

SUBTERRANEAN SPACE LEASE

Document Number

Document Title

SUBTERRANEAN SPACE LEASE

BETWEEN

THE CITY OF MILWAUKEE

AND

M.D. FIFTH WARD PROPERTIES, INC.

FOR AN EXISTING TUNNEL

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

Parcel Identification Number (PIN)

SUBTERRANEAN SPACE LEASE

The City of Milwaukee, a Wisconsin municipal corporation (“Lessor” or “City”), and M.D. Fifth Ward Properties, Inc., a Wisconsin corporation (“Lessee”), pursuant to the provisions of sec. 66.0915(3), Wisconsin Statutes (2013-2014), do hereby make and enter into this Lease Agreement as of the _____ day of _____, 201__ (“Effective Date”).

1. Description. Lessor hereby leases to Lessee subterranean space under South Barclay Street in the City of Milwaukee (“Subterranean Space”), for the purpose using and maintaining an existing tunnel connecting the properties at 139 East Oregon Street and 300 South Barclay Street (“Tunnel”), the Subterranean Space being more particularly described as follows:

An 11 foot wide lease being a part of the public right-of-way of South Barclay Street per the plat of Walker’s Point, being located in the Northeast Quarter of the Northeast Quarter of Section 32, Township 7 North, Range 22 East, City of Milwaukee, Milwaukee County, Wisconsin described as:

Commencing at the North One-Quarter Corner of said Section 32; thence, along the West line of said Northeast Quarter of Section 32, South 00°22’01” West, 1103.83 feet; thence South 89°25’32” East, 2255.93 feet to the Northeast corner of Block 34 of Walker’s Point and the Point of Beginning; thence South 89°25’32” East, 60.00 feet to the Northwest corner of Block 36 of said Walker’s Point; thence, along the East right-of-way line of South Barclay Street, South 00°21’17” West, 11.00 feet; thence North 89°25’32” West, 60.00 feet to the West right-of-way line of South Barclay Street; thence, along said West right-of-way line, North 00°21’17” East, 11.00 feet to the Point of Beginning.

The described land, as shown on Sheet 1 of 2 hereof [Exhibit A], contains 660 square feet or 0.015 acres, more or less.

See also, Exhibit A.

2. 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. 160679) 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.

3. Rental. The rental payable to Lessor by Lessee under the Lease shall be the sum of \$1,060.00 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 the Effective Date of the Lease, and future annual payments to be due 30 days prior to the annual anniversary of the Effective 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.

4. Use and Occupancy. Lessee covenants and agrees that those portions of the Tunnel located within the Subterranean Space will be occupied solely for the purpose of operating, using, and maintaining mechanical systems and in accordance with operating standards, methods, and procedures that may be established from time to time by the City of Milwaukee.

5. Maintenance. Lessee shall safely maintain the Tunnel and regulate its use and occupancy so that the Tunnel or the use thereof will not be a hazard or danger to persons or property within the public right of way. By no

later than 60 days after the Effective Date, Lessee shall submit to the Commissioner a structural analysis of the Tunnel to be performed by a professional engineer licensed in the State of Wisconsin. No material changes to the Tunnel 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.

6. Insurance and Indemnity. Lessee shall maintain and keep in force during the term of the Lease public-liability insurance in no event less than the amount of \$1,000,000.00 for an individual claim and \$5,000,000.00 for multiple claims arising out of an accident involving the Tunnel or the use or occupancy of the Subterranean Space, 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 Tunnel, or from collapse of the Tunnel. 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 immediately following execution of the Lease. At the option of Lessor, these minimum amounts may be reviewed and increased or decreased every ten years.

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 either one or both of the buildings which are connected by the Tunnel, to the extent that the Tunnel would no longer be usable or useful to Lessee, this Lease shall be terminated as of the time the use and occupancy of the Tunnel and building or buildings are surrendered and the Tunnel 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 one or both of the adjacent buildings, 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 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 Tunnel that are made necessary by reason of the construction of the Tunnel. Lessor shall first, however, provide Lessee with notice of such charges and any removal or relocation that may be required.

9. Act of God, Rioting, and Public Enemies. In the event of the destruction of all or a portion of the Tunnel 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 Tunnel located in the Subterranean Space 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 Tunnel 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 have access to and enter the Tunnel and the Subterranean Space to view the condition of the Tunnel 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 Tunnel.

11. 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 Subterranean Space 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 Tunnel at its own expense or Lessor may remove or demolish the Tunnel and require the payment of the expense thereof from Lessee to Lessor within 30 days thereafter.

12. Surrender of Premises. Upon the termination of the Lease, Lessee agrees to surrender or relinquish any claims or right to further utilize the Subterranean Space. Lessee shall, prior to surrender of the Subterranean Space, cause the Tunnel to be demolished and removed and the Subterranean Space 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 Tunnel 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 Subterranean Space 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 sec. 66.0915(3), Wisconsin Statutes (2013-2014).

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. 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.

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:
Michael Denesha, Owner
M.D. Fifth Ward Properties, Inc.
300 S. Barclay Street
Milwaukee, WI 53204
[Lessee: confirm address]

[Signature Pages Follow]

IN WITNESS WHEREOF, the City of Milwaukee has caused these presents to be signed by Tom Barrett, Mayor, and James R. Owczarski, City Clerk, and countersigned by Martin Matson, City Comptroller, at Milwaukee, Wisconsin, and its corporate seal to be hereunto affixed this ____ day of _____, 201__.

CITY OF MILWAUKEE

COUNTERSIGNED:

TOM BARRETT, Mayor

MARTIN MATSON, Comptroller

JAMES R. OWCZARSKI, City Clerk

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 201__, 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. _____, effective date _____.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 201__, James R. Owczarski, 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. _____, effective date _____.

Notary Public, State of Wisconsin
My commission expires: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2015, Martin Matson, 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. _____, effective date _____.

Notary Public, State of Wisconsin
My commission expires: _____

IN WITNESS WHEREOF, M.D. Fifth Ward Properties, Inc., a Wisconsin corporation, has caused these presents to be signed at Milwaukee, Wisconsin, this ____ day of _____, 201_.

M.D. FIFTH WARD PROPERTIES, INC.

By: _____

Name (Print): _____

Title: _____

STATE OF WISCONSIN)
)ss.
MILWAUKEE COUNTY)

Personally came before me this ___ day of _____, 201_, _____ the _____ of the above-named party, M.D. Fifth Ward Properties, Inc., 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: _____

Approved as to form and execution
this ___ day of _____, 201_.

Assistant City Attorney

This instrument was drafted by the City of Milwaukee by Assistant City Attorney Thomas D. Miller.

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TDM:tdm