

A Ground Lease for Land Located at 704 East
Gorham St (Collins House).



**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
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EDD – Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No.: (251 0709-132-1501-2)

This document was executed and drafted by:




Dan Rolfs, AICP
Community Development Project Manager

INDIVIDUAL ACKNOWLEDGMENT

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 14th day of September, 2012, the above-named
Dan Rolfs, known by me to be the person who executed the foregoing instrument
and acknowledged the same.



Notary Public, State of Wisconsin

Jennifer A. Frese
(print or type name)
My Commission Expires: 2/17/2013

GROUND LEASE

(This document is not subject to Transfer Return and fee
per Sec. 77.25(2) and 77.255 Wis. Stats.)

This Ground Lease ("Ground Lease") is entered into this 14th day of Sept, 2012, by and between the **City of Madison**, a municipal corporation, located in Dane County, Wisconsin (the "City"), and **Robert E. Klebba and David P. Waugh**, (collectively the "Lessees").

WITNESSETH:

WHEREAS, the City is the owner of James Madison Park located in the 600 and 700 blocks of East Gorham Street in the City of Madison, including that certain 3-story brick residential landmark-designated building formerly known as the Collins House (the "Building Improvement") identified on attached Exhibit A; and

WHEREAS, on February 8, 2006, the Madison Board of Park Commissioners declared the Building Improvement, but not the land underneath it, surplus to the needs of the City of Madison Parks Division; and

WHEREAS, the Mayor then established the James Madison Park Disposal Surplus Criteria and Selection Committee (the "Committee"), and the Committee ultimately recommended the issuance of a Request for Proposals ("RFP") for the purchase of the Building Improvement; and

WHEREAS, on March 16, 2011, the City's Common Council approved the issuance of such RFP; and

WHEREAS, on September 20, 2011, the City's Common Council approved the rejection of the initial responses to the RFP and re-issued the RFP; and

WHEREAS, the Lessees submitted a response to the re-issued RFP to purchase the Building Improvement for \$130,000 and to enter into a 99-year land lease with the City to allow for the occupancy and use of the Building Improvement as a bed and breakfast; and

WHEREAS, the Committee recommended that the Common Council accept the Lessees' proposal; and

WHEREAS, the Common Council has determined that it is in the best interests of the City to sell the Building Improvement to the Lessees for adaptive rehabilitation and reuse as a owner occupied residence and bed and breakfast establishment and to provide a long-term land lease for the ground under and surrounding the Building Improvement.

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NOW, THEREFORE, it is mutually agreed as follows:

1. Leased Land. The City hereby leases to the Lessees the "Leased Land" depicted in Exhibit A and described in Exhibit B, which exhibits are attached and made a part of this Lease. The Leased Land is a part of James Madison Park.
2. Term. This Ground Lease shall be for a term of approximately ninety-nine (99) years, subject to early termination pursuant to the terms of this Ground Lease. This Ground Lease shall commence on Sept 14th, 2012 (the "Effective Date") and expire on Sept 14th, 2111. The term "Lease Year" shall mean a period of twelve (12) consecutive full calendar months running from the first day of the month. If the Effective Date is not the first day of the month, then the period between the Effective Date and the first day of the following month shall be defined as a "Partial Month." The phrases "term of this Lease," "Lease term" or "term" as used hereinafter shall include all Lease Years and Partial Lease Year, if any.
3. Rent and Rent Adjustments.
 - a. For the period from the Effective Date through the end of Lease Year one (1), the Lessees shall pay the City rent in the amount of Four Thousand Five Hundred and no/00 Dollars (\$4,500.00) per annum, payable in advance on the first day of each Lease Year. Rent for any partial Lease Year shall be prorated.
 - b. Beginning on the first anniversary of the Effective Date of this Lease and on each anniversary date thereafter, the annual rent shall increase by two percent (2%) per year compounded annually. The rent schedule for Lease Years one (1) through ninety-nine (99) is attached as Exhibit C.
 - c. All payments are to be made payable to the City Treasurer and sent or personally delivered to the City's Economic Development Division at the address specified in Paragraph 31.
4. Use and Restrictions on Use of Leased Land. The Lessees shall have the exclusive use and possession of the Leased Land, including the subterranean space for the basement of the Building Improvement, for the purpose of restoring and using the Building Improvement for the Lessees' owner occupied residence and a bed and breakfast establishment,, as described in the City's zoning code and State of Wisconsin Building Code, and other uses as permitted by the codes . No change of use may be permitted without the prior written approval by the City of Madison.
5. Special Conditions.
 - a. No additional buildings, fencing or other structures shall be erected upon the Leased Land without the City's express prior written consent and subject to the provisions of Paragraph 18. Notwithstanding the foregoing, the Lessees shall be permitted to install a "GT System" in accordance with the provisions of Paragraph 6.
 - b. The Lessees shall in no way encumber, or allow to be encumbered, the City's title to the Leased Land, including but not limited to easements for public utility purposes.

