

Document Number

AIRSPACE LEASE BETWEEN THE
CITY OF MILWAUKEE AND THE
WISCONSIN CENTER DISTRICT FOR
A SKYWALK OVER NORTH VEL R.
PHILLIPS AVENUE

Document Title

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THE WISCONSIN CENTER DISTRICT
FOR A SKYWALK OVER NORTH VEL R. PHILLIPS AVENUE**

Recording Area

Name and Return Address

Amy Turim
Real Estate Development Services Manager
City of Milwaukee
Department of City Development
809 North Broadway
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Parcel Identification Number (PIN)

**AIRSPACE LEASE BETWEEN THE CITY OF MILWAUKEE AND THE WISCONSIN CENTER
DISTRICT FOR A SKYWALK OVER NORTH VEL R. PHILLIPS AVENUE**

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”) and the Wisconsin Center District, a special purpose district that is a unit of government created under Wis. Stats. § 229.42 (“Lessee”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2019-2020), do hereby make and enter into this Airspace Lease (“Lease”) as of the _____ day of _____, 2022 (“Effective Date”).

1. Description. Lessor hereby leases to Lessee airspace over North Vel R. Phillips Avenue between West Wells Street and West Kilbourn Avenue in the City of Milwaukee (the “Airspace”), for the purpose of constructing and maintaining a skywalk (“Skywalk”), the Airspace being more particularly described as follows **[Note: Legal description is from Revision #4 12.13.21]:**

A cube of air space above a parcel of land located in in the Southeast ¼ of the Northwest ¼ Section and the Southwest ¼ of the Northeast ¼ of Section 29, Township 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin, more particularly described as follows:

Commencing at the Northeast corner of Parcel 1 of CSM No. 6244; thence S 00°41’45” E along the east line of said Parcel 1 also being the west line of Vel R. Phillips Avenue, 91.97 feet to the point of beginning of the VEL R. PHILLIPS SKYBRIDGE AIR RIGHTS EASEMENT, the ground elevation is 11.1 feet (city datum), the bottom of easement elevation is 27.5 feet (city datum), and the top of easement elevation is 54.5 feet (city datum); thence continuing S 00°41’45” E, along said west line of Vel R Phillips Avenue 24.42 feet where the ground elevation is 11.1 feet (city datum), the bottom of easement elevation is 27.5 feet (city datum), and the top of easement elevation is 54.5 feet (city datum); thence N 89°16’48” E, 105.00 feet to the east line of Vel R Phillips Avenue where the ground elevation is 10.9 feet (city datum), the bottom of easement elevation is 27.5 feet (city datum), and the top of easement elevation is 54.5 feet (city datum); thence N 00°41’45” W, along said east line 24.42 feet where the ground elevation is 11.1 feet (city datum), the bottom of easement elevation is 27.5 feet (city datum), and the top of easement elevation is 54.5 feet (city datum); thence S 89°16’48” W, 105.00 feet to the point of beginning where the ground elevation is 11.1 feet (city datum), the bottom of easement elevation is 27.5 feet (city datum), and the top of easement elevation is 54.5 feet (city datum), said parcel of land containing **2,564 SF**, or 0.06 Acre more or less, which is contained within a horizontal plane of which is above elevation 27.50 feet and below elevation 54.50 feet and is **27.00 feet in height** and includes a volume of **69,228 Cubic Feet** of air space.

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 Skywalk.

Lessor and Lessee agree and acknowledge that the Skywalk will replace that certain previously existing skywalk that was constructed pursuant to the Turnkey, Operation and Maintenance Agreement by and between the Milwaukee Exposition and Convention Center and Arena Board and Milwaukee MECCA Hotel Associates, dated November 16, 1981 (“Turnkey Agreement”), which is attached to this Lease as Exhibit B. Lessor and Lessee further agree and acknowledge that the Skywalk will connect with the segment of existing skywalk that connects to the Hyatt Regency Milwaukee, located at 333 West Kilbourn Avenue (“Hyatt Segment”). Lessor and Lessee acknowledge that the Hyatt Segment was also constructed pursuant to the Turnkey Agreement.

