

AIRSPACE LEASE

BETWEEN

THE CITY OF MILWAUKEE

AND

GASLIGHT SQUARE APARTMENTS, LLC

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LEASE

The City of Milwaukee, a municipal corporation (Lessor), and Gaslight Square Apartments, LLC a Wisconsin limited liability corporation (Lessee), pursuant to the provisions of sec. 66.0915(4), 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 air space over the sidewalk area bordering East Menomonee Street between North Milwaukee Street and North Jefferson Street; and over the sidewalk areas bordering North Milwaukee and North Jefferson Streets, between East Corcoran Avenue and East Menomonee Street; in the City of Milwaukee, for the purpose of constructing, using and maintaining portions of three buildings on property located at 425 East Menomonee Street, 136 North Milwaukee Street, and 141 North Jefferson Street, ("the buildings"), with the lowest part not less than 21 feet above the sidewalk areas consisting of not more than 30 feet in width, 3 feet of projection, and 35 feet in height, the airspace being more particularly described in Exhibit A, attached.

The 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 portions of buildings within the leasehold area corresponding to the final plans, within 60 days after completion of the construction.

2. Terms. The Lease shall run for a period of 99 years from the date of the execution of the 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 the structure is completely removed.

3. Rental. The rental to the Lessor by the Lessee under the Lease shall be the sum of \$377.00 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 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 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 those portions of the buildings that will be located within the area of the Lease.

5. Plans, Regulations, and Permits. The Lessee shall have the plans and specifications prepared by a registered professional engineer, which plans and specifications shall specifically provide for the prevention of ice accumulation on the leasehold area. 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. The portions of the buildings within the leasehold area shall be constructed in compliance with the intent of the plans and specifications to the satisfaction of the registered professional engineer 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 buildings.

6. Maintenance. The Lessee shall safely maintain the buildings and regulate their use and occupancy so that the leasehold area 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 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 building or the use or occupancy of the area 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 buildings, or from collapse of the buildings; or which arise by reason of any material or thing whatsoever falling or being thrown from the buildings. 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 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 property.

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, any or all of the buildings, to the extent that any or all of the buildings 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 building is surrendered. It is further understood that in the event of condemnation or acquisition by any governmental authority or agency of any or all of the buildings, 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 Lessees 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 buildings that are made necessary by reason of the construction. 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 buildings 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 buildings located in the leased premises 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 building was damaged, 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 and upon reasonable prior notice have access to and enter the leasehold area to view the condition of the area 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 buildings.

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 buildings at its

own expense or the Lessor may remove or demolish the building 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 this area. The Lessees shall, prior to surrender of the area, cause the building 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 building 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.

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 (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 701
Milwaukee, WI 53202

For the Lessee:

Barry R. Mandel
111 East Wisconsin Avenue, Suite 1700
Milwaukee, WI 53202

18. Signs. The Lessees shall not place or maintain any signs or cause them to be placed in or on the leased premises so as to be readable from the street, without permission of the Commissioners of Public Works and Neighborhood Services.

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

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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, Gaslight Square Apartments, LLC, a limited liability corporation district has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 2003.

GASLIGHT SQUARE APARTMENTS, LLC

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. 021503 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. 021503 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. 021503 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, Gaslight Square Apartments, LLC, 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.

Assistant City Attorney

This instrument was drafted
by the City of Milwaukee
1050-2003-235/69242
6/24/03