

**AIRSPACE LEASE**

**BETWEEN**

**THE CITY OF MILWAUKEE**

**AND**

**THE REDEVELOPMENT AUTHORITY OF THE CITY  
OF MILWAUKEE**

**(MANPOWER PROJECT)**

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## AIRSPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation (Lessor), and the Redevelopment Authority of the City of Milwaukee, a public body corporate and politic organized and existing under the laws of the State of Wisconsin (Lessee), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes, do hereby make and enter into this Lease Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2006.

1. DESCRIPTION. The Lessor hereby leases to Lessee an airspace over West Cherry Street between North Dr. Martin Luther King Jr. Drive and former North Second Street, in the City of Milwaukee, for the purpose of constructing and maintaining a skywalk connecting property to be known as \_\_\_\_\_ and \_\_\_\_\_ in the area legally described on EXHIBIT "A", (the "Airspace").

The foregoing Airspace legal description shall be adjusted to match final "as-built" construction. Lessee shall provide the City Engineer of the City of Milwaukee with an "as-built" legal description of the skywalk corresponding to the final plans, within 60 days after completion of the construction of the skywalk.

2. Terms. The Lease shall run for a period of 99 years from the date of this Lease; provided, however, that the Lessee may terminate the Lease at any time during the 99-year period by giving Lessor due notice of its intention to terminate the Lease in writing by registered or certified mail at least six months prior to the termination date specified in the notice; the termination, however, shall not become effective until all structures located within the Airspace are completely removed.

3. Rental. The rental payable to the Lessor from the Lessee under the Lease shall be the sum of \$\_\_\_\_\_ per year. This rental shall be paid by the Lessee in annual payments to the Office of the City Comptroller, the first payment being due upon execution of this Lease, and future annual payments to be due 30 days prior to the annual anniversary date of the Lease. At the option of the Lessor, the rental amount may be reviewed and increased every ten years. Rent increases shall be proportionate to any increase in the averaged land values of the adjoining properties. If appropriate, the Lessee may pre-pay the rental fee in a lump sum at a discounted rate to be determined by the City's Department of City Development.

4. Use and Occupancy. The Lessee covenants and agrees that upon the execution of this Lease, it will in due course construct or cause to be constructed a skywalk, a portion of which shall be located within the Airspace.

5. Plans, Regulations, and Permits. The Lessee shall have the plans and specifications for the skywalk prepared by a registered professional engineer. The plans and specifications shall be approved by the Commissioner of Public Works and the Commissioner of the City Development of the City of Milwaukee prior to the commencement of construction of the skywalk. The skywalk shall be constructed in compliance with the plans and specifications. The Lessee shall further obtain the necessary permits for the construction and pay all required fees, and comply with all the building and zoning regulations of the Lessor, the County of Milwaukee, and the State of Wisconsin which shall at any time be applicable to the construction and maintenance of the skywalk.

6. Maintenance. The Lessee shall cause the skywalk to be maintained and regulate its use and occupancy so that its use will not be a hazard or danger to persons or property within the public right of way. No material changes to the skywalk that deviate from the approved plans and specifications may be made during the term of this Lease without the written approval of the Commissioner of Public Works.

7. Insurance and Indemnity. The Lessee shall maintain and keep in force during the term of the Lease public-liability insurance in no event less than the amount of [\$500,000.00] for an individual claim and [\$1,000,000.00] for multiple claims arising out of an accident involving the skywalk or the use or occupancy of the Airspace, and the Lessor shall be named as an additional insured and shall be held harmless from all claims, liabilities, or causes of action arising out of any injury to person, or persons, or damage to real or personal property arising out of the construction, maintenance, destruction, or dismantling of the skywalk, or from collapse of the skywalk; or which arise by reason of any material or thing whatsoever falling or being thrown from the skywalk. A certificate of insurance, including Lessor as a party insured, shall be deposited with the City Clerk of the City of Milwaukee immediately following execution of the Lease. [This policy of insurance shall also contain a provision that during the period of construction of the building the aggregate limits of the policy for multiple claims shall be increased to \$3,000,000.00.] At the option of the Lessor, these minimum amounts may be reviewed and increased or decreased every ten years.