- c. The Lessees shall prohibit and prevent parking by anyone on any unimproved area of the Leased Land.
- d. It is expressly understood and agreed that the location of the Leased Land within James Madison Park confers no special rights or privileges of use and enjoyment of James Madison Park upon the Lessees, the Lessees' agents, tenants, assigns, or invitees, or the tourists and transients of the bed and breakfast.
- e. The City reserves unto itself, its successors and assigns, the right to further develop or improve the public areas of James Madison Park as it sees fit, regardless of the desires or views of the Lessees, without interference or hindrance by the Lessees. Notwithstanding the foregoing, the Lessees may exercise any and all rights to comment on or object to a use or proposed use for James Madison Park in accordance with applicable laws as if the Lessees were an adjacent land owner.
- f. The City reserves the right to review and approve any and all landscaping changes or improvements that the Lessees propose to make to the Leased Land. "Landscaping changes" are defined as any modifications to the grade or topography of the Leased Land and the installation or removal of plants, other than the planting of flowers or vegetables or regular maintenance such as lawn mowing.
- g. Lessees shall grant the City a permanent easement for the installation, maintenance and use of a water line on the Leased Land to serve a potential community garden in James Madison Park. The City shall work with the Lessees to ensure said easement does not interfere with the Building Improvement including the GT System.

6. Geo-Thermal System.

- a. To help heat and cool the Building Improvement, the Lessees may install a Geo-Thermal Heating and Cooling system (the "GT System"). The GT System shall consist of:
 - (1) Up to 16 number of bore holes drilled into the Leased Land. The bore holes shall have a maximum width of 6" and a maximum depth of 200'.
 - (2) Up to two heat exchanger units;
 - (3) A piping system that links the bore holes and the heat exchanger(s);
 - (4) A heat transfer medium that runs through the piping system; and
 - (5) Any and all associated equipment and mechanicals that are required to connect the GT System to the HVAC system within the Building Improvement.
- b. The GT System shall be considered part of the Building Improvement.
- c. The Lessees shall be responsible for the installation and maintenance of the GT System.
- d. Should the Lessees elect to install a GT System, the Lessees shall ensure the GT System is installed, operated and maintained in compliance with all applicable Federal, State and local ordinances.

- e. Prior to installation or removal of the GT System, the Lessees shall submit all plans and specifications for such installation or removal to the City of Madison Engineer, the City of Madison Parks Superintendent, and City of Madison Historic Preservation Planner for their approval.
 - f. The Lessees' GT System installation contractor shall add the City of Madison as an additional insured on its commercial general liability insurance.
7. Assignment of Lease. It is understood that the Lessees are the owner of the Building Improvement and that the Lessees' interest in this Ground Lease is appurtenant to the Lessees' ownership of the Building Improvement.

It is further understood that this ground leasehold interest shall not be severed from the ownership of the Building Improvement. Accordingly, the Lessees shall at any time, upon notice to the City, be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey their interest in this Ground Lease (which actions are collectively referred to herein as "Transfers"), but only if such Transfer is made simultaneously with the Transfer of the Building Improvement to the same purchaser or transferee of this Ground Lease. Furthermore, foreclosure of any such mortgage, pledge or encumbrance shall also be a Transfer permitted hereunder, subject to the restriction that this ground leasehold interest shall not be severed from the ownership of the Building Improvement. All such Transfers shall be subject to all of the terms of this Ground Lease, and all applicable statutes, laws and ordinances. Any purchaser or transferee of all of the Lessees' right, title and interest in and to this Ground Lease shall be considered as having assumed and become bound by all of the Lessees' obligations hereunder, and shall take the Ground Lease subject to all prior breaches and shall be liable therefor in the same manner as the Lessees or prior transferee.

8. Mortgage Liens.

- a. The Lessees shall have the right at any time and from time to time during the term of this Ground Lease, at their own expense, to negotiate and obtain a loan or loans (and to extend, renew, refinance or replace any such loan and/or to negotiate and obtain a new loan or loans) which may be secured by a mortgage on the Building Improvement and the Lessees' ground leasehold interest in the Leased Land. Any such mortgage loan or loans or extension, renewal, refinancing or replacement thereof (hereinafter referred to as a "Mortgage") shall (a) be due and payable in full prior to the expiration of the term of this Ground Lease and any authorized extensions thereof, and (b) impose no personal liability on the City (the sole recourse of the holder of the mortgage (the "Mortgagee") to be against the Lessees and/or the Lessees' interest in the Leased Land and/or including any other collateral pledged to the Mortgagee). The Lessees agree to pay all charges for securing and making any Mortgage, including all brokerage, commission charges, and fees for examination of title, attorney's fees, recording fees, title insurance, and such other costs and expenses as any Mortgagee may require to be paid.
- b. The Lessees shall notify the City of the names and addresses of all Mortgagees within thirty (30) days of recording a mortgage.

