

DATE: August 9, 2025

TO: Board of Parks

Common Council

Alder Guequierre District 19

Mayor Satya Conway-Rhoads

FROM: Friends of Merrill Spring Board

RE: Agenda #13, Legistar 88148 Merrill Springs View Preservation Easement Amendment

Board of Park Commissioners August 13, 2025, 6:30pm, virtual

As stated previously at the Board of Park Commissioners May 14, 2025 meeting concerning Legistar 88148, the Board of the Friends of Merrill Spring (FMS) has been long involved in the care of the small pocket park that was expanded in 2012 via the City's purchase of land from the Margetis Family. The purchase included a permanent limited easement for view preservation from the house at 5050 Lake Mendota Drive on and over the new purchase area (Document # 4829662, 1/5/2012). The legal description of the easement area was recorded as "Lot 2", certified survey Document # 4504885. The City Files for the Easement include "Subject Property Photo Addendum". This past spring the City and current owner of 5050 Lake Mendota Drive (Grantee) drafted an "Amended View Preservation Easement (version 1)". The FMS Board reviewed the proposed amended easement and concluded that the amendment incorrectly favored and expanded the original view easement for the benefit of the Grantee over the public. The City and Grantee withdrew the amendment at the May 14, 2025 meeting.

The new amendment (version 2) still favors and expands the easement view for the Grantee over the public. As stated in the May recommendations and now again here, the FMS Board firmly recommends that the subject property photo addendum attached to the original easement's file be included in the amendment. The three photographs included in the addendum clearly show that the extent of the 5050 Lake Mendota Drive view toward the original park was limited by a 2-story house surrounded by two large oaks on Lot 2 and thick vegetation and trees along the park's fence line. Since the purchase the two large oaks have fallen and the house has been removed. The trees on the original park property provide shoreline erosion protection, park visitor privacy, cooling shade, and enhanced views of wildlife.

An example viewshed of the house to the lake was drafted by the FMS Board and is attached (Attachment 1). The profile shows that vertical restrictions of vegetation heights are lower than the view line in Zones 1-3. The west edge of the viewshed in the original easement is shown on Attachment 2, drawn over the survey map which shows the location of the house, which is in the middle of the viewshed proposed in the amendment (version 2).

The draft easement amendment (version 2) needs to be updated to address the following inconsistencies.

In the WITNESSETH Section, the 3rd Whereas paragraph states “... over a portion of Merrill Springs Park....”. This statement is incorrect and should be kept consistent with the original easement “... over the Easement Area of Lot 2” according to Exhibit A of the original Easement agreement.

In the WITNESSETH Section, the 4th Whereas paragraph states that photos were not taken to document the “Easement View” during the summer following the execution of the easement. However, the original Easement document (January 5 2012, Document 4829662) defined the easement view “as currently exists” and had “subject property photo addendum” from the Appraisal of 5100 Spring Court (City Files File No 5100SpringCourt GPAR) as reference. The photos clearly show that the view toward the west side of Lot 2 and the original park area was blocked by two large oaks and a 2-story cottage, a heavily wooded hillslope extended southward from the spring cistern, and heavy vegetation along the fenceline, and three large trees (2 willows and 1 silver maple) along the shoreline. These photos were used by the City for an evaluation of this expensive purchase and should be considered sufficient documentation. This paragraph needs to be updated to include the three photos included in the Subject Property Photo Addendum.

Item 1: The amendment specifically needs to include Exhibit D – the Subject Property Photo Addendum from the first easement document. As recommended by others, a viewshed analyses should be included as an Exhibit that defines the height and (original) width of the viewshed.

Item 2. Paragraph 1 of the Easement “Purpose” – The original wording should be kept.

Item 3 Paragraph 2 “Easement Holder’s Rights” – The updated wording in this paragraph expands the Grantee’s rights beyond the original intent of the Easement. “...and certain vegetation” is vague, whereas the original intent were trees of a height that would block the view from the house and yard. The Grantee’s rights should remain true to the original view easement -- trimming trees in their original view area in the eastern portion of Lot 2.