8. Termination of Lease in the Event of Condemnation. In the event that any governmental authority or agency shall require the use of or take all of, or a major portion of, the skywalk, to the extent that the skywalk would no longer be usable or useful to the Lessee, this Lease shall be terminated as of the time the use and occupancy of the skywalk is surrendered. It is further understood that in the event of condemnation or acquisition by any governmental authority or agency of the building, the value of the leasehold interest created hereunder shall not be an element of damages, nor in any way be considered as a factor of valuation of the property acquired.

9. Removal of Street Facilities. The Lessee shall upon demand by the Lessor pay such charges as may be incurred by the Lessor for the removal or relocation of any facilities, utilities, or structures within the public way in the vicinity of the skywalk that are made necessary by reason of the construction of the skywalk. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation that may be required.

10. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the skywalk by an act of God, casualty, public enemies, or by reason of riot or insurrection, the Lease shall terminate and the Lessee shall not be required to pay any further rent to the Lessor. Notwithstanding the foregoing, the Lessee shall have the right to reconstruct the building located in the Airspace and this Lease shall not terminate, provided such reconstruction is commenced within six months of the damage or destruction, and in such event,

Lessee shall pay rental for any period during which the skywalk was damaged, destroyed or inoperative.

11. Entry by Lessor. The Lessor, by its officers, agents, or employees, may at all reasonable times during business hours and upon reasonable prior notice have access to and enter the skywalk and the Airspace to view the condition of the skywalk and require any and all necessary repairs and alterations thereto for the public safety and well-being. This right shall in no way eliminate the Lessee's obligation of determining and maintaining the structural adequacy of the skywalk.

12. Default and Penalty. In the event default shall be made at any time by the Lessee in payment of rent, and such default shall continue for a period of 30 days after written notice thereof by registered mail or certified mail to the Lessee by the Lessor, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by the Lessee, and such default shall continue for 30 days after written notice thereof by registered or certified mail to the Lessee from the Lessor, or if default is of such a nature as to require more than 30 days to effect a cure, and Lessee shall not commence to cure such default within the 30-day period after notice as provided above, and thereafter diligently proceed to cure such default, then the Lessor may at any time thereafter prior to the curing of such default within reasonable time, declare the term of the Lease ended and terminated by giving the Lessee written notice of its intention. If possession of the Airspace is not immediately surrendered, the Lessor may re-enter therein and declare the Lease to be terminated; and in such event the Lessor may require that the Lessee

remove and demolish the skywalk at its own expense or the Lessor may remove or demolish the skywalk and require the payment of the expense thereof from the Lessee to the Lessor within 30 days thereafter.

13. Surrender of Premises. Upon the termination of the Lease, the Lessee agrees to surrender or relinquish any claims or right to further utilize the Airspace. The Lessee shall, prior to surrender of the Airspace, cause the skywalk to be demolished and removed and the Airspace returned to the same condition as it was when first acquired by the Lessee in compliance with the applicable building codes. In the event of the failure of the Lessee to remove the skywalk within 6 months after the termination of the Lease, it shall pay liquidated damages to the Lessor in the sum of \$100.00 for each and every day it remains in possession of the area after the expiration of six months from the termination of the Lease.

14. Parties to Lease. The term "parties to the Lease" shall include the successors and assigns of the Lessor and Lessee, respectively. Lessor and Lessee acknowledge that, upon completion of the skywalk, Lessee contemplates assignment of this Lease to the Brewery Works, Inc.

