



Legislation Text

File #: 53369, **Version:** 1

Fiscal Note

No City appropriation required.

Title

Authorizing the City's acceptance of a Permanent Limited Easement for grading and sloping purposes granted to the City by Alabaster Holdings, LLC over and across a portion of the property located at 3116 Commercial Avenue. (15th A.D.)

Body

WHEREAS, Alabaster Holdings, LLC (the "Grantor") is the owner of the property located at 3116 Commercial Avenue (the "Property"); and

WHEREAS, the Grantor submitted an application to the City of Madison ("City") for a conditional use to establish a nightclub in an existing building on the Property; and

WHEREAS, during approval by the City, the Grantor and the City agreed that a developer agreement for the project would be waived if the Grantor granted two (2) Permanent Limited Easements for Grading and Sloping Purposes (together, the "Easement") to allow the City to perform grading and sloping on the Grantor's lands located outside of the Commercial Avenue and Rethke Avenue public rights-of-way adjacent to the Property, as required for future public works reconstruction projects on said rights-of-way; and

WHEREAS, the Easement is legally described on attached Exhibit A and depicted on attached Exhibit B (the "Easement Areas"); and

WHEREAS, the Office of Real Estate Services will prepare the Easement, to be reviewed and approved by the City's Engineering Division prior to recording with the Dane County Register of Deeds.

NOW, THEREFORE, BE IT RESOLVED that the Common Council of the City of Madison hereby authorizes the acceptance of the Easement from the Grantor, at no cost to the City, across a portion of the Property, subject to the following terms and conditions:

1. Construction, Restoration, Repair and Maintenance.
 - a. The purpose of this Easement is to allow the City to perform grading and sloping on the Grantor's lands located outside of the existing Commercial Avenue and Rethke Avenue public rights-of-way adjacent to the Property, as required for future public works reconstruction projects on said right-of-way.
 - b. The City's use of the Easement Areas shall be for grading and sloping purposes, including, but not limited to, the right of ingress and egress, the right to operate necessary equipment thereon, and the right to preserve, protect, remove or plant thereon any vegetation that the City may deem desirable to prevent erosion of the soil.
 - c. The work of grading and sloping by the City shall be done and completed in a good and professional manner and shall be performed in such a manner as in to no way interfere with or endanger the use of the remainder of the Property.

- d. **Property Restoration:** The City shall repair any damage caused to any pavement or turf located within the Easement Areas and/or the Property as a result of the use of the Easement Areas by or on behalf of the City as provided herein. Following completion of any excavation work, the City shall promptly restore the area affected by the work to the required final grade and surface condition including the repair or replacement of pavement and turf.
 - e. After completion of the grading and sloping work, there shall be no grade change to the Easement Areas without the prior written approval of the City's Engineering Division.
 - f. No above-ground improvements shall be located in the Easement Areas by the City or the Grantor.
2. Reservation of Use by Grantor.
- a. The Grantor reserves the right to use and occupy the Easement Areas in a manner consistent with the rights herein conveyed, provided that such use and occupancy shall not interfere with the use by the City and/or the public.
 - b. Plantings and landscaping by the Grantor within the Easement Areas shall not obstruct routine maintenance by the City. In the event of repair or reconstruction, plantings and landscaping installed by the Grantor may be removed by the City without replacement or compensation to the Grantor.
3. Compliance. The Grantor and the City shall comply with all applicable laws with respect to this Easement, including, but not limited to, any laws, standards, regulations, or permit requirements relating to environmental pollution or contamination or to occupational health and safety.
4. Amendment. This Easement may not be amended, modified, terminated, or released without the written consent of all the parties hereto, or their respective successors-in-interest.
5. Binding Effect. The rights and easement granted herein shall be deemed to be covenants running with the land and shall inure to the benefit of the City, its successors and assigns, and shall be binding upon the Grantor, its successors and assigns.
6. Applicable Law. This Easement shall be construed in accordance with the laws of the State of Wisconsin.
7. Severability. If any term or provision of this Easement is held to be invalid or unenforceable by a court of competent jurisdiction, then such holding shall not affect any of the remaining terms and provisions of this Easement and the same shall continue to be effective to the fullest extent permitted by law.
8. Public Record. The City shall record this Easement at the Office of the Dane County Register of Deeds.