



City of Fitchburg
Planning/Zoning Department
5520 Lacy Road
Fitchburg, WI 53711
(608-270-4200)

REZONING APPLICATION

The undersigned owner, or owner's authorized agent, of property herein described hereby petitions to amend the zoning district map of the Fitchburg zoning ordinance by reclassifying from the BH district to the BG district the following described property:

1. **Location of Property/Street Address:** 6250 Nesbitt Road, Fitchburg, WI 53719

Legal Description - (Metes & Bounds, or Lot No. And Plat):

Lot Two (2), Certified Survey Map No. 13244, recorded in Volume 85 of Certified Survey Maps, Page 184, as Document No. 4848684, in the City of Fitchburg, Dane County, Wisconsin.

***Also submit in electronic format (MS WORD or plain text) by email to: planning@fitchburgwi.gov

2. **Proposed Use of Property - Explanation of Request:**

Requesting to rezone property back to General Business to not only accommodate Yahara Bay, a current tenant and distiller, but to accommodate new tenants in the property that require office and retail use.

3. **Proposed Development Schedule:** N/A

***Pursuant to Section 22-3(b) of the Fitchburg Zoning Ordinance, all Rezoning shall be consistent with the currently adopted City of Fitchburg Comprehensive Plan.

***Attach three (3) copies of a site plan which shows any proposed land divisions, plus vehicular access points and the location and size of all existing and proposed structures and parking areas. Two (2) of the three (3) copies shall be no larger than 11" x 17". Submit one (1) electronic pdf document of the entire submittal to planning@fitchburgwi.gov. Additional information may be requested.

Type of Residential Development (If Applicable): N/A

Total Dwelling Units Proposed: N/A

No. Of Parking Stalls: _____

Type of Non-residential Development (If Applicable): Multi-tenant flex building

Proposed Hours of Operation: M-W8a-5p, TH/F 8a-9p, S11a-12a **No. Of Employees:** 14

Floor Area: 29,060 SF **No. Of Parking Stalls:** 233

Sewer: Municipal ☒ Private ☐ **Water:** Municipal ☒ Private ☐

Current Owner of Property: Nesbitt Road Property Group LLC

Address: 1955 Atwood Avenue, Madison, WI 53704

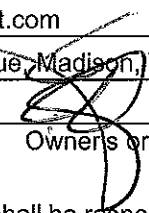
Phone No: 608-852-8777

Contact Person: Brittany Nyenhuis, Director of Real Estate

Email: bnyenhuis@sarainvest.com

Address: 1955 Atwood Avenue, Madison, WI 53704

Phone No: 608-852-8786

Respectfully Submitted By:  _____
Owner's or Authorized Agent's Signature

Eric M. Schwartz
Print Owner's or Authorized Agent's Name

PLEASE NOTE - Applicants shall be responsible for legal or outside consultant costs incurred by the City. Submissions shall be made at least four (4) weeks prior to desired plan commission meeting.

