

MILWAUKEE COUNTY WISCONSIN

**SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT
(Multi-Purpose Sports Complex)**

THIS SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT (this "Agreement") is entered into by and between MILWAUKEE COUNTY, WISCONSIN, a political subdivision of the State of Wisconsin, as represented through its Department of Parks, Recreation and Culture (the "County"), and The Rock Sports Complex, LLC (the "Operator"), with reference to the following recited facts:

RECITALS

A. The County met with the Operator to discuss the idea of building and operating a year-round multi-purpose sports center on land owned by the County with the Operator to provide certain services including but not limited to operational services relating to the design, construction, management, operation and maintenance of a year-round multi-purpose sports center (hereinafter referred to as the "Sports Park" and as more specifically described and defined in ARTICLE I) to be located on County-owned land commonly referred to as Crystal Ridge with a property identification number(s) of: 744-8980-001; 745-8998-000; 744-8985-002; 744-8985-001; 744-8988-000; 744-8989-000; 708-8996-000; 708-8999-000, and comprising approximately 140 total acres.

B. The County represents and warrants that it owns that certain real property specifically described in Exhibit "A" attached to this Agreement (the "Property"), subject to certain reservations, covenants, conditions or restrictions relating to the use of the Property.

C. The County and Operator desire to construct a top quality, for-profit, self-supporting year-round multi-purpose Sports Park facility on the Property.

D. The County and the Operator (hereinafter collectively the "Parties") desire to enter into this Agreement to set forth their rights and obligations to each other relating to the Operator's operation and maintenance of the Sports Park for the County following construction and installation of the Sports Park on the Property, if at all.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES OF THE COUNTY AND THE OPERATOR SET FORTH IN THIS AGREEMENT, THE COUNTY AND THE OPERATOR AGREE, AS FOLLOWS:

ARTICLE I

DEFINITIONS

1. The following definitions apply in this Agreement:

1.1 "**Affiliate**" means with respect to any Person, (i) any other Person which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with the Operator, such Person or (ii) any general partner, officer or director of

such Person or of any other Person described in clause (i). As used in the previous sentence, “control” means the possession, directly or indirectly, of the power to cause the direction of the management of a Person, whether through voting securities, by contract, family relationship or otherwise. “Affiliated” shall have the correlative meaning.

1.2 “Annual Net Income Statement” means a financial statement, prepared in accordance with generally accepted accounting principles and in accordance with Operator’s accounting policies.

1.3 “Application” means any agreement, application, certificate, document, or submission (or amendment of any of the foregoing): (a) necessary or appropriate for any activity on the Property that this Agreement allows, including any application for any building permit, certificate of occupancy, utility service or connection, easement, covenant, condition, restriction, subdivision plat, or such other instrument as the Operator may from time to time reasonably request in performing services under this Agreement; (b) to enable the Operator from time to time to seek any Approval or to use or operate the Sports Park in accordance with this Agreement; or (c) otherwise reasonably necessary and appropriate to permit the Operator to perform its services under this Agreement.

1.4 “Approvals” means any and all licenses, permits, approvals, consents, certificates (including certificate(s) of occupancy), rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Law to commence, perform, or complete any use, maintenance, repair or operation of the Sports Park.

1.5 “Bankruptcy Law” means Title 11, United States Code, and any other or successor state or federal statute relating to assignment for the benefit of creditors, appointment of a receiver or trustee, bankruptcy, composition, insolvency, moratorium, reorganization, or similar matters.

1.6 “Bankruptcy Proceeding” means any proceeding, whether voluntary or involuntary, under any Bankruptcy Law.

1.7 “Building Equipment” means all fixtures incorporated into the Sports Park, whether acquired by the County or the Operator and used, useful, or necessary to operate the Sports Park as such (including, but not limited to, boilers; compactors; compressors; conduits; ducts; elevators; engines; equipment; escalators; fittings; heating, ventilating and air conditioning systems; irrigation systems; machinery; and pipes) as opposed to operating any business in the Sports Park.

1.8 “Capital Repair” means any work reasonably necessary to repair, restore, refurbish or replace any equipment, facility, structure or any other component of the Sports Park which has a useful life extending substantially beyond the Operating Year in which the repair was made.

1.9 “Casualty” means any damage or destruction of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, affecting all or any part of the Sports Park, whether or not insured or insurable.

1.10 **“Commencement Date”** means the earliest of the following dates to occur, if at all: (a) the Operator issues a certificate of completion to its designated contractor(s) performing the design-build or construction activities required for installation of the Sports Park and, unless waived by the Operator, the Operator has obtained all Approvals as set forth in Section 21.2; or (b) the Operator opens all or any part of the Sports Park for use by members of the public.

1.11 **“Concession Facility”** means the family-style, sports-themed food and beverage restaurant type concession facility to be constructed as part of the Sports Park.

1.12 **“Condemnation”** means any temporary or permanent taking of (or of the right to use or occupy) all or any part of the Property by condemnation, eminent domain, or any similar proceeding.

1.13 **“Condemnation Award”** means any award(s) paid or payable (whether or not in a separate award) to either Party after the Commencement Date because of or as compensation for any Condemnation, including: (1) any award made for any improvements that are the subject of the Condemnation; (2) the full amount paid or payable by the condemning authority for the estate or interest that is the subject of the Condemnation, as determined in the Condemnation; (3) any interest on such award; and (4) any other sums payable on account of such Condemnation.

1.14 **“Condemnation Effective Date”** means, for any Condemnation, the first date when the condemning authority has acquired title to or possession of any part of the Sports Park subject to the Condemnation.

1.15 **“Contingent County Revenue”** means a percentage of Operator’s net earnings before taxes generated by its use of the Property, payable to the County in the following amounts: (i) Years 1 through 5, five percent (5%), (ii) Years 6 through 15, eight percent (8%), (iii) Years 16 through 25, ten percent (10%). Operator shall calculate Contingent County Revenue on a cash accounting basis.

1.16 **“County”** has the definition set forth in the Preamble.

1.17 **“County Approval”** when used in this Agreement, any requirement of the “County’s approval” or “prior written approval” or “consent” or words of similar import shall be deemed satisfied by the written approval of the Director of Milwaukee County Department of Parks, Recreation and Culture (the “Parks Director”) or designee.

1.18 **“County Existing Infrastructure”** means the existing ski chalet, other buildings, utility infrastructure and any other non-real property on the Property, whether or not owned by the County, as of the date of this Agreement.

1.19 **“County Parties”** means and refers to, collectively, the County, its elected officials, County Commission, officers, employees, agents and legal representatives.

1.20 **“County Party”** means and refers to, individually, the County and each of its elected officials, officers, employees, agents and legal representatives.

1.21 **“County Representative”** means an employee, employees or agent of the County designated in writing by the Parks Director for the purpose of facilitating the review of the Sports Park Plans and Specifications and for post-Commencement Date coordination including scheduling of Public Events with the Operator.

1.22 **“County Revenues”** means, collectively, the Fixed County Revenue, and the Contingent County Revenue.

1.23 **“Default”** means any Monetary Default or Non-Monetary Default.

1.24 **“Default Interest”** means interest at an annual rate equal to the lesser of: (a) five percent (5%) per annum; or (b) the Usury Limit.

1.25 **“Effective Date”** means and refers to the first date on which all of the following have occurred: (1) this Agreement has been approved by the Milwaukee County Board of Supervisors and, (2) this Agreement has been executed by the authorized representative(s) of each Party.

1.26 **“Environmental Claim”** means any written complaint, summons, action, citation, notice of violation, directive, order, claim, litigation, investigation, judicial or administrative proceeding or action, judgment, lien, demand, letter or communication from any Person alleging non-compliance with any Environmental Law relating to any actual or threatened Hazardous Substance Discharge.

1.27 **“Environmental Laws”** means any and all applicable federal, state, tribal and local statutes, laws, rules, regulations, ordinances, codes, principles of common law, judicial orders, administrative orders, consent decrees, judgments, permits, licenses or other binding determinations of any judicial or regulatory authority, now or hereafter in effect, imposing liability, establishing standards of conduct or otherwise relating to protection of the environment (including natural resources, surface water, groundwater, soils, and indoor and ambient air), health and safety, land use matters or the presence, use, generation, treatment, storage, disposal, Hazardous Substance Discharge or threatened Hazardous Substance Discharge, transport or handling of Hazardous Substances.

1.28 **“Equity Interest”** means all or any part of any direct or indirect equity or ownership interest(s) (whether stock, partnership interest, beneficial interest in a trust, membership interest in a limited liability company, or other interest of an ownership or equity, nature) in any entity, at any tier of ownership, that directly or indirectly owns or holds any ownership or equity interest in a Person.

1.29 **“Expiration Date”** means the date when this Agreement terminates or expires in accordance with its terms.

1.30 **“Fee Estate”** means the County’s fee estate in the Property.

1.31 **“Furniture, Fixtures and Equipment (“FF&E”)** means all movable furniture, furnishings, equipment, and personal property (excluding Building Equipment) that may be removed without material damage to the Sports Park and without adversely affecting: (a) the

structural integrity of the Sports Park; (b) any electrical, plumbing, mechanical, or other system of the Sports Park; (c) the present or future operation of any such system; or (d) the present or future provision of any utility service to the Sports Park. FF&E includes items such as furniture, movable equipment, telephone, telecommunications and facsimile transmission equipment, point of sale equipment, televisions, radios, network racks, and computer systems and peripherals.

1.32 **“Fixed County Revenue”** means a guaranteed rent of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) per Operating Year payable during the Initial Term of this Agreement. In the event Operator exercises its option to renew this Agreement, the County and Operator agree that further negotiation regarding the Fixed County Revenue may be appropriate at that time, and said revenue amount shall be negotiated and agreed upon in good faith as between the Parties; provided that if the Parties cannot agree on such revenue amount, such amount will be THIRTY ONE THOUSAND TWO HUNDRED FIFTY DOLLARS (\$31,250.00) per Operating Year.

1.33 **“Government”** means each and every governmental agency, authority, bureau, department, quasi-governmental body, or other entity or instrumentality having or claiming jurisdiction over the Property (or any activity this Agreement requires or allows), including the United States government, the State and County governments and their subdivisions and municipalities, including the City, and all other applicable governmental agencies, authorities, commissions, boards, department and subdivisions thereof.

1.34 **“Hazardous Substance”** includes flammable substances, explosives, radioactive materials, asbestos, asbestos-containing materials, polychlorinated biphenyls, chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, medical wastes, toxic substances or related materials, explosives, petroleum and petroleum products, and any “hazardous” or “toxic” material, substance or waste that is defined by those or similar terms or is regulated as such under any Law, including any material, substance or waste that is: (i) defined as a “hazardous substance” under Section 311 of the Water Pollution Control Act (33 U.S.C. § 1317), as amended; (ii) substances designated as “hazardous substances” pursuant to 33 U.S.C. § 1321; (iii) defined as a “hazardous waste” under Section 1004 of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et seq., as amended; (iv) defined as a “hazardous substance” or “hazardous waste” under Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Reauthorization Act of 1986, 42 U.S.C. § 9601 et seq. or any so-called “superfund” or “superlien” law; (v) defined as a “pollutant” or “contaminant” under 42 U.S.C.A. § 9601(33); (vi) defined as “hazardous waste” under 40 C.F.R. Part 260; (vii) defined as a “hazardous chemical” under 29 C.F.R. Part 1910; any matter within the definition of “hazardous substance” set forth in 15 U.S.C. § 1262; (viii) any matter, waste or substance regulated under the Toxic Substances Control Act (“TSCA”) [15 U.S.C. Sections 2601, et seq.]; any matter, waste or substance regulated under the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1801, et seq.; any matter, waste or substance regulated under the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901, et seq.; those substances listed in the United States Department of Transportation (DOT) Table [49 CFR 172.101], or designated by the EPA, or any successor authority, as a hazardous substance [40 CFR Part 302]; and those substances defined as “hazardous waste” or, as a “hazardous substance” under Wisconsin Statutes or the Wisconsin Administrative Code; (ix) subject to any other Law regulating, relating to or imposing

obligations, liability or standards of conduct concerning protection of human health, plant life, animal life, natural resources, property or the enjoyment of life or property free from the presence in the environment of any solid, liquid, gas, odor or any form of energy from whatever source; or (x) other substances, materials, and wastes that are, or become, regulated or classified as hazardous or toxic under federal, state, or local laws or regulations and in the regulations adopted pursuant to said laws, and shall also include manure, asbestos, polychlorinated biphenyl, flammable explosives, radioactive material, petroleum products.

