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Assistant City Attorneys

March 30, 2016

James Owczarski
City Clerk
City Hall, Room 205

Commissioner Tom Mishefske
Department of Neighborhood Services
Zeidler Building, Room 104

Rocky Marcoux, Commissioner
Department of City Development
809 North Broadway
Second Floor

Ghassan Korban, Commissioner
Attn: Michael Loughran
Zeidler Building, Room 519

Jeffrey S. Polenske
City Engineer
Zeidler Building, Room 701

Vanessa Koster
City Planning Manager
809 North Broadway, Second Floor

Re: Airspace Lease for Overhang Structure for Milwaukee Bucks Arena

Dear Air and Subterranean Space Committee Members:

Enclosed is a proposed Airspace Lease between the City of Milwaukee and Wisconsin Center District for an Overhang Structure for the Bucks arena. Also enclosed is a draft ordinance approving the lease.

Please review the documents in preparation for the Air and Subterranean Space Committee meeting on Monday, April 4. Assistant City Attorney Tom Miller will attend the committee meeting but is out of the office and unavailable this week. In his absence, please direct any questions about the documents to me at 286-2637.



James Owczarski
Tom Mishefske
Rocky Marcoux
Ghassan Korban
Vanessa Koster
Jeffrey S. Polenske
March 30, 2016
Page 2

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Mary L. Schanning', followed by a long horizontal line.

MARY L. SCHANNING
Assistant City Attorney

TDM:wt:226856

c: Alderman Robert J. Bauman
Tom Miller
Dawn Schmidt, DPW Infrastructure
Attorney Danielle Bergner
Attorney Bruce Block

1053-2016-525

AIRSPACE LEASE BETWEEN THE
CITY OF MILWAUKEE AND
WISCONSIN CENTER DISTRICT FOR
AN OVERHANG STRUCTURE

Document Number

Document Title

AIRSPACE LEASE
BETWEEN
THE CITY OF MILWAUKEE
AND
WISCONSIN CENTER DISTRICT
FOR AN OVERHANG STRUCTURE

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"), and Wisconsin Center District, a local exposition district created and existing pursuant to Chapter 229 of the Wisconsin Statutes, ("Lessee"), pursuant to the provisions of sec. 66.0915(4), 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 Lessee an airspace over the sidewalk area bordering West Juneau Avenue, between North 4th Street and North 6th Street in the City of Milwaukee (the "Airspace"), for the purpose of constructing and maintaining a building overhang ("Overhang") that will be attached to a professional basketball arena ("Arena"), the Airspace being more particularly described as follows:

That part of West Juneau Avenue in the Northwest 1/4 of the Northeast 1/4 of Section 29, T 7 N, R 22 E, in the City of Milwaukee, Milwaukee County, Wisconsin, which is bounded and described as follows:

Commencing at the North quarter corner of said Section 29;

Thence South 00° 54' 02" East, coincident with the West line of the Northeast 1/4 of said Section, 76.67 feet to the South right of way line of West Juneau Avenue;

Thence North 89° 29' 10" East, coincident with said South right of way line, 29.18 feet to the Point of Beginning of said air space easement; (sidewalk elevation 18.3 feet, bottom of easement elevation 54.5 feet, top of easement elevation 104.0 feet.);

Thence North 00° 30' 50" West, 7.99 feet to a point; (sidewalk elevation 18.0 feet, bottom of easement elevation 54.5 feet, top of easement elevation 104.0 feet.);

Thence North 89° 29' 10" East, 224.48 feet to a point; (sidewalk elevation 14.3 feet, bottom of easement elevation 54.5 feet, top of easement elevation 104.0 feet.);

Thence South 00° 30' 50" East, 7.99 feet to a point on the South right of way line of West Juneau Avenue; (sidewalk elevation 14.6 feet, bottom of easement elevation 54.5 feet, top of easement elevation 104.0 feet.);

Thence South 89° 29' 10" West, coincident with said South right of way line, 224.48 feet to the Point of Beginning of said air space easement (sidewalk elevation 18.3 feet, bottom of easement elevation 54.5 feet, top of easement elevation 104.0 feet.).

Lease area as described containing 1,793 square feet or 88,783 cubic feet of area, more or less.

North referenced to the North line of the Northeast 1/4 of Section 29, 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. 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 Overhang.

2. Sublease. The City acknowledges and consents to a sublease of this Lease to Deer District LLC ("ArenaCo") pursuant to an Arena Lease, Management, and Operations Agreement by and between Lessee and ArenaCo (the "Sublease"). The Sublease shall incorporate all of the terms of this Lease in respect of the Airspace only and, as a condition of such sublease, ArenaCo shall assume all obligations, responsibilities, rights and liabilities of Lessee under this Lease solely with respect to the Airspace; provided, however, ArenaCo shall have no liability for matters caused by the affirmative actions of Lessee, 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 Lessee may terminate the Lease at any time during the 99-year period 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 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. _____) 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.

4. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$2,100.00 per year. Said rental shall commence upon the start of construction of the Overhang. This rental shall be paid by Lessee 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 Overhang, 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. Lessee covenants and agrees that upon the execution of this Lease, it will in due course construct the Overhang in accordance with, and subject to, the Sublease and related Development Agreement by and between Lessee and ArenaCo. Lessee further covenants and agrees that those portions of the Overhang 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.

6. Plans, Regulations, and Permits. Lessee shall have the plans and specifications for the Overhang prepared by a registered professional engineer, which plans and specifications shall specifically provide for the prevention of ice accumulation on the Overhang and methods by which pigeons and other birds will be prevented from roosting or nesting on the Overhang. 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 Overhang. The Overhang 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 Overhang, 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 Overhang.

6. Maintenance. Lessee shall safely maintain the Overhang and regulate its use and occupancy so that the Overhang 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 Overhang 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 (or ArenaCo) 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 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 Overhang, or from collapse of the Overhang; or which arise by reason of any material or thing whatsoever falling or being thrown from the Overhang. 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 Overhang. This policy of insurance shall also contain a provision that during the period of construction of the Overhang the aggregate limits of the policy for multiple claims shall be increased to \$3,000,000.00. 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. The City hereby agrees not to pursue a condemnation of all or any portion of the Airspace during the Term of this Lease. Subject to the foregoing, 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 to which the Overhang is attached, to the extent that the Overhang would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use and occupancy of the Overhang are surrendered and the Overhang 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 the Arena, 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, 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 Overhang that are made necessary by reason of the construction of the Overhang. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation that may be required.

10. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the Overhang 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 Overhang 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 Overhang was damaged, destroyed, or inoperative.

11. Entry by Lessor. 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 Airspace to view the condition of the Overhang 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 of determining and maintaining the structural adequacy of the Overhang.

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 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 Overhang at its own expense or Lessor may remove or demolish the Overhang 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 Overhang 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 Overhang 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 (2013-2014).

16. Assignment; Liens; Estoppel Certificates.

a. 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. Lessee may pledge, mortgage, grant a security interest in, encumber, or collaterally assign its interest in this Lease to secure indebtedness for borrowed money of Lessee; additionally, ArenaCo shall have the right to pledge, mortgage, grant a security interest in, encumber, or collaterally assign its interest in the Sublease to secure indebtedness for borrowed money of ArenaCo or the equity interests in ArenaCo and the same shall not constitute or be deemed to be a violation of this Lease. Lessee 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 Lessee (or anyone claiming by, through or under Lessee) may perform or have done at the Airspace. Lessee 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.

17. 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:
Wisconsin Center District
Attn: President/CEO
400 West Wisconsin Ave.
Milwaukee, WI 53203

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.