For City Use Only: **Date Received:** 3/19/19 **Publish:** _____ and _____

Ordinance Section No. _____ **Fee Paid:** \$620.00

Permit Request No. P2-2278-19

Receipt # 12.1973
3/21/19 48

6264 Nesbitt

Total Parking: 233 stalls

6250 Nesbitt

**Potential Yahara Bay
Expansion 2,471 RSF**

**Yahara Bay
Distillery
17,142 SF**

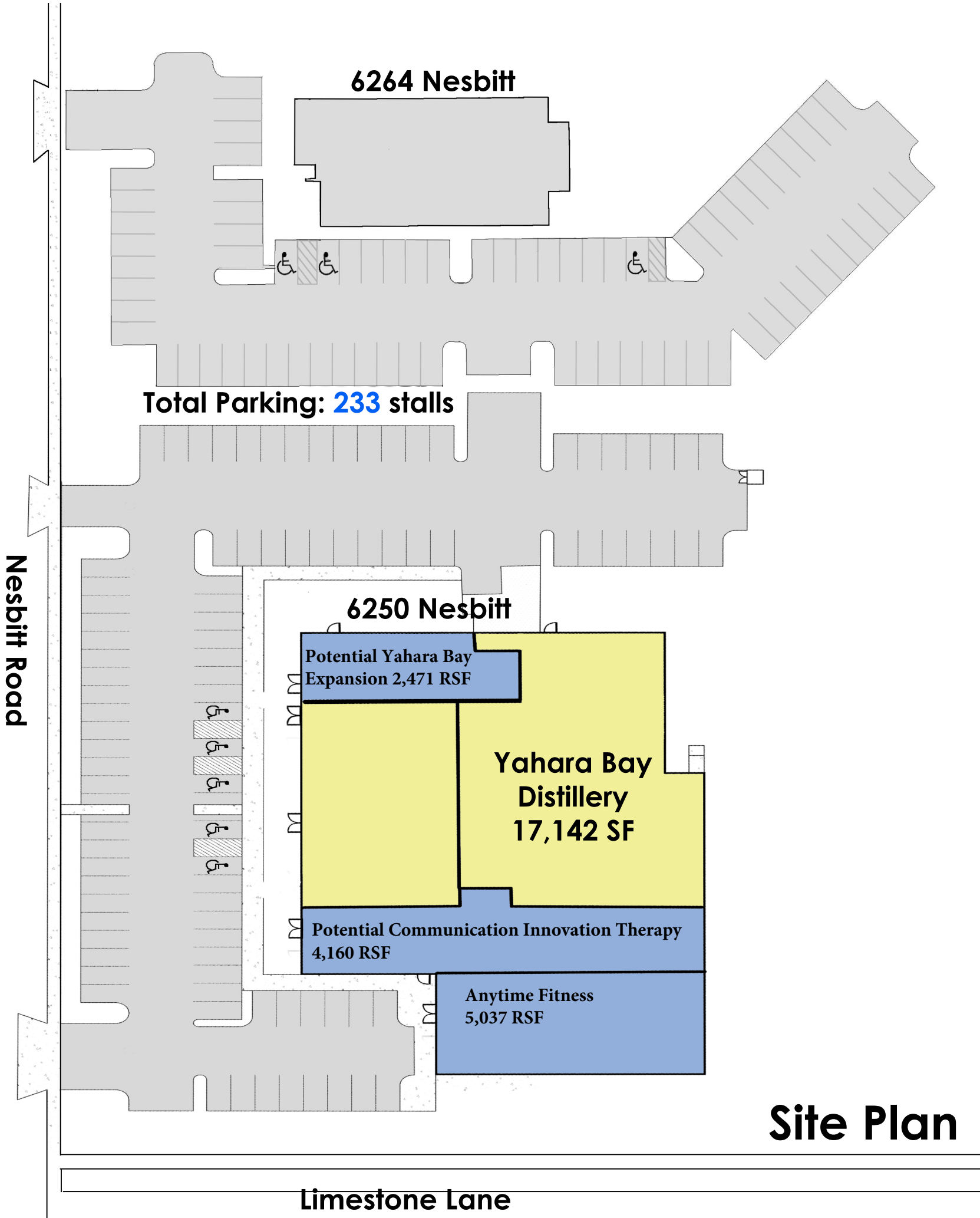
**Potential Communication Innovation Therapy
4,160 RSF**

