

AIRSPACE LEASE

BETWEEN

THE CITY OF MILWAUKEE

AND

TERRACE ROW, LLC

FOR EXISTING OVERHANG STRUCTURES

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LEASE

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and Terrace Row, LLC, a Wisconsin limited liability company (“Lessee”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2005-2006), do hereby make and enter into this Lease Agreement as of the ___ day of _____, 2009.

1. Description. The Lessor hereby leases to Lessee an airspace over the sidewalk area bordering East Kilbourn Avenue between North Van Buren Street and North Cass Street in the City of Milwaukee for the purpose of maintaining four bedroom bays and roof terraces on a building located at 755, 765, 775, and 785 East Kilbourn Avenue (“overhang structures”), with the lowest part of each not less than 20 feet above the sidewalk area consisting of not more than 23.42 feet in width, 5 feet of projection, and 25 feet in height, the airspace being more particularly described as follows:

Air Space Description for Bedroom Bay & Terrace, 3rd and 4th Floors, Unit 1:

Legal Description

All that part of E. Kilbourn Avenue as mapped and dedicated being part of the Northeast Quarter (NE ¼) of the Northwest Quarter (NW ¼) of Section 28, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin bounded and described as follows: Commencing at the northeast corner of Lot 1 of Certified Survey Map No. 8042, recorded April 17, 2008 as Document No. 09587485 in the Milwaukee County Registry; thence South 89°59’05” West along the north line of said Lot 1, 0.27 feet to the place of beginning of said Air Space Easement hereinafter described (Ground Elevation 66.00 feet, bottom of Air Space Elevation 86.66 feet, top of Air Space Elevation 111.00 feet, City of Milwaukee Datum); thence North 00°00’55” West 5.00 feet; thence South 89°59’05” West 23.42 feet; thence South 00°00’55” East 5.00 feet to above said north line of Lot 1; thence North 89°59’05” East along said north line 23.42 feet to the place of beginning. Said Air Space Easement containing 2850 cubic feet more or less.

Air Space Description for Bedroom Bay & Terrace, 3rd and 4th Floors, Unit 2:

Legal Description

All that part of E. Kilbourn Avenue as mapped and dedicated being part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 28, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin

bounded and described as follows: Commencing at the northeast corner of Lot 1 of Certified Survey Map No. 8042, recorded April 17, 2008 as Document No. 09587485 in the Milwaukee County Registry; thence South 89°59'05" West along the north line of said Lot 1, 33.85 feet to the place of beginning of said Air Space Easement hereinafter described (Ground Elevation 66.00 feet, bottom of Air Space Elevation 86.66 feet, top of Air Space Elevation 111.00 feet, City of Milwaukee Datum); thence North 00°00'55" West 5.00 feet; thence South 89°59'05" West 23.00 feet; thence South 00°00'55" East 5.00 feet to above said north line of Lot 1; thence North 89°55'05" East along said north line 23.00 feet to the place of beginning. Said Air Space Easement containing 2799 cubic feet more or less.

Air Space Description for Bedroom Bay & Terrace, 3rd and 4th Floors, Unit 3:

Legal Description

All that part of E. Kilbourn Avenue as mapped and dedicated being part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 28, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin bounded and described as follows: Commencing at the northeast corner of Lot 1 of Certified Survey Map No. 8042, recorded April 17, 2008 as Document No. 09587485 in the Milwaukee County Registry; thence South 89°59'05" West along the north line of said Lot 1, 61.85 feet to the place of beginning of said Air Space Easement hereinafter described (Ground Elevation 66.00 feet, bottom of Air Space Elevation 86.66 feet, top of Air Space Elevation 111.00 feet, City of Milwaukee Datum); thence North 00°00'55" West 5.00 feet; thence South 89°59'05" West 23.00 feet; thence South 00°00'55" East 5.00 feet to above said north line of Lot 1; thence North 89°59'05" East along said north line 23.00 feet to the place of beginning. Said Air Space Easement containing 2799 cubic feet more or less.

Air Space Description for Bedroom Bay & Terrace, 3rd and 4th Floors, Unit 4:

Legal Description

All that part of E. Kilbourn Avenue as mapped and dedicated being part of the Northeast Quarter (NE 1/4) of the Northwest Quarter (NW 1/4) of Section 28, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin bounded and described as follows: Commencing at the northeast corner of Lot 1 of Certified Survey Map No. 8042, recorded April 17, 2008 as Document No. 09587485 in the Milwaukee County Registry; thence South 89°59'05" West along the north line of said Lot 1, 89.85 feet to the place of beginning of said Air Space Easement hereinafter described (Ground Elevation 66.00 feet, bottom of Air Space Elevation 86.66 feet, top of Air Space Elevation 111.00 feet, City of Milwaukee Datum); thence North 00°00'55" West 5.00 feet; thence South 89°59'05" West 23.42 feet; thence South 00°00'55" East 5.00 feet to above said north line of Lot 1; thence North 89°59'05" East along said north line 23.42 feet to the place of beginning. Said Air Space Easement containing 2850 cubic feet more or less.

