

SUBTERRANEAN SPACE LEASE  
BETWEEN THE CITY OF MILWAUKEE  
AND PFISTER, LLC  
FOR AN EXISTING UNDERGROUND VAULT

Document Number

Document Title

Recording Area

Name and Return Address

Ms. Elaine Miller  
Real Estate and Development Services  
Redevelopment Authority of the City of  
Milwaukee  
809 N. Broadway, 2<sup>nd</sup> Floor  
Milwaukee, WI 53202

392-0801-100

Parcel Identification Number (PIN)

**SUBTERRANEAN SPACE LEASE BETWEEN  
THE CITY OF MILWAUKEE AND PFISTER, LLC  
FOR AN EXISTING UNDERGROUND VAULT**

The City of Milwaukee, a Wisconsin municipal corporation ("Lessor" or "City"), and Pfister, LLC, a Wisconsin limited liability company ("Lessee"), pursuant to the provisions of Wis. Stat. § 66.0915(4) (2007-2008), do hereby make and enter into this Lease Agreement as of the \_\_\_ day of \_\_\_\_\_, 2009.

1. **Description.** Lessor hereby leases to Lessee a space underneath the surface of a public alley located between East Wells Street and East Wisconsin Avenue and North Jefferson Street and North Milwaukee Street for the purpose of maintaining an existing underground vault ("underground vault") more particularly described as follows:

A sub-surface easement across a public alley and East Wisconsin Avenue, being a part of the Northwest ¼ of Section 28, Town 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:

Commencing at the Southeast corner of Lot 6, Block 19 in Plat of Milwaukee of said ¼ Section; thence North 90°00'00" West along the North line of East Wisconsin Avenue 119.66 feet to a point in the East line of a 14 foot public alley being the point of beginning of lands to be described; thence South 00°24'00" East 21.20 feet to a point (Lower elevation of 27.0 feet, Upper elevation of 36.0 feet); thence North 90°00'00" West along a line parallel to said North line 10.00 feet to a point (Lower elevation of 27.0 feet, Upper elevation of 36.0 feet); thence North 00°24'00" West along a line parallel to the East line of a 14 foot public alley 201.52 feet to a point

(Lower elevation of 29.0 feet, Upper elevation of 40.0 feet); thence South 90°00'00" East 10.00 feet to a point in the East line of said alley (Lower elevation of 29.0 feet, Upper elevation of 40.0 feet); thence South 00°24'00" East along said East line 180.32 feet to the point of beginning.

See also, Exhibit A.

2. Term. 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 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 underground vault is completely removed and the public right of way restored to the satisfaction of the City's Commissioner of Public Works ("Commissioner").

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$4,500.00 per year. This rental shall be paid by Lessee in annual payments to the Office of the City Comptroller, the first payment being due 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 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, 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. Lessee and Lessor acknowledge that a portion of the underground vault is comprised of a portion of Lessee's kitchen and that other uses currently include an employee break room, a janitor's closet, sump pump station, and a storage area. Lessee covenants and agrees that the underground vault 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. Lessee shall not install, place, or store in the underground vault any boiler, engine, or other machinery using steam, gas, or explosive mixtures, or any tank or container containing volatile or flammable liquid.

5. Maintenance. Lessee shall safely maintain the underground vault and regulate its use and occupancy so that the underground vault or its use will not be a hazard or danger to the persons or property of the public using the public right-of-way. Lessee shall maintain the roof of the underground vault, supporting the alley surface, to the satisfaction of the Commissioner according to the requirements of Milwaukee Code of Ordinances (MCO) § 245-5 and any regulations or specifications issued by the Commissioner. No material changes to the physical structure of the underground vault may be made during the course of this Lease without the prior written approval of the Commissioner.

6. 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 structure, but 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 underground vault or the use or occupancy of the premises hereby leased, and 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, dismantling, or removal or abandonment of the underground vault, or from collapse of the underground vault. 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 underground vault, the aggregate limits of the policy for multiple claims shall be increased to \$3,000,000. At the option of 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 underground vault would no longer be usable or useful to 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. Removal of Street or Alley Facilities. Lessee shall, upon demand by Lessor, pay such charges as may be incurred by Lessor for the removal or relocation of any facilities, pavement, utilities, or structures within the public way in the vicinity of the underground vault that are made necessary by reason of the existence of the underground vault. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation which may be required.

9. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the underground vault 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 underground vault located within the leased premises, and the 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 underground vault was damaged, destroyed or inoperative.

10. 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, with the exception of emergencies in which case notice shall be given as soon thereafter as possible, have access to and enter the leasehold area to view the condition of the underground vault and require any and all necessary repairs and alterations thereto for the public safety and well-being. Lessor's right shall in no way eliminate Lessee's obligation to determine and maintain the structural adequacy of the underground vault.

