

SUBTERRANEAN SPACE LEASE
BETWEEN THE CITY OF MILWAUKEE
AND MILLERCOORS, LLC
FOR AN EXISTING IMPROVEMENT
(Existing Special Privilege No. 308 – CCFN 83999,
83999-a)

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, 2nd Floor
Milwaukee, WI 53202

387-1143-000 & 387-0014-110

Parcel Identification Number (PIN)

**SUBTERRANEAN SPACE LEASE
BETWEEN THE CITY OF MILWAUKEE
AND MILLERCOORS, LLC
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The CITY OF MILWAUKEE, a Wisconsin municipal corporation (“Lessor” or the “City”), and MILLERCOORS, LLC, a Delaware limited liability company (“Lessee” or “MillerCoors”), pursuant to the provisions of sec. 66.0915(4), Wisconsin Statutes (2007-2008), do hereby make and enter into this Lease Agreement (the “Lease”) as of the ___ day of _____, 200__.

1. Description. The City hereby leases MillerCoors subterranean space to maintain an existing underground tunnel approximately five feet wide and six feet high (the “Improvement”), the center line of the underground tunnel being approximately 108 feet east of the east line of North 41st Street and extending across West State Street in a slightly northwesterly direction and more particularly described as follows:

A subsurface easement across West State Street, being a part of the Southwest ¼ of the Northwest ¼ of Section 25, Town 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows.

Commencing at the intersection of the present East line of North 41st Street and the present South line of West State Street; thence North 82°30’27” East along the Southerly right of way line of

West State Street 107.32 feet to the point of beginning of lands to be described; thence North 06°12'20" West 66.02 feet to a point on the Northerly line of West State Street; thence North 82°30'27" East along said Northerly line 8.75 feet to a point; thence South 06°12'20" East 66.02 feet to a point on the Southerly line of West State Street; thence South 82°30'27" West along said Southerly line 8.75 feet to the point of beginning.

See also, Exhibit A.

2. Term and Termination. The Lease shall run for a period of 99 years from the date of the execution of the Lease. MillerCoors, however, may terminate the Lease at any time during the 99-year period by giving the City due notice of its 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 (the "Commissioner of Public Works").

3. Rental. The rental payable to the City by MillerCoors under the Lease shall be the sum of \$35 per year. This rental shall be paid by MillerCoors annual payments to the Office of the City Comptroller (the "Comptroller"), the first payment being due 20 days after the passage of an ordinance by the Common Council of the City approving 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 City, 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. If appropriate, MillerCoors 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 ("DCD").

4. Use and Occupancy. MillerCoors covenants and agrees that the Improvement currently located within the public space subject to this Lease will be operated, used, and maintained in accordance with operating standards, methods, and procedures ("Standards") that may be established from time to time by the Plan Commission of the City.

5. Maintenance. The Lessee shall safely maintain the Improvement and regulate its use and occupancy so that the Improvement or its use will not be a hazard or danger to the persons or property of the public using or in the public right of way. No material changes to the Improvement that deviate from the original plans and specifications previously approved by the City may be made during the course of this Lease without the written approval of the Commissioner of Public Works.

6. Plans, Regulations, and Permits – Replacement Structure. In the event that MillerCoors seeks to demolish the existing Improvement and replace it with a new structure, MillerCoors shall submit to the Commissioner of Public Works and Commissioner of DCD the plans and specifications for the replacement structure prepared by a registered professional engineer or architect. The plans and specifications shall be approved by the Commissioner of Public Works and the Commissioner of DCD prior to the commencement of construction of the replacement structure, which approval shall not be unreasonably withheld. The replacement structure shall be constructed in compliance with the intent of the plans and specifications to the satisfaction of the registered professional engineer or architect who shall supervise the construction thereof. MillerCoors shall further obtain the necessary permits for the construction and pay all required fees, and comply with all the building and zoning regulations of the City, Milwaukee County, and the State of Wisconsin, which shall at any time be applicable to the construction and maintenance of the Improvement.