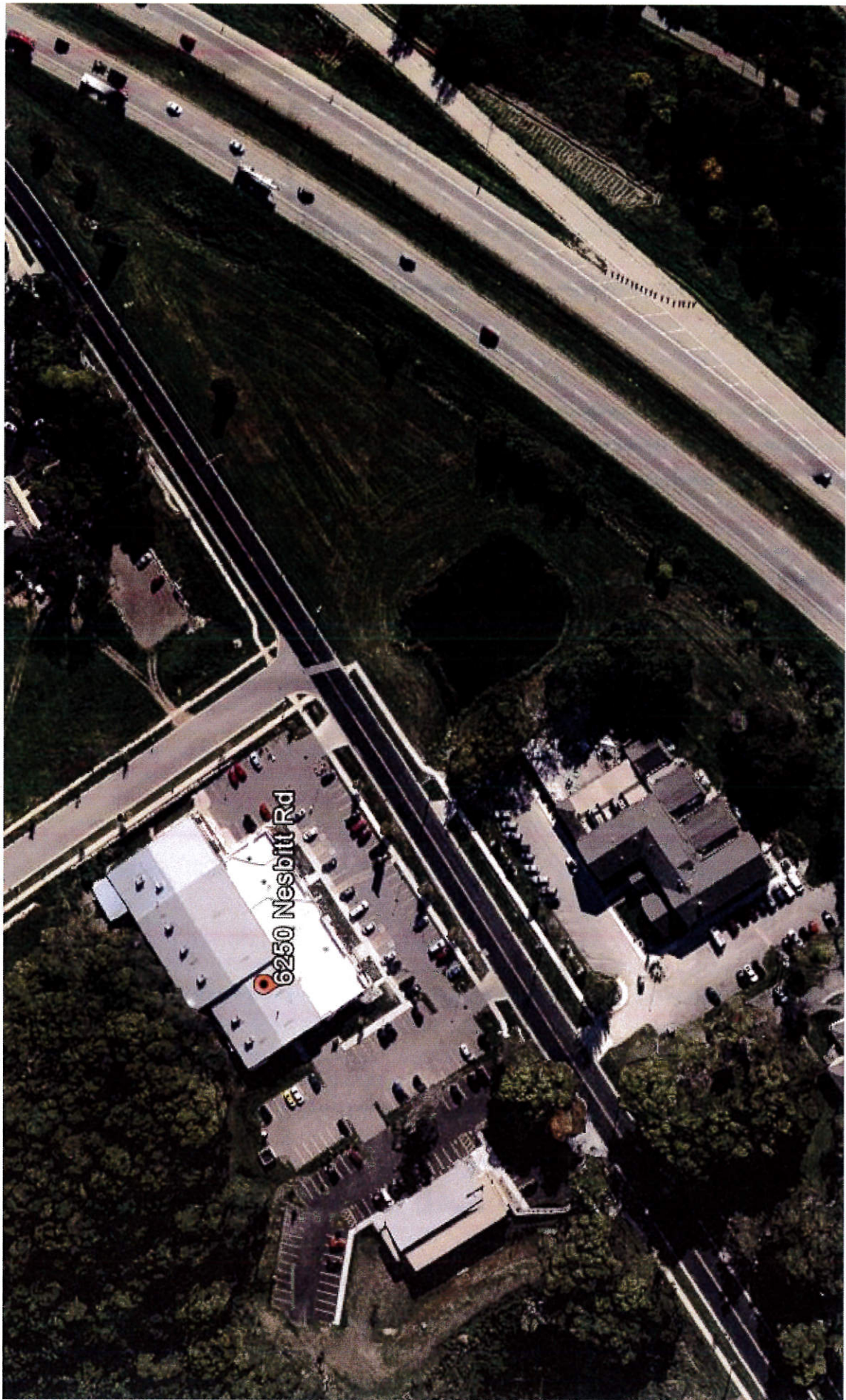
**Anytime Fitness
5,037 RSF**

Site Plan

Limestone Lane

Nesbitt Road

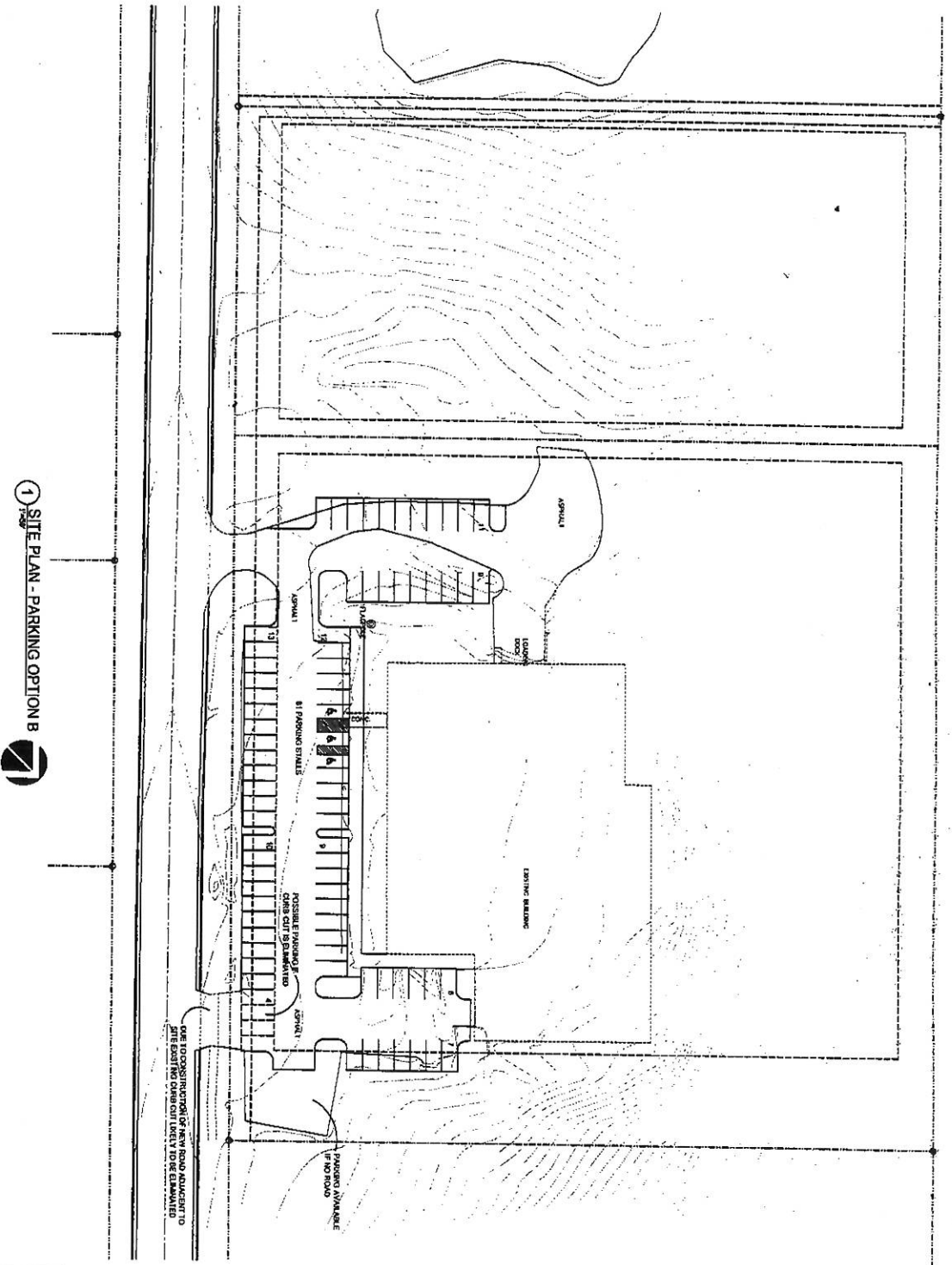




**Architectural
Planning**

Donnerstag, 11. April 2013 14:00
 112 Washington Ave., Ste. 112
 Madison, Wisconsin 53725

158020



PROJECT
MESSETT ROAD
FITCHBURG, WISCONSIN

DRAWING
· SITE PLAN -
PAVING OPTION B

DATE
04.05.07

C1.0B

PARKING LOT EASEMENT



8 3 5 1 4 8 7
Tx:8212434

KRISTI CHLEBOWSKI
DANE COUNTY
REGISTER OF DEEDS

DOCUMENT #
4848683

03/05/2012 08:37 AM

Trans. Fee:

Exempt #:

Rec. Fee: 30.00

Pages: 7

THIS PARKING LOT EASEMENT AGREEMENT (the "**Agreement**") is between SO Nesbitt LLC, a Wisconsin limited liability company ("**Parcel A Owner**") and Nesbitt Office LLC, a Wisconsin limited liability company ("**Parcel B Owner**").

