



## Legislation Text

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**File #:** 34553, **Version:** 1

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### .Fiscal Note

Annual rent payable during the first five lease years shall be in the amount of \$1,000.00 and shall be deposited into the General Fund (Acct. No. GN01-78220). Rent shall be subject to a 10% increase every five years beginning on the fifth anniversary of the air space lease.

### Title

Authorizing the Mayor and City Clerk to execute an air space lease with All Saints Retirement Center, Inc., and All Saints Cottages and Condos, Inc. to accommodate a skywalk connecting the two properties located at 8202 Highview Drive and 501 Commerce Drive.

### Body

WHEREAS, All Saints Retirement Center, Inc. ("ASRCI") is the owner of property located at 8202 Highview Drive; and

WHEREAS, All Saints Cottages and Condos, Inc. ("ASCCI") is the owner of property located at 501 Commerce Drive; and

WHEREAS, the ASRCI property and the ASCCI property (collectively, the "Abutting Properties") are improved, or will be improved, with two buildings (the "Buildings") that are part of an integrated development commonly known as All Saints Campus; and

WHEREAS, ASRCI and ASCCI desire to construct an enclosed elevated pedestrian walkway (the "Skywalk") over the Commerce Drive public right of way connecting the Buildings; and

WHEREAS, the terms of an air space lease have been negotiated between the Office of Real Estate Services, ASRCI and ASCCI; and

WHEREAS, the lease of the necessary air space over public right of way is in accordance with Wisconsin Statutes Section 66.0915(4).

NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Clerk are authorized to execute an air space lease ("Lease") with All Saints Retirement Center, Inc. and All Saints Cottages and Condos, Inc. (collectively, the "Lessees") on the following terms and conditions:

1. The City shall lease to the Lessees a portion of the Commerce Drive public right of way described in attached Exhibit A and depicted in attached Exhibit B as the "Leased Premises," which area is contiguous to the Lessees' Properties located at 8202 Highview Drive and 501 Commerce Drive (collectively, the "Abutting Properties").

2. The Leased Premises shall consist of approximately 1,872 sq. ft. and shall be used by the Lessees for the construction, maintenance and operation of a skywalk connecting the Abutting Properties (the "Skywalk"), as depicted in attached Exhibit C. The Skywalk shall be used exclusively by the employees, agents, permittees and invitees of the Lessees.

3. The Lease shall be for a term of ninety-eight (98) years, commencing as of August 1, 2014 (the "Effective Date") and expiring on July 31, 2112. The term "Lease Year" shall mean a full one (1) year period. The first Lease Year shall begin on the Effective Date. Each succeeding Lease Year shall begin on the anniversary of

the Effective Date.

4. During the first five Lease years, the Lessees shall pay to the City annual rent of \$1,000. Rent shall be subject to a 10% increase every five years beginning on the fifth anniversary of the Lease.

5. Except for the initial construction of the Skywalk undertaken in accordance with the approved PUD (SIP) for the Abutting Property located at 501 Commerce Drive, no further construction, modification, improvement, alteration, or remodeling of the Skywalk shall be undertaken without prior written approval of the City's Office of Real Estate Services, and any plans for any of the same are subject to written approval of the City's Office of Real Estate Services. Title to all improvements installed or erected by the Lessees within the Leased Premises shall be in and remain the property of the Lessees for and during the entire term, subsequent terms or proper assignment of the Lease

6. The Lessees may sell, assign, transfer, sublease, mortgage, pledge, encumber, grant and convey their interests in the Lease and the Permitted 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 Abutting Property to the same purchaser or transferee of the Lease and the Permitted Improvements.

7. The Lessees shall be liable to and shall 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 Lessees or their officers, officials, officers, agents, employees, assigns, guests, invitees, sublessees or subcontractors, in the performance of the Lease, whether caused by or contributed to by the negligence of the City, its officers, officials, agents, or employees.

8. The Lessees shall carry commercial general liability insurance covering as insured the Lessees and naming the City, its officers, officials, agents and employees as additional insureds, with a minimum limit of \$5,000,000 per occurrence (\$5,000,000 limit can be obtained with a combination of general liability and umbrella liability). This policy shall also be endorsed for contractual liability in the same amount, apply on a primary and noncontributory basis, and provide the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to the policy during the term of this Lease, unless otherwise permitted by the City Risk Manager. As evidence of this coverage, the Lessees shall furnish the City with a certificate of insurance on a form approved by the City, and, if requested by the City Risk Manager, the Lessees shall also provide copies of additional insured endorsements or policy. If the coverage required above expires while this Lease is in effect, the Lessees shall provide a renewal certificate to the City for approval.

9. The Lessees shall represent and warrant that their use of the Leased Premises will not generate any hazardous substance, and they 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 Lessees 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.

10. Within one year after the effective date of the expiration or termination of the Lease, the Lessees shall cause the Skywalk to be demolished and removed.

11. The Skywalk shall conform where applicable to chapter SPS 362 of the Wisconsin Administrative Code, and the Americans with Disabilities Act, regarding accessibility, with all costs of compliance to be paid by the Lessees.

12. The Lessees shall be jointly and severally liable for all terms and conditions, including payments, of the Lease.

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.