7. Insurance and Indemnity. MillerCoors 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 \$500,000.00 for an individual claim and \$1,000,000.00 for multiple claims arising out of an accident involving the Improvement or the use or occupancy of the premises hereby leased, and the City 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 Improvement, or from collapse or cave in of the Improvement; or which arise by reason of any material or thing whatsoever falling, being thrown or escaping from the Improvement. A certificate of insurance in those sums, including the City as a party insured, shall be deposited with the City's

Clerk immediately following execution of the Lease. This policy of insurance shall also contain a provision that during the period of construction of any replacement Improvement the aggregate limits of the policy for multiple claims shall be increased to \$3,000,000.00. At the option of the City, these minimum amounts may be reviewed and increased or decreased every ten years, with any adjustment being proportionate to the land value of the abutting 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, either one or both of those structures that are connected by the Improvement, to the extent that the Improvement would no longer be usable or useful to MillerCoors or to the extent that either or both of those structures would not require the continued use of the Improvement, this Lease shall be terminated as of the time the use and occupancy of the Improvement or the structures are surrendered and the Improvement 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 either one or both of such structures, the value of the Improvement 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 in any action against the City or any authority of the City.

9. Removal of Street Facilities. MillerCoors shall upon demand by the City pay such charges as may be incurred by the City for the removal or relocation of any facilities, utilities, or structures within the public way in the vicinity of the Improvement that are made necessary by reason of the construction of any replacement Improvement. The City shall first, however, provide MillerCoors with notice of such charges and any removal or relocation that may be required.

10. Act of God, Rioting, Terrorism or Public Enemies. In the event of the destruction of the Improvement by an act of God, public enemies, or by reason of riot, insurrection or terrorism, the Lease shall terminate and MillerCoors shall not be required to pay any further rent to the City. In that event, the Lease shall not terminate if MillerCoors reconstructs the Improvement or any portion thereof demolished, provided the reconstruction is commenced within six months of the destruction, and in such event MillerCoors shall pay rental for any period during which the Improvement was destroyed or inoperative.

11. Entry by Lessor. The City, by its officers, agents, or employees, may at all reasonable times during MillerCoors' business hours and upon reasonable prior notice to MillerCoors, with the exception of emergencies in which case notice shall be given as soon thereafter as possible, have access to and enter the Improvement to view the condition of the Improvement and require any and all necessary repairs and alterations thereto for the public safety and well-being. This right shall in no way eliminate MillerCoors' obligation of determining and maintaining the structural adequacy of the Improvement.

12. 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 MillerCoors by the City, or if default shall be made in any of the other terms and conditions to be kept, observed, and performed by MillerCoors, and such default shall continue for 30 days after written notice thereof by registered or certified mail to MillerCoors from the City, or if default is of such a nature as to require more than 30 days to effect a cure, and MillerCoors 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 City 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 MillerCoors written notice of its intention. If possession of the demised area is not immediately surrendered, the City may re-enter therein and declare the Lease to be terminated. In such event the City may require that MillerCoors remove and demolish the Improvement at MillerCoors' own expense or the City may remove or demolish the Improvement and require the payment of the expense thereof from MillerCoors to the City within 30 days thereafter.

13. Surrender of Premises. Upon the termination of the Lease, MillerCoors agrees to surrender or relinquish any claims or right to further utilize this area. MillerCoors shall, prior to surrender of the area, cause the Improvement to be demolished and removed and the area returned to the same condition as it was when first acquired by MillerCoors in compliance with the applicable building codes of the City unless otherwise directed by the City. In the event of the failure of MillerCoors to remove the Improvement within 6 months after the

termination of the Lease, they shall pay liquidated damages to the City in the sum of \$100.00 for each and every day MillerCoors remains in possession of the area after the expiration of six months from the termination of the Lease provided that the failure of MillerCoors to remove the Improvement within such period shall not have resulted from any action by the City, or any third party acting on behalf of the City.

14. Parties to Lease. The term "parties to the Lease" shall include the successors, agents or assigns, however designated, of the City and MillerCoors, 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 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).

16. Assignment. MillerCoors, and its successors, agents or assigns, however designated, may assign its interest in this Lease to any party who holds fee title or a leasehold estate in the land abutting the public 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 MillerCoors 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 Comptroller for billing purposes.

