

## LEASE AGREEMENT

This Lease Agreement (the "Lease") is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, (the "Effective Date") by and between the MILWAUKEE COUNTY, a municipal corporation in the State of Wisconsin ("County") and the MILWAUKEE DOMES ALLIANCE, INC., a Wisconsin nonstock corporation ("Tenant"). Referenced together, the County and Tenant are the "Parties" to this Lease.

### *Recitals*

**WHEREAS**, Mitchell Park, located at 524 W. Layton Boulevard, Milwaukee, Wisconsin 53215 (the "Park") was established as a Milwaukee County park in 1890. In 1965 a horticultural conservatory consisting of beehive-shaped conoidal glass domes opened to the public, replacing a prior greenhouse structure constructed in 1898. The conservatory, as subsequently expanded, is known as the Mitchell Park Horticultural Conservatory, or the "Domes".

**WHEREAS**, the County has operated and managed the Domes as a living plant museum since its 1965 opening, including caring for the over 1,800 plant and animal species housed in the Domes (such plants and animals as in existence in the Domes as of the date of this Lease, the "Plant and Animal Collection").

**WHEREAS**, Tenant, formerly known as Friends of the Domes, Inc., is a 501(c)(3) not-for-profit privately-funded organization established in 1989, whose mission is to provide inspirational experiences at the Domes that restore connections to nature and community (the "Mission"). Tenant has provided financial and programmatic support to the Domes since its inception and as of the date of this Lease operates at the Domes pursuant to that certain Agreement between Tenant and the County dated as of December 13, 2019 (the "Original Operation Agreement").

**WHEREAS**, the Domes have experienced structural deterioration that has threatened the County's ability to safely operate the Domes, and the County is unable to fully cover the cost to repair and reconstruct the Domes to ensure their continued operation into the future.

**WHEREAS**, Tenant has worked closely with the County to create a plan for the historic restoration and rehabilitation of the Domes and surrounding facilities (the "Project") to be implemented and carried out by Tenant (the "Plan"), a copy of which is attached as Exhibit A to that certain Development Agreement between the County and Tenant dated [\_\_\_\_\_] (the "Development Agreement"). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Development Agreement.

**WHEREAS**, as part of the Plan, the County has agreed to lease the Domes, the parking lot serving the Domes and certain surrounding area all as more fully described in Exhibit A attached hereto (the "Leased Premises") and the Plant and Animal Collection to Tenant and Tenant has agreed to lease the same from the County, pursuant to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual promises and other good and valuable consideration set forth herein, the Parties agree as follows:

1. **Leased Premises.** The County hereby leases to Tenant, and Tenant hereby leases from the County, the Leased Premises. The County further grants to Tenant during the Term of this Lease the non-exclusive use for itself and its members, employees, agents and invitees to use the roads, driveways and walkways of the Park necessary to access the Leased Premises. The term “Improvements” as used herein shall include buildings (including the Domes), roadways, driveways, parking areas, landscaping, fences, sidewalks, paved areas, utility distribution facilities, signs, or any other enhancements or improvements in, under, or upon the Leased Premises, whether now existing or hereafter added. Improvements shall not include Tenant’s equipment or trade fixtures or removable personal property.

2. **Plant and Animal Collection.** The County hereby further leases to Tenant the Plant and Animal Collection, as such Plant and Animal Collection may be supplemented, changed, and managed by Tenant pursuant to the terms of the Development Agreement and the Collection Maintenance Plan(s) now in effect or to be entered into between the County and Tenant. Tenant shall, at all times, comply with the terms of the Collection Maintenance Plan.

3. **Term.** This Lease shall commence on the Effective Date and continue for a period of ninety-nine years (“Term”) until [ ] (“Expiration Date”), unless sooner terminated as provided herein.