RECITALS:

1. Parcel A Owner is the owner of certain real property located in Dane County, Wisconsin, as described on the attached Exhibit "A" and referred to on the exhibit and in this Agreement as "**Parcel A.**"

Name and Return Address:

John W. Van Note
20 North Carroll Street
Madison, WI 53703

225/0609-072-6610-2
(Parcel Identification Number)

2. Parcel B Owner is the owner of certain real property also located in Dane County, Wisconsin, adjoining Parcel A, as described on the attached Exhibit "B" and referred to on the exhibit and in this Agreement as "**Parcel B.**"

3. Parcel A Owner and Parcel B Owner wish to grant each other certain easement rights as more fully set forth below.

AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. **Grant by Parcel A Owner.** Parcel A Owner grants to Parcel B Owner for the benefit of Parcel B Owner and Parcel B and all present and future owners of Parcel B and their occupants, agents, employees, guests, licensees, and invitees (collectively "**Users**") a perpetual nonexclusive easement

A. To use any portions of Parcel A that are used as drive aisles and pedestrian walkways for vehicular and pedestrian ingress and egress over, on, and across such portions of Parcel A to obtain access to and from Parcel B and public rights-of-way; and

B. To park vehicles on any portion of Parcel A that is used for vehicular parking.

The areas described in (A) and (B), above, are referred to in this Agreement as the "**Parcel A Easement Areas.**"

2. **Grant by Parcel B Owner.** Parcel B Owner grants to Parcel A Owner for the benefit of Parcel A Owner and Parcel A and all present and future owners of Parcel A and their occupants, agents, employees, guests, licensees, and invitees (collectively "**Users**") a perpetual nonexclusive easement

A. To use any portions of Parcel B that are used as drive aisles and pedestrian walkways for vehicular and pedestrian ingress and egress over, on, and across such portions of Parcel B to obtain access to and from Parcel A and public rights-of-way; and

B. To park vehicles on any portion of Parcel B that is used for vehicular parking.

The areas described in (A) and (B), above, are referred to in this Agreement as the "**Parcel B Easement Areas.**"

3. **Maintenance.** Parcel A Owner and Parcel B Owner shall at all times maintain the easements and parking areas and all driveways, walkways, and exits and appurtenances thereto as are located on their respective properties in good condition and repair and at the similar properties in the City of Fitchburg, Wisconsin, including periodic patching, resurfacing, and restriping, and keep them in a neat and safe condition free of accumulated paper, debris, other refuse, snow, and ice for the uses and purposes described in this Agreement. Maintenance shall be performed by the owner of the particular property at the owner's expense. Each party shall have the right, but not the duty, to perform any maintenance for which the obligation of performance is imposed on the other party to this Agreement. This right may only be exercised if within 30 days of delivery of written notice to the responsible party, sent by registered or certified mail and describing the maintenance to be performed by the party, the responsible party has continued to fail to perform the maintenance that is the subject of the notice. A party performing maintenance imposed on the other party to this Agreement shall be entitled to reimbursement from the other party upon the performing party's presentation of an invoice for the maintenance cost incurred.

4. **Consistent Uses Allowed.** Parcel A Owner and Parcel B Owner shall each have the rights to use the surface area of their respective properties in any way not inconsistent with the grant in this Agreement.

