

CITY OF MILWAUKEE

Form CA-43

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September 19, 2002

Ms. Martha L. Brown
Manager, Development Center
Department of City Development
809 Building, 1st Floor

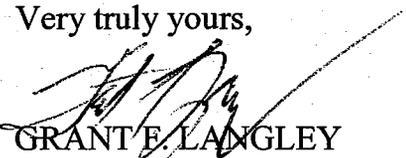
Re: Subterranean-Space Lease/New Land Enterprises
Common Council File No. 020798

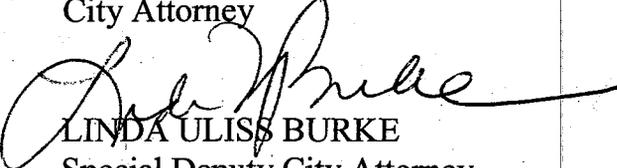
Dear Ms. Brown:

Enclosed is a draft lease and ordinance relative to the above Subterranean-Space Lease. Copies are also being provided to the City Engineer and the Commissioner of Public Works.

Upon their review, we will revise these documents. It is our understanding that the Air and Subterranean-Space Lease Committee will then fill the Common Council jacket.

Very truly yours,


GRANT F. LANGLEY
City Attorney


LINDA ULISS BURKE
Special Deputy City Attorney

LUB:dms
Enc.

c: Jeff Mantes
Tom Miller
Ronald Leonhardt
1050-2002-2634:57887

DRAFT

SUBTERRANEAN SPACE LEASE

BETWEEN THE CITY OF MILWAUKEE

AND

NEW LAND ENTERPRISES

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LEASE

The City of Milwaukee, a municipal corporation ("Lessor"), and New Land Enterprises, a _____ ("Lessee") pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes, (1999-2000), hereby agree to enter into a lease agreement as of the ___ day of _____, 2002.

1. **DESCRIPTION** Lessor hereby leases a space underneath the surface of East Kilbourn Avenue and North Prospect Avenue, for the purpose of enabling Lessee to construct and maintain an underground parking lot facility ("parking facility") for the proposed residential building to be known as 923 E. Kilbourn Avenue, the space consisting of an area approximately ___ feet in width and ___ feet in length with a height of approximately ___ feet to extend to a depth ranging from ___ to ___ feet below grade, within the public right-of-way corridor, dimensions of the area being more particularly described as follows:

All that part of the Northwest Quarter (NW ¼) of Section 28, Town 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin, and being part of the right-of-ways of E. Kilbourn Avenue and N. Prospect Avenue as mapped and dedicated on the Plat of Milwaukee bounded and described as follows: Commencing at the northeast corner of Lot 2 of Block 102 of the Plat of Milwaukee; thence Due South 28.75 feet along the west right-of-way line of N. Prospect Avenue to the place of beginning of the lands hereinafter described; thence Due East 16.33 feet; thence Due North 99.00 feet; thence Due West 20.00 feet; thence Due North 24.00 feet; thence Due West 115.67 feet; thence Due South 34.00 feet; thence South 89°52'30" East along the south right-of-way line of E. Kilbourn Avenue 119.33 feet to the west right-of-way line of N. Prospect Avenue; thence Due South along said right-of-way line 88.75 feet to the place of beginning. Containing a net area of 5,602 square feet.

2. **TERMS**

This lease shall run for a period of 99 years from the date of its execution; provided, however, that the Lessee may terminate the lease at any time during the 99 years by giving the Lessor due notice of its election 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 parking facility is properly abandoned and the public right-of-way restored to the satisfaction of the Commissioner of Public Works.

3. **RENTAL**

Rental to the Lessor by the Lessee under the lease shall be the sum of _____ Dollars per year, which rental shall be paid by the Lessee to the Lessor in annual payments, the first payment being due upon the acceptance of this lease, and future annual payments to be due 30 days prior to the annual anniversary date of the lease. The rental payments shall be made payable to the Treasurer of the City of Milwaukee and sent to the City Comptroller. 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 averaged land values of the neighboring properties.

4. **USE AND OCCUPANCY**

The Lessee covenants and agrees that upon the execution of this lease with the Lessor, it will construct and maintain a parking facility to be located entirely within the area of the lease to provide parking for a residential building located at 923 E. Kilbourn Avenue. Lessee further covenants and agrees that the parking facility 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. Entrances to the parking facility shall be accessible to the disabled in accordance with State Statutes (Barrier Free Access Codes) and as approved by the

Plan Commission. The Lessee shall comply with the Americans with Disabilities Act of 1990 and regulations thereunder. Lessee shall not install, place, or store in the parking facility any boiler, engine, or other machinery using steam, gas, or explosive mixtures, or any tank or container containing volatile or flammable liquid.