4. **Rent and Additional Rent.**

a. Annual Rent. Tenant shall pay County \$1.00 per year in rent (“Rent”). If Tenant chooses to pay all \$99.00 in Rent for the Term of the Lease at the time the Lease is signed, the County shall execute an acknowledgement that that rent for the full Term of the Lease has been paid in full.

b. Interest. Unless waived by County, Tenant shall be responsible for payment of interest on amounts not remitted in accordance with the terms of this Lease, including all Rent and other amounts payable to County pursuant to the terms hereof (“Additional Rent”). The rate of interest shall be the statutory rate in effect for delinquent County Premises taxes (presently 1% per month or fraction of a month) as described in Wis. Stats. §74.47(1) (the “Delinquency Rate”). Except as otherwise set forth herein, the obligation for payment and calculation thereof shall commence upon the day following the date such Rent or Additional Rent are due until paid in full. Imposition of interest shall not constitute a waiver of any other remedies available to County due to Tenant’s failure to timely pay Rent or Additional Rent. Any amounts disputed by Tenant in good faith and in writing to County shall not be subject to the interest charges set forth in this Section 4(b) so long as County and Tenant are engaged in active negotiations regarding resolution of any such dispute.

c. Returned Payments. If Tenant's payment of Rent or Additional Rent due under this Lease is returned to County as unpaid for any reason, the payment shall be considered not to have been made and shall be delinquent. County shall notify Tenant in writing of any returned payment. In addition to interest at the Delinquency Rate, County may charge Tenant a returned payment fee of \$50.00 per returned payment, which Tenant agrees is a reasonable fee for the additional administrative time and expense incurred by County in having to deal with the returned payment. Interest at the Delinquency Rate shall continue to accrue until the returned payment fee is paid, the payment can be deposited by the County, and County receives all funds due.

d. Remedies Nonexclusive. The remedies provided by Section 4(d) are in addition to all other rights and remedies that County may have for a breach or violation of this Lease. Nothing in Section 4(d) shall be deemed to be a waiver by County of any breach or violation, nor shall it be deemed to estop County from terminating this Lease (after applicable notice and cure periods) or from asserting any other of its other rights or remedies under this Lease, or at law or in equity.

e. Constant Dollars. Other than Rent, all amounts under this Lease, including amounts required to be held in the Fund (as herein defined) shall be calculated in "Constant Dollars". Constant Dollars shall mean the present value of the U.S. Dollar. An adjustment shall occur on January 1 of the fifth (5th) full calendar year following the date of this Lease and upon the expiration of each five (5)-year period thereafter. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. For purposes of this Section, the "Base Index Number" shall be the level of the Index for the year in which the Parties execute the Lease; the "Current Index Number" shall be the level of the Index for the year preceding the adjustment year. As used in this Section, "Index" means the Consumer Price Index for All Urban Consumers (CPI-U) (U.S. City Average) of the United States Department of Labor's Bureau of Labor statistics in effect and generally published at the time the computation is to be made (1982=100). If the aforesaid price indices are no longer published, then another price index, generally recognized as authoritative, shall be substituted by mutual agreement between the County and Tenant.

5. **Permitted Use.** Tenant shall have the exclusive right to use the Leased Premises. Tenant may only use the Leased Premises for the following purposes: (i) displaying, maintaining and caring for the Plant and Animal Collection, as the same may be modified, replaced, managed, and maintained pursuant to the Collection Maintenance Plan in accordance with the Development Agreement and the Collection Maintenance Plan(s); (ii) providing educational, environmental, recreational, scientific, research, and community activities that align with Tenant's Mission; (iii) hosting private and public revenue generating events ("Special Events"); (iv) operation of a gift shop, café, and similar retail activities ancillary to the uses described in this Section 5, and (iv) any other uses consistent with Tenant's past operation of the Leased Premises under the Original Operation Agreement or otherwise consistent with activities appropriate and regularly permissible within Milwaukee County parks (collectively, the "Permitted Use"). Tenant shall use and occupy the Leased Premises in a safe and proper manner

and will not commit waste or suffer or permit waste to be committed in, on or about the Leased Premises. This Lease shall not be construed in any manner to grant or confer upon Tenant or those claiming under it any exclusive right to access or use any portion of the Park other than the Leased Premises.

6. **Condition of Leased Premises.** County makes no warranties or representations regarding the condition of the Leased Premises including, without limitation, the environmental condition of the Leased Premises or the suitability of the Leased Premises for Tenant's intended uses. Tenant has had the opportunity to inspect the physical and legal condition of the Leased Premises and accepts the Leased Premises in "as is, where as, and with all faults" condition. Subject to the terms of this Lease, Tenant assumes all risks of the physical and legal condition of the Leased Premises, known and unknown. County shall have no liability to Tenant for any damage or injury caused by the condition of the Leased Premises existing as of the Effective Date. Unless otherwise stated in this Lease or agreed in writing by both parties, County shall have no responsibility to bring the Leased Premises into compliance with any laws including, without limitation, any building or occupancy codes.

