KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
4931872
11/12/2012 2:12 PM
Trans. Fee:
Exempt #:
Rec. Fee: 30.00
Pages: 9

Document No.

DECLARATION OF CONSERVATION EASEMENT

Return to:
Matthew C. Carlson, Esq.
Michael Best & Friedrich LLP
P.O. Box 1806
Madison, WI 53701-1806

See Exhibit A attached hereto
Parcel Identification Number

DECLARATION OF CONSERVATION EASEMENT

THIS DECLARATION OF CONSERVATION EASEMENT (the "Declaration") is made as of the 9th day of November, 2012, by Midwest Realty and Investment Corporation, a Wisconsin corporation ("Grantor") for the benefit of the City of Madison, a Wisconsin municipal corporation (the "City").

WITNESSETH:

WHEREAS, the Grantor is the owner of that certain real property and improvements commonly known as the Edgewater Hotel, 666 Wisconsin Avenue, Madison, Wisconsin, and legally described on Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, the City has granted the necessary approvals pursuant to a Planned Unit Development Ordinance adopted by the City and recorded on 11-12-2012 as Document No. 4931552 for the redevelopment of the Property (the "Recorded PUD"); and

WHEREAS, the Grantor desires to grant the easement described herein to the City for the benefit of the public for the purpose of subjecting that certain portion of the Property described on Exhibit B attached hereto and incorporated herein (the "Subject Property"), to the conditions,

restrictions, covenants and reservations set forth below, which shall encumber the Subject Property, and shall bind the successors-in-interest, any owner thereof, and the owner of any interest therein; and

WHEREAS, the City had previously reserved and obtained for the benefit of the public certain rights and restrictions on the Subject Property for the substantial preservation and reasonably feasible improvement of the visual outlook from the vicinity of the intersection of Wisconsin Avenue and Langdon Street northwesterly over Lake Mendota and of the appearance of vacated Wisconsin Avenue as viewed from the lake (the "Prior View Preservation") pursuant to the terms, conditions and restrictions set forth in that certain Ordinance of the City No. 1761 adopted on January 28, 1965 and recorded with the Dane County Register of Deeds on February 1, 1965 as Document No. 1123724, as amended November 10, 1966, September 28, 1967, November 9, 1971, and May 18, 2010 (collectively, the "1965 Ordinance"); and

WHEREAS, the Easement granted herein amends, restates and clarifies the location, terms and conditions of the Prior View Preservation, and the terms and conditions this Declaration shall control in the event of any conflict therewith.

NOW, THEREFORE, Grantor, for good and valuable consideration, the receipt of which is hereby acknowledged, declares that the Property be subject to the following easements, restrictions, covenants and agreements:

1. Grant of Easement. Grantor hereby grants and conveys a perpetual easement (the "Easement") to the City for the benefit of the public for the purpose of preserving and protecting the view and open space above the structures existing as of the date hereof, and the structures to be constructed on the Subject Property pursuant to the (i) Recorded PUD, (ii) any amendment to the Recorded PUD that may be approved from time to time by the City, (iii) any and all Conditional Use Permits and/or any other approvals, permits or other actions as approved by the City Common Council or any other municipal bodies with jurisdiction over the Subject Property (collectively the "City Approvals") (together, the structures existing as of the date of this Declaration and those to be constructed on the Subject Property pursuant to the City Approvals shall be referred to herein as the "Structures"). The portion of the Subject Property subject to the Easement granted herein is that certain three dimensional space consisting of (i) that area commencing at a height of eight (8) feet above the upper-most finished surface of the Structures and extending upward to the height of 189.2 feet GDM and (ii) that area commencing at a distance of eight (8) feet out from the outer-most finished vertical surface of any Structures (the "Easement Area"), as such Easement Area is further depicted on Exhibit C attached hereto and incorporated herein. Pursuant to the Easement granted herein, Grantor shall be prohibited (i) from erecting, installing or constructing any permanent building, structure or improvement within the Easement Area, and/or (ii) from making any permanent modification to, enlargement of or expansion to any of the Structures on the Subject Property which results in any of the Structures extending into the Easement Area described herein. Notwithstanding anything to the contrary set forth herein, Grantor shall have the right (i) to install and erect temporary structures and improvements on the Subject Property that extend into the Easement Area, (ii) to plant trees and install other landscaping improvements on the Property that may extend into the Easement Area in the future, provided that same are consistent with the landscaping plans approved by the City and (iii) to erect temporary and permanent light poles and other similar improvements on

the Subject Property that extend into the Easement Area provided such improvements are consistent with the City Approvals.