1.35 “Hazardous Substance Discharge” means any deposit, discharge, generation, release, or spill of a Hazardous Substance that occurs at or from the Property whether or not caused by a Party to this Agreement and whether occurring before or after the Commencement Date.

1.36 “Immaterial Loss” means a Casualty or Condemnation resulting in a loss of ten thousand dollars (\$10,000) or less.

1.37 “Indemnify” means, where this Agreement states that any Indemnitor shall “indemnify” any Indemnitee from, against, or for a particular matter, that the Indemnitor shall indemnify the Indemnitee and defend and hold the Indemnitee harmless from and against any and all loss, cost, claims, liability, penalties, judgments, damages, and other injury, detriment, or expense (including Legal Costs, interest and penalties) that the Indemnitee suffers or incurs: (a) from, as a result of, or on account of the particular matter; or (b) in enforcing the Indemnitor’s indemnity.

1.38 “Indemnitee” means any Party entitled to be Indemnified under this Agreement and its agents, directors, employees, Equity Interest holders, mortgagees, officers and elected officials.

1.39 “Indemnitor” means the Party that agrees pursuant to this Agreement to Indemnify the other Party to this Agreement.

1.40 “Initial Term” shall have the meaning set forth in Section 3.1.

1.41 “Insubstantial Condemnation” means any Condemnation, except a Substantial Condemnation, a Temporary Condemnation, or an Immaterial Loss.

1.42 “Law” means all laws, ordinances, requirements, orders, proclamations, directives, rules, and regulations of any Government affecting the Sports Park or this Agreement in any way, including any use, maintenance, taxation, operation, or occupancy of, or environmental conditions affecting, the Sports Park, or relating to any Taxes, or otherwise relating to this Agreement or any Party’s rights or remedies under this Agreement, or any Transfer of any of the foregoing, whether in force at the Commencement Date or passed, enacted, or imposed at some later time, subject in all cases, however, to any applicable waiver, variance, or exemption.

1.43 “Legal Costs” of any Party means all reasonable costs and expenses such Party incurs in any legal proceeding where the Party prevails (or other matter for which such Party is

entitled to be reimbursed for its Legal Costs), including reasonable attorneys' fees, court costs and expenses.

1.44 "Loss" means any Casualty or Condemnation.

1.45 "Loss Proceeds" means any Condemnation Award(s) or Property Insurance Proceeds.

1.46 "Monetary Default" means the Operator's failure to pay any County Revenues.

1.47 "Naming Rights" shall mean the exclusive right (subject to County's written approval) to name through the use of available sponsor logo(s), trade name(s), trademark(s), or service mark(s), the fields within the Sports Park to be constructed on the Property and the Concession Facility to be constructed in the Sports Park but not including any Facilities or areas outlying the Sports Park or the Sports Park as a whole as further provided in Section 5.20.

1.48 "Non-Monetary Default" means the Operator's: (a) failure to comply with any materially affirmative or negative covenant or obligation in this Agreement, except a Monetary Default; or (b) material breach of any representation or warranty (as of the date made or deemed made).

1.49 "Notice" means any consent, demand, designation, election, notice, or request relating to this Agreement, including any Notice of Default.

1.50 "Notify" means give a Notice.

1.51 "Notice of Default" means any Notice claiming or giving Notice of a Default or alleged Default.

1.52 "Operating Year" means: (a) the twelve calendar months starting on the first day of the first full calendar month after the Commencement Date; and (b) every subsequent period of twelve calendar months during the Term. In this Agreement, Operating Years are referred to in consecutive numerical order starting with the Operating Year commencing on the first day of the first full calendar month after the Commencement Date being referred to as "Operating Year 1" and followed by "Operating Year 2," "Operating Year 3," etc.

1.53 "Operator" has the meaning set forth in the Preamble.

1.54 "Operator FF&E" means all FF&E used or located at the Sports Park and purchased by the Operator or anyone claiming through the Operator.

1.55 "Operator Parties" means and refers to, collectively, the Operator, its shareholders, directors, officers, employees, agents and legal representatives.

1.56 "Operator Party" means and refers to, individually, the Operator and each of its shareholders, directors, officers, employees, Affiliates, agents and legal representatives.

1.57 "Parties" means and refers, collectively, to the County and the Operator.

1.58 **“Party”** means and refers, individually, to either the County or the Operator, as applicable.

1.59 **“Person”** means any association, corporation, Government, individual, joint venture, joint-stock company, limited liability company, partnership, trust, unincorporated organization or other entity of any kind.

1.60 **“Pro Forma”** means and refers to that certain pro forma gross revenue and sports team participation projections for the Sports Park prepared by the Operator based on the facility and its related amenities to be constructed on the Property attached hereto and incorporated herein as Exhibit “D” to this Agreement.

1.61 **“Property”** means that certain real property specifically described in Exhibit “A” attached to this Agreement.

1.62 **“Property Insurance”** means insurance providing coverage for all of the Sports Park, and all Building Equipment, against loss, damage, or destruction by fire and other hazards encompassed under the broadest form of property insurance coverage then customarily used for like properties in the County (except earthquake or war risk) from time to time during the Term, in an amount equal to 100% of the replacement value (without deduction for depreciation) of all of the Sports Park and all Building Equipment (excluding excavations and foundations) and in any event sufficient to avoid co-insurance, with “ordinance or law” coverage.

1.63 **“Property Insurance Proceeds”** means net proceeds (after reasonable costs of paid premiums, adjustment and collection, including Legal Costs) of Property Insurance, when and as received by the County or the Operator, excluding proceeds of the Operator’s business interruption insurance in excess of the County’s Revenues.

1.64 **“Remediation”** or **“Remedial Action”** and their derivatives (such as **“Remediate”**) means and includes any investigation, clean-up, corrective action or monitoring required to comply with applicable Environmental Laws including all actions within the definition of “removal” and “remedial” actions as those terms are defined in applicable Environmental Laws.

1.65 **“Renewal Term”** shall have the meaning ascribed to the term in Section 3.2.

1.66 **“Retail Facility”** means one or more retail merchandise sales facility to be constructed as part of the Sports Park.

1.67 **“Restoration”** means, after a Loss, the alteration, clearing, rebuilding, reconstruction, repair, replacement, restoration and safeguarding of the damaged or remaining Sports Park, substantially consistent with their condition before the Loss, subject to any changes in Law that would limit any such activities.

1.68 **“Restoration Funds”** means any Loss Proceeds to be applied to Restoration.

1.69 **“Restore”** means accomplish a Restoration.

1.70 **"Scheduled Expiration Date"** has the meaning set forth in Section 3.1.

1.71 **"Sports Park"** means, collectively the facilities constructed or installed by Operator on the Property as described in Article IV and any improvements, additions or renovations thereto, all constructed and installed in accordance with the Sports Park Plans and Specifications.

1.72 **"Sports Park Events or Sports Park Event"** shall mean sports events and any and all other sports contests, tournaments, music concerts, corporate sponsored events or other events of any kind which may be scheduled and exhibited at the Sports Park, except for those Public Events scheduled in coordination with the Operator on days or at times when there are no conflicting Sports Park Event or Sports Park Events.

1.73 **"Sports Park Expenses"** means all costs of operating and maintaining the Sports Park pursuant to the terms and conditions of this Agreement, after the Commencement Date.

1.74 **"Sports Park Plans and Specifications"** means the final landscaping plans, grading plans and construction drawings for construction and installation of the Sports Park as prepared by the Operator's design-build team and approved by the Parties pursuant to Article IV, subject to minor field changes in response to construction or property conditions during construction.

1.75 **"State"** means the State of Wisconsin.

1.76 **"Substantial Casualty"** means a Casualty that: (a) renders 25% or more of the Concession Facility not capable of being used or occupied for more than sixty (60) days; (b) renders, at least, two (2) of the Sports Park baseball fields significantly unusable for more than ninety (90) days; (c) renders 25% or more of the ski hill significantly unusable for more than ninety (90) days; (d) requires Restoration whose cost the County reasonably estimates in writing would exceed One Hundred Thousand Dollars (\$100,000); or (e) pursuant to Law, prevents the Sports Park from being Restored to the same bulk, and for the same use(s), as before the Casualty. Notwithstanding anything to the contrary, anything giving rise to an Environmental Claims, invoking the environmental indemnification obligations under Article XIII, or requiring Remediation, will be deemed a Substantial Casualty.

1.77 **"Substantial Condemnation"** means any Condemnation that (a) takes the entire Sports Park; (b) in the Operator's reasonable determination renders the remaining Sports Park uneconomic; or (c) occurs less than six (6) months before the end of the Term.

1.78 **"Taxes"** means all general and special real estate taxes (including taxes on FF&E, sales taxes, use taxes, and the like), possessory interest taxes, assessments, municipal water and sewer fees, rates and charges, excises, levies, license and permit fees, fines, penalties and other governmental charges and any interest or costs with respect to any of the foregoing, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time before or during the Term and applicable to the Term or any part of it may be assessed, levied, imposed upon, or become due and payable out of or in respect of, or charged with respect to or become a lien on, the Sports Park, or the sidewalks or streets in front of or adjoining the Sports Park, or any vault, passageway or space in, over or under such sidewalk or

street, or any other appurtenances of the Sports Park, or any FF&E, Building Equipment or other facility used in the operation of any of the foregoing, or the fee or income received from the Sports Park, or any use or occupancy of the Sports Park. If at any time during the Term the method of taxation prevailing at the Commencement Date is altered so that any new tax, assessment, levy (including any municipal, state or federal levy), imposition, or charge, or any part thereof, shall be measured by or be based in whole or in part upon the Sports Park and imposed upon the County, then all such new taxes, assessments, levies, Taxes, or charges, or the part thereof, to the extent that they are so measured or based, shall be deemed to be included within the term "Taxes," to the extent that such amount would be payable, if the Sports Park were the only property of the County subject to such Taxes.

1.79 **"Temporary Condemnation"** means a Condemnation of the temporary right to use or occupy all or any portion of the Sports Park, as described in Section 15.5.

1.80 **"Term"** means the Initial Term and, if applicable, the validly exercised Renewal Term.

