

Document No.

**DECLARATION OF
STORM WATER EASEMENT**

Return to:
Attorney David A. Geier
Geier Homar & Roy, LLP
131 W. Washington Avenue
Madison, WI 53703

251/0709-133-0722-3 & 251/0709-133-0726-5

Parcel Numbers

THIS DECLARATION OF STORM WATER EASEMENT (this "Declaration") is made this ___ day of _____, 2018, by County of Dane, a Wisconsin political corporation ("Owner").

R E C I T A L S :

WHEREAS, Owner owns certain real property which is located in the City of Madison, Wisconsin, and legally described as set forth in Exhibit A, attached hereto and incorporated herein (the "Servient Property"); and

WHEREAS, Clifford D. Fisher owns certain real property which is located in the City of Madison, Wisconsin and legally described as set forth in Exhibit B, attached hereto and incorporated herein (the "Dominant Property"); and

WHEREAS, the Owner desires to subject Servient Property to a non-exclusive easement for surface storm water drainage on, over and across Servient Property in favor of Dominant Property and shall bind the successors in interest, any owner thereof and the owner of any interest therein.

DECLARATION:

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, Owner hereby declares as follows:

1. Creation of Easement. Owner hereby declares, establishes, grants and conveys to Dominant Property, a perpetual, non-exclusive easement for surface storm water drainage on, over and across

Servient Property, which such easement shall be for the benefit of, and a burden upon Servient Property and shall permit the flow of surface storm water on, to and across Servient Property. The Owner(s) of Dominant Property shall reasonably cooperate to manage the flow and drainage of surface storm water on, over and across Servient Property, as may be reasonable necessary. Notwithstanding anything to the contrary set forth herein, the Owner of Servient Property shall have the right, at any time and from time to time, in such Owner's reasonable sole discretion, to grade and regrade Servient Property and to construct or demolish any and all improvements thereon, and to direct or redirect the flow of storm water on, to and across and to any portion of Servient Property.

2. Maintenance. The Owner of Servient Property shall be responsible for construction, maintenance and repair of any and all storm water drainage improvements and facilities which may be installed on Servient Property from time to time.
3. Binding Effect. This Declaration and the terms, conditions, restrictions, covenants and agreements set forth herein, including the benefits and burdens, shall run with the land, and shall be binding upon and inure to the benefit of the owners of the properties described herein and their respective successors and assigns in interest. The easements granted and declared under this Declaration are easements appurtenant to the respective properties described herein and may not be assigned, transferred or conveyed separately from, or severed from, the title to such properties.
4. Amendment or Termination. This Declaration may only be amended or terminated by the recording of a written instrument in the Office of the Register of Deeds of Dane County, Wisconsin, executed by or on behalf of the owners of Servient Property and Dominant Property.
5. Governing Law. This Declaration shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.
6. Invalidity. If any term or condition of this Declaration, or the application of this Declaration to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Declaration, 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.
7. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Declaration shall be construed to be a waiver of the right or power. 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 or conditions of this Declaration.
8. Enforcement. The Owner of Servient Property and Dominant Property, or their respective successors or assigns, shall have the right to enforce provisions hereof by proceedings in law or in equity against any person or persons violating or attempting to violate any provision of the Declaration, either to restrain or cure the violation or to recover damages, or both. If any suit or action is brought to enforce the provisions of this Declaration, the party who prevails in such action or suit shall be entitled to recover its court costs and reasonable attorneys' fees from the other party.
9. No Merger. The easements granted, reserved and established under this Declaration shall be deemed appurtenant to the lands benefited thereby, and no application of the doctrine of merger shall apply, as the easements and other rights created hereunder are expressly intended to be

appurtenant to the lands described as benefiting therefrom.

10. No Public Dedication. Nothing in this Declaration shall be deemed a gift or dedication of any portion of the easement granted under this Declaration to the general public or for any public purpose whatsoever.

11. Notices. All notices under this Declaration shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party or parties at its or their last known address. If a party’s address is not known to the party desiring to send a notice, the party sending the notice may use the address to which the other party’s tax bills, if any, are sent. Any party may change its address for notice by providing written notice to the other party.

IN WITNESS WHEREOF, Owner has caused this Declaration to be made as of the first date written above.

COUNTY OF DANE

By: _____
Joseph T. Parisi, County Executive

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me on this ____ day of _____, 2018, the above named Joseph T. Parisi, as County Executive of County of Dane, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin
My commission expires: _____

COUNTY OF DANE

By: _____
Scott McDonell, County Cler

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.

COUNTY OF DANE)

Personally came before me on this ____ day of _____, 2018, the above named Scott McDonell as County Clerk of County of Dane, to me known to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

My commission expires: _____

This document was drafted by:
Attorney David A. Geier
Geier, Homar & Roy, LLP

EXHIBIT A

Lot Three (3), Block One Hundred Twenty-two (122), Madison, according to the original plat thereof, in the City of Madison , Dane County, Wisconsin .

The Southwest One-Half (SW1/2) of Lot Sixteen (16), Block One Hundred Twenty-two (122), Madison, according to the original plat thereof, in the City of Madison, Dane County, Wisconsin.

Lot Three (3) and the Southeast One-Half (SE1/2) of Lot Two (2), P.L. Mohr's Subdivision of Lots 17 and 18 in Block 122, Madison, in the City of Madison, Dane County, Wisconsin.

Lot Four (4), P.L. Mohr's Subdivision of Lots 17 and 18 in Block 122, Madison, in the City of Madison, Dane County, Wisconsin.

EXHIBIT B

Prior Legal Descriptions:

Lots One (1) and Two (2), Block One Hundred Twenty-two (122), Original Plat of the City of Madison, Dane County, Wisconsin, EXCEPT that portion described in an award of damages recorded in Volume 6123 of Records, page 41, as Document No. 1852520.

Lot One (1) and the Northwesterly Half (NW 1/2) of Lot Two (2), P.L. Mohr's Subdivision of Lots 17 and 18, Block 122 in the City of Madison, Dane County, Wisconsin, EXCEPT that land described in Volume 5955 of Records, page 22, as Document No. 1845479.

Current Legal Description:

Lot 1, of Certified Survey Map Number 14663, as recorded in Volume 102, of Certified Survey Maps, pages 7 - 12, as Document Number 5374612, in the SE 1/4 of the SW 1/4 , also known as Government Lot 4, and the NE 1/4 of the SW 1/4 all in Fractional Section 13, T7N, R9E, in the City of Madison, Dane County, Wisconsin.