Document No.

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

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DECLARATION OF PUBLIC AREAS EASEMENT

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

Parcel IDs: See Exhibit A attached hereto

THIS DECLARATION OF PUBLIC AREAS EASEMENT (the "Declaration") is made this 9th day of November, 2012, by Edgewater Hotel Company, LLC, a Wisconsin limited liability company ("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 Grantor has been granted the necessary approvals by the City 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, pursuant to the approval of the Recorded PUD for the redevelopment of the Property, Grantor and the City entered into that certain Public Access Management Agreement dated as of the same date hereof (the "Management Agreement"), which Management Agreement requires Grantor to designate certain areas of the Property to be accessible and open to the general public pursuant to the terms, conditions and restrictions described therein (the "Public Areas"), as the Public Areas are further described and depicted in this Declaration; and

WHEREAS, pursuant to the Management Agreement, Grantor is required to grant a perpetual, non-exclusive easement to the City for the benefit of the public for the use and enjoyment of the Public Areas (the "Public Access Easement"), which Public Access Easement shall be subject

to the terms, conditions and restrictions further set forth below and as contained in the Management Agreement; and

WHEREAS, the City had previously reserved and obtained for the benefit of the public certain rights on the Property for (i) public pedestrian access to and the use of the top surface of any structure placed on vacated Wisconsin Avenue and (ii) public vehicular access and circulation over that portion of vacated Wisconsin Avenue lying southeasterly of any structure placed thereon (together, the "Prior Public Access") 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 Public Access Easement granted herein amends, restates and clarifies the location, terms and conditions of the Prior Public Access, and the terms and conditions of the Management Agreement and this Declaration shall control in the event of any conflict therewith.

NOW, THEREFORE, in consideration of the promises set forth herein and as contained in the Management Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor declares as follows:

1. Public Access Easement. Grantor hereby grants to the City for the benefit of the public, a perpetual, non-exclusive "Public Access Easement" over that portion of the Property described on Exhibit B attached hereto and incorporated herein (the "Easement Area") for the public use and enjoyment of the improvements situated therein. Notwithstanding anything to the contrary set forth herein, the rights and interests granted pursuant to the Public Access Easement shall be limited to the use and enjoyment of the improvements consisting of, and attached to, the exterior surface of the Easement Area and shall not include any rights, title or interests in any of the air or subterranean rights above or below the Easement Area as well as within any interior building areas within the Easement Area. Notwithstanding anything to the contrary set forth herein, the use and enjoyment by the public of the Easement Area shall be consistent with, and limited to, the purpose and intent of the improvements constructed therein as further described in, and in accordance with, the Management Agreement. Grantor shall cause the improvements in the Easement Area to be constructed in accordance with the plans submitted and approved pursuant to the Recorded PUD and the approved construction plans and as further set forth in the Management Agreement. In the event the as-built location of the improvements and/or the Easement Area vary from that specifically described in this Declaration, Grantor shall have the right to record an amendment to this Declaration providing a corrected legal description of the Easement Area. Notwithstanding anything to the contrary set forth herein, the management, operation, access to and use of the Public Access Easement and Easement Area shall be in accordance with the terms, conditions and restrictions set forth in the Management Agreement.

2. Maintenance. Grantor shall be responsible for all maintenance and repair of the Easement Area in accordance with the terms and conditions of the Management Agreement.

3. Reservation of Use. Grantor reserves the right to use and occupy the Property and the Easement Area in any manner consistent with the use and operation of the Property pursuant to the Recorded PUD (as amended from time to time), the Management Agreement (as amended from time to time), any Conditional Use Permits issued for the Property and/or any other agreements, permits, approvals or similar actions as approved by the Madison Common Council or other municipal bodies with jurisdiction over the Property, provided that such use and occupancy shall not unreasonably interfere with or disturb the public use of the Easement Area, except as otherwise set forth in the Management Agreement.