1.81 **"Transfer"** of any property, right or obligation under this Agreement means any of the following, whether by operation of law or otherwise, whether voluntary or involuntary, and whether direct or indirect: (a) any assignment, conveyance, grant, hypothecation, mortgage, pledge, sale, or other transfer, whether direct or indirect, of all or any part of such property, right or obligation under this Agreement, or of any legal, beneficial, or equitable interest or estate in such property, right or obligation or any part of it (including the grant of any easement, lien, or other encumbrance); (b) any conversion, exchange, issuance, modification, reallocation, sale, or other transfer of any direct or indirect Equity Interest(s) in the owner of such property, right or obligation by the holders of such Equity Interest(s); (c) any transaction described in clause "b" affecting any Equity Interest(s) or any other interest in such property, right or obligation under this Agreement or in any such owner (or in any other direct or indirect owner at any higher tier of ownership) through any manner or means whatsoever; or (d) any transaction that is in substance equivalent to any of the foregoing. A transaction affecting Equity Interests, as referred to in clauses "b" through "d," shall be deemed a Transfer by the Operator even though the Operator is not technically the transferor. A "Transfer" shall not, however, include any of the following (provided that the other Party to this Agreement has received Notice of such occurrence) relating to any Equity Interest: (a) that constitutes a mere change in form of ownership with no material change in beneficial ownership and constitutes a tax-free transaction under federal income tax law and the State of Wisconsin real estate transfer tax; (b) to member(s) of the immediate family(ies) of the transferor(s) or trusts for their benefit; or (c) to any Person that, as of the Commencement Date, holds an Equity Interest in the entity whose Equity Interest is being transferred.

1.82 **"Unavoidable Delay"** means delay in performing any obligation under this Agreement, except payment of money, arising from or on account of any cause whatsoever beyond the obligor's reasonable control, despite such obligor's reasonable diligent efforts, including industry-wide strikes, labor troubles or other union activities (but only to the extent such actions affect similar premises at that time and do not result from an act or omission of the obligor), the obligor's inability to obtain required labor or materials after commercially reasonable efforts to do so, litigation (unless caused by the obligor), Loss, accidents, Laws,

governmental preemption (excluding the County's as a Party to this Agreement), war, or riots. Unavoidable Delay shall exclude delay caused by the obligor's financial condition, illiquidity, or insolvency.

1.83 "Usury Limit" means the highest rate of interest, if any, that Law allows under the circumstances.

ARTICLE II

OPERATION AND MAINTENANCE COVENANT

2. Exclusive License. The County hereby grants to the Operator and the Operator hereby accepts from the County an exclusive license to occupy the Property to use, to operate, to manage and to market the Sports Park, TO HAVE AND TO HOLD, subject to all the terms and conditions herein, throughout the Term for the sole purpose of managing and operating the Sports Park in accordance with the terms and conditions herein.

ARTICLE III

TERM

3.1 Term. The term of this Agreement (the "Initial Term") shall: (a) commence, if at all, on the Commencement Date; and (b) shall continue for a period of fifteen (15) years thereafter (the "Scheduled Expiration Date"), unless terminated sooner as provided under this Agreement.

3.2 Renewal Option. The Operator shall provide the County written notice of intent to renew no later than three (3) months prior to the Scheduled Expiration Date. Upon such Notice, this Agreement will be renewed on the same terms and conditions, for one additional successive period of ten (10) years (the "Renewal Term") commencing at the expiration of the Initial Term and for such other additional renewal periods thereafter as may be mutually agreed upon by the Parties.

ARTICLE IV

SPORTS PARK CONSTRUCTION; EXISTING INFRASTRUCTURE

4.1 Condition of the Property.

4.1.1 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 the construction of the Sports Park and its use of the Property, including from the Wisconsin Department of Natural Resources ("WDNR"), as contemplated herein. The County does not represent that the Property is suitable to Operator's proposed use. County is not responsible for any required Approvals, zoning changes, building permits or other required authorizations from regulatory agencies, without limitation; provided, however, County

agrees to use reasonable efforts to assist Operator in obtaining any such Approvals, changes, permits or authorization.

4.1.2 Based on the foregoing, the Operator understands that it cannot undertake any construction activities at the Property unless and until the condition of the Property is satisfactory to the County and the WDNR.

4.2 Construction.

4.2.1 This Agreement and the obligations of the County and the Operator hereunder are contingent upon Operator successfully meeting the Milwaukee County "Due Diligence" requirements (see attached as Exhibit "C") and upon Operator obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the proposed Sports Park. All costs associated with the construction, maintenance and operation of the Sports Park are the responsibility of Operator.

4.2.2 Prior to the start of any construction activities, including any subsequent alterations, renovations or improvements to the Property, Operator shall submit any, every and all detailed Sports Park Plans and Specifications, and any revisions thereto, to the County, to the Architecture and Engineering Division of the Milwaukee County Department of Administrative Services, and to the WDNR, together with the name of Operator's proposed contractor(s) for review and written approval, which approval shall not be unreasonably delayed or withheld. Operator shall reimburse County for the actual and out-of-pocket cost of a Milwaukee County Project Manager during construction phases of the project, including any subsequent construction, alterations or improvements, in an amount not to exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00).

It is understood by the Parties that the Operator anticipates that its improvements to the Property may proceed in stages with the installation of the fields, fencing, and Concession Facility being financed, submitted for approval, and constructed first; and with the other improvements, to be financed, submitted for approval, and constructed at a later date, dependent on the timing of Operator's financing. The provisions and requirements of this Article IV and its subparts shall apply with equal force and effect to any later construction.

4.2.3 Conditions for approval specified in Section 4.1.2 shall include, but not be limited to, provision that: (1) Operator shall obtain, prior to commencing any alterations, additions or improvements, all necessary permits and licenses from the appropriate governmental authorities, including the WDNR; and (2) Operator shall commence construction of the Sports Park described in the approved plans and specifications as soon as reasonably practicable following the County's and the WDNR's approval and shall complete the applicable construction within a reasonable time thereafter (subject to extension by reason of force majeure). As of the date of this Agreement the Parties agree that, with regard to the phases of construction, such reasonable time for completion is eighteen (18) months after the commencement of construction.

4.2.4 All development and landscaping shall be completed in a manner consistent with standards acceptable to the County and the WDNR. The County and the WDNR shall have the right to inspect the work at reasonable times provided it does not interfere with

Operator's construction and improvements. Any and all alterations, additions and additional improvements shall be made subject to Section 13.3 and in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Property, including the WDNR. Operator shall also indemnify and hold County harmless from and against all statutory liens or claims or liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Property undertaken by or on behalf of Operator. Any structures, alterations, additions or improvements installed on the Property by Operator that are necessary for the continued operation of the Sports Park shall become the property of the County upon the expiration or termination of this Agreement. In no event shall Operator make any alterations or additions to the Property without the prior written consent of the County, which consent shall not be unreasonably delayed, conditioned or withheld, except in the event of an emergency, when such consent shall not be required, provided that notice shall be given as soon as reasonably possible thereafter, provided further that routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations or additions requiring such approval, providing they do not individually exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in cost.

4.2.5 Operator or its general contractor shall provide and maintain Builders Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate, during any and all phases of construction. Coverage is during construction period(s) and is intended to terminate when the work has been completed.

4.2.6 Operator agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Operator shall provide to County a complete set of construction documents to be included as a minimum: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; (g) City of Franklin final occupancy permits, if applicable.

4.2.7 County shall use reasonable efforts to assist Operator in finding funding for the repair or replacement, and maintenance of the road commonly known as Crystal Ridge Drive, and all entrances therefrom into the Sports Park. Using reasonable efforts shall not impose on the County any obligation to budget or pay for the repair or replacement, and maintenance of Crystal Ridge Drive or the entrances therefrom, but may require County Staff time and advisory support.

4.3 Endowment Fund. Operator shall establish an Endowment Fund ("Fund") for Capital Repairs of the Property, which shall total FIFTY THOUSAND DOLLARS (\$50,000.00) (the "Fund Balance Minimum") which such amount shall increase to SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00) beginning with the fourteenth (14th) Operating Year. As additional consideration, Operator agrees to augment the Fund by depositing the interest accrued on any balance invested into the Fund, and hereby agrees that if the value of the Fund falls below the applicable Fund Balance Minimum at any time, Operator shall add to the Fund enough assets to maintain a the applicable Fund Balance Minimum. Failure to maintain the applicable Fund Balance

Minimum shall be grounds for termination of this Lease by County, provided Operator fails to cure any such shortage within thirty (30) days of receipt of notice from County that the shortage has occurred. The Fund is to be used as follows:

(a) Capital Repairs and major maintenance to assure upkeep of the Property and the improvements to be constructed on the Property.

(b) Additional improvements or non-routine maintenance to the Property as may be agreed upon in writing by Operator and County, which approval shall not be unreasonably withheld, conditioned or delayed.

Management of the Fund shall include the establishment of an interest bearing account(s), changing investment strategies, monitoring account activity, and providing joint written approval of all payments from account assets, which approval by County shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, Operator shall have the right to make withdrawals from the Fund without County's approval, but upon ten (10) days written notice to County, for up to TEN THOUSAND DOLLARS (\$10,000.00) for any item described in clause (a) above, provided that the Fund does not fall below the applicable Fund Balance Minimum as a result thereof and the aggregate amount so withdrawn from the Fund without County approval in any twelve (12) month period does not exceed TWENTY FIVE THOUSAND DOLLARS (\$25,000.00). Operator shall provide County with quarterly reports relating to Fund activities, including funds received, monies spent, and any long-term obligations, including an annual report.

ARTICLE V

SPORTS PARK OPERATION AND MAINTENANCE

5.1 General. The Operator shall have the right to operate, manage and market the Sports Park subject to the terms and conditions set forth in this Agreement. Such operation and management shall be conducted in a manner that will maximize opportunities to achieve and sustain a profit for each Operating Year from the operations of the Sports Park and the promotion of tourism in the County by attracting, promoting, and contracting for tournaments, outdoor activity and other sport related events and non-sport activities.

5.2 Except to the extent that this Agreement otherwise expressly provides or allows, the Operator shall, during the Term, keep and maintain the Sports Park in good order, condition, and repair, subject to Loss, reasonable wear and tear, and any other condition that this Agreement does not require the Operator to repair or Restore. The Operator shall remove trash, water, mud, sand and debris from the Sports Park.

5.3 Continuous Operation Covenant. The Operator covenants to the County to cause the Sports Park to be continuously operated as weather and Seasons permit throughout the Term.

5.4 General Operational Responsibilities. The Operator shall have the following described general responsibilities regarding operation of the Sports Park, which the Operator shall perform at its sole expense:

5.4.1 enter into and pay any costs associated with arrangements, if any, with concessionaires, vendors licensees, tournament promoters, contractors or other providers of services to or intended users of the Sports Park;

5.4.2 enter into and pay any costs associated with contracts for the furnishing of ongoing utilities and telecommunications services, maintenance, repair and other services to the Sports Park;

5.4.3 incur and pay such expenses as shall be reasonably necessary for the proper operation of the Sports Park, including, without limitation, employee salaries and benefits and applicable taxes and withholdings, and rental expenses for leased FF&E, as necessary;

5.4.4 maintain a level of Operating Inventory as applicable and reasonably appropriate for supplying the needs of the Sports Park and its customers;

5.4.5 apply for, obtain and maintain all licenses and permits required of the Operator in connection with the operation of the Sports Park, including beer and wine licenses and sign permits. The County shall reasonably cooperate with the Operator in the application for obtaining and maintenance of such licenses and permits, provided that such cooperation by the County is legally permitted and does not result in any direct or indirect cost to the County;

5.4.6 use commercially reasonable efforts to do, or cause to be done, all acts in and about the Sports Park as shall be reasonably necessary to comply with any applicable insurance policies or Law;

5.4.7 pay initial activation charges for utilities and services for the Sports Park, after initial construction of the Sports Park in accordance with the Sports Park Plans and Specifications;

5.4.8 operate a year-round sports center, offering a reasonable schedule of recreational sports programming in adult and youth softball, baseball, soccer, lacrosse, mountain biking and such other sports activities for all seasons as agreed upon in writing by the County and the Operator, recognizing that demand for some of the sports varies and it may not be commercially reasonable to offer programs for all of the above-listed sports in any or all of the seasons of the year; and

5.4.9 operate the ski hill as a ski hill.

