

LEASE

(This document is a lease of less than 99 years and not a conveyance subject to Transfer Return and fee per Sec. 77.21(1) Wis. Stats.)

This Lease is entered into on this _____ day of _____, 2024 (“Effective Date”), by and between the **City of Madison**, a Wisconsin municipal corporation, (“City”), and **The Salvation Army**, an Illinois corporation (“Lessee”).

WITNESSETH:

WHEREAS, the City is the owner of the property at 3030 Darbo Drive, located in the City of Madison, Dane County, Wisconsin, which is legally described on attached Exhibit A and depicted on attached Exhibit B (“Property”); and

WHEREAS, the Lessee was the prior owner of the Property, and City and the Lessee (together, the “Parties”) agreed that upon conveying the Property to the City, the Lessee could continue to occupy the Property, pursuant to this Lease, for the continued operation of their business during Lessee’s construction of replacement shelter and office facilities on the property owned by Lessee and located at 630 East Washington Avenue in Madison, Wisconsin (the “Project”); and

NOW, THEREFORE, the Parties mutually agree as follows:

1. Leased Premises. The City hereby leases to the Lessee the Property, also referred to as the “Leased Premises” in this Lease.
2. As Is, Where Is. The City leases the Leased Premises to the Lessee in "as is", "where is" condition with all faults and City makes no representations or warranties, either express or implied, as to the condition of the property or any improvements thereon, as to the suitability or fitness of the property or any improvements thereon, as to any law, or any other matter affecting the use, value, occupancy, or enjoyment of the property, or, except as set forth elsewhere herein, as to any other matter whatsoever.
3. Term. This Lease shall commence on the Effective Date and expire on December 31, 2026 (“Initial Term”), subject to extension and Early Termination pursuant to the terms of this Lease.

The Lease shall automatically terminate prior to the expiration of the Initial Term or any subsequent Renewal Option, 60 days following the Project receiving a final certificate of occupancy permit and all other required approvals from the City necessary for Lessee’s occupancy and use of the Project (“Early Termination”).

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

Tax Parcel No.: 251/0710-052-1005-1

4. Option to Renew. Lessee shall have two (2) successive options to extend this Lease (each defined as a “Renewal Option”; collectively the “Renewal Options”) for additional terms of one (1) year each, under the same terms and conditions provided in the original term of this Lease. If the Lessee desires to renew this Lease, the Lessee must give notice in writing to the City a minimum of one hundred twenty (120) days prior to the expiration of the Initial Term or any Renewal Term, pursuant to the notice provisions set forth in Paragraph 23. In addition, City shall have the right to declare Lessee’s exercise of a Renewal Option null and void if Lessee is in default under the terms of this Lease beyond any applicable notice and cure periods on the date Lessee exercises a Renewal Option or at any time thereafter until the commencement of the applicable Renewal Term for which the Renewal Option was exercised. Except as otherwise provided for in this Paragraph, any applicable Renewal Options shall expire or terminate under the same terms and conditions as the Initial Term.
5. Rent. "Base Rent" shall be One Dollar (\$1.00) per year, or any portion thereof. All payments are to be made payable to the City Treasurer, and sent or personally delivered to the Economic Development Division at the address specified in Paragraph 23, or to the address of a property manager, as designated by the City.
6. Use. The Lessee shall use the Leased Premises solely for the purpose of operating The Salvation Army and activities related thereto, which may include use of the Leased Premises by other community organizations provided such use does involve leasing or subleasing any portion of the Property and does not otherwise conflict with the terms of this Lease, and for no other purposes whatsoever without the City’s prior written consent. The City may withhold such consent in its sole discretion.
7. Utilities. The Lessee shall be responsible for and promptly pay all charges for heat, gas, electric, sewer, storm sewer, water service and any other utility used upon or furnished to the Leased Premises. The Lessee shall also be responsible for arranging the stoppage of any internet, television, cable and telephone service furnished to the Leased Premises, and all costs related thereto, upon the termination or expiration of this Lease.
8. Assignment and Subletting. The Lessee shall not assign this Lease nor sublet the Leased Premises, or any portion thereof, without the prior written consent of the City.
9. Alterations and Construction. Except as authorized by this Paragraph 9 or as may be required to satisfy Lessee’s obligations under Paragraph 10, no construction, modification, improvement, alteration, redecoration, or remodeling of the Leased Premises shall be undertaken without prior written approval from the Director of the City Economic Development Division, which approval shall not be unreasonably withheld, conditioned or delayed. Any such construction, modification, improvement, alteration, redecoration, or remodeling shall be at the expense of the Lessee and remain for the benefit of the City, unless otherwise provided in such written approval. In all cases, the Lessee is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction activity.

