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BARAN PARK MANAGEMENT AGREEMENT

THIS MANAGEMENT AGREEMENT, (herein called the "Agreement"), is made and entered into effective _____, 2017, by and between MILWAUKEE COUNTY, a municipal corporation of the State of Wisconsin, as represented by the Department of Parks, Recreation and Culture (herein called "County"), and JOURNEY HOUSE, INC. ("Operator"), a Wisconsin non-stock corporation.

PRELIMINARY STATEMENT

Milwaukee County is the owner of Baran Park, located with a primary address of 2474 S. Chase Ave. in the City of Milwaukee, Milwaukee County, State of Wisconsin ("Park"). The Journey House Felix Mantilla Baran Park Master Plan envisions installing new safe baseball fields and other recreational amenities and concessions facilities in the Park. Operator and with the support of its neighborhood residents and businesses and other stakeholders, has secured funds for the purpose of constructing, renovating, operating, maintaining, and managing certain baseball fields, pavilion, and related amenities in the Park (as more particularly defined below, the "Baseball Fields and Related Amenities"). Prior to commencing construction as to any specific aspect of the Baseball Fields and Related Amenities, e.g. concession stand with restrooms, concession window, storage, and kitchen facilities ("Pavilion") or the proposed 5 baseball or T-ball fields, Operator will have secured 100% of the funds necessary to install or renovate, operate, maintain and manage that aspect of Baseball Fields and Related Amenities, and, as and when applicable, certain related amenities as more particularly described below for use by Milwaukee County residents, and by visitors to Milwaukee County as herein provided. The County has executed this Agreement pursuant to action taken by its Board of Supervisors on _____, 2017, Resolution File No. __-__.

WITNESSETH

1. PARK. County owns the Park as shown on Exhibit A attached hereto and made a part hereof and legally described on Exhibit B attached hereto and hereby made a part of the Agreement, with all easements, licenses, rights, privileges, hereditaments and appurtenances thereunto belonging.

2. EXCLUSIVE LICENSE: PROPERTY. In connection with this Management Agreement, the County hereby grants to Operator and the Operator hereby accepts from County an exclusive license to occupy the portion of the Park depicted on Exhibit C attached hereto (the "Property") to construct, to use, to operate, to maintain, to repair, to replace, to restore, to improve, and to manage the Baseball Fields and Related Amenities in the Park, on the Property and to construct, to use, to operate, to maintain, to repair, to replace, to restore, to improve, and to manage the Pavilion within the Park subject to all the terms and conditions of the Management Agreement, throughout the Term of the Management Agreement for the sole purpose of operating and managing the Baseball Fields and Related Amenities in accordance with the terms and conditions herein. The Property will be more particularly comprised of the property located within the security fence to be built as part of the Related Amenities and including the property upon which the fence is located as said fence may be repaired, renovated, improved and replaced from time to time.

(a) Use of the Property. The Parties agree that Operator accepts the Property subject to all existing easements or restrictions on the Property and surrounding area, and Operator shall obtain any and all approvals necessary for its use as contemplated by this Agreement. County does not represent that the Property is suitable to Operator's proposed use. County is not responsible for any required approvals, zoning changes, demolition and building permits or

1 other required authorizations from regulatory agencies, without limitation; provided, however,
2 County agrees to cooperate with Operator and to assist Operator to obtain any such approvals,
3 changes, permits or authorization. Operator enters into this Agreement with the knowledge and
4 understanding that Operator shall use the Park consistent with its primary function, to construct,
5 operate, renovate, maintain, repair, and manage up to five baseball diamonds, intended to be
6 comprised of three little league baseball diamonds and one high school regulation baseball diamond
7 and the renovation of a tee ball diamond (collectively, the "Baseball Fields") and related amenities in
8 the Park (among them, if and to the extent constructed, the Pavilion, security fencing around all fields
9 except the tee ball diamond, field and outside lighting, sound system, score boards, utility lines and
10 equipment to service the fields and amenities, the storage shed, dugouts, bleacher seating,
11 entranceway, entrance treatments, and signage, all of which are hereby approved by the County,
12 together and any other amenity, to the extent any such other amenity is permitted and approved by
13 County, which approval by County shall not be unreasonably withheld, conditioned or delayed),
14 (collectively, the "Related Amenities"). Operator shall use the fields in conjunction with its youth
15 athletic programming, other athletic programming, and may also use the Pavilion, the fields, Related
16 Amenities and the Park for workforce training, including culinary, hospitality, landscaping, grounds
17 keeping, and snow maintenance, event hosting, urban gardens, and for other uses ancillary thereto.
18 Subject to County's prior written approval, which shall not be unreasonably withheld, conditioned or
19 delayed, Operator may use the Property for additional events for the purpose of raising funds or
20 generating revenues to benefit Operator so long as such events are not inconsistent with the purpose
21 of increasing public access or enjoyment of the Park. As used in this paragraph, and any other part
22 of this Agreement, any requirement of the "County's approval" or "prior written approval" or
23 "consent" or words of similar import shall be deemed satisfied by the written approval of the
24 Director of Milwaukee County Department of Parks, Recreation and Culture (the "Director") or
25 said Director's designee. The Property shall be developed and landscaped in a manner that is
26 consistent with its use as Baseball Fields and Related Amenities and as will enhance public access
27 to and enjoyment of the adjacent areas of the Park and promote park and open space uses. The
28 Director's approval of the plans for development, landscaping, entranceways, entrance treatments
29 and signage shall be evidence that Operator has complied with the foregoing with respect thereto.
30

31 (b) Public Access and Use of the Park. Operator and County recognize that public use of
32 the Park and Property is mutually desirable. Operator shall include in its programming access to all
33 sectors of the Milwaukee County community, including programming intended to reach minority and
34 other groups. Operator shall also provide for and encourage use of the Baseball Fields and Related
35 Amenities by non-members of Operator whether by groups such as Milwaukee Public Schools or
36 by individual members or organizations of the public. Operator may, however, give priority to its
37 own programming. Operator has set up a reservation system that is accessible to the public.
38 Operator confirms that the County may use the reservation system or any similar system set up by
39 Operator in the future to reserve use of the field on the same terms and conditions as similarly
40 situated "Community Partners". "Community Partners" are those organizations designated as such
41 by Operator. Operator shall make a monthly calendar available to which County may request field
42 reservations through the reservation system preferred by the Operator, such request must occur at
43 least thirty (30) days in advance of the requested date. All reservation fees associated with field
44 reservation will be waived by the Operator for the County provided that the County is reserving the
45 field only for individual, single, and one-off events that are non-seasonal, non-league, non-
46 tournament, and non-program activities. The Operator and the County expressly acknowledge that
47 the intent of waiving fees for County reservations is to encourage public access to the Baseball
48 Fields and not to adversely impact the finances or programs of the Operator. In addition to the
49 foregoing, Operator agrees on a weekly basis to make the Baseball Fields available to the public
50 free of charge for at least four (4) hours, provided such access need not be provided during the
51 winter or if the weather is not conducive to such access, the dates and times of which are to be

1 mutually agreed upon between County and Operator, acting reasonably and in good faith. Operator
2 uses and public uses in the Park shall at all times be subject to the requirements and restrictions in
3 Milwaukee County General Ordinances Sections 47.02 and 47.16, and to all other rules,
4 regulations, policies, and procedures applicable to Properties and space owned by the County, not
5 covered by this Agreement and open for general use by the public. County further represents it
6 will use its best effort to promptly respond and enforce reported violations of the above-
7 referenced ordinances, policies, procedures, rules and regulations.
8