5.5 Operational Services. Subject to the terms of this Agreement the Operator shall have the responsibility to: (a) determine, establish, and implement the policies, standards, prices and schedules for the operation of the Sports Park and all matters affecting customer relations; (b) hire, train, and supervise all employees; (c) supervise and direct advertising, sales and business promotion; and (d) establish accounting and payroll procedures and functions.

5.6 Personnel. The number of employees working at the Sports Park, and the compensation (salaries or wages, benefits and commissions) paid to them, shall be reasonably established by the Operator, but minimum staffing levels shall be comparable to those at similar recreational sports parks at other similar locations in Wisconsin.

5.7 Specific Operating Procedures. In addition to the more general responsibilities of the Operator for operation of the Sports Park described in 5.1, the Operator shall operate the Sports Park in accordance with the following operating procedures:

5.7.1 Sports Park Operating Hours. The Operator shall operate the Sports Park on days and at hours consistent with similar recreational sports parks at other similar locations in Wisconsin, subject to closure due to inclement weather, Substantial Casualty, Substantial Condemnation or Unavoidable Delay. The hours of operation of the Sports Park shall not allow any game or event to be scheduled to begin later than 9:00 p.m. on any night and all field lighting at the Sports Park shall be turned off and all use of the Sports Park fields and batting cages shall be concluded by 10:30 p.m. every night. The Concession Facility and any other parts of the Sports Park shall close by 2:00 a.m. every night. The County has the authority to adjust the hours of operation of County parks, including the Sports Park, in the County's sole discretion, and nothing in this Agreement is intended to limit or abrogate such authority.

5.7.2 Fees and Charges. All fees, charges and prices for services at the Sports Park shall be set by the Operator at amounts comparable to those of similar recreational sports parks at other similar locations in Wisconsin. If the County finds that the Operator is setting Fees and Charges at a rate the County determines in its reasonable discretion are excessive, the County and the Operator agree to negotiate in good faith Fees and Charges mutually acceptable to both Parties.

5.7.3 Limitation on Consumption of Alcoholic Beverages in the Sports Park. The Operator shall restrict users of the Sports Park to consuming alcoholic beverages in the Concession Facility, the sidewalks, patios, picnic areas and spectator seating areas within the Sports Park. Alcoholic beverages shall not be allowed to be consumed in any other areas of the Sports Park such as the playing surfaces, dug-outs, or playground areas.

5.7.4 Smoking Areas. The Operator shall designate reasonable smoking areas within the Sports Park, subject to the County's reasonable approval and in compliance with applicable Law.

5.7.5 Sports Park Operating Expenses. The Operator shall, at its sole expense, timely pay and discharge all Sports Park Expenses, in accordance with the provisions of this Section 5.7.

5.8 Noise. The Operator shall not use or permit the use of the Sports Park in any manner that creates or maintains any noise or sound in violation of the County's or any noise ordinance of the City of Franklin and the Village of Greendale, as applicable to the Property or to the Sports Park.

5.9 Nuisance. The Operator shall not itself and shall not allow any other Person to use the Sports Park for any unlawful purpose and shall not itself and shall not allow any other Person to perform, permit or suffer any act or omission upon or about the Sports Park that would result in a nuisance or a violation of any Law, as the same may now or hereafter be in force and effect.

5.10 Permits, Licenses, Etc. The Operator shall, for the full Term, at the Operator's cost and expense, maintain all franchises, permits, contractual arrangements, licenses, and registrations required for the Operator to conduct all sales, operations relating to the Sports Park that are contemplated in this Agreement to be undertaken by the Operator. The County shall use reasonable efforts in assisting Operator in maintaining all franchises, permits, contractual arrangements, licenses and registrations. Using reasonable efforts means approving or authorizing approval of such permits and licenses, provided Operator is not then in default under this Agreement.

5.11 Abandonment. The Operator shall not abandon or surrender the operation of all or any part of the Sports Park during the Term, except as otherwise expressly provided in herein.

5.12 Contracts and Agreements. All equipment leases, financing agreements, contracts and agreements relating to the Sports Park (including contracts for utility services, telecommunications services, Maintenance and Repair services, pest control, supplies, landscaping services, and agreements for tournaments, banquets and other group functions), entered into during the Term shall be entered into by the Operator as the contracting party. The Operator shall not have any authority to enter into any equipment lease, financing agreement, contract or agreement that extends beyond the Term of this Agreement, that is not terminable on thirty (30) days or less notice, if the Operator defaults under the terms of this Agreement, or that is secured by all or any part of the Sports Park or the Property. All contracts entered into by the Operator regarding the Sports Park shall automatically expire on the Expiration Date.

5.13 Business Name. During the entire Term, the Operator shall conduct business in the Sports Park under the name "The Rock Sports Complex" (or something similar); provided that the Operator may change the operating name of the Sports Park and the Operator shall notify the County in writing ninety (90) days prior to any such name change.

5.14 Security. The Operator may, at its own discretion, provide such security for the operation of the Sports Park to protect the customers, employees, guests, contractors and other invitees of the Sports Park. Operator is solely responsible for and assumes all liability and risks related to providing security for the operation of the Sports Park.

5.15 Signage.

5.15.1 All such signage must be pre-approved in writing by the County and comply with the County Code and any applicable code of the City of Franklin and the Village of Greendale. The County agrees to not unreasonably withhold, condition or delay such approval.

5.15.2 All signs on or in the Sports Park will be maintained by the Operator in good condition during the Term.

5.15.3 The Operator agrees to provide the County with prominent acknowledgment signage using the County Parks Logo as integral part of all promotions. The acknowledgment signage must be prominently displayed at the entrance to the Sports Park and in all of Operator's print, digital, and TV promotions and advertising related to the activities covered by this Agreement.

5.15.4 The Operator will remove all signs containing the Operator's name or logo installed in or on the Sports Park by the Operator on or before the Expiration Date, except as otherwise agreed between the Operator and the County, and will repair and restore any damage caused by installation or removal of such signs. The Operator shall not cause or allow the display of any advertising of tobacco products or adult entertainment on, in or about the Sports Park.

5.16 Event Programs And Merchandising. The County grants to the Operator the sole and exclusive right to sell, lease, or contract for the sale or lease of event programs, yearbooks, novelties, pendants, hats, clothing, sporting equipment, cameras, film, binoculars, headsets, or any other items, goods, or equipment which the Operator may desire to offer for sale or lease at the Sports Park. The County shall also grant to the Operator or its designee the right to set up carts, kiosks, and other similar temporary structures for the sale of such items at locations within the Sports Park selected by the Operator in its reasonable discretion, taking into consideration public safety and access. Further, the Operator shall have the right to grant any of the rights held by the Operator under this Section to a single supplier or to enter into multiple agreements with multiple suppliers. The County agrees that the Operator may determine the items of merchandise to be offered for sale or lease in such areas and the prices to be charged for such items of merchandise and shall select any suppliers for such merchandise. The County has the right to offer complimentary materials at the Sports Park during the Sports Park Events solely for the purpose of promoting tourism or economic development within the County.

5.17 Concessions.

5.17.1 Right To Sell. Milwaukee County hereby grants to the Operator the sole and exclusive right to sell or contract others, including without limitation the Operator Affiliates, to sell, all food, beverages, and other concessions within the Sports Park, during any Sports Park Events held by Operator, and to operate the Concession Facility and concessions stands. The rights granted to the Operator with regard to concessions pursuant to this Agreement shall also include the right (without limitation) to grant to third party(s) any and all so-called "pouring rights" or similar beverage designations with regard to the use of the Sports Park at all times. Operator is solely responsible for and assumes all liability and risks related to the activities covered under this Section.

5.17.2 Food And Beverage. Any concessionaire contracted by the Operator shall be entitled to bring a reasonably sufficient number of workers into the Sports Park, free of charge, in order to operate the concessions, pursuant to this Agreement. The Operator shall have

the right to determine items of food or beverage offered for sale, the prices to be charged for such items of food or beverage, or the concessionaire or concessionaires selected to provide such food and beverage concessions. The County agrees that the Operator may determine the items of to be offered for sale or lease in such areas and the prices to be charged for such items and shall select any suppliers. Except for Public Events, the County shall have no right to offer any food or beverage items for sale at any Sports Park Events without the consent of the Operator. The Operator shall have the right to determine the location of concession stands for the sale of food and beverage concessions and staging areas for the storage and preparation of food and beverages prior to sale, both within the Sports Park and elsewhere on the Sports Park Property, in its reasonable discretion, subject to considerations for public safety and access.

5.17.3 Access To Facility. The Operator shall establish all policies relating to access to the Sports Park including, but not limited to, entry to Sports Park with consumables, parking rates, and signs and banners subject to applicable Law. The County shall entrust the Operator with keys to the Sports Park, and the Operator shall at no time be denied access to the Sports Park by the County unless the Operator is in default or the Agreement has been terminated as provided herein.

5.18 Parking. The Operator is solely responsible for and assumes all liability and risk related to managing and controlling the parking in or on the Property for all Sports Park Events. The Operator or its designee may charge patrons of Sports Park Events a fee in an amount to be determined on an event basis for the right to park within the Sports Park Property. The Operator is further authorized to grant, within its reasonable commercial discretion, to any promoter of Sports Park Events the right to collect and keep for its own account any and all parking fees.

5.19 Parking Overflow. In the event that the Sports Park does not have adequate parking available during an event, the County may assist the Operator in locating sufficient parking in a nearby location. Under no circumstances, however, shall the County be legally obligated to expend funds or resources to secure or staff additional parking areas outside of the Sports Park Property for Sports Park Events nor shall it be liable for any uses or activities that may occur on or at any such alternative parking locations it may identify for the Sports Park.

5.20 Naming Rights.

(a) General. The County acknowledges that the marketing and sale of naming rights of the field(s) within the Sports Park (as distinguished from naming rights for all of the "Sports Park" or any other non-field structures) is to be an integral component for the Sports Park to achieve its primary objective of positive cash flow. The Operator may receive money or other consideration in exchange for granting to such third party(s) the right to name all or any part of the Sports Park. The County grants to the Operator the right to market and to sell the naming rights for the Sports Park during the Term of this Agreement. The Operator shall have the right to sell the rights to any third party or parties or to any the Operator's Affiliate, and to receive all monies. The County grants the Operator the right to market and to license or assign any other advertising or promotional rights within the Sports Park Property. The provisions of this Section are subject to the Operator providing the County at least ten (10) calendar days notice of such grant of naming rights and the County's prior written approval, which shall not be

unreasonably withheld, conditioned or delayed. No agreements entered into by the Operator with any third party or parties or to any the Operator's Affiliate relating to the Naming Rights specified herein shall extend beyond the Term of this Agreement.

(b) Effect Of Grant. Upon the grant of the Naming Rights to any third party or parties and the determination of a name or names for the Sports Park or for any other part of the Sports Park Parcel, the County agrees that it shall recognize such name(s) and shall use such name(s) in all correspondence and promotional activity of the County with regard to the Sports Park or the Sports Park Property. Further, the County agrees that upon the determination of a name(s) for the Sports Park and for any other part of the Sports Park Property as a result of the sale or exercise of the Naming Rights, the County shall use such descriptive name(s) on street signs, maps, promotional materials, and other similar items, to the extent that a descriptive name shall be necessary or appropriate, provided, however, that this provision shall apply only to street signs, maps, promotional materials and other similar items which are erected or produced subsequent to the initial determination of the descriptive name or names for the Sports Park and the Sports Park Property and shall not require the County to incur any costs with regard to modifying or replacing existing signs, maps, promotional materials, or similar items.

