

AIRSPACE LEASE
BETWEEN THE CITY OF
MILWAUKEE
AND GEORGETOWN, LLC
FOR AN OVERHANG STRUCTURE

Document Number

Document Title

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

356-0284-000

Parcel Identification Number (PIN)

**AIRSPACE LEASE
BETWEEN THE CITY OF MILWAUKEE
AND GEORGETOWN, LLC
FOR AN OVERHANG STRUCTURE**

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and Georgetown, LLC, a Wisconsin limited liability company (“Lessee”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2011-2012), do hereby make and enter into this Lease Agreement as of the ___ day of _____, 2013.

1. Description. Lessor hereby leases to Lessee an airspace over the sidewalk area on East Ivanhoe Place and North Prospect Avenue, in the City of Milwaukee, for the purpose of constructing and maintaining a building overhang (“overhang”) adjacent to property with the address 2217 N. Prospect Avenue, the airspace being more particularly described as follows:

An air space easement being part of East Ivanhoe Place and North Prospect Avenue located in the Northwest 1/4 of the Northwest 1/4 of Section 22, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin, said airspace easement is located vertically between

elevations 92.0 (bottom of airspace easement) and 141.00 (top of airspace easement) bounded and described as follows:

Beginning at the Northeast corner of Lot 9, Block 27 in Glidden and Lockwood's Addition (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 61.5); thence North 55°01'12" West along the North line of said lot 90.00 feet to a point (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 62.5); thence North 34°58'48" East 8.00 feet to a point (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 62.5); thence South 55°01'12" East and parallel with said lot line 98.00 feet to a point (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 61.5); thence South 35°00'00" West 73.00 feet to a point (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 59.5); thence North 55°00'00" West 8.00 feet to a point on the East line of lot 10, Block 27 (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 59.5); thence North 35°00'00" East along the East line of lots 10 and 9 aforesaid, 65.00 feet to the point of beginning (bottom of airspace elevation: 92.0, top of airspace elevation: 141.00, ground elevation: 61.5). Said elevations are based on City of Milwaukee datum.

See also, Exhibit A. The foregoing legal description shall be adjusted upon final "as-built" construction. Lessee shall provide the City Engineer with an "as-built" legal description of the overhang corresponding to the final plans, within 60 days after completion of the construction of the overhang.

2. Term. The Lease shall run for a period of 99 years from the date of the execution of the 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 ("DPW Commissioner").

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$1,320.00 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 execution 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. If appropriate, 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 ("DCD").

4. Use and Occupancy. Lessee covenants and agrees that upon the execution of this Lease with Lessor, it will in due course construct the overhang, a portion of which shall be located within the area of the Lease. Lessee further covenants and agrees that those portions of the overhang located within the public airspace subject to this Lease 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. Plans, Regulations, and Permits. Lessee shall have the plans and specifications for the overhang 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 DPW Commissioner and the DCD Commissioner prior to the commencement of construction of the overhang. The overhang 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 and pay all required fees, and comply with all the 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 overhang.

6. Maintenance. Lessee shall safely maintain the overhang and regulate its 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 overhang that deviate from the original plans and specifications may be made during the course of this Lease without the prior written approval of the DPW 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 overhang or the use or occupancy of the area hereby leased, and Lessor shall be named as an additional insured and shall be held 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, or from collapse of the overhang; or which arise by reason of any material or thing whatsoever falling or being thrown from the overhang. 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 overhang 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, 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 the adjacent building, to the extent that the overhang would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use and occupancy of the adjacent building is surrendered. 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.

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 overhang that are made necessary by reason of the construction of the overhang. 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 overhang 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 located in the public 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 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 leasehold area to view the condition of the leasehold 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 Lessee's obligation of determining and maintaining the structural adequacy of the overhang.

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

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. 121297 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 _____, 2013, 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. 121297 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 _____, 2013, 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. 121297 adopted by the Common Council of the City of Milwaukee on _____.

Notary Public, State of Wisconsin
My commission expires: _____

IN WITNESS WHEREOF, Georgetown, LLC, a Wisconsin limited liability company, has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 2013.

GEORGETOWN, LLC

By: _____

Name (Print): _____

Title: _____