9 **3. TERM; EXTENSION TERM.** The Agreement shall be for an initial term of
10 approximately fifteen (15) years (the "Initial Term") commencing as of the above date and
11 expiring on November 30, 2033. Provided that Operator (i) is not then in default under this
12 Agreement, (ii) is maintaining and managing the Park and the Property as herein required, and
13 (iii) is actively operating the Property for its intended purposes, after the Initial Term of the
14 Agreement, Operator shall have the option to extend the term of the Agreement for one (1)
15 additional fifteen (15) year period (the "Extension Term" and, together with the Initial Term, the
16 "Term") Operator shall exercise this option, if at all, by giving County written notice of its desire
17 to extend the Agreement not later than one hundred eighty (180) days prior to expiration of the
18 Initial Term.
19

20 **4. SCOPE OF SERVICES.** Operator shall perform and furnish such management services
21 as are appropriate or necessary to construct, to operate, to maintain and to manage the Baseball
22 Fields and Related Amenities as more particularly set forth.
23

24 **5. CONSTRUCTION; ALTERATIONS and IMPROVEMENTS.**
25

26 (a) This Agreement and the obligations of County and Operator hereunder are contingent upon
27 Operator successfully meeting the Milwaukee County "Due Diligence" requirements (see attached, as
28 Exhibit D). Operator has met these requirements. Prior to commencing construction on the Pavilion,
29 Operator shall have obtained or have readily available through a line of credit or otherwise an amount of
30 not less than one hundred percent (100%) of the estimated cost of demolition of the existing concession
31 stand, and construction of the Pavilion. Prior to commencing construction on any baseball field, Operator
32 shall have obtained or have readily available through a line of credit or otherwise an amount of not less
33 than one hundred percent (100%) of the estimated cost of the field and the security fencing. All costs
34 associated with the demolition, construction and operation of the field, Pavilion and fencing,
35 including hookup of utilities and any and all utility charges for the fields and fencing are the
36 responsibility of Operator.
37

38 (b) Prior to the start of any demolition or construction activities, including any
39 subsequent alterations, renovations or improvements to the Park requiring County approval,
40 Operator shall submit all detailed demolition or construction plans and specifications, and any
41 revisions thereto, to County and to the Architecture and Engineering Division of the Milwaukee
42 County Department Of Administrative Services, together with the name of Operator's proposed
43 contractor(s), for review and approval, which approval shall not be unreasonably delayed or
44 withheld. County's failure to respond within thirty (30) days to a written or electronic request by
45 Operator for approval of construction plans, or within twenty (20) days regarding revisions, shall
46 constitute approval, if, in such written or electronic request, Operator shall have notified County of
47 the time constraint. County may request and Operator shall not unreasonably refuse a reasonable
48 extension of time within which to respond if needed. It is expressly understood that County or the
49 Architecture and Engineering Division cannot and will not approve any revisions that, in their
50 reasonable opinion, are not consistent with Operator's purposes or not consistent with the
51 conceptual design, plans and specifications submitted by Operator. Operator shall reimburse

1 County for the cost of a Milwaukee County Project Manager during the construction phases of
2 the project, including any subsequent construction, alterations or improvements, in an amount
3 not to exceed seven thousand five hundred dollars (\$7,500.00) within thirty (30) days after
4 receipt of an invoice therefor). It is understood by the Parties that Operator anticipates that its
5 improvements to the Park may proceed in stages, with the installation of the Baseball Fields and
6 security fencing being financed, submitted for approval, and constructed as one Phase and the
7 demolition of the existing concession facility and construction of the new Pavilion as a different
8 Phase; and with the equipment and other Related Amenities, to be financed, submitted for
9 approval, and constructed at later dates dependent on the timing of Operator's fundraising. All the
10 provisions and requirements of this Paragraph 5 and its subparts shall apply with equal force and
11 effect to any later construction. The County, through its Parks division, and Operator shall meet at
12 least annually during the Term of this Agreement to review the Operator's use of the Property and to
13 discuss contemplated improvements of the Property and the Park.

14
15 (c) Conditions for approval shall include, but not be limited to provision that: (1)
16 Operator shall obtain, prior to commencing any demolition, alterations, additions and
17 improvements, all necessary permits and licenses from the appropriate governmental
18 authorities; and (2) Operator shall commence demolition or construction of said improvements
19 described in the approved plans and specifications as soon as reasonably practicable following
20 County's approval and shall have a period of thirty–six (36) months or other period of time
21 mutually agreed upon by Operator and County, thereafter to complete the Baseball Fields,
22 Pavilion and security fencing contemplated hereby (subject to extension by reason of force
23 majeure delay).

24
25 1) Operator shall, at all times, obtain a Right-of-Entry ("ROE") Permit from
26 County before performing any ground disturbing activities in any part of the Park. Operator's
27 application for an ROE shall be reviewed and approved by County prior to commencing any
28 ground disturbing activities. The ROE can be obtained at the Milwaukee County Dept. of Parks,
29 Recreation and Culture, 9480 Watertown Plank Rd. Wauwatosa, WI 53226. County approval of
30 the ROE shall not be unreasonably withheld, and any fees for the ROE shall be waived.

31
32 (d) All development and landscaping shall be completed in a manner and consistent
33 with the standards established for other work in the Park. County shall have the right to inspect
34 the work at reasonable times provided it does not interfere with Operator's construction and
35 improvements. Any and all alterations, additions and additional improvements shall be made in
36 compliance with all statutes, laws, ordinances, rules and regulations of any governmental
37 authority having jurisdiction of the Park. Operator shall also indemnify and hold County
38 harmless from and against all statutory liens or claims or liens of any contractor, subcontractor,
39 laborer or any other party which may arise in connection with any alteration, addition or
40 improvement to the Park undertaken by or on behalf of Operator. Any structures, alterations,
41 additions or leasehold improvements installed on the Park by Operator that are necessary for
42 the continued operation of the Park shall become the property of the County upon the expiration
43 or termination of this Agreement. Except as expressly permitted herein, in no event shall
44 Operator make any alterations or additions to the Park without the prior written consent of
45 County, which consent shall not be unreasonably delayed, conditioned or withheld, except in the
46 event of an emergency, when such consent shall not be required, provided that notice shall be
47 given as soon as reasonably possible thereafter. The parties acknowledge that the Baseball
48 Fields and Related Amenities have been approved by the County subject to compliance with the
49 other provisions of this section. Routine instances of maintenance, painting, repair and like-kind
50 replacement of materials needing repair or replacement do not constitute alterations or additions
51 requiring such approval, providing they do not individually exceed \$50,000 in cost.

1
2 (e) Builder's Risk. Operator or its general contractor shall provide Builders Risk
3 insurance coverage on a completed value form insuring for special perils, with Milwaukee
4 County as additional insured and loss payee on the insurance certificate. Coverage is during
5 construction period and is intended to terminate when the work has been completed and the
6 Property is ready for occupancy. In addition, Operator shall not be required to obtain the
7 consent of County to the installation of electric, water, and sewer lines for the Pavilion, field
8 irrigation, lighting, and/or other uses provided that Operator or its contractors obtain any
9 required permits and/or easements.

