

1501 Monroe Street



* 4 4 9 1 0 0 6 3 *

DANE COUNTY

REGISTER OF DEEDS

DOCUMENT #

4491006

01/06/2009

01:18PM

Exempt #:

Rec. Fee:

15.00

Pages: 3

DECLARATION OF CONDITIONS, COVENANTS AND RESTRICTIONS FOR MAINTENANCE OF STORMWATER MANAGEMENT MEASURES

RECITALS:

- A. Wisconsin Avenue Associates is the owner of Lots 1, 2, 3, and 4, Block 1, Oakland Heights more particularly described on Exhibit A attached hereto ("Property").
B. Owner desires to construct buildings and/or parking facilities on the Property in accordance with certain plans and specifications approved by the City.
C. The City requires Owner to record this Declaration regarding maintenance of stormwater management measures to be located on the Property. Owner agrees to maintain the stormwater management measures and to grant to the City the rights set forth below.

NOW, THEREFORE, in consideration of the declarations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the owner agrees as follows:

- 1. Maintenance. Owner and its successors and assigns shall be responsible to repair and maintain the stormwater management measures located on the Property in good condition and in working order and such that the measures comply with approved plans on file with the City Engineer. Said maintenance shall be at the Owner's sole cost and expense. Owner will conduct such maintenance or repair work in accordance with all applicable laws, codes, regulations, and similar requirements.
2. Easement to City. If Owner fails to maintain the stormwater management measures as required in Section 1, then City shall have the right, after providing Owner with written notice of the maintenance issue ("Maintenance Notice") and thirty (30) days to comply with the City's maintenance request, to enter the Property in order to conduct the maintenance specified in the Maintenance Notice. City will conduct such maintenance work in accordance with all applicable laws, codes, regulations, and similar requirements and will not unreasonably interfere with Owner's use of the Property. All costs and expenses incurred by the City in conducting such maintenance may be charged to the owner of the Property by placing the amount on the tax roll for the Property as a special assessment in accordance with Section 66.0703, Wis. Stats. and Section 4.09 of the Madison General Ordinances.
3. Term/Termination. The term of this Agreement shall commence on the date that this Agreement is filed of record with the Register of Deeds Office for Dane County, Wisconsin, and except as otherwise herein specifically provided, shall continue in perpetuity. Notwithstanding the foregoing, this Agreement may be terminated by recording with the Register of Deeds Office for Dane County, Wisconsin, a written instrument of termination signed by the City and all of the then-owners of the Property.
4. Miscellaneous.
(a) Notices. Any notice, request or demand required or permitted under this Agreement shall be in writing and shall be deemed given when personally served or three (3) days after the same has been deposited with the United States Post Office, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

If to Owner: Wisconsin Avenue Associates
c/o Mr. Bob Sieger
1501 Monroe Street
Madison WI 53711

If to City: City Engineering Division
Room 115, City County Building
210 Martin Luther King Jr. Blvd.
Madison, WI 53703-3342
Attention: City Engineer

Any party may change its address for the receipt of notice by written notice to the other.

- (b) Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Wisconsin.
(c) Amendments or Further Agreements to be in Writing. This Agreement may not be modified in whole or in part unless such agreement is in writing and signed by all parties bound hereby.
(d) Covenants Running with the Land. All of the easements, restrictions, covenants and agreements set forth in this Agreement are intended to be and shall be construed as covenants running with the land, binding upon, inuring to the benefit of, and enforceable by the parties hereto and their respective successors and assigns.
(e) Partial Invalidity. If any provisions, or portions thereof, of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such provision, or portion thereof, to any other persons or circumstances shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

This space is reserved for recording data

Return to:

City Engineering Division
Rm. 115, City-County Building
Madison, Wisconsin

PN# 251-0709-224-0604-0
251-0709-224-0602-0

3/15

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 29 day of Oct., 2008.

Robert Sieger
STATE OF WISCONSIN
COUNTY OF DANE) SS

Personally came before me this 29th day of October, 2008, the above named Robert Sieger, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

Matt J. Hein
NOTARY PUBLIC

Matt J. Hein

My Commission Expires: 09/12/2010

Drafted by: City Engineering Division
Rm. 115, City-County Building
Madison, Wisconsin

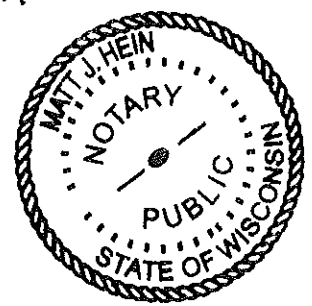


EXHIBIT A

Legal Description of Property:

PARCEL A

LOTS ONE (1), TWO (2), AND THREE (3), BLOCK ONE (1), OAKLAND HEIGHTS, LOCATED IN THE CITY OF MADISON, DANE COUNTY, WISCONSIN.

TAX KEY NUMBER: 070922406040

PARCEL B

THE NORTHEAST FIFTY (50) FEET OF THE NORTHWEST 1/2, AND THE NORTHEAST FORTY (40) FEET OF THE SOUTHEAST 1/2 OF LOT FOUR (4), BLOCK ONE (1), OAKLAND HEIGHTS, IN THE CITY OF MADISON, DANE COUNTY, WISCONSIN.

TAX KEY NUMBER: 070922406024

Maintenance Provisions:

Owner shall install a Rain Garden/Bio-Retention System in accordance with plans approved by City Engineer. Owner shall maintain records of installation, inspections, cleaning and any other maintenance all in accordance with Chapter 37 of the Madison General Ordinances. Visual Inspection of the Rain Garden/ Bio-Retention System shall be performed, at a minimum, annually. Maintenance shall be required when system shows standing water beyond 72 hours of rain event. Cleaning shall consist of removal of sediment, two (2) foot undercut, undercut replacement with material consisting of 1/3 topsoil, 1/3 compost and 1/3 sand and restoration in-kind. Restoration of plant material shall be by plugging, not seeding alone. Any alterations to approved Rain Garden/ Bio-Retention System shall be approved by City Engineer. Owner shall maintain records of inspections, cleaning and replacement of the Rain Garden all in accordance with Chapter 37 of the Madison General Ordinances.