

**AMENDED AND RESTATED LEASE AGREEMENT  
BETWEEN  
MILWAUKEE COUNTY PARKS DEPARTMENT  
AND  
KELLOGG PEAK INITIATIVE, LLC**

This Amended and Restated Lease Agreement (the "Lease" or "Agreement") is made and entered into effective \_\_\_\_\_, by and between the MILWAUKEE COUNTY PARKS DEPARTMENT (the "County" or "Landlord") and KELLOGG PEAK INITIATIVE, LLC (the "PEAK" or "Tenant"). Referenced together, the County and PEAK are the "Parties" to this Lease.

***Recitals***

**WHEREAS**, PEAK is a 501(c)(3) not-for-profit privately funded organization, whose mission is to bring out the limitless potential in young leaders through extraordinary experiences and nurturing relationships; and

**WHEREAS**, since 2009, pursuant to that certain Lease Agreement effective as of September 9, 2009, by and between the County and PEAK, as successor-in-interest to Lake Valley Camp, Inc. (the "Existing Lease"), PEAK has occupied the pavilion (the "Pavilion") within Tiefenthaler Park (the "Park"), and has successfully developed and operated its educational and community programs at the Park; and

**WHEREAS**, PEAK wishes to expand its presence and enhance its programming in the Park and construct an expansion to the existing building improvements for the purposes of operating PEAK programming and a community center with associated amenities (the "Building"),

**WHEREAS**, to support the desired work and achieve the desired goals, the Parties desire to enter into this Lease; and

**WHEREAS**, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution # \_\_\_\_\_ on \_\_\_\_\_, has authorized the County to negotiate this agreement with the Tenant for and on behalf of Milwaukee County; and

**WHEREAS**, recognizing that the continued partnership of the Parties is beneficial to Tiefenthaler Park and is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

**1. INCORPORATION OF WHEREAS CLAUSES:**

The above WHEREAS clauses are incorporated into and are made a part of this Agreement.

**2. BUILDING AND LEASED PREMISES:**

Tenant shall lease land located underneath the Building in Tiefenthaler Park, 2480 W. Cherry Street in Milwaukee, Wisconsin and agreed upon adjacent areas, together with any and all improvements, appurtenances, rights, privileges and easements benefiting,

belonging or appertaining thereto (collectively, the "Leased Premises"). The Leased Premises are further described in Exhibit A.

**3. RENT:**

The Parties acknowledge and agree that, in lieu of rental payments, (i) Tenant has or will agree to complete certain work and renovations to the Leased Premises set forth in that certain Development Agreement which has been entered into or will be entered into by the County and PEAK (the "Development Agreement") and (ii) Tenant has agreed to the covenants and promises set forth in this Lease, including, without limitation, the payment of utilities serving the Leased Premises.

**4. TERM:**

This Lease shall be for an initial term of ten (10) years commencing on the Effective Date of this Lease and expiring ten (10) years thereafter (the "Initial Term"), unless renewed, extended or sooner terminated as provided herein.

**5. RENEWAL:**

After the Initial Term of the Lease, Tenant shall have the option to extend the Lease for eight (8) additional five (5) year periods (each an "Extension Term" and, together with the Initial Term, the "Term"), provided that Tenant:

- i. Is not then in default under the Lease past any applicable notice and cure period; and
- ii. Is maintaining and managing the Building as herein required; and
- iii. Is not then in default of any other agreements with the County; and
- iv. Is actively operating the Building for its intended purposes as further defined in Section 6 of this Agreement.

Each such option shall be deemed to be automatically exercised unless Tenant provides written notice to Landlord given at least one hundred eighty (180) days prior to the expiration of the then-current Term that Tenant desires to terminate the Lease effective as of the expiration of the then-current Term. In the event the County has not received a notice of termination by the foregoing deadline, prior to the extension(s) taking effect, the County shall submit an agendized report to the Milwaukee County Board of Supervisors setting forth Tenant's compliance with the terms of the Lease.

**6. PERMITTED USE:**

Consistent with County ordinances and other applicable laws, PEAK shall have use of the Leased Premises and other areas PEAK has access to in Tiefenthaler Park, for activities related to its educational and recreational programs, community programs and events, and administrative activities. PEAK will be permitted to use designated areas and picnic tables near the Building for activities consistent with PEAK's educational and community programs and events, including, but not limited to, planting gardens and storing program materials with prior written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed.

