

AIRSPACE LEASE BETWEEN THE  
CITY OF MILWAUKEE, DEER  
DISTRICT LLC, AND WISCONSIN  
CENTER DISTRICT FOR A SKYWALK

Document Number

Document Title

**AIRSPACE LEASE  
BETWEEN  
THE CITY OF MILWAUKEE,  
DEER DISTRICT LLC,  
AND  
WISCONSIN CENTER DISTRICT  
FOR A SKYWALK**

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

## AIRSPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), Deer District LLC (“Deer District”), a Delaware limited liability company, and Wisconsin Center District, a local exposition district created and existing pursuant to Chapter 229 of the Wisconsin Statutes (“WCD”) (Deer District and the WCD together called “Lessees”), pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (2013-2014), do hereby make and enter into this Airspace Lease (“Lease”) as of the \_\_\_\_\_ day of \_\_\_\_\_, 2016 (“Effective Date”).

1. Description. Lessor hereby leases to Lessees an airspace over West Juneau Avenue between North 5th Street and North 6th Street in the City of Milwaukee (the “Airspace”), for the purpose of constructing and maintaining a skywalk pedestrian bridge (“Skywalk”) that will connect the Block 7 parking structure (“Parking Structure”) with the new Milwaukee Bucks Arena (“Arena”), the Airspace being more particularly described as follows:

That part of West Juneau Avenue in the Southeast ¼ of the Southwest ¼ of Section 20, T7N, R22E, and the Northeast ¼ of the Northwest ¼ of Section 29, T7N, R22E, in the City of Milwaukee, Milwaukee County, Wisconsin, which is bounded and described as follows:

Commencing at the South quarter corner of said Section 20 and a point on the North right of way line of West Juneau Avenue;

Thence South 89°18’32” West, coincident with said North right of way line, 42.16 feet to a jog in said North right of way line;

Thence North 86°05’44” West, coincident with said North right of way line, 1.98 feet to the Point of Beginning of said air space easement; (sidewalk elevation 20.4 feet, bottom of easement elevation 39.7 feet, top of easement elevation 55.3 feet);

Thence South 18°00’23” East, 80.41 feet to the South right of way line of West Juneau Ave; (sidewalk elevation 19.4 feet, bottom of easement elevation 41.7 feet, top of easement elevation 57.2 feet.);

Thence South 89°29’10” West, coincident with said South right of way, 19.72 feet to a point; (sidewalk elevation 19.8 feet, bottom of easement elevation 41.7 feet, top of easement elevation 57.2 feet.);

Thence North 18°07’55” West, 82.12 feet to a point on the North right of way line of West Juneau Avenue; (sidewalk elevation 20.7 feet, bottom of easement elevation 39.7 feet, top of easement elevation 55.3 feet.);

Thence South 86°05’44” East, coincident with said North right of way line, 20.46 feet to the Point of Beginning of said air space easement (sidewalk elevation 20.4 feet, bottom of easement elevation 39.7 feet, top of easement elevation 55.3 feet.).

Lease area as described containing 1534.85 square feet or 23854 cubic feet of area, more or less.

North referenced to the South line of the Southwest ¼ of Section 20, T7N, R22E.

Vertical datum referenced to the City of Milwaukee.

See also, Exhibit A. The foregoing Airspace legal description shall be adjusted upon final “as-built” construction. Lessees 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. Sublease. The City acknowledges that Deer District will convey title to the Parking Structure to the City pursuant to the terms of a Cooperation, Contribution and Development Agreement by and among the City, Deer District and the Redevelopment Authority of the City dated as of December 22, 2015, as amended. By acquiring title to the Parking Structure, the City will assume Deer District's interest as Lessee under this Lease, and the City will sublease its interest in this Lease to the WCD. The City further acknowledges, and consents to, a sublease of WCD's interest in this Lease and the subsequent sublease from the WCD to Deer District pursuant to an Arena Lease, Management Agreement and Operations Agreement by and between WCD and Deer District dated as of April 13, 2015, as amended ("Arena Lease") (the two foregoing subleases are collectively referred to as the "Subleases"). The Subleases shall incorporate all of the terms of this Lease in respect of the Airspace only and, as a condition of such Subleases, Deer District shall assume all obligations, responsibilities, rights and liabilities of the Lessees under this Lease solely with respect to the Airspace; provided, however, Deer District shall have no liability for matters caused by the affirmative actions of Lessees, including acts of negligence, bad faith or willful misconduct.