- c. The Lessees understand that the City's interest in the fee of the Leased Land will not be subordinated to the lien or extension, renewal, continuation or replacement of the lien of any Mortgage obtained by the Lessees.
- d. The City shall, upon serving the Lessees with any notice of default, simultaneously serve a copy of such notice upon the holder of such Mortgage by certified mail, return receipt requested. The Mortgagee shall thereupon have the same period, after service of such notice upon it, plus an additional sixty (60) days, to remedy or cause to be remedied the defaults complained of, and the City shall accept such performance by or at the instigation of such Mortgagee as if the same had been done by the Lessees.
- e. If the Lessees shall not cure or remedy any default by the Lessees under this Ground Lease within the period provided for such cure or remedy by the Lessees, then each Mortgagee may, but shall not be required to:
 - (1) cure or remedy, or cause to be cured or remedied, within the period of time provided to the Lessees for such cure or remedy, such default and the City shall accept the same as a timely cure or remedy; and/or
 - (2) acquire by foreclosure, purchase, assignment in lieu of foreclosure, or otherwise the property interest mortgaged, encumbered, pledged or assigned as security, and in such event the City shall not exercise any remedy it might have with respect to such default for so long as the Mortgagee shall be diligently pursuing any such acquisition. Upon acquisition, the Mortgagee shall be required to cure or remedy or cause to be cured or remedied, within the period of time provided to the Lessees for such cure or remedy, such default and the City shall accept the same as a timely cure or remedy.
- f. The City agrees that so long as there is any Mortgage of the Lessees' interest herein, the following provisions shall apply, notwithstanding any other provisions of this Ground Lease:
 - (1) There shall be no cancellation, surrender or material modification of this Ground Lease by joint action or agreement of the City and the Lessees without the prior consent in writing of the Mortgagee.
 - (2) The City agrees that the name of the Mortgagee may be added to the "Loss Payable Endorsement" of Fire and Extended Coverage insurance policies required to be carried by the Lessees hereunder.
 - (3) The proceeds from any Fire and Extended Coverage insurance policies or arising from a condemnation may be held by any Mortgagee and distributed pursuant to the provisions of this Ground Lease, but the Mortgagee may reserve its right to apply to the Mortgage debt the Lessees' share of such proceeds pursuant to such Mortgage.
 - (4) The City shall, upon request, execute, acknowledge and deliver to the Mortgagee, an agreement prepared at the sole cost and expense of the Lessees, in form

satisfactory to the Mortgagee, between the City, the Lessees and Mortgagee, acknowledging agreement with all of the provisions of this Subparagraph 8.f.

g. The City and the Lessees hereby acknowledge and agree that in the event the Mortgagee notifies the City in writing of (i) a default by the Lessees under the Mortgage; and (ii) the Mortgagee's election to cause the transfer of the Lessees' interest under this Ground Lease to the Mortgagee or any designee or nominee of the Mortgagee, whether such transfer shall occur before or simultaneously to the corresponding transfer of the Building Improvement to Mortgagee, then the City will accept the Mortgagee, any designee or nominee of the Mortgagee, or the purchaser of the Building Improvement and of the Lessees' interest under this Ground Lease at a foreclosure sale, or any assignee of the Lessees' interest under the Ground Lease in lieu of foreclosure or any other party as the lessee under the Ground Lease (provided such party shall be the purchaser of the Building Improvement) for the remainder of the term of the Ground Lease and such transfer of the Lessees' interest shall not be a default hereunder.

9. Subletting. Lessees may sublet the Leased Land concurrent with subleasing the Improvements to the same sublessee for no more than twelve (12) cumulative months in any sixty (60) month period. Lessees shall provide the City with a copy of all subleases prior to the effective date of said sublease.

10. Liens.

a. The Lessees shall not suffer or permit any construction lien to be filed, or if filed, to remain uncontested, against the fee of the Leased Land, nor against the Lessees' ground leasehold interest in the Leased Land, by reason of work, labor, services or materials supplied or claimed to have been supplied to the Lessees or anyone holding the Leased Land or any part thereof through or under the Lessees; 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 supplier for the performance of any labor or the furnishing of any materials for any specific improvement, alteration or repair of or to the Leased Land or any part thereof, nor as giving the Lessees 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 lien against the fee of the Leased Land. If any such lien is filed, the Lessees 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 lien shall at any time be filed against the Leased Land, the Lessees covenant that they will promptly take and diligently prosecute appropriate action to have the same discharged by payment, bonding or otherwise, and that they will hold the City free and harmless of and from any and all liability to any contractor, subcontractor, supplier, laborer or any other person relating to or arising because of any improvements or alterations on or to the Leased Land, and that it will also defend on behalf of the City, at the Lessees' 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 Lessees' 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 Lessees to the City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum.

11. Maintenance. The Lessees shall, at their own expense, keep and maintain the Leased Land in a presentable condition consistent with good residential practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving; general repairs; maintenance and replacement of sidewalks, exterior stairwell, patio, stone retaining wall; driveway; removal of garbage and debris; snow removal; and landscape upkeep. No exterior storage of materials or equipment is permitted on the Leased Land, except the temporary and orderly placement of items in conjunction with maintenance, repair or construction activities.
12. Taxes.
 - a. Real Estate Taxes. The City is a tax exempt entity. Should any City of Madison Ordinance or State of Wisconsin Statute after the Effective Date require that the Leased Land be subject to real estate taxes, the Lessees shall be liable for all such real estate taxes.
 - b. Special Assessments. The Lessees shall pay, before delinquency, any and all special assessments that accrue to the Leased Land.
 - c. Personal Property Taxes. The Lessees shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any ground leasehold interest of the Lessees or any fixtures, furnishings, or other of the Lessees' personal property of any kind owned, installed or used in or on the Leased Land, including the Building Improvement.
 - d. Room Taxes. The Lessees shall pay, before delinquency, all transient occupancy taxes imposed by the City of Madison pursuant to Sec. 4.21, Madison General Ordinances and 66.0651, Wis. Stats., as they may be amended or renumbered from time to time.
13. Utilities. The Lessees shall be solely responsible for and promptly pay all charges for water, gas, heat, electricity, sewer, storm water, and any other utility used upon or furnished to the Leased Land.
14. Indemnification. The Lessees 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 Lessees or their officers, officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Ground Lease. Negligence on the part of the City does not relieve the Lessees of their obligations under this paragraph.