**7. UTILITIES:**

Tenant shall separate and pay any and all utility costs serving the Leased Premises and Building. "Utilities" may include sewer, water, gas, telephone, internet, electric, steam, natural gas, and chilled water, excluding those associated with standard County provisions in the public parks space and the wading pool. Any costs related to the installation, service, and maintenance of Utilities for the Leased Premises, including, but not limited to, the installation of any electrical outlet(s) necessary for the operation of the Tenant, shall be the sole responsibility of the Tenant. Tenant shall have the right to enter into reasonable agreements with utility companies as required in order to service the Building. County agrees to timely review and approve any such agreements. PEAK shall obtain a Right-of-Entry permit from County before construction of any utilities.

**8. PUBLIC BENEFIT ANNUAL REPORTS:**

By December 31 each year, Tenant shall submit a written report to the County listing a description of the number and types of activities provided at the Building for the prior year; the number and demographic information of the participants served by each of the activities; and, if applicable, the focus and types of any new activities planned for the upcoming calendar year.

**9. SPECIAL EVENTS:**

PEAK may from time to time hold certain events in the Park beyond the Leased Premises and shall make reasonable efforts to notify the County at least 1 (one) week in advance of such events. All such events with anticipated attendance of greater than one hundred (100) people require at least ninety (90) days' notice and written permission of the County, which shall not be unreasonably withheld, conditioned, or delayed. PEAK shall obtain and may be required to pay a Special Event Permit at the standard County fee in effect at the time. PEAK shall also obtain any permits required by other governmental authorities having jurisdiction over the Park if necessary under applicable laws or ordinances.

**10. SIGNAGE:**

PEAK shall have the right to place external signage on the Building. In addition, PEAK will have the right to place a large identifying sign(s) for the main access point(s) to the Building at the street entrance(s). PEAK will work with the County regarding the design of the large identifying sign(s) and potential wayfinding signs in the park. PEAK shall not allow or issue naming rights to any portion of the Building without the County's written consent. If approval is granted, no agreements entered into by PEAK with any third party relating to naming rights shall extend beyond the Term of this Lease. PEAK will work with County regarding the design of the large identifying sign(s). PEAK must obtain a Right of Entry Permit from the County prior to installation of any external signage covered by this paragraph and all such external signage must be approved by the County prior to placement which approval shall not be unreasonably delayed or withheld. Installation of signage that requires disturbance of the ground, whether temporary or permanent, requires the prior approval of the County including but not limited to the issuance of a Right of Entry Permit. For the purposes of this Lease, all signage installed by or on behalf of Tenant shall be referred to herein as, collectively, the "Signage."

Tenant hereby covenants and agrees that Tenant shall, at its own cost and expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage, with any consents, approvals, and permits from the County to not be unreasonably withheld, conditioned or delayed; (iii) insure the Signage as part of its property and shall also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage retains an attractive appearance at all times; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage.

**11. PUBLIC ACCESS AND USE OF THE LEASED PREMISES:**

PEAK and County recognize that public use of the Park and Building is mutually desirable. PEAK shall make the Building available for neighborhood group meetings as PEAK program schedule reasonably allows. PEAK uses and public uses in the Park shall at all times be subject to the requirements and restrictions in Milwaukee County General Ordinances (“MCGO”) Sections 47.02 and 47.16, and to all other rules, regulations, policies, and procedures applicable to properties and space owned by the County, not covered by this Lease and open for general use by the public; provided, however, that PEAK, subject to the Special Events section of this Agreement, is permitted to hold events listed in MCGO Section 47.02 without obtaining a written permit or paying a fee as long as such events are related to PEAK’s use of the Leased Premises as set forth in Section 6 of this Agreement and are not solely profit-oriented private rentals. Likewise, PEAK is permitted to sell, keep and offer for sale all things listed in MCGO Section 47.04 without obtaining a permit or paying a fee as long as such activities are related to PEAK’s use of the Leased Premises as set forth in Section 6 of this Agreement. County further represents it will use its best effort to promptly respond and enforce reported violations of the above-referenced ordinances, policies, procedures, rules and regulations.

**12. PUBLIC RESTROOMS:**

PEAK agrees that the Building will allow restroom access to the public controlled and managed by PEAK during PEAK business hours; typically 9am to 5pm Monday through Friday with exceptions for holidays, PEAK offsite retreats, and weather related closures. PEAK maintains the discretion to adjust their business hours. PEAK will provide for all supplies, maintenance, and routine cleaning of the restrooms.

**13. SOUND/AMPLIFIED MUSIC RESTRICTION:**

Amplified music shall be limited to acoustic and vocal reinforcement to provide background music throughout the Leased Premises and surrounding areas. Events or performances with concert style amplification must be approved in writing by the Parks Director or his/her designee. All amplified music approved by the Parks Director or his/her designee, as well as ambient music, shall comply with the appropriate City of Milwaukee and Milwaukee County noise ordinances.

