



## Legislation Text

---

**File #:** 43885, **Version:** 1

---

### **Fiscal Note**

No expenditure required; however, there is the potential for additional costs in the event a lawsuit would arise between the parties since the City may incur legal expenses that would otherwise be paid by The American Center Owner's Association, Inc. and American Family Mutual Insurance Company if standard indemnification language were used.

### **Title**

Authorizing the City of Madison to accept a Permanent Limited Easement for Public Sidewalk and Bus Pad purposes from The American Center Owner's Association, Inc. and American Family Mutual Insurance Company across portions of Outlots 3, 4, 5, 6, 7, 9 and Lot 1 of The American Center Plat which will contain non-standard indemnification language.

### **Body**

WHEREAS, The American Center Owner's Association, Inc. ("ACOC") is the owner of Outlots 6 and 7 of The American Center Plat and the American Family Mutual Insurance Company ("AFMIC") is the owner of Outlots 3, 4, 5, 9, and also Lot 1 of The American Center Plat (collectively, the "Property"); and

WHEREAS, in accordance with a previous development agreement between AFMIC and the City of Madison ("City"), AFMIC constructed private sidewalk improvements over portions of the Property, with shared ownership and maintenance responsibilities between ACOC and AFMIC (collectively, the "Owners"); and

WHEREAS, the Owner's sidewalk improvements are currently being used by the public for pedestrian purposes without the benefit of public easement rights; and

WHEREAS, the portions of the Property currently being used for sidewalk purposes are described and depicted on attached Exhibit A (the "Easement Areas"); and

WHEREAS, in accordance with City Engineering Division Project No. 11106, Citywide Sidewalk Installation and Repair, the City desires to install public concrete bus pads and connecting sidewalks to the existing sidewalks located in the Easement Areas, as shown on attached Exhibit B; and

WHEREAS, to provide for the installation of the bus pads and connecting sidewalks, the maintenance of the existing sidewalks, and/or the potential removal of any part of these improvements in the future, the Owners desire to grant, at no cost to the City, and the City desires to accept, a Permanent Limited Easement for Public Sidewalk and Bus Pad Purposes ("Easement"); and

WHEREAS, the Easement shall include non-standard indemnification language, written as follows; "The City shall be liable to and agrees to indemnify, defend and hold harmless the Owner from and against all loss or expense, including liability costs and attorney's fees, by reason of any claim or suit, for damages because of bodily injury or property damage arising from or caused by the City's negligent acts or omissions arising under this Easement, except that the City shall not be liable if a claim or suit arises from the negligence and willful acts of Owner. Nothing in this provision shall be construed as a waiver of any of the statutory caps on damages to which the City may be entitled pursuant to Wis. Stat. §893.80, or any other applicable statutory section."

NOW, THEREFORE, BE IT RESOLVED that the City of Madison is hereby authorized to accept from American

Center Owner's Association, Inc. and American Family Mutual Insurance Company, at no cost to the City of Madison, a Permanent Limited Easement for Public Sidewalk and Bus Pad Purposes across a portion of the Property, as described and depicted on attached Exhibits A and B, which will contain non-standard indemnification language.