

Document Number

AIRSPACE LEASE BETWEEN THE
CITY OF MILWAUKEE AND J.V.
HOME IMPROVEMENTS, LLC FOR
AN EXISTING OVERHANG
STRUCTURE

Document Title

**AIRSPACE LEASE BETWEEN
THE CITY OF MILWAUKEE
AND
J.V. HOME IMPROVEMENTS, LLC
FOR AN EXISTING OVERHANG STRUCTURE**

Recording Area

Name and Return Address

Amy Turim
Real Estate Development Services Manager
City of Milwaukee
Department of City Development
809 North Broadway
Milwaukee, WI 53201-0324

AIRSPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and J.V. Home Improvements, LLC, a Wisconsin limited liability company (“Lessee”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2013-2014), do hereby make and enter into this Airspace Lease (“Lease”) as of the _____ day of _____, 2016 (“Effective Date”).

1. Description. Lessor hereby leases to Lessee airspace over the public alley at 3000 South 13th Street in the City of Milwaukee (the “Airspace”), for the purpose of maintaining an existing building overhang (“Overhang Structure”), the Airspace being more particularly described as follows:

That part of a second story structure that overhangs into a 20 foot wide public alley being more particularly described of [sic] follows: Commencing at the Northwest corner of Lot 40, Block 8, Vogel Park being a Subdivision of the Southwest ¼ of the Southwest ¼ of Section 8, Town 6 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin; thence South, 0.22 feet to the intersection the East line of said Lot 40 and the North line of the existing second story structure also being the point of beginning of the land to be described; thence North 89°07’54” East, 5.78 feet; thence South 0°13’48” West, 42.56 feet; thence South 88°50’42” West, 5.61 feet; thence North, 42.58 feet to the point of beginning.

See also, Exhibit A.

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 Lease shall be effective upon execution by the parties. Lessor, at the expense of Lessee, shall cause this Lease and its authorizing ordinance (No. 160351) to be recorded with the Milwaukee County Register of Deeds upon execution of the Lease. Lessee shall provide Lessor with full payment for recording costs upon execution of the Lease.

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$360.00 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 effective date of 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 those portions of the Overhang Structure located within the Airspace will be operated, used, and maintained in accordance with operating standards, methods, and procedures that may be established from time to time by the Plan Commission of the City of Milwaukee.

5. Maintenance. Lessee shall safely maintain the Overhang Structure and regulate its use and occupancy so that the Overhang Structure 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 Overhang Structure that deviate from the original plans and specifications filed with the City of Milwaukee may be made during the course of this Lease without the prior written approval of the Commissioner.

6. 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 \$1,000,000.00 for an individual claim and \$5,000,000.00 for multiple claims arising out of an accident involving the Overhang Structure 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 Overhang Structure, or from collapse of the Overhang Structure; or which arise by reason of any material or thing whatsoever falling or being thrown from the Overhang Structure. 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. At the option of Lessor, these minimum amounts may be reviewed and reasonably adjusted every ten years.

7. 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 building to which the Overhang Structure is attached, to the extent that the Overhang Structure would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use and occupancy of the Overhang Structure is surrendered and the Overhang Structure 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 the adjacent 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.

8. 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 Overhang Structure that are made necessary by reason of the existence of the Overhang Structure. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation that may be required.

9. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the Overhang Structure 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 Overhang Structure 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 Overhang Structure was damaged, destroyed, or inoperative.

10. 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 Airspace to view the condition of the Overhang Structure 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 Overhang Structure.

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

12. 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 Overhang Structure 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 Overhang Structure 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.

13. Parties to Lease. The term "parties to the Lease" shall include the successors and assigns of Lessor and Lessee, respectively.

14. 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(4), Wisconsin Statutes (2013-2014).

15. 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.

18. 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:
J.V. Home Improvements, LLC
Attn: Jose S. Vidrio
3573 South 46th Street
Greenfield, WI 53220

19. Signs. Lessee 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 the written approval of the Commissioner.

[Signature Pages Follow]

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 _____, 2016.

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 _____, 2016, 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. 160351, effective date _____, 2016.

Notary Public, State of Wisconsin
My commission expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ___ day of _____, 2016, 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. 160351, effective date _____, 2016.

Notary Public, State of Wisconsin
My commission expires:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2016, Martin Matson, 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. 160351, effective date _____, 2016.

Notary Public, State of Wisconsin
My commission expires:_____

IN WITNESS WHEREOF, J.V. Home Improvements, LLC, a Wisconsin limited liability company, has caused these presents to be signed at _____, Wisconsin, this ____ day of _____, 2016.

J.V. HOME IMPROVEMENTS, LLC

By:_____

Name (Print):_____

Title:_____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2016, _____, the _____ of the above-named party, J.V. Home Improvements, LLC, to me known to be the person 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 _____, 2016.

Assistant City Attorney

This instrument was drafted by the City of Milwaukee by Assistant City Attorney Thomas D. Miller.

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