**14. HOURS OF OPERATION:**

The Parties acknowledge and understand that pursuant to Section 47.27 of the Milwaukee County Code of General Ordinances, the County has the authority to adjust the hours of operation of County parks, including the Park, in the County's reasonable discretion, and nothing in this Agreement is intended to limit or abrogate such authority; provided, however, (i) PEAK, its employees, clients, invited visitors, contractors, and service providers shall have access to the Leased Premises at all times, (ii) the County shall not limit public access to the Park to less than eight hours a day, and (iii) PEAK shall have the right to host Private Events in the Leased Premises until midnight of any night during the Term. For the sake of clarity, PEAK employees, invitees, and attendees of Private Events shall have the right to access the Leased Premises through access roads and paths leading to the Leased Premises regardless of whether the Park is open to the Public.

**15. COUNTY APPROVAL OF ITEMS TO BE SOLD/RENTED:**

Tenant shall provide County with a list and pricing information for the products it intends to sell or rent within the Leased Premises for approval. The Parks Director or his/her designee maintains the right to prohibit the sale or rental of any item that he/she reasonably deems to be inappropriate within the Milwaukee County Parks System; provided, however, notwithstanding the foregoing, PEAK shall be permitted to sell PEAK-logoed merchandise and other items consistent with the missions of PEAK. Tenant agrees to comply with the County's prohibitions including the sale of gum and glass bottles and to operate subject to the Milwaukee County Parks System's exclusive product contracts such as a food or non-alcoholic beverage contracts.

**16. CLEANLINESS, GARBAGE:**

Tenant is responsible for maintaining the Leased Premises and surrounding area as further described in Exhibit B, and surrounding areas in a state of cleanliness and repair to prevent injury to the public. Tenant is also responsible for the collection, disposal, and removal of all municipal solid waste (trash) and recycling associated with its activities. Tenant is strongly encouraged to establish a recycling program to reduce landfill waste. Tenant may contract with a commercial waste service and, upon coordination with County, place municipal solid waste and recycling containers in a designated area of the parking lot.

**17. PARKING:**

Tenant and Tenant's employees, customers and invitees shall have the right to use the parking spaces located within the parking area as further described in Exhibit C. Landlord reserves the right to regulate parking within the Park, including the right to preclude Tenant from parking in certain areas or requiring Tenant and its employees to park their cars only in areas specifically designated from time to time by Landlord for that purpose. Tenant shall not permit vehicles to be abandoned or stored in the parking areas of the Leased Premises. If in the future, the County establishes parking fees for the Park, PEAK and its employees, agents, clients, and invitees shall be exempt from such parking fees.

**18. MAINTENANCE AND REPAIRS:**

- i. During the Term of this Lease, Tenant shall, at its expense, pay for and make all necessary repairs and replacements, structural or otherwise, to the Leased Premises

and Building, parking lot, and access drive, including, but not limited to, any existing structures and any structures it erects, including the Building, in and on the Leased Premises, and any plumbing, electrical and lighting, doors, door hardware, windows, fixtures, heating, ventilating and air conditioning facilities located in or serving the Leased Premises or Building or any structures the Tenant erects. All repairs shall be done by licensed tradespersons if so required by applicable law. Landlord shall have no obligation to make repairs to the Leased Premises or any structures the Tenant erects or to any utility systems servicing the Leased Premises or any structures the Tenant erects.

- ii. During the Term of this Lease, Tenant will be responsible for repairing, maintaining, salting, and plowing/shoveling the parking lot on the Leased Premises, new access roads and new sidewalks constructed by Tenant, salting and hand shoveling required at entrances to the building, and repairing and maintaining all lighting Tenant erects in the Leased Premises. The County shall be responsible for repairing, maintaining, and for performing snow and ice removal on all remaining access roads and sidewalks, and repairing and maintaining all other lighting and existing Park equipment.
- iii. After the conclusion of each year during the Term, Tenant shall provide Landlord with a maintenance report, in a form reasonably agreed upon by the Parties, for the Building. The report shall include the maintenance records from the prior year. Maintenance records include, but are not limited to, fire inspections, HVAC maintenance, elevator maintenance, and generator maintenance.
- iv. Timeliness of Repairs: Tenant shall perform its obligations under Section 18 of this Lease promptly after learning of the need for such repairs, but in any event within thirty (30) days of the occurrence or notice provided by the County. If Tenant fails to make such repairs for which it is obligated within thirty (30) days after County's notice, and such failure constitutes a health or safety hazard to the public, or has the potential to cause further damage to the Leased Premises, then the County shall have the right to make the repair with its own staff or contract with a third party to make the repair, and charge all reasonable costs associated with making the repair to Tenant (including salary and benefits if done with County's own staff).

