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DANE COUNTY

REGISTER OF DEEDS

DOCUMENT #

4485860

12/09/2008 11:51AM

Exempt #:

Rec. Fee: 19.00

Pages: 5

ENCROACHMENT AGREEMENT

Re: The privilege of encroaching into public property to occupy a portion of **State Street** right-of-way with a decorative cornice and two metal balconies located adjacent to the following legally described property:

The East 1 foot of Lot 7, and the West 30.5 feet of Lot 6, Block 8, Original Plat, City of Madison, Dane County, Wisconsin.

This Agreement, entered into between the **City of Madison**, a Wisconsin municipal corporation ("City") and **528 State Street LLC**, a Wisconsin limited liability company ("Permittee"),

RETURN TO: City of Madison
EDD - Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No.: 251-0709-144-2019-9

WITNESSETH:

WHEREAS, the Permittee is the owner of the above described property situated at **528 State Street**, City of Madison, Dane County, Wisconsin, ("Property"); and

WHEREAS, during a recent municipal street reconstruction project, the aforementioned encroachments into State Street right-of-way were discovered at the Property, and the owner was notified of the permitting options; and

WHEREAS, the Permittee has made application to City for a privilege in streets pursuant to Section 66.0425, Wisconsin Statutes and Section 10.31, Madison General Ordinances (MGO), consisting of the following:

To grant the privilege for an existing decorative cornice and two metal balconies which are located within the public right-of-way of State Street, as identified on attached Exhibit A.

NOW, THEREFORE, City hereby grants the aforementioned privilege subject to the following obligations, which are assumed by the Permittee, its heirs, successors and assigns.

1. To comply with all applicable Madison General Ordinances ("MGO"); specifically MGO 10.31.
2. To remove said encroachments upon ten (10) days written notice by City. Additionally, the Permittee, its successors and assigns shall be entitled to no damages for removal of the encroachment, and if the Permittee does not remove the same upon due notice, it shall be removed at the Permittee's expense and the cost therefore levied against the Property as a special charge for current service rendered.
3. The Permittee shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, and its officers, officials, agents, and employees, against all loss or expense (including liability costs and attorney's fees) by reason of any claim or suit, or of liability imposed by law upon the City or its officers, officials, agents and employees for damages because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons or on account of damages to property, including loss of use thereof, arising from, in connection with, caused by or resulting from the acts or omissions of the Permittee or its officers, officials, agents, employees, assigns, guests, invitees, or subcontractors, in the performance of this Agreement, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees. Additionally, the Permittee shall carry commercial general liability insurance covering as insured the Permittee and naming the City as an additional insured, with no less than the following limits of liability: bodily injury, death and property damage of \$1,000,000 in the aggregate. This policy shall also be endorsed for contractual liability in the same amount. As evidence of this coverage, the Permittee shall furnish the City a certificate of insurance on a form provided by the City.



4. The Permittee agrees to pay City an annual fee of \$250.00 for each calendar year the privilege and accompanying Agreement is in effect. Said annual fee may be adjusted from time to time by City. The initial fee shall be due upon execution of this Agreement. Subsequent annual fee payments shall be due on or before January 1 of each year this Agreement is in effect. Check is to be made payable to the City Treasurer, and mailed to:

Office of Real Estate Services, Economic Development Division, Madison Municipal Building, 215 Martin Luther King, Jr. Boulevard, P.O. Box 2983, Madison, Wisconsin 53701-2983.

5. By acceptance of the privilege, the Permittee shall waive the right to contest in any manner the validity of Section 66.0425, Wis. Stats., and Sec. 10.31 MGO.
6. City agrees that the Permittee may terminate this Agreement at any time upon written notice to City, following removal of the subject encroachment.
7. This Agreement shall be binding upon the Permittee, its successors and assigns, and shall be recorded in the office of the Dane County Register of Deeds. In the event of the sale of the Property, the City shall be given notice of the change of ownership in accordance with the provisions of Paragraph 11.
8. In the performance of the services under this Agreement, the Permittee agrees not to discriminate 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, political beliefs, or student status. The Permittee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex or national origin.
9. The Permittee agrees to maintain the decorative cornice and balcony overhangs in a satisfactory manner so as to not cause any undo sidewalk icing or other related pedestrian hazards.
10. The Permittee agrees that City shall not be held responsible for any damage to the Permittee's decorative cornice and balconies that may be caused by City, its employees, contractors, or others.
11. All notices to be given under the terms of this agreement shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the parties specified below:

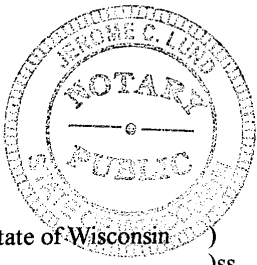
For the City: Economic Development Division
Real Estate Services
Madison Municipal Building
215 Martin Luther King, Jr. Boulevard
P. O. Box 2983
Madison, WI 53701-2983

For the Permittee: Gregg Hinkley
528 State Street LLC
522 State Street Apt. L
Madison, WI 53703

Any party hereto may, by giving five (5) days written notice to the other party in the manner herein stated, designate any other address in substitution of the address shown above to which notices shall be given.



Dated this 8TH day of DECEMBER, 2008.



CITY OF MADISON

By:

Donald S. Marx
Donald S. Marx, Manager
Office of Real Estate Services

State of Wisconsin)
County of Dane)ss.