5.21 Premises Advertising.

(a) Grant Of Rights. As part of the rights granted to the Operator under this Agreement, the County hereby also grants to the Operator the right to undertake any and all advertising or marketing of any kind on the Property including but not limited to any advertisements or marketing distributed through the signage and any related media, whether printed, transmitted on a video screen or message board transmitted verbally, or otherwise, whether presently available or made available in the future, for Sports Park Events, and at all other times during the Term hereof, and to contract with third parties and grant to such third parties the right to exercise such advertising rights for Sports Park Events, and at all other times during the Term hereof. The Operator agrees to allow the County to place signage within the Sports Park or Sports Park Parcel at a mutually agreeable location identifying the name of the County and contact information or other material for the County's use in tourism development.

(b) Quality And Control. The Operator agrees that all advertising of Sports Park Events and related activities shall be accurate and straightforward, and not be considered discriminatory or vulgar. The Operator shall have responsibility for and control over the distribution, posting, exhibition and removal of all signs, advertisements, show bills, lithographs, posters or cards of any description at, in or about the Sports Park (except for County promotional material).

5.22 County Organized Sports League Events. The County shall have the right to use the Sports Park for County Organized Sports League Events that are scheduled with the prior written approval of the Operator, in the Operator's reasonable discretion (each of which shall be considered a "County Organized Sports League Event"), but no less than one (1) calendar day Monday through Thursday per week. The Operator shall provide the County use of the Sports Park for County Organized Sports League Events free of any facility rental or admission charge,

except the County reserves the right to collect and keep for its own account any and all league/rental fees the County may in its sole discretion charge its league/rental participants.

5.23 Outreach. To provide increased baseball and softball programming in under-served areas of Milwaukee County, the Operator agrees to commit not less than TWENTY THOUSAND DOLLARS (\$20,000.00) in funding annually (the "Outreach Funding") to develop and implement programming and scholarships for low income minority and low income children who reside in Milwaukee County. Eligibility shall be based on the criteria set forth for Milwaukee Public Schools low-income school lunch program, and may include a sliding-scale basis for determining the amount of the scholarships. The Outreach Funding is to subsidize the cost of participation in local little leagues for low-income children. At the same time the Operator pays the County its Contingent County Revenue, Operator shall submit a written report to the County listing a description of the types of funding provided; and, if applicable, the focus and types of any new funding planned for the upcoming Operating Year.

5.24 Control And Supervision. The Operator shall have the sole responsibility for, and sole right of control and supervision of its employees and the methods, details and all other aspects of its operation of the Sports Park pursuant to this Agreement, subject, however, to any provision to the contrary in this Agreement and to the following additional terms and conditions:

(a) Control. The Operator shall have the right to eject or cause to be ejected from the Sports Park any person whose conduct is unlawful or otherwise objectionable. In addition, the County and the Operator shall each have the right to make announcements at any time during Park Events and activities in the interest of public safety, proper operation of the Sports Park, crowd control and compliance with applicable laws, ordinances, regulations and rules.

(b) No Waste. The Operator shall not allow any waste, nuisance or ultra-hazardous activities at the Sports Park, or engage in, or permit others to engage in, any activity which may cause physical damage to the Sports Park or discredit Milwaukee County.

(c) Periodic Meetings And Communications. The Operator shall meet with the County at such reasonable times and places as may be mutually agreed for the purpose of presenting any issues or resolving problems related to the Sports Park.

(d) Schedule Of Park Events. The Operator shall provide the County, on a quarterly basis, with an updated twelve (12) month schedule of upcoming Park Events for the Sports Park, including but not limited to twelve tentative dates for future events in negotiation.

5.25 Disadvantaged Business Enterprise (DBE) Utilization. Operator shall use reasonable efforts to cause its contractors to establish Disadvantaged Business Enterprise (DBE) participation goals, consistent with Milwaukee County DBE goals of 25% for construction and 17% for professional services, for the planning, development and construction of improvements and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist the Operator in soliciting potential DBE vendors for

the improvements and monitor such goal attainment. Operator's contact regarding DBE participation is: Director, CBDP, at 414-257-5248.

5.26 Non-Discrimination. There shall be no discrimination against or segregation of any Person, or group of Persons, on account of gender, sexual orientation, age, race, color, religion, creed, national origin or ancestry in the transfer or use of the Sports Park, and the Operator (or any Person claiming under or through the Operator) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Sports Park or the Property.

5.27 Form of Non-discrimination and Non-segregation Clauses. The Operator covenants and agrees for itself, its successors, its assigns, that the Operator, such successors and such assigns shall refrain from restricting the use of all or any part of the Sports Park or the Property on the basis of gender, sexual orientation, race, color, religion, creed, ancestry or national origin of any Person. All contracts pertaining to the Sports Park or the Property shall contain or be subject to substantially the following non-discrimination or non-segregation covenants:

5.27.1 In contracts: "There shall be no discrimination against or segregation of any person or group of persons on account of gender, sexual orientation, age, race, color, creed, religion, national origin, or ancestry, in the sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed or agreement, nor shall the transferee or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sub-lessees, sub-tenants, or vendees of the premises herein transferred." The foregoing provision shall be binding upon and shall obligate the contracting party or parties and any subcontracting party or parties, or other transferees under the instrument.

ARTICLE VI

OPERATOR FISCAL RESPONSIBILITIES; COMPENSATION; SPORTS PARK REVENUE ALLOCATIONS

6.1 Capital Improvement Plan. The Operator shall prepare a three (3) year capital improvement plan for written approval by the County within ninety (90) days following the completion of each construction phase.

6.2 Fixed County Revenue. Within the first month of each Operating Year, Commencing on the first day of the last month of Operating Year 1, the Operator shall pay to the County, without Notice, the Fixed County Revenue agreed to within this Agreement.

6.3 Contingent County Revenue. The Contingent County Revenue shall be paid annually, without Notice, within one hundred twenty (120) calendar days following the end of each Operating Year, with the first payment of Contingent County Revenue occurring during Operating Year 2, based on the Sports Park net income from the immediately preceding Operating Year.

6.4 County Revenue Payment. The Operator shall pay all County Revenues payable to the County in lawful money of the United States, by good and sufficient check payable to the County or in immediately available funds, at such address as the County shall designate, from time to time. Checks shall constitute payment only when collected.

ARTICLE VII

SPORTS PARK EXPENSES

7.1 Operator to Pay All Sports Park Expenses. In addition to the County Revenue, the Operator shall pay all Sports Park Expenses, regardless of the amount of Sports Park revenues or whether or not there are any Sports Park revenues at all.

7.2 Pre-Opening Expenses and Operating Losses. The Operator acknowledges that it will be responsible for the initial capitalization of the Operator's business operations at the Sports Park and will be responsible for start-up expenses in connection with such business operations, including, without limitation, hiring and training of employees, acquisition of inventory and pre-opening marketing expenses, without any reimbursement or contribution from the County. The Operator further acknowledges and agrees that it will be solely responsible for operating losses or deficits arising in its operation of the Sports Park and that any such losses or deficits shall not abate any obligations of the Operator under this Agreement.

7.3 Taxes. Due to the fact that the Sports Park Property is owned by the County, a political subdivision of the State of Wisconsin and as such are exempt from property taxes and that the use of the Property as a Sports Park is for the public purpose of promoting and enhancing tourism and business development within the County, the County and Operator intend that no ad valorem taxation will apply to the Sports Park or use thereof in accordance with this Agreement by the Operator. In the event that the Sports Park or the Operator is held to be subject to ad valorem, real property, intangible or other taxes or for any other reason arising in connection with Operator's operation or interest in the Sports Park, the Operator will be legally obligated for such taxes.

The Operator shall pay and discharge all other Taxes payable or accruing for all period(s) within the Term. The Operator shall also pay all interest and penalties any Government assesses for late payment of any Taxes. The Operator shall, within a reasonable time after Notice from the County, give the County reasonable proof that the Operator has paid any Taxes that this Agreement requires the Operator to pay.

7.4 Assessments in Installments. To the extent Law allows, the Operator may apply to have any assessment payable in installments. Upon approval of such application, the Operator shall pay and discharge only such installments as are attributable to the Term.

7.5 Direct Payment by the County. If any Sports Park Expenses must be paid directly by the County, then: (a) the County appoints the Operator as the County's attorney-in-fact to make such payment; and (b) if the payee nevertheless refuses to accept payment from the

Operator, then the Operator shall Notify the County and shall pay such amount to the County in a timely manner with reasonable instructions on remittance of such payment. In such event, the County shall with reasonable promptness comply with the Operator's reasonable instructions.

7.6 Utilities. The Operator shall arrange and pay for all fuel, gas, light, power, water, sewage, garbage disposal, telephone, internet, cable or satellite television and other utility charges, and the expenses of installation, maintenance, use, and service in connection with the foregoing, for the Sports Park during the Term of this Agreement. Operator is solely responsible for and assumes all liability and risk related to utility services at the Sports Park.

ARTICLE VIII

RECORDS, REPORTS AND AUDITS

8.1 Sales Recording and Records. The Operator shall keep:

8.1.1 full and accurate books of account and records including, without limitation, a sales journal, general ledger and all bank account statements showing deposits and withdrawals of Sports Park revenues; and

8.1.2 detailed original records of any Sports Park revenues exclusions.

8.2 Annual Income Statements.

8.2.1 Annual Net Income Statement. Within ninety (90) calendar days after the end of each Operating Year, including the Operating Year ending in the month in which the Term ends, the Operator shall furnish the County with an Annual Net Income Statement for the just concluded Operating Year.

8.2.2 Accounting And Bookkeeping. The Operator agrees to maintain separate accounting and bookkeeping records for the operations of the Sports Park pursuant to this Agreement and to utilize generally accepted accounting principles and practices in such accounting records. The Operator shall, at reasonable times and upon request, permit the County's auditors to inspect, examine and copy any and all of the Operator's books, papers, reports, correspondence, sales tax returns, federal and state tax returns memoranda, cash register records and other records of the Operator which are pertinent to this Agreement for purposes of verifying the Sports Park revenues for any given Operating Year.

8.3 Audit and Examination Rights.

8.3.1 Audit Procedures.

(a) Annual Audit. Pursuant to Milwaukee County Ordinance section 56.30(6)(e), Operator and its Affiliates shall allow Milwaukee County or any other party the County may name, when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Operator or its Affiliates, including

handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Agreement, all at no cost to County. Any subcontracting by Operator in performing the duties described under this Agreement shall subject the subcontractor or its associates to the same audit terms and conditions as Operator. The County shall preserve the confidentiality of such information to the extent permitted by Wisconsin law, as determined by County's Corporation Counsel. If any Net Income Statement for any Operating Year is found to be less than the amount of the Operator's actual Net Income for such Operating Year, the Operator shall immediately pay to the County any earned but unpaid amounts of County Revenues due to the County.

8.4 Retention of Books and Records. The Operator and its Affiliates shall, for a period of five (5) years following the end of the Term, keep and maintain, safe and intact, all of the records, books and accounts required to be maintained by such Persons regarding the Sports Park pursuant to this Agreement, and shall from time to time, upon request, make these records available to the County, the County's auditor, representative or agent for examination at any reasonable time, on ten (10) calendar days advance written notice. The County shall also have the right to make abstracts from the records, to make copies of any or all of the records and to examine and make copies of any or all contracts, licenses and concession agreements. In addition, on request of the County or the County's representative, the Operator shall furnish copies of the Operator's State and local sales and use tax returns and federal and state income tax return.

