

**FIRST AMENDMENT TO
SUBTERRANEAN AND AIR SPACE LEASE**

(This document pertains to a lease of less than 99 years and not a conveyance
subject to Transfer Return and fee per Sec. 77.21(1) Wis. Stats.)

This First Amendment to Subterranean and Air Space Lease (“First Amendment to Lease”), entered into this _____ day of _____, 2023, by and between the **City of Madison**, a Wisconsin municipal corporation (“City”), and **Constantine (Dino) A. Christ and Tom A. Christ** (together, the “Lessee”).

WITNESSETH:

WHEREAS, the City and the Lessee (together, the “Parties”), as successors-in-interest to Arist Christ, entered into a Subterranean and Air Space Lease dated March 5, 2008 and recorded on March 10, 2008, as Document Number 4406594 in the office of the Dane County Register of Deeds, State of Wisconsin (“Lease”); and

WHEREAS, the Lessee is the owner of certain property located at 226 State Street, located in the City of Madison, Dane County, Wisconsin (the “Abutting Property”), Wisconsin; and

WHEREAS, the Lease pertains to the Lessee’s use of certain subterranean and air space in portions of public right-of-way to accommodate existing building encroachments at the Abutting Property; and

WHEREAS, the Lease erroneously identifies the “Vault,” as defined in the Lease, as being located within the State Street right-of-way rather than the W. Johnson Street right-of-way, and the Parties desire to amend the Lease to correct such error; and

WHEREAS, the Parties also desire to amend the Lease to include the existing exterior metal fire escape overhanging the W. Johnson Street right-of-way as an encroaching building feature that is subject to the Lease, which requires and adjustment to the annual rent.

NOW, THEREFORE, the Parties mutually agree as follows:

1. The third “Whereas” clause on page 1 of the Lease is deleted in its entirety and replaced with the following:

WHEREAS, the Lessee desires to lease certain subterranean and air space in portions of the State Street and W. Johnson Street public rights-of -way to accommodate the existing encroachments of an underground vault (“Vault”), and the above-ground encroachments of a building cornice (“Cornice”), a business identification sign (“Sign”), below-awning lighting (“Lighting”), and a fire escape (“Fire Escape”) into said public rights-of-way; and

Return to: City of Madison
Economic Development Division
Office of Real Estate Services
P.O. Box 2983
Madison, WI 53701-2983

Tax Parcel No.: 251/0709-144-2708-8
(and parts of the adjacent W. Johnson Street and
State Street public rights-of-way)

2. The fourth “Whereas” clause on page 1 of the Lease is deleted in its entirety and replaced with the following:

WHEREAS, the Cornice, Sign, Lighting and Fire Escape are hereinafter collectively referred to as the “Building Features;” and

3. Paragraph 1 of the Lease is deleted in its entirety and replaced with the following:
 1. Leased Premises. The City hereby leases to the Lessee certain subterranean and air space in portions of the W. Johnson Street and State Street public rights-of-way in the City of Madison, Wisconsin (collectively, the “Leased Premises”), as legally described on attached Exhibit A and identified on attached Exhibit B. The Leased Premises are contiguous to and connected with the Abutting Property.
4. Exhibit A to the Lease is hereby deleted in its entirety and replaced with Exhibit A - Revised 2023 attached hereto.
5. Exhibit B to the Lease is hereby deleted in its entirety and replaced with Exhibit B - Revised 2023 attached hereto.
6. Paragraph 3.a. of the Lease is amended to reflect that effective January 1, 2023 (Lease Year 16), rent payable under the Lease shall be as set forth below.

Feature	Area of Encroachment (square feet)	Height of Encroachment	Rent Calculation*	Annual Rent for Lease Year 14
Vault	21 ft. x 8 ft. = 168 sf	1 story	168 sf x \$52.09 x 3%	\$262.53
Cornice	21 ft. x .5 ft. = 10.5 sf	1 story	10.5 sf x \$52.09 x 3%	\$16.41
Sign	.33 ft. x 2 ft. = .66 sf	2 stories (approx. 15 ft.)	.66 sf x \$52.09 x 6%	\$2.06
Lighting	21 ft. x 1 ft. = 21 sf	1 story	21 sf x \$52.09 x 3%	\$32.82
Fire Escape	4 ft. x 8 ft. = 40 sf	2 stories	40 sf x \$52.09 x 6%	\$125.02
Lease Year 16 Total Rent:				\$438.84

* Based on 2007 Assessed Land Value of Abutting Property @ \$45/sf – escalated 5% every 5 years thereafter to current value of \$52.09. In accordance with Paragraph 3.c. of the Lease, rent shall continue to increase by five percent (5%) every five (5) year period.