Item 4 Tree and Vegetation Restrictions – These restrictions do not take into account the slope of the land relative to the Grantee’s house. A viewshed analysis using existing lidar topography, as recommended in the public comment from the May meeting, should be done to account for the 35 feet of relief in the Easement Area. See attachment for a draft viewshed line relative to proposed zones and heights. The new amendment must specify that if the existing trees are lost that they can be replaced with similar tall species with similar expected canopy widths.

Zone 1: proposed 4 ft; actual = 9-13 ft

Zone 2: proposed 6 ft; actual = 13-16 ft

Zone 3: proposed 10 ft; actual = 16-19 ft

Beyond Zone 3 to lake: proposed 10 ft; actual 19-10 ft

Even though the house and fence along Lot 2 have been taken out and the two large oaks surrounded the house have fallen since the purchase, the silver maple and concrete block at the shoreline mark the western extent of the view of the lake from 5050 Lake Mendota Drive. Trees shall be allowed to grow along the shoreline of the park area to the extent of the canopy covered by the silver maple that extends into Lot 2, following shoreline protection rules recently updated in the Madison Parks and Open Space Plan (<https://www.cityofmadison.com/parks/documents/projects/City%20of%20Madison%20POSP%20Online.pdf>)

July 2024 measurements of existing tree canopy that needs to be accounted for:

Silver maple (along shoreline) canopy = radius of 23 ft beyond center of trunk

Protected oak canopy = radius of 34 ft beyond center of trunk.

The Grantee should not be allowed to trim any branches from the trees that are currently outside of the Easement Area, including the protected oak, but also the silver maple, and other trees along the edge of the wooded bluff.

Including unspecified “vegetation” will likely be a cause for future conflict. The original Easement terminology shall be kept which was specific to trees. Any vegetation that grows higher than the heights specified for the four zones needs to be discussed with and approved in writing by Parks before the Grantee removes it.

Item 7. Paragraph 5 of the Easement “Vegetation and Tree Trimming and Maintenance”. As stated above, the use of the word “vegetation” is vague. As stated above, the original easement was specific to trees.