ARTICLE IX

COMPLIANCE

9.1 Generally. The Operator shall during the Term, at the Operator's sole expense, in all material respects: (a) comply with all Laws; and (b) procure and comply with all Approvals required by Law.

9.2 Copies of Notices. The County shall promptly give the Operator a copy of any notice of any kind regarding the Sports Park or any Taxes (including any bill or statement), and any notice of nonrenewal or threatened nonrenewal of any Approval that the County receives from any Government, utility company, insurance carrier or insurance rating bureau.

ARTICLE X

NO ALTERATIONS TO SPORTS PARK

10.1 The Operator shall have the right to alter the facility as needed to allow for success of the facility, subject to the provisions contained in Article IV.

10.2 Alterations, Renovations And Additions. Operator shall not, without the advance written approval of the County, remove from the Sports Park, or permit the removal of, any

equipment, furnishings and other property of the County. If at any time the County supplies the Operator with labels, plates, or other markings identifying equipment, furnishings and other property of the County, the Operator shall affix and keep the same in a prominent place on such equipment, furnishings and other property.

ARTICLE XI

HAZARDOUS SUBSTANCES

11. Restrictions. The Operator shall not during the Term: (a) knowingly allow any violation of any Environmental Law at the Sports Park, or (b) knowingly permit the introduction, onto the Property of any Hazardous Substance.

ARTICLE XII

COUNTY'S SPECIAL RIGHTS

12.1 County's Right to Utilize the Sports Park During Local State of Emergency. In those situation where a local state of emergency has been declared by the County pursuant to its authority under Wisconsin law or County code, or is continuing to exist within the County, the County shall have the right to exercise sole control over the Sports Park Property and to implement such emergency measures and to make such use of the Sports Park Property as it deems necessary for the health, safety and welfare of the residents of the County. The County, in taking such action, will attempt at all times to minimize any damage to the Sports Park and will repair or provide funds for the Operator to effect repairs for any Capital Repairs that may be required as a result of such emergency use(s).

12.2 County's Access to the Sports Park.

(a) Notwithstanding anything to the contrary in this Agreement, the County, its agents, representatives or designees may enter the Sports Park to: (a) ascertain whether the Operator is complying with this Agreement; (b) cure the Operator's Defaults; (c) inspect the Sports Park; (d) perform such tests, borings, and other analyses as the County determines may be necessary or appropriate relating to (non)compliance with any Law or possible Hazardous Substances Discharge; or (e) operate, maintain, test, and repair the County's gas control system and monitoring wells. In entering the Sports Park, the County and its designees shall not unreasonably interfere with operation of the Sports Park. The County shall Indemnify the Operator against any claims arising from the County's activities related to the entry upon the Sports Park from the County's negligence, except to the extent arising from the willful misconduct or negligence of the Operator Parties or upon termination of this Agreement or the occurrence of an Event of Default.

(b) Operator understands and acknowledges that the Property is a former County landfill. Should the County need to access the Property for the purposes described in this Section, the County shall notify the Operator and schedule its repairs in coordination with the Operator in an attempt to minimize the County's impacts to Sports Park Events while achieving

the primary goals of protecting the health, general welfare, and safety of the general public and placing the gas control system back into operation.

ARTICLE XIII

INDEMNIFICATION; LIMIT ON LIABILITY OF COUNTY

13.1 General Indemnification. The County and the Operator shall each Indemnify the other and their respective shareholders, elected officials, officers, directors, partners, employees, attorneys and other agents against any claims, actions or suit arising from: (a) wrongful act, wrongful omission, or negligence of the Indemnitor (and anyone claiming by or through the Indemnitor) or its or their shareholders, directors, officers, elected officials, partners, attorneys, agents or employees which may arise out of or are connected with the activities covered by this Agreement; (b) breach or default by the Indemnitor under this Agreement; or (c) breach of any representation or warranty the Indemnitor makes in this Agreement. Notwithstanding anything to the contrary in this Agreement, no Indemnitor shall be required to indemnify any Indemnitee to the extent of the Indemnitee's wrongful intentional acts or negligence. Milwaukee County's liability shall be limited by Wis. Stat. §§ 345.05(3) for automobile and 893.80(3) for general liability.

13.2 Operator is solely responsible for conducting its own geotechnical investigation to determine soil bearing capacity and for all site development expenses. In the event that Operator reasonably determines as a result of its own investigation that Hazardous Substances exist or may possibly exist in or on the Property, Operator shall have the right, at its sole option, by written notice to County, to terminate this Agreement. Operator shall keep the results of its investigations confidential, unless otherwise required by law or court order. In no event shall the discovery or disturbance of any Hazardous Substances by Operator preclude the Operator from performing its remediation responsibilities as contained in this Section.

13.3 Environmental Indemnification. Operator shall to the fullest extent provided for under any Environmental Laws be responsible for any repair, cleanup, Remediation or detoxification arising out of: (1) any Hazardous Substance brought onto or introduced into the Property or surrounding area by Operator, its agents or guests, or (2) any Hazardous Substance whose presence pre-exists the Effective Date of this Agreement, located in or on the Property, that are discovered or disturbed as result of Operator's construction activities on, at or near the Property. Operator shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. Prior to the Commencement Date, Phase 1 or other environmental reports and geotechnical reports may be obtained at Operator's expense to help determine anticipated remediation requirements and expenses, as well as for identifying structural issues on, in and under the site, or to provide recommendations or suggestions for further review.

13.4 Limitation on Liability. During the Term: (a) the Operator is and shall be responsible for operation of the Sports Park; and (b) the County shall not be liable for any injury or damage to any property (of the Operator or any other Person) or for any accident, injury or death to any Person occurring on or about the Sports Park, except to the extent caused by the County's intentional or negligent act or omission. Provisions of this Agreement regarding the

County's ownership of or access to the Sports Park shall not impose upon the County any liability to third Persons.

13.5 Strict Liability. The indemnification obligations of an Indemnitor shall apply regardless of whether liability without fault or strict liability is imposed or sought to be imposed on one or more Indemnitees. The indemnification obligations of an Indemnitor shall not apply to the extent that a final judgment of a court of competent jurisdiction establishes that a claim against an Indemnitee was proximately caused by the negligence or willful misconduct of that Indemnitee.

13.6 Independent of Insurance Obligations. The Operator's indemnification obligations under this Agreement shall not be construed or interpreted as in any way restricting, limiting, or modifying the Operator's insurance or other obligations under this Agreement and is independent of the Operator's insurance and other obligations under this Agreement. The Operator's compliance with its insurance obligations and other obligations under this Agreement shall not in any way restrict, limit, or modify the Operator's indemnification obligations under this Agreement and are independent of the Operator's indemnification and other obligations under this Agreement.

13.7 Survival of Indemnification and Defense Obligations. The indemnification and defense obligations under this Agreement shall survive the expiration or earlier termination of this Agreement, until all claims against any of the Indemnitees involving any of the indemnified matters are fully, finally, and absolutely and completely barred by the applicable statutes of limitations.

13.8 Independent Duty to Defend. The duty to defend under this Agreement is separate and independent of the duty to Indemnify. The duty to defend includes claims for which an Indemnitee may be liable without fault or strictly liable. The duty to defend applies regardless of whether the issues of negligence, liability, fault, default, or other obligation on the part of the Indemnitor or the Indemnitee have been determined. The duty to defend applies immediately, regardless of whether the Indemnitee has paid any sums or incurred any detriment arising out of or relating (directly or indirectly) to any claims. It is the express intention of the Parties that an Indemnitee be entitled to obtain summary adjudication or summary judgment regarding an Indemnitor's duty to defend the Indemnitee at any stage of any claim or suit within the scope of the Indemnitor's indemnity obligations under this Agreement.

13.9 Indemnification Procedures. Wherever this Agreement requires any Indemnitor to Indemnify any Indemnitee:

13.9.1 Prompt Notice. The Indemnitee shall promptly Notify the Indemnitor of any claim. To the extent, and only to the extent, that the Indemnitee fails to give prompt Notice and such failure materially prejudices the Indemnitor in providing indemnity for a particular claim, the Indemnitor shall be relieved of its indemnity obligations for such claim.

13.9.2 Selection of Counsel. The Indemnitor shall select counsel reasonably acceptable to the Indemnitee. Counsel to Indemnitor's insurance carrier that is providing coverage for a claim shall be deemed reasonably satisfactory. Even though the Indemnitor shall

defend the action, Indemnitee may, at its option and its own expense, engage separate counsel to advise it regarding the claim and its defense. The Indemnitee's separate counsel may attend all proceedings and meetings. The Indemnitor's counsel shall actively consult with the Indemnitee's separate counsel. The Indemnitor and its counsel shall, however, fully control the defense, except to the extent that the Indemnitee waives its rights to indemnity and defense for such claim.

13.9.3 Settlement. The Indemnitor may, with the Indemnitee's consent, not to be unreasonably withheld, settle the claim. The Indemnitee's consent shall not be required for any settlement by which: (a) the Indemnitor procures (by payment, settlement, or otherwise) a release of the Indemnitee from the subject claim(s) by which the Indemnitee need not make any payment to the claimant; (b) neither the Indemnitee nor the Indemnitor on behalf of the Indemnitee admits liability; (c) the continued effectiveness of this Agreement is not jeopardized in any way; and (d) the Indemnitee's interest in the Sports Park is not jeopardized in any way.

13.9.4 Insurance Proceeds. The Indemnitor's obligations shall be reduced by net insurance proceeds the Indemnitee actually receives for the matter giving rise to indemnification obligation.

ARTICLE XIV

INSURANCE

14.1 Operator to Insure. The Operator shall, at its sole expense, during the Term, maintain the insurance specified in this Article.

14.2 Nature of Insurance Program. All Property Insurance and Liability Insurance policies this Agreement requires shall be issued by carriers that: (a) are listed in the then current "Best's Key Rating Guide—Property/Casualty—United States & Canada" publication (or its equivalent, if such publication ceases to be published) with a minimum financial strength rating of "A" and a minimum financial size category of "VIII"; and (b) are admitted to do business in the State of Wisconsin by the State Department of Insurance. **The Operator may provide any Property Insurance or Liability Insurance coverage under a "blanket" or "umbrella" insurance policy, provided that (i) such policy or a certificate of such policy shall specify the amount(s) of the total insurance allocated to the Sports Park, which amount(s) shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made for other properties; and (ii) such policy otherwise complies with this Agreement.**

14.3 Policy Requirements and Endorsements. Operator agrees to evidence and maintain or cause its contractors to evidence and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws or vicarious liability arising from employees at least to the minimum limits established now and in the future by Milwaukee County's Risk Manager. Such evidence shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile coverage in the following minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation Or Proof of All State Coverage	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000
Commercial General Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
(Incl. Personal Injury, Fire, Legal	\$2,000,000 Aggregate
Contractual and Products/Completed	
Operations	
Umbrella Policy	\$2,000,000
Liquor Liability	\$1,000,000 Per Occurrence
Automobile Liability	
Bodily Injury & Property Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned or hired	
Uninsured Motorists	Per Wisconsin Requirements

Milwaukee County shall be named as an additional insured for General Liability and Automobile Liability; in the event there is a General Contractor, then the Operator and Milwaukee County shall be named as additional Insureds. A waiver of subrogation for Workers Compensation by endorsement in favor of Milwaukee County shall be provided. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County.

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

The insurance requirements contained within this Agreement are subject to periodic review and reasonable adjustment by the County Risk Manager consistent with similarly situated properties within the properties owned by Milwaukee County.

14.4 No Representation. Neither Party makes any representation that the limits, scope, or forms of insurance coverage this Agreement requires are adequate or sufficient.