15. Effect of Lease. This Lease and the ordinance under which it is executed shall not operate to repeal, rescind, modify, or amend any ordinances or resolutions of the City of Milwaukee relating to the use or obstruction of streets, the granting of permits, and any regulations relating to the preservation of order and movement of traffic, or any other similar ordinances, resolutions, or



regulations not specifically set forth in the ordinance of which this Lease is a part, or as authorized by said sec. 66.0915(4), Wisconsin Statutes.

16. Assignment. The Lessee, and its successors and assigns, may assign its interest in this Lease to any party who holds fee title or a leasehold estate in the land abutting the Airspace. With respect to each assignment, the assignee shall execute a written instrument whereby it agrees to assume and be bound by all of the responsibilities and obligations of the Lessee under the Lease and the assignor shall be released from all obligations and liabilities under this Lease, and a notarized copy shall be submitted to the City Engineer for record-keeping purposes and the City Comptroller for billing purposes.

17. Notices. Notices required hereunder shall be sent to:

For the Lessor:

City Engineer  
Infrastructure Services Division  
841 North Broadway, Room 701  
Milwaukee, WI 53202

For the Lessee:

Redevelopment Authority of the City of Milwaukee  
809 North Broadway  
Milwaukee, WI 53202  
Attn: Executive Director

18. Signs. The Lessee shall not place or maintain any signs or cause them to be placed in or on the skywalk so as to be readable from the street, without the written approval of the City's Commissioner of Public Works.

IN WITNESS WHEREOF, parties hereto have caused this Lease to be executed by their duly authorized officers as of the date set forth above.

**CITY OF MILWAUKEE**

\_\_\_\_\_  
TOM BARRETT, Mayor

\_\_\_\_\_  
RONALD D. LEONHARDT, City Clerk

**COUNTERSIGNED:**

\_\_\_\_\_  
W. MARTIN, MORICS, Comptroller

**REDEVELOPMENT AUTHORITY OF  
THE CITY OF MILWAUKEE:**

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Executive Director/Secretary





## EXHIBIT A

### **Air Space Lease**

A corridor of air space 15.50 feet high, measured from 1 foot below the bottom elevation to 1 foot above the upper most roof line of the bridge structure, in and over West Cherry Street, located in the Southeast 1/4 of Section 20, Township 7 North, Range 20 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin, described as follows:

Commencing at the Southwest corner of the Southeast 1/4 of said Section 20; thence North  $89^{\circ}38'09''$  East along the South line of said Southeast 1/4, 1339.88 feet; thence North  $00^{\circ}03'50''$  West, 150t50 feet to the Southeast corner of Parcel 2 of C.S.M. No. 6921 also being the North right of way line of West Cherry Street; thence South  $89^{\circ}52'40''$  West along the South line of said Parcel 2, 21.01 feet to the point of beginning of the air space to be described, the ground elevation at this point is 18.90 feet, City Datum, the bottom elevation of said bridge at this point will be 37.08 feet, City Datum, and the top elevation of said bridge at this point will be 52.58 feet; thence South  $00^{\circ}03'43''$  East, 80.00 feet to the South right of way line of West Cherry Street, the ground elevation at this point is 18.70 feet, City Datum, the bottom elevation of said bridge at this point will be 35.00 feet, City Datum, and the top elevation at this point is 50.50 feet; thence South  $89^{\circ}52'40''$  West along said South right of way, 16.00 feet, the ground elevation at this point is 18.70 feet, City Datum, the bottom elevation of said bridge at this point will be 35.00 feet, City Datum and the top elevation of said bridge at this point will be 50,50 feet; thence North  $00^{\circ}03'43''$  West, 8000 feet to said South line of Parcel 2, the ground elevation at this point is 18.90 feet, City Datum, the bottom elevation of said bridge at this point will be 37.08 feet, City Datum, and the top elevation of said bridge at this point will be 52.58 feet; thence North  $89^{\circ}52'40''$  East along said South line of Parcel 2, 16.00 feet to the point of beginning.

Said Airspace Lease includes 1,280 square feet (0.0294 acres) (19,840 cubic feet) more or less.

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