10
11 (f) Construction Escrow. Prior to commencing construction on the Property, Operator
12 agrees to provide evidence satisfactory to the County that the total amount of funds necessary
13 to demolish the existing concession facility, construct the Baseball Fields, Pavilion and security
14 fence in the Park, as applicable for the applicable phase, are immediately available and
15 dedicated to such purpose and documentation is in place to provide for the orderly
16 disbursement of the funds during the course of construction to pay for all permits, material,
17 labor, supplies, and any other miscellaneous items used or necessary for the construction of the
18 Baseball Fields, Pavilion and security fence, as applicable. Operator shall deliver to County
19 evidence reasonably acceptable to the County that the total amount of such funds are
20 immediately available and dedicated for the above purpose prior to any construction activities
21 taking place on the Park said evidence may be in the form of a letter from a banking institution
22 stating that a line of credit is immediately available to Operator for such purposes in an amount
23 sufficient to cover the costs thereof.

24
25 (g) Licensed Tradespersons. Operator agrees that all renovations and improvements
26 shall be performed by fully licensed contractors and subcontractors or under their supervision
27 who shall utilize industry standard supplies, equipment, and construction methods in the
28 performance of their duties. Operator shall require its contractors and subcontractors to obtain
29 and maintain adequate insurance coverages with liability limits not less than that required of
30 Operator by County. Operator shall have responsibility to enforce compliance with these
31 insurance requirements and provide the County acceptable evidence of insurance for any
32 contractor or subcontractor.

33
34 (h) Construction Documents. Operator agrees that within sixty (60) days after the
35 conclusion of each demolition project, construction project, renovation or improvement project,
36 Operator shall, upon request, provide to County a complete set of construction documents to be
37 included at a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders;
38 (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical
39 fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties;
40 (f) a copy of all approved permits and signed drawings; and (g) City of Milwaukee final
41 occupancy permits; if applicable.

42
43 (i) Ownership of Improvements.

44
45 1) Upon termination of the Agreement for any reason, the County reserves the
46 right to retain ownership of all renovations, improvements, or alterations on or to the Park,
47 including the Pavilion, at no cost to the County. If the County exercises such right, the Operator
48 shall remove, at its costs, all of its equipment and trade fixtures, including, without limitation
49 kitchen and grounds keeping, supplies, displays, and related items and personal property from
50 the Property and the Park within thirty (30) days of the expiration or termination date, and shall
51 repair any damage caused by such removal. Damage caused to the Premises by any removal

1 of personal property or improvements to the Premises will be repaired by the Operator. If for
2 any reason Operator does not comply in a timely manner with its obligations under this
3 paragraph (which shall mean completion within sixty (60) days (as such time frame is extended
4 for force majeure) unless otherwise authorized in writing by the County, then the County may
5 make such repairs or remove, dispose of, or retain such property as the County sees fit. It is
6 mutually agreed that the County may recover from the Operator any and all reasonable costs,
7 as determined by the County, related to this Section. The Operator agrees to surrender the
8 Premises in broom-clean condition, where appropriate, subject to ordinary wear and tear.
9

10 2) In addition to the reservation of the above-referenced right to retain
11 ownership, the County also reserves the right to require the Operator to raze the renovations,
12 improvements, or alterations on or to the Park, including the Pavilion, installed by the Operator
13 at no cost to the County. The Operator shall thereafter restore the area to a safe and sightly
14 condition and stabilize any unvegetated land in a cost-efficient manner reasonably approved by
15 the County. In the event the Operator fails to remove such improvements from the Park or
16 restore the area to a condition reasonably satisfactory to the County within ninety (90) days (as
17 such time frame is extended for force majeure), the County may cause its removal and charge
18 the Operator the reasonable expense thereof.

19 6. OPERATION AND MAINTENANCE.
20

21 (a) Operation.
22

23 1) General. Operator shall operate, maintain and manage the Park, Property,
24 and Baseball Fields and Related Amenities subject to the terms and conditions set forth in
25 this Agreement. Such operation and management shall be conducted in accordance with
26 the terms of this Agreement, including, without limitation, in a manner that will maximize
27 opportunities for public accessibility as set forth in section 2(a) and for achieving and
28 sustaining breakeven or better for each operating year from the operations of the Baseball
29 Fields.
30

31 2) Operational Services. Subject to the terms of this Agreement Operator shall
32 have the right and responsibility to: (i) determine, establish, and implement the policies,
33 standards, prices and schedules for the operation of the Baseball Fields and Related Amenities;
34 (ii) supervise and direct sales and promotion; (iii) hire, train, and supervise all employees of
35 Operator employed at the Park; and (iv) establish accounting and payroll procedures and
36 functions for such employees. The hours of operation of the Property shall not allow any event
37 to begin later than 9:00 pm on any night. The Parties acknowledge and understand that
38 pursuant to Section 47.27 of the Milwaukee County Code of General Ordinances, the County
39 has the authority to adjust the hours of operation of County parks, including the Park, in the
40 County's reasonable discretion, and nothing in this Agreement is intended to limit or abrogate
41 such authority.
42

43 3) Contracts and Agreements. All equipment leases, financing agreements,
44 contracts and agreements relating to the obligations of Operator with respect to the Park and
45 the improvements thereon (including contracts for utility services, maintenance and repair
46 services, landscaping services, and agreements for any other service or function) entered into
47 during the Term of this Agreement shall be entered into by the Operator as the contracting
48 party. The Operator shall not have any authority to enter into any agreement or contract that
49 extends beyond the Term of this Agreement that is not terminable on thirty (30) days written
50 notice or less if the Operator defaults under the terms of this Agreement, or that is secured by

1 all or any part of the Property or Baseball Fields and Related Amenities (excepting only
2 financing leases and installment sales contracts for fixtures and/or personal property). All
3 contracts entered into by Operator regarding the Property or the Baseball Fields and Related
4 Amenities shall automatically expire on the expiration date of this Agreement.

5
6 4) Signs.
7

8 (i) Operator shall have the right and privilege of attaching, affixing,
9 painting or exhibiting signs on the interior and exterior of the Property and the Pavilion with the
10 written approval of County, which approval shall not be unreasonably withheld, conditioned or
11 delayed, provided that: a) any and all signs shall comply with the ordinances of the City of
12 Milwaukee; and b) such signs if and when taken down shall not damage the Park or, if any
13 damage, occurs, Operator shall promptly repair the same; and c) it is expressly understood by
14 Operator that any such signage shall be subject to the applicable terms and conditions set forth
15 by the City of Milwaukee and County which terms and conditions shall be reasonable. It is
16 hereby intended that County and Operator shall cooperate in order to arrive at a mutually
17 agreeable signage program which shall facilitate the exposure of the Property to the general
18 public while at the same time being aesthetically compatible with the Park. Notwithstanding the
19 foregoing, Operator shall have the right, without the approval of the County, to install or place
20 signage recognizing its donors within the Property, within physical structure located at the
21 Property and on the Baseball Fields and Related Amenities, including, without, limitation in and
22 on the Pavilion.
23

24 (ii) Operator agrees to provide the County with prominent
25 acknowledgment signage using the County Parks Logo as integral part of all promotions. The
26 acknowledgment signage must be prominently displayed at the entrance to the Baseball Fields
27 and in all of Operator's print, digital, and TV promotions and advertising related to the activities
28 covered by this Agreement.
29

30 5) Naming Rights. Approval in writing must be obtained from the County for any
31 naming privileges sought in relation to the Baseball Fields, which approval shall not be
32 unreasonably withheld, conditioned or delayed. County's failure to respond within ten (10) business
33 days to a written or electronic request by Operator for approval of a naming privilege shall
34 constitute approval, if, in such written or electronic request, Operator shall have notified County of
35 the time constraint. County may request and Operator shall not unreasonably refuse a reasonable
36 extension of time within which to respond if needed. The County approves the use of Felix
37 Mantilla and Journey House as a part of the name for the Baseball Fields and Related
38 Amenities.
39