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. 210822) 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 \$5,100.00 per year. This rental shall be paid by Lessee in annual payments to the Office of the City Comptroller, the first payment being due within 30 days after the Effective Date, and future annual payments to be due 30 days prior to the annual anniversary of the Effective Date. 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, Lessee will in due course construct the Skywalk. Lessee further covenants and agrees 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 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 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 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. 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 as pedestrian skywalk 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.

Lessor and Lessee acknowledge that Lessee has transferred its maintenance and operations responsibilities, under pars. 4 and 6 of this Lease to CL1 Milwaukee, LLC consistent with Sec. XII and XIII of the Turnkey Agreement. Notwithstanding this transfer of responsibilities, Lessor may hold Lessee responsible for all reasonable and necessary costs incurred by Lessor if CL1 Milwaukee, LLC, or its successors/assigns, fail to maintain and operate the Skywalk in accordance with this Lease.

7. Insurance and Indemnity. Lessee shall maintain and keep in force, or cause to be maintained and kept 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. 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.

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 one of the buildings to which the Skywalk is attached, 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 is 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 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. Demolition of Hyatt Segment. If the Hyatt Segment is demolished and not replaced or reconstructed, Lessor or Lessee may terminate this Lease and, upon termination of the Lease, Lessee shall surrender the Airspace and cause the Skywalk to be demolished and removed in accordance with par. 14 of this Lease.

10. 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.

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 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 were damaged, destroyed, or inoperative.

12. 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 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 to determine and maintain the structural adequacy of the Skywalk.

13. 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 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.

14. 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.

15. Parties to Lease. The term "parties to the Lease" shall include the successors and assigns of Lessor and Lessee, 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(4), Wisconsin Statutes (2019-2020).

17. Assignment. Lessee, and its 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.

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 Lessee:

President/CEO
Wisconsin Center District
400 West Wisconsin Avenue
Milwaukee, WI 53203

For the Consenting Party:

CL1 Milwaukee, LLC
3363 NE 163 Street #601
North Miami Beach, FL 33160
Attn: Joao Woiler

and

CL1 Milwaukee, LLC
1395 Brickell Avenue, Suite 800

Miami, FL 33131
Attn: Pedro Miranda

19. 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 Cavalier Johnson, Acting Mayor, and James R. Owczarski, City Clerk, and countersigned by Aycha Sawa, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2022.

CITY OF MILWAUKEE

COUNTERSIGNED:

CAVALIER JOHNSON, Acting Mayor

AYCHA SAWA, Comptroller

JAMES R. OWCZARSKI, City Clerk

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, Cavalier Johnson, Acting Mayor of the City of Milwaukee, 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. 210822.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, James R. Owczarski, City Clerk of the City of Milwaukee, 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. 210822.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, Aycha Sawa, City Comptroller of the City of Milwaukee, 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 she executed the foregoing instrument as such officer as the deed of said municipal corporation, by its authority, and pursuant to Ordinance No. 210822.

Notary Public, State of Wisconsin
My commission expires: _____

IN WITNESS WHEREOF, the Wisconsin Center District, a special purpose district that is a unit of government created under Wis. Stats. § 229.42, has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 2022.

Wisconsin Center District

By: _____

Name (Print): _____

Title: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, _____, the _____ 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 _____ 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:_____

CONSENTING PARTY ACKNOWLEDGMENT

CL1 Milwaukee, LLC, for itself and its successors and assigns, hereby approves this Lease and acknowledges its responsibilities for maintenance and operation of the Skywalk as set forth in par. 6 of this Lease.

CL1 Milwaukee, LLC

By: _____

Name (Print): _____

Title: _____

Approved as to form and execution
this ____ day of _____, 2022.

Assistant City Attorney

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

1053-2021-1127:278401