17. Notices. Notices required hereunder shall be sent to:

For the City (Lessor):
City Engineer, City of Milwaukee
Department of Public Works, Infrastructure Services Division
841 North Broadway, Room 701
Milwaukee, WI 53202

For MillerCoors (Lessee):
MillerCoors, LLC
250 South Wacker Drive, Suite 800
Chicago, IL 60606
Attn: General Counsel

With a copy to:
MillerCoors, LLC
3939 West Highland Boulevard
P.O. Box 482
Milwaukee, WI 53208
Attn: Plant Manager

IN WITNESS WHEREOF, MILLERCOORS, LLC, a Delaware limited liability company has caused these presents to be signed at Chicago, Illinois, this ____ day of _____, 200__.

MILLERCOORS, LLC

ATTEST:

By: _____

By: _____

Name (Print): _____

Name (Print): _____

Title: _____

Title: _____

MILLERCOORS, LLC
250 South Wacker Drive, Suite 800
Chicago, IL 60606

CORPORATE ACKNOWLEDGMENT

STATE OF ILLINOIS)
)ss.
COOK COUNTY)

Personally came before me this ___ day of _____, 200___, _____ and _____, the _____ and _____, respectively, of the above-named party, MILLERCOORS, LLC, to me known to be the persons who executed the foregoing instrument and to me known to be such _____ and _____ of such LLC and acknowledged that they executed said foregoing instrument as such officers as the act of the LLC, by its authority.

Notary Public, State of Illinois
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 _____, 200___.

CITY OF MILWAUKEE

COUNTERSIGNED:

TOM BARRETT, Mayor

W. MARTIN, MORICS, Comptroller

RONALD D. LEONHARDT, City Clerk

MUNICIPAL ACKNOWLEDGMENT

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ___ day of _____, 200___, 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 _____, 200____, 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 _____, 200____, 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 _____, 200____.

Assistant City Attorney

This instrument was drafted by the City of Milwaukee by Assistant City Attorney Thomas D. Miller.
1029-2008-2423:148480

SUBSURFACE EASEMENT EXHIBIT

TUNNEL BELOW WEST STATE STREET

Situated in West State street, in the City of Milwaukee, Milwaukee County, Wisconsin.

A subsurface easement across West State street, being a part of the Southwest 1/4 of the Northwest 1/4 of Section 25, Town 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, Wisconsin, bounded and described as follows.
 Commencing at the intersection of the present East line of North 41st street and the present South line of West State street; thence North 82°30'27" East along the Southerly right of way line of West State street 107.32 feet to the point of beginning of lands to be described; thence North 06°12'20" West 66.02 feet to a point on the Northerly line of West State street; thence North 82°30'27" East along said Northerly line 8.75 feet to a point; thence South 06°12'20" East 66.02 feet to a point on the Southerly line of West State street; thence South 82°30'27" West along said Southerly line 8.75 feet to the point of beginning.

Containing 577.7 sq.ft. (0.013 acres).

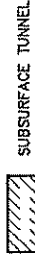
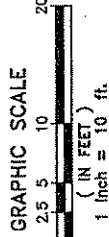
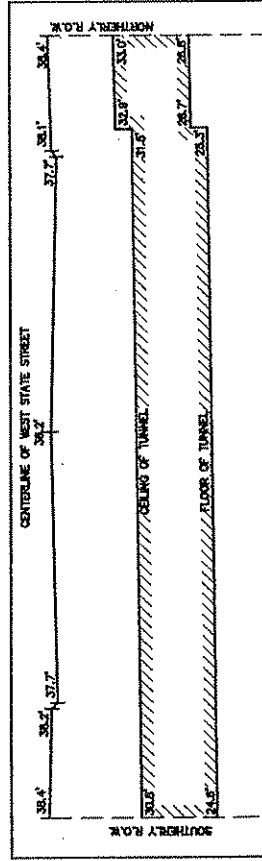
September 2, 2009