40 6) Security. County shall not be responsible for providing any security in connection
41 with the Property, except as set forth below. Operator shall restore and repair, at its sole cost and
42 expense, all of its facilities damaged and defaced as the result of vandalism, graffiti, or other wanton
43 destruction by third parties. County shall provide, or cause to be provided, routine periodic checks
44 of the exterior areas of the Property at least consistent with the level provided by County for other
45 similarly "attractive" areas owned by County.
46

47 (b) Maintenance.
48

49 1) Operator shall be responsible for any and all maintenance and repairs to
50 the Property and the Pavilion
51

1 2) Operator covenants and agrees that it will keep the Park and Property,
2 including those portions of the Park depicted on Exhibit _ immediately adjacent to and
3 outside of the Baseball Fields and Related Amenities but excluding the wooded areas to the
4 East and North of the Baseball Fields and Related Amenities as such area is depicted on
5 Exhibit _, in a reasonably safe and serviceable condition, and shall otherwise perform all
6 necessary repairs, replacements and maintenance to the Baseball Fields and Related
7 Amenities constructed or installed by Operator, including necessary cosmetic repairs
8 thereto, which shall include such things as: (i) mowing grass; (ii) seasonal snow clearance
9 of sidewalks and parking lots, but only to the extent Operator determines such clearance to
10 be necessary for Operator's activities at the Park; (iii) seasonal daily maintenance and minor
11 repair of the playground, as needed; (iv) collection and disposal of trash, litter, and debris;
12 (v) turf and fencing repairs and replacements; (vi) repairs or replacements which are
13 necessitated by the willful misconduct or negligence of Operator, its agents, employees,
14 guests or representatives; (vii) repairs or replacements which are necessitated by reason of
15 fire or other natural casualty, which events are governed by Paragraph 14 below; (viii)
16 repairs or replacements which are necessitated by reason of a defect in the condition of the
17 Property which existed prior to the effective date of the Agreement; (ix) repairs or replacements
18 which are necessitated by reason of a breach of any warranty or representation of Operator
19 contained in the Agreement or by reason of Operator's failure to perform or observe any term,
20 covenant or condition to be performed or observed by Operator pursuant to the Agreement; and (x)
21 the offsite removal of any waste from any work generated by services provided under this
22 Agreement. The foregoing indemnity shall not cover or include any repairs or replacements arising
23 out of the willful misconduct or negligence of County, its agents, employees, or representatives or
24 arising out of a breach by County of its representations, warranties or obligations hereunder, which
25 shall be County's obligation hereunder. Operator agrees to perform all repairs, maintenance and
26 replacements of the type enumerated in subparagraphs (i) through (x) of this paragraph 6 as
27 expeditiously as is reasonable. In the event the Operator cannot repair or maintain an item
28 enumerated in subparagraphs (i) through (x) above, which directly impacts the condition of the Park
29 and its use, County may, after notice to Operator to perform same and reasonable time for Operator
30 to do so, but in no event less than thirty (30) days (unless the failure to repair endangers public
31 safety) and upon five (5) business days' notice of County's intent to do so, make said repair or
32 maintenance and Operator shall reimburse County for the reasonable costs of said repair or
33 maintenance. In the event of an emergency repair which prevents such notification, County shall
34 notify Operator of said repair as soon as is possible.
35

36 3) Notwithstanding anything to the contrary hereinabove set forth, Operator shall be
37 responsible for the maintenance and repair of its improvements, trade fixtures, equipment and
38 mechanical systems including such periodic preventative maintenance of its improvements, trade
39 fixtures and equipment, as Operator may require. Operator further agrees to comply with such
40 reasonable rules and regulations as County may establish from time to time for the upkeep and
41 maintenance of the Park. Operator shall store its maintenance equipment, as applicable, in the
42 storage shed or area to be included as a Related Amenity. Operator shall not be responsible for
43 any patching, repairs, resurfacing, replacement, or snow removal of the parking areas, drive ways or
44 sidewalks within the Park, provided that Operator may elect to undertake any or all such activities,
45 but if Operator elects to do so it is at Operator's sole cost. Operator shall also not be responsible for
46 any repairs, replacement or similar steps with respect to the playground within the Park except
47 ordinary maintenance and minor repairs, provided that Operator may elect to undertake any or all
48 such activities, but if Operator elects to do so it is at Operator's sole cost.
49

50 4) Endowment Fund. Operator shall establish an Endowment Fund ("Fund") for
51 maintenance of the Baseball Fields and Related Amenities, which shall total one hundred thousand dollars

1 (\$100,000.00). As additional consideration, Operator agrees to augment the Fund by depositing the
2 interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the
3 Fund falls below \$50,000.00 at any time, Operator shall add to the Fund enough assets to maintain
4 a minimum balance of \$50,000.00. Failure to maintain a balance of \$50,000.00 shall be grounds
5 for termination of this Agreement by County, provided Operator fails to cure any such shortage
6 within one hundred and eighty (180) days of receipt of notice from County that the shortage has
7 occurred. The Fund is to be used as follows:

8
9 (i) Maintenance, repair and replacement to assure upkeep of the Property
10 and the improvements to be constructed on the Property.

11
12 (ii) Additional improvements or non-routine maintenance to the Property as
13 may be agreed upon by Operator and County, which approval shall not be unreasonably withheld,
14 conditioned or delayed.

15
16 Management of the Fund shall include the establishment of an interest bearing
17 account(s), changing investment strategies, monitoring account activity, and providing joint
18 written approval of all payments from account assets, which approval by County shall not be
19 unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Operator shall
20 have the right to make withdrawals from the Fund without County's approval, but upon notice to
21 County, for up to \$10,000 for any item described in clause (i) above, provided that the Fund does
22 not fall below \$50,000 as a result thereof and the aggregate amount so withdrawn from the Fund
23 without County approval in any twelve (12) month period does not exceed \$25,000. Operator shall
24 provide County with quarterly reports relating to Fund activities, including funds received, monies
25 spent, and any long-term obligations, including an annual report prepared by independent auditors.

26
27 7. REVENUE; EXPENSES.

28
29 (a) All revenues generated by, payable in connection with or in any way related to the
30 Baseball Fields and Related Amenities shall be the sole property and revenue of Operator.

31
32 (b) Operator shall pay any and all expenses of whatever kind or nature incurred by Operator
33 in constructing, demolishing, operating, maintaining and managing the Baseball Fields and Related
34 Amenities, regardless of the amount of revenues generated by the Baseball Fields or whether or not
35 there are any revenues generated by the Baseball Fields.

36
37 8. ENVIRONMENTAL.

38
39 (a) To the best of County's knowledge, the Park is not in violation of any Environmental
40 Laws (as defined below) and County has no knowledge of (i) the presence on or about the Park
41 of any hazardous materials; (ii) any release or threatened release of any hazardous materials
42 on or affecting the Park; or (iii) the existence of storage tanks on or under the Park. County has
43 received no notice of any investigation proceeding by any governmental agency concerning the
44 presence or alleged presence, release or threatened release of hazardous materials on the
45 Park.