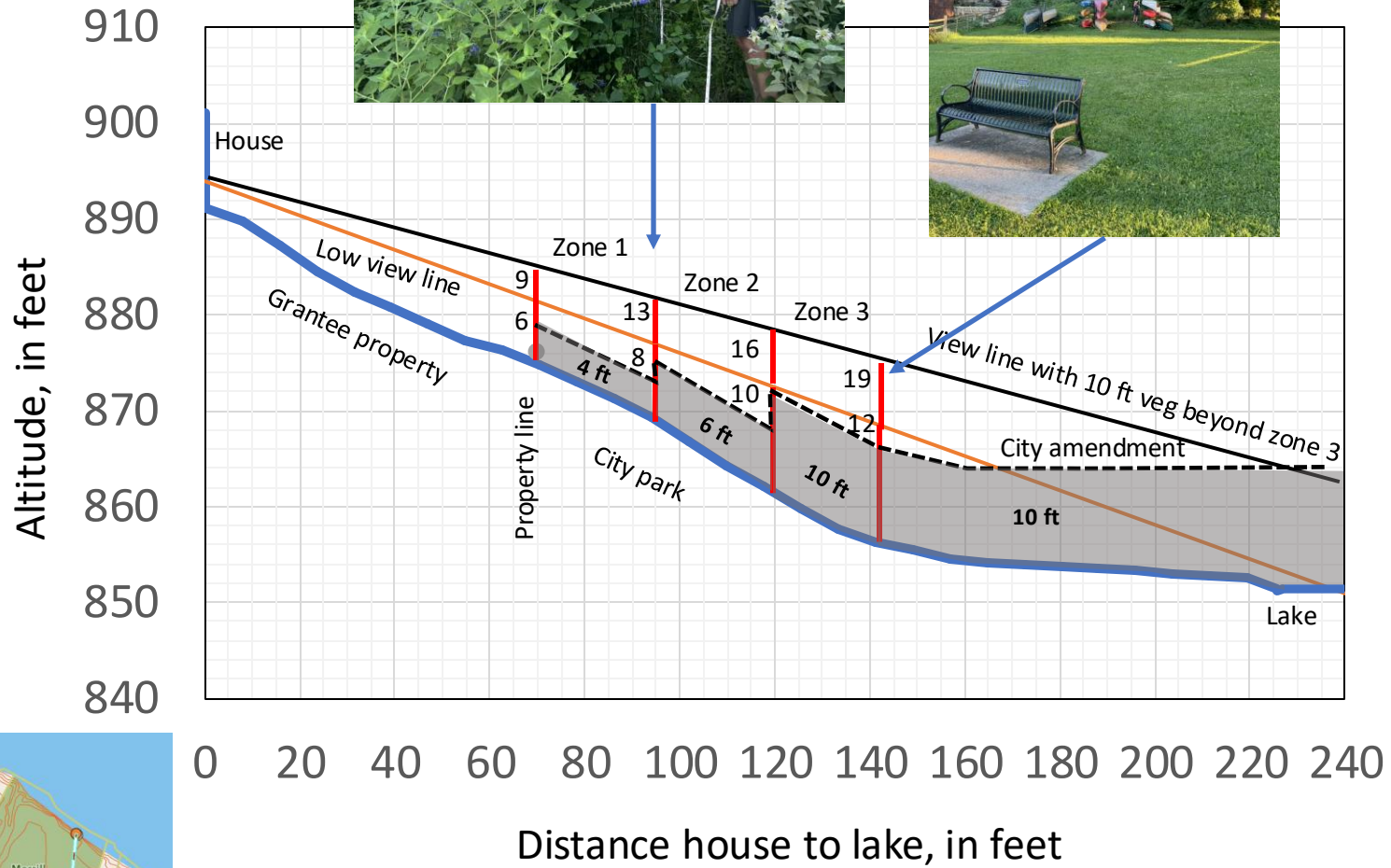
Exhibit A – Legal Description of Easement Area: The amendment adds an additional lot (the original Park area). This is an error and extends the view easement beyond the original intent. The original Exhibit A defines the easement area within Lot 2.

Exhibit B – Easement Area: The original easement contained the official survey map of Lot 2. The new description based on distances and directions appear to extend beyond the original easement view width and don’t consider the effect of the house surrounded by large oaks on Lot 2.

Exhibit C – The maps should include the location of the canopy covered by the protected oak and silver maple.

