

**AIRSPACE LEASE**

**BETWEEN**

**THE CITY OF MILWAUKEE**

**AND**

**BOSTCO, LLC**

**FOR AN EXISTING SKYWALK**

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LEASE

The City of Milwaukee, a municipal corporation (Lessor), and BOSTCO, LLC, a Wisconsin limited liability company (Lessee) pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (2005-2006), do hereby make and enter into this Lease Agreement as of the \_\_\_ day of \_\_\_\_\_, 2008.

1. Description. The Lessor hereby leases an airspace over North 4<sup>th</sup> Street between West Wisconsin Avenue and West Michigan Street, not less than thirty (30) feet above said street at its present grade, consisting of not more than fourteen (14) feet in height and twenty (20) feet in width, and more particularly described as follows:

That part of the Southeast ¼ of Section 29, Township 7 North, Range 22 East, which lies between right-of-way lines lying 15.00 feet on either side of a centerline described as follows, said right-of-way lines extended easterly and westerly to the street lines of North 4<sup>th</sup> Street: Commencing at a point in the present west line of North 4<sup>th</sup> Street, said point lying 125.10 feet north of the intersection of the present west line of North 4<sup>th</sup> Street and the present north line of West Michigan Street; running thence easterly, 70.00 feet more or less, to a point in the present east line of North 4<sup>th</sup> Street, said point lying 124.92 feet north of the intersection of the present east line of North 4<sup>th</sup> Street and the present north line of West Michigan Street.

2. Term. The Lease shall run for a period of 99 years from the date of the execution of the Lease. The Lessee, however, may terminate the Lease at any time during the 99-year period by giving Lessor due notice of its 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 is completely removed and the public right of way restored to the satisfaction of the Commissioner of Public Works.

3. Rental. The rental to the Lessor by the Lessee under the Lease shall be the sum of \$\_\_\_\_\_ per year. This rental shall be paid by the Lessee in annual payments to the Office of the City Comptroller, the first payment being due 20 days after the passage of an ordinance by

the Common Council of the City of Milwaukee approving this Lease, and future annual payments to be due 30 days prior to the annual anniversary date of the Lease. At the option of the Lessor, the rental amount may be reviewed and increased every ten years. Rent increases shall be proportionate to any increase in the averaged land values of the neighboring properties. If appropriate, the 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.

4. Use and Occupancy. Lessee covenants and agrees that the pedestrian bridge currently located within the airspace subject to this Lease will be operated, used, and maintained in accordance with operating standards, methods, and procedures ("Standards") that may be established from time to time by the Plan Commission of the City of Milwaukee.

5. Maintenance. The Lessee shall safely maintain the bridge and regulate its use and occupancy so that the bridge 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 bridge that deviate from the original plans and specifications previously approved by the City of Milwaukee may be made during the course of this Lease without the written approval of the Commissioner of Public Works.

6. Plans, Regulations, and Permits – Replacement Structure. In the event that the Lessee seeks, with the prior approval of the Commissioner of Public Works, to demolish the existing bridge and replace it with a new pedestrian bridge, the Lessee shall have the plans and specifications for the replacement bridge prepared by a registered professional engineer or architect, which plans and specifications shall specifically provide for the prevention of ice accumulation on the bridge, and methods by which pigeons and other birds will be prevented or discouraged from roosting or nesting on or near the bridge. The plans and specifications shall be

approved by the Commissioner of Public Works and the Commissioner of City Development of the City of Milwaukee prior to the commencement of construction of the replacement bridge. The replacement bridge shall be constructed in compliance with the intent of the plans and specifications to the satisfaction of the registered professional engineer or architect who shall supervise the construction thereof. The 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 the Lessor, the County of Milwaukee, and the State of Wisconsin, which shall at any time be applicable to the construction and maintenance of the bridge.

7. Insurance and Indemnity. The Lessee shall maintain and keep in force during the term of the Lease public-liability insurance for the same limits as are and will be in effect for the adjoining structures, but 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 bridge or the use or occupancy of the premises hereby leased, and the Lessor shall be named as an additional insured and shall be 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 construction, maintenance, destruction, or dismantling of the bridge, or from collapse of the bridge; or which arise by reason of any material or thing whatsoever falling or being thrown from the bridge. 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 any replacement bridge the aggregate limits of the policy for multiple claims shall be increased to \$3,000,000.00. At the option of the 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 abutting properties.