46
47 (b) Operator agrees to accept the Property "as-is" and is solely responsible for
48 conducting its own geotechnical investigation to determine soil bearing capacity and for all site
49 excavation, debris removal, fill and development expenses. In the event that Operator
50 reasonably determines as a result of its own investigation that hazardous materials exist or may
51 possibly exist in or on the Park, Operator shall have the right, at its sole option, by written notice

1 to County, to terminate this Agreement. Operator shall keep the results of its investigations
2 confidential, unless otherwise required by law or court order and except for providing the results
3 thereof to its lenders, donors, attorneys and consultants. In no event shall the discovery or
4 disturbance of any hazardous materials by Operator preclude the Operator from performing its
5 remediation responsibilities as contained in the following paragraph 8(c).
6

7 (c) Operator shall, to the full extent provided for under any environmental laws, rules
8 and regulations (collectively, "Environmental Laws"), be responsible for any repair, cleanup,
9 remediation or detoxification required by the DNR arising out of (1) any hazardous materials
10 brought onto or introduced into the Property or surrounding areas by Operator, its agents,
11 employees, guests or representatives utilizing the Property, or (2) any hazardous materials
12 whose presence pre-exists the commencement of Operator's Agreement term, located in and
13 on the Property, that are discovered or disturbed as a result of Operator's construction activities
14 on, at or near the Property.
15

16 9. TAXES. County and Operator intend that the Property shall not be subject to general
17 and special real estate taxes and assessments, it being the parties' intention that the Property
18 constitute "property owned by any county" within the meaning of Sec. 70.11(2), Wis. Stats., and
19 County and Operator will take such steps as are reasonably necessary to establish and uphold
20 such tax exemption, provided that Operator shall not be required to change its use of the
21 Property. In addition, Operator is a 501(c)(3) corporation and should not be subject to such
22 taxes. Notwithstanding the foregoing, if the Property is now or hereafter subject to such taxes
23 and assessment, including but not limited to stormwater management fees or other special
24 assessments of the City of Milwaukee, Operator agrees to pay any real estate, personal
25 property or other taxes and fees due and owing with respect to the Baseball Fields and Related
26 Amenities. If, during the term of the Agreement, any special assessment is levied against the
27 Park, then Operator shall be responsible for payments of such special assessment which
28 becomes due and owing during the term of the Agreement with respect to the Baseball Fields
29 and Related Amenities (with such assessments being deemed to be paid over the longest
30 installment period available). Nothing herein contained shall prevent County or Operator from
31 protesting the validity or amount of any such assessment or from taking such action as may be
32 required or permitted by law for enforcing and effecting such protest. In this connection, County
33 or Operator may withhold the payment of any such protested assessments provided County or
34 Operator proceed with such protest according to law and provide reasonably satisfactory
35 security.
36

37 10. UTILITIES; LICENSES; FEES. Operator agrees to pay, when due, all charges
38 and costs for installation and operation of water, sewer, gas, heat, air conditioning,
39 electricity, telephone and any and all other utilities or services, if applicable, for services to
40 the Property. Operator will at its sole expense, provide for the installation of a separate
41 metering system for these utilities if and to the extent practical.
42

43 Operator, at its expense, shall acquire and pay for all permits or licenses which may be
44 required for Operator's business, and also to pay, when due, all occupation taxes and any other
45 charges of a similar nature which may at any time be levied against the Property by reason of
46 Operator's use and occupancy thereof.
47

48 11. INDEMNITY.
49

50 (a) The Operator and County (the "Indemnifying Party") agree to the fullest extent
51 permitted by law, to indemnify, defend and hold each other harmless, and their agents, officers,

1 and employees, from and against all loss or expense including costs and attorney's fees by
2 reason of liability for damages including suits at law or in equity, caused by any willful
3 misconduct or negligence of the Indemnifying Party or its agents which may arise out of or are
4 connected with the activities covered by the Agreement; provided that the party seeking
5 indemnification (an "Indemnitee") notify the other party (an "Indemnitor") in writing of the
6 existence of such loss, liability, claim, injury, damage or expense promptly after the Indemnitee
7 has obtained actual knowledge that such a loss liability, claim, injury, damage or expense is
8 threatened or pending, and further provided that the Indemnitee afford to the Indemnitor the
9 right, but not the obligation, to assume the defense of such loss, liability, claim, injury, damage,
10 costs and expenses, including reasonable attorneys' fees connected therewith or resulting
11 therefrom. County's liability hereunder shall be limited by Wisconsin Statutes 345.05(3) for
12 automobile and 893.80(3) for general liability.
13

14 (b) Environmental. The Operator shall be responsible for any repair, cleanup,
15 remediation or detoxification required by the Wisconsin Department of Natural Resources in
16 compliance with applicable laws arising out of (i) any Hazardous Materials brought onto or
17 introduced into the Property or surrounding areas by the Operator or its agents at any time
18 and/or (ii) Hazardous Materials whose presence pre-exists the commencement of any of the
19 Operator's demolition or improvements, located in the Property, that are disturbed or
20 exacerbated as a result of the Operator's construction activities on, at or near the Property
21 during the Term. The Operator shall indemnify, defend and hold the County harmless from any
22 liability, cost, damage, claim or injury (including reasonable attorney fees) arising from
23 Operator's failure to comply with the preceding sentence. "Hazardous Materials" as the term is
24 used herein shall mean any substance: (i) the presence of which requires investigation or
25 remediation under any Federal, State or local statute, regulation, ordinance, order, action or
26 policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance"
27 under any Federal, State or local statute, regulation, ordinance, order, action or policy.
28

29 12. INSURANCE.

30
31 (a) Operator agrees to maintain policies of insurance as may arise from claims for damages
32 to property of and/or claims which may arise out of or result from Operator's activities, by whomever
33 performed, in such coverage amounts as reasonably and consistently required and approved by
34 Milwaukee County's Risk Manager. Acceptable proof of such coverage shall be furnished to
35 Milwaukee County prior to the commencement of activities under this agreement. A Certificate of
36 Insurance shall be submitted for review for each successive period of coverage for the duration of
37 this agreement, unless otherwise reasonably and consistently specified by Milwaukee County's Risk
38 Manager, in the minimum amounts specified in Exhibit F.
39

40 (b) Operator shall cause its consultants, contractors and subcontractors to have and
41 maintain in connection with any work being performed at or for the Park insurance policies with at
42 least the following coverage and limits: General Liability \$1,000,000 per Occurrence/\$2,000,000
43 Aggregate, WI Workers' Compensation Statutory Limit, Employer's Liability
44 \$100,000/\$500,000/\$100,000, Automobile Liability \$1,000,000 per Accident, Professional Liability (If
45 applicable, required for Construction Managers, Architects, Engineers and Designers) \$1,000,000
46 per Occurrence, and Contractor's Pollution Liability (If applicable, required for general contractor
47 employed for pavilion demolition/construction) \$1,000,000 per Occurrence.
48

49 (c) Operator shall cause its consultants, contractors and subcontractors to name Milwaukee
50 County as an additional insured on the General, Automobile, Employer's and Contractor's Pollution
51 Liability policies and provide a waiver of subrogation in favor of Milwaukee County on the Workers'

1 Compensation and Contractor's Pollution Liability policies as respects to the services provided in
2 this agreement. All Carriers must be approved to do business in the State of Wisconsin and be A
3 rated or better per AM Best's Rating Guide. Certificates of insurance shall be submitted for review
4 to Milwaukee County for each successive period of coverage for the duration of this Agreement.
5

6 13. ASSIGNMENT. Operator may not assign the Agreement and its right, title and interest
7 hereunder, without County's express written consent, which consent shall not be unreasonably delayed,
8 conditioned or withheld. County's consent shall not be required in the event of a merger of Operator with
9 another non-profit entity.
10