At the Lessee's sole cost, from and after the execution of this Lease by the Parties, the Lessee may replace and/or repair the finished flooring surface, paint walls, replace and/or repair lighting fixtures throughout the Leased Premises without the City’s prior written approval.

10. Lessee's Maintenance Responsibilities. The Lessee shall, at its own expense, keep and maintain the Leased Premises and every part thereof, and any fixtures, facilities or equipment contained therein, including exterior and interior signs; paving; general repairs; removal of garbage and debris; snow removal; landscape upkeep; parking enforcement; light fixtures, including replacement of light bulbs and ballasts; all plumbing fixtures and accessories; sinks and drains, including unclogging; interior walls including drywall, plaster, and other wall surfaces that may be present; and finish flooring materials and surfaces, in substantially the same condition and repair as exists on the Effective Date, ordinary wear and tear excepted, and in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. In the event any of the items listed in this Paragraph 10 need to be replaced, whether at the time the Lessee takes occupancy of the Leased Premises or at any time while this Lease is in effect, such replacement(s) shall be at the Lessee's sole expense.
11. Liens and Title.
- a. The Lessee shall not suffer or permit any construction or mechanics' lien to be filed, or if filed, to remain uncontested, against the fee of the Leased Premises, nor against the Lessee's leasehold interest in the Leased Premises, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessee or anyone holding the Leased Premises or any part thereof through or under the Lessee; and nothing contained herein shall be deemed or construed in any way as constituting the consent or request of the City, express or implied, by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Leased Premises or any part thereof, nor as giving the Lessee any right, power or authority to contract for or permit the rendering of any services or the furnishing of any materials that would give rise to the filing of any construction or mechanics' lien against the fee of the Leased Premises. If any such lien is filed, the Lessee shall immediately cause the same to be discharged or released or shall upon request provide adequate and acceptable security or bond to protect the City's interest.
- b. If any such construction or mechanics' lien shall at any time be filed against the Leased Premises, the Lessee covenants that it will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise, and that it will hold the City free and harmless of and from any and all liability to any contractor, subcontractor, materialman, laborer or any other person relating to or arising because of any improvements or alterations on or to the Leased Premises, and that it will also defend on behalf of the City, at the Lessee's sole cost and expense, any action, suit or proceeding which may be brought for the enforcement of any such lien, and that it will pay any damages and discharge any judgments entered therein. Upon the Lessee's failure to do any of the foregoing things, the City may take such action as may be reasonably necessary to protect the City's interest, in addition to any other right or remedy which it may have; and any amount paid by the City in connection with such action shall be repaid by the Lessee to the City upon demand.
- c. The Lessee shall in no way encumber, or allow to be encumbered, the City's title to the Leased Premises.

