



## Legislation Text

File #: 27531, Version: 1

### Fiscal Note

Rent for Parcel A shall remain at the current annual rate of \$21,468.00 (\$1,789.00 per month) through March 21, 2013. Effective March 22, 2013, rent for Parcel A shall be at the increased annual rate of \$29,739.00 (\$2,478.25 per month) and shall be subject to 2% annual increases thereafter. Rent for Parcel B (subterranean space) shall remain at the current rate of \$0 per year through the original lease expiration date of March 21, 2034. Effective March 22, 2034, rent for Parcel B shall be at the increased annual rate of \$9,528.14 (\$794.01 per month) and shall be subject to 2% annual increases thereafter.

### Title

Authorizing the Mayor and City Clerk to execute an amendment to the Ground Lease Agreement with Lincoln School Associates Limited Partnership providing for the extension of the lease term, adjustment to rent, and changes to other various provisions of the Ground Lease Agreement.

### Body

WHEREAS, in 1983 the former Lincoln School building (the "Building") located at 720 East Gorham Street was declared surplus to the needs of the City of Madison, and in 1985, based on conditions of sale established by a selection committee, the Building was sold to Lincoln School Associates Limited Partnership ("LSA"), with the condition that the land on which the Building is located would be ground leased from the City to LSA for a term of 49 years; and

WHEREAS, on March 22, 1985 the City, as the ground lessor, and LSA, as the ground lessee, entered into a Ground Lease Agreement (the "Ground Lease") for lands consisting of Lot 2 of Certified Survey Map ("CSM") No. 4607, together with subterranean space within a portion of Lot 3 of said CSM 4607; and

WHEREAS, Lot 2 of CSM 4607 is the lot on which the Building is located and is referred to in the Ground Lease as "Parcel A"; and

WHEREAS, the subterranean space within Lot 3 of CSM 4607 is the area reserved solely for LSA's construction, maintenance and use of an underground parking structure to serve Parcel A and as a trash storage area and is referred to in the Ground Lease as "Parcel B"; and

WHEREAS, said Parcel A and Parcel B are hereinafter collectively referred to as the "Premises"; and

WHEREAS, the City and LSA are also parties to a "Right of Way Agreement" dated March 22, 1985 providing LSA with an easement for ingress and egress to the Premises across a portion of the adjacent James Madison Park; and

WHEREAS, the term of the Ground Lease is scheduled to expire on March 21, 2034, and LSA has requested that the term be extended to coincide with the expiration dates of the ground leases currently being negotiated for the City-owned properties located at 640, 646 and 702 East Gorham Street; and

WHEREAS, the terms of an amendment to the Ground Lease have been negotiated between the Office of Real Estate Services and LSA.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute an amendment to that certain Ground Lease Agreement dated March 22, 1985 (the "Lease"), by and between the City of Madison (the "Lessor") and Lincoln School Associates Limited Partnership (the "Lessee"), pertaining to

the "Premises" located at 720 East Gorham Street, as described and depicted on attached Exhibits A and B, amending the terms of the Ground Lease as follows:

1. The term of the Lease is currently for a period of forty-nine (49) years, commencing on March 22, 1985 and expiring on March 21, 2034. The Lease shall be amended to provide that the term of the Lease shall be extended for a period of fifty (50) years, such that the new expiration date shall be March 21, 2084.
2. The rent provision of the Lease shall be amended as follows:
  - a. Rent payable under the Lease for the period from the effective date of the Lease amendment through March 21, 2013 shall remain at the current monthly rate of \$1,789.00.
  - b. For the period from March 22, 2013 through March 21, 2034, the Lessee shall pay to the Lessor annual rent for only Parcel A of the Premises in an amount equal to ten percent (10%) of the estimated fair market value ("EFMV") of Parcel A. During such period no rent shall be payable for Parcel B of the Premises.
  - c. For the period from March 22, 2034, through March 21, 2084, the Lessee shall pay to the Lessor as annual rent an amount equal to ten percent (10%) of the EFMV of Parcel A, plus an amount equal to three percent (3%) of the EFMV of Parcel B of the Leased Premises.
  - d. The EFMV of Parcel A and Parcel B for the period from the Effective Date through March 21, 2014 shall be calculated at the rate of \$15.00 per square foot. Beginning on March 22, 2014 and continuing on each anniversary thereafter, the EFMV shall increase by two percent (2%) per year compounded annually.
  - e. Rent shall be payable in advance in equal monthly installments on or before the 1st day of each month.
  - f. Rent payments are to be made payable to the City Treasurer and sent or personally delivered to the Lessor at the address specified in the Notice provision of the Lease.
  - g. The provisions in the Lease relating to annual CPI adjustments, 10-year base value re-establishment, and interim base value re-establishment shall no longer be applicable.
3. The authorized agent provision of the Lease shall be updated as follows:

