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**KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS**

**DOCUMENT #
5157623**

06/08/2015 3:53 PM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 14

THIRD AMENDMENT TO LEASE

(This document pertains to a lease of less than 99 years and not a conveyance subject to Transfer Return and Fee per Sec. 77.21(1) Wis. Stats.)

This Third Amendment to Lease ("Third Amendment") is made as of JUNE 4, 2015, by and between the **City of Madison**, a Wisconsin municipal corporation (the "City") and **Madison-Kipp Corporation**, a Delaware corporation (the "Lessee").

WITNESSETH:

WHEREAS, the City and the Lessee are parties to that certain Lease, dated May 18, 2000 and recorded in the Office of the Dane County Register of Deeds on June 2, 2000 as Document No. 3218002; as amended by First Notice of Lease Renewal, dated February 7, 2008 and recorded in the Office of the Dane County Register of Deeds on February 8, 2008 as Document No. 4395803; as amended by First Amendment to Lease, dated July 23, 2009 and recorded in the Office of the Dane County Register of Deeds on July 28, 2009 as Document No. 4578840; and as amended by Second Amendment to Lease, dated March 25, 2010 and recorded in the Office of the Dane County Register of Deeds on March 29, 2010 as Document No. 4644194 (collectively, the "Lease"); and

WHEREAS, the Lease allows the Lessee to utilize a portion of the City's East Rail Corridor for the construction, maintenance and operation of a parking lot and drive aisle (the "Parking Improvements"), which use is ancillary to the Lessee's business operations at 201 Waubesa Street, Madison, Wisconsin (the "Abutting Property"); and

WHEREAS, the original term of the Lease was for the ten (10)-year period running from January 1, 1998 through December 31, 2007, and the Lessee exercised its first renewal option for the ten (10)-year period running from January 1, 2008 through December 31, 2017 (the "First Renewal Period"). The Lessee has a second renewal option remaining under the Lease for the ten (10)-year period running from January 1, 2018 through December 31, 2027; and

WHEREAS, the Lessee plans to construct on the Abutting Property an accessory building for materials storage and a groundwater treatment system (the "Accessory Building"); and

WHEREAS, as a condition of the City's approval of the Accessory Building, the City requires that the Lessee lease and maintain the existing bio-retention basin located within portions of the

Return to: City of Madison
Economic Development Division
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel Nos.: 251-0710-053-0503-4
251-0710-053-0801-2

14

East Rail Corridor and unimproved Waubesa Court adjacent to the Abutting Property (the “Biobasin”); and

WHEREAS, the parties recently discovered that the Biobasin and the soil beneath the Parking Improvements are contaminated with polychlorinated biphenyls (“PCBs”), and the State of Wisconsin Department of Natural Resources (“DNR”) determined that the Abutting Property is the source of the contamination and the Lessee is the responsible party for such contamination; and

WHEREAS, the Lessee has remediated the contamination within the Biobasin to a level acceptable to the DNR; and

WHEREAS, the DNR, the City and the Lessee have agreed that the Parking Improvements shall serve as an environmental cap throughout the remainder of the Lease term, and any further renewals or extensions thereof, and that upon the expiration or termination of the Lease the Lessee shall remove the Parking Improvements, remediate the contaminated soil to the DNR-approved, site-specific, nonindustrial (residential) direct contact standard, and restore the Leased Premises as hereinafter provided, unless otherwise agreed to by the City and DNR; and

WHEREAS, in connection with the foregoing environmental cap requirement, the City and the Lessee desire to amend the Lease to extend by six (6) years the term of the current First Renewal Period and to adjust the dates of the Second Renewal Period accordingly.

NOW, THEREFORE, the City and the Lessee agree to amend the Lease as follows:

1. Paragraph 1 of the Lease is deleted in its entirety and replaced with the following:

“1. Leased Premises. The City hereby leases to the Lessee a portion of the City’s East Rail Corridor lands located in the City of Madison, Dane County, Wisconsin (the “Leased Premises”). The Leased Premises are more fully described and identified on Exhibit A and Exhibit B, which exhibits are attached and made a part of this Lease. The Leased Premises are comprised of two (2) areas: (1) “Area A,” containing 12,262 square feet and encompassing the area of the “Parking Improvements,” as such term is defined in Paragraph 5; and (2) “Area B,” containing 7,466 square feet and comprising the area of the “Biobasin,” as such term is defined in Paragraph 5.”