4. Obstructions. Grantor, and any person permitted to use the Public Access Easement pursuant to the terms of this Declaration and the Management Agreement, shall not unreasonably interfere with the use and enjoyment of the Public Access Easement in accordance with the terms and conditions of this Declaration and the Management Agreement, provided, however, that temporary obstructions or closures to and within all or a part of the Easement Area resulting from weather conditions, a public safety emergency declared by any government official or agency, any other circumstances beyond the reasonable control of Grantor or as may be necessary for the performance of maintenance, repair or other obligations required under the Management Agreement shall be permitted. Except as may be temporarily permitted pursuant to the previous sentence and/or as otherwise set forth in the Management Agreement, no permanent barriers, fences, dividers or other obstructions shall be constructed on or across the Easement Area which prevent, prohibit, impede or discourage the free and uninterrupted flow of pedestrian traffic.

5. Covenants Run with Land. All of the terms, conditions, covenants and easements set forth herein shall run with the land and shall inure to the benefit of and be binding upon the parties hereto, and their heirs, successors, transferees and assigns.

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

7. Amendment. Except as set forth in Section 1 above, this Declaration may not otherwise be changed except by a written document executed and acknowledged by the Grantor and the City, and/or their respective successors and assigns.

8. 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.

9. Enforcement. Enforcement of this Declaration shall be in accordance with the terms and conditions of the Management Agreement.

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

11. Interpretation. Notwithstanding anything to the contrary set forth herein, in the event of any inconsistency or conflict between the terms, conditions and restrictions of this Declaration and the Management Agreement (as same may be amended from time to time) with regard to the use of,

access to, occupancy and/or management of the Property and the rights granted and reserved herein, the Management Agreement shall control.

12. Damage or Destruction. Notwithstanding anything to the contrary set forth herein, in the event that the buildings and improvements upon which the Easement Area is situated on the Property shall be damaged by fire or other casualty and if such damage or casualty renders all or a substantial portion of the buildings and improvements upon which the Easement Area is situated incapable of being repaired such that they cannot be used for the intended purpose, Grantor shall have the unilateral right to terminate this Declaration by recording a termination and release of the rights, title and interests granted herein with the Dane County Register of Deeds office. Notwithstanding anything to the contrary set forth in the previous sentence, in the event that Grantor elects to repair, rebuild the buildings and improvements or build other improvements upon which the Easement Area is situated on the Property, Grantor agrees to grant an easement to the City for the benefit of the public on terms and conditions reasonably consistent with those set forth in this Declaration and as set forth in the 1965 Ordinance for public use and access of an area reasonably consistent with the Easement Area described herein, as such terms, conditions and location are reasonably agreed to by Grantor and the City Planning Division.

[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:

EDGEWATER HOTEL COMPANY, LLC

By: _____
Robert P. Dunn, Manager

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF DANE)

Personally came before me this 8th day of November, the above named Robert P. Dunn, who acknowledged himself to be the Manager of Edgewater Hotel Company, LLC, 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 251-0709-144-0302-0