Authorized Agent. The Lessor's Economic Development Division Director or the Director's designee is hereby designated as the official representative of the Lessor for the enforcement of all provisions of this Lease, with authority to administer this Lease lawfully on behalf of the Lessor.
4. The Non-Discrimination provision of the Lease shall be updated as follows:

Non-Discrimination in Employment. In the performance of its obligations 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, 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 or national origin.
5. The Indemnification provision of the Lease shall be updated as follows:

Indemnification. The Lessee shall be liable to and agrees to indemnify, defend and hold harmless the Lessor, 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 Lessor or its officers, officials, agents or 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 Lessee or its officers, officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease or in the use of the easement area defined in the Right of Way Agreement, whether caused by or contributed to by the negligence of the Lessor, its officers, officials, agents, or employees.

6. The Liability Insurance provision of the Lease shall be updated as follows:  
Liability Insurance. The Lessee shall carry commercial general liability insurance including contractual liability with no less than the following limits of liability, as may be adjusted, from time to time, by the Lessor's Risk Manager: bodily injury, death and property damage of \$1,000,000.00 per occurrence. The policy or policies shall name the Lessor, its officers, officials, agents and employees as additional insureds. As evidence of this coverage, the Lessee shall furnish to the Lessor a certificate of insurance on a form provided by the City.
7. The Property Insurance provision of the Lease shall be updated as follows:  
Property Insurance. The Lessee shall maintain throughout the term of this Lease a policy of comprehensive fire, extended coverage, vandalism, malicious mischief and other endorsements deemed advisable by the Lessor insuring all building improvements located on the Premises and all appurtenances thereto for the full insurable replacement value thereof, with such a deductible not to exceed \$5,000.00. The Lessor shall be named as a loss payee in such policy.
8. The following provision shall be inserted in the Lease:  
Hazardous Substances; Indemnification. The Lessee represents and warrants that its use of the Premises will not generate any hazardous substance, and they will not store or dispose on the Premises nor transport to or over the Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Lessee further agrees to hold the Lessor harmless from and indemnify the Lessor against any release of such hazardous substance and any damage, loss, or expense or liability resulting from such release including all attorneys' fees, costs and penalties incurred as a result thereof except any release caused by the sole negligence or intentional acts of the Lessor, its employees or agents. "Hazardous substance" shall be interpreted broadly to mean any substance or material defined or designated as hazardous or toxic waste, hazardous or toxic material, hazardous or toxic radioactive substance, or other similar term by any federal, state or local environmental law, regulation or rule presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include, but not be limited to, any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease or damage to or loss of use of real or personal property.
9. The provisions of the Lease pertaining to real estate taxes, special assessments and personal property taxes shall be updated as follows:  
Taxes.
  - a. Real Estate Taxes. The Lessor is a tax exempt entity, and the Premises are currently not subject to real estate taxes. Should any State of Wisconsin Statute after the effective date of the Lease amendment require that the Premises be subject to real estate taxes, the Lessee shall be liable for all such real estate taxes.
  - b. Special Assessments. The Lessee shall pay, before delinquency, any and all special assessments that accrue to the Premises.

c. Personal Property Taxes. The Lessee shall pay, before delinquency, all municipal, county and state or federal taxes assessed against any ground leasehold interest of the Lessee or any fixtures, furnishings, or other of the Lessee's personal property of any kind owned, installed or used in or on the Premises, including all building improvements.

10. The Notice provision of the Lease shall be updated as follows:

Notices. All notices to be given under the terms of this Lease 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 Lessor:           City of Madison  
Economic Development Division  
Office of Real Estate Services  
Attn: Manager  
215 Martin Luther King, Jr. Blvd., Room 312  
P. O. Box 2983  
Madison, WI 53701-2983

For the Lessee:           Lincoln School Associates Limited Partnership  
c/o Urban Land Interests  
10 East Doty Street, Suite 300  
Madison, WI 53703

With a copy to:           Lessee's Mortgagee(s)

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.

11. The amendment to the Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the parties.

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

BE IT FURTHER RESOLVED that the Mayor and City Clerk are hereby authorized to execute, deliver and record such documents and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution.