

## **FIRST AMENDMENT TO LEASE**

This First Amendment to Lease (this "Amendment") is dated as of the 28 day of April, 2010, by and between MILWAUKEE COUNTY DEPARTMENT OF PARKS, RECREATION AND CULTURE, ("Lessor"), and MARY-BART, L.L.C., ("Lessee"). Together these named entities constitute the Parties ("Parties") to this Agreement.

### **WITNESSETH:**

**WHEREAS**, Lessor and Lessee are Parties to that certain Lease dated APRIL 28, 1995 (the "Lease"), pursuant to which Lessee leases from Lessor certain portions of the real property constituting the pavilion building (the "Building") located at and commonly known as Lake Park, situated in the City of Milwaukee, Milwaukee County, Wisconsin, as more particularly described in the Lease (the "Demised Premises"); and

**WHEREAS**, it is the desire of Lessor and Lessee to amend the Lease as more particularly set forth herein.

**NOW THEREFORE**, in consideration of the terms and provisions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties hereto, it is agreed as follows:

### **PROVISIONS:**

#### **1. AMENDMENTS:**

(a) Extended Term(s). Section 3 of the Lease is amended by inserting the following sentence after the first sentence of the Section:

"In addition to the Extended Terms referenced in the immediately preceding sentence, Lessee shall have the additional option to extend the term of this Lease for the Premises for one (1) ten (10) year extended term beginning September 1, 2015 and expiring December 31, 2025."

(b) Rent.

1. Rental Payments. Section 4(a) is amended by deleting "\$33,500" under "ANNUAL RENT", across from "\$0 - \$1,499,999", and replacing it with "\$45,000 plus one percent (1%) of gross sales".

The Section is further amended by deleting "\$33,500" under "ANNUAL RENT", across from "\$1,500,000 +", and replacing it with "\$45,000 plus one percent (1%) of gross sales".

The third paragraph in this Section is amended by deleting "\$33,500", and replacing it with "\$45,000 plus one percent (1%) of gross sales".

In addition to the amendments above, the last paragraph of this Section is amended by deleting the last two (2) sentences and inserting the following sentence, "The Lake Park Pavilion Trust Fund will be used to enhance the exterior and interior

(including, but not limited to, repair and refurbishment of flooring, fixtures, mechanical systems including exhaust systems, plumbing, electrical) of the Building and any other Lake Park improvements, repairs and upgrades, as presented by the Lessor and reviewed by the Lessee.".

2. Rental Adjustments. Section 4(b) of the Lease is hereby deleted in its entirety.

(c) Use of First Floor of Building. The first sentence of the third paragraph in Section 5(b) is amended by striking the words from the sentence:

"Lessor" and replacing it with "Lessee".

The first occurrence of the word "Lessee" and replacing it with "Lessor".

(d) Indemnity and Subrogation.

1. The title of Section 9 is amended by deleting the words "and Subrogation".

2. Section 9(b) of the Lease is further amended by deleting the last two (2) sentences from the Section.

(e) Insurance.

1. Section 10 is amended by deleting "\$500,000" under "Minimum Limits", across from "(Incl. All autos owned, non-owned and/", and replacing it with "1,000,000".

2. Section 10 of the Lease is further amended by adding the following sentence to the end of the Section:

"The insurance requirements contained within this Lease are subject to periodic review and adjustment by the County Risk Manager."

(f) Alterations and Improvements.

1. Section 11 is amended by deleting from the first sentence the phrase, "subsequent to the achievement of "Financing Goal" (as hereinafter defined) and satisfaction or waiver of contingency set forth in Paragraph 17(d) hereof,"

2. Section 11 is further amended by adding the following phrase between the phrases "shall be made in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Premises, including, but not limited to," and "Lessor's Minority/Women Business Enterprise Program:"

"Wisconsin's Prevailing Wage Law as required under Wis. Stat. §§ 66.0903, 66.0904, and 103.49,"

3. Section 11 of the Lease is further amended by deleting the phrase, "Minority/Women Business Enterprise", and replacing it with "Disadvantaged Business Enterprise"; and deleting the phrase "Disadvantaged Business Development Office", replacing it with "Community Business Development Partners".

(g) Trade Fixtures of Lessee. Section 12 is amended by deleting from the first sentence, "At any time subsequent to the satisfaction or waiver of the Contingency set forth in Paragraph 17 herein,".

(h) Contingency. Section 17(d) of the Lease is hereby deleted in its entirety.

(i) Disadvantaged Business Enterprise (MBE/WBE) Utilization. Section 24(c) of the Lease shall be deleted in its entirety and replaced by the following:

"(c) Disadvantaged Business Enterprise (DBE) Utilization. Lessee shall use reasonable efforts to cause its contractors to establish 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."

(j) Records and Audits. Section 25(j) of the Lease shall be deleted in its entirety and replaced by the following:

"(j) Records and Audits. Pursuant to Milwaukee County ordinance section 56.30(6)(e), Lessee shall allow Milwaukee County, the Milwaukee County Department of Audit, or any other party the Milwaukee 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 Lessee, including not limited to, 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 Lease, all at no cost to Milwaukee County. Any subcontracting by Lessee in performing the duties described under this Lease shall subject the subcontractor and/or associates to the same audit terms and conditions as Lessee. Lessee (or any subcontractor) shall maintain and make available to Milwaukee County the aforementioned audit information for no less than three years after the conclusion of this Lease."

2. **ADDITIONS TO LEASE:** The Lease is amended to add the following Paragraphs:

(a) "9(c) Environmental Indemnification. Lessee 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 Premises or surrounding areas by Lessee, its contractors, subcontractors, or agents. Lessee 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 its introduction of any such Hazardous Materials into or onto the Premises and any Hazardous Materials brought onto or introduced into the Premises as described below. Notwithstanding the foregoing, Lessee shall not be liable for, and shall have no obligations for (including but not limited to the indemnification, repair, clean-up, remediation or detoxification of) Hazardous Materials

located in and on the Premises whose presence pre-exists the commencement of Lessee's activities on the Premises, as well as any Hazardous Materials existing on or brought into the Premises by the County or any third parties, other than Lessee's contractors, subcontractors, or agents. County hereby agrees to indemnify, defend, and hold Lessee 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 Hazardous Materials located in and on the Premises whose presence pre-exists the commencement of Lessee's activities on the Premises, as well as any Hazardous Materials brought into the Premises by the County or any third parties.

"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.

(b) "25(k) Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between the County or its successors or assigns and Lessee or its successors or assigns. The Agreement does not create the relationship of principal and agent or of partnership, of joint venture, or of any association between County and Lessee."

3. **CONFLICT:** In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall govern, control and prevail.

**IN WITNESS WHEREOF, the Parties have executed this Amendment as of the date first set forth above.**



**Mary-Bart, LLC**

by  Date \_\_\_\_\_  
Joseph Bartolotta

**Milwaukee County Dept of Parks, Recreation & Culture**

by  Date 4/26/10  
Sue Black, Parks Director

**Approved as to form and independent status:**

by  Date 4/23/10 by  Date 4/26/10  
Corporation Counsel Risk Management