15. Liability Insurance. The Lessees shall carry homeowners liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the City's Risk Manager: bodily injury, death and property damage of \$1,000,000.00 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, the Lessees shall furnish to the City a certificate of insurance on a form provided by the City.
16. Property Insurance. The Lessees shall maintain throughout the term of this Ground Lease a policy of comprehensive fire, extended coverage, vandalism, malicious mischief and other endorsements deemed advisable by the City insuring the Building Improvement and all appurtenances thereto for the full insurable replacement value thereof, with such a deductible not to exceed \$5,000.00. The City shall be named as a loss payee in such policy.
17. Hazardous Substances; Indemnification. The Lessees represent and warrant that their use of the Leased Land will not generate any hazardous substance, and they will not store or dispose on the Leased Land nor transport to or over the Leased Land any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessees further agree to hold the City harmless from and indemnify the City against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the City, its employees or agents. "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.
18. Compliance. The Lessees shall observe and promptly and effectively comply with all applicable statutes, rules, orders, ordinances, requirements and regulations of the City, the County of Dane, the State of Wisconsin, the federal government and any other governmental authority having jurisdiction over the Leased Land. The Lessees 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 Lessees agree that any such contest shall be prosecuted to a final conclusion as soon as possible. and that they will hold the City harmless with respect to any actions taken by any lawful governmental authority with respect thereto.
19. Subordination.
 - a. This Ground Lease is subordinate to rights and privileges granted by the City to public and private utilities across, over or under the Leased Land.
 - b. The Lessees shall subordinate their rights in this Ground Lease, without compensation, at the request of the City to provide rights, privileges, easements and rights-of-way for

all current or future public and private utilities across, along, under or over the Leased Land, provided that neither such subordination nor such easements shall interfere, except temporarily during construction or temporarily pursuant to rights which accrue to such easements or rights-of-way, with the use of the Leased Land under the terms of this Ground Lease, including the proposed GT system.

20. Right of Entry. The City or its representatives shall have the right to enter upon the Leased Land at any reasonable time with 24 hours notice given to Lessees for the purpose of making any inspection it may deem expedient to the proper enforcement of any term or condition of this Ground Lease or in the exercise of its municipal powers. Such right of entry shall not include the Building Improvement, and shall not interfere with the operation of Lessees' business. Notice may be made in writing, including by e-mail, or verbally.

21. Termination. The City shall have the right, at its sole option, to declare this Ground Lease void, terminate the same, reenter and take possession of the Leased Land under the following conditions:
 - a. By giving the Lessees a minimum of thirty (30) days written notice of pending termination, upon or after any one of the following events:
 - (1) The filing by the Lessees of a voluntary petition in bankruptcy.
 - (2) The institution of proceedings in bankruptcy against the Lessees and the adjudication of the Lessees as bankrupt pursuant to such proceedings.
 - (3) The taking by a court of competent jurisdiction of the Lessees' assets pursuant to proceedings brought under the provisions of any federal or state reorganization act.
 - (4) The appointment of a receiver of the Lessees' assets.
 - (5) The divestiture of the Lessees' estate herein by other operation of law.
 - (6) The abandonment by the Lessees of the Leased Land and/or the Building Improvement, except in connection with her surrender to an assignee or other party succeeding to the Lessees' interest hereunder, subject to Paragraph 7. Abandonment shall not be deemed to occur while rental payments are current.
 - (7) The use of the Leased Land for an illegal purpose.
 - (8) The failure of the Lessees to pay when due any rent or any other monetary sums due pursuant to the terms of this Ground Lease.

The termination shall not be effective, if within such thirty (30) day period, the event giving rise to the City's right to terminate ceases to exist. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the City.

The Lessees shall pay to the city the sum of Two Hundred Fifty Dollars (\$250) for each occasion on which rent is not paid within ten (10) days of its due date. In addition, any

rent that is not paid within thirty (30) days of its due date shall accrue interest at the rate of twelve percent (12%) per annum from the due date until paid.

