

AIRSPACE LEASE BETWEEN THE
CITY OF MILWAUKEE AND JOSEPH
PROPERTY DEVELOPMENT, LLC
FOR OVERHANG STRUCTURES

Document Number

Document Title

**AIRSPACE LEASE BETWEEN
THE CITY OF MILWAUKEE
AND
JOSEPH PROPERTY DEVELOPMENT, LLC
FOR OVERHANG STRUCTURES**

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 Joseph Property Development, 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 sidewalk area bordering North Prospect Avenue at 2214-2228 N. Prospect Avenue in the City of Milwaukee (the “Airspace”), for the purpose of constructing and maintaining two building overhangs (“Overhang Structures”), the Airspace being more particularly described as follows:

Lease Area A

An area of space in the Northwest ¼ of Section 22, Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the southwesterly corner of Lot 14, in a Subdivision of Block 17 in Glidden and Lockwood’s Addition having an existing ground elevation of 55.4 feet, City of Milwaukee [d]atum; thence N 55°01’12” W, 5.70 feet; thence N 35°00’00” E, 70.00 feet to a point having an existing ground elevation of 57.5 feet, City of Milwaukee [d]atum; thence S 55°01’12” E, 5.70 feet; thence S 35°00’00” W, 70.00 feet to the point of beginning. Said area beginning at a ground elevation of 73.2 feet, City of Milwaukee datum, extending vertically to a ground elevation of 139.0 feet, City of Milwaukee datum.

Lease Area B

An area of space in the Northwest ¼ of Section 22, Township 7 North, Range 22 East, in the City of Milwaukee, County of Milwaukee, State of Wisconsin, bounded and described as follows: Beginning at the northwesterly corner of Lot 20, in a Subdivision of Block 17 in Glidden and Lockwood’s Addition having an existing ground elevation of 61.4 feet, City of Milwaukee [d]atum; thence S 35°00’00” W, 36.00 feet to a point having an existing ground elevation of 60.5 feet, City of Milwaukee [d]atum; thence N 55°01’12” W, 4.60 feet; thence N 35°00’00” W, 36.00 feet; thence S 55°01’12” E, 4.60 feet to the point of beginning. Said area [b]eginning at a ground elevation of 73.2 feet, City of Milwaukee datum, extending vertically to a ground elevation of 139.0 feet, City of Milwaukee datum.

See also, Exhibit A. 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 Airspace corresponding to the final plans, within 60 days after completion of the construction of the Overhang Structures.

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. 160258) 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 \$680.00 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 upon the execution of this Lease, it will in due course construct the Overhang Structures. Lessee further covenants and agrees that those portions of the Overhang Structures 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. Plans, Regulations, and Permits. Lessee shall have the plans and specifications for the Overhang Structures prepared by a registered professional engineer, which plans and specifications shall specifically provide for the prevention of ice accumulation on the Overhang Structures and methods by which pigeons and other birds will be prevented from roosting or nesting on the Overhang Structures. The plans and specifications shall be approved by the Commissioner and the Department of City Development Commissioner prior to the commencement of construction of the Overhang Structures. The Overhang Structures 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 Overhang Structures, 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 Overhang Structures.

6. Maintenance. Lessee shall safely maintain the Overhang Structures and regulate their use and occupancy so that the Overhang Structures 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 Structures 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 \$1,000,000.00 for an individual claim and \$5,000,000.00 for multiple claims arising out of an accident involving the Overhang Structures 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 Structures, or from collapse of the Overhang Structures; or which arise by reason of any material or thing whatsoever falling or being thrown from the Overhang Structures. 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 prior to commencement of construction of the Overhang Structures. This policy of insurance shall also contain a provision that during the period of construction of the Overhang Structures the aggregate limits of the policy for multiple claims shall be \$5,000,000.00. At the option of Lessor, these minimum amounts may be reviewed and reasonably adjusted 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 the building to which the Overhang Structures are attached, to the extent that the Overhang Structures 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 Structures are surrendered and the Overhang Structures are 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.

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 Structures that are made necessary by reason of the construction of the Overhang Structures.

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 Structures 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 Structures 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 Structures were 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 Airspace to view the condition of the Overhang Structures 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 Structures.

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 Overhang Structures at its own expense or Lessor may remove or demolish the Overhang Structures 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 Overhang Structures 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 Structures 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(4), Wisconsin Statutes (2013-2014).

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.

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:
Joseph Property Development, LLC
Attn: Robert Joseph
117 N. Jefferson Street, Suite 200
Milwaukee, WI 53202

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. 160258, 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. 160258, effective date _____, 2016.

Notary Public, State of Wisconsin
My commission expires: _____