5. **PLANS, REGULATIONS, AND PERMITS**

Specifications must be approved by the Commissioner of Public Works, the Commissioner of City Development, the Commissioner of the Department of Neighborhood Services, and the City Engineer of the City of Milwaukee prior to the commencement of any construction in or around the parking facility. Any improvements to the parking facility shall be completed in every respect according to the plans and specifications and to the satisfaction of the registered professional engineer who shall supervise the construction. The Lessee shall further obtain any necessary permits and pay all proper fees for the same, and comply with all building and zoning regulations of the Lessor, the County of Milwaukee, and the State of Wisconsin that will at any time be applicable to the parking facility or the construction and maintenance thereof. The Lessee shall have the use of areas that are deemed essential for ingress and egress to the leased premises.

6. **MAINTENANCE**

The Lessee shall maintain the parking facility so that it is safe and regulate the use of its occupancy so that the parking facility or the use thereof will not be a hazard or danger to the persons or property of the public using the public right-of-way above. The Lessee shall maintain the roof of the parking facility, supporting the roadway surface, to the satisfaction of the Commissioner of Public Works. No changes to the parking facility that deviate from the original plans and specifications may be made during the course of this Lease, without the written approval of the Commissioner of Public Works.

7. **INSURANCE AND INDEMNITY**

The Lessee shall maintain and keep in force during the term of the Lease public liability insurance for the same limits as are and will be in effect for the adjoining structures, but in no event less than the amount of \$500,000 for an individual claim and \$1,000,000 for multiple claims arising out of an accident involving the parking facility or the use or occupancy of the premises hereby leased, and the Lessor in said policy 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 construction, maintenance, destruction, dismantling, or removal or abandonment of the parking facility, or from collapse of the parking facility. A certificate of insurance in those sums, naming Lessor as a party insured, shall be deposited with the City Clerk of the City of Milwaukee immediately following execution of the lease. The policy of insurance shall also contain a provision that during any period of construction of improvements to the parking facility, the aggregate limits of the policy for multiple claims shall be increased to \$3,000,000. At the option of the Lessor, the minimum amounts may be reviewed and increased every ten years, with any increase being proportionate to the increase in the land value of the neighboring properties.

8. **TERMINATION OF LEASE IN THE EVENT OF CONDEMNATION OF EITHER OR BOTH STRUCTURES**

In the event that any governmental authority or agency shall require the use of or take all of, or a major portion of, the building serviced by the parking facility, to the extent that the parking facility would no longer be usable or useful to the Lessee or to the extent that the residential building would not require the continued use of the parking facility, this lease shall be terminated as of the time the use and occupancy of the parking facility or building are surrendered and the parking facility 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 all or a part of the building, the value of the parking facility or any 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 OR ALLEY FACILITIES**

The Lessee shall, upon demand by the Lessor, pay such charges as may be incurred by the Lessor for the removal or relocation of any facilities, pavement, utilities, or structures within the public way in the vicinity of the parking facility that are made necessary by reason of the existence of the parking facility. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation which may be required.

10. **ACT OF GOD, RIOTING, AND PUBLIC ENEMIES**

In the event of the destruction of the parking facility by an act of God, 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. In such event, the Lessee shall have the right to reconstruct the premises or any portion thereof demolished, provided such reconstruction is started within six months of the destruction. In that event, Lessee shall pay rental for any period during which the parking facility was destroyed and inoperative.

11. **ENTRY BY LESSOR**

The Lessor by its officers, agents or employees may at all reasonable times during Lessee's business hours have access to and enter upon the demised area to view the condition of the parking facility 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 parking facility.

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 or certified mail to Lessee by Lessor, or if default shall be made in any of the other terms or 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 Lessee from Lessor, or if default is of such a nature as to require more than 30 days to cure and Lessee shall not proceed to cure the default, then the Lessor may at any time thereafter prior to the curing of such default within reasonable time, declare the term of this 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 thereon for possession thereof and declare the Lease to be terminated; in such event the Lessor may require that the Lessee remove and properly abandon the parking facility and restore the public right-of-way to the satisfaction of the Commissioner of Public Works at Lessee's own expense or the Lessor may remove such structure, restore the public right-of-way and require the payment of the expense thereof from Lessee to the Lessor within 30 days thereafter.

