

Wilmington, Delaware
May 28, 2020

#4808

WHEREAS, pursuant to Section 8-208 of the City Charter, the Department of Public

Sponsor:

Works shall itself, or by contract, be responsible for the maintenance and repair of all city

**Council
Member
Freel**

buildings and grounds unless any department, board or commission has been approved to perform such services itself; and

WHEREAS, GFM Enterprises, L.L.C. (“GFM”) is the owner of 1925 Lovering Avenue, Wilmington, Delaware, 19806, Tax Parcel No. 26-013.20-146; and

WHEREAS, while the City of Wilmington is the owner of certain parkland bounded by Lovering Avenue, N. Union Street, Kentmere Parkway, Academy Place and the GFM Parcel (the “Park”); the State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation (“State”) operates and maintains the Park pursuant to a longstanding agreement and practice with the City; and

WHEREAS, the City and the State previously approved the installation by GFM of a walkway (the “Walkway”) over and across the Park between Kentmere Parkway and the northeast side of the GFM Parcel; and

WHEREAS, in consideration for the permission granted by the City and State to construct the Walkway, GFM desires to execute a declaration (“Declaration” or “Walkway Maintenance Declaration”), a copy of which is attached hereto as Exhibit “A”, for the benefit of the City and the State, to be responsible for the ongoing maintenance and repair of the Walkway at GFM’s sole cost and expense.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE
CITY OF WILMINGTON** that the Council hereby authorizes the Department of Public

Works to accept the Walkway Maintenance Declaration made by GFM Enterprises L.L.C. to provide ongoing maintenance and repair of the Walkway located over and across the City's parkland between Kentmere Parkway and the northeast side of the GFM Parcel.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution authorizes the Department of Public Works to accept a declaration from GFM Enterprises, L.L.C. to provide ongoing maintenance and repair for the Walkway located over and across the City's parkland between Kentmere Parkway and the northeast side of the GFM Parcel.

EXHIBIT A

Prepared by and, after recording, return to
Gordon, Fournaris & Mammarella, P.A.
1925 Lovering Avenue
Wilmington, DE 19806

WALKWAY MAINTENANCE DECLARATION

This Walkway Maintenance Declaration ("Declaration") is made this ____ day of _____, 2020, by **GFM Enterprises, L.L.C.**, a Delaware limited liability company ("Declarant" or "GFM") for the benefit of **The City of Wilmington**, a municipal corporation of the State of Delaware ("City") and the **State of Delaware, Department of Natural Resources and Environmental Control, Division of Parks and Recreation** ("State"). The City and the State are each a "Beneficiary" and, together, are the "Beneficiaries" of this Declaration so long as the latter operates and maintains the Park (as defined below).

BACKGROUND

A. GFM is the owner of 1925 Lovering Avenue, Wilmington, Delaware, being Tax Parcel No. 26-013.20-146, which property is described more particularly as Parcel No. 1 in the deed dated November 26, 2002 between The Delaware Academy of Medicine, Inc. and GFM, of record at the Office of the Recorder of Deeds in and for New Castle County, Delaware ("Recorder's Office"), as Instrument No. 20021127-0115592 ("GFM Parcel").

B. While the City is the owner of certain parkland located in the City of Wilmington, State of Delaware, bounded by Lovering Avenue, N. Union Street, Kentmere Parkway, Academy Place (Microfilm No. 5742) and the GFM Parcel ("Park"), being part of Tax Parcel No. 26-013.40-075, the State operates and maintains the Park pursuant to a longstanding agreement and practice with the City.

C. At the request of GFM, the City and the State have approved the installation by GFM of a walkway ("Walkway") over and across the Park between Kentmere Parkway and the northeast side of the GFM Parcel.

D. GFM executes this Declaration to provide for the ongoing maintenance and repair of the Walkway.

COVENANTS

NOW, THEREFORE, for and in consideration of the permission granted to GFM by the City and the State to construct the Walkway, the parties hereto agree as follows:

1. Construction; Repair and Maintenance; Alterations. GFM shall, at GFM's sole cost and expense, construct the Walkway in accordance with plans previously approved by the City and the State that are attached hereto as Exhibit A and made a part of this Declaration. GFM shall, at GFM's sole cost and expense, be responsible for the repair and maintenance of the Walkway. No alterations shall be made to the Walkway without the prior written approval of the City and the State. The Walkway is the full extent of the improvements to be made by GFM to the Park. GFM does not anticipate making any further improvements to the Park.

2. Indemnification. GFM shall indemnify, defend and hold the City and the State harmless from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, suits, administrative proceedings, costs and expenses of any kind or nature (unless the foregoing results from the intentional acts or negligence of the City or the State), including reasonable attorney fees, which arise out of or result from the intentional acts or negligence of GFM, its agents, employees, representatives, licensees, contractors or invitees, in connection with the condition of the Walkway.

3. Insurance. As long as this Agreement remains in effect, GFM shall at all times maintain a policy of Commercial General Liability, Bodily Injury/Property Damage Insurance (the "Policy"), in commercially reasonable amounts, initially not less than One Million Dollars (\$1,000,000) combined single limit per occurrence for personal injury and property damage, and shall provide to the City, upon request, a certificate evidencing such insurance coverage. The Policy shall name the City as an additional insured.

4. Termination.

(a) *By the City and the State.* The City and the State (as long as they have an interest in the Park) shall have the right, by their joint action so long as the State maintains and operates the Park, and the City shall have the right by itself if the State should no longer maintain and operate the park, to require that GFM remove the Walkway from the Park and restore the area affected substantially to its condition prior to the construction of the Walkway. Following the removal of the Walkway and restoration of the land and, except as provided for in Section 2 above (regarding indemnification), GFM shall have no further obligation hereunder.

(b) *By GFM.* GFM shall have the right at any time to remove the Walkway from the Park and restore the area affected substantially to its condition prior to the construction of the Walkway. Following the removal of the Walkway and restoration of the land and, except as provided for in Section 2 above (regarding indemnification), GFM shall have no further obligation hereunder.

5. Miscellaneous.

(a) *Covenants Run with the Land.* The obligations assumed by GFM hereunder shall run with and bind the GFM Parcel and shall be binding upon subsequent owners of the GFM Parcel.

Exhibit A