11 14. DAMAGE OR DESTRUCTION. If, during the term of the Agreement, including any time after
12 which Operator may have given notice to terminate the Agreement, the entire structural portion of the
13 Property or such portion thereof as shall render the remaining portion thereof unsuitable for the continued
14 conduct of Operator's activities therein, shall be damaged or destroyed more than 50% by fire or other
15 casualty, Operator shall have the right, for a period of ninety (90) days thereafter, by giving written notice to
16 County, to terminate the Agreement, in which event: (a) County shall be entitled to retain all insurance
17 proceeds payable by reason of and with respect to damage or destruction to the Park and improvements
18 constructed by County on the Park; and (b) Operator shall convey and remit to County all insurance
19 proceeds payable by reason of and with respect to damage or destruction to the permanent improvements
20 owned or constructed by Operator on the Property. All other insurance proceeds shall be the property of
21 Operator. If Operator does not elect to terminate the Agreement or if the damage or destruction to the
22 Property does not render the remaining portion thereof unsuitable for the continued conduct of Operator's
23 activities thereon, then the Agreement shall continue in full force and effect, and Operator shall, in
24 accordance with the provisions set forth in paragraphs 6 and 7 hereof, promptly commence and pursue
25 diligently to completion whatever repairs to the Property are necessary to restore the Property to the
26 condition the same were in prior to such damage or destruction and Operator shall be entitled to all
27 insurance proceeds relating to the casualty. All such repairs shall be performed promptly and in a good
28 and workmanlike manner in accordance with all statutes, laws, ordinances, rules and regulations of any
29 governmental authority having jurisdiction over the Property.
30

31 15. CONDEMNATION.
32

33 (a) Total Taking. If, during the term of the Agreement, the entire Property shall be taken by any
34 public or quasi-public authority (which County itself hereby agrees not to do) under its power of
35 condemnation or eminent domain (or is sold under threat thereof), the Agreement shall terminate as of
36 the date possession shall be taken by the acquiring authority. If any part of the Property shall be taken as to
37 render the remainder thereof unsuitable for the continued conduct of Operator's activities thereon,
38 Operator shall have the right to terminate the Agreement on thirty (30) days notice to County.
39

40 (b) Partial Taking. If the portion of the Property taken by any public, or quasi-public authority
41 (which Milwaukee County hereby agrees not to do) under its power of condemnation of eminent domain
42 (or sold under threat thereof) shall not render the remaining portion unsuitable for the continued conduct
43 of Operator's or County's activities thereon, the Agreement shall continue in full force and effect. County
44 shall use such portion of the County's proceeds by reason of such taking necessary to repair and restore
45 the Property as herein provided.
46

47 (c) Compensation Award. If a total or partial taking of the Property occurs, any
48 Compensation Award shall be the sole and exclusive property of County. Notwithstanding the
49 foregoing, nothing contained herein shall be construed to preclude Operator from prosecuting
50 any claim directly against the condemning authority in such condemnation proceedings for loss
51 of business, or depreciation to, damage to or cost of removal of, or for the value of stock or

1 Operator's trade fixtures, furniture, equipment and other improvements made to the Property,
2 and any other property belonging to Operator.
3

4 **16. DEFAULT REMEDIES.**
5

6 (a) Default by Operator. If (i) Operator fails to pay any of the fees or other sums
7 required hereunder and such failure to pay continues for thirty (30) days after written notice
8 thereof to Operator; or, (ii) default be made in the performance or observance by Operator of
9 any other terms, covenants or conditions herein contained and such default shall continue for
10 sixty (60) days after written notice thereof to Operator (or if such default is not of a type that can
11 reasonably be corrected within sixty (60) days and Operator fails to commence promptly and
12 in good faith to proceed with due diligence to correct such default), then if any such default is
13 not cured within sixty (60) days (as such time frame is extended for force majeure) after a
14 second written notice from County specifying such default, which second notice shall be given
15 after the expiration of the above referenced, applicable grace period, then, in any of the above-
16 described events, County may elect to terminate the Agreement and declare the term of the
17 Agreement ended, to re-enter the Property or any part thereof with judicial process and to expel
18 and remove Operator or any person or persons occupying the same and again to repossess
19 and enjoy the Property. County shall also have the right, at its option, in the event its written
20 notice of default is not cured by Operator within the time provided in this Agreement, to cure any
21 default by Operator and recover from Operator the reasonable costs and expenses incurred by
22 County in curing such default.
23

24 (b) Alternate Dispute Resolution. In the event of any alleged default hereunder by either County
25 or Operator, the parties shall endeavor, in good faith, to utilize an alternative dispute resolution
26 mechanism, which utilizes retired judicial officials prior to the commencement of any litigation or
27 arbitration.
28

29 (c) Remedies Not Exclusive. Any right or remedy conferred on County or Operator under the
30 Agreement shall not be deemed to be exclusive of any other right or remedy which might otherwise be
31 available hereunder or at law or in equity. The rights and remedies hereunder shall be cumulative and
32 may be exercised and enforced concurrently and whenever and as often as occasion therefore arises.
33

34 (d) No Waivers of Rights. The failure of County or Operator to insist upon strict performance of
35 any of the terms, covenants or conditions herein contained shall not be deemed a waiver of any of its
36 rights or remedies and shall not be deemed a waiver of any subsequent breach or default in any of said
37 terms, covenants and conditions.
38

39 **17. TERMINATION.** County may terminate this Agreement: (a) subject to the terms and
40 conditions of this Agreement; or (b) if Operator ceases to do business as a going concern, or
41 becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or
42 trustee is appointed to take possession of, or an attachment, execution or other judicial seizure
43 is made with respect to, substantially all of Operator's assets or Operator's interest in this
44 Agreement, in each case which is not dismissed within ninety (90) days thereafter.
45

46 **18. PROHIBITED PRACTICES.**
47

48 (a) During the term of this Agreement, Operator shall not hire, retain or utilize for
49 compensation any member, officer or employee of the County or any person who, to the actual
50 knowledge (without inquiry) of Operator, has a conflict of interest.
51

1 (b) Operator hereby acknowledges that portion of County's Code of Ethics, which states
2 in part: No person may offer to give to any County officer of employee or his immediate family,
3 and no County officer of employee or his immediate family may solicit or receive anything of
4 value pursuant to an understanding that such officers or employees vote, official actions or
5 judgment would be influenced thereby.
6

7 19. TRASH REMOVAL. Operator shall be responsible for the collection and removal
8 of trash, litter, and garbage within the Property and in connection with Operator's operations
9 at the concession stand. County and Operator shall cooperate to allow for the placement of
10 trash, litter, and garbage into a dumpster or waste receptacle within the Park.
11

12 20. MISCELLANEOUS.