7. Paragraph 5.a of the Lease is deleted in its entirety and replaced with the following:
 - a. The Lessee shall use the Leased Premises to accommodate the encroachment of the existing Vault and Building Features into the W. Johnson Street and State Street public rights-of-way, which Vault and Building Features are ancillary to the Lessee’s business operation in the Building, as defined in the Lease.

8. Paragraph 27 of the Lease is deleted in its entirety and replaced with the following:

All notices to be given under the terms of this Lease shall be signed by the person sending the same, and shall be sent by certified mail, return receipt requested and postage prepaid, to the address of the Parties specified below. If electing to utilize electronic mail, said emails shall be sent to the email addresses provided below with an active read receipt and shall include a statement that the electronic mail constitutes notice under the terms of this Lease.

For the City: City of Madison
Economic Development Division
Office of Real Estate Services
Attn: Manager
P. O. Box 2983
Madison, WI 53701-2983
ores@cityofmadison.com & jfrese@cityofmadison.com

For the Lessee: Constantine (Dino) A. Christ and Tom A. Christ
2 Marble Circle
Madison, WI 53719
nicksrestaurantmadison@gmail.com

9. Paragraph 28 of the Lease is deleted in its entirety and replaced with the following:

28. Non-Discrimination. In the performance of its obligations under this Lease, the Lessee agrees not to discriminate because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs or student status. The Lessee further agrees not to discriminate against any contractor, subcontractor or person who offers to contract or subcontract for services under this Lease because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

10. All other provisions of the Lease remain unchanged and in full force and effect.
11. This First Amendment to Lease will be recorded at the office of the Dane County Register of Deeds after it is executed by the Parties.

[SEE NEXT 2 PAGES FOR SIGNATURES]

IN WITNESS WHEREOF, the Parties have entered into this First Amendment to Lease as of the date first set forth above.

By: _____
CONSTANTINE (DINO) A. CHRIST

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2023, the above-named Constantine (Dino) A. Christ, known by me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(Print or Type Name)
My Commission expires:_____

By: _____
TOM A. CHRIST

State of Wisconsin)
)ss.
County of Dane)

Personally came before me this _____ day of _____, 2023, the above-named Tom A. Christ, known by me to be the person who executed the foregoing instrument and acknowledged the same.

Notary Public, State of Wisconsin

(Print or Type Name)
My Commission expires:_____

CITY OF MADISON,
a Wisconsin municipal corporation

By: _____
Satya Rhodes-Conway, Mayor

By: _____
Maribeth Witzel-Behl, City Clerk

AUTHENTICATION

The signatures of Satya Rhodes-Conway, as the Mayor, and Maribeth Witzel-Behl, as the City Clerk, on behalf of the City of Madison, are authenticated on this ____ day of _____, 2022.

Name: Doran Viste, Assistant City Attorney
Title: Member, State Bar of Wisconsin

Execution of this First Amendment to Subterranean and Air Space Lease is authorized by Resolution Enactment No. RES-23-_____, File ID No. _____, adopted by the Common Council of the City of Madison on _____, 2023.

Drafted by the City of Madison Office of Real Estate Services

Project No. 8234

EXHIBIT A - Revised 2023

Abutting Property:

Part of Lots One (1) and Two (2), Block Sixty-four (64), Original Plat of the City of Madison, described as follows:

Commencing at a point on State Street 125 ½ feet East of the West corner of said Block; thence North on a line at right angles to State Street to the point of intersection of said line with a line drawn at right angles to Johnson Street Southeasterly from a point in said Johnson Street distant 133 ½ feet Northeasterly from the West corner of said Block; thence Northwest along said line last mentioned to said Johnson Street; thence Southwesterly along Johnson Street 9 ½ feet to a point 124 feet Northeasterly on Johnson Street from the West corner of said Block; thence Southeasterly at right angles to Johnson Street to a point 71 feet North from State Street and at right angles thereto; thence South at right angles to State Street 71 feet to the North line of State Street; thence East along the North line of State Street 21 ½ feet to the point of beginning; being a piece of land with a frontage of 21 ½ feet on State Street and 9 ½ feet on Johnson Street.

Leased Premises:

Area of Vault Encroachment: Certain subterranean space within the West Johnson Street right-of-way adjacent to the Abutting Property, as identified on attached Exhibit B. Said subterranean space applies to rights below the ground surface. Upon review of topographic survey information provided by MSA Professional Services, Inc., rights are estimated to commence at an elevation of 30.00 feet, and terminate at an elevation of 20.00 feet. Elevations herein are referenced to the City of Madison Datum. Said subterranean space contains approximately 168 square feet in area.

