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October 17, 2014

VIA E-MAIL ONLY

Public Works Committee
Attention: Jessica Celella, Staff Assistant
200 East Wells Street, Room 205

Re: Common Council File No. 140692
NML Airspace Lease (Van Buren Office Building)
Our File No. 1050-2014-2323

Dear Members of the Public Works Committee:

Enclosed for your consideration is a proposed airspace lease between the City of Milwaukee and The Northwestern Mutual Life Insurance Company for a bridge connecting the North Office Building, 818 East Mason Street, and 825 East Mason Street. We also enclose for the Committee's consideration a proposed ordinance approving the airspace lease.

Very truly yours,

GRANT F. LANGLEY
City Attorney

THOMAS D. MILLER
Assistant City Attorney

TDM:wt:208927
Enclosures

c: Dawn Schmidt, DPW Infrastructure (via e-mail only)
Attorney Catherine Young (via e-mail only)
1050-2014-2323



..Number
140692
..Version
SUBSTITUTE 1
..Reference

..Sponsor
THE CHAIR

..Title

An ordinance granting an air space lease to The Northwestern Mutual Life Insurance Company for a bridge connecting the North Office Building, 818 E. Mason Street, and 825 East Mason Street.

..Analysis

In accordance with state law, this ordinance will grant an airspace lease to The Northwestern Mutual Life Insurance Company for the purpose of constructing and maintaining a skywalk connecting the North Office Building, 818 E. Mason Street, and 825 East Mason Street.

..Body

The Mayor and Common Council of the City of Milwaukee do ordain as follows:

Part 1: FINDINGS. In accordance with the provisions of s. 66.0915(3), Wis. Stats., (2011-2012), the Common Council of the City of Milwaukee hereby authorizes, directs and agrees that the City of Milwaukee enter into a lease, substantially the same as the lease attached hereto, with The Northwestern Mutual Life Insurance Company for the purpose of enabling The Northwestern Mutual Life Insurance Company to construct and maintain a skywalk connecting the North Office Building, 818 E. Mason Street, and 825 East Mason Street, as described in the lease, and the Common Council of the City of Milwaukee hereby finds that the area described in the lease is not needed for street, alley or other public purposes and that the public interest will be served by promoting convenient access to buildings essential to commerce within and development of the downtown area.

Part 2: A copy of such lease is attached hereto and is made part of Common Council File No. 140692.

Part 3: The Northwestern Mutual Life Insurance Company shall cause such lease and this authorizing ordinance to be recorded with the Milwaukee County Register of Deeds upon execution of the lease and shall deliver the recording information complete with a final copy of the ordinance and lease to the City Engineer and the City Comptroller.

Part 4: All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

Part 5: Common Council Ordinance No. 871673, adopted by the Common Council of the City of Milwaukee on March 29, 1988, is hereby repealed.

Part 6: This ordinance shall take effect and be in full force from and after its passage and publication

..LRB

APPROVED AS TO FORM

Legislative Reference Bureau
Date: _____

..Attorney

IT IS OUR OPINION THAT THE ORDINANCE
IS LEGAL AND ENFORCEABLE

Office of the City Attorney
Date: _____

..Requestor

..Drafter
TDM/tdm
1050-2014-2323:208621

AIRSPACE LEASE

Document Number

Document Title

AIRSPACE LEASE

BETWEEN

THE CITY OF MILWAUKEE

AND

THE NORTHWESTERN MUTUAL LIFE

INSURANCE COMPANY

(North Office Building Bridge Lease)

Recording Area

Name and Return Address

Catherine M. Young, Esq.
Office of the General Counsel
The Northwestern Mutual Life Insurance
Company
720 East Wisconsin Avenue
Milwaukee, WI 53202

Parcel Identification Number (PIN)

AIRSPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation ("Lessor" or "City"), and The Northwestern Mutual Life Insurance Company, Inc., a Wisconsin corporation ("Lessee"), pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (2011-2012), do hereby make and enter into this Lease Agreement as of the day of _____, 2014.

1. Description. Lessor hereby leases to Lessee an airspace over East Mason Street between and in the City of Milwaukee, for the purpose of constructing and maintaining a skywalk connecting the property at 818 E. Mason Street ("North Office Building") and a proposed office building at 825 East Mason Street ("825 Building"), (the "Airspace"), the Airspace being more particularly described as follows:

