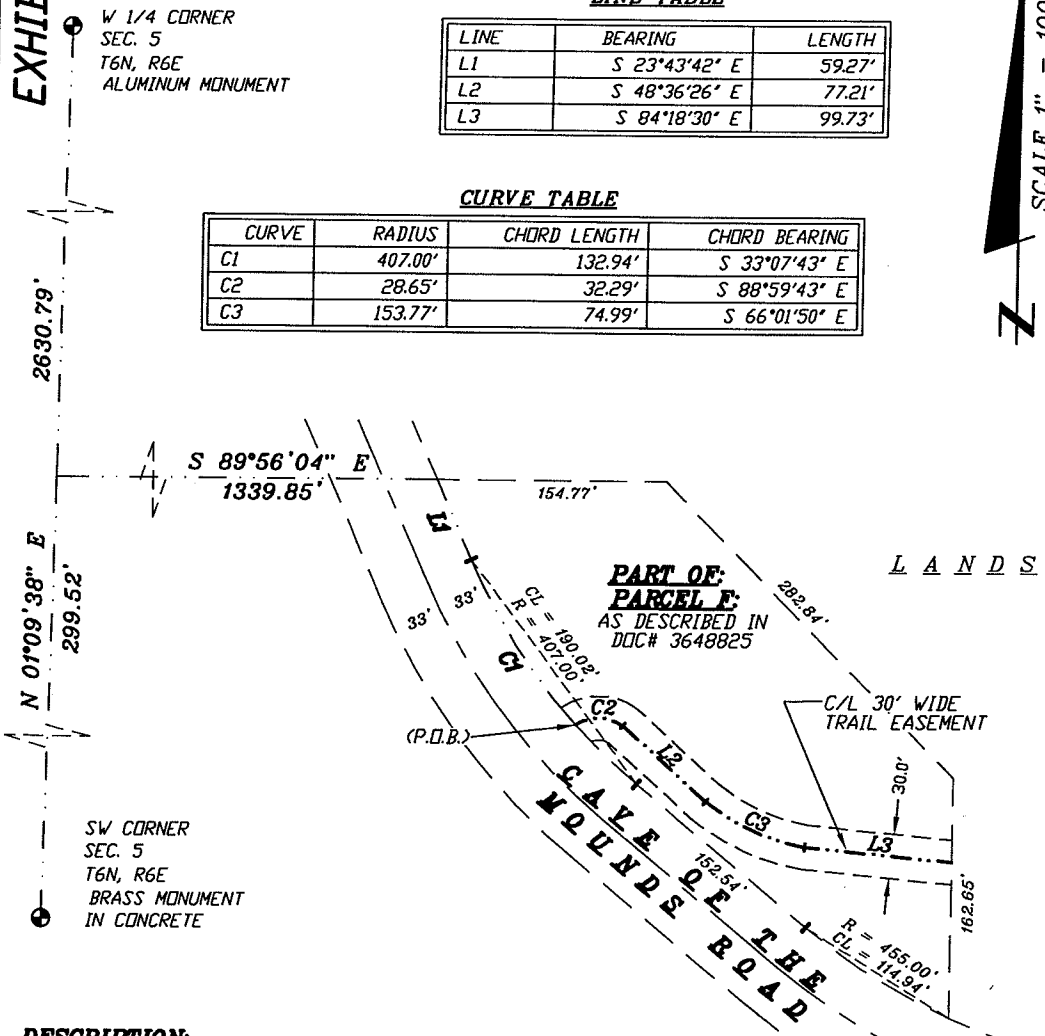
DANE COUNTY LAND AND WATER RESOURCES DEPARTMENT
5201 FEN OAK DRIVE #208
MADISON, WI 53718

LINE TABLE

LINE	BEARING	LENGTH
L1	S 23°43'42" E	59.27'
L2	S 48°36'26" E	77.21'
L3	S 84°18'30" E	99.73'

CURVE TABLE

CURVE	RADIUS	CHORD LENGTH	CHORD BEARING
C1	407.00'	132.94'	S 33°07'43" E
C2	28.65'	32.29'	S 88°59'43" E
C3	153.77'	74.99'	S 66°01'50" E



DESCRIPTION:

The centerline of a 30 foot wide trail easement being located in part of the SE 1/4 of the SW 1/4 of Section 5, T6N, R6E, Town of Blue Mounds, Dane County, Wisconsin and more particularly described as follows:

Commencing at the SW Corner of said Section 5; Thence N 01°09'38" E along the west line SW 1/4 of Section 5 299.52 feet; Thence S 89°56'04" E 1339.85 feet to the east right of way line of Cave of the Mounds Road and the parcel described as part of parcel F in document number 3648825; Thence S 23°43'42" E along the said east right of way of Cave of the Mounds Road and said parcel F, 59.27 feet; Thence continue along said right of way and along the arc of a curve concaved northeasterly having a radius of 407.0 feet and a long chord bearing of S 33°07'43" E and a long chord distance of 132.94' to the Point of Beginning (P.O.B) of the Centerline of a 30 feet wide trail easement; Thence along said centerline and along the arc of a curve concaved southeasterly having a radius of 28.65 feet and a long chord bearing of S 88°59'43" E and a long chord distance of 32.29 feet; Thence S 48°36'26" E along said centerline 77.21 feet; Thence along said easement and along the arc of a curve concaved northeasterly having a radius of 153.77 feet and long chord bearing of S 66°01'50" E and a long chord distance of 74.99 feet; Thence S 84°18'30" E along said centerline 99.73 feet more or less to the easterly line of said parcel F as described in document number 3648825.