2. Amendment or Termination. This Declaration may only be amended or terminated by the recording of a written instrument in the Office of the Register of Deeds of Dane County, Wisconsin, executed by or on behalf of all the following: (a) all owners of the fee interest and land contract vendee interest, if any, of the Subject Property; and (b) the City of Madison.

3. Enforcement. The City shall have the exclusive right to enforce the provisions hereof by proceedings at law or in equity against any person or persons violating or attempting to violate any provision of the Declaration, either to restrain or cure the violation or to recover damages, or both. In the event the City determines that a violation of the terms of this Declaration has occurred or is threatened, the City may initiate judicial action after the Grantor has been given written notice of the violation or threatened violation, and at least sixty (60) days to correct the violation. If any suit or action is brought to enforce the provisions of this Declaration, the party who prevails in such action or suit shall be entitled to recover its court costs and attorneys' fees from the other party.

4. Covenants Running with the Land. The easements, conditions, restrictions, covenants and agreements set forth herein shall encumber the Subject Property, and run with the land, and shall bind the successors-in-interest, any owner thereof, and the owner of any interest therein.

5. Severability. If any term, covenant, or condition of this Declaration or the application thereof to any person or circumstance shall be deemed invalid or unenforceable, the remainder of this Declaration, or the application of such term, covenant or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term, covenant and condition shall be valid and enforceable to the fullest extent permitted by law.

6. Governing Law. This Declaration shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

7. Recitals. The above stated recitals are hereby incorporated into this Declaration.

[SIGNATURES ON NEXT PAGE FOLLOWING]

IN WITNESS WHEREOF, Grantor has caused this Declaration to be executed by its duly authorized representative as of the date and year first above written.

GRANTOR:

MIDWEST REALTY AND INVESTMENT CORPORATION

By: _____
Robert P. Dunn, President

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 8th day of November, 2012, the above named Robert P. Dunn, who acknowledged himself to be the President of Midwest Realty and Investment Corporation, and to me known to be the person who executed the foregoing instrument as such officer of such entity, by its authority, and acknowledged the same.

_____
Name: Sharon A. Zelanka
Notary Public, State of Wisconsin
My Commission: 05/01/2016

SHARON A. ZELANKA
Notary Public
State of Wisconsin

THIS DOCUMENT PREPARED BY:
Matthew C. Carlson, Esq.
Michael Best & Friedrich LLP
One South Pinckney Street, Suite 700
P.O. Box 1806
Madison, WI 53701-1806
(608) 257-3501

Authorized by Resolution Enactment No. RES-11-00090, File ID No. 20945, adopted by the Common Council of the City of Madison on January 18, 2011.

EXHIBIT A

Legal Description of Property

PARCEL 1:
All that part of Lot Five (5), lying Northwest of the Southeast 126 feet thereof, in Block Seventy-eight (78), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin.

PARCEL 2:
All of that portion of vacated Wisconsin Avenue, in the City of Madison. Dane County, Wisconsin, lying Northwesterly of a line parallel to the Northwesterly line of Langdon Street extended Northeasterly and 126 feet Northwesterly from such extended line of Langdon Street.

PARCEL 3:
Part of Block Two Hundred Sixty-three (263), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: Beginning at the most southerly corner of Block 94, said point being the point of intersection of the Northwest line of East Gilman Street with the Northeast line of Wisconsin Avenue; thence Northwesterly along said Northeasterly line of Wisconsin Avenue 383.6 feet to the point of beginning of this description; thence Northeasterly at right angles to last described line 45.0 feet; thence Northwesterly parallel with the Northeast line of Wisconsin Avenue (now vacated) 186.4 feet to an iron stake, on a meander line, which is 36.0 feet more or less Southeasterly from the low water mark of Lake Mendota; thence Southwesterly along said meander line 45.0 feet to an iron stake on the Northeast line of Wisconsin Avenue which is 48.6 feet Southeasterly from the low water mark of Lake Mendota and also 186.4 feet Northwesterly from the point of beginning; thence Southeasterly along said line 186.4 feet to the point of beginning. Also, all land lying Northwesterly of above described meander line to the low water mark of Lake Mendota.