ARTICLE XV

LOSSES AND LOSS PROCEEDS

15.1 Notice. If either Party becomes aware of any Casualty or any actual, threatened, or contemplated Condemnation, then such Party shall promptly Notify the other.

15.2 Effect of Casualty. If any Casualty occurs, then: (a) the Operator's obligation to make any payments under this Agreement shall not abate; (b) this Agreement shall not terminate or be impaired; and (c) the Operator shall Restore with reasonable promptness regardless of cost. If, however, the Casualty is a Substantial Casualty, then the Operator may, by Notice to the County, given within thirty (30) days after the occurrence of the Casualty, (i) invoke the indemnity procedures outlined in Article XIII, or (ii) terminate this Agreement effective ninety (90) days after such Notice, provided that the Operator assigns to the County all of the Operator's right, title and interest in and to any Property Insurance Proceeds (and rights thereto) arising from the Casualty.

15.3 Substantial Condemnation. If a Substantial Condemnation occurs, then this Agreement (except as it relates to allocation of the Condemnation Award and other matters surviving termination of this Agreement) shall terminate on the Condemnation Effective Date. The Condemnation Award shall be the sole and exclusive property of the County, except the portion of any such award applicable to the Operator's FF&E or other personal property, if any.

15.4 Insubstantial Condemnation. If an Insubstantial Condemnation occurs, then any Condemnation Award shall be paid to the County to be applied first for Restoration in the same manner as Property Insurance Proceeds. The Operator shall Restore in the same manner as Restoration upon Casualty. Any Condemnation Award remaining after Restoration shall be applied in the same manner as a Condemnation Award from an Immaterial Loss.

15.5 Temporary Condemnation. If a Temporary Condemnation relates to a period longer than ninety (90) days and more than twenty five percent (25%) of the Sports Park, then the Operator may, by Notice within sixty (60) days after notice of such Temporary Condemnation, terminate this Agreement effective on the Condemnation Effective Date. If the Temporary Condemnation relates to a shorter period, or if the Operator does not terminate this Agreement, then the Operator shall receive any Condemnation Award (to the extent compensating for periods within the Term) for use for Restoration, without affecting the Operator's obligations under this Agreement in any way.

15.6 Immaterial Loss. If an Immaterial Loss occurs, then the Operator shall receive any Condemnation Award in trust to be applied first to Restoration. The Operator shall Restore in accordance with this Agreement. After Restoration, the County shall receive any remaining Condemnation Award as its sole and exclusive property.

15.7 Voluntary Conveyance Under Threat of Condemnation. A voluntary conveyance by the County of title to all or a part of the Property or the Sports Park to a public or quasi-public agency or entity in lieu of and under threat by that agency or entity to take such property by eminent domain proceedings shall be considered a Condemnation of the subject part of the Property or the Sports Park, for the purposes of this Agreement.

15.8 Rights and Obligations Governed by Agreement. If during the Term there is any taking of all or any part of the Sports Park or any interest in this Agreement by Condemnation, the rights and obligations of the Parties shall be determined pursuant to this Section.

ARTICLE XVI

REPRESENTATIONS AND WARRANTIES

16.1 No Litigation. Operator represents and warrants to County that there is no existing or, to the Operator's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the Operator, any holder of an Equity Interest in the Operator or any Affiliate that would, if adversely determined, materially adversely affect the Operator, this Agreement or the Operator's ability to perform its obligations under this Agreement.

16.2 Litigation; Environmental Claims. County represents and warrants to Operator that there is no existing or, to the County's knowledge, pending or threatened litigation, suit, action, or proceeding before any court or administrative agency affecting the County, that would, if adversely determined, materially adversely affect the County, this Agreement or the County's ability to perform its obligations under this Agreement.

ARTICLE XVII

COUNTY TRANSFERS

17.1 County's Right to Convey. The County may Transfer the Fee Estate from time to time, but only if the County promptly Notifies the Operator of such Transfer. Notwithstanding the forgoing, in the event the County decides to sell the Property and the County receives an offer to purchase acceptable to the County, during the Term of the Agreement, the County, prior to acceptance thereof, shall give the Operator, with respect to such offer, written notice thereof and a copy of said offer; and Operator shall have the option and right of first refusal for sixty (60) days after receipt of such notice within which to elect to purchase the Property on the terms of said offer. If Operator shall elect to purchase the Property pursuant to the option and first refusal herein granted, it shall give notice of such election within such sixty (60) day period. Operator's failure to exercise its option under this paragraph shall not affect this Agreement and the continuance of Operator's rights under this and any other paragraph contained herein.

17.2 Release of the County. Upon any Transfer of the entire Fee Estate in compliance with this Agreement, provided such Transfer does not adversely affect the Operator's rights under this Agreement, the grantor shall be automatically freed and relieved from all liability (excluding liability previously accrued) for performance of any covenants or obligations to be performed by the County after the Transfer, provided that the successor to the County assumes the County's future obligations under this Agreement. This Agreement shall bind the County only while the County owns the Fee Estate, except as to any liabilities and obligations accrued before the date of Transfer of the Fee Estate.

ARTICLE XVIII

OPERATOR TRANSFERS

18. The Operator's Limited Right. The Operator may Transfer this Agreement to any Affiliate. The Operator may Transfer this Agreement to a non-Affiliate with the County's prior written consent, which may be given or withheld in the County's sole and absolute discretion, prior to the effective date of any such Transfer. Any permitted transferee, franchisee or assignee of the Operator shall assume all obligations and liabilities of the Operator under this Agreement in a writing reasonably satisfactory to the County, prior to the effective date of any such Transfer. The Operator shall pay all transfer and other taxes payable on account of any Transfer by the Operator or any holder of any Equity Interest in the Operator. The Operator shall promptly Notify the County at least ninety (90) days in advance of the effective date of any proposed Transfer by the Operator. After the Operator assigns this Agreement and the assignee, franchisee or transferee assumes the Operator's obligations under this Agreement, in accordance with this Agreement, the Operator shall have no obligation or liability under this Agreement, except: (a) any obligation to hold and apply Restoration Funds held by the Operator at the date of the assignment (unless transferred to the assignee); and (b) any unperformed obligations that arose before the assignment (unless assumed in writing, in recordable form, by the assignee). If the Operator assigns this Agreement, then as between the County and the Operator, the Operator shall be deemed to have assigned to the assignee, franchisee or transferee all claims against the County then existing, and the assignee, franchisee or transferee shall be deemed, by assuming this Agreement, to have assumed all liabilities and obligations of the Operator then existing or thereafter arising under this Agreement (except as this Agreement otherwise expressly states).

ARTICLE XIX

EVENTS OF DEFAULT; REMEDIES

19.1 Definition of "Event of Default." An "Event of Default" means the occurrence of any one or more of the following:

19.1.1 Monetary Default. If a Monetary Default occurs and continues for thirty (30) days after Notice from the County, specifying in reasonable detail the amount of money not paid and the nature and calculation of each such payment.

19.1.2 Bankruptcy or Insolvency. If the Operator ceases to do business as a going concern, ceases to pay its debts as they become due or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any Bankruptcy Proceeding (except an involuntary Bankruptcy Proceeding dismissed within sixty (60) days after commencement), or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of the Operator's assets or the Operator's interest in this Agreement (unless such appointment, attachment, execution, or other seizure was involuntary and is contested with diligence and continuity and vacated and discharged within sixty (60) days).

19.1.3 Non-Monetary Default. If any Non-Monetary Default occurs and the Operator does not cure such Non-Monetary Default within sixty (60) days after Notice from the County describing the Default in reasonable detail.

19.2 Remedies. If an Event of Default occurs, then the County shall, at the County's option, have any or all of the following described remedies, all cumulative (so exercise of one remedy shall not preclude exercise of another remedy), in addition to such other remedies as may be available at Law or in equity or under any other terms of this Agreement. The County's remedies shall include:

19.2.1 Termination of the Operator's Rights. The County may terminate this Agreement by written Notice of termination of this Agreement to the Operator or by any other lawful means, in which case this Agreement and the Term shall terminate, such Termination Date shall be considered the Expiration Date of the Agreement, and the Operator shall immediately vacate the Sports Park. Additionally, the County may bring an action to recover any or all of the following from the Operator:

- (a) any unpaid County Revenues earned as of the Expiration Date; and
- (b) any other amount necessary to compensate the County for all detriment proximately caused by the Operator's failure to perform the Operator's obligations under this Agreement.

19.2.2 Suits Before Expiration Date. The County may sue the Operator for damages or to recover County Revenues, from time to time, at the County's election, without terminating this Agreement.

19.2.3 Receipt of Moneys. No receipt of money by the County from the Operator after the Expiration Date, or after the giving of any Notice of termination of this Agreement, shall reinstate, continue, or extend this Agreement or affect any Notice previously given to the Operator, or waive the County's right to enforce payment of any amount payable or later falling due, or the County's right to enter the Sports Park, except as this Agreement expressly states otherwise, it being agreed that after service of Notice of termination of this Agreement or the commencement of suit or proceedings, or after final order or judgment, the County may demand, receive, and collect any moneys due or thereafter falling due, without in any manner affecting such Notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of use of the Sports Park or, at the County's election, on account of the Operator's liability to the County.

19.2.4 No Waiver. No failure by the County to insist upon strict performance of any covenant, agreement, term or condition of this Agreement or to exercise any right or remedy upon a Default, and no acceptance of full or partial County Revenues during continuance of any such Default, shall waive any such Default or such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Agreement to be performed or complied with by the Operator, and no Default, shall be modified, except by a written instrument executed by the County. No waiver of any Default shall Modify this Agreement. Each and every covenant, agreement, term and condition of this Agreement shall continue in full force and

effect with respect to any other then-existing or subsequent Default of such covenant, agreement, term or condition of this Agreement.

19.2.5 Injunction of Breaches. Whether or not an Event of Default has occurred, the County may obtain a court order enjoining the Operator from continuing any Default or from committing any threatened Default. The Operator specifically and expressly acknowledges that damages would not constitute an adequate remedy to the County for any Non-Monetary Default.

19.2.6 Continue Agreement. The County may, at the County's sole option, allow the Operator to continue operating the Sports Park after an Event of Default. In that case, this Agreement shall continue and the County may continue to enforce it, including the right to collect County Revenues when due and exercise any remedies for nonpayment.

19.2.7 Restoration Funds. Upon any termination of this Agreement, to the extent that the County then holds any Restoration Funds, they shall be the sole property of the County and may be applied solely as the County directs.

19.3 Accord and Satisfaction; Partial Payments. No payment by the Operator or receipt by the County of a lesser amount than the amount owed under this Agreement shall be deemed to be other than a part payment on account by the Operator. Any endorsement or statement on any check or letter accompanying any check or payment of County Revenues or any other amount shall not be deemed an accord or satisfaction. The County may accept any such check or payment without prejudice to the County's right to recover the balance of such County Revenues or other payment or pursue any other remedy.

19.4 Survival. No expiration or termination of this Agreement and no entry into or onto the Sports Park by the County after such expiration or termination shall relieve the Operator of its liabilities and obligations under this Agreement, all of which shall survive such expiration, termination or entry.

ARTICLE XX

DISPUTE RESOLUTION

20.1 Mediation. As a condition precedent to filing any action in law or equity on any claim against the County that may be arise out of this Agreement or the subject thereof, the Operator agrees to provide thirty (30) calendar days advance notice to the County of its intent to file a lawsuit or other action against the County. Each of the other Parties further agrees to submit the dispute in good faith to non-binding mediation before a single mediator, pending completion of which any lawsuit or other action that may have been filed by or on behalf of, either Party shall be tolled. The costs for such mediation shall be equally split between the Parties.