2. Exhibit A to the Lease is hereby deleted and replaced with Exhibit A attached to this Third Amendment.

3. Exhibit B to the Lease is hereby deleted and replaced with Exhibit B attached to this Third Amendment.

4. Exhibit C to the Lease is hereby deleted and replaced with Exhibit C attached to this Third Amendment.

5. Paragraph 4 of the Lease is hereby amended to provide that the First Renewal Period shall be extended by six (6) years such that said term shall run from January 1, 2008 through December 31, 2023, and that the term of the Second Renewal Period shall be adjusted to run for the (10)-year period from January 1, 2024 through December 31, 2033; and
6. Paragraphs 3 and 4 of the Lease are hereby amended to provide that the \$900 reduction in annual rent established in the First Amendment to Lease shall expire effective December 31, 2014.
7. Paragraphs 3 and 4 of the Lease are hereby further amended to provide that, as discussed in the First Amendment to Lease, the cost of the wooden fencing installed by the Lessee along the Lessee's northerly and easterly perimeter property line is hereby agreed to by the parties to be \$55,000 and that the Lessee has received a rent credit in said amount effective as of January 1, 2014.
8. Paragraph 4 of the Lease is hereby further amended to delete the rent schedule for the First and Second Renewal Periods and replace it with the rent schedule set forth in Exhibit D, which exhibit is attached and made a part of the Lease.
9. The first sentence of Paragraph 5 of the Lease is hereby deleted and replaced with the following:

“The Lessee shall use the Leased Premises for the construction, maintenance and operation of a paved parking lot and drive aisle (collectively, the “Parking Improvements”) and a bio-retention basin (the “Biobasin”), which uses shall be ancillary to the Lessee’s business operation at 201 Waubesa Street, Madison, Wisconsin (the “Abutting Property”). The Abutting Property is identified in Exhibit B and described in Exhibit C, which exhibits are attached and made a part of this Lease.”
10. The following is hereby inserted at the end of Paragraph 5 of the Lease:

“The Lessee agrees that the Parking Improvements within Area A of the Leased Premises shall function as an environmental cap for the existing PCB-contaminated soils. Such environmental cap has been approved by the Wisconsin Department of Natural Resources (DNR) pursuant to the closure requirements established in Wisconsin Administrative Code NR 726.”
11. The first two (2) sentences of Paragraph 6.c. of the Lease are hereby deleted in their entirety and replaced with the following:

“Unless otherwise agreed to by the City and DNR, upon the expiration or termination of this Lease pursuant to Paragraph 16, the Lessee, at the Lessee’s sole cost and expense, shall remove from Area A of the Leased Premises all improvements located thereon, including but not limited to, all asphalt, pavement

and sub base. In addition, the Lessee shall be required to remediate the soil contamination within Area A to such standard specified by the DNR. The Lessee shall then restore Area A to original grade; and shall add topsoil, install Class 1 Urban erosion matting and seed Area A with grass in accordance with the City's Standard Specifications for Public Works Construction (see: www.cityofmadison.com/business/pw/). If the Lessee fails to perform any or all of these removal, remediation or restoration requirements to the satisfaction of the City Engineer, the City may perform such activities for the Lessee, and the cost thereof shall be charged against the Abutting Property as a special charge under Madison General Ordinances Sec. 4.09(13) and Wis. Stat. Sec. 66.0627. As a condition of this Third Amendment to Lease, the Lessee consents to the imposition of these special charges against the Abutting Property.”

12. Paragraph 9 of the Lease is hereby deleted in its entirety and replaced with the following:

“9. Maintenance.

- a. Area A – Parking Improvements. The Lessee shall, at its own expense, keep and maintain Area A of the Leased Premises in a presentable condition consistent with good business practice and in a manner consistent with the preservation and protection of the general appearance and value of other premises in the immediate vicinity. Maintenance responsibilities include, but shall not be limited to, any required paving, general repairs, removal of garbage and debris, snow removal, landscape upkeep, and parking enforcement. In addition, Lessee shall be responsible for maintaining the Parking Improvements on Area A in a condition that satisfies the DNR requirements regarding the use of the Parking Improvements as an environmental cap.
- b. Area B – Biobasin.
 1. The Lessee shall be responsible for all inspections, cleaning and any other maintenance of the Biobasin and shall maintain records of same, all in accordance with Chapter 37 of the Madison General Ordinances.
 2. The Lessee shall have televised inspections performed of all piping located within the Abutting Property or the Leased Premises that discharges into the Biobasin. The Lessee shall provide the City a copy of the video condition report and allow the City to review the video in person. The video condition report is only required to document connections to the storm sewer piping. The Lessee shall then document what areas of the property drain to each connection pipe. This investigation can be done with dye testing, TV, or smoke via a plan pre-approved by the City Engineer. Upon completion of the investigation, the City and the Lessee shall meet