13. **SURRENDER OF PREMISES**

Upon the termination of this lease, the Lessee and the Lessor further covenant and agree that the Lessee shall yield up the area without further notice; but, before the surrender of the area, the Lessee shall cause the parking facility to be abandoned and the public right-of-way area returned to a condition satisfactory to the Commissioner of Public Works. In the event of the failure of Lessee to do so within six months after the termination of the lease, Lessee shall pay liquidated damages to Lessor in the sum of \$100 for each and every day it remains in possession of the area after expiration of six months from the termination of the Lease.

14. **PARTIES TO SAID LEASE**

The term "parties to said lease" shall include the successors and assigns of the 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 construction of streets, the granting of permits, and any 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, (1999-2000).

16. **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 subterranean space 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 Lessees under the lease, the assignor shall be released from all obligations and liabilities under this lease.

17. **NOTICES**

Notices required hereunder shall be sent to:

For the Lessor:

Jeffrey Polenske, City Engineer
Infrastructure Services Division
841 North Broadway, Room 612
Milwaukee, WI 53202

For the Lessee:

Boris Gokhman
2010 East Windsor Pl.
Milwaukee, WI 53202

**SIGNED AND SEALED
IN PRESENCE OF:**

CITY OF MILWAUKEE

JOHN O. NORQUIST, Mayor

RONALD D. LEONHARDT
City Clerk

COUNTERSIGNED:

W. MARTIN MORICS
Comptroller

IN WITNESS WHEREOF, the _____, a _____ corporation, has caused these presents to be signed by _____, _____, and countersigned by _____, _____, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 2002.

**SIGNED AND SEALED
IN PRESENCE OF:**

NEW LAND ENTERPRISES

COUNTERSIGNED:

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2002, John O. Norquist, Mayor of the 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 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. _____, adopted by the Common Council of the City of Milwaukee on _____.

Notary Public, State of Wisconsin
My Commission expires _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2002, Ronald D. Leonhardt, City Clerk of 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 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. _____, adopted by the Common Council of the City of Milwaukee on _____.

Notary Public, State of Wisconsin
My Commission expires _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this _____ day of _____, 2002, W. Martin Morics, City Comptroller of 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. _____, adopted by the Common Council of the City of Milwaukee on _____.

Notary Public, State of Wisconsin
My Commission expires _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2002,
_____, and _____ the _____
and _____ of the above-named not-for-profit corporation, New Land
Enterprises, to me known to be the persons who executed the foregoing instrument, and to me
known to be such _____ and _____ of said corporation, and
acknowledged that they executed said foregoing instrument as such officers as the deed of said
corporation, by its authority

Notary Public, State of Wisconsin
My Commission expires _____

This instrument was drafted by
the Office of the City Attorney

Approved as to form and execution
this ____ day of _____, 2002.

Assistant City Attorney

LUB:dms
9/17/02
1050-2002-2634:57803

DRAFT

..Number
020798
..Version
Substitute 1
..Reference

..Sponsor
THE CHAIR
..Title

An ordinance to grant a subterranean-space lease to Boris Gokhman/New Land Enterprises for the development of underground parking at a new residential tower at 923 East Kilbourn Avenue, and to declare that such a subterranean-space lease is in the interest of the City of Milwaukee.

..Analysis

In accordance with state law, this ordinance will grant a subterranean-space lease to Boris Gokhman/New Land Enterprises for the development of underground parking beneath the surface of East Kilbourn and North Prospect Avenues, at a new residential tower at 923 East Kilbourn Avenue, and will declare that it is in the interest of the City of Milwaukee to lease such space.

..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. 109.15(4), Stats. (1999-2000), the Common Council of the City of Milwaukee hereby authorizes, directs and agrees that the City of Milwaukee enter into a lease with New Land Enterprises for the purpose of enabling New Land Enterprises to construct and maintain a parking facility beneath East Kilbourn and North Prospect Avenues, at a new residential tower at 923 East Kilbourn Avenue, said premises consisting of an area approximately ____ feet in width and ____ feet in length, with a height of approximately ____ feet, to extend to a depth ranging from ____ to ____ feet below grade, and the Common Council of the City of Milwaukee hereby finds that said space beneath the above-described street is not needed for street, alley or other public purposes provided that the lessee meet certain conditions by the City of Milwaukee.

Part 2: The Common Council of the City of Milwaukee further finds that the public interest will be served by such leasing inasmuch as the parking facility will continue to aid in the development of the downtown area and convenience of the public; and that New Land Enterprises will at its own expense bear the cost of any relocating, reconstructing and abandonment of private and public improvements in the street as may become necessary.

Part 3: A copy of such lease is attached hereto and is made part of Common Council File No. 020798.

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

Part 5: 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

City Attorney

LUB:dms

1050-2002-2634

57818

9/18/2002