12. Taxes and Assessments. The City and the Lessee are a tax-exempt entities. Should any City of Madison Ordinance or State of Wisconsin Statute after the Effective Date require that the Property be subject to real estate taxes or assessments, the Lessee shall be liable for all such real estate taxes and assessments in relation to the Property during the term of this Lease. The Lessee shall be responsible for all personal property tax on its personal property.
13. Indemnification. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents or employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Lessee or its officers, officials, members, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. This paragraph shall survive termination and assignment or transfer of this Lease.
14. Hazardous Substances; Indemnification. The Lessee represents and warrants that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the City harmless from and indemnify the City against any release of such hazardous substance occurring on or after the Effective Date and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property. This paragraph shall survive termination and assignment or transfer of this Lease.
15. Insurance.
 - a. The Lessee shall carry commercial general liability insurance covering as insured the Lessee and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$1,000,000 minimum per occurrence as may be adjusted occasionally by the City of Madison's Risk Manager, but in no event shall the minimum limit exceed \$2,000,000 minimum per occurrence. This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Lease. As evidence of this coverage, the Lessee shall furnish the City with a certificate of insurance on a form approved by the City, such approval not to be unreasonably withheld, and, if requested by the City Risk Manager, the Lessee shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while

this Lease is in effect, the Lessee shall provide a renewal certificate to the City for approval.

- b. The Lessee shall be solely responsible for carrying property insurance sufficient to cover loss of all stock-in-trade, trade fixtures, furniture, furnishings, equipment or personal property on the Leased Premises. The City shall not be liable for any damage to, or loss of property of the Lessee or others located on the Leased Premises. In addition, the Lessee agrees to provide a waiver of subrogation in favor of the City.
- c. Throughout the term of this Lease, the City will, at the City's expense, carry property insurance on the Leased Premises. Such property insurance will be the same as what is carried on other City-owned properties.

16. Defaults, Remedies, and Termination.

- a. Defaults: The occurrence of any of the following events shall constitute a default and breach of this Lease by the Lessee:
 - (1) The abandonment by the Lessee of the Leased Premises;
 - (2) The use of the Leased Premises for an illegal purpose;
 - (3) In the event the Lessee ceases its business operations at the Leased Premises.
 - (4) In the event the Lessee defaults in the performance of any other term or condition of this Lease.
- b. City's Remedies. If any default by the Lessee shall continue uncured after thirty (30) days written notice of default from City to the Lessee, the City has the following remedies, in addition to all other rights and remedies provided by law or equity, to which the City may resort cumulatively or in the alternative.
 - (1) Termination of Lease. The City may at the City's election terminate this Lease by giving the Lessee notice of termination while such default remains uncured. On the giving of the notice, all further obligations of City under this Lease shall terminate, the Lessee shall surrender and vacate the Leased Premises in a broom clean and sanitized condition, and the City may take possession of the Leased Premises and eject all parties in possession or eject some and not others or eject none. Termination under this paragraph shall not relieve the Lessee from the payment of any sum then due to the City or from any claim for damages previously accrued or then accruing against the Lessee.
 - (2) Diligent Efforts. Notwithstanding anything to the contrary in this Paragraph, in the event of the Lessee's default under Paragraph 16.a.(4), if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within the thirty (30) days after City's notice thereof, then the Lessee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Lessee immediately takes steps to cure the default as soon as reasonably possible and

proceeds thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable.

- (3) City May Perform. City shall have the right at any time, after ten (10) days notice to the Lessee (or in case of emergency or a hazardous condition or in case any fine, penalty, interest or cost may otherwise be imposed or incurred), to make any payment or perform any act required of the Lessee under any provision in this Lease, and in exercising such right, to incur necessary and incidental costs and expenses, including reasonable attorneys' fees. Nothing herein shall obligate City to make any payment or perform any act required of the Lessee, and this exercise of the right to so do shall not constitute a release of any obligation or a waiver of any default. All payments made and all costs and expenses incurred in connection with any exercise of such right shall be reimbursed to the City by the Lessee.

c. Lessee's Remedies. If any default by the City shall continue uncured after thirty (30) days written notice of default from Lessee to City, Lessee has the following remedies, in addition to all other rights and remedies provided by law or equity, to which Lessee may resort cumulatively or in the alternative:

- (1) The Lessee may terminate this Lease by giving the City notice of termination. On the giving of the notice, all further obligations of under this Lease shall terminate, Lessee shall surrender and vacate the Leased Premises in a broom clean and sanitized condition, and the City may take possession of the Leased Premises and eject all parties in possession or eject some and not others or eject none.
- (2) Lessee may take any actions necessary to cure a default by making repairs or replacements required by City under this Lease and offset such expenses by reducing Lessee's rent.