to review results and propose any system changes, if needed. Following the City's review of the video condition report and video as provided above, the City may, in its sole discretion, require that the Lessee perform subsequent televised inspections of any unverified piping. All inspections shall be at the Lessee's sole cost and expense.

3. Visual Inspection of the Biobasin shall be performed at least once each year by a licensed professional engineer, and a "Stormwater Management Annual Maintenance Certification" (form attached as Exhibit E) shall be submitted annually to the City Engineer. The Lessee may request that the City Engineer accept date-stamped photographic documentation of the Biobasin in lieu of the foregoing certification form.
4. The City shall, in consultation with the Lessee, conduct periodic sampling of the Biobasin for new environmental contamination. If the annual environmental sampling indicates new PCB contamination to the Biobasin, the Lessee shall remediate the contamination according to local, State, and federal standards. The Lessee shall also determine the source of the contamination and take action to ensure that further contamination does not occur. New contamination shall be defined as shallow soil sample results above the DNR residential direct contact standard (RCL) for PCBs.
5. Maintenance shall be required when system shows standing water beyond 72 hours of a rain event. Cleaning shall consist of removal of sediment, two (2) foot undercut, undercut replacement with material consisting of 30% compost and 70% sand and restoration in-kind. Restoration of plant material shall be by plugging, not seeding alone.
6. Any alterations to the Biobasin shall be approved by the City Engineer.
7. If the Lessee fails to maintain the Biobasin as required in Paragraph 9.b.5., then the City shall have the right, after providing the Lessee with written notice of the maintenance issue ("Maintenance Notice") and thirty (30) days to comply with the City's maintenance request, to enter upon the Leased Premises in order to conduct the maintenance specified in the Maintenance Notice. The City will conduct such maintenance work in accordance with all applicable laws, codes, regulations, and similar requirements and will not unreasonably interfere with the Lessee's use of the Abutting Property. All costs and expenses incurred by the City in conducting such maintenance may be charged to the

Lessee by placing the amount on the tax roll for the Abutting Property as a special charge in accordance with Section 66.0627, Wis. Stats. and Section 4.09 of the Madison General Ordinances.”

8. The Lessee shall submit to the City Engineer each year an annual update to the Lessee’s Storm Water Pollution Prevention Plan (SWPPP), which shall include the area of the Biobasin.

13. Paragraph 26 of the Lease is deleted in its entirety and replaced with the following:

“26. Non-Discrimination. In the performance of the services under this Lease, the Lessee agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.”

14. All other provisions of the Lease remain in full force and effect.

IN WITNESS WHEREOF, the parties have entered into this Third Amendment to the Lease as of the date first set forth above.

[SIGNATURES FOLLOW ON NEXT 2 PAGES]

CITY OF MADISON

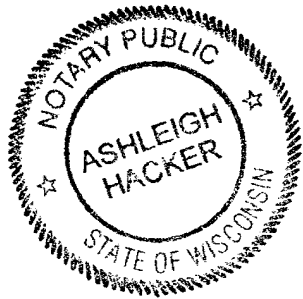
By: Paul R. Soglin
Paul R. Soglin, Mayor

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

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 4th day of June, 2015, 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.

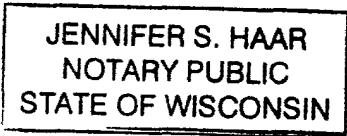
[Signature]
Notary Public, State of Wisconsin



Ashleigh Hacker
(Print or type name)
My Commission: exp 5/18/18

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 1st day of June, 2015, 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.



[Signature]
Notary Public, State of Wisconsin
Jennifer S. Haar
(Print or type name)
My Commission: 2-2-2019

MADISON-KIPP CORPORATION

By: _____

Tony Koblinski, President and CEO

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this 27 day of May, 2015, the above named Tony Koblinski, President and CEO of Madison-Kipp Corporation, known to me to be the person who executed the above and foregoing instrument and acknowledged that he executed the foregoing instrument as such officer as the deed of such corporation, by its authority.

