



## Legislation Text

File #: 07753, Version: 2

### Fiscal Note

This amendment removes the lessee's obligation to erect a fence. No appropriation is required.

### Title

SUBSTITUTE - Amending the Ground Lease Agreements between the City of Madison and Larry E. and Dolores A. Lichte and between the City of Madison and Polly O'Hare to delete references to a 42-inch high, 2-rail, split-rail fence, and to make other minor modifications.

### Body

On January 30, 1981, two Ground Lease Agreements were entered into between the City of Madison, a Wisconsin municipal corporation, (Lessor) and Larry E. and Dolores A. Lichte, husband wife, (Lessee) and recorded in Volume 2559, page 42 as Document #1696381 in the office of the Register of Deeds for Dane County, and between the City of Madison, a Wisconsin municipal corporation (Lessor) and Mary North O'Hare (Lessee), and recorded in Volume 2559, page 20 as Document #1696380 in the office of the Register of Deeds for Dane County, Wisconsin covering certain lands within the City of Madison and more particularly described in Certified Survey Map 3631 as filed in the office of the Register of Deeds for Dane County, Wisconsin.

Among the terms of those Ground Lease Agreements as found in Article VI - Obligations of Lessee, paragraph B. is the statement that

"Lessee shall assume the costs of erection, continued maintenance, repair and replacement of screening materials, the design, location, extend and type of which shall be mutually agreed upon by Lessor's Board of Park Commissioners and Landmarks Commission or other designated agent or successor and the Lessee. The Lessee shall, at a minimum, be required to erect and maintain a standard forty-two (42) inch high, 2-rail, split-rail fence more or less along the boundary between the parklands and the demised lands."

together with further references to consequences if the Lessee should "fail to erect said screening materials and" "repair" and "erection, repair".

WHEREAS, since the date of execution and recording of the above referenced Ground Lease Agreements, the City of Madison, the Board of Park Commissioners and Landmarks Commission have not seen the need to demand the installation of the perimeter 2-rail fence or other screening; and

WHEREAS, the installation of the fence would impact the aesthetics of the adjoining land known as Marshall Park owned by the City of Madison Park; and

WHEREAS, it is agreed that the installation of the fencing or other screening would provide no tangible benefit to the park users and would only serve to protect the privacy of the tenants; and

WHEREAS, the fencing referred to in the above ground lease agreement does not replace any past fencing at this location and is not part of an original historic preservation plan for this property.

NOW, THEREFORE, BE IT RESOLVED That the above quoted sentences and all other references to the erection, maintenance and repair of said fence be deleted from Article VI, Paragraph B of the above referenced Ground Lease Agreements be deleted and that should tenants desire to install a fence or other type of barrier at this location in the future, that all City permits and a review would apply to that request.

BE IT FURTHER RESOLVED That an amendment to the above referenced Ground Lease Agreement be entered into between the City of Madison (Lessor) and the Owners of Lots 3 and 4 (Lessees) as follows:

For Lot 3 (Lichte) Lease: Delete the first part of existing Sentence 1 of Item 1 of Article IV-Rights and Privileges Granted Lessee, which currently reads as follows "Exclusive use and possession of the demised lands for the purpose of use and enjoyment of the single-family improvements of historical significance subject to a shared use of the circular drive with the Lessee of the adjoining residential Lot 4 of Certified Survey Map No. 3631," and replace it with the following:

"1. Exclusive use and possession of the demised lands for the purpose of use and enjoyment of the single-family improvements of historical significance subject to a shared use with the Lessee of the adjoining residential Lot 4 of Certified Survey Map No. 3631 of that portion of the private driveway that commences at Point 10 of said CSM and continues Northwesterly approximately 50 feet to a split ("Y"), along with the first 15 feet of the private driveway west of the split on Lot 3 of said CSM (as illustrated on the attached map) for the purposes of allowing the Lessee of Lot 4 an area to back into, if needed, to exit Lot 4, ..."

For Lot 4 (O'Hare) Lease: Delete the first part of Sentence 1, of Item 1, of Article IV-Rights and Privileges Granted Lessee, which currently reads as follows "Exclusive use and possession of the demised lands for the purpose of use and enjoyment of the single-family improvements of historical significance subject to a shared use of the circular drive with the Lessee of the adjoining residential Lot 3 of Certified Survey Map No. 3631," and replace it with the following:

"1. Exclusive use and possession of the demised lands for the purpose of use and enjoyment of the single-family improvements of historical significance subject to a shared use with the Lessee of the adjoining residential Lot 3 of Certified Survey Map No. 3631 of the entire private driveway that exists on Lot 4 of said CSM for the purposes of ingress to and egress from Lot 3 by the Lessee of Lot 3 (as illustrated on the attached map), with the understanding that the Lessee of Lot 3 shall not park on any portion of the private driveway that exists on Lot 4, ..."

BE IT FURTHER RESOLVED, That the Ground Lease Agreements are amended in Article I--Premises by inserting the word "private" within the description such that the relevant clause reads:

"... together with and subject to use of an easement in common with others for ingress and egress over the existing private driveway located ...".

BE IT FURTHER RESOLVED, That the Ground Lease Agreements are amended in Article IV--Rights and Privileges Granted Lessee, item 1, Sentence 1, by adding the words "via the private driveway" such that the relevant clause reads:

"... the shared right of ingress to and egress from said demised lands across Lots 1 and 2 via the private driveway, which rights shall extend ..."

BE IT FINALLY RESOLVED That all such amendments shall be in a form approved by the City Attorney, and the Mayor and City Clerk and other appropriate City officers are authorized to sign an amendment to the Ground Lease Agreements to memorialize these changes.