#### **19. MAINTENANCE RESERVE FUND:**

PEAK shall establish and manage a Maintenance Reserve Fund ("Fund") for maintenance of the Building, which shall total forty thousand dollars (\$40,000.00) which will be fully fundraised by PEAK. As additional consideration, PEAK 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 \$20,000.00 at any time, PEAK shall add to the Fund enough assets to maintain a minimum balance of \$40,000.00. The Failure to maintain a balance of \$20,000.00 shall be grounds for termination of this Agreement by County, provided Tenant fails to cure any such shortage within one hundred and eighty (180) days of receipt of notice from County that the shortage has occurred. The Fund is to be used as follows:

- i. Maintenance, repair and replacement to assure upkeep of the Building and the improvements to be constructed on the Building;
- ii. Additional improvements or non-routine maintenance to the Building;

- iii. Maintenance, repair, and replacement of the Leased Premises.

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 from Tenant and the County only in the event the balance in the Fund falls below twenty thousand dollars (\$20,000.00). Such approval shall not be unreasonably withheld, conditioned or delayed by either party. Notwithstanding the foregoing, Tenant shall have the right to make withdrawals from the Fund without County's approval, but upon notice to County, for up to ten thousand dollars (\$10,000) for any item described in this Section, provided that the Fund does not fall below twenty thousand dollars (\$20,000.00) 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). Tenant shall provide County with annual reports relating to the Fund in general, including an annual report prepared by independent auditors. Tenant shall also provide County with an annual report regarding Fund activities, including funds received, monies spent, and any long-term obligations. Upon expiration or termination of this Lease, the Fund shall be immediately released to the County and shall be the property of County to be used for maintenance of the Building.

## **20. IMPROVEMENTS:**

- i. Tenant's future plans to renovate, improve and alter any structure on the Leased Premises hereunder are contingent upon Tenant obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Leased Premises, as further described in the Development Agreement. All costs associated with the construction and renovation of the Leased Premises, including disconnection and/or hookup of Utilities in conjunction with such construction or renovation, shall be the responsibility of the Tenant. The County will not incur any costs, pay any expenses or issue any debt associated with the Leased Premises, improvements and renovations to the Leased Premises or equipment used on the Leased Premises during the Term.
- ii. Construction Escrow: Tenant agrees to provide evidence reasonably satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Leased Premises are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations. Tenant shall deliver to County evidence reasonably acceptable to the County that the total amount of such funds are immediately available and dedicated for the above purpose prior to any construction activities taking place on the Leased Premises. The County agrees that a letter from the Tenant's banking institution stating that Tenant has such funds available for the purposes set forth above shall satisfy the requirements set forth herein.
- iii. County Approval: Prior to the start of any construction or renovation of the Leased Premises, including any subsequent alterations or renovations, Tenant shall send all plans and associated documents to the County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative

Services, together with the name of Tenant's proposed contractor(s), for review and approval, which approval shall not be unreasonably withheld or delayed. Submittals shall include, but not limited to, shop drawings containing product information and materials and products. Contractors must obtain a Right of Entry permit from County prior to commencing work, such permit shall not be unreasonably withheld or delayed.. Tenant shall reimburse County for the actual cost of a Milwaukee County Project Manager (including salary and benefits) during the construction phases of the improvements, including any subsequent construction, alterations or improvements, which reimbursement amount shall not exceed Five Thousand Dollars (\$5,000.00) in the aggregate. Conditions for approval shall include, but not be limited to provision that Tenant shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.

- iv. Construction Standards: All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Leased Premises. Tenant shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party for work or materials which may arise in connection with any alteration, addition or improvement to the Leased Premises undertaken by or on behalf of Tenant. In no event shall Tenant make any alterations or additions to the Leased Premises without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event of an emergency, such consent shall not be required so long as notice shall be given as soon as reasonably possible thereafter. Routine instances of maintenance, painting, repair and like-kind replacement of materials needing repair or replacement do not constitute alterations, improvement, or additions requiring such approval, providing they do not individually exceed Fifty Thousand Dollars (\$50,000.00) in cost per year.
- v. Builder's Risk: Tenant or its general contractor shall provide Builder's 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. Coverage is during construction period and is intended to terminate when the work has been completed and the Leased Premises are ready for occupancy. Prior to construction, Tenant shall supply County with written evidence of Builder's Risk insurance. Tenant shall not commence construction activities without written approval from the Parks Director and his/her designee, which approval shall not be unreasonably withheld, conditioned or delayed. The County shall provide a written response to the Tenant within ten (10) days of receiving written evidence of the Tenant's Builder's Risk insurance documents.
- vi. Licensed Tradespersons: Tenant agrees that all renovations and improvements shall be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. Tenant shall require its contractors and subcontractors

to obtain and maintain adequate insurance coverages with liability limits not less than that required of Tenant by County. Tenant shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County.