If the City shall fail to perform any covenant, term or condition of this Lease to be performed by City, if any, and if as a consequence of such default, the Lessee shall recover a money judgment against City, such judgment shall be satisfied only out of the proceeds of sale received upon execution of such judgment and levied thereon against the right, title and interest of City in the Leased Premises and out of income from such property receivable by City, or out of the consideration received by City from the sale or other disposition of all or any part of City's right, title and interest in the Leased Premises, and City shall not be personally liable for any deficiency.

17. Compliance. The Lessee shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Premises. The Lessee may, if in good faith and on reasonable grounds, dispute the validity of any charge, complaint or action taken pursuant to or under color of any statute, rule, order, ordinance, requirement or regulation, defend against the same, and in good faith diligently conduct any necessary proceedings to prevent and avoid any adverse consequence of the same. The Lessee agrees that any such contest shall be prosecuted to a final conclusion as soon as possible and that it will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.

Madison, WI 53701-2983
Email: mhermann@cityofmadison.com and
ores@cityofmadison.com

With a copy to: City Attorney's Office
Attn: Matthew Robles
City County Building, Room 401
210 Martin Luther King Jr. Blvd. Madison, WI 53703
Phone: (608) 267-4925
Email: mrobles@cityofmadison.com

For the Lessee: The Salvation Army
Attn: Tracy Habermehl, Divisional Property
Administrator
11315 W. Watertown Plank Road
Wauwatosa, WI 53226
Email: tracy.habermehl@usc.salvationarmy.org

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.

24. Counterparts, Electronic Signature and Delivery. This Lease may be signed in counterparts, each of which shall be taken together as a whole to comprise a single document. Signatures on this Lease may be exchanged between the Parties by facsimile, electronic scanned copy (.pdf) or similar technology and shall be as valid as original; and this Lease may be converted into electronic format and signed or given effect with one or more electronic signature(s) if the electronic signature(s) meets all requirements of Wis. Stat. ch. 137 or other applicable Wisconsin or Federal law. Executed copies or counterparts of this Lease may be delivered by facsimile or email or similar technology and upon receipt will be deemed original and binding upon the Parties, whether or not a hard copy is also delivered. Copies of this Lease, fully executed, shall be as valid as an original.
25. Non-Discrimination. In the performance of its obligations under this Lease, the Parties agree not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Parties further agree not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.
26. Accessibility. The Leased Premises shall conform where applicable to Chapter SPS 361.05 of the Wisconsin Administrative Code, Madison General Ordinances Section 39.05, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Lessee.
27. Signs. Any signs on the Leased Premises shall be in conformity with the provisions of City of Madison General Ordinance Chapter 31, Sign Control Ordinance. Lessee shall pay the cost to create, install and maintain any signage.