5. **Indemnity.** Each party to this Agreement who exercises rights under the easement granted by this Agreement (the "**Dominant Owner**") over the lands owned by the other party (the "**Servient Owner**") shall indemnify and defend the Servient Owner and its officers, agents, and employees from all liability, suits, actions, claims, costs, damages, and expenses of every kind and description, including court costs and legal fees, for claims of any character, including liability and expenses in connection with the loss of life, personal injury, or damage to property, brought because of any injuries or damages received or sustained by any person, persons, or property on account of or arising out of the use of the Servient Owner's property (the "**Servient Property**") by the Dominant Owner or its agents, contractors, subcontractors, invitees, or employees.

6. **Barriers.** The parties intend that Parcel A and Parcel B shall be served by a single continuous parking lot and that ingress and egress between the portion of the parking lot located on Parcel B and the portion of the parking lot located on Parcel A shall be open and unobstructed at all times. Accordingly, neither party shall do anything to interfere with the use of

the easements granted under this Agreement by the other party or by the Users. No curbs, barriers, fences, dividers, or other obstructions shall be constructed on or across any driveway or parking area to prevent, prohibit, or discourage the free and uninterrupted flow of vehicular and pedestrian traffic. Notwithstanding anything set forth in this Agreement to the contrary, the foregoing prohibitions and limitations shall not apply to: (a) speed bumps, speed limit signs, and the like; (b) curbs and landscape islands; and (c) other temporary structures, enclosures, and fencing erected in connection with outdoor sales of merchandise within the parking lot, provided that such structures, enclosures, and fencing do not unreasonably obstruct traffic or unreasonably limit the availability of parking spaces to members of the general public.

7. **Reasonable Rules and Regulations.** Parcel A Owner and Parcel B Owner shall each have the right to promulgate reasonable rules, restrictions, and regulations governing the use, maintenance, operation, and enjoyment of the parking lot and employee parking within the parking lot, so long as the rules, restrictions, and regulations are of general applicability and are not designed or implemented in such a manner as to discriminate against the other party to this Agreement or that party's Users. Each party to this Agreement agrees to honor any rules, restrictions, and regulations promulgated under this Agreement by the other party.

8. **Covenants Run with Land.** All of the terms and conditions in this Agreement, including the benefits and burdens, shall run with the land and shall be binding upon, inure to the benefit of, and be enforceable by Parcel A Owner and Parcel B Owner and their respective successors and assigns as owners of Parcel A and Parcel B, respectively. The easements granted under Section 1 of this Agreement are easements appurtenant to Parcel B and may not be transferred separately from, or severed from, title to Parcel B. The easements granted under Section 2 of this Agreement are easements appurtenant to Parcel A and may not be transferred separately from, or severed from, title to Parcel A. Furthermore, the benefits of the easements granted under this Agreement shall not be extended to any properties other than Parcel A and Parcel B without the consent of the owners of the fee simple interest of all of Parcel A and all of Parcel B. The specific parties named as Parcel A Owner and Parcel B Owner in this Agreement, and each of their respective successors and assigns as fee simple owners of Parcel A and Parcel B, respectively, or any portion of Parcel A or Parcel B, shall cease to have further liability under this Agreement with respect to facts or circumstances first arising after the party has transferred its fee simple interest in Parcel A or Parcel B, respectively, except, however, for obligations that accrued during the party's period of ownership of title.

9. **Non-Use.** Non-use or limited use of the easement rights granted in this Agreement shall not prevent the benefiting party from later use of the easement rights to the fullest extent authorized in this Agreement.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the internal laws of the State of Wisconsin.

11. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and may not be changed except by a written document executed and acknowledged by all parties to this Agreement and duly recorded in the office of the Register of Deeds of Dane County, Wisconsin.

12. **Notices.** All notices to either party to this Agreement shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party at that party's last known address. If the other party's address is not known to the party desiring to send

a notice, the party sending the notice may use the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.

13. Invalidity. If any term or condition of this Agreement, or the application of this Agreement to any person or circumstance, shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term 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 and condition shall be valid and enforceable to the fullest extent permitted by law.

14. Waiver. No delay or omission by any party in exercising any right or power arising out of any default under any of the terms or conditions of this Agreement shall be construed to be a waiver of the right or power. A waiver by a party of any of the obligations of the other party shall not be construed to be a waiver of any breach of any other terms or conditions of this Agreement.