11. Default and Penalty. If Lessee defaults in payment of rent and such default continues 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 the Lease ended and terminated by giving Lessee written notice of its intention. If possession of the leased premises is not immediately surrendered, Lessor may re-enter the leased premises for possession of the leased premises and declare the Lease to be terminated; and in such event Lessor may require that Lessee remove and abandon the underground vault and restore the public right-of-way to the satisfaction of the Commissioner at Lessee's own expense or Lessor may remove such structure, restore the public right-of-way and require the payment of the expense thereof from Lessee to Lessor within 30 days thereafter; said abandonment, removal, and restoration to be conducted according to the requirements of MCO § 245-5-5.

12. Surrender of Premises. Upon the termination of the Lease, Lessee agrees to surrender or relinquish any claims or right to further utilize the leased premises. Lessee shall, prior to surrender of the leased premises, cause the underground vault to be abandoned and the public right-of-way returned to a condition satisfactory to the Commissioner; said abandonment, removal, and restoration to be conducted according to the requirements of MCO § 245-5-5. If Lessee fails to surrender the leased premises 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 area after the expiration of six months from the termination of the Lease.

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

14. 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 Wis. Stat. § 66.0915(4) (2007-2008).

15. Assignment. 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 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.

16. 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:  
Thomas F. Kissinger, Secretary  
Pfister, LLC  
100 East Wisconsin Avenue, Suite 1900  
Milwaukee, WI 53202

IN WITNESS WHEREOF, Pfister, LLC, a Wisconsin limited liability company, has caused these presents to be signed at Milwaukee, Wisconsin, this \_\_\_\_ day of \_\_\_\_\_, 2009.

**PFISTER, LLC**

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2009, \_\_\_\_\_ the \_\_\_\_\_ of the above-named party, Pfister, LLC, to me known to be the person(s) 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: \_\_\_\_\_

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**

**COUNTERSIGNED:**

\_\_\_\_\_  
TOM BARRETT, Mayor

\_\_\_\_\_  
W. MARTIN, MORICS, Comptroller

\_\_\_\_\_  
RONALD D. LEONHARDT, City Clerk

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2009, Tom Barrett, Mayor of the City of Milwaukee, 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 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. \_\_\_\_\_ 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 \_\_\_\_\_, 2009, Ronald D. Leonhardt, City Clerk of the City of Milwaukee, 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 its Common Council on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

STATE OF WISCONSIN )  
  )ss.  
MILWAUKEE COUNTY )

Personally came before me this \_\_\_ day of \_\_\_\_\_, 2009, W. Martin Morics, City Comptroller of the City of Milwaukee, 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 its Common Council on \_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Wisconsin  
My commission expires: \_\_\_\_\_

Approved as to form and execution  
this \_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_  
Assistant City Attorney

This instrument was drafted by the City of Milwaukee by Assistant City Attorney Thomas D. Miller.  
1050-2009-1428:146141

