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June 29, 2012

VIA HAND DELIVERY

Art Dahlberg, Commissioner
Department of Neighborhood Services
Zeidler Building, Room 104
Attention: Richard Paur

Ghassan Korban, Commissioner
Department of Public Works
Zeidler Building, Room 519

Rocky Marcoux, Commissioner
Department of City Development
809 North Broadway, Second Floor
Attention: Elaine Miller

Jeffrey S. Polenske P.E.
City Engineer
Infrastructure Services Division
Zeidler Building, Room 701
Attention: Dawn Schmidt

Re: Airspace Lease Between City and Northwestern Mutual Life Insurance Company
(Common Council File No. 120085)

Dear Air and Subterranean Space Committee Members:

Enclosed is a revised proposed Airspace Lease between the City of Milwaukee and Northwestern Mutual Life Insurance Company for a skywalk connecting the properties at 733 North Van Buren Street and 720 East Wisconsin Avenue. This revised draft incorporates edits from Northwestern Mutual Life Insurance Company and its attorneys. In addition, I have enclosed a proposed ordinance authorizing the execution of the lease. Please review the enclosed documents in preparation for the space lease committee meeting which will be held on Tuesday, July 3, 2012.

Very truly yours,

THOMAS D. MILLER
Assistant City Attorney

TDM:wt:182412

Enclosure

c: John D. Finerty (via hand delivery)
Brian C. Randall (via hand delivery)
Tobie Black, City Clerk Office (via e-mail)

OFFICE OF THE CITY ATTORNEY

AIRSPACE LEASE

Document Number

Document Title

AIRSPACE LEASE

BETWEEN

THE CITY OF MILWAUKEE

AND

THE NORTHWESTERN MUTUAL LIFE

INSURANCE COMPANY

Recording Area

Name and Return Address

Ms. Elaine Miller
Real Estate and Development Services
Redevelopment Authority of the City of
Milwaukee
809 N. Broadway, 2nd Floor
Milwaukee, WI 53202

Parcel Identification Number (PIN)

DRAFT

AIRSPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation ("Lessor" or "City"), and The Northwestern Mutual Life Insurance Company, Inc., a Wisconsin corporation ("Lessee"), pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (2009-2010), do hereby make and enter into this Lease Agreement as of the _____ day of _____, 2012.

1. Description. Lessor hereby leases to Lessee an airspace over North Van Buren Street between East Mason Street and East Wisconsin Avenue in the City of Milwaukee, for the purpose of constructing and maintaining a skywalk connecting the properties at 733 North Van Buren Street ("733 Building") and 720 East Wisconsin Avenue ("720 Building"), including a column support, (the "Airspace"), the Airspace being more particularly described as follows:

A. Skywalk Bridge.

That part of North Van Buren Street in the NW $\frac{1}{4}$ of section 28, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, which is bounded and described as follows: Commencing at the northwest corner of Lot 12, Block 88, in the Plat of Milwaukee, East of River as recorded in the Milwaukee County registry, said point also being at the intersection of the South line of East Mason Street with the East line of North Van Buren Street; thence South $04^{\circ} 35' 41''$ East along the West line of said Block 88 and said East line of North Van Buren Street, 89.44 feet to the point of beginning of said easement (ground elevation 46.6 FT., bottom of easement elevation 65.33 FT., top of easement elevation 86.83 FT.); thence continue South $04^{\circ} 35' 41''$ East along said West line of Block 88 and said East line of North Van Buren Street, 27.70 feet to a point; (ground elevation 46.1 FT., bottom of easement elevation 65.33 FT., top of easement elevation 86.83 FT.); thence North $81^{\circ} 43' 28''$ West, 71.28 feet to a point; (ground elevation 45.1 FT., bottom of easement elevation 68.10 FT., top of easement elevation 89.60 FT.); thence South $85^{\circ} 15' 54''$ West, 10.51 feet to a point on the West line of North Van Buren Street and the east line Lot 2, Block 29, in the Plat of Milwaukee, East of River as recorded in the Milwaukee County registry; (ground elevation 45.5 FT., bottom of easement elevation 68.10 FT., top of easement elevation 89.60 FT.); thence North $04^{\circ} 35' 41''$ West along said West line of North Van Buren Street, 27.00 FT. to a point; (ground elevation 46.20 FT., bottom of easement elevation 68.10 Ft., top of easement elevation 89.60 FT.); thence North $85^{\circ} 15' 54''$ East, 13.52 FT. to a point; (ground elevation 45.7 FT., bottom of easement elevation 68.10 Ft., top of easement elevation 89.60 FT.); thence South $81^{\circ} 43' 28''$ East, 68.19 feet to the East line of North Van Buren Street and the point of beginning. Containing 2,207 square feet or 47,451 cubic feet of area, more or less. North referenced to the east line of North Van Buren Street, Bearing North $04^{\circ} 35' 41''$ West. Vertical datum referenced to the City of Milwaukee.

B. Support Column.

That part of North Van Buren Street in the NW $\frac{1}{4}$ of section 28, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, which is bounded and described as follows: Commencing at the northeast corner of Lot 1, Block 29, in the Plat of Milwaukee, East of River as recorded in the Milwaukee County registry, said point also being at the intersection of the South line of East Mason Street with the West line of North Van Buren Street; thence South $04^{\circ} 35' 41''$ East along the East line of said Block 29 and the West line of North Van Buren Street, 85.12 feet; thence North $85^{\circ} 17' 02''$ East, 8.51 feet to the point of beginning; thence continue North $85^{\circ} 17' 02''$ East, 7.00 feet; thence South $04^{\circ} 42' 58''$ East, 8.83 feet; thence South $85^{\circ} 17' 02''$ West, 7.00 feet; thence North $04^{\circ} 42' 58''$ West, 8.83 feet to the point of beginning. Containing 62

square feet of land, more or less. North referenced to the west line of North Van Buren Street, bearing North 04° 35' 41" West.

