

DRAFT

AIRSPACE LEASE

BETWEEN

THE CITY OF MILWAUKEE

AND

ST. JOSEPH REGIONAL MEDICAL CENTER, INC.

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LEASE

The City of Milwaukee, a municipal corporation (Lessor), and St. Joseph Regional Medical Center, Inc., a Wisconsin nonstock corporation (Lessee) pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (1999-2000), do hereby make and enter into this Lease Agreement as of the ___ day of _____, 2003.

1. DESCRIPTION. The Lessor hereby leases an airspace over North 51st Street between West Chambers and West Burleigh Streets, in the City of Milwaukee, for the purpose of replacing, operating, and maintaining a pedestrian bridge joining Lessee's hospital building on property known as 5000 West Chambers Street and a parking structure on North 51st Street, with the lowest part not less than 13 feet above the roadway of North 51st Street and consisting of not more than 12.71 feet in width and 27.52 feet in height, the airspace being more particularly described as follows:

That part of the Northwest $\frac{1}{4}$ and the Northeast $\frac{1}{4}$ of Section 14, Township 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, described as follows:

An airspace easement across North 51st Street between West Chambers Street and West Burleigh Street bounded and described as follows:

Commencing at the Northwest corner of said Northeast $\frac{1}{4}$; thence South 00°34'03" East, on and along the West line of said Northeast $\frac{1}{4}$, 599.56 feet; thence South 89°42'11" West 33.00 feet to the West right of way line of North 51st Street and the point of beginning (ground elevation 139.9 feet, bottom of airspace elevation 153.71 feet, top of airspace elevation 181.23 feet); thence North 00°34'03" West, on and along said West right of way line, 12.71 feet to a point (ground elevation 140.1 feet, bottom of airspace elevation 153.71 feet, top of airspace elevation 181.23 feet); thence South 89°42'11" West, 66.00 feet to the East right of way line of North 51st Street (ground elevation 140.4 feet, bottom of airspace elevation 153.71 feet, top of airspace elevation 181.23 feet); thence South 00°34'03" East, on and along said East right of way line, 12.71 feet to a point (ground elevation 140.1 feet, bottom of airspace elevation 153.71 feet, top of airspace elevation 181.23 feet); thence South 89°42'11" West,

66.00 feet to the point of beginning containing 839 square feet (0.02 acres), more or less.

Said airspace easement containing 23,084 cubic feet, more or less.

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

2. Term. The Lease shall run for a period of 99 years from the date of the execution of the Lease. The Lessee, however, 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 the structure is completely removed and the public right of way restored to the satisfaction of the Commissioner of Public Works.

3. Rental. The rental to the Lessor by the Lessee under the Lease shall be the sum of \$150.00 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 20 days after the passage of an ordinance by the Common Council of the City of Milwaukee approving 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 neighboring 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 with Lessor, it will in due course construct a pedestrian bridge to be located entirely within airspace subject to this Lease to provide a pedestrian walkway between the building at 5000 West Chambers Street on the east side of North 51st Street, and the parking structure located on the west side of North 51st Street. Lessee further covenants and agrees that the bridge will be operated, used, and maintained in accordance with operating standards, methods, and procedures ("Standards") that may be established from time to time by the Plan Commission of the City of Milwaukee. Access on either end of the bridge shall be handicap accessible in accordance with State Statutes (Barrier Free Access Codes). All construction shall comply with the Americans With Disabilities Act of 1990 and regulations thereunder.

5. Plans, Regulations, and Permits. The Lessee shall have the plans and specifications for the bridge prepared by a registered professional engineer or architect, which plans and specifications shall specifically provide for the prevention of ice accumulation on the bridge, and methods by which pigeons and other birds will be prevented or discouraged from roosting or nesting on or near the bridge. 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 bridge. The bridge shall be constructed in compliance with the intent of the plans and specifications to the satisfaction of the registered professional engineer or architect who shall supervise the construction thereof. 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 bridge.

6. **Maintenance.** The Lessee shall safely maintain the bridge and regulate its use and occupancy so that the bridge or its use will not be a hazard or danger to the persons or property of the public using the public right of way. No material changes to the structure that deviate from the original plans and specifications may be made during the course 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 for the same limits as are and will be in effect for the adjoining structures, but 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 bridge or the use or occupancy of the premises hereby leased, 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 bridge, or from collapse of the bridge; or which arise by reason of any material or thing whatsoever falling or being thrown from the bridge. A certificate of insurance in those sums, 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 bridge 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, with any adjustment being proportionate to the land value of the abutting properties.