EXHIBIT B

Legal Description and Depiction of Easement Area

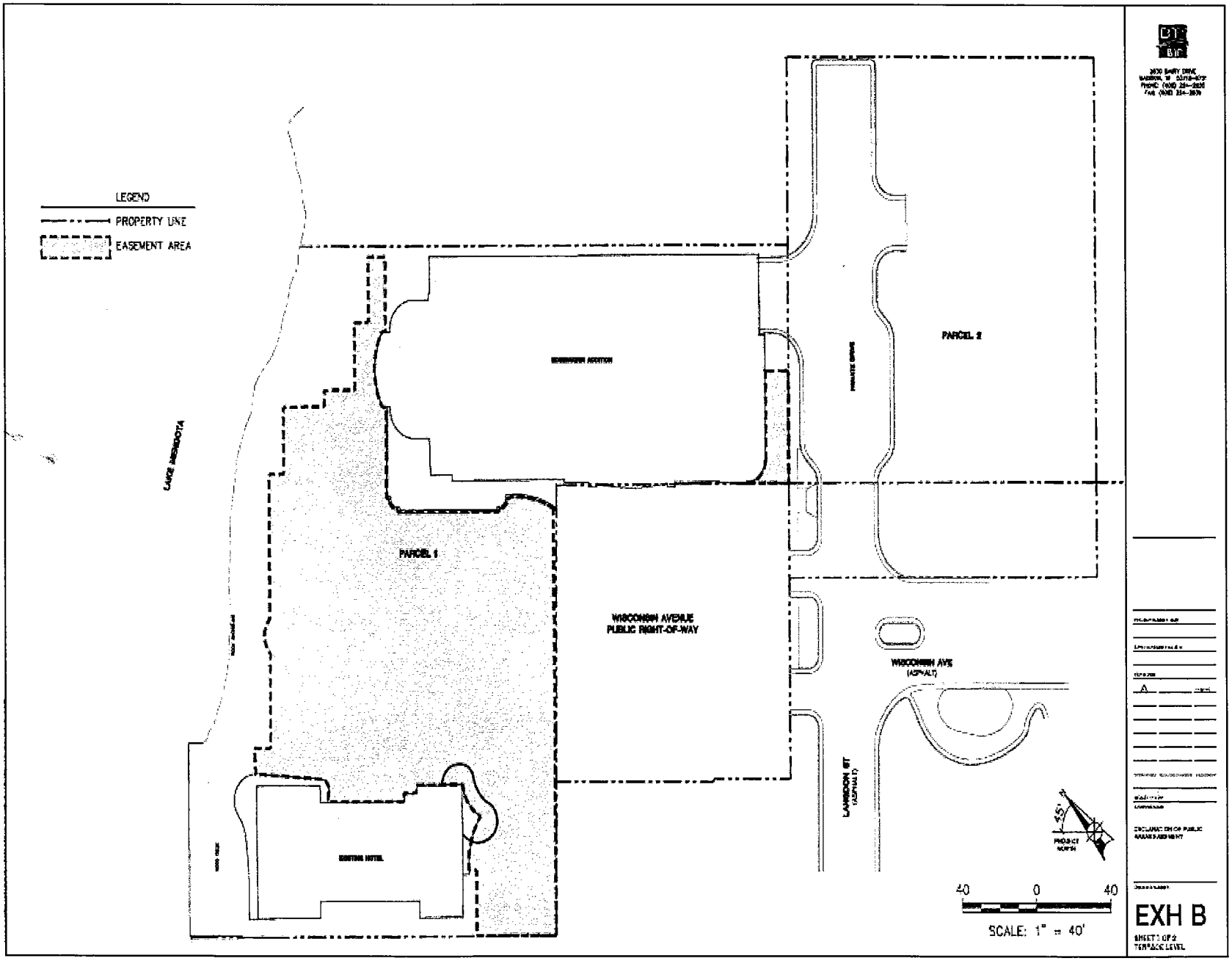
Terrace Level (as depicted on Sheet 1 of the attached Site Plan):