28. Severability. If any term or provision of this Lease or the application thereof to the City or the Lessee or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such terms or provisions to the City or the Lessee or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforceable to the fullest extent permitted by law.
29. Entire Agreement. All terms and conditions with respect to this Lease are expressly contained herein, and the Parties agree that neither Party has made any representations or promises with respect to this Lease not expressly contained herein. No alteration, amendment, change, or addition to this Lease shall be binding upon the Parties unless in writing and signed by them.
30. Damage and Destruction. In the event the Leased Premises is damaged by any peril covered by standard policies of fire and extended coverage insurance to an extent which is less than fifty percent (50%) of the cost of replacement of the Leased Premises, the damage shall, except as hereinafter provided, promptly be repaired by the City, at the City's expense, but in no event shall the City be required to repair or replace the Lessee's stock-in-trade, trade fixtures, furniture, furnishings, equipment or personal property. In the event: (a) the Leased Premises is damaged to the extent of fifty percent (50%) or more of the cost of replacement of the Leased Premises; or (b) the building is damaged to the extent of fifty percent (50%) or more of the cost of replacement; or (c) any damage to the Leased Premises occurs during the last one-third (1/3) of the primary term of this Lease or at any time during any renewal term or hold over period thereof, the City may elect either to repair or rebuild the Leased Premises, as the case may be, or to terminate this Lease upon giving notice of such election in writing to the Lessee within ninety (90) days after the event causing the damage. If the casualty, repairing or rebuilding shall render the Leased Premises untenable, in whole or in part, the Lease term shall be extended for a period equal to the period of repair. If the City is required or elects to repair the Leased Premises, the Lessee shall repair or replace its stock-in-trade, trade fixtures, furniture, furnishings, equipment and personal property in a manner and to at least a condition equal to that prior to its damage or destruction, and the proceeds of all insurance carried by the Lessee shall be held in trust by the Lessee for the purpose of such repair and replacement.
31. Leased Premises Acquired by Eminent Domain. In the event the Leased Premises or any part thereof shall be needed either permanently or temporarily for any public or quasi-public use or purpose by any authority in appropriation proceedings or by any right of eminent domain, the entire compensation award therefor, including, but not limited to, all damages and compensation for diminution of value of the leasehold, reversion and fee, shall belong to the City without any deduction therefrom for any present or future estate of the Lessee, and the Lessee hereby assigns to the City all of its right, title and interest to any such award. However, the Lessee shall have the right to recover from the condemning authority such compensation as may be separately awarded to the Lessee for moving and relocation expenses.

In the event of a taking of any portion of the Leased Premises not resulting in a termination of this Lease, the City shall use so much of the proceeds of the City's award for the Leased Premises as is required therefor to restore the Leased Premises to a complete architectural unit, and this Lease shall continue in effect with respect to the balance of the Leased Premises.

32. Brokerage Costs. The Parties are not responsible for any brokerage costs in connection with the Lease.
33. Public Record. This Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the Parties.

Signatures begin on following page.

IN WITNESS WHEREOF, the Parties have entered into this Lease as of the date first set forth above.

The Salvation Army,
an Illinois corporation

By: _____

State of Illinois)
)ss.
County of Cook)

Personally came before me this ____ day of _____, 2024, the above named
_____ (name), as _____ (title)
of The Salvation Army, an Illinois corporation, known to me to be the person who executed the above
foregoing instrument, and acknowledged that they executed the foregoing instrument as such
_____ (title) as the deed of said corporation, by its authority.

Notary Public, State of Illinois

Print or Type Name
My Commission expires: _____

CITY OF MADISON

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Maribeth L. 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 _____, 2024.

Matthew Robles, Assistant City Attorney
Member of the Wisconsin Bar

Approved	Date	Approved	Date
_____ David Schmiedicke, Finance Director	_____	_____ Eric Veum, Risk Manager	_____

Approved as to Form

Michael Haas, City Attorney

Execution of this Lease by the City of Madison is authorized by Resolution Enactment No. RES-24-00____, File ID No. _____, adopted by the Common Council of the City of Madison on _____, 2024.

Drafted by the City of Madison Office of Real Estate Services Real Estate Project No. 10379