3. Term. The Lease shall run for a period of 99 years from the Effective Date of this Lease; provided, however, that Lessees may terminate the Lease at any time during the 99-year period by giving Lessor due notice of Lessees' 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 Lessees, shall cause this Lease and its authorizing ordinance (No. 160459) to be recorded with the Milwaukee County Register of Deeds upon execution of the Lease. Lessees shall provide Lessor with full payment for recording costs upon execution of the Lease.

4. Rental. The rental payable to Lessor by Lessees under the Lease shall be the sum of \$4,300.00 per year. Said rental shall commence upon the start of construction of the Skywalk. This rental shall be paid by Lessees in annual payments to the Office of the City Comptroller, the first payment being due within thirty (30) days following the start of construction of the Skywalk, 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. Any such rental increases shall be proportionate to any increase in the average land values of neighboring properties.

5. Use and Occupancy. Lessees covenant and agree that upon the execution of this Lease, Lessees will in due course construct the Skywalk, which will be used only for a passageway for pedestrians. Lessees shall permit access to the Skywalk to all persons using the Parking Structure and seeking to gain access to or egress from the Arena. Lessees further covenant and agree that those portions of the Skywalk 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 Plan Commission of the City of Milwaukee. 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 Lessees of such determination, by certified mail, informing Lessees 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 Lessees, compromise the structural integrity of the Skywalk, or materially affect the design of the Skywalk. Lessor and Lessees 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.

6. Plans, Regulations, and Permits. Lessees 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 Skywalk 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. Lessees shall 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.

7. Maintenance. Lessees 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.

8. Insurance and Indemnity. Lessees 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 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, excluding however, those matters set forth in the last sentence of this paragraph. 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 Skywalk. 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 \$5,000,000.00. At the option of Lessor, these minimum amounts may be reviewed and reasonably adjusted every ten years. In the event that Lessor exercises its right to attach wires to the Skywalk pursuant to paragraph 5, above, Lessor shall indemnify Lessees and hold Lessees 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, operation, 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.

9. Termination of Lease in the Event of Condemnation. The City hereby agrees not to pursue a condemnation of all or any portion of the Airspace during the term of the Arena Lease, as amended from time to time. In the event that any governmental authority or agency shall require the use of or take all of, or a major portion of the buildings which are connected by the Skywalk, to the extent that the Skywalk would no longer be usable or useful to Lessees, this Lease shall be terminated as of the time the use and occupancy of the Skywalk and/or adjacent 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.

10. Removal of Street Facilities. Lessees 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 Lessees with notice of such charges and any removal or relocation that may be required.

11. 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 Lessees shall not be required to pay any further rent to Lessor. Notwithstanding the foregoing, Lessees 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, Lessees shall pay rental for any period during which the Skywalk was damaged, destroyed, or inoperative.

12. Entry by Lessor. Lessor, by its officers, agents, or employees, may at all reasonable times during Lessees' business hours have access to and enter the Skywalk and 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 Lessees' obligation of determining and maintaining the structural adequacy of the Skywalk.

13. Default and Penalty. In the event default shall be made at any time by Lessees 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 Lessees by Lessor, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by Lessees, and such default shall continue for 30 days after written notice thereof by registered or certified mail to Lessees from Lessor, or if default is of such a nature as to require more than 30 days to effect a cure, and Lessees 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 Lessees 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 Lessees remove and demolish the Skywalk at Lessees' own expense or Lessor may remove or demolish the Skywalk and require the payment of the expense thereof from Lessees to Lessor within 30 days thereafter.

