

## CONSENT TO OCCUPY EASEMENT

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**RE:** *Existing fifty (50) foot wide Perpetual Easement for Public Storm Sewer and Sanitary Sewer purposes, recorded as Document No. 3268680 on November 27, 2000, in the Office of the Dane County Register of Deeds in the City of Madison, Dane County, Wisconsin.*

This Consent to Occupy Easement (“Consent”) is entered into on this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between the **City of Madison**, a Wisconsin municipal corporation, **Dane County**, a Wisconsin quasi-municipal corporation, and the **South Central Library System** (together, the “Parties”).

WHEREAS, the property legally described on attached Exhibit A, located at 1650 Pankratz Street (“Property”), is owned by Dane County (“Owner”) and subject to a ground lease with the South Central Library System (“Lessee”), as amended, for the existing buildings and improvements on the Property; and

WHEREAS, the City of Madison (“City”) is the Grantee of the above-referenced easement, which includes six different easement areas set forth for either sanitary sewer purposes, storm sewer purposes, or both (“City Easement”), with the portion defined as “Easement Area 2” of the City Easement encumbering the Property with sanitary sewer facilities; and

WHEREAS, the Lessee submitted a Conditional Use application seeking the City’s approval to construct a 14,000 square foot addition to create a warehouse/distribution facility for the South Central Library System; and

WHEREAS, the site plan associated with the application includes curb and paving improvements that are proposed to encroach upon the City Easement (collectively, the “Permitted Improvements”), as shown on attached Exhibit B; and

WHEREAS, a condition of the Lessee’s Conditional Use application and related plan approvals, the City’s Engineering Division requires this Consent to allow for the placement of the Permitted Improvements in, on and across the City Easement, as approved by the City, subject to the terms and conditions specified herein.

NOW, THEREFORE, the Parties hereby agree to the following terms and conditions set forth by this Consent:

1. Grant of Permission. The City does hereby grant the Owner and/or the Lessee (either being the “User”) permission to occupy a portion of the City Easement, as depicted on attached

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RETURN TO: City of Madison  
Economic Development Division  
Office of Real Estate Services  
P.O. Box 2983  
Madison, WI 53701-2983

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Tax Parcel Nos.: 251/0810-311-0313-8  
251/0810-311-0396-4

Exhibit B, for the purposes of construction, installation, operation and maintenance of the Permitted Improvements, all in accordance with the Conditional Use application LNDUSE-2022-00122, which has been conditionally approved by the City's Plan Commission.

2. Construction and Maintenance. The User, at their sole expense, shall maintain the Permitted Improvements in a good and professional manner, subject to the following conditions:
  - a. Prior to construction/installation of the Permitted Improvements, the User shall televise the City sanitary sewer facilities in the City Easement. Upon completion of the Permitted Improvements, the User shall televise the City sanitary sewer facilities in the City Easement again, and remedy any damages to said facilities at the User's expense.
  - b. The User shall be responsible for all costs of design, construction/installation and maintenance of the Permitted Improvements in compliance with all applicable ordinances, codes, statutes, and laws.
  - c. The User shall obtain any and all permits required prior to the construction, repair, maintenance or other activity within the City Easement.
  - d. No grade change to the City Easement shall be made by the User without the prior written approval of the City.
  - e. With the exception of routine maintenance and repairs and normal use of the Permitted Improvements, no changes to, additions to or alterations of the Permitted Improvements shall be allowed without the prior written approval of applicable plans and specifications by the City Engineer.
  - f. No additional improvements shall be installed or constructed in the City Easement without the express written consent of the City.
  - g. All areas within the City Easement affected by maintenance and repair work on the Permitted Improvements will be restored to original grade and vegetation or surface condition, including repair or replacement of pavement and concrete, by and at the sole expense of the User promptly after completion of said work (or as soon thereafter as weather reasonably permits) and in a manner satisfactory to the City.
3. Type of Grant. This Consent does not transfer, release, or convey any of the rights the City may have in said lands by virtue of the City Easement. The granting of this Consent shall be deemed to be permissive and shall preclude the User from any claim of adverse possession against the City by virtue of any encroachment on or into the City Easement by virtue of the granting of this Consent.
4. Use of City Easement. The User shall use and occupy the City Easement in a manner consistent with the rights herein conveyed, and shall ensure that such use and occupancy shall not interfere with or disturb the City's rights granted by the City Easement. Each User shall not in any way be responsible for the use and occupation of the other in the City Easement.