13
14 (a) Notices. Whenever in the Agreement it shall be required or permitted that notice be
15 given by any party hereto to the other, such notice shall be given by certified or registered mail,
16 and any notice so sent shall be deemed to have been given on the date that the same is
17 deposited in the United States mail, postage prepaid. Notices shall be addressed to the party
18 as follows:
19

20 If to County:
21 Milwaukee County Department of Parks, Recreation and Culture
22 9480 Watertown Plank: Road
23 Wauwatosa, Wisconsin 53226
24 Attn: Director
25

26 With a copy to:
27 Milwaukee County Corporation Counsel
28 Room 303, Milwaukee County Courthouse
29 901 North Ninth Street, Milwaukee, Wisconsin 53233,
30

31 If to Operator:
32 Journey House, Inc., c/o Dr. Michele Bria, CEO
33 2110 Scott Street
34 Milwaukee, WI 53204
35

36 With a copy to:
37 Attorney Sarah O. Jelencic, Foley & Lardner LLP
38 777 E. Wisconsin Ave.
39 Milwaukee, WI 53202,
40

41 Or at such other address as either party may from time to time specify in writing in lieu
42 thereof. It is further agreed that each party hereto will promptly furnish to the other party hereto
43 a copy of any notice it may receive from any third person, which may affect the rights of any
44 party hereunder.
45

46 (b) Access. County, its agents and representatives shall, upon reasonable notice to
47 Operator, be entitled to enter upon the Property at reasonable times during normal business
48 hours for the purpose of examining and inspecting the condition thereof, and exercising any
49 right or power reserved to County under the Agreement provided, however, that except in the
50 case of an emergency such entry shall be done in a manner so as not to unreasonably interfere
51 with the conduct of Operator's activities thereon, and such entry shall except in the case of an

1 emergency only be made if County is accompanied by a responsible employee of Operator and
2 shall be at the sole risk of County.
3

4 (c) Targeted Business Enterprise (TBE) Utilization. Operator shall commit that Targeted Business
5 Enterprises (TBEs) have an equal opportunity to receive and participate in the project and shall require that
6 its contractors and subcontractors do the same, as required by the Targeted Business Enterprise section of
7 Chapter 42 of the Milwaukee County Code of General Ordinances. Operator shall utilize good faith efforts
8 to achieve its goal of a minimum of 25 percent TBE participation for project costs relating to the hard
9 construction costs of the Baseball Fields and related amenities.
10

11 (d) Equal Employment Opportunities. In, accordance with Section 56.17 of the Milwaukee County
12 General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, the Operator Certifies to
13 the County as to the following:
14

15 1) Non-Discrimination. The Operator certifies that it will not discriminate against any
16 employee or applicant for employment because of race, color, national origin, age, sex or handicap which
17 includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or
18 recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for
19 training, including apprenticeship. The Operator will post in conspicuous places, available for employment,
20 notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit E is an
21 Equal Opportunity Certificate that shall be executed and delivered by Operator simultaneously with the
22 execution and delivery of the Agreement.
23

24 2) Affirmative Action Program. The Operator certifies that it will strive to implement the
25 principles of equal employment opportunity through an effective affirmative program which shall have as its
26 objective to increase the utilization of women, minorities and handicapped persons and other protected
27 groups, at all levels of employment in all divisions of its work force, where these groups may have been
28 previously under-utilized and under-represented. The Operator also agrees that in the event of any
29 disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it
30 has exercised good faith efforts to meet all requirements.
31

32 3) Affirmative Action Plan. To the extent required by applicable law, the Operator certifies
33 that if it has 50 or more employees, it has filed or will develop and submit a written Affirmative Action Plan.
34 Current Affirmative Action Plan, if required, must be fled with any of the following. The Office of Federal
35 Contract Compliance Programs or the State of Wisconsin, or the Milwaukee County Department of Audit,
36 Room 319 Courthouse Annex, 907 North Tenth Street, Milwaukee, Wisconsin 53233.
37

38 4) Non-Segregated Facilities. The Operator certifies that it does not and will not maintain
39 or provide segregated facilities for its employees, and that it does not permit its employees to perform their
40 services at any location under its control where segregated facilities are maintained.
41

42 5) Reporting Requirement. When applicable, the Operator certifies that it will comply with
43 all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
44

45 6) Compliance. The Operator certifies that it is not currently in receipt of any
46 outstanding letters of deficiencies, show cause, probable cause, or other such notification of
47 noncompliance with EEO regulations.
48

49 7) ADA Accessibility. Operator shall, at Operator's expense, promptly comply
50 with all laws, rules, and regulations applicable to Operator's use of the Pavilion and the Property
51 so that the Pavilion and Property is not in violation of the American with Disabilities Act of 1990

1 and the Architectural Barriers Act of 1968 (the “ADA”) and, to the extent required by applicable
2 law, such ADA compliance is approved by the Milwaukee County Office of Persons with
3 Disabilities.
4

5 (e) Surrender of Property. Operator upon termination of the Agreement, by lapse of time or
6 otherwise, agrees peaceably to surrender the Property to County.
7

8 (f) Holding Over. If Operator, with the consent or acquiescence of County, continues to manage
9 the Property after the termination of the Agreement and without the execution of a new Agreement,
10 Operator shall be deemed to be occupying the Property subject to all the applicable terms, conditions and
11 covenants of the Agreement and existing Wisconsin laws.
12

13 (g) Benefit. The Agreement and all of the covenants and conditions herein contained shall be
14 binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
15

16 (h) Provisions Severable. It is the intent of the County and the Operator that the Property
17 be exempt from general property taxes pursuant to the provisions of section 70.11(2), Wis.
18 Stats., as amended or supplemented. Accordingly, if the existence, effect or operation of any
19 provision of this Agreement causes the Property to be subject to general property taxes, such
20 provision(s) shall be null and void and the Agreement shall be construed and enforced as if
21 such provision had never been a part of the Agreement, and the remaining provisions of the
22 Agreement shall remain in full force and effect. Further, if any provision of the Agreement shall be
23 held or declared to be invalid, illegal or unenforceable under any law applicable hereto; such
24 provision shall be deemed deleted from the Agreement without impairing or prejudicing the validity,
25 legality and enforceability of the remaining provisions hereof.
26

27 (i) Governing Law. The Agreement shall be governed by the laws of the State of Wisconsin.
28

29 (j) Records and Audits. Pursuant to Milwaukee County ordinance section 56.30(6)(e),
30 Operator shall allow Milwaukee County or any other party the County may name, when and as
31 they demand, to audit, examine and make copies of records in any form and format, meaning
32 any medium on which written, drawn, printed, spoken, visual or electromagnetic information is
33 recorded or preserved, regardless of physical form or characteristics, which has been created or
34 is being kept by Operator, including but not limited to, handwritten, typed or printed pages,
35 maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files,
36 computer printouts and optical disks, and excerpts or transcripts from any such records or other
37 information directly relating to matters under this Agreement, all at no cost to County. Operator
38 shall not be required to disclose any of its donors. Any subcontracting by Operator in
39 performing the duties described under this Agreement shall subject the subcontractor or its
40 associates to the same audit terms and conditions as Operator. Operator (or any
41 subcontractor) shall maintain and make available to Milwaukee County the aforementioned
42 audit information for no less than three years after the conclusion this Agreement.
43

44 (k) Independent Contractor. Nothing contained in this Agreement shall constitute or be
45 construed to create a partnership or joint venture between the County and its successors or
46 assigns and Operator or its successors or assigns. In entering into this Agreement, and in
47 acting in compliance herewith, Operator is at all times acting and performing as an independent
48 contractor duly authorized to perform the acts required of it hereunder. This Agreement does
49 not create the relationship of principal and agent, of partnership or joint venture, or of any
50 association between Milwaukee County and Operator.
51

1 (l) Any disagreement, dispute or determination required by or arising under the
2 provisions of this Agreement, other than a termination of the Agreement, shall be submitted to
3 the American Arbitration Association and arbitration shall be carried on and concluded in
4 accordance with the then existing Commercial Arbitration rules of the American Arbitration
5 Association, or if it is no longer in existence, any nationally recognized arbitration board or
6 company, and judgment upon the award rendered by the arbitrator(s) may be entered in any
7 court having jurisdiction thereof.
8

9 (m) Headings. Paragraph and subparagraph headings herein are for convenience and
10 reference only and in no way define or limit the scope or content of this Agreement or in any
11 way affect its provisions.
12

