

**TEMPORARY AIRSPACE
EASEMENT AGREEMENT**

Document Title

Document Number

Recording Area

This Document was drafted by and
should be Returned to:

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1 S. Pinckney Street, Suite 700
Madison, WI 53703
Attn: Kevin A. Martin

Parcel Identification Numbers:
See Exhibits A-B attached

TEMPORARY AIRSPACE EASEMENT AGREEMENT

THIS TEMPORARY AIRSPACE EASEMENT AGREEMENT (this “*Agreement*”) is dated this _____ day of _____, 2025 (the “*Effective Date*”), by and among THE EDISON SPE, LLC, a Delaware limited liability company (“*Grantee*”), MARCUS CENTER FOR THE PERFORMING ARTS, INC., a Wisconsin nonstock corporation (“*Marcus*”), and the CITY OF MILWAUKEE, a Wisconsin municipal corporation (“*City*”, and together with Marcus the “*Grantors*” and each a “*Grantor*”). Grantors and Grantee are each a “*Party*”; together, they are the “*Parties*.”

W I T N E S S E T H :

WHEREAS, Grantee, the owner of property located at 1000 and 1005 N. Edison Street, Milwaukee, Wisconsin, as further described on Exhibit A, attached hereto (the “*Property*”), intends to develop and construct thereon an approximately thirty-two (32) story mixed-use multifamily project known as “The Edison” (the “*Project*”);

WHEREAS, City is the owner of certain real property adjacent and to the east of the Property, located at 1001 N. Water Street, Milwaukee, Wisconsin, as further described on Exhibit B, attached hereto (the “*Adjacent Property*”);

WHEREAS, Marcus is the ground lessor of the Adjacent Property, and pursuant to the Parking Lease, the owner of the improvements located thereon, pursuant to the following lease documents (collectively, the “*Parking Lease*”): that certain Agreement between the City of Milwaukee and Milwaukee County War Memorial Center, Inc. (“*Initial Lessee*”) dated February 5, 1969, recorded with the Milwaukee County Register of Deeds Office on September 22, 1969, as Document No. 4488622, as amended by that certain unrecorded Amendment to Agreement between City of Milwaukee and Milwaukee County War Memorial Center, Inc. dated February 5, 1969, which amendment is dated July 26, 1985, as subsequently assigned from Initial Lessee to Marcus, and as further amended by that certain Second Amendment of Lease Agreement by and between City and Marcus dated March 3, 2015, and recorded with the Milwaukee County Register of Deeds Office on April 6, 2015 as Document No. 10448533, as the same may be further amended, modified, or replaced from time to time; and

WHEREAS, Grantee has requested, and Grantors have agreed to grant to Grantee, a temporary nonexclusive airspace easement to enter into and utilize air space over the Adjacent Property not less than twenty-five feet (25’) above the improvements upon the Adjacent Property existing as of the Effective Date (the “*Easement Area*”), as further depicted on Exhibit C, and upon the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the Recitals set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantors and Grantee hereby mutually covenant and agree to each of the following terms and conditions:

1. **Grant of Easement.** Grantors hereby grant to Grantee and its employees, agents, contractors, and subcontractors (collectively, the “*Grantee Parties*”) a temporary nonexclusive airspace easement and right-of-entry into the Easement Area solely for the Use (as defined in Paragraph 2 below) SUBJECT TO the limitations, conditions, and restrictions contained in this Agreement.

2. **Use.** The Grantee Parties may use the Easement Area during the initial development and construction of the Project, for the swing and rotation of any boom, hook, crane and any related apparatus of a construction crane utilized in connection with the Project (the “*Permitted Use*”).

3. **Names; Information.** Grantors acknowledge and agree that Grantee has engaged C.D. Smith Construction, Inc., a Wisconsin corporation (the “**Contractor**”) as its general contractor for the initial construction of the Project (including as the tower crane operator) and that, without limiting any of Grantee’s obligations hereunder, Contractor shall be the party installing and operating the tower crane and such party shall have the right to do so through Grantee’s rights hereunder. Prior to the installation of the tower crane and/or the use of any of the Easement Area, Grantee shall, or shall cause Contractor to, provide a certificate of insurance evidencing that the insurance required pursuant to Paragraph 6 below is in full force and effect.