2. Terms. The Lease shall run for a period of 99 years from the date of the execution of the Lease; provided, however, that Lessee may terminate the Lease at any time during the 99-year period by giving the 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 overhang structures authorized by the Lease are completely removed and the public right of way restored to the satisfaction of the City's Commissioner of Public Works.

3. Rental. The rental payable to the Lessor by the Lessee under the Lease shall be the sum of \$985.00 per year. This rental shall be paid by the Lessee in annual payments to the Office of the City Comptroller, the first payment being due upon execution of this Lease, and future annual payments to be due 30 days prior to the annual anniversary date of the Lease. At the option of the 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. If appropriate, the Lessee may pre-pay the rental fee in a lump sum at a discounted rate to be determined by the City's Department of City Development.

4. Use and Occupancy. The Lessee covenants and agrees that those portions of the overhang structures currently located within the public airspace subject to this Lease 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.

5. Maintenance. The Lessee shall safely maintain the overhang structures and regulate their use and occupancy so that the leasehold area or its use will not be a hazard or danger to the persons or property of the public using the public right of way. No material changes to the overhang structures that deviate from the original plans and specifications filed

with the City of Milwaukee may be made during the course of this Lease without the prior written approval of the Commissioner of Public Works.

6. Insurance and Indemnity. The 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 overhang structures or the use or occupancy of the area hereby leased, and the Lessor shall be named as an additional insured and shall be 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 construction, maintenance, destruction, or dismantling of the overhang structures, or from collapse of the overhang structures; or which arise by reason of any material or thing whatsoever falling or being thrown from the overhang structures. A certificate of insurance in those sums, including the Lessor as a party insured, shall be deposited with the City Clerk of the City of Milwaukee immediately following execution of the Lease. At the option of the Lessor, these minimum amounts may be reviewed and increased or decreased every ten years, with any adjustment being proportionate to the land value of the property.

7. 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 adjacent building, to the extent that the overhang structures would no longer be usable or useful to the Lessee, this Lease shall be terminated as of the time the use and occupancy of the adjacent building is surrendered. 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.

8. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the overhang structures by an act of God, casualty, public enemies, or by reason of riot or insurrection, the Lease shall terminate and the Lessee shall not be required to pay any further rent to the Lessor. Notwithstanding the foregoing, the Lessee shall have the right to reconstruct the overhang structures located in the public 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 overhang structures were damaged, destroyed or inoperative.

9. Entry by Lessor. The 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 leasehold area to view the condition of the overhang structures and require any and all necessary repairs and alterations thereto for the public safety and well-being. This right shall in no way eliminate the Lessee's obligation of determining and maintaining the structural adequacy of the overhang structures.

10. Default and Penalty. In the event default shall be made at any time by the 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 the Lessee by the Lessor, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by the Lessee, and such default shall continue for 30 days after written notice thereof by registered or certified mail to the Lessee from the 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 the Lessor may at any time thereafter prior to the curing of such default within reasonable time,

declare the term of the Lease ended and terminated by giving the Lessee written notice of its intention. If possession of the demised area is not immediately surrendered, the Lessor may re-enter therein and declare the Lease to be terminated; and in such event the Lessor may require that the Lessee remove and demolish the overhang structures at the Lessee's own expense or the Lessor may remove or demolish the overhang structures and require the payment of the expense thereof from the Lessee to the Lessor within 30 days thereafter.

11. Surrender of Premises. Upon the termination of the Lease, the Lessee agrees to surrender or relinquish any claims or right to further utilize the airspace. The Lessee shall, prior to surrender of the airspace, cause the overhang structures to be demolished and removed and the airspace returned to the same condition as it was when first acquired by the Lessee in compliance with the applicable building codes, unless otherwise directed by the Lessor. In the event of the failure of the Lessee to remove the overhang structures within six months after the termination of the Lease, it shall pay liquidated damages to the 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.

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

13. 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 (2005-2006).

14. Assignment. The 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 described in paragraph 1 of this Lease. 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 the 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.

15. 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 Lessee:

Terrace Row, LLC
1840 N. Farwell Ave. #203
Milwaukee, WI 53202

16. Signs. The 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 permission of the Commissioner of Public Works provided that individual condominium owners may place signs on the interior portion of windows contained within the leased airspace without obtaining permission of the Commissioner of Public Works.

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Tom Barrett, Mayor, and Ronald D. Leonhardt, City Clerk, and countersigned by W. Martin Morics, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2009.

CITY OF MILWAUKEE

SIGNED AND SEALED IN PRESENCE OF:

TOM BARRETT, Mayor

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

W. MARTIN, MORICS, Comptroller

IN WITNESS WHEREOF, Terrace Row, a Wisconsin limited liability company, has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 2009.

TERRACE ROW, LLC

By:_____