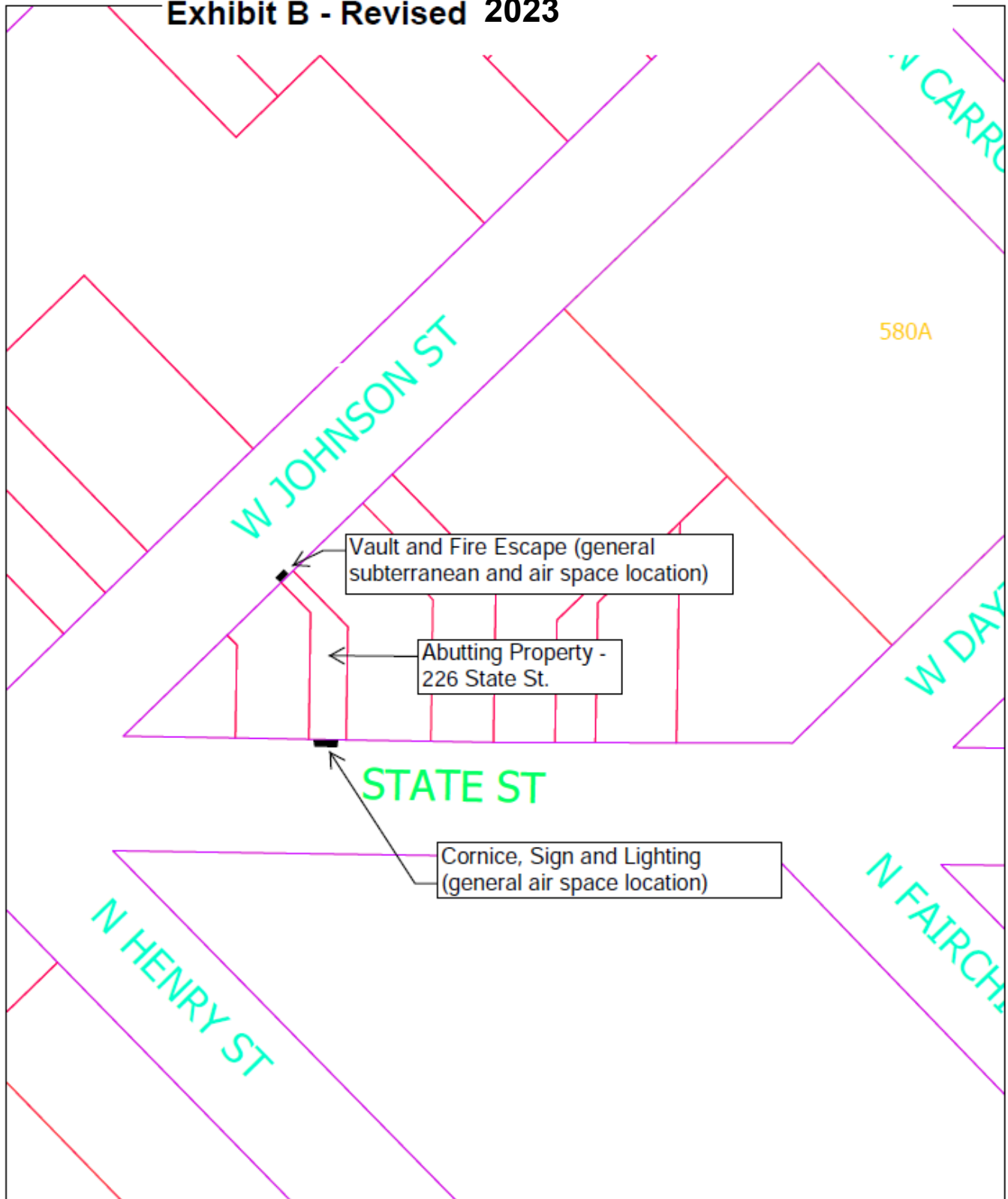
Area of Cornice Encroachment: Certain air space within the State Street right-of-way adjacent the Abutting Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 63 feet, and terminate at an elevation of 65 feet. Elevations herein are referenced to the City of Madison Datum. Said air space contains approximately 10.5 square feet in area.

Area of Sign Encroachment: Certain air space within the State Street right-of-way adjacent the Abutting Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 45 feet, and terminate at an elevation of 60 feet. Elevations herein are referenced to the City of Madison Datum. Said air space contains approximately .66 square feet in area.

Area of Lighting Encroachment: Certain air space within the State Street right-of-way adjacent the Abutting Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 38 feet, and terminate at an elevation of 39 feet. Elevations herein are referenced to the City of Madison Datum. Said air space contains approximately 21 square feet in area.

Area of Fire Escape Encroachment: Certain air space within the West Johnson Street right-of-way adjacent to the Abutting Property, as identified on attached Exhibit B. Said air space applies to rights above the ground surface and is estimated to commence at an elevation of 885 feet, and terminate at an elevation of 902 feet. Elevations herein are referenced to NAVD 88. Said air space contains approximately 32 square feet in area.

Exhibit B - Revised 2023



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Disclaimer: The City makes no representation about the accuracy of these records and shall not be liable for any damages

Not to scale 7