8. **Termination of Lease in the Event of Condemnation of Either or Both Structures.** In the event that any governmental authority or agency shall require the use of or

take all of, or a major portion of, either one or both of structures that are connected by said bridge, to the extent that the bridge would no longer be usable or useful to the Lessee or to the extent that either or both structures would not require the continued use of the bridge, this Lease shall be terminated as of the time the use and occupancy of said bridge or structures or structures are surrendered and the bridge is removed pursuant to this Lease. It is further understood that in the event of condemnation or acquisition by any governmental authority or agency of all or a part of either one or both of the structures, the value of the bridge or any 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 bridge that are made necessary by reason of the construction of the bridge. 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 the bridge by an act of God, 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. In that event, the Lease shall not terminate if the Lessees shall reconstruct the bridge or any portion thereof demolished, provided the reconstruction is commenced within six months of the destruction, and in such event Lessee shall pay rental for any period during which the bridge was destroyed or inoperative.

11. **Entry by Lessor.** The Lessor, by its officers, agents, or employees, may at all reasonable times during Lessee's business hours have access to and enter the bridge to view the

condition of the bridge 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 bridge.

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 demised area 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 bridge at their own expense or the Lessor may remove or demolish the bridge 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 agree to surrender or relinquish any claims or right to further utilize this area. The Lessee shall, prior to surrender of the area, cause the bridge to be demolished and removed and the area 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 bridge within

6 months after the termination of the Lease, they shall pay liquidated damages to the Lessor in the sum of \$100.00 for each and every day they remain 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.

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(3), Wisconsin Statutes (1999-2000).

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 described in paragraph 1 of this Lease. With respect to each assignment, if the assignee executes a written instrument whereby it agrees to assume and be bound by all of the responsibilities and obligations of the Lessee under the Lease, 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 620
Milwaukee, WI 53202

For the Lessee:

Mr. Louis Yaeger
Vice President Support Services
St. Joseph Regional Medical Center, Inc.
5000 West Chambers Street
Milwaukee, WI 53210

18. Signs. The Lessee shall not place or maintain any signs or cause them to be placed in or on the bridge occupying the leased premises so as to be readable from the street, without permission of the Commissioner of Public Works. No signs shall be attached to or placed on the exterior of the bridge at any time.

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by John O. Norquist, Mayor, and Ronald D. Leonhardt, City Clerk, and countersigned by W. Martin Morics, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ___ day of _____, 2003.

CITY OF MILWAUKEE

SIGNED AND SEALED IN PRESENCE OF:

JOHN O. NORQUIST, Mayor

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

W. MARTIN, MORICS, Comptroller

IN WITNESS WHEREOF, St. Joseph Regional Medical Center, Inc., a special-purpose district has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 2003.

**ST. JOSEPH REGIONAL MEDICAL
CENTER, INC.**

By: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, John O. Norquist, Mayor of the City of Milwaukee, above-named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such Mayor of such municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation by its authority and pursuant to Ordinance No. _____ adopted by the Common Council of the City of Milwaukee on _____.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, Ronald D. Leonhardt, City Clerk of the City of Milwaukee, above named municipal corporation, to me known to be the person who executed the foregoing instrument, and to me known to be such City Clerk of said municipal corporation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, by its authority and pursuant to Ordinance No. _____ adopted by its Common Council on _____.

Notary Public, State of Wisconsin
My commission expires: _____
STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, W. Martin Morics, City Comptroller of the City of Milwaukee, the above-named municipal corporation, to me known to be the person who executed the foregoing instrument and to me known to be such City Comptroller of said municipal corporation and acknowledged that he executed the foregoing instrument as such officer as the deed of said municipal corporation, by its authority, and pursuant to Ordinance No. _____ adopted by its Common Council on _____.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ___ day of _____, 2003,
_____ the _____ of the above-named party, St. Joseph
Regional Medical Center, Inc., to me known to be the persons who executed the foregoing
instrument and to me known to be such _____ of such body and acknowledged
that he executed said foregoing instrument as such officers as the deed of said body, by its
authority.

Notary Public, State of Wisconsin
My commission expires: _____

Approved as to form and execution
this ___ day of _____, 2003.

Special Deputy Assistant City Attorney

This instrument was drafted
by the City of Milwaukee

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