- b. In the event that the Lessees fail to maintain insurance as required by this Ground Lease, the City may elect to (a) immediately terminate this Ground Lease and cause the removal of all personal property installed upon the Leased Land at the sole expense of the Lessees; or (b) purchase or pay for any insurance coverage required by this Ground Lease and charge the Lessees the cost of same as additional rent. Any amount paid by the City hereunder shall be repaid by the Lessees to the City upon demand, together with interest thereon at the rate of twelve percent (12%) per annum. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the City.
 - c. By giving the Lessees a minimum of thirty (30) days written notice of termination in the event the Lessees default in the performance of any term or condition of this Ground Lease other than those as set forth in Subparagraphs 21.a. and 21.b. Notwithstanding the foregoing, if such default is not a health or safety violation and cannot, because of the nature of the default, be cured within said thirty (30) days, then the Lessees shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Lessees immediately take steps to cure the default as soon as reasonably possible and proceed thereafter continuously with due diligence to cure the default within a period of time which, under all prevailing circumstances, shall be reasonable. In the event of termination under this Subparagraph, any prepaid rent shall be retained by the City.
 - d. By giving the Lessees a minimum of seven hundred thirty (730) days (approximately two (2) calendar years) written notice of termination in the event the Leased Land, at the sole discretion of the City of Madison, are desired for any public use or purpose. In the event of termination under this Subparagraph, any rent that has been prepaid for the period following the date of the Lessees' vacation of the Leased Land shall be prorated on a per diem basis and refunded to the Lessees.
 - e. If the whole of the Leased Land or so much of the Leased Land that the Building Improvement can no longer be maintained on the Leased Land shall be taken by Federal, State, county, city, or other authority for public use, or under any statute, or by right of eminent domain, then the term hereby granted and all rights of the Lessees hereunder shall immediately cease and terminate when possession of the Leased Land or so much of the Leased Land that the Building Improvement can no longer be maintained on the Leased Land shall be taken, and the Lessees shall not be entitled to any part of any award that may be made to the City for such taking of the Leased Land, nor to any damages therefor except to the extent that the Lessees are entitled to a separate award for the taking of the Leased Land. The rent shall be adjusted proportionately as of the date of such termination of this Ground Lease.
 - f. Failure of the City to declare this Ground Lease terminated upon the breach or default of the Lessees for any reason set forth in this Paragraph 21 shall not operate to bar or destroy any right of the City to terminate this Ground Lease for any subsequent breach or default of any term or condition of this Ground Lease.
22. No Waiver. Failure or delay on the part of either party to enforce any of the terms, covenants, conditions or agreements hereof shall not operate as a waiver thereof nor void or affect the

right of the party to enforce the same upon any subsequent default or breach. Except as otherwise provided in this Ground Lease, the rights and remedies herein granted are cumulative and are in addition to any given by statutes, rules of law or otherwise and the use of one remedy shall not be taken to exclude or waive the right to the use of another.

23. Damage and Destruction.

- a. In the event the Building Improvement is damaged by fire or other casualty to the extent of more than fifty percent (50%) of the cost of replacement, as determined by a third party independent insurance expert with specialization in historic properties as selected by the City, this Ground Lease shall automatically terminate effective as of the date of damage and the Building Improvement shall revert back to the City for the expansion of James Madison Park.
- b. In the event the Building Improvement shall be damaged by fire or other casualty to the extent of fifty percent (50%) or less of the cost of replacement, then the Lessees, at their own cost and expense, shall cause the same to be repaired, replaced or rebuilt within a period of time which, under all prevailing circumstances, shall be reasonable and time shall be of the essence.

24. Leased Land Acquired by Eminent Domain

- a. If the whole of the Leased Land and or so much of the Leased Land that the Building Improvement can no longer be maintained on the Leased Land shall be taken by any entity other than the City or any authority acting on behalf of the City for any public or quasi-public use under any statute or by right of eminent domain or by negotiated purchase in lieu thereof, then this Lease shall automatically terminate as of the date that possession has been taken, and the City and the Lessees shall each be entitled to claim separate awards with respect to their interests as a result of the taking.
- b. In the event of a partial taking (or negotiated purchase in lieu thereof) of the Leased Lands not resulting in the termination of this Ground Lease pursuant to the provisions of Subparagraph 24.a., the entire award (or the sales price in the case of a negotiated purchase) shall belong to the Lessees, and the rent payable hereunder for the Leased Land shall be reduced by the same percentage as the percentage which the square footage which was taken bears to the total square footage of the Leased Land.

25. Ownership of Building Improvement and Surrender.

- a. During the term hereof, the Building Improvement and any and all other improvements shall be and remain the property of the Lessee. Upon the expiration or earlier termination of this Ground Lease for any reason, including without limitation, termination as a result of a default by the Lessee, subject to the terms and conditions set forth in Section 25(b) below, (i) the Building Improvement and any and all other improvements shall become the property of the City; and (ii) the Lessee shall surrender the Building Improvement to the City in good condition and repair, normal wear and tear and damage by fire or other casualty excepted.

