

AIRSPACE LEASE BETWEEN THE  
CITY OF MILWAUKEE AND THIRD  
WARD LOFTS, LLC FOR A BUILDING  
OVERHANG

Document Number

Document Title

**AIRSPACE LEASE BETWEEN  
THE CITY OF MILWAUKEE  
AND  
THIRD WARD LOFTS, LLC  
FOR A BUILDING OVERHANG**

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

396-0542-000

Parcel Identification Number (PIN)

## AIRSPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and Third Ward Lofts, LLC, a Wisconsin limited liability company (“Lessee”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2017-2018), do hereby make and enter into this Airspace Lease (“Lease”) as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020 (“Effective Date”).

1. Description. Lessor hereby leases to Lessee airspace over East St. Paul Avenue at 323 N. Jefferson Street in the City of Milwaukee (the “Airspace”), for the purpose of constructing and maintaining a building overhang (“Building Overhang”), the Airspace being more particularly described as follows:

A 6.00 foot wide by 64.00 foot high air space across E. St. Paul Ave., being a part of the Northwest ¼ of the Southwest 1/4 of Section 28, Township 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southwest corner of said 1/4 Section; thence North 00°59’35” West along the West line of said Section 1384.56 feet to a point; thence North 89°00’25” East 751.24 feet to a point on the South line of East St. Paul Avenue; thence North 83°39’26” East along said South line 70.46 feet to the point of beginning of the air space hereinafter described (Lower Elevation=29.00’; Upper Elevation=95.00’; Ground Elevation=9.1’); thence North 06°18’28” West 6.00 feet to a point (Lower Elevation=29.00’; Upper Elevation=95.00’; Ground Elevation=9.1’); thence North 83°39’26” East and parallel to the South line of E. St. Paul Ave. 50.00 feet to a point on the West line of N. Jefferson St. extended (Lower Elevation=29.00’; Upper Elevation=95.00’; Ground Elevation=8.9’); thence South 06°18’28” East along said West line extended 6.00 feet to a point (Lower Elevation=29.00’; Upper Elevation=95.00’; Ground Elevation=9.0’); thence South 83°39’26” West along said South line 50.00 feet to the point of beginning. (Lower Elevation=29.00’; Upper Elevation=95.00’; Ground Elevation=9.1’). Elevations are City of Milwaukee Datum.

See also, attached 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 Building Overhang.

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’ 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. 191619) 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 **\$14,900.00** 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 covenant and agree that upon the execution of this Lease, Lessee will in due course construct the Building Overhang. Lessee further covenant and agree that those portions of

the Building Overhang 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 City of Milwaukee.

5. Plans, Regulations, and Permits. Lessee shall have the plans and specifications for the Building Overhang prepared by a registered professional engineer, which plans and specifications shall specifically provide for the prevention of ice accumulation on the Building Overhang and methods by which pigeons and other birds will be prevented from roosting or nesting on the Building Overhang. 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 Building Overhang. The Building 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 of the Building Overhang, 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 Building Overhang.

6. Maintenance. Lessee shall safely maintain the Building Overhang and regulate its use and occupancy so that the Building Overhang 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 Building Overhang 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 Building Overhang 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 Building Overhang, or from collapse of the Building Overhang; or which arise by reason of any material or thing whatsoever falling or being thrown from the Building 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 prior to commencement of construction of the Building Overhang. This policy of insurance shall also contain a provision that during the period of construction of the Building Overhang 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 Building Overhang is attached, to the extent that the Building 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 Building Overhang is surrendered and the Building Overhang 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 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 Building Overhang that are made necessary by reason of the construction of the Building 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 Building 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 Building Overhang 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 Building Overhang were damaged, destroyed, or inoperative.

11. Entry by Lessor. Lessor, by its officers, agents, or employees, may at all reasonable times and upon reasonable prior notice have access to and enter the Airspace to view the condition of the Building Overhang 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 to determine and maintain the structural adequacy of the Building Overhang.

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 a 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 Building Overhang at its own expense or Lessor may remove or demolish the Building 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 agree to surrender or relinquish any claims or right to further utilize the Airspace. Lessee shall, prior to surrender of the Airspace, cause the Building 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 Building Overhang 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 (2017-2018).

16. Assignment. Lessee, and their successors and assigns, may assign their 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.

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:

Reggie L. Belanger  
Director of Residential Properties  
Third Ward Lofts, LLC  
117 N. Jefferson Street, Suite 200  
Milwaukee, WI 53202

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 the written approval of the Commissioner.

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 \_\_\_\_\_, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this \_\_\_\_ day of \_\_\_\_\_, 2020.

[Signature Pages Follow]

**CITY OF MILWAUKEE**

**COUNTERSIGNED:**

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

\_\_\_\_\_  
AYCHA SAWA, Comptroller

\_\_\_\_\_  
JAMES R. OWCZARSKI, City Clerk

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2020, 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.191619, effective date \_\_\_\_\_, 2020.

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

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2020, 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. 191619, effective date \_\_\_\_\_, 2020.

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

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2020, Aycha Sawa, 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. 191619, effective date \_\_\_\_\_, 2020.

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

IN WITNESS WHEREOF, Third Ward Lofts, LLC, a Wisconsin limited liability company, has caused these presents to be signed at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2020.

**Third Ward Lofts, LLC**

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

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

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

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2020, \_\_\_\_\_, the \_\_\_\_\_ of the above-named party, Third Ward Lofts, LLC, to me known to be the person 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 \_\_\_\_\_, 2020.

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

This instrument was drafted by the City of Milwaukee by Assistant City Attorney Thomas D. Miller.  
1053-2020-116:267140