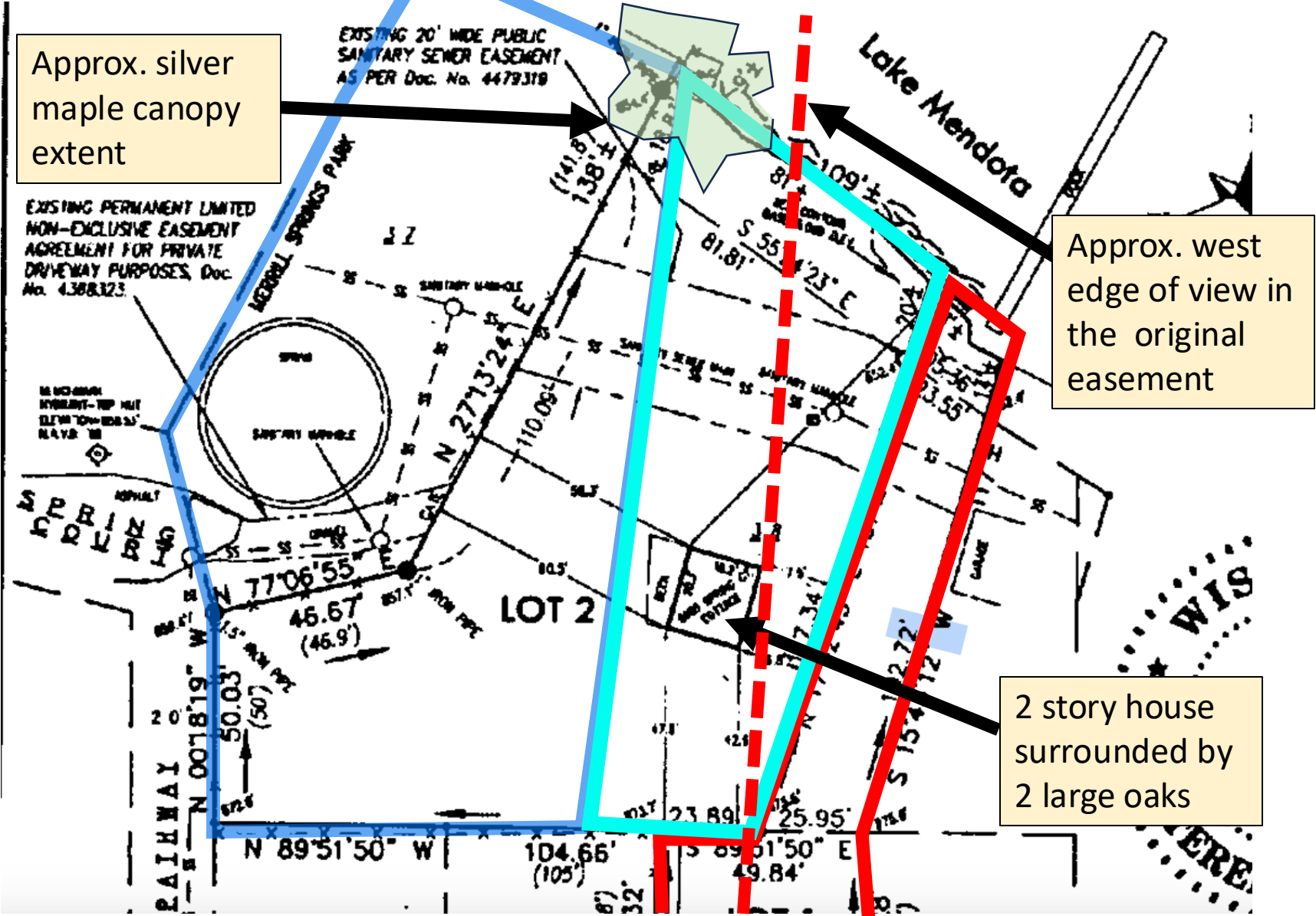
The original easement and the city file photos in the addendum are also attached.

ATTACHMENT 1



Path of Profile

ATTACHMENT 2





8 3 3 1 4 2 7
Tx:8200805

PERMANENT LIMITED EASEMENT FOR VIEW PRESERVATION

The **City of Madison**, a Wisconsin municipal corporation (the "City") being the owner of the property hereinafter described, in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, the receipt whereof is hereby acknowledged, does grant, set over and convey to **Bill N. Margetis** (the "Grantee"), a permanent limited easement for view preservation (the "Easement") on and over (the "Easement Area") described on attached Exhibit A, and depicted on attached Exhibit B.

WITNESSETH:

WHEREAS, the City is the owner of certain real property located in the City of Madison, Dane County, Wisconsin, as more particularly described on attached Exhibit A; and

WHEREAS, the City desires to grant and record permanent limited easement for view preservation purposes on and over the City's Property to the Grantee.

NOW, THEREFORE, the City hereby grants to and for the benefit of the Grantee, their successors and assigns, a permanent limited easement for view preservation purposes on and over the Easement Area.