PARCEL 4:
Part of Block Two Hundred Sixty-three (263), Madison, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: Beginning at the most southerly corner of Block 94, said point being the point of intersection of the Northwest line of East Gilman Street with the Northeast line of Wisconsin Avenue; thence Northwesterly along said Northeasterly line of Wisconsin Avenue 383.6 feet to the point of beginning of this description; thence N44°22'39"E, 45.32 feet; thence N44°12'40"W, 234.4 feet more or less to the shore of Lake Mendota; thence Northeasterly, 65 feet more or less, along the shore of Lake Mendota; thence S44°12'40"E, 263.8' feet more or less; thence S45°47'23"W, 105.00 feet; thence N44°32'43"W, 53.52 feet along said Northeasterly line of Wisconsin Avenue to the point of beginning.

PINs: 251-0709-144-0907-8
Part of 251-0709-144-0307-0

EXHIBIT B

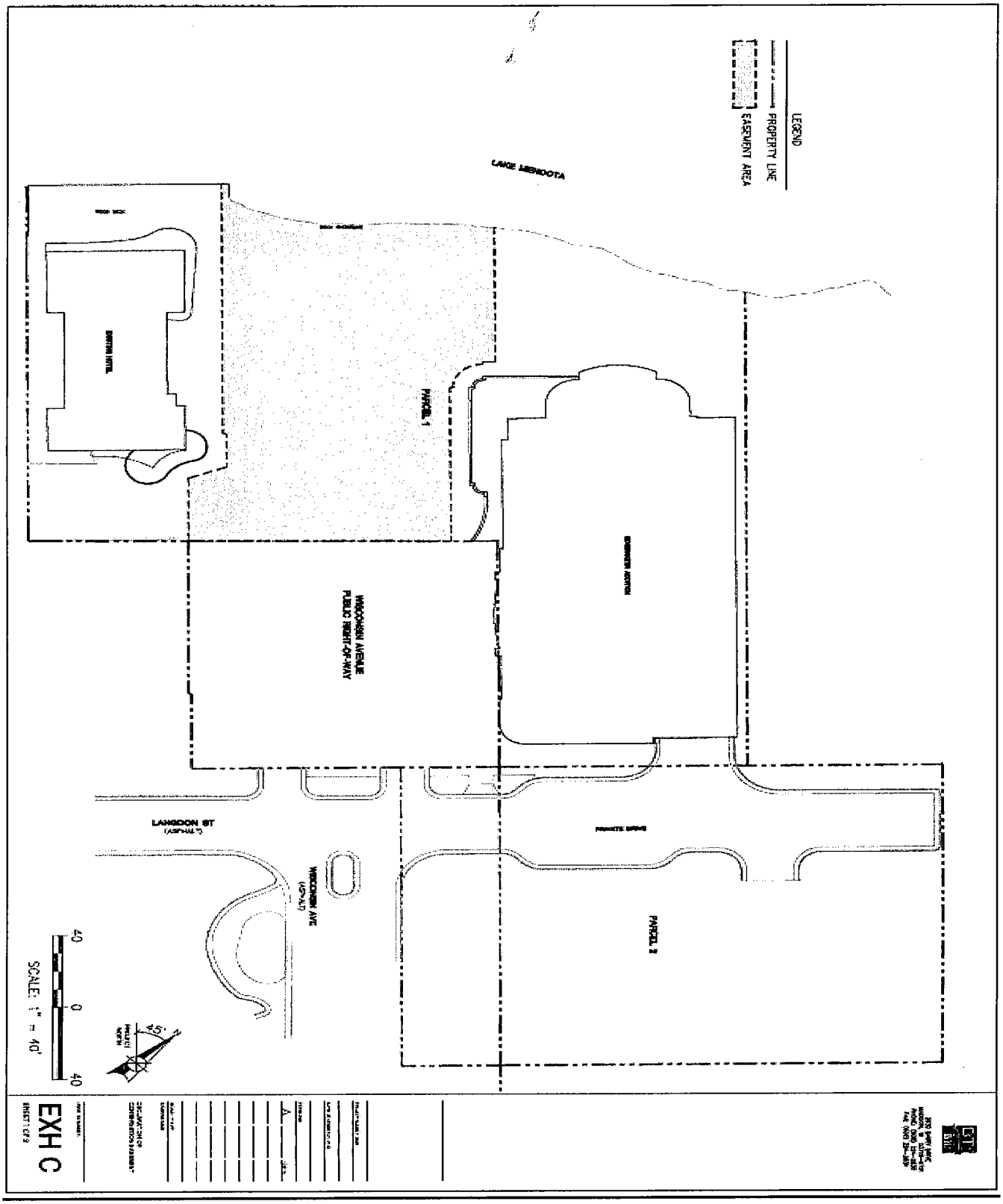
Legal Description of Subject Property

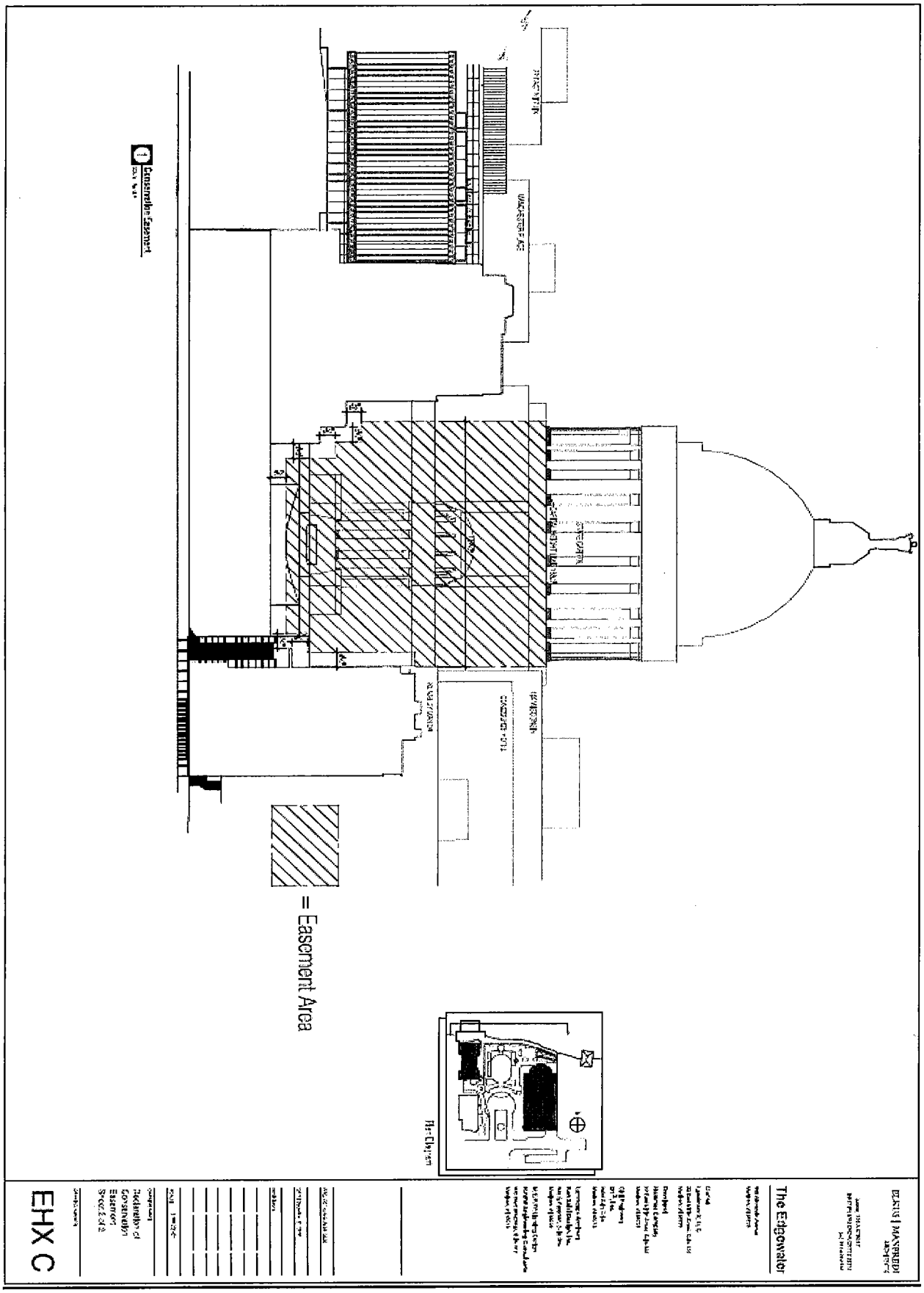
All of that portion of vacated Wisconsin Avenue, in the City of Madison. Dane County, Wisconsin, lying Northwesterly of a line parallel to the Northwesterly line of Langdon Street extended Northeasterly and 126 feet Northwesterly from such extended line of Langdon Street.

EXHIBIT C

Depiction of Easement Area

[See Attached]


LEGEND
PROPERTY LINE
EASEMENT AREA
LAKE MENDOTA
PARCEL 1
PARCEL 2
WISCONSIN AVENUE
PUBLIC RIGHT-OF-WAY
LANGDON ST
(ASPHALT)
WISCONSIN AVE
(ASPHALT)
SCALE: 1" = 40'
40
0
40
EXH C



Conservation Easement
= Easement Area
The Edgewater
EHX C