4. **Terms and Duration.** The Agreement granted herein hereby shall commence on the Effective Date and shall expire upon the earlier of: (i) completion of the Project, as evidenced by the issuance of a certificate of occupancy therefor; or (ii) October 31, 2027. In the event that Grantee has not received a certificate of occupancy for the Project on or prior to October 31, 2027 despite good faith efforts to obtain the same, Grantors shall provide a reasonable extension of such date upon Grantee’s written request therefor.

5. **Use Limited to Specified Uses.** Unless otherwise mutually agreed by the parties hereto from time to time, Grantee shall not use or permit the Easement Area (or any parts thereof) to be used for any purpose other than for the Permitted Use and such use shall be in the manner provided in this Agreement.

6. **Insurance.** Grantee will, at its own cost and expense, at all times during the term hereof, effect and maintain with an insurance company or companies qualified to do business in the State of Wisconsin, or cause Contractor to effect and maintain at its own cost and expense, policies of insurance as set forth in this Paragraph 6.

Commercial Liability Insurance	\$1,000,000 each occurrence \$2,000,000 aggregate.
--Fire Damage Legal Liability or equivalent	\$500,000 each incident
Workers Compensation & Employer’s Liability Insurance	WC: Statutory EL: \$500,000 each accident/employee \$1,000,000 policy limit
Excess Liability and/or Following-Form Commercial Umbrella Insurance	\$25,000,000 each occurrence

Grantee shall furnish to Grantors a certificate(s) of insurance on ACORD forms along with any endorsements that provide each Grantor with insured status, primary and non-contributory coverage, notice of cancellation, and waiver of subrogation evidencing compliance by Grantee or the applicable Grantee Parties with the insurance requirements herein prior to the first entry into the Easement Area by Grantee or the Grantee Parties, and thereafter upon renewal or replacement of each required policy of insurance. Prior to the installation of the tower crane, Grantee shall also furnish to each Grantor a certificate of insurance on an ACORD form to confirm that the Contractor has the required Workers Compensation & Employer’s Liability Insurance, and thereafter upon renewal or replacement of such Workers Compensation & Employer’s Liability Insurance.

Grantee shall name the City of Milwaukee as an additional insured under Grantee's Commercial General Liability Insurance and other appropriate policies throughout the term of this Agreement and any subsequent renewals thereof.

The indemnification obligation under this Agreement in Section 7 shall not be reduced in any way by the existence or non-existence, limitation, amount or type of damages, compensation or benefits payable under Worker's Compensation laws or other insurance provisions. Under no circumstances will either Grantor's recovery be limited due to the fact that it is named as an additional insured under Grantee's insurance policy as listed above.

7. **Indemnity.** Grantee will indemnify and hold harmless each Grantor and its respective officers, directors, employees, agents, tenants, lenders, guests, invitees, successors and assigns and all others legally using and occupying the Adjacent Property from and against any and all loss, liability, damage, cost, or expense and any and all claims, suits and actions arising out of the use of the Easement Area by Grantee or the Access Parties, including any injuries to or death of persons or damage to the Adjacent Property, but only to the extent caused by Grantee's or any Grantee Parties' use of the Easement Area pursuant to the Terms of this Agreement, including Grantee's or Grantee Parties' willful or negligent acts or omissions; provided, however, that in no event shall Grantee be responsible or have any duty of indemnification under this Paragraph 7 for the negligence or willful misconduct of either Grantor, its respective officers, directors, contractors, employees, agents, or their respective guests, invitees, successors and assigns, or others using and occupying the Adjacent Property or any part thereof. The foregoing provisions are subject to legal defenses available, respectively, to Grantee and to each Grantor.

8. **Governing Law; Venue.** This Agreement and the rights and obligations of the parties hereto and hereunder shall be interpreted, construed, and enforced in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in the Circuit Court of Milwaukee County for matters arising under state law and in federal district court in the eastern district of Wisconsin for matters arising under federal jurisdiction.