Part of Block 263, and Lot 5 Block 78, and vacated Wisconsin Avenue, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: COMMENCING 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; Thence N44°19'44"W, 72.18 feet; Thence S46°08'41"W, 10.91 feet; Thence N43°51'19"W, 0.59 feet to the POINT OF BEGINNING; Thence S45°59'00"W, 187.26 feet; Thence N44°19'44"W, 42.90 feet; Thence N45°40'16"E, 28.86 feet; Thence N44°19'44"W, 4.17 feet; Thence N45°40'16"E, 3.13 feet to a point of curve to the right having a radius of 35.55 feet and a central angle of 15°19'16"; Thence northeasterly along the arc a distance of 9.51 feet; thence continue easterly along said curve through a central angle of 20°02'47", a distance of 12.44 feet to the point of curve of a non tangent curve to the right, of which the radius point lies N71°24'30"E, a radial distance of 16.93 feet; thence northerly along the arc, through a central angle of 59°58'21", a distance of 17.72 feet; Thence N44°19'44"W, 24.98 feet; Thence S45°40'16"W, 3.67 feet; Thence N44°19'44"W, 6.81 feet; Thence S45°40'16"W, 3.63 feet; Thence N44°19'44"W, 40.97 feet; Thence N50°33'16"E, 5.13 feet to a point of curve to the left having a radius of 4.50 feet and a central angle of 89°26'59"; Thence northerly along the arc a distance of 7.03 feet; Thence N40°30'42"W, 35.68 feet; Thence N41°41'05"E, 11.32 feet; Thence S44°19'44"E, 8.98 feet; Thence N45°40'16"E, 42.00 feet to the point of curve of a non tangent curve to the right, of which the radius point lies S87°36'21"E, a radial distance of 11.00 feet; thence northeasterly along the arc, through a central angle of 86°33'15", a distance of 16.62 feet; Thence N45°40'16"E, 63.73 feet; Thence S44°19'44"E, 8.00 feet; Thence N45°40'16"E, 29.67 feet; Thence S44°58'05"E, 22.41 feet; Thence N45°40'16"E, 7.13 feet; Thence S44°19'44"E, 16.56 feet; Thence N45°40'16"E, 29.66 feet; Thence S44°19'44"E, 7.70 feet; Thence N45°40'16"E, 29.01 feet; Thence S44°19'44"E, 9.15 feet; Thence S45°40'16"W, 33.14 feet; Thence N44°06'23"W, 2.01 feet to the point of curve of a non tangent curve to the left, of which the radius point lies S17°02'19"E, a radial distance of 36.13 feet; thence southwesterly along the arc, through a central angle of 54°34'51", a distance of 34.42 feet; Thence S44°15'33"E, 2.01 feet; Thence S45°40'16"W, 40.52 feet; Thence S44°19'44"E, 1.33 feet to the point of curve of a non tangent curve to the left, of which the radius point lies S44°19'44"E, a radial distance of 4.70 feet; thence southerly along the arc, through a central angle of 90°00'00", a distance of 7.38 feet; Thence S45°40'16"W, 1.28 feet; Thence S44°19'44"E, 54.52 feet; Thence N45°40'16"E, 1.28 feet to the point of curve of a non tangent curve to the left, of which the radius point lies N45°40'16"E, a radial distance of 4.70 feet; thence easterly along the arc, through a central angle of 90°00'00", a distance of 7.38 feet; Thence S44°19'44"E, 1.33 feet; Thence N45°40'16"E, 0.33 feet to the point of curve of a non tangent curve to the right, of which the radius point lies S40°47'21"W, a radial distance of 40.44 feet; thence southeasterly along the arc, through a central angle of 24°32'44", a distance of 17.32 feet; thence continue southerly along said curve through a central angle of 11°34'55", a distance of 8.17 feet to the POINT OF BEGINNING.

Containing 25,645 square feet or 0.59 acres, more or less.

Lake Shore Level (as depicted on Sheet 2 of the attached Site Plan):
Part of Block 263, according to the recorded plat thereof, in the City of Madison, Dane County, Wisconsin, described as follows: COMMENCING 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; Thence S44°32'43"E, 53.52 feet; Thence N45°47'23"E, 105.00 feet; Thence N44°12'40"W, 226.75 feet to the POINT OF BEGINNING; Thence S45°47'20"W, 4.41 feet; Thence S45°40'16"W, 29.01 feet; Thence N44°19'44"W, 7.70 feet; Thence S45°40'16"W, 29.66 feet; Thence N44°19'44"W, 16.56 feet; Thence S45°40'16"W, 7.13 feet; Thence N44°58'05"W, 26.31 feet; Thence N62°30'42"E, 8.68 feet; Thence N68°12'46"E, 53.76 feet; Thence N45°47'20"E, 12.59 feet; Thence S44°12'40"E, 27.42 feet to the POINT OF BEGINNING.
Containing 2,216 square feet or 0.05 acres, more or less.

[See attached depiction of Easement Area]


LEGEND
PROPERTY LINE
EASEMENT AREA
PARCEL 1
PARCEL 2
WISCONSIN AVENUE
PUBLIC RIGHT-OF-WAY
WISCONSIN AVE
(ASPHALT)
LAWSON ST
(ASPHALT)
LAKE MENDOTA
EXISTING HOTEL
PROJECT NORTH
40 0 40
SCALE: 1" = 40'
EXH B
SHEET 1 OF 2
TERRACE LEVEL

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