Personally came before me this 8TH day of DECEMBER, 2008, the above named Donald S. Marx, Manager, Office of Real Estate Services of the City of Madison, and acting in said capacity and known by me to be the person who executed the foregoing instrument and acknowledged the same.

Jerome C. Lund
Notary Public, State of Wisconsin

Print or Type Name

My Commission: 10/16/2010

Approved:

Dean Brassier
City Comptroller, Dean Brassier

Approved as to form:

Michael P. May
City Attorney, Michael P. May

528 STATE STREET LLC

By:

Gregg Hinkley
(signature)

GREGG HINKLEY, AGENT
(print or type name and title)

State of Wisconsin)
County of Dane)ss.

Personally came before me this 26 day of November, 2008 the above named Gregg Hinkley (name), Agent (title), of 528 State Street LLC, being the person who executed the above and foregoing instrument and acknowledged that he/she executed the foregoing instrument as the deed of such company, by its authority.

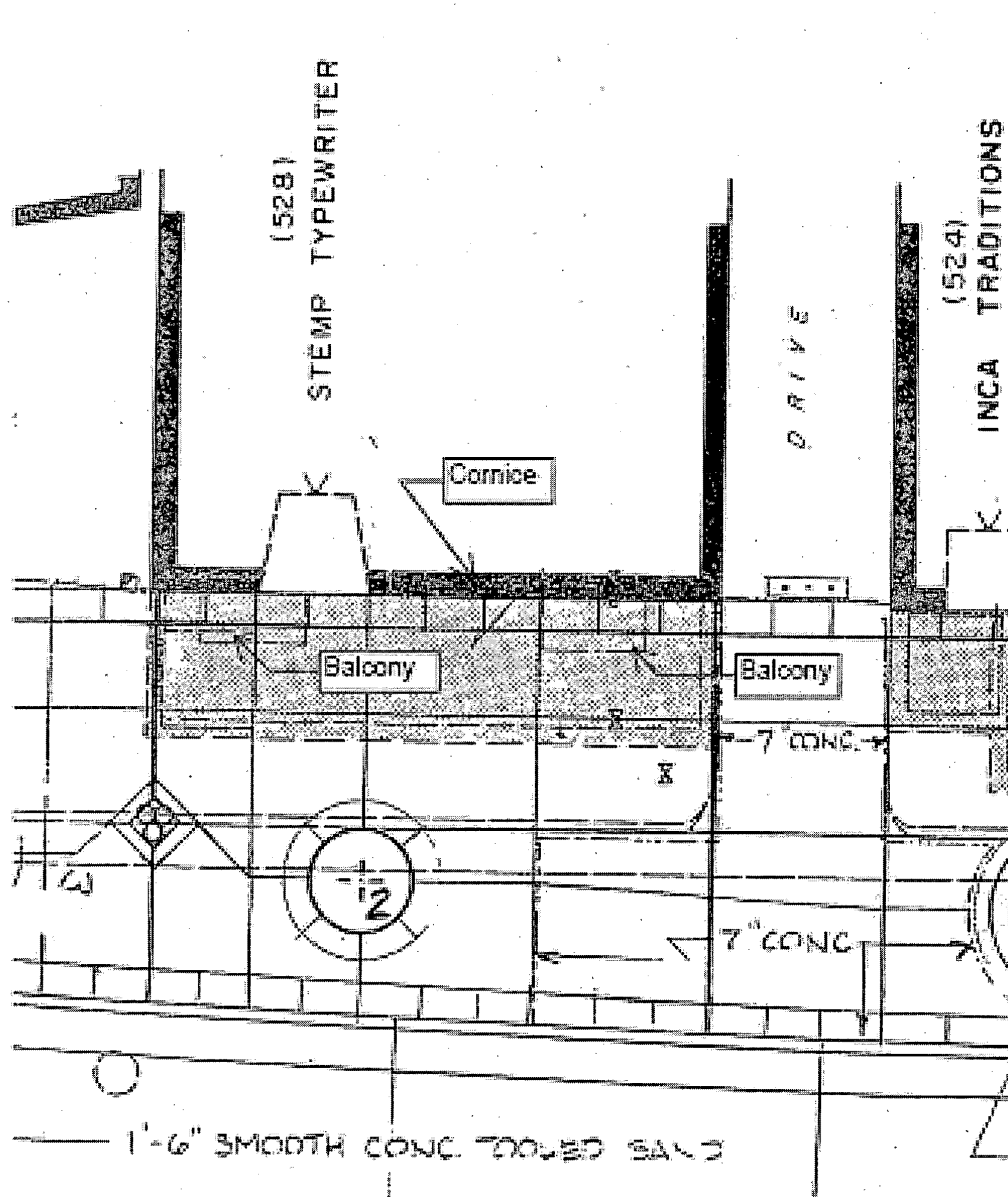
Jeanann Breining
Notary Public, State of Wisconsin

Print or Type Name

My Commission: August 30, 2009

This instrument drafted by City of Madison Real Estate Section

Project No. 8655



Viewers are advised to ignore the illegible text on this map. It is presented to show spatial relationships only.
 Authorized by:

Jeane Lund



Viewers are advised to ignore the
illegible text on this map. It is presented
to show spatial relationships only.
Authorized by:

Glenn P. Pugh