See also, Exhibits A, B, and C. The foregoing Airspace legal description shall be adjusted upon final "as-built" construction. Lessee shall provide the City Engineer 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. Term. The Lease shall run for a period of 99 years from the effective date of this Lease; provided, however, that Lessee may terminate the Lease at any time during the 99-year period by giving Lessor due notice of Lessee's 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 authorized by the Lease is completely removed and the public right of way restored to the satisfaction of the City's Commissioner of Public Works ("Commissioner"). The effective date of this Lease shall be the date that Lessee takes title to the 733 Building. Lessee shall cause this Lease and its authorizing ordinance (No. 120085) to be recorded with the Milwaukee County Register of Deeds immediately after the recording of the title to the 733 Building. Lessee shall deliver the recording information complete with a final copy of the ordinance and lease to the City Engineer and the City Comptroller.

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$_____ per year. This rental shall be paid by Lessee in annual payments to the Office of the City Comptroller, the first payment being due upon the passage of an ordinance of the Common Council of the City of Milwaukee approving the Lease, and future annual payments to be due 30 days prior to the annual anniversary date of the Lease. At the option of Lessor, the rental amount may be reviewed and increased every ten years. Rent increases shall be proportionate to any increase in the average land values of the neighboring properties.

4. Use and Occupancy. Lessee covenants and agrees that upon the execution of this Lease with Lessor, it will in due course construct a skywalk connecting the 733 Building and the 720 Building a portion of which will be located within the Airspace, said skywalk to be used only for a passageway for pedestrians.

5. Plans, Regulations, and Permits. Lessee shall have the plans and specifications for the skywalk prepared by a registered professional engineer, which plans and specifications shall specifically provide for the prevention of ice accumulation on the leasehold area and methods by which pigeons and other birds will be prevented from roosting or nesting on the skywalk. The plans and specifications shall be approved by the Commissioner and the DCD Commissioner prior to the commencement of construction of the skywalk. The skywalk 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. Lessee shall further obtain the necessary permits for the construction of the skywalk, pay all required fees, and comply with all building and zoning regulations of 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. Lessee shall safely maintain the skywalk and regulate its use and occupancy so that the skywalk or the use thereof 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 course of this Lease without the prior written approval of the Commissioner.

7. Insurance and Indemnity. 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 Lessor shall be named as an additional insured and shall be indemnified and 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 design, 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 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 skywalk the aggregate limits of the policy for multiple claims shall be

increased to \$3,000,000.00. At the option of 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 either one or both of the office buildings which are connected by the skywalk, to the extent that the skywalk would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use and occupancy of the skywalk and office building or buildings are surrendered and the skywalk 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 one or both of the adjacent 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. Lessee shall, upon demand by Lessor, pay such charges as may be incurred by 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 Lessee shall not be required to pay any further rent to Lessor. Notwithstanding the foregoing, Lessee shall have the right to reconstruct the skywalk 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. 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 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 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 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 Lessee by Lessor, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by Lessee, and such default shall continue for 30 days after written notice thereof by registered or certified mail to Lessee from 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 Lessor may at any time thereafter prior to the curing of such default within reasonable time, declare the term of Lease ended and terminated by giving Lessee written notice of its intention. If possession of the Airspace is not immediately surrendered, Lessor may re-enter therein and declare the Lease to be terminated; and in such event Lessor may require that Lessee remove and demolish the skywalk at its own expense or Lessor may remove or demolish the skywalk and require the payment of the expense thereof from Lessee to Lessor within 30 days thereafter.

13. Surrender of Premises. Upon the termination of the Lease, Lessee agrees to surrender or relinquish any claims or right to further utilize the Airspace. 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 Lessee in compliance with the applicable building codes, unless otherwise directed by Lessor. In the event of the failure of Lessee to remove the skywalk within six months after the termination of the Lease, Lessee shall pay liquidated damages to Lessor in the sum of \$100.00 for each and every day it remains in possession of the Airspace 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 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 sec. 66.0915(3), Wisconsin Statutes (2009-2010).

16. Assignment. 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, if the assignee executes a written instrument whereby it agrees to assume and be bound by all of the responsibilities and obligations of 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 City (Lessor):
City Engineer
Infrastructure Services Division
841 North Broadway, Room 701
Milwaukee, WI 53202

For Lessee:
Office of the General Counsel
The Northwestern Mutual Life Insurance Company
720 East Wisconsin Avenue
Milwaukee, WI 53202

18. Signs. 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 Commissioner.

DRAFT

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Tom Barrett, Mayor, and James R. Owczarski, City Clerk, and countersigned by Martin Matson, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2012.

CITY OF MILWAUKEE

COUNTERSIGNED:

TOM BARRETT, Mayor

MARTIN MATSON, Comptroller

JAMES R. OWCZARSKI, City Clerk

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2012, Tom Barrett, 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. 120085 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 _____, 2012, James R. Owczarski, 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. 120085 adopted by the Common Council of the City of Milwaukee on _____.

Notary Public, State of Wisconsin
My commission expires: _____