- vii. Construction Documents: Tenant agrees that within sixty (60) days after the conclusion of each construction project, renovation or improvement project, Tenant shall provide to County a complete set of construction documents to be included at 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 Milwaukee final occupancy permits, if applicable.

## **21. PARKS LOGO:**

Tenant is responsible for all marketing and advertising to promote its activities. Tenant may acknowledge the Parks Department and may include the official Proudly Supporting Parks logo, which logo shall be approved by Parks Department, in promotional materials, whether print or digital, directly related to its activities covered under this Agreement.

## **22. PERMITS, LICENSES, AND OTHER COSTS:**

Tenant shall procure, maintain, and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.

## **23. COMPLIANCE WITH LAWS – NONDISCRIMINATION, AFFIRMATIVE ACTION AND TARGETED BUSINESS ENTERPRISE GOALS:**

- i. Generally: There shall be no discrimination against or segregation of any person, or group of persons, on account of gender, age, race, color, religion, creed, national origin or ancestry in the use of the Leased Premises, and Tenant (or any person claiming under or through Tenant) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the Leased Premises.
- ii. Non-Discrimination: Tenant certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. Tenant will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause.
- iii. Affirmative Action Program: Tenant certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. Tenant also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.

- iv. Affirmative Action Plan: Tenant certifies that if it has fifty (50) or more employees (excluding any and all seasonal employees), it has filed or will develop and submit a written Affirmative Action Plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs, the State of Wisconsin, or the Milwaukee County Comptroller's Audit Services Division, 633 W. Wisconsin Ave, 9<sup>th</sup> Floor, Milwaukee, WI, 53203.
- v. Non-Segregated Facilities: Tenant certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.
- vi. Reporting Requirement: When applicable, Tenant certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
- vii. Compliance: Tenant certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other such notification of noncompliance with EEO regulations.
- viii. Targeted Business Enterprise Goals: Tenant shall use reasonable efforts to cause its contractors to establish Targeted Business Enterprise ("TE") participation goals, consistent with Milwaukee County TE goals of twenty-five percent (25%) for construction and seventeen percent (17%) for goods and services, purchases and subcontracts, and to use good faith efforts to achieve those goals. The Milwaukee County Community Business Development Partners shall assist Tenant in soliciting potential TE vendors for the improvements and monitor such goal attainment.

**24. COMPLIANCE WITH LAWS – ADA:**

Tenant shall, at Tenant's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Tenant's use of the Leased Premises pertaining to: (a) accessibility, ensuring that the Leased Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the Milwaukee County Office of Persons with Disabilities; and (b) Tenant's activities on the Leased Premises.

**25. INDEMNIFICATION:**

To the fullest extent permitted by law, Tenant shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Leased Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Tenant, its agents, or employees; provided, however, Tenant shall have no obligation to indemnify the County for any liability, claims, damage, injury, loss or expenses relating to or arising from the negligence or willful misconduct of the County or its employees, agents or contractors. Tenant shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all

charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action.

**26. ENVIRONMENTAL INDEMNIFICATION:**

Tenant shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Leased Premises or surrounding areas by Tenant, or its agents. Tenant hereby agrees to indemnify, defend and hold County harmless from and against any and all liabilities, costs, expenses (including attorney fees), damages (including but not limited to clean-up, remediation or detoxification of) or any other losses caused by the introduction of any such Hazardous Materials into or onto the Leased Premises by Tenant or its agents.

- i. "Hazardous Materials" as the term is used herein shall mean any substance: (i) the presence of which requires investigation or remediation under any federal, state or local statute, regulation, ordinance, order, action, or policy; or (ii) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any federal, state, or local statute, regulation, ordinance, or amendments thereto, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 et seq.), or the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.); or (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of Wisconsin, or any political subdivision thereof; or (iv) the presence of which on lands within the Leased Premises causes or threatens to cause a nuisance upon the Leased Premises or surrounding area or poses or threatens to pose a hazard to the Leased Premises or surrounding areas or to the health or safety of persons on or about the Leased Premises; or (v) which contains gasoline, diesel fuel, or other petroleum hydrocarbons; or (vi) which contains polychlorinated biphenyls (PCBs), asbestos, or urea formaldehyde foam insulation; or (vii) which causes notification of release and required actions in accordance with Chapter 292 Wisconsin Statutes.