That part of East Mason Street, being a part of the Northwest $\frac{1}{4}$ of Section 28, Town 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Northeast corner of said $\frac{1}{4}$ Section; thence South $04^{\circ}31'07''$ West along the East line of said $\frac{1}{4}$ Section 1957.13 feet to a point in the extension of the South line of East Mason Street; thence South $90^{\circ}00'00''$ West along said line and its extension 728.72 feet the point of beginning of said easement (sidewalk elevation 45.9 feet, bottom of easement elevation 65.5 feet, top of easement elevation 85.2 feet); thence continuing South $90^{\circ}00'00''$ West along said South line 17.34 feet to a point (sidewalk elevation 46.2 feet, bottom of easement elevation 65.5 feet, top of easement elevation 85.2 feet); thence North $01^{\circ}25'56''$ East 77.87 feet to a point in the North line of East Mason Street (sidewalk elevation 46.9 feet, bottom of easement elevation 65.5 feet, top of easement elevation 85.2 feet); thence South $89^{\circ}53'33''$ East along said North line 17.34 feet to a point (sidewalk elevation 46.8, bottom of easement elevation 65.5 feet, top of easement elevation 85.2 feet); thence South $01^{\circ}25'56''$ West 77.84 feet to the point of beginning. Elevations refer to City of Milwaukee Datum. Containing 1,350 square feet.

See also, Exhibit D-2. 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 skywalk corresponding to the final plans, within 60 days after completion of the construction of the skywalk.

2. Termination of Existing Lease. Lessor and Lessee entered into a lease agreement for the purpose of enabling Lessee to construct an enclosed pedestrian bridge joining 815 East Mason Street and the North Office Building, dated May 10, 1988 ("1988 Lease") and authorized by Ordinance No. 871673, adopted by the Common Council of the City of Milwaukee on March 29, 1988. The pedestrian bridge constructed pursuant to the 1988 Lease has been removed. This Lease supersedes the 1988 Lease.

3. 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. Lessee shall cause this Lease and its authorizing ordinance (No. 140692) to be recorded with the Milwaukee County Register of Deeds upon execution of the Lease. Lessee shall deliver the recording information complete with a final copy of the ordinance and lease to the City Engineer and the City Comptroller.

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$5,000.00 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 with Lessor, it will in due course construct a skywalk connecting the North Office Building and the 825 Building a portion of which will be located within the Airspace, said skywalk to be used only for a passageway for pedestrians. Lessor reserves the right to attach wiring to those portions of the skywalk located within the Airspace whenever the Commissioner determines such wiring to be necessary to accommodate public travel on the public right-of-way, including but not limited to wiring to support the overhead contact system necessary to operate the Milwaukee Streetcar. The Commissioner shall notify Lessee of such determination, by certified mail, informing Lessee of the proposed work to be done by Lessor. Notwithstanding anything herein to the contrary, any such proposed work to attach wiring for the Milwaukee Streetcar shall not restrict the use of the skywalk by Lessee, compromise the structural integrity of the skywalk, or materially affect the design of the skywalk. Lessor and Lessee shall work together to minimize the impact of such wiring on the aesthetics of the skywalk. The attachment, maintenance and operation of such wiring (including any electricity costs) will be at Lessor's sole expense. Lessor shall provide notice at least sixty (60) days prior to the commencement of any such proposed work, which notice shall include the plans, specifications and method of attachment of the wires to the skywalk.

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

6. Maintenance. Lessee shall safely maintain the skywalk and regulate its use and occupancy so that the skywalk 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 skywalk 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 \$500,000.00 for an individual claim and \$1,000,000.00 for multiple claims arising out of an accident involving the skywalk 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 skywalk, or from collapse of the skywalk; or which arise by reason of any material or thing whatsoever falling or being thrown from the skywalk. 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 skywalk 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.

In the event that Lessor exercises its right to attach wires to the skywalk pursuant to paragraph 4, above, Lessor shall indemnify Lessee and hold Lessee 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 wiring, or from disconnection of the wiring; or which arise by reason of any material or thing whatsoever hitting, pulling, falling from, or being thrown at the wiring.

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 either one or both of the office buildings which are connected by the skywalk, to the extent that the skywalk would no longer be usable or useful to Lessee, this

Lease shall be terminated as of the time the use and occupancy of the skywalk and office building or buildings are surrendered and the skywalk 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 one or both of the adjacent buildings, 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 skywalk that are made necessary by reason of the construction of the skywalk. 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 skywalk 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 skywalk 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 skywalk 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 skywalk and the Airspace to view the condition of the skywalk 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 skywalk.

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 skywalk at its own expense or Lessor may remove or demolish the skywalk 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 skywalk 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 skywalk 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(3), Wisconsin Statutes (2011-2012).

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.

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:
Office of the General Counsel
The Northwestern Mutual Life Insurance Company
720 East Wisconsin Avenue
Milwaukee, WI 53202

18. Signs. Lessee shall not place or maintain any signs or cause them to be placed in or on the skywalk 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 Martin Matson, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2014.

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 _____, 2014, 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. 140692 adopted by the Common Council of the City of Milwaukee on [insert date].

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2014, 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. 140692 adopted by the Common Council of the City of Milwaukee on [insert date].

Notary Public, State of Wisconsin
My commission expires: _____