- b. Upon the expiration of this Ground Lease, the City shall purchase the Building Improvement from the Lessee. The repurchase price shall be determined in the following manner. The City and the Lessee each shall retain an expert appraiser reasonably acceptable to the other party (at the sole cost and expense of the retaining party) to appraise independently appraise the Building Improvement in “as-is” condition, as defined by the Appraisal Institute, *Dictionary of Real Estate Appraisal*, 5th Edition (“The estimate of the market value of real property in its current physical condition, use and zoning as of the appraisal date”). Each appraiser will be instructed to prepare an appraisal report of the Building Improvement in accordance with the then-current Uniform Standards of Professional Appraisal Practice. Upon receipt of the appraisal reports, they shall be promptly reviewed by the parties. In the event that the lower of such appraised values is ninety (90) percent or more of the higher appraised value, then the value of the Building Improvement shall be the average of the values indicated in the two appraisal reports. In the event that the lower of such appraised values is less than ninety (90) percent of the higher appraised value, a third appraiser shall be selected by the two fee appraisers. The third appraiser shall review both existing appraisal reports and make a determination of the “as-is” value of the Building Improvement. The value of the third appraiser shall not exceed the higher of the two previous appraisals, nor be less than the lower of the two previous appraisals. The cost incurred in retaining the third appraisal shall be borne equally by the Lessee and the City. In the event of a termination pursuant to Section 23(a) of this Ground Lease, then the repurchase price shall be proportionally reduced by the amount of any insurance proceeds actually received by the Lessee from the Lessee’s insurer.
- c. Upon the termination of the lease due to a condemnation, as outlined in 21(e) and 24 of this Ground Lease, the Lessee shall be entitled to a separate award for the Building Improvement. This separate award shall be made by the condemning authority that acquires Leased Land.
- d. Upon the termination of this Ground Lease as outlined in 21(a), 21(b) and 21(c) of this Ground Lease, the Lessee shall surrender the Building Improvement to the City as provided in 25(a) of this Ground Lease, and the City shall purchase the Building Improvement from the Lessee. The repurchase price shall be determined in the same manner set forth in Section 25(b) above. Once calculated, the repurchase price shall be discounted by 10% to arrive at the repurchase price due and payable pursuant to this Section 25(d) (the “Reduced Repurchase Price”). The City and the Lessee acknowledge and agree that (i) it will be difficult to determine the precise amount of damages that the City will incur as a result of the termination of the Ground Lease as outlined in 21(a), 21(b) and 21(c) of this Ground Lease; and (ii) the Reduced Purchase Price has been agreed upon, after negotiation, as the parties’ best and reasonable estimate of the City’s damages. Therefore, the City and the Lessee agree that the Lessee’s agreement to accept the Reduced Repurchase Price shall constitute a payment of liquidated damages by the Lessee to the City for compensation for the City’s damages arising as a result of the termination of the Ground Lease as outlined in 21(a), 21(b) and 21(c) of this Ground Lease. The City shall apply the Reduced Repurchase Price to any and all outstanding mortgages that are placed on the Building Improvement, with the balance of the Reduced Repurchase Price being paid to Lessee.

26. Historic Preservation. In all actions relating to the Leased Land, the Lessees shall comply with all applicable provisions of Subchapter II, Historic Preservation, of Chapter 44, Wisconsin Statutes, and all federal laws and regulations applicable to properties listed on the National Register of Historic Places.
27. Removal and Disposal of Personal Property. Upon the expiration or termination of this Ground Lease, the Lessees shall remove all personal property from the Leased Land. If the Lessees leave any personal property on the Leased Land, the City shall have the right to dispose of said property, without liability, thirty (30) days after the Lessees vacate or abandon the Leased Land.
28. Ownership of Building Improvement and Surrender. During the term hereof, the Building Improvement, the GT System and any and all other improvements shall be and remain the property of the Lessees. Upon the expiration or earlier termination of this Ground Lease, the Building Improvement, the GT System and any and all other improvements shall become the property of the City, and the Lessees shall surrender same to the City in good condition and repair, normal wear and tear and damage by fire or other casualty excepted.
29. Hold Over. In the event the Lessees shall continue to occupy or use the Leased Land after the expiration of this Ground Lease or any extension thereof, such holding over shall be deemed to constitute a tenancy from month to month, upon the same terms and conditions as herein provided except that rent equal to one-twelfth (1/12) of the annual rent shall be paid monthly in advance, and in no event shall the tenancy be deemed to be year to year.
30. Definition of City and Lessees. The terms "City" and "Lessees" when used herein shall mean either singular or plural, as the case may be, and the provisions of this Ground Lease shall bind the parties mutually, their heirs, personal representatives, successors and assigns.
31. Notices. All notices to be given under the terms of this Ground Lease shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

For the City: City of Madison
 Economic Development Division
 Office of Real Estate Services
 Attn: Manager
 215 Martin Luther King, Jr. Blvd., Room 312
 P. O. Box 2983
 Madison, WI 53701-2983

For the Lessees: Bob Klebba and David Waugh
 704 East Gorham Street
 Madison, WI 53703

With a copy to: Lessees' Mortgagee

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.

32. Non-Discrimination in Employment. In the performance of the Lessees' obligations under this Ground Lease, the Lessees agree not to discriminate against any employee or applicant 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, political beliefs or student status. The Lessees further agree not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Ground Lease because of race, religion, color, age, disability, sex or national origin.
33. Severability. If any term or provision of this Ground Lease or the application thereof to the City or the Lessees or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Ground Lease, or the application of such terms or provisions to the City or the Lessees 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 the Ground Lease shall be valid and be enforceable to the fullest extent permitted by law.
34. Joint and Several Liability. The Lessees shall be jointly and severally liable for all terms and conditions, including payments, of this Ground Lease.
35. Entire Agreement. All terms and conditions and all negotiations, representations and promises with respect to this Ground Lease are merged into this Ground Lease. No alteration, amendment, change, or addition to this Ground Lease shall be binding upon the parties unless in writing and signed by them.
36. Quiet Enjoyment. The City hereby covenants and agrees that if the Lessees shall perform all of the covenants and agreements herein to be performed on the Lessees' part, the Lessees shall, at all times during the continuance hereof, have the peaceable and quiet enjoyment and possession of the Leased Land without any manner of hindrance from the City or any person lawfully claiming the Leased Land.
37. Public Record. This Ground Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the parties.
38. Consent of the City: In the event the Lessees require the consent of the City hereunder, the Parks Superintendent shall have the authority to grant such consent

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

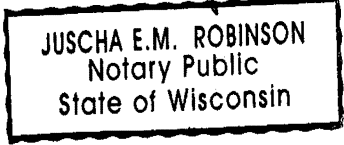
By: *Robert E. Klebba*
Robert E. Klebba

By: *David P. Waugh*
David P. Waugh

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 14th day of September, 2012, Robert E. Klebba and David P. Waugh, known to be the persons who executed the above foregoing instrument and acknowledged the same.

Juscha E.M. Robinson
Notary Public, State of Wisconsin
Juscha E.M. Robinson
Print or Type Name
My Commission: is permanent.



CITY OF MADISON

By: [Signature]
Paul R. Soglin, Mayor

By: Jean Triton-Schmitz for
Maribeth L. Witzel-Behl, City Clerk

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 13th day of September, 2012, the above named Paul R. Soglin, Mayor of the City of Madison, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

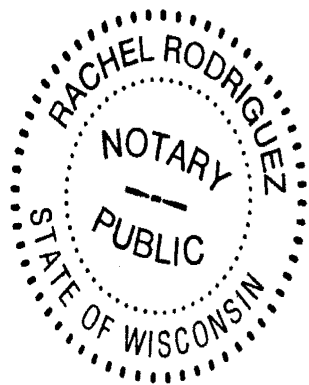
[Signature]
Notary Public, State of Wisconsin

Anne Zellhoefer
Print or type name

My Commission: is permanent.

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 13th day of September, 2012, the above named ^{Jean Triton-Schmitz for} Maribeth L. Witzel-Behl, City Clerk of the City of Madison, acting in said capacity and known to me to be the person who executed the foregoing instrument and acknowledged the same.



[Signature]
Notary Public, State of Wisconsin

Rachel Rodriguez
Print or type name

My Commission: exp 6/26/16

Approved
[Signature]
David Schmiedicke, Finance Director

Date
9/13/12

Approved
[Signature]
Eric Neum, Risk Manager

Date
9/13/12

Approved as to Form
[Signature]
Michael P. May, City Attorney

9/13/12

Execution of this Ground Lease is authorized by Resolution Enactment No. ~~12-00656~~ File ID No. 27237, adopted by the Common Council of the City of Madison on 4, Sept, 2012.

Drafted by the City of Madison Office of Real Estate Services.

Project Nos. 9470 & 9916

EXHIBIT A

BE ADVISED THAT THE
ILLUSTRATION ON THIS PAGE
CANNOT BE REPRODUCED
CLEARLY WHEN SCANNED.