**27. INSURANCE:**

Tenant, and every contractor and all parties furnishing services or product to Milwaukee County (County) or any of its subsidiary companies must provide County with evidence of the following minimum insurance requirements. In no way do these minimum requirements limit the liability assumed elsewhere in the contract. All parties shall, at their sole expense, maintain the following insurance:

- i. Commercial General Liability Insurance including contractual coverage:  
The limits of this insurance for bodily injury and property damage  
Combined shall be at least:

Each Occurrence Limit	\$1,000,000
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General Aggregate Limit	\$2,000,000
Products-Completed Operations Limit	\$2,000,000
Personal and Advertising injury Limit	\$1,000,000

- ii. Business Automobile Liability Insurance:  
Should the performance of this Agreement involve the use of automobiles, Tenant shall provide comprehensive automobile insurance covering the ownership, operation and maintenance of all owned, non-owned and hired motor vehicles. Tenant shall maintain limits of at least \$1,000,000 per accident for bodily injury and property damage combined.
- iii. Workers' Compensation Insurance:  
Such insurance shall provide coverage in amounts not less than the statutory requirements in the state where the work is performed, even if such coverages are elective in that state.
- iv. Employers Liability Insurance:  
Such insurance shall provide limits of not less than \$500,000 policy limit.
- v. Excess/Umbrella Liability Insurance:  
Such insurance shall provide additional limits of not less than \$3,000,000 per occurrence in excess of the limits stated in (1.), (2.), and (4.) above.

Additional Requirements:

- vi. Tenant shall require the same minimum insurance requirements, as listed above, of all its contractors, and subcontractors, and these contractors, and subcontractors shall also comply with the additional requirements listed below, unless the written consent of the County is obtained for any lower insurance coverages for Tenant's contractors and subcontractors.
- vii. The insurance specified in (1), (2), and (5) above shall: (a) name County, including its directors, officers, and employees and agents as additional insureds by endorsement to the policies, and, (b) provide that such insurance is primary coverage with respect to all insureds and additional insureds.
- viii. The above insurance coverages may be obtained through any combination of primary and excess or umbrella liability insurance. County may require higher limits or other types of insurance coverage(s) as necessary and appropriate under the applicable purchase order. Except where prohibited by law, all insurance policies shall contain provisions that the insurance companies waive the rights of recovery or subrogation, by endorsement to the insurance policies, against County, its subsidiaries, its agents, servants, invitees, employees, co-lessees, co-venturers, affiliated companies, contractors, subcontractors, and their insurers.

- ix. Tenant shall provide certificates evidencing the coverages, limits and provisions specified above on or before the execution of the Agreement and thereafter upon the renewal of any of the policies. Tenant shall require all insurers to provide County with a thirty (30) day advanced written notice of any cancellation, nonrenewal or material change in any of the policies maintained in accordance with this Agreement. Coverage must be placed with carriers with an A. M. Best rating of A- or better.

**28. SITE RESTORATION:**

Tenant shall be responsible for any actual documented physical damage to the Leased Premises caused by Tenant, its employees, agents, representatives, and guests, including any necessary site restoration. Within thirty (30) days of the discovery of any such damage (or a reasonable longer period if such damage cannot be repaired and restored within such initial thirty (30) day period), the Leased Premises shall be restored to the satisfaction of the Parks Director or his/her designee. If damage is not restored by the Tenant after thirty (30) days of the discovery (or such longer period as set forth above) and the County elects to restore such damage, then the County shall have the right to restore the damage with its own staff or contract with a private company to restore the damage, and have all reasonable costs directly associated with performing the restoration work paid from the Fund (including salary and benefits if done with the County's own staff); provided, however, notwithstanding anything to the contrary, if the County elects to restore such damage, Tenant's liability for the County's costs directly associated with performing such restoration work shall be limited to the amounts remaining in the Fund at the time such work is completed.

**29. SECURITY:**

Unarmed security personnel are permitted within the Leased Premises and Building for the purposes of checking identification and general observation. Tenant shall be solely responsible for and assume all risks related to Tenant's use of security personnel.

**30. INSPECTION BY COUNTY:**

County shall at all reasonable times, upon one (1) business day's prior written notice, have the right to enter the Leased Premises and Building to inspect the condition thereof, and to improve or repair the Leased Premises, and to make such repairs, alterations, improvements or additions as County may deem necessary or desirable; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with the conduct of Tenant's use of the Leased Premises.