This Easement is subject to the following terms and conditions:

1. Purpose. The purpose of the Easement is to preserve the existing view of Lake Mendota from the Grantee's residence located at 5050 Lake Mendota Drive, Madison, WI, legally described as Lot 1, Certified Survey Map No. 12633.
2. Easement Holder's Rights. The Grantee's easement rights include, and are limited to, the restriction on the construction of structures and planting of trees in the Easement Area by the City which would obstruct the Grantee's view of Lake Mendota from the Grantee's residence located at 5050 Lake Mendota Drive, as it currently exists. The Grantee shall also have the right to trim trees in the Easement Area, at the Grantee's expense, to preserve the view of Lake Mendota as currently exists. The existing view from the Grantee's residence shall be established by photographic documentation in the summer following the execution of this Easement. Grantee shall allow representatives of the City onto Grantee's property and into Grantee's residence, at a mutually agreeable time, to make such documentation. Once the documentation is agreed to, it shall be incorporated into this Easement and shall be filed at the City Clerk's Office along with a copy of this Easement.

**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

DOCUMENT #

4829662

01/05/2012 12:08 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 7

RETURN TO: City of Madison
EDD – Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No.s: 251-0709-184-0123-6
251-0709-184-0126-0

3. Reserved Rights. The City retains all ownership rights that are not expressly restricted by this Easement and are not inconsistent with this grant; including but not limited to the right to sell, mortgage, or donate the property subject to the terms and conditions of this Easement.
4. Restrictions on Use. Notwithstanding the provisions of Paragraph 1, the Grantee's use of this Easement shall be restricted as follows:
 - a. The Grantee shall contact the City Parks Division prior to any tree trimming in the Easement Area. No tree trimming will be allowed in the Easement Area without prior written approval of the City Parks Division, which consent shall not be unreasonably withheld.
 - b. Grantee shall not use the Easement Area for open storage of or permanent parking of vehicles or equipment of any kind.
5. Tree Trimming and Maintenance.
 - a. The work of tree trimming shall be done and completed in a good and professional manner at the sole expense of the Grantee and shall be performed in such a manner as in no way to interfere with or endanger the use of the Easement Area. In all cases, the Grantee shall be responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any tree trimming and maintenance activity. To the extent that City Ordinances may otherwise prevent Grantee from exercising its right to trim trees in the Easement Area, the City agrees that the terms of this Easement control and that tree trimming pursuant to the terms and conditions of this Easement is permissible in the Easement Area.
 - b. Following any tree trimming activity by Grantee in the Easement Area (or as soon thereafter as weather reasonably permits), the Grantee will promptly restore the Easement Area in a manner satisfactory to the City Parks Division.
 - c. Grantee shall not be responsible for the cost of any tree trimming activities undertaken by the City or initiated by the City. Grantee shall not be responsible for restoration or cleanup related to tree trimming activities undertaken by the City or initiated by the City.
6. Termination. In the event the Grantee defaults in the performance of any term or condition of this Easement and fails to remedy such default within thirty (30) days after written notice from the City, the City shall have the right, at its sole option, to declare this Easement void and terminate the same. 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 Grantee shall be deemed to be complying with such notice if, promptly upon receipt of such notice, the Grantee 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.

7. Indemnification. The Grantee 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 Grantee or its agents, employees, or subcontractors, in the performance of activities permitted under paragraphs 5a. or 5b. of this Easement. Negligence on the part of the City and its officials, officers, agents or employees shall not eliminate the indemnification obligation stated in the preceding sentence.
8. Additionally, Grantee's tree trimming contractor shall carry commercial general 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 per occurrence. The policy or policies shall name the City as an additional insured. As evidence of this coverage, Grantee's tree trimming contractor shall furnish to the City a certificate of insurance on a form provided by the City.
9. Authorized Agent. The City of Madison Parks Division or the Park Division's designee is hereby designated as the official representative of the City for the enforcement of all provisions of this Easement, with authority to administer this Easement lawfully on behalf of the City.
10. Notices. All notices to be given under the terms of this Easement 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:

