



## Legislation Text

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**File #: 07368, Version: 1**

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### **Fiscal Note**

Initial annual rent of \$85 will be credited to the City General Fund as Rentals and Property Leases revenue. During years 2 through 5, rents shall be subject to adjustment based on any percentage change in land value. After lease year 5, rent shall be subject to a 5% increase every five (5) years.

### **Title**

Authorizing the Mayor and City Clerk to execute a lease with the Perry J. Schappe Revocable Trust, the owner of property located at 819 East Washington Avenue, to accommodate the existing air space encroachment of a building canopy into the East Washington Avenue public right of way.

### **Body**

WHEREAS, the Perry J. Schappe Revocable Trust (the "Owner") is the owner of certain property located at 819 East Washington Avenue (the "Owner's Property"); and

WHEREAS, an engineer's encroachment report prepared in connection with the East Washington Avenue reconstruction project revealed that the building canopy located on the Owner's Property encroaches into the air space of the East Washington Avenue public right of way; and

WHEREAS, it is in the public interest to document and regulate existing encroachments in the public right of way; and

WHEREAS, the Owner desires to enter into an Air Space Lease with the City of Madison to accommodate the encroachment of such building canopy into the public street right of way; and

WHEREAS, the terms of an Air Space Lease have been negotiated between the Owner and the Real Estate Section; and

WHEREAS, the City Attorney's office has reviewed and approved the Air Space Lease as to form.

NOW THEREFORE BE IT RESOLVED that the Mayor and City Clerk are authorized to execute an Air Space Lease with the Perry J. Schappe Revocable Trust (the "Owner") to accommodate the existing air space encroachment of the Owner's building canopy ("Canopy") at 819 East Washington Avenue (the "Owner's Property") into the adjacent East Washington Avenue public right of way, subject to the following terms and conditions:

1. The "Leased Premises" shall consist of approximately 216 square feet of air space within the East Washington Avenue public right of way, as described below and depicted on Exhibit A.
2. The term of the lease shall be for a period of 50 years.
3. During the first five (5) years of the lease, the Owner shall pay to the City an annual rent equal to three percent (3%) of the current assessed per square foot land value of the Owner's Property, multiplied by the square footage area of the Leased Premises. Annual rent for the first year of the lease is calculated as follows: 3% x \$13/sq. ft. x 216 sq. ft. = \$85.00
4. Commencing in year six (6), rent shall increase by 5% per each five (5) year period and shall no longer be adjusted based on the assessed value of the Owner's Property.
5. In the event the Owner's Property becomes tax-exempt, rent shall be calculated in accordance with Paragraph 3 based on the last annual assessed land value of the Owner's Property prior to it becoming tax-exempt.
6. The Owner shall be permitted to sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey its interests in the lease and the improvements located on the Leased Premises (which actions are collectively

referred to herein as "Transfers"), but only if such Transfer is made simultaneously with the Transfer of the Owner's Property to the same purchaser or transferee of the lease and the improvements located on the Leased Premises.

7. No further construction, modification, improvement, alteration, or remodeling of the Canopy shall be undertaken without prior written approval of the City's Real Estate Section, and any plans for any of the same are subject to written approval of the City's Real Estate Section. In all cases, the Owner is responsible for following all applicable ordinances, codes, statutes, and laws, and obtaining all permits required for any construction activity.
8. The City shall have no responsibility or liability for any maintenance of the Canopy and the City shall have no responsibility or liability for any damage to the Canopy caused by acts of God, and the Owner shall hold the City harmless therefrom.
9. Upon the expiration or termination of the lease, the Owner, at its sole cost, shall remove the Canopy and any other personal property from the Leased Premises. The City may waive or alter this removal requirement at its sole discretion.
10. The Owner shall be required to 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 City's Risk Manager: bodily injury, death and property damage of \$1,000,000 per occurrence.
11. The Owner shall be liable to and agree 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, 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 Owner or its officers, officials, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of this Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.
12. The Owner shall represent and warrant that its use of the Leased Premises will not generate any hazardous substance, and it will not store or dispose on the Leased Premises nor transport to or over the Leased Premises any hazardous substance in violation of any applicable federal, state or local law, regulation or rule. The Owner shall further agree to hold the City harmless from and indemnify the City 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 City, 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.
13. The City shall have the right to terminate the lease upon 30 days written notice in the event of the Owner's default or upon 180 days written notice in the event the Leased Premises are needed for transportation purposes.
14. The Owner shall have the right, at its sole option, to terminate the lease upon 180 days written notice.

#### Description of the Leased Premises

Certain air space within the East Washington Avenue public right of way adjacent to Lot 4, Block 144, Original Plat of the City of Madison, Dane County, Wisconsin, as identified on attached Exhibit B. Said air space applies to rights commencing at an approximate elevation of 12.5 feet above ground level and

terminating at an approximate elevation of 14.0 feet above ground level. Said air space contains approximately 216 square feet in area.