5. Compensation for Damages. The User understands and agrees that the Permitted Improvements may be removed by the City without replacement or compensation to the User, and the User shall not hold the City liable for any future expense to move the Permitted Improvements, if reasonably necessary, for maintenance of the City's sewer facilities within the City Easement.
6. Indemnification. Each party shall be responsible for the consequences of its own acts, errors, or omissions related to or arising out of this Consent, and for such acts, errors or omissions of its employees, officers, officials, agents, boards, committees, and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions, including providing its own defense. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions, and the acts, errors, or omissions of its employees, officers, officials, agents, boards, committees, and commissions. It is not the intent of any party to waive, limit, or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law.
7. Termination. This Consent shall automatically terminate upon the earliest of the following to occur: (a) the removal or abandonment of the Permitted Improvements by the User, (b) the release of the City Easement by the City; or (c) the agreement to terminate this Consent by the Parties, or their successors and assigns. In the event of termination, the User shall remove the Permitted Improvements at the User's expense to the extent necessary to permit the City to use the City Easement pursuant to the terms thereof. The City shall execute such document(s) as may be requested by the User for the purpose of further evidencing the termination of the rights granted herein.
8. Compliance. The Parties shall comply with all applicable laws, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
9. Binding Effect. This Consent shall be binding upon the Parties, as well as any respective successors and assigns.
10. This Consent shall be recorded in the office of the Dane County Register of Deeds to memorialize the use of the City Easement.

*[Signatures on following three pages]*

IN WITNESS WHEREOF, the undersigned hereby consent to the terms provided herein, as of the date first set forth above.

**CITY OF MADISON,**  
a Wisconsin municipal corporation

By: \_\_\_\_\_  
Satya Rhodes-Conway, Mayor

By: \_\_\_\_\_  
Maribeth Witzel-Behl, City Clerk

**AUTHENTICATION**

The signatures of Satya Rhodes-Conway, Mayor, and Maribeth Witzel-Behl, Clerk, on behalf of the City of Madison, are authenticated on this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Matt Robles, Assistant City Attorney  
Member of the Wisconsin Bar

Execution of this document is authorized by Resolution No. RES-21-00047, File No. 62948, adopted by the Common Council of the City of Madison on January 19, 2021.

Drafted by the City of Madison Office of Real Estate Services      Real Estate Project No. 12780

**DANE COUNTY**, a Wisconsin quasi-municipal corporation

By: \_\_\_\_\_  
Scott McDonell, County Clerk

State of Wisconsin    )  
                                  )ss.  
County of Dane        )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, the above named Scott McDonell, County Clerk of Dane County, a Wisconsin quasi-municipal corporation, known to me to be the person who executed the above and foregoing instrument and acknowledged that they executed the foregoing instrument as such officer as the deed of such corporation, by its authority.

\_\_\_\_\_  
Notary Public, State of Wisconsin

\_\_\_\_\_  
(print or type name)

My Commission expires: \_\_\_\_\_

Gary Poulson  
Gary Poulson, Board of Trustees

State of Wisconsin )  
                                  )ss.  
County of Dane        )

Personally came before me this 7<sup>th</sup> day of June, 2023, the above named Gary Poulson, to me known to be an authorized representative of South Central Library System who executed the foregoing instrument and acknowledged the same on behalf of the South Central Library System.



Juan C. Martinez Hurtado  
Notary Public, State of Wisconsin  
JUAN C. Martinez Hurtado  
(print or type name)

My Commission expires: 4/30/27

**EXHIBIT A**  
Legal Descriptions

**The Property:**

Lot 3, Certified Survey Map No. 13328, recorded as Document No. 4893393 in the office of the Dane County Register of Deeds in Volume 86, Pages 141-147, located in the City of Madison, Dane County, Wisconsin.

**Consent to Occupy Easement Area:**

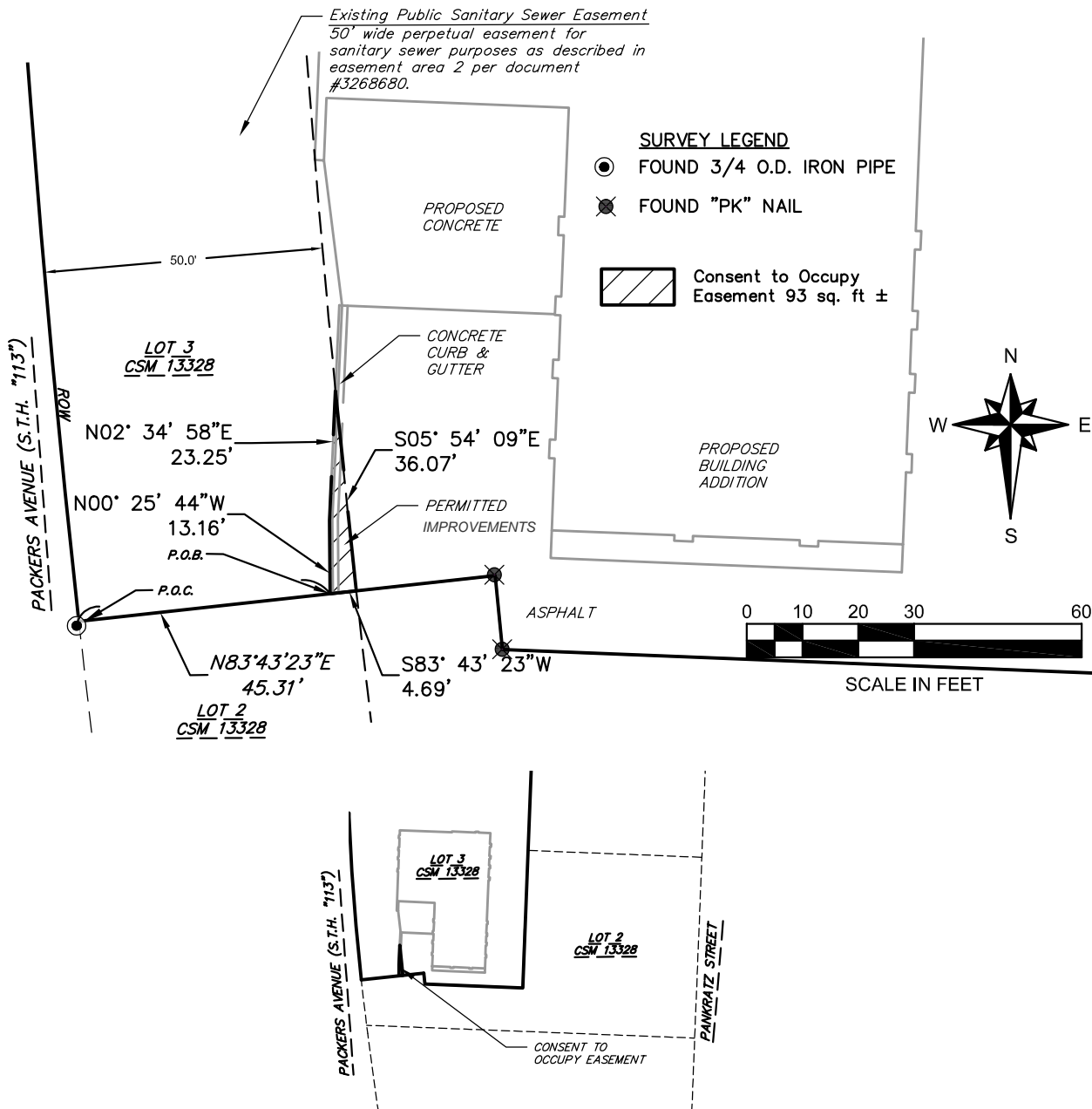
Being part of Lot 3 of Certified Survey Map No. 13328, located in part of the Southwest 1/4 of the Northeast 1/4 of Section 31, located in Township 8 North, Range 10 East, City of Madison, Dane County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of Lot 3 of Certified Survey Map (CSM) No. 13328, thence bearing N83°43'23"E along the Southerly line of said Lot 3, a distance of 45.31 feet to the Point of Beginning (POB); thence bearing N00°25'44"W, a distance of 13.16 feet; thence bearing N02°34'58"E, a distance of 23.25 feet; thence bearing S05°54'09"E, a distance of 36.07 feet to the Southerly line of said Lot 3; thence bearing S83°43'23"W along said line, a distance of 4.69 feet to the POB, containing 93 square feet more or less of land. Subject to, but not limited to, covenants, restrictions and easements of record.

# EXHIBIT B

## CONSENT TO OCCUPY EASEMENT

Being part of Lot 3 of Certified Survey Map No. 13328, located in part of the Southwest 1/4 of the Northeast 1/4 of Section 31, located in Township 8 North, Range 10 East, City of Madison, Dane County, Wisconsin



PROPERTY LINES SHOWN ON THIS EXHIBIT ARE DRAWN FROM DATA DERIVED FROM MAPS AND DOCUMENTS OF PUBLIC RECORD AND/OR OCCUPATION LINES. THIS EXHIBIT MAY NOT BE A TRUE REPRESENTATION OF EXISTING PROPERTY LINES, EXCLUDING LINES OF THE PUBLIC LAND SURVEY SYSTEM AND RIGHT-OF-WAY LINES, AND SHOULD NOT BE USED AS A SUBSTITUTE FOR AN ACCURATE PROPERTY SURVEY AS DEFINED AND PURSUANT TO THE WISCONSIN ADMINISTRATIVE CODE A-E 7.



**PREPARED FOR:**  
 City of Madison  
 215 Martin Luther King Jr. Blvd.  
 Madison, WI 53703

**PREPARED BY:**  
 Ruekert & Mielke, Inc.  
 W233 N2080 Ridgeview Pkwy.  
 Waukesha, WI 53188