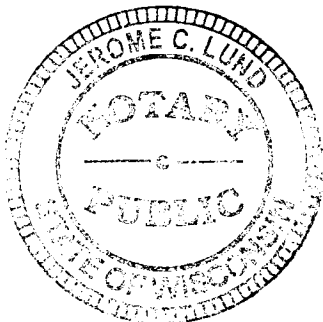
For the City: City of Madison Parks Division
 Attention: Parks Superintendent
 210 Martin Luther King Jr. Blvd.
 Room 104
 Madison, WI 53703

For Grantee: Bill Margetis
 5050 Lake Mendota Drive
 Madison, WI 53705

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.

11. Compliance. The City and the Grantee 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.
12. Severability. If any term or provision of this Easement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Easement and the same shall continue to be effective to the fullest extent permitted by law.
13. Binding Effect. This Easement shall inure to the benefit of the Grantee, their successors and assigns, and shall be binding upon the City, and their respective successors and assigns.
14. Covenants Run with Land. All terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by the City and Grantee and their respective successors and assigns. The party named as Grantee in this Agreement and any successor or assign to the Grantee as fee simple owner of Lot 1, CSM 12633, shall cease to have any liability under this Agreement with respect to facts or circumstances arising after the party has transferred its fee simple interest in Lot 1, CSM 12633.

Dated this 30TH day of DECEMBER, 2011.



CITY OF MADISON

By: *Paul R. Soglin*
Paul R. Soglin, Mayor

By: *Maribeth L. Witzel-Behl*
Maribeth L. Witzel-Behl, City Clerk

State of Wisconsin)
)ss.
County of Dane)

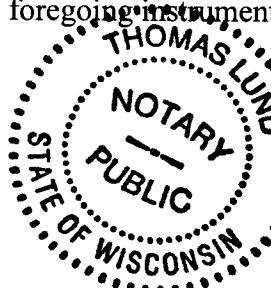
Personally came before me this 30TH day of December, 2011, the above named Paul R. Soglin, Mayor of the City of Madison, acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

Jerome C. Lund
Notary Public, State of Wisconsin
JEROME C. LUND
Print or Type Name
My Commission: 10/19/2014

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 29th day of December, 2011, the above named 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.

Thomas Lund
Notary Public, State of Wisconsin
THOMAS LUND
Print or Type Name
My Commission: 05/25/2015

A circular notary seal for Thomas Lund, Notary Public, State of Wisconsin. The seal features the text "THOMAS LUND" at the top, "NOTARY PUBLIC" in the center, and "STATE OF WISCONSIN" at the bottom.

Drafted by the City of Madison Office of Real Estate Services

Project No. 9567

Execution of this easement by the City of Madison is authorized by Resolution Enactment No. RES-11-00965, File ID No. 24359, adopted November 29, 2011.