8. Termination of Lease in the Event of Condemnation of Either or Both Structures. 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 structures that are connected by said bridge, to the extent that the bridge would no longer be usable or useful to the Lessee or to the extent that either or both structures would not require the continued use of the bridge, this Lease shall be terminated as of the time the use and occupancy of said bridge or structures or structures are surrendered and the bridge 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 all or a part of either one or both of the structures, the value of the bridge or any 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. The Lessee shall upon demand by the Lessor pay such charges as may be incurred by the Lessor for the removal or relocation of any facilities, utilities, or structures within the public way in the vicinity of the bridge that are made necessary by reason of the construction of any replacement bridge. 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 the bridge by an act of God, public enemies, or by reason of riot or insurrection, the Lease shall terminate and the Lessee shall not be required to pay any further rent to the Lessor. In that event, the Lease shall not terminate if the Lessees shall reconstruct the bridge or any portion thereof demolished, provided the reconstruction is commenced within six months of the destruction, and

in such event Lessee shall pay rental for any period during which the bridge was destroyed or inoperative.

11. Entry by Lessor. The Lessor, by its officers, agents, or employees, may at all reasonable times during Lessee's business hours have access to and enter the bridge to view the condition of the bridge and require any and all necessary repairs and alterations thereto for the public safety and well-being. This right shall in no way eliminate the Lessee's obligation of determining and maintaining the structural adequacy of the bridge.

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 the Lessee by the Lessor, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by the Lessee, and such default shall continue for 30 days after written notice thereof by registered or certified mail to the Lessee from the 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 the Lessor may at any time thereafter prior to the curing of such default within reasonable time, declare the term of the Lease ended and terminated by giving the Lessee written notice of its intention. If possession of the demised area is not immediately surrendered, the Lessor may re-enter therein and declare the Lease to be terminated; and in such event the Lessor may require that the Lessee remove and demolish the bridge at their own expense or the Lessor may remove or demolish the bridge and require the payment of the expense thereof from the Lessee to the Lessor within 30 days thereafter.

13. Surrender of Premises. Upon the termination of the Lease, the Lessee agrees to surrender or relinquish any claims or right to further utilize this area. The Lessee shall, prior to surrender of the area, cause the bridge to be demolished and removed and the area returned to the same condition as it was when first acquired by the Lessee in compliance with the applicable building codes. In the event of the failure of the Lessee to remove the bridge within 6 months after the termination of the Lease, they shall pay liquidated damages to the Lessor in the sum of \$100.00 for each and every day they remain in possession of the area 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 the 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 said sec. 66.0915(3), Wisconsin Statutes (2005-2006).

16. Assignment. The 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 described in paragraph 1 of this Lease. 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 the 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 Lessor:

City Engineer  
Infrastructure Services Division  
841 North Broadway, Room 701  
Milwaukee, WI 53202

For the Lessee:

Todd J. Rizzo  
Vice President  
WISPARK LLC  
301 W. Wisconsin Avenue, Suite 400  
Milwaukee, WI 53203

18. Signs. The Lessee shall not place or maintain any signs or cause them to be placed in or on the bridge occupying the leased premises so as to be readable from the street, without permission of the Commissioner of Public Works. No signs shall be attached to or placed on the exterior of the bridge at any time.

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Tom Barrett, Mayor, and Ronald D. Leonhardt, City Clerk, and countersigned by W. Martin Morics, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF MILWAUKEE

SIGNED AND SEALED IN PRESENCE OF:

\_\_\_\_\_  
TOM BARRETT, Mayor

\_\_\_\_\_  
RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

\_\_\_\_\_  
W. MARTIN, MORICS, Comptroller

IN WITNESS WHEREOF, BOSTCO, LLC, a Wisconsin limited liability company has caused these presents to be signed at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2008.

BOSTCO, LLC

By: \_\_\_\_\_

Todd J. Rizzo  
Vice President  
WISPARK LLC  
301 W. Wisconsin Avenue, Suite 400  
Milwaukee, WI 53203  
Agent for BOSTCO, LLC

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2008, 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. \_\_\_\_\_ 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 \_\_\_\_\_, 2008, Ronald D. Leonhardt, 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. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires:\_\_\_\_\_

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2008, W. Martin Morics, 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. \_\_\_\_\_ adopted by its Common Council on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires:\_\_\_\_\_

STATE OF WISCONSIN    )  
                                  )ss.  
MILWAUKEE COUNTY    )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2008,  
\_\_\_\_\_ the \_\_\_\_\_ of the above-named party, BOSTCO,  
LLC, to me known to be the persons 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 \_\_\_\_\_, 2008.

\_\_\_\_\_  
Assistant City Attorney

This instrument was drafted  
by the City of Milwaukee

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