Miller Coors

Survey no. 163997-ojm

Note:
 Elevations are based on the City of Milwaukee datum

PROFILE OF SUBSURFACE TUNNEL LOOKING WEST



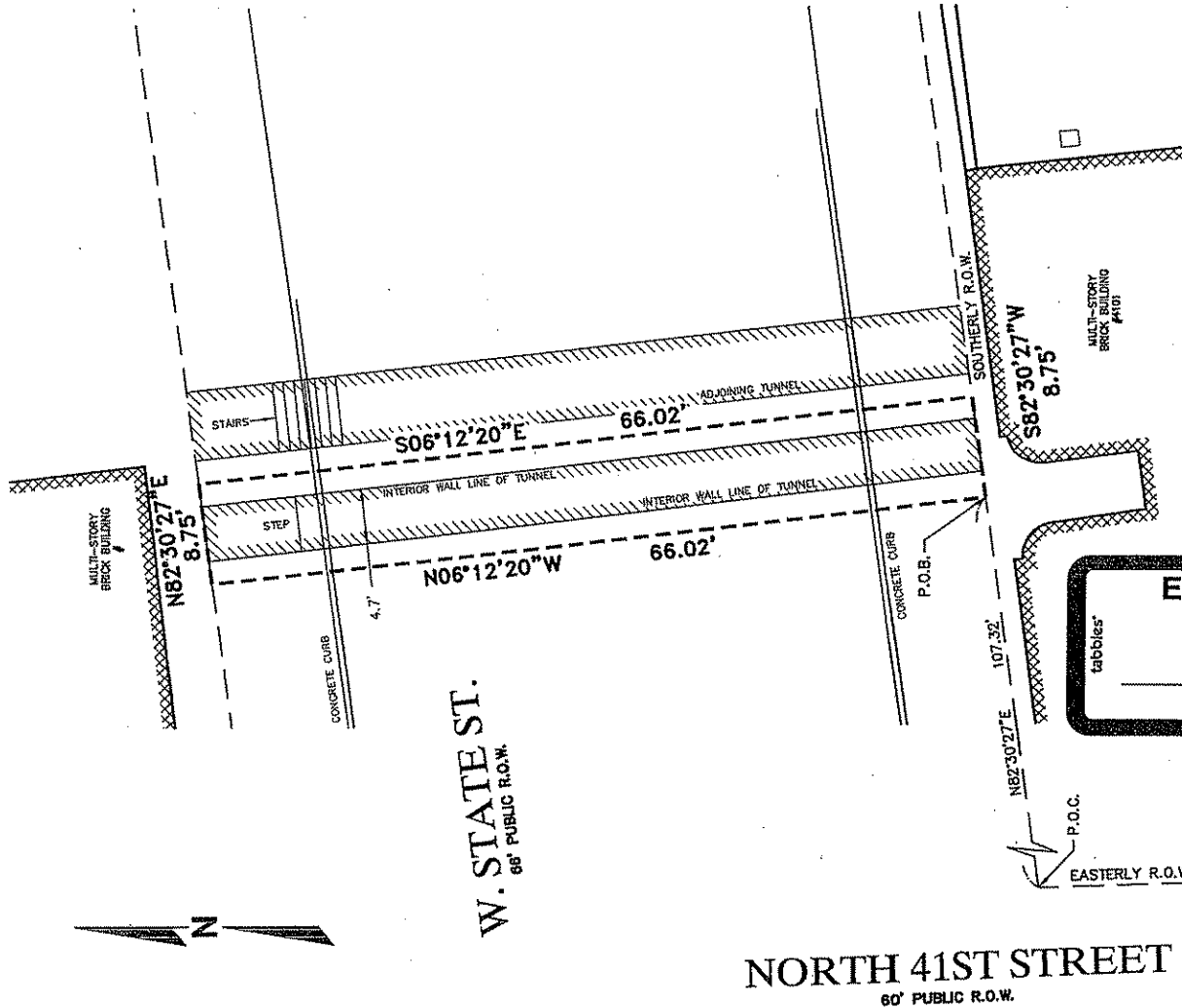
R.A. Smith National, Inc.

Beyond Surveying
 and Engineering

16745 W. Bluemound Road, Brookfield WI 53005
 262-781-1000 Fax 262-787-7373
 www.ra-smithnational.com

ES143974.dwg
 EX301810.dwg EX301810

SHEET 1 OF 1



NORTH 41ST STREET
 60' PUBLIC R.O.W.

EXHIBIT

A