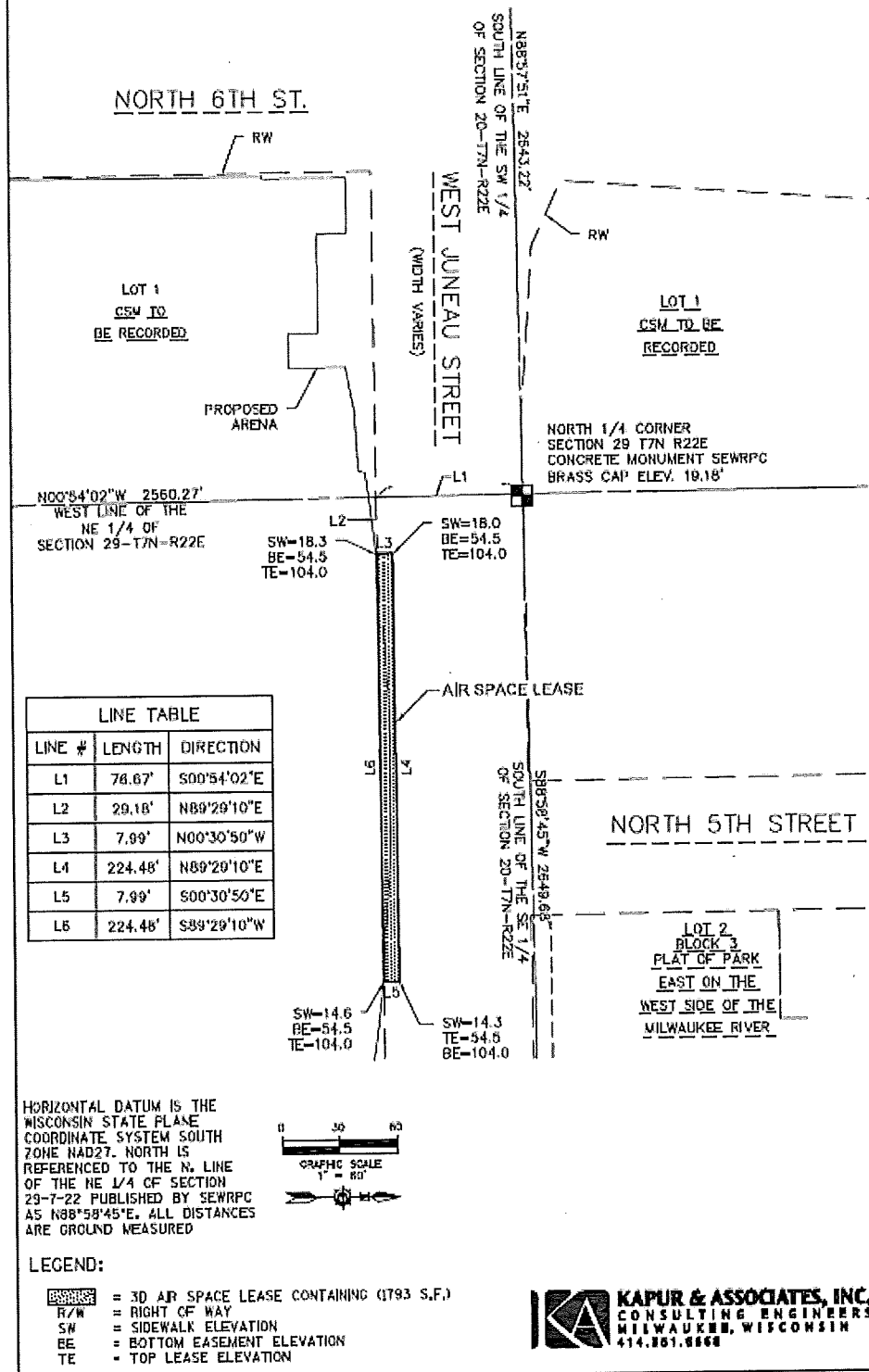
[Signature Pages Follow]

Notary Public, State of Wisconsin
My commission expires:

EXHIBIT A AIR SPACE LEASE

PAGE 1 OF 1

BEING A PART OF THE NW 1/4 OF THE NE 1/4 OF
SECTION 29, TOWNSHIP 7 NORTH, RANGE 22 EAST, IN THE
CITY OF MILWAUKEE, MILWAUKEE COUNTY, WISCONSIN.



..Number

..Version

..Reference

..Sponsor

THE CHAIR

..Title

An ordinance granting an airspace lease for an overhang structure for the Milwaukee Bucks arena.

..Analysis

In accordance with state law, this ordinance will grant an airspace lease to Wisconsin Center District for the purpose of constructing and maintaining a building overhang over the sidewalk area on the north property line on property bordered by North 4th Street to the east, West Highland Avenue to the south, North 6th Street to the west, and West Juneau Ave to the north.

..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. 66.0915(4), Wis. Stats., (2013-2014), the Common Council of the City of Milwaukee hereby authorizes, directs and agrees that the City of Milwaukee enter into a lease, substantially the same as the lease attached hereto, with Wisconsin Center District for an airspace over the sidewalk area bordering West Juneau Avenue, between North 4th Street and North 6th Street for the purpose of constructing and maintaining a building overhang on property bordered by North 4th Street to the east, West Highland Avenue to the south, North 6th Street to the west, and West Juneau Ave to the north, as described in the lease, and the Common Council of the City of Milwaukee hereby finds that the area described in the lease is not needed for street, alley or other public purposes and that the public interest will be served by promoting development of the downtown area.

Part 2: A copy of such lease is attached hereto and is made part of Common Council File No. _____.

Part 3: The lease shall not be executed until the Wisconsin Center District takes title to the property adjacent to the Airspace and bordered by North 4th Street to the east, West Highland Avenue to the south, North 6th Street to the west, and West Juneau Ave to the north.

Part 4: The Department of City Development, through its real estate section, shall, at the expense of the lessee, cause such lease and this authorizing

ordinance to be recorded with the Milwaukee County Register of Deeds upon execution of the lease and shall deliver the recording information complete with a final copy of the ordinance and lease to the City Engineer and the City Comptroller.

Part 5: All ordinances or parts of ordinances contravening the provisions of this ordinance are hereby repealed.

Part 6: 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
TDM/tdm
1053-2016-525:226874