Stephanie L Lauth
Notary Public, State of Wisconsin
Stephanie L Lauth
(Print or type name)
My Commission: Expires 11.30.2018

Execution of this Third Amendment to Lease by the City of Madison is authorized by Second Substitute Resolution Enactment No. RES-15-00400, File ID No. 36155, adopted by the Common Council of the City of Madison on May 5, 2015.

Drafted by the City of Madison Office of Real Estate Services Project No. 4114

EXHIBIT A

Legal Description of the Leased Premises

Area A

A parcel of land located in the NW ¼ of the SW ¼ of Section 5, T7N, R10E, City of Madison, Dane County, Wisconsin, to wit:

Commencing at a City of Madison concrete monument with a brass cap located at the meander corner for the West quarter corner of said Section 5; thence S89°57'56"E, 595.28 feet; thence S00°02'04"W, 657.51 feet; thence S34°57'36"E, 65.11 feet to the **point of beginning**; thence N53°24'27"E, 342.48 feet; thence southeasterly, at right angles more or less, to a point one foot distant from the most westerly corner of the existing metal building; thence following the exterior perimeter of said building along the northwesterly and northeasterly walls of said building, and one foot distant from, more or less, in a northeasterly and then southeasterly direction thereof; thence continuing southeasterly on a prolongation of the line which is parallel to and one foot distant from the said northeasterly building wall, to the point of intersection with the southeasterly line of the Leased Premises in the existing Lease described above; thence S53°28'58"W along the said southeasterly line of the Leased Premises (a.k.a City of Madison's East Rail Transportation Corridor property line) to the northeasterly right-of-way line of Waubesa Street; thence along the said northeasterly right-of-way line N34°57'36"W, 34.92 feet to the **point of beginning**. Containing approximately 12,262 square feet.

Area B

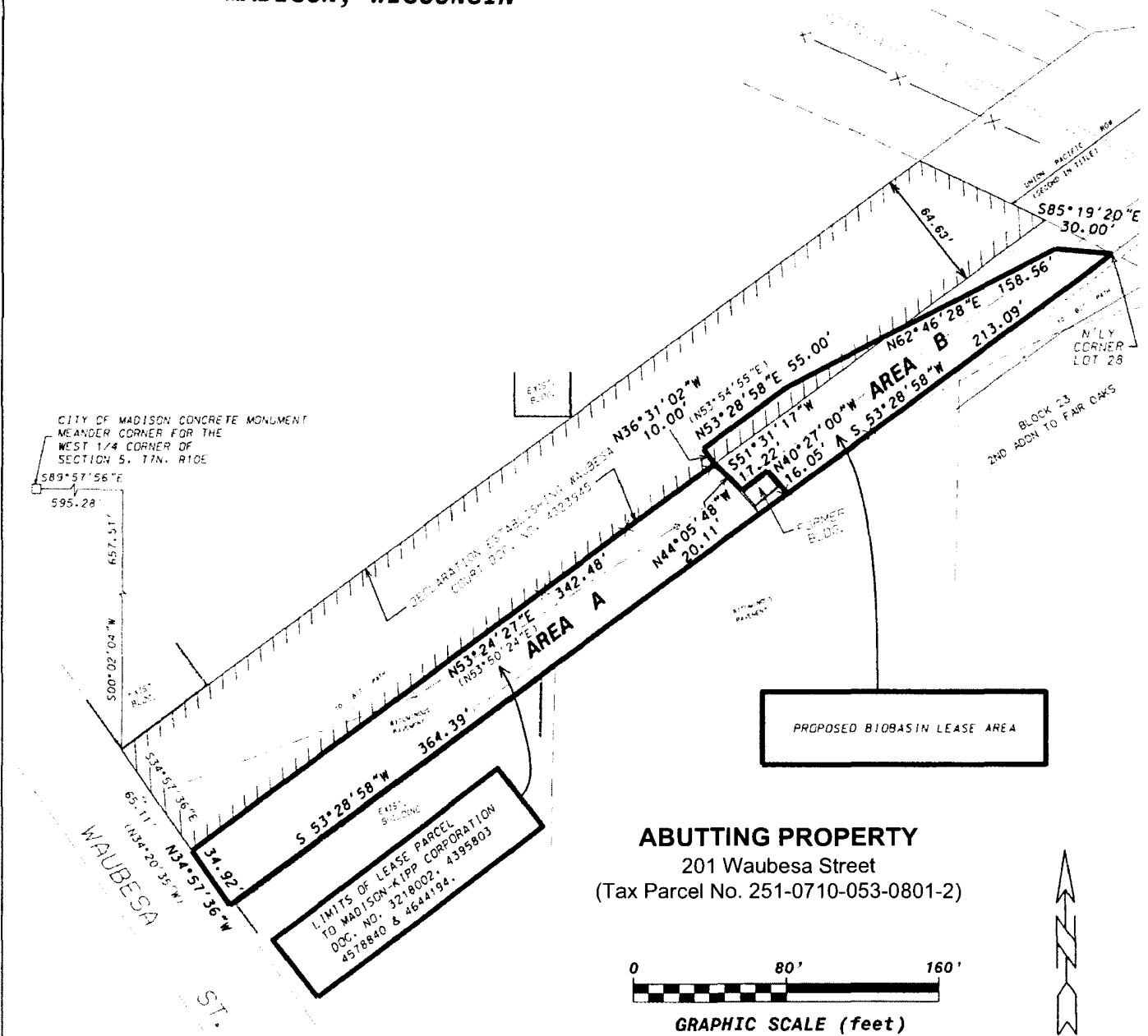
A parcel of land located in part of lands described in Declaration Establishing Waubesa Court per Document No. 4323945, hereinafter referred to as Waubesa Court and part of lands described in Quit Claim Deed per Document No. 2265621, hereinafter referred to as Madison's East Rail Transportation Corridor, all located in the NW ¼ of the SW ¼ of Section 5, T7N, R10E, City of Madison, Dane County, Wisconsin, to wit:

