

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

DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
4210369

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Exempt #:

Rec. Fee: 15.00
Pages: 3

001917

RECITALS:

- A. Atrium One LLC (Owner), 2275 Deming Way, Suite 300, Middleton, WI 53562, is the Owner of the Atrium Center, Madison, WI 53717 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 as set forth in Exhibit A 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 (Exhibit A) 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:	Atrium One LLC 2275 Deming Way, Suite 300 Middleton, WI 53562
If to City:	City of Madison City Engineering Division Rm. 115, City-County Building Madison, Wisconsin 53709 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.

Return to:

D'Onofrio Kottke & Associates, Inc.
7530 Westward Way
Madison, Wisconsin 53717

PN # 070930305028

001918

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 19th day of June, 2006.

ATRIUM ONE LLC

By: John J. Lively, manager

STATE OF WISCONSIN)
COUNTY OF DANE) SS

Personally came before me this 19th day of June, 2006, the above named John J. Lively, to me known to be the person(s) who executed the foregoing instrument and acknowledged the same.

J. J. Ewan
NOTARY PUBLIC, John J. Ewan
of Wisconsin
My Commission Expires no permanent

Drafted by: Bruce Hollar
D'Onofrio Kottke & Associates, Inc.
7530 Westward Way
Madison, WI 53717

BJH:bjh

EXHIBIT A

001919

Legal Description of Property:

Being Lot 2, Certified Survey Map Number 4504 and a part of Lot 1, Certified Survey Map Number 442, located in the N1/2 of the SW1/4 of Section 30, T7N, R9E, City of Madison, Dane County, Wisconsin, to-wit: beginning at the southwest corner of said Lot 2, Certified Survey Map Number 4504; thence N00°45'02"E along the west line of said Lot 2, 224.26 feet; thence S89°27'20"W along the south line of said Lot 1, Certified Survey Map Number 442, 115.12 feet; thence N00°53'44"E along the west line of said Lot 1, 86.14 feet; thence N89°27'20"E along the north line of said Lot 1, 168.61 feet; thence S00°53'44"W, 86.14 feet; thence N89°27'20"E along the north line of said Lot 2, Certified Survey Map Number 4504, 296.53 feet; thence S00°45'00"W along the east line of said Lot 2, 281.67 feet; thence S89°52'03"W along the south line of said Lot 2, 92.19 feet to a point of curve; thence northwesterly along the south line of said Lot 2 on a curve to the right which has a radius of 628.77 feet and a chord which bears N78°04'26"W, 262.74 feet to the point of beginning. Containing 2.479 acres and being subject to easements and restrictions of record, if any, City of Madison, Dane County, Wisconsin.

Maintenance Provisions:

Bioretention System:

Owner shall install a Bioretention 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 Bioretention 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 Bioretention System shall be approved by City Engineer. Owner shall maintain records of inspections, cleaning and replacement of the Bioretention System all in accordance with Chapter 37 of the Madison General Ordinances.

Inlet Filters:

The Owner or the Owner's representative shall install and maintain catch basin inserts as noted on the approved plans. Said insert is installed for mitigation and control of sediment and/or oil and grease in the storm water runoff. Installation and maintenance shall be in accordance with the manufacturer's guidelines, which, at minimum shall be three (3) inspections per year, two (2) cleanings per year and one (1) filter replacement per year. More specifically, debris shall be removed and filter medium is to be replaced any time the filter medium appears to be 50% coated with oil or grease.

Owner shall maintain records of inspections, cleaning and replacement of the device or components of the device all in accordance with Chapter 37 of the Madison General Ordinances.