(a) Venue for Mediation. The mediation shall be conducted within Milwaukee County at a venue agreed to by both parties.

(b) Selection of Mediator. The mediator shall be selected from the official list of certified mediators and shall possess a minimum of ten (10) years experience in handling commercial transactions and litigation.

(c) Rules and Administration. Unless otherwise contrary to this Agreement, to any subsequent written expression of mutual intent executed by the parties, or to any provision of the law, the mediation shall be administered by the rules of the American Arbitration Association.

ARTICLE XXI

END OF TERM; OPERATOR CONDITIONS

21.1 Upon any Expiration or Termination Date: (a) the Operator shall vacate the Sports Park (including removal of all of the Operator's personnel and Operator's FF&E), in the condition this Agreement requires, subject to any Loss that this Agreement does not require the Operator to Restore; (b) the Operator shall deliver title to the Sports Park including all permanent alternations, modifications, additions and improvements to the Property necessary and appropriate for the continued operation of the Property, free and clear of all claims, except claims that the County or any of its agents caused; (c) the Operator shall remit to the County all remaining amounts in the Endowment Fund; (d) the Operator shall assign to the County, without recourse, and give the County copies or originals of, all assignable licenses, permits, contracts, warranties, and guarantees then in effect for the Sports Park; (e) the Parties shall cooperate to achieve an orderly transition of operation of the Sports Park from the Operator to the County or a designee of the County, without interruption, including delivery of such books and records (or copies thereof) as the County reasonably requires; and (f) the Parties shall adjust for all other expenses and income of the Sports Park and any prepaid County Revenues and shall make such payments as shall be appropriate on account of such adjustment (but any sums otherwise payable to the Operator shall first be applied to cure any Default). Notwithstanding anything to the contrary in this Section, the Operator may remove from the Sports Park any Operator FF&E, but the Operator must do so, if at all, before the Expiration Date. The Operator shall repair any material damage from any such removal of Operator FF&E. Should the Operator fail to make such repairs, the County reserves the right to perform the work involved and to seek compensation as otherwise provided herein. Any Operator FF&E not removed before the Expiration Date or Termination Date shall be deemed the sole and exclusive property of the County. This Agreement does not, and shall not be deemed or construed to, confer upon or grant to any third Person (excepting permitted successors or assigns of the Operator or the County pursuant to the terms of this Agreement) any right to claim damages or to bring any suit, action or other proceeding against either the County or the Operator because of any breach of this Agreement or to enforce any term, covenant, condition, restriction, reservation, provision or agreement contained in this Agreement.

21.2 Operator Conditions. This Agreement is conditioned on the obtainment of all Approvals required to operate the Sports Park, Concession Facility and all related activities described in this Agreement within a reasonable time after the final approval of the County as set forth in Section 22.18. County agrees to use reasonable efforts to assist Operator in obtaining all such Approvals.

ARTICLE XXII

MISCELLANEOUS

22.1 Further Assurances. Each Party shall execute and deliver such further documents, and perform such further acts, as may be reasonably necessary to achieve the Parties' intent in entering into this Agreement.

22.2 No Waiver by Silence. Failure of either Party to complain of any act or omission on the part of the other Party shall not be deemed a waiver by the noncomplaining Party of any of its rights under this Agreement. No waiver by either Party at any time, express or implied, of any breach of this Agreement shall waive the same such breach at another time or any other breach.

22.3 Performance Under Protest. If a dispute arises about performance of any obligation under this Agreement, the Party against which such obligation is asserted shall have the right to perform such obligation under protest, which shall not be regarded as voluntary performance. A Party that has performed under protest may institute appropriate proceedings to determine the Parties' rights and obligations regarding such performance and, if appropriate, to recover any amount paid or the reasonable cost of otherwise complying with any such obligation, with Default Interest.

22.4 Survival. All rights and obligations that by their nature are to be performed after any termination of this Agreement shall survive any such termination.

22.5 Unavoidable Delay. Each Party's obligation to perform or observe any nonmonetary obligation under this Agreement shall be suspended during such time as such performance or observance is prevented or delayed by Unavoidable Delay.

22.6 Recitals. The recitals are incorporated herein as true and correct and made part of this Agreement.

22.7 Captions. The captions of this Agreement are for convenience and reference only and in no way affect this Agreement.

22.8 Counterparts. This Agreement may be executed in counterpart originals, each of which shall constitute an original of this Agreement and that, collectively, shall constitute one and the same agreement.

22.9 Delivery of Drafts. Neither Party shall be bound by this Agreement unless and until the authorized representative(s) and such Party has/have executed, at least, one counterpart original of this Agreement and delivered such executed counterpart original to the other Party. The submission of draft(s) or comment(s) on drafts shall not bind either Party in any way. Such draft(s) and comment(s) shall not be considered in interpreting this Agreement. Submission of this Agreement document for examination or signature by the Parties does not constitute an option or offer regarding the Property on the terms in this document or a reservation of the Property in favor of the Operator. This document shall not be binding on either Party, unless and until all of the conditions of this Section are satisfied.

22.10 Entire Agreement. This Agreement contains all of the terms, covenants, conditions and agreements between the Parties regarding the Sports Park. The Parties have no other understandings or agreements, oral or written, about the Sports Park.

22.11 Modification. Any modification to this Agreement must be evidenced by a writing agreed upon and executed by both the County and the Operator to be binding on either Party.

22.12 Governing Law and Venue. This Agreement, its interpretation and performance, the relationship between the Parties, and any disputes arising from or relating to any of the foregoing, shall be governed, construed, interpreted, and regulated under the laws of the State of Wisconsin, without regard to principles of conflicts of laws.

22.13 Partial Invalidity/Severability. If any term or provision of this Agreement or its application to any Person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Agreement, or the application of such term or provision to Persons or circumstances, except those as to which it is invalid or unenforceable, shall not be affected by such invalidity. All remaining provisions of this Agreement shall be valid and be enforced to the fullest extent Law allows.

22.14 Principles of Interpretation. No inference in favor of or against any Party shall be drawn from the fact that such Party has drafted any part of this Agreement. The Parties have both participated substantially in the negotiation, drafting, and revision of this Agreement, with advice from counsel and other advisers of their own selection. A term defined in the singular in this Agreement may be used in the plural, and vice versa, all in accordance with ordinary principles of English grammar, which also govern all other language in this Agreement. The words "include" and "including" shall be construed to be followed by the words: "without limitation."

22.15 Reasonableness. Wherever this Agreement states that a Party's approval shall be "reasonable" or not unreasonably withheld: (a) such approval shall not be unreasonably delayed or conditioned; (b) no withholding of approval shall be deemed reasonable, unless withheld by Notice specifying reasonable grounds, in reasonable detail, for such withholding, and indicating specific reasonable changes in the proposal under consideration that would make it acceptable; and (c) if a Party grants its consent to any matter, this shall not waive its rights to require such consent for any further or similar matter.

22.16 Time of Essence. Time is of the essence with respect to the performance of each term, provision, covenant or agreement contained in this Agreement.

22.17 Independent Contractor/Disclaimer of Partnership. The relationship of the Parties to this Agreement is that of the owner and third-party contractor, and it is expressly understood and agreed that the County does not, as a result of this Agreement, in any way, nor for any purpose, become a partner of or a joint venturer with the Operator in the conduct of the Operator's business or otherwise. This Agreement is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture or association as between the County and the Operator.

22.18 Condition; Final Approval. This Agreement is expressly conditioned upon and subject to the approval of the Milwaukee County Board of Supervisors and shall not be or become effective or binding on either the County or the Operator, unless and until formally approved by the Milwaukee County Board of Supervisors and fully executed by the authorized representative(s) of each Party.

22.19 No Third Party Beneficiaries. This Agreement shall bind and benefit the County and the Operator and their successors and assigns. Nothing in this Agreement is intended to confer on any Person (except the County and the Operator or the Operator's approved successor or assign) any right to insist upon, or to enforce against the County or the Operator, the performance or observance by either Party of its rights or obligations under this Agreement.

22.20 Notices. All Notices shall be in writing and addressed to the County or the Operator (and their designated copy recipients) as set forth in Exhibit "B". Notices (including any required copies) shall be delivered personally or by Federal Express, United Parcel Service or other nationally recognized overnight (one-night) courier service to the addresses set forth in Exhibit "B", in which case they shall be deemed delivered on the date of delivery (or when delivery has been attempted twice, as evidenced by the written report of the courier service) to such address(es). Either Party may change its address for delivery of Notices by written Notice in compliance with this Agreement. Notice of such a change shall be effective only upon receipt. Any Party giving a Notice may request the recipient to acknowledge receipt of such Notice. The recipient shall promptly comply with any such request, but failure to do so shall not limit the effectiveness of any Notice. Any attorney may give any Notice on behalf of their client.

22.21 Nor Brokers. Each Party: (a) represents and warrants that it did not engage or deal with any broker or finder in connection with this Agreement and no Person is entitled to any commission or finder's fee on account of any agreement or arrangement made by such Party; and (b) shall indemnify the other Party against any breach of such representation.

22.22 Attachments. The following attachments are intended to be incorporated into and made part of this Agreement:

- Exhibit "A" = Property Legal Description
- Exhibit "B" = Notice Addresses
- Exhibit "C" = Milwaukee County Due Diligence Requirements
- Exhibit "D" = Sports Park Pro Forma

**SIGNATURE PAGE
TO
SPORTS PARK MAINTENANCE AND OPERATIONS SERVICES AGREEMENT**

IN WITNESS WHEREOF, the County and the Operator have executed this Agreement as of the Effective Date.

**COUNTY: DEPARTMENT OF PARKS,
RECREATION AND CULTURE**

By: James Keegan
Name Printed: James Keegan
Title: Interim Parks Director

OPERATOR:

By: Michael Ezimmer
Name Printed: Mike Zimmerman
Title: CEO

Approved as to form and Independent
Contractor status:

By: Kimberly 9/24/2012
Corporation Counsel

Reviewed by:

By: Guthrie Van der
Risk Management

Approved with regards to County Ordinance
Chapter 42:

By: SPD 9/21/2012
Community Business Development Partners

EXHIBIT "A"

PROPERTY LEGAL DESCRIPTION

EXHIBIT "B"

NOTICE ADDRESSES

Party:	Notice Address:	With a copy to:
County	Department of Parks, Recreation and Culture Attn: Parks Director 9480 Watertown Plank Road Wauwatosa, WI 53226	
Operator	The Rock Sports Complex, LLC Attn: Mike Zimmerman 4600 W. Loomis Road, Suite 310 Milwaukee, Wisconsin 53220	

EXHIBIT "C"

MILWAUKEE COUNTY DUE DILIGENCE REQUIREMENTS

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

ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

Due Diligence 7.92

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

- Letter of Full Disclosure and Cooperation
- Cash flow projections for the venture.
- Operating budget impact.
- Debt management responsibilities, schedules and procedures.
- Legal liability for all priorities.
- Financial reporting systems and controls.
- Right-to-audit provisions.
- Project feasibility studies and market analysis.
- Key factors for success/failure of the venture.
- Governance structure and procedures.
- Public policy impacts (e. g. Affirmative Action, Disadvantaged Business).
- Employee/labor relations impacts (including benefits).
- Environmental concerns.
- Tax consequences.
- Capital management (e. g. maintenance).
- Conflicts of interest/ethics.
- Performance measurements.
- Organization Chart and Mission Statement
- Name of Lending institution or Bank to determine single or combined reporting

Each relevant item noted above should be included in the description of the proposal, which is subtitled for approval by the County Executive and County Board.

EXHIBIT "D"

SPORTS PARK PRO FORMA