14. Surrender of Premises. Upon the termination of the Lease, Lessees agrees to surrender or relinquish any claims or right to further utilize the Airspace. Lessees 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 Lessees in compliance with the applicable building codes, unless otherwise directed by Lessor. In the event of the failure of Lessees to remove the Skywalk within six months after the termination of the Lease, Lessees 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.

15. Parties to Lease. The term "parties to the Lease" shall include the successors and assigns of Lessor and Lessees, respectively.

16. 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 (2013-2014).

17. Assignment; Liens; Estoppel Certificates.

a. Each 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.

b. Lessees (and Deer District, as sublessee) shall have the right to pledge, mortgage, grant a security interest in, encumber, or collaterally assign their or its interest in this Lease or the Subleases to secure indebtedness for borrowed money of the Lessees or Deer District or the equity interest of Deer District, and the same shall not constitute or be deemed to be a violation of this Lease. Lessees shall take all actions and precautions required to ensure that the City's interest in the Airspace does not become attached by, or with, any lien (excluding any mortgage lien contemplated by the foregoing sentence), including, but not limited to, any construction lien, or lien of or by any laborer, contractor, subcontractor, materialman or supplier (including any lien under Subch. I of Wis. Stat. Ch. 779) relating directly or indirectly to any work that Lessees (or anyone claiming by, through or under Lessees) may perform or have done at the Airspace. Lessees shall indemnify, defend and hold harmless City from and against, any such lien (excluding any mortgage lien contemplated by the first sentence of this Section) which may attach or be asserted against the Airspace, together with all costs in connection therewith.

c. Upon request of Lessee, Lessor shall deliver to Lessee, within ten (10) days of request, a certificate stating that (a) the Lease is in full force and effect, (b) to Lessor's knowledge, Lessee is not in default thereunder, and (c) the current amount of rental payable under the Lease and the date through which payment has been made.

18. 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 the Wisconsin Center District (Lessee):

Wisconsin Center District  
Attn: President/CEO  
400 West Wisconsin Ave.  
Milwaukee, WI 53203

For Deer District, LLC (Lessee):

Deer District LLC  
1543 North 2<sup>nd</sup> Street, 6<sup>th</sup> Floor  
Milwaukee, WI 53212  
Attn: Mr. Peter Feigin

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.

[Signature Pages Follow]

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 \_\_\_\_\_, 2016.

**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 \_\_\_\_\_, 2016, 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. 160459, effective date \_\_\_\_\_, 2016.

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

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2016, 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. 160459, effective date \_\_\_\_\_, 2016.

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

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2016, Martin Matson, 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. 160459, effective date \_\_\_\_\_, 2016.

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

IN WITNESS WHEREOF, Deer District LLC, a Delaware company, has caused these presents to be signed at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2016.

**DEER DISTRICT LLC**

By: \_\_\_\_\_  
PETER FEIGIN, President

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2016, Peter Feigin, the President of the above-named party, Deer District LLC, to me known to be the person who executed the foregoing instrument and to me known to be such President 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: \_\_\_\_\_

IN WITNESS WHEREOF, Wisconsin Center District has caused these presents to be signed at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2016.

**WISCONSIN CENTER DISTRICT**

By: \_\_\_\_\_  
SCOTT A. NEITZEL, Board Chairman

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2016, Scott A. Neitzel, the Board Chairman of the above-named party, Wisconsin Center District, to me known to be the person who executed the foregoing instrument and to me known to be such Chairman 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 \_\_\_\_\_, 2016.

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Assistant City Attorney

This instrument was drafted by the City of Milwaukee by Assistant City Attorney Thomas D. Miller.  
1053-2016-1474:231098  
TDM:tdm