Commencing at a City of Madison concrete monument with a brass cap located at the meander corner for the West quarter corner of said Section 5; thence S89°57'56"E, 595.28 feet; thence S00°02'04"W, 657.51 feet; thence S34°57'36"E, 65.11 feet to the southerly most corner of Waubesa Court; thence N53°24'27"E, 342.48 feet along the southeasterly line of said Waubesa Court to the northerly most corner of lease lands described in Document No. 4644194, hereinafter referred to as lease lands and the point of beginning; thence N36°31'02"W, 10.00 feet; thence N53°28'58"E, 55.00 feet parallel with and 10 feet northwest of the said southeasterly line of said Waubesa Court; thence N62°46'28"E, 158.56 feet; thence S85°19'20" E, 30.00 feet to the northerly most corner of Lot 28, Block 23, Second Addition to Fair Oaks; thence S53°28'58"W, 213.09 feet along the southeast line of said Madison's East Rail Transportation Corridor; thence N40°27'00"W, 16.05 feet along the northeast side of said lease lands; thence S51°31'17"W, 17.22 feet along the said northeasterly side of lease lands; thence N44°05'48"W, 20.11 feet along the said northeasterly side of lease lands to the **point of beginning**. Containing approximately 7,466 square feet.

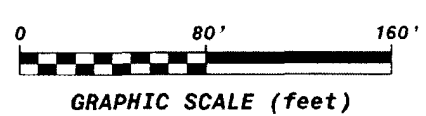
EXHIBIT B

MAP OF THE LEASED PREMISES

DEPARTMENT OF PUBLIC WORKS
CITY ENGINEERING DIVISION
MADISON, WISCONSIN



ABUTTING PROPERTY
201 Waubesa Street
(Tax Parcel No. 251-0710-053-0801-2)



FILENAME:
M:\Mapping\MISC. CAD Drawings\ENCR\Misc\53w1822\Kipp Bio Retention Lease Area.dgn
DATE: 10/14/2014
ENGR. PROJ. NO. 53W1822
REAL ESTATE PROJ. NO. 4114
REVISED:

EXHIBIT C

Legal Description of the Abutting Property

A parcel of land located in the NW ¼ of the SW ¼ of Section 5, T7N, R10E, City of Madison, Dane County, Wisconsin, to-wit:

Lots 1 through 8 and Lots 19 and 20, Block 21, East Side Land Company Addition to Fair Oaks; and