**31. COUNTY RIGHTS OF ACCESS AND AUDIT:**

The Contractor, Lessee, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Lessee, or other party to the contract, related to the terms and performance of the Contract for a period of up to three years following the date of last payment, the end date of this contract, or activity under

this contract, whichever is later. Any subcontractors or other parties performing work on this Contract will be bound by the same terms and responsibilities as the Contractor. All subcontracts or other agreements for work performed on this Contract will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. The Contractor, Lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that the Contractor, lessee, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

**32. ASSIGNMENT AND SUBLETTING:**

The Lease will not be assignable by either Tenant or County, in whole or in part, without the written consent of the other party; provided, however, that such consent will not be unreasonably withheld. An approved assignment shall only be to an entity performing a similar recreational and/or educational mission to Tenant and that any use of the Building and leased area will be consistent with City of Milwaukee “PK” Parks zoning.

**33. RELATIONSHIP OF PARTIES:**

Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, it being understood and agreed that no provision contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship other than the relationship of Landlord and Tenant.

**34. TERMINATION BY TENANT:**

Except for Tenant’s right to terminate the Lease as of the expiration of the then-current Term, the Lease may be terminated by Tenant only for cause. Tenant may terminate for cause upon ninety (90) days’ written notice. Prior to termination for cause, Landlord will be afforded such ninety (90) days in which to cure the alleged breach after having been notified of such breach; provided, however, that if Landlord is diligently pursuing a cure, Landlord will have such additional time as is reasonably necessary to effect a cure.

**35. OWNERSHIP OF IMPROVEMENTS:**

Upon the completion of any alterations, expansions, additions to the improvements on the Leased Premises, the County will own such improvements. Upon the expiration or termination of this Lease, Tenant shall surrender the Leased Premises to Landlord with the improvements in their then-existing condition.

**36. DEFAULTS & REMEDIES:**

- i. Tenant’s Defaults. Tenant agrees that any one or more of the following events shall be considered events of default as said term is used herein:

- i. Tenant shall fail to contest the validity of any lien or claimed lien and give security to County to insure payment thereof, or having commenced to contest the same and having given such security, shall fail to prosecute such contest with diligence, or shall fail to have the same released and satisfy any judgment rendered thereon, and such default continues for ninety (90) days after notice thereof to Tenant; or
  - ii. Tenant's failure to perform any other covenant or condition of this Agreement within ninety (90) days after notice and demand, unless the failure is of such a character as to require more than ninety (90) days to cure, in which event Tenant's failure to proceed diligently to cure such failure shall constitute an event of default.
- ii. County's Remedies. If a Default occurs, County shall have the rights and remedies hereinafter set forth, which shall be distinct, separate and cumulative and shall not operate to exclude or deprive County of any other right or remedy allowed it by law:
  - i. County may terminate this Agreement by giving to Tenant notice of County's election to do so, in which event the Term of this Agreement shall end, and all right, title and interest of Tenant hereunder shall expire, on the date stated in such notice;
  - ii. County may enforce the provisions of this Agreement and may enforce and protect the rights of County hereunder by a suit or suits in equity or at law for the specific performance of any covenant or agreement contained herein, or for the enforcement of any other appropriate legal or equitable remedy, including recovery of all moneys due or to become due from Tenant under any of the provisions of this Agreement.

**37. CASUALTY:**

If the Leased Premises or the Building is damaged or destroyed by fire or other casualty covered by insurance, then this Lease shall continue in full force and effect and Tenant may proceed to repair or restore the Leased Premises or the building(s) with the insurance proceeds subject to the requirements of improvements under Section 21 of this Lease.

**38. AUTHORITY:**

Each individual executing this Agreement on behalf of Tenant and Landlord represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said entity, as the case may be, and that this Agreement is binding upon said entity in accordance with its terms without the joinder or approval of any other person.

**39. NOTICES:**

All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the party addressed as follows:

To Tenant:

Kellogg PEAK Initiative, LLC  
2480 W. Cherry Street  
Milwaukee, WI 53205  
Attn: Dan Schiller, Executive Director

To County:

Milwaukee County Department of Parks  
Parks Director  
9480 W. Watertown Plank Rd.  
Wauwatosa, WI 53226

Either party may designate a new address for purposes of this Agreement by written notice to the other party.

**40. RESTATEMENT.** Landlord and Tenant acknowledge and agree this Lease restates and replaces the Existing Lease. Upon the execution and delivery of this Lease by both Landlord and Tenant, the Existing Lease and the terms and provisions set forth therein shall terminate and this Lease shall be the operative lease agreement between Landlord and Tenant relating to the Leased Premises.

[Signatures on Following Pages.]

**IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:**

PEAK:

KELLOGG PEAK INITIATIVE, LLC

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Milwaukee County

By: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

[Signature Page 1 of 2]

*Approved with regards to County Ordinance Chapter 42:*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Community Business Development Partners

*Reviewed by:*

*Approved for execution:*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Risk Management

By: \_\_\_\_\_ Date: \_\_\_\_\_

Corporation Counsel

*Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e):*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Comptroller

*Approved:*

By: \_\_\_\_\_ Date: \_\_\_\_\_

County Executive

*Approved as compliant under sec. 59.42(2)(b)5, Stats.:*

By: \_\_\_\_\_ Date: \_\_\_\_\_

Corporation Counsel

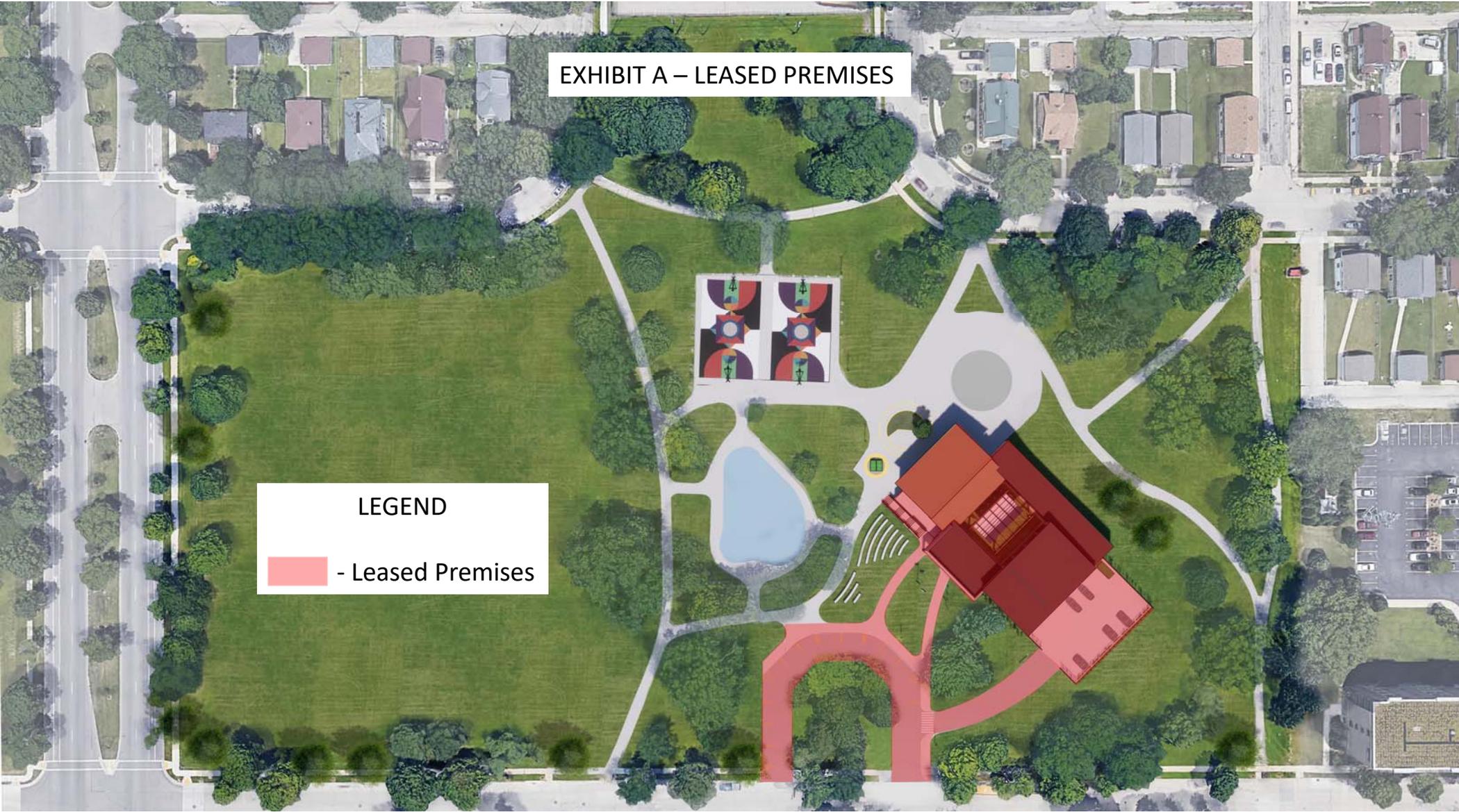
[Signature Page 2 of 2]

**Exhibit A**  
**Leased Premises**

EXHIBIT A – LEASED PREMISES

LEGEND

 - Leased Premises



**Exhibit B**  
**Trash and Litter Maintenance Location**

**EXHIBIT B – TRASH AND  
LITTER MAINTENANCE AREA**

**LEGEND**



- Litter  
maintenance area



**Exhibit C**  
**Parking Area**

EXHIBIT C – PARKING AREA

LEGEND

 - Parking area

