

Document Number

AIRSPACE LEASE BETWEEN THE
CITY OF MILWAUKEE AND THE
DELONG COMPANY, INC. FOR AN
ELEVATED CONVEYOR SYSTEM
OVER SOUTH CARFERRY DRIVE

Document Title

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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

Parcel Identification Number (PIN)

**AIRSPACE LEASE BETWEEN THE CITY OF MILWAUKEE AND THE DELONG COMPANY,
INC. FOR AN ELEVATED CONVEYOR SYSTEM OVER SOUTH CARFERRY DRIVE**

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”) and the DeLong Company, Inc., a Wisconsin corporation (“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 South Carferry Drive connecting the properties at 1711 South Carferry Drive and 1790 South Carferry Drive in the City of Milwaukee (the “Airspace”), for the purpose of constructing and maintaining an elevated conveyor system (“Structure”), the Airspace being more particularly described as follows:

Land being a part of the Southwest 1/4 of the Northeast 1/4, all in Section 4, Township 6 North, Range 22 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin described as follows:

Commencing at the Northwest corner of said Northeast 1/4; thence South 00°56’16” East along the West line of said 1/4 section a distance of 1785.58 feet; thence North 90°00’00” East 428.45 feet; thence South 01°20’52” East 124.19 feet to the East right-of-way line of “South Carferry Drive”; thence South 21°41’49” East along said East line 32.98 feet to the point of beginning of lands being described.

Thence continuing South 21°41’49” East along said East line 20.17 feet; thence South 75°40’09” West 50.42 feet to the West right-of-way line of “South Carferry Drive”; thence North 21°41’49” West along said West right-of-way line 20.17 feet; thence North 75°40’09” East 50.42 feet to the point of beginning of lands being described.

Said easement is contained within the elevations of 611.09 and 617.67, being above the existing roadway of “South Carferry Drive” having an elevation of 587.40, North American Vertical Datum of 1988.

Containing 1,008 Square feet (0.02 Ac.) of land more or less.

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 Structure.

2. Term. The term of the Lease shall commence on the Effective Date and run concurrently with the term of the Lease Agreement between the DeLong Company, Inc. and the Board of Harbor Commissioners of the City of Milwaukee, authorized by Common Council Resolution No. 200590, (“Ground Lease”), including any extensions or amendments of the Ground Lease term. Lessee may terminate the Lease at any time 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 is completely removed and the public right of way restored to the satisfaction of Lessor’s Commissioner of Public Works (“Commissioner”). Lessor, at the expense of Lessee, shall cause this Lease and its authorizing ordinance (No. 211583) 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 \$100 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 Structure. Lessee further covenants and agrees that those portions of the Structure 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 Structure prepared by a registered professional engineer. 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 Structure. The Structure 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 Structure, 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 Structure.
6. Maintenance. Lessee shall safely maintain the Structure and regulate its use so that the Structure 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 Structure 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, 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 Structure 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 Structure, or from collapse of the Structure; or which arise by reason of any material or thing whatsoever falling or being thrown from the Structure. 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 Structure. This policy of insurance shall also contain a provision that during the period of construction of the Structure 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 Structure is attached, to the extent that the Structure would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use of the Structure is surrendered and the Structure 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. Removal of Street Facilities. Lessee shall be responsible, at Lessee's expense, for the removal or relocation of any facilities, utilities, or structures within the public way made necessary by the construction of the Structure, as determined by Lessor. If Lessor incurs any costs for the removal or relocation of any facilities, utilities, or structures within the public way made necessary by the construction of the Structure, as determined by Lessor, Lessee shall reimburse Lessor for such costs within 30 days of invoice.
10. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the Structure 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 Structure 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 Structure 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 Structure 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 Structure.

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 Structure at its own expense or Lessor may remove or demolish the Structure 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 Structure 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 Structure 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 (2019-2020).

16. 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:

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

With a copy to:

Board of Harbor Commissioners
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207
Attn: Municipal Port Director

To Lessee:

The DeLong Company, Inc.
P.O. Box 552
214 Allen Street
Clinton, WI 53525
Attn: Brandon Bickham

With a copy to:

Godfrey & Kahn, S.C.
833 E. Michigan St., Suite 1800
Milwaukee, WI 53202
Attn: Marvin C. Bynum, II

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.

20. Amendment or Modification. This Lease shall not be modified or amended without a written document signed by the parties to the Lease.

[Signature Pages Follow]

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Cavalier Johnson, 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, 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, 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. 211583.

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. 211583.

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. 211583.

Notary Public, State of Wisconsin
My commission expires: _____

IN WITNESS WHEREOF, the DeLong Company, Inc., a Wisconsin corporation, has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 2022.

DeLong Company, Inc.

By: _____

Name (Print): _____

Title: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2022, _____, the _____ of the DeLong Company, Inc., 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 _____, 2022.

Assistant City Attorney

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

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