Lots 1, 2 and 3, Block 23, Second Addition to Fair Oaks; and

Unplatted lands in Section 5, T7N, R10E, described as follows: Beginning on the North line of Atwood Avenue at the Southeast corner of Block 21, East Side Land Co's Addition to Fair Oaks; thence North along the East line of said Block 21 to the right of way line of the City of Madison's East Rail Transportation Corridor (formerly the right-of-way of the Chicago, Milwaukee St. Paul and Pacific Railroad); thence Northeasterly along said right of way to the West line of Block 23; Second Addition to Fair Oaks; thence South to the North line of Atwood Avenue; thence West along said Atwood Avenue to the point of beginning; and

Lot 28 and that part of Lot 27, Block 23, Second Addition to Fair Oaks described as follows: Beginning at the Northwest corner of said Lot 27; thence Easterly along the Northerly line of said Lot 27, 30 feet; thence Southwesterly in a straight line to a point on the West line of said Lot 27; thence Northerly, 25 feet to the point of beginning.

EXHIBIT D

**LEASE MADISON-KIPP CORPORATION 176 S. FAIR OAKS AVENUE
(REAL ESTATE PROJ. # 4114)**

	Year	Original Rent	Less \$900 per year (for period 1/1/09-12/31/14)	Rent Credit for Sound Deadening Fence (credit effective 1/1/2014)	Balance Due
First Renewal Term	2008	5,790.40	5,790.40		0.00
	2009	5,964.11	5,064.11		0.00
	2010	6,143.04	5,243.04		0.00
	2011	6,327.33	5,427.33		0.00
	2012	6,517.15	5,617.15		0.00
	2013	6,712.66	5,812.66		0.00
	2014	6,914.04	6,014.04	(55,000.00)	(48,985.96)
	2015	7,121.46			(41,864.50)
	2016	7,335.11			(34,529.39)
	2017	7,555.16			(26,974.23)
	2018	7,781.81			(19,192.42)
	2019	8,015.27			(11,177.15)
	2020	8,255.73			(2,921.43)
	2021	8,503.40			5,581.97
	Second Renewal Term	2022	8,758.50		
2023		9,021.25			23,361.72
2024		9,291.89			32,653.62
2025		9,570.65			9,570.65
2026		9,857.77			9,857.77
2027		10,153.50			10,153.50
2028		10,458.11			10,458.11
2029		10,771.85			10,771.85
2030		11,095.01			11,095.01
2031		11,427.86			11,427.86
2032		11,770.69			11,770.69
2033		12,123.81			12,123.81



Department of Public Works

Robert F. Phillips, P.E., City Engineer

Engineering Division

210 Martin Luther King, Jr. Boulevard, Room 115

Madison, Wisconsin 53713

PH 608 266 4751

FAX 608 264 9275

www.cityofmadison.com/publicworks

STORMWATER MANAGEMENT ANNUAL MAINTENANCE CERTIFICATION

Maintenance for Calendar Year: _____

Stormwater Management _____

Permit Number: _____

Project Name: _____

Site Address: _____

Certifying Engineer: _____

Certification Date: _____

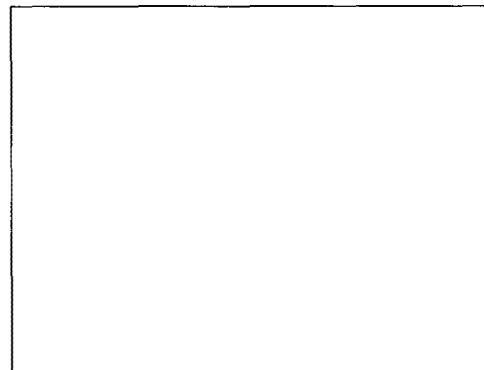
STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (BMP) IN USE:

BMP	Comments

(attach additional sheets as needed)

ATTACH INSPECTION SUMMARY PAGES FOR EACH BMP

This document and included maintenance summaries certifies that the stormwater management BMP's for the above site have been properly maintained for the indicated calendar year.



Engineer's Seal

STORMWATER MANAGEMENT ANNUAL MAINTENANCE CERTIFICATION

Maintenance for Calendar Year: _____

Stormwater Management Permit Number: _____

Project Name: _____

Site Address: _____

Certifying Engineer: _____

Certification Date: _____

STORMWATER MANAGEMENT BEST MANAGEMENT PRACTICES (BMP) IN USE:

BMP	Comments

(attach additional sheets as needed)