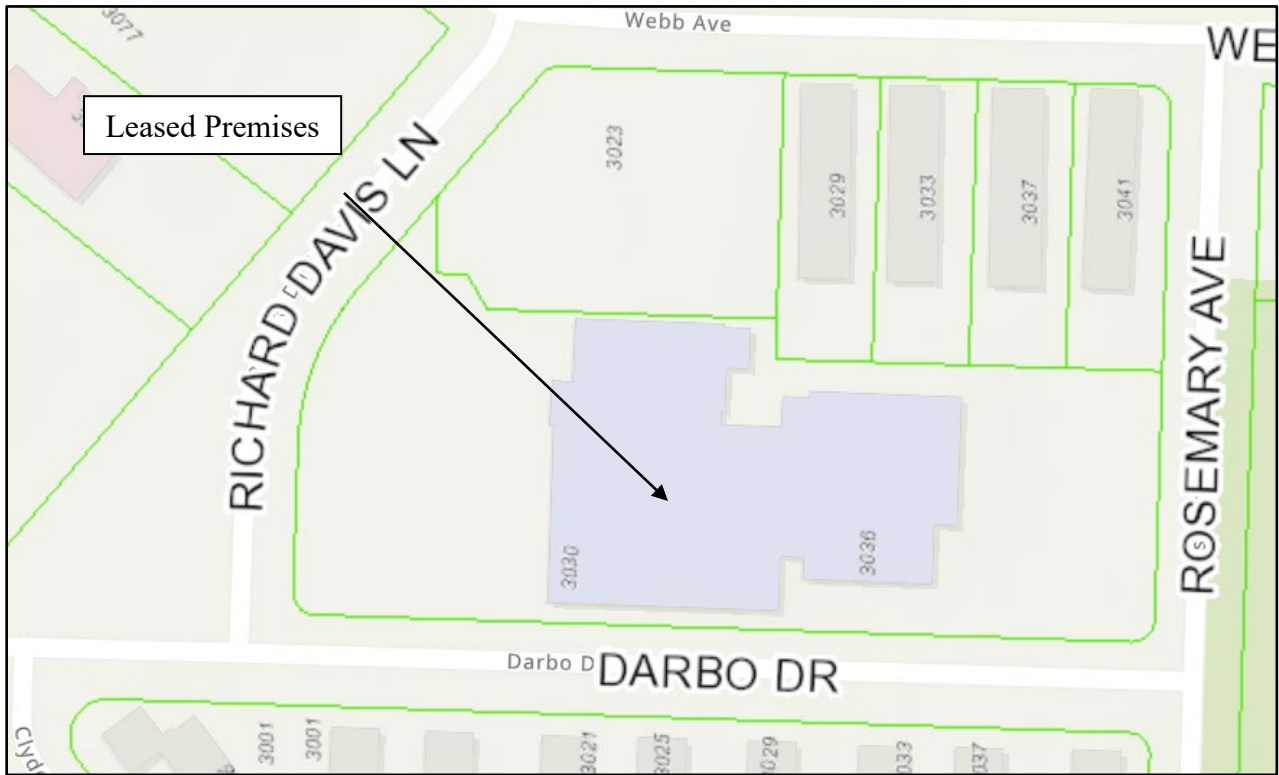
EXHIBIT A

Legal Description of the Property

LOT 2 OF CERTIFIED SURVEY MAP NO. 7652, RECORDED NOVEMBER 15, 1994 IN VOLUME 40, PAGES 47-49 AS DOCUMENT NO. 2645258 AND BEING CORRECTED BY AFFIDAVIT RECORDED JUNE 10, 1996 IN VOLUME 33141, PAGE 73 AS DOCUMENT NO. 2769665, BEING LOCATED IN THE NORTHEAST 1/4 AND NORTHWEST 1/4 OF THE NORTHWEST 1/4 OF SECTION 5, TOWNSHIP 7 NORTH, RANGE 10 EAST, CITY OF MADISON, DANE COUNTY, WISCONSIN, BEING OUTLOT A, LOTS 1-4 AND 9-19 EXCEPT THE NORTHERLY 5 FEET OF LOTS 16-19, ALL IN DARBO'S ADDITION.

EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED IN WARRANTY DEED RECORDED IN DOCUMENT NO. 4229987 AND FURTHER EXCEPTING THEREFROM THAT PORTION OF LAND CONVEYED IN INSTRUMENT RECORDED IN DOCUMENT NO. 5424962.

EXHIBIT B
Depiction of the Property/Leased Premises



31784055.4