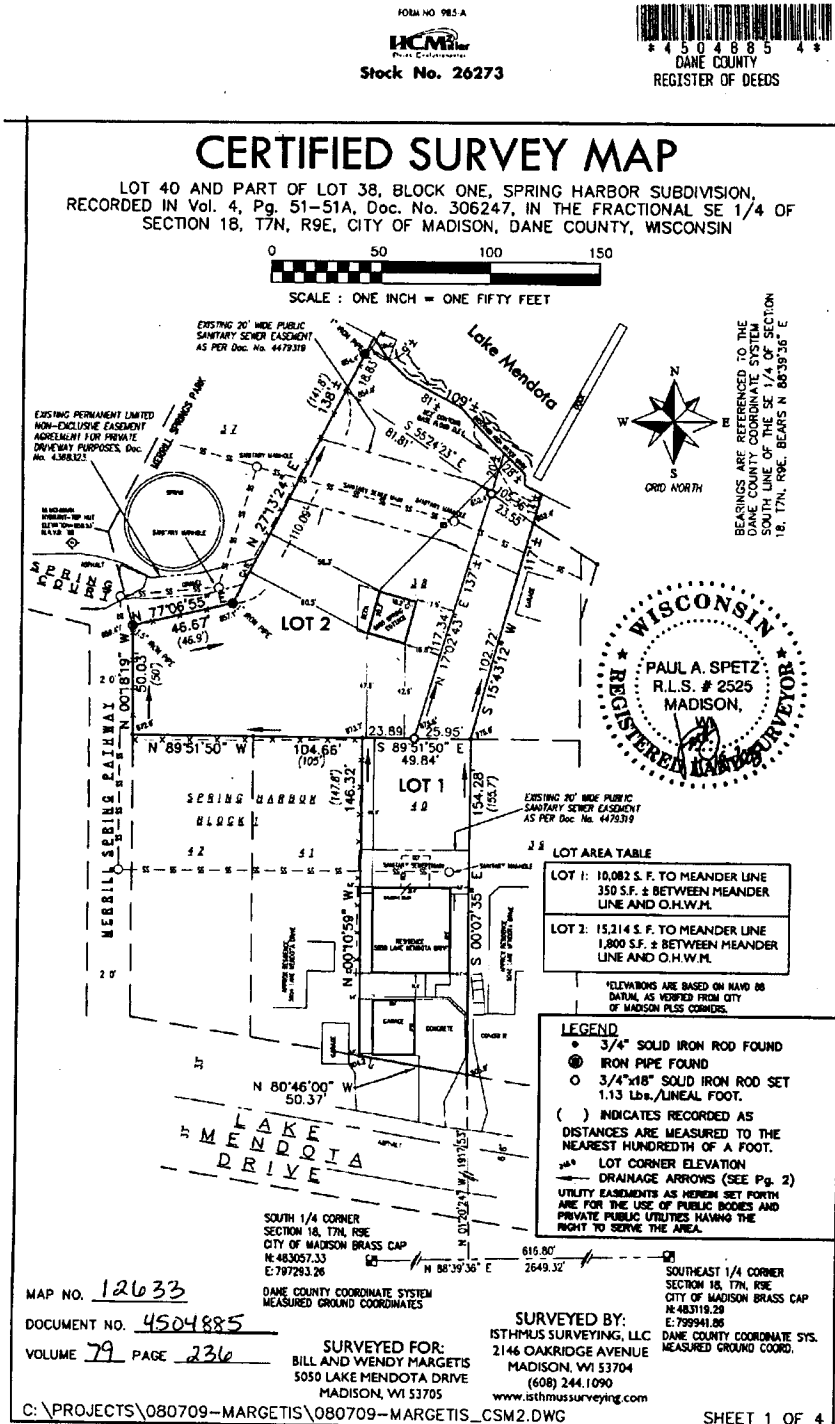
Exhibit A

Legal Description of Easement Area:

Lot 2, Certified Survey Map No. 12633 as recorded in Dane County Register of Deeds Office in Volume 79, page 236-239 of Certified Surveys, as Document No. 4504885, City of Madison, Dane County, Wisconsin

Address:	5100 Spring Court
Tax Parcel No.	251-0709-184-0123-6

Exhibit B



Viewers are advised to ignore the
illegible text on this exhibit. It is
presented to show spatial relationships
only.

Authorized by:

Leon Paul

This page from city files, not recorded with easement document



View north along eastern border of site

Margetis View Amenity

SUBJECT PROPERTY PHOTO ADDENDUM

Client: City of Madison	File No.: 5100SpringCourt_GPAR
Property Address: 5100 Spring Court	Case No.:
City: Madison	State: WI Zip: 53705

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Margetis Residence



FRONT VIEW OF
SUBJECT PROPERTY

Appraised Date: March 7, 2011
Appraised Value: \$ 861,000



REAR VIEW OF
SUBJECT PROPERTY