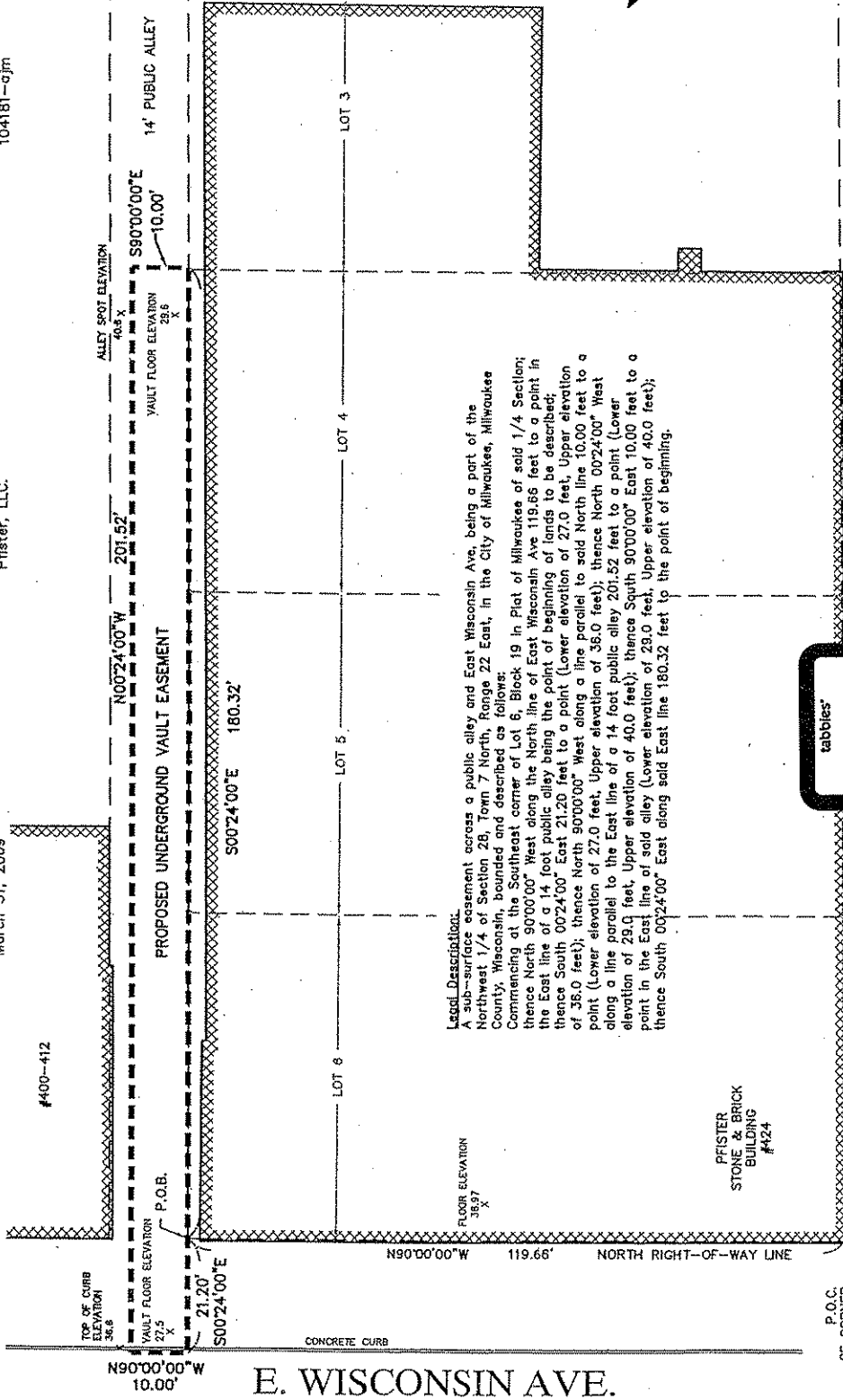
# SUB-SURFACE EASEMENT EXHIBIT

Known as 424 East Wisconsin Avenue, in the City of Milwaukee, Milwaukee County, Wisconsin  
 Part of a public alley in Block 19, in Plot of Milwaukee, being in the Northwest 1/4 of Section 28, Town 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin.

March 31, 2009

Pflister, LLC.

104181-ajm



### Legal Description.

A sub-surface easement across a public alley and East Wisconsin Ave, being a part of the Northwest 1/4 of Section 28, Town 7 North, Range 22 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows:  
 Commencing at the Southeast corner of Lot 6, Block 19, in Plot of Milwaukee of said 1/4 Section; thence North 90°00'00" West along the North line of East Wisconsin Ave 119.66 feet to a point in the East line of a 14 foot public alley being the point of beginning of lands to be described; thence South 00°24'00" East 21.20 feet to a point (Lower elevation of 27.0 feet, Upper elevation of 36.0 feet); thence North 90°00'00" West along a line parallel to said North line 10.00 feet to a point (Lower elevation of 27.0 feet, Upper elevation of 36.0 feet); thence North 00°24'00" West along a line parallel to the East line of a 14 foot public alley 201.52 feet to a point (Lower elevation of 29.0 feet, Upper elevation of 40.0 feet); thence South 90°00'00" East 10.00 feet to a point in the East line of said alley (Lower elevation of 28.0 feet, Upper elevation of 40.0 feet); thence South 00°24'00" East along said East line 180.32 feet to the point of beginning.

### Notes.

- Benchmark: SW corner of N. Jackson St. & E. Wisconsin Ave., extreme NE corner of U.S. post office (federal building) in circular tower, 3.60' above sidewalk, 2.5" bronze disc set into granite stone. Elevation = 42.947 (City of Milwaukee Datum)
- Horizontal location of underground vault was taken from Arnold and O'Sheridan Inc. plans dated June 20, 2008
- Bearings are referenced to the North line E. Wisconsin Ave, which is assumed to bear North 90°00'00" West

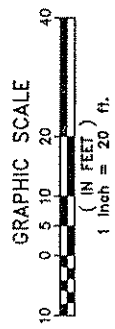
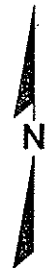


EXHIBIT  
**A**

N. JEFFERSON ST.

PFISTER  
 STONE & BRICK  
 BUILDING  
 #424

E. WISCONSIN AVE.

R.A. Smith National, Inc.  
*Beyond Surveying  
 and Engineering*

16745 W. Bluemound Road, Brookfield WI 53005  
 262-781-1000 Fax: 262-797-7373  
 www.ra-smithnational.com  
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