

Document Number	AIRSPACE LEASE BETWEEN THE CITY OF MILWAUKEE AND FIX DEVELOPMENT, LLC FOR AN OVERHANG STRUCTURE	
Document Title		
		Recording Area <hr/> Name and Return Address  Ms. Elaine Miller Real Estate and Development Services Redevelopment Authority of the City of Milwaukee 809 N. Broadway, 2 <sup>nd</sup> Floor Milwaukee, WI 53202
		<hr/> Parcel Identification Number (PIN)

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

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and Fix Development, LLC, a Wisconsin limited liability company (“Lessee”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2007-2008), do hereby make and enter into this Lease Agreement as of the \_\_\_\_ day of \_\_\_\_\_, 2011.

1. Description. Lessor hereby leases to Lessee an airspace over the sidewalk area on the north side of West Bruce Street, commencing at South 2<sup>nd</sup> Street and extending east to the north-south alley, in the City of Milwaukee, for the purpose of constructing, using, and maintaining a building overhang (“overhang”) adjacent to property with the address 538 South 2<sup>nd</sup> Street, the airspace being more particularly described as follows:

That part of the Northeast 1/4 of Section 32, Township 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin described as follows:

Beginning at the intersection of the east right of way line of South 2<sup>nd</sup> Street and the north right of way line of West Bruce Street; thence North 89°16'36" East, on and along said north right of way line, 136.60 feet to a point 1.00 feet east of the overhang of the building; thence South 00°45'16" East, 1.00 foot east of and parallel with said overhang, 9.92 feet; thence South 89°14'44" West, 1.00 foot south of and parallel with said overhang, 136.53 feet to the extension of said east right of way line; thence North 01°07'59" West, to the point of beginning.

The above description is for an airspace lease which is between elevations of 23.00 feet and 72.00 feet. The elevation of the sidewalk below the air space is between 9.50 feet and 10.50 feet. The datum for these elevations is the City of Milwaukee Datum.

Containing 1,360 square feet (0.03 acres) (66,640 cubic feet), more or less.

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 ("Commissioner").

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$200.00 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 execution of this 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 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 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. Prior to construction of the overhang, Lessee shall procure the relocation of the We Energies pole line from the north side of West Bruce Street and shall bear all relocation charges, including, but not limited to, the cost of relocating any City facilities made necessary by relocation of the We Energies facilities.

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.

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 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 within six months after the termination of the Lease, it 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 (2007-2008).

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 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 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 City (Lessor):  
City Engineer  
Infrastructure Services Division  
841 North Broadway, Room 701  
Milwaukee, WI 53202

For Lessee:  
Juli Kaufman  
Fix Development, LLC  
602 S. 3<sup>rd</sup> Street  
Milwaukee, WI 53204

18. 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 permission of the Commissioner of Public Works.

19. Miscellaneous. To ensure sufficient sidewalk lighting for pedestrians using the right of way beneath the leased airspace, Lessee shall construct and maintain sidewalk lighting facilities either integral to the overhang structure or otherwise in conformance with the Milwaukee Code of Ordinances (MCO) section governing permissible projections or encroachments for electrical lighting fixtures, currently MCO § 245-4-20. Plans for the sidewalk lighting facilities shall be approved by the Commissioner prior to the commencement of construction of the overhang.

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 \_\_\_\_\_, 2011.

**CITY OF MILWAUKEE**

**COUNTERSIGNED:**

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

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

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

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2011, 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 \_\_\_\_\_, 2011, 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 \_\_\_\_\_, 2011, 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: \_\_\_\_\_

IN WITNESS WHEREOF, Fix Development, LLC, a Wisconsin limited liability company, has caused these presents to be signed at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2011.

**FIX DEVELOPMENT, LLC**

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

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN )  
 )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2011, \_\_\_\_\_ the \_\_\_\_\_ of the above-named party, Fix Development, LLC, to me known to be the person(s) 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 \_\_\_\_\_, 2011.

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

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

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