13 (n) Waiver. No delay or omission by any of the parties hereto to exercise any right or
14 power occurring upon any non-compliance or failed performance by another party under the
15 provisions of this Agreement shall impair any such right or power or be construed to be a waiver
16 thereof. A waiver by any of the parties hereto of any of the covenants, conditions or
17 agreements hereof to be performed by another, shall not be construed to be a waiver of any
18 succeeding breach thereof or of any other covenant, condition or agreement contained herein.
19

20 (o) Amendments or Further Agreements to be in Writing. No agreement or amendment
21 shall be effective to add to, change, modify, waive or discharge this Agreement in whole or in
22 part, unless such agreement is in writing and signed by all parties bound hereby.
23

24 (p) Deemed Approvals. In the event County fails to respond within thirty (30) days to a
25 written or electronic request by Operator for any approval or consent required or desirable under
26 the terms of the Agreement, and then fails to respond within 10 days after receipt of a second
27 written request stating in all capital letters that "FAILURE TO RESPOND WITHIN 10 DAYS
28 WILL RESULT IN DEEMED APPROVAL" sent by overnight delivery service, or such shorter or
29 longer period as may be specifically provided in the Agreement, then County shall be deemed to
30 have consented to or approved such request.
31

32 (q) Counterparts. This Agreement may be signed in counterparts, which, when taken
33 together, shall be deemed an original for all purposes.
34

35 (r) Assignment. If approved under Paragraph 13 of this Agreement, upon the
36 assignment by Operator of all of its interest in this Agreement or the conveyance by the County
37 of all of its interest in the Park, the transferring party shall be relieved of any further liability
38 under this Agreement arising on and after the date of transfer and such transferee shall be
39 deemed to have assumed all rights and obligations of the transferor hereunder arising on and
40 after the date of transfer. It is expressly understood that the transferor shall notify the other
41 party to this Agreement of any such assignment or conveyance. This Agreement shall be
42 binding upon the parties hereto and their successors and assigns.
43

44 (s) Approvals. All approvals are subject to there being no conflicts with existing and
45 applicable laws, rules or regulations, or other factors beyond the reasonable control of the
46 County.
47

48 (t) No Alterations by County. Nothing set forth anywhere in this Agreement shall be
49 construed to obligate County to remove or modify any existing improvements in, on or under the
50 Park.
51

1 (u) Utilities. Operator is to be responsible for locating and plotting utilities and other
2 infrastructure of the County and others that may be present in the area and which may be
3 impacted by Operator's operations and activities. Operator is also responsible for any damage
4 to these items caused by operations and programming and maintenance and repair work done
5 by the Operator under cover of this Agreement. County shall provide Operator with all
6 information in County's possession or control relating to the location of any such utilities.
7

8 (v) Authority. Each of the parties hereby represents and warrants that the individual
9 executing this Agreement on its behalf has full power and authority to bind such party to the
10 terms and conditions hereof. The parties shall each, at all times, provide the other party with
11 written notice as to the contact person regarding this Agreement.
12

13 (w) Further Assurances. The parties hereto agree to execute immediately upon
14 presentation and deliver such additional documentation as may be required from time to time by
15 either of the parties hereto to further evidence or as are necessary to carry out the terms and
16 conditions of this Agreement.
17
18
19
20

21 **SIGNATURE PAGES FOLLOW:**
22
23

1 **IN WITNESS WHEREOF, County and Operator have executed this instrument under seal**
2 **as of the day and year first above written.**
3
4

5
6
7 **COUNTY: MILWAUKEE COUNTY**

OPERATOR: JOURNEY HOUSE, INC.

8
9 By: _____

By: _____

10
11 Name Printed: _____

Name Printed: _____

12
13 Title: _____

Title: _____

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43 [Signature Page 1 of 2]
44

1 Approved with regards to County Ordinance Chapter 42:

2
3
4 By: _____ Date: _____
5 Community Business Development Partners

6
7 Approved: _____ Approved per Sec. 59.255(2)(e), Stats.:

8
9
10 By: _____ Date: _____ By: _____ Date: _____
11 County Executive Chris Abele Comptroller Scott B. Manske

12
13 Approved as to form and independent status: _____ Reviewed by: _____

14
15
16 By: _____ Date: _____ By: _____ Date: _____
17 County Corporation Counsel County Risk Management

18
19 Approved as compliant under Sec. 59.42(2)(b)5, Stats.:

20
21
22 By: _____ Date: _____
23 County Corporation Counsel

24
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44 [Signature Page 2 of 2]

45 Exhibit Listing:

- 46
47 A. Site Plan of Park
48 B. Legal Description and Plat of Land of Park
49 C. Depiction of the Property
50 D. Due Diligence
51 E. Equal Opportunity Certificate

1 F. Insurance Requirements
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(Site Plan of Park)

Exhibit A

Exhibit B

1
2
3 (Legal Description)
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1 **Exhibit D**

2
3 Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE MANUAL
4 Financial & Management 7 MILWAUKEE COUNTY Accounting
5

6 **Due Diligence 7.92**

7
8 CHECKLIST. Prior to recommending any venture for consideration, responsible County
9 agencies shall ensure that any of the following applicable factors have been identified:

- 10
11 • Letter of Full Disclosure and Cooperation
12 • Cash flow projections for the venture.
13 • Operating budget impact.
14 • Debt management responsibilities, schedules and procedures.
15 • Legal liability for all priorities.
16 • Financial reporting systems and controls.
17 • Right-to-audit provisions.
18 • Project feasibility studies and market analysis.
19 • Key factors for success/failure of the venture.
20 • Governance structure and procedures.
21 • Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
22 • Employee/labor relations impacts (including benefits).
23 • Environmental concerns.
24 o To include a historical or archaeological survey of any and all areas of Mitchell
25 Park impacted by the project.
26 • Tax consequences.
27 • Capital management (e. g. maintenance).
28 • Conflicts of interest/ethics.
29 • Performance measurements.
30 • Organization Chart and Mission Statement
31 • Name of Lending institution or Bank to determine single or combined reporting
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33 Each relevant item noted above should be included in the description of the proposal, which is
34 subtitled for approval by the County Executive and County Board.
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Exhibit E

(Equal Employment Opportunity Certificate for Milwaukee County Contracts)

Exhibit F
Insurance Requirements

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Operator shall provide evidence of the following coverages and minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers Compensation and Employers Liability & Disease	Statutory/Waiver of Subrogation \$100,000/\$500,000/\$100,000
General Liability Including Bodily Injury & Property Damage, Contractual & Products/Completed Operations, Fire, Legal, Liquor	\$1,000,000 per Occurrence \$2,000,000 Aggregate
Automobile Liability Bodily Injury & Property Damage All Autos	\$1,000,000 per Accident
Volunteer Accident	\$1,000,000 per Occurrence
Umbrella Liability Policy follows form to General, Automobile, Employer's Liability and Volunteer Accident	\$5,000,000 Aggregate
Property Insurance	Replacement Cost

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Milwaukee County shall be named as an Additional Insured on the General, Automobile, Employer's and Volunteer Accident policies as respects the services provided in this agreement. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

Operator shall maintain in force Property Insurance coverage on any and all improvements to the Property, including, but not limited to, the contemplated pavilion building and any other structures or amenities. Said insurance shall include coverage for the replacement value thereof against loss or damage by fire or other insurable hazards.

The insurance specified above shall be placed with a Carrier approved to do business in the State of Wisconsin. All carriers must be A rated or better per AM Best's Rating Guide. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

A certificate of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this agreement.

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