Grantor/Agent JK

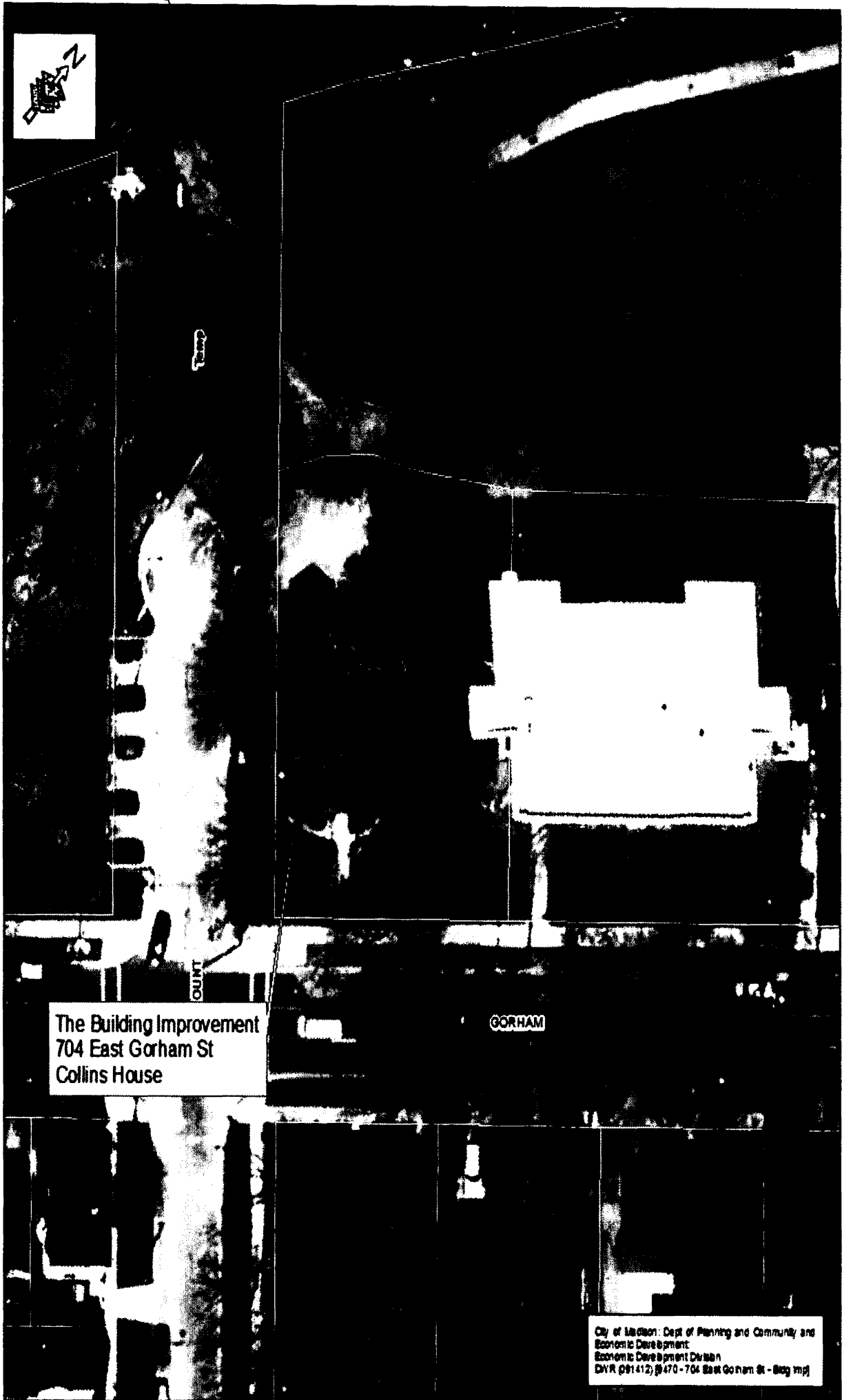


EXHIBIT B

LEGAL DESCRIPTION OF LEASED LANDS:

Lot One (1), Certified Survey Map No. 4607, recorded March 22, 1985 in Volume 20 of Certified Survey Maps, page 140, as Document No. 1872436, located in the City of Madison, Dane County, Wisconsin, Together with access for ingress and egress over a portion of Lot Three (3) of Certified Survey Map No. 4607.

EXHIBIT C

RENT SCHEDULE

Year	Annual Rent				
		41	\$9,936.18	82	\$22,378.27
1	\$4,500.00	42	\$10,134.90	83	\$22,825.83
2	\$4,590.00	43	\$10,337.60	84	\$23,282.35
3	\$4,681.80	44	\$10,544.35	85	\$23,747.99
4	\$4,775.44	45	\$10,755.24	86	\$24,222.95
5	\$4,870.94	46	\$10,970.34	87	\$24,707.41
6	\$4,968.36	47	\$11,189.75	88	\$25,201.56
7	\$5,067.73	48	\$11,413.55	89	\$25,705.59
8	\$5,169.09	49	\$11,641.82	90	\$26,219.70
9	\$5,272.47	50	\$11,874.65	91	\$26,744.10
10	\$5,377.92	51	\$12,112.15	92	\$27,278.98
11	\$5,485.47	52	\$12,354.39	93	\$27,824.56
12	\$5,595.18	53	\$12,601.48	94	\$28,381.05
13	\$5,707.09	54	\$12,853.51	95	\$28,948.67
14	\$5,821.23	55	\$13,110.58	96	\$29,527.65
15	\$5,937.65	56	\$13,372.79	97	\$30,118.20
16	\$6,056.41	57	\$13,640.24	98	\$30,720.56
17	\$6,177.54	58	\$13,913.05	99	\$31,334.97
18	\$6,301.09	59	\$14,191.31		
19	\$6,427.11	60	\$14,475.14		
20	\$6,555.65	61	\$14,764.64		
21	\$6,686.76	62	\$15,059.93		
22	\$6,820.50	63	\$15,361.13		
23	\$6,956.91	64	\$15,668.35		
24	\$7,096.05	65	\$15,981.72		
25	\$7,237.97	66	\$16,301.35		
26	\$7,382.73	67	\$16,627.38		
27	\$7,530.38	68	\$16,959.93		
28	\$7,680.99	69	\$17,299.13		
29	\$7,834.61	70	\$17,645.11		
30	\$7,991.30	71	\$17,998.01		
31	\$8,151.13	72	\$18,357.97		
32	\$8,314.15	73	\$18,725.13		
33	\$8,480.43	74	\$19,099.63		
34	\$8,650.04	75	\$19,481.63		
35	\$8,823.04	76	\$19,871.26		
36	\$8,999.50	77	\$20,268.68		
37	\$9,179.49	78	\$20,674.06		
38	\$9,363.08	79	\$21,087.54		
39	\$9,550.34	80	\$21,509.29		
40	\$9,741.35	81	\$21,939.48		