9. **No Party Deemed Drafter.** All provisions of this Agreement have been negotiated by Grantors and Grantee at arm's length and with the opportunity for full representation by their respective legal counsel and neither party shall be deemed to be the drafter of this Agreement. If this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provision thereof against either Grantors or Grantee as the drafter of this Agreement.

10. **Successors.** All of the covenants, agreements, provisions, terms and conditions contained in this Agreement shall apply to, inure to, and be binding upon Grantors, Grantee, and their respective successors and permitted assigns, including without limitation any future owner, tenant, occupant, or easement holder of the Property and Adjacent Property, respectively, as well as any future tenant pursuant to the Parking Lease. In the event the Parking Lease expires or is terminated during the term of this Agreement, Marcus, its successors and assigns shall have no further rights or obligations with respect to this Agreement except for indemnity claims asserted by Marcus against Grantee pursuant to Paragraph 7 of this Agreement prior to expiration or termination of the Parking Lease.

11. **Non Waiver.** The waiver by any party of any breach of any term, covenant or condition herein contained, shall not be deemed to be a waiver of such term, covenant or condition of any subsequent breach of the same or any other term, covenant or condition herein contained. No covenant, term or condition of this Agreement shall be deemed to have been waived by unless such waiver is in writing, signed by both parties.

connection with the transfer of the Property to: (i) any lender providing mortgage financing for the Project, or any purchaser at a foreclosure sale, in connection with any foreclosure or deed in lieu of foreclosure in connection with a first lien mortgage against the Property; and (ii) any transfer of any membership interests in Grantee or any beneficial owner of Grantee.

19. **Public Records.** The Parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21, et seq. Grantee acknowledges that it is obligated to assist the City in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement. Except as otherwise authorized, those records shall be maintained for a period of seven (7) years.

20. **Entire Agreement; Amendments.** This Agreement is all the agreements between Grantee and Grantors concerning the Easement Area and there are no agreements or understandings, either oral or written in connection therewith, other than those set forth herein. Except as otherwise herein provided, no variations, modifications, changes, or amendments to this Agreement shall be binding upon any party to this Agreement unless in writing, executed by a duly authorized officer or agent of the particular party against whom enforcement is sought. This Agreement may be executed in counterparts, each together constitute the entire Agreement.

[Signatures on Following Page]

IN WITNESS WHEREOF, Grantee and Grantors have executed this Agreement as of the date first above written.

GRANTORS:

MARCUS CENTER FOR THE PERFORMING ARTS,
INC.

By _____
Name: _____
Its: _____

ACKNOWLEDGMENT

STATE OF WISCONSIN)
) ss.
COUNTY OF MILWAUKEE)

Personally came before me this __ day of _____, 2024, the above-named _____
as _____ of Marcus Center For The Performing Arts, Inc., a Wisconsin nonstock corporation, who
executed the above instrument and acknowledged the same on behalf of said nonstock corporation.

Name: _____
Notary Public, State of Wisconsin
My Commission: _____

CITY OF MILWAUKEE

By: _____
Cavalier Johnson, Mayor

By: _____
Jim Owczarski, City Clerk

COUNTERSIGNED

By: _____
Bill Christianson, Comptroller

Milwaukee City Attorney Approval and Authentication

_____, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the City of Milwaukee representatives above, and also authenticates the signatures of each of the above City of Milwaukee representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: _____

Name: _____

Title: _____

State Bar No. _____

Date: _____

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

[new CSM description to be inserted]

TAX PARCEL NOS. 392-1179-100 and 392-1178-100

EXHIBIT B
ADJACENT PROPERTY LEGAL DESCRIPTION

All of Block 52 in Plat of Milwaukee, (East of the River), a recorded subdivision in the Northeast ¼ of Section 29, Township 7 North, Range 22 East, said block being bounded by North Edison Street, East Highland Avenue, East State Street, and North Water Street.

TAX PARCEL NO.: 392-1210-100

EXHIBIT C
EASEMENT AREA DEPICTION

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