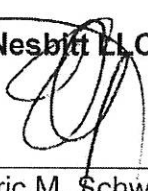
15. Enforcement. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief. If a suit is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorney fees, from the non-prevailing party.

16. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of any portion of the easements granted under this Agreement to the general public or for any public purpose whatsoever. Parcel B Owner and Parcel A Owner agree to cooperate with each other and to take such measures as may be necessary to prevent the dedication to the public of the Parcel B Easement Areas or the Parcel A Easement Areas, whether by express grant, implication, or prescription. These measures may include, without limitation, the posting of "Private Road," "No Through Traffic," or "No Trespassing" signs. Such measures shall not, however, unreasonably interfere with the easement rights granted under this Agreement.

Dated the 1st day of MARCH, 2012.

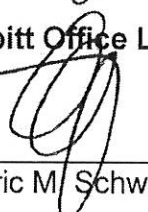
*** PARCEL A OWNER ***

SO Nesbitt LLC

By: 
Eric M. Schwartz, Manager

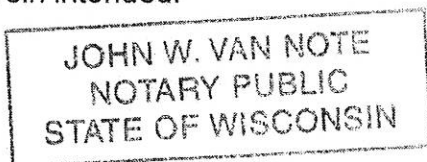
*** PARCEL B OWNER ***

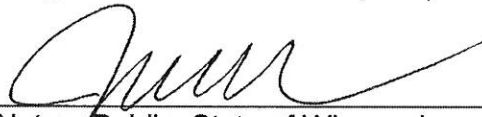
Nesbitt Office LLC

By: 
Eric M. Schwartz, Manager

STATE OF WISCONSIN)
)ss
COUNTY OF DANE)

Personally came before me this 1st day of MARCH, 2012, the above named Eric M. Schwartz, to me known to be the person who executed the foregoing instrument on behalf of SO Nesbitt LLC and acknowledged the same in the capacity and for the purposes therein intended.

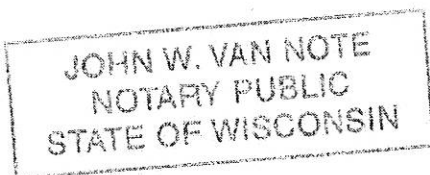


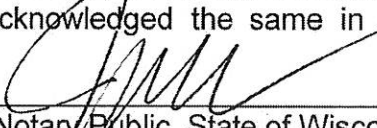


Notary Public, State of Wisconsin
My Commission expires:
IS PERMANENT

STATE OF WISCONSIN)
)ss
COUNTY OF DANE)

Personally came before me this 1st day of MARCH, 2012, the above named Eric M. Schwartz, to me known to be the person who executed the foregoing instrument on behalf of Nesbitt Office LLC and acknowledged the same in the capacity and for the purposes therein intended.





Notary Public, State of Wisconsin
My Commission expires:
IS PERMANENT

EXHIBIT "A"

Legal Description of Parcel A

Commencing at the West $\frac{1}{4}$ corner of Section 7, T6N, R8E, City of Fitchburg, Dane County; thence N51°43'25"E, 1354.28 feet to point of beginning; thence N57°27'59"E, 206.40 feet; thence S32°32'01"E, 393.00 feet; thence S57°27'59"W, 206.40 feet; thence N32°32'01"W, 393.00 feet to point of beginning.

EXHIBIT "B"

Legal Description of Parcel B

Commencing at the West $\frac{1}{4}$ corner of Section 7, T6N, R8E, City of Fitchburg, Dane County; thence N51°43'25"E, 1354.28 feet; thence N57°27'59"E, 206.40 feet to the point of beginning; thence N57°27'59"E, 360.10 feet to west line of Limestone Lane; thence S32°32'01"E, 393.00 feet; thence S57°27'59"W, 360.10 feet; thence N32°32'01"W, 393.00 feet to point of beginning.