7. **Utilities.** Tenant shall obtain all necessary or desired utility services in its name and shall pay any and all utility costs incurred serving the Leased Premises. "Utilities" may include sewer, water, gas, telephone, internet, electric, steam, natural gas, and chilled water. Any costs related to the installation, service, and maintenance of Utilities, including, but not limited to, the installation of any electrical outlet(s) necessary for Tenant's operations, shall be the sole responsibility of Tenant. If Tenant desires to install utility lines on or under the Leased Premises as part of the Project, Tenant shall obtain County's written approval the location proposed for the installation of such lines, provided that no separate approval shall be required if the same are part of the Plans and Specifications approved by the County in accordance with the terms of the Development Agreement. Except as approved in connection with the Plans and Specifications approved pursuant to the Development Agreement, County will not grant approval for the installation of lines that adversely impact existing lines and may withhold approval if any proposed installation will otherwise adversely impact other services or use of County property not within the Leased Premises. Tenant shall maintain and repair at its sole expense all existing and newly installed utility lines located on or solely serving the Leased Premises.

## 8. **Taxes and Assessments**

a. **Tenant's Obligation.** Tenant shall pay, in addition to all other sums required to be paid by it under the provisions of this Lease, all taxes, assessments and levies, if any, whether general or special, ordinary or extraordinary, of every nature or kind whatsoever, including all services to the Leased Premises which may be taxed, charged, assessed, levied or imposed at any time, or from time to time, during the term of this Lease, upon or against this Lease, the Leased Premises, the Plant and Animal Collection, or the occupancy, use or possession of the Leased Premises, or any estate, right, title or interest of the County and of the Tenant, or of either of them, in or to the Leased Premises and the Plant and Animal Collection, fractional years, if any, to be prorated accordingly. In the event any special assessments for public improvements are levied against the Leased Premises which are normally and usually payable in

installments, Tenant may request the taxing authority to list such assessments on the tax rolls in installments. Tenant shall be responsible only for those installments accruing during the term of this Lease, fractional years, if any, to be prorated accordingly.

b. Payment Timing. Except as permitted by subsection (c) hereof, the taxes, assessments and other impositions above provided to be paid by Tenant shall be paid, before any delinquency occurs therein or in any part or installment thereof, in the name of the owner of the fee, and certificates of payment shall be delivered promptly to the County.

c. Right to Contest. Tenant shall have the right to contest the legality or validity of any of the taxes, assessments or other impositions herein provided to be paid by it, but no such contest shall be carried on or maintained by it after the time limited for the payment of any such taxes, assessments or other impositions unless Tenant, at its option, (i) shall pay the amount involved under protest; (ii) shall procure and maintain a stay of all proceedings to enforce any collection of such taxes, assessments or other impositions, together with all penalties, interest, costs and expenses, by a deposit of a sufficient sum of money or by such undertaking as may be required or permitted by law to accomplish such stay; or (iii) shall deposit with the County, as security for the performance by the Tenant of its obligations hereunder with respect to such taxes, assessments or other impositions, such reasonable security as may be demanded by the County to ensure payment of such contested taxes, assessments or other impositions and all penalties, interest, costs and expenses which may accrue during the period of the contest. In the event any such contest is made by Tenant, then within thirty (30) days after any adverse final determination thereof, it shall fully pay and discharge the amount involved in or affected by any such contest, together with all penalties, fines, interest, costs or expenses that may have accrued thereon or that may result from any such action by Tenant, whereupon the County shall return to Tenant all amounts, if any, deposited by Tenant in accordance with the provisions hereof. County and Tenant acknowledge that Tenant intends to apply for a property tax exemption with respect to the Leased Premises. County agrees to cooperate with Tenant's efforts to obtain such property tax exemption, at no additional cost to County, including execution such documents, applications, letters in support, or other reasonable documents Tenant may request in connection therewith.

d. County's Right to Pay. Should the Tenant fail, within the time provided above, to pay any of the taxes or assessments provided to be paid by the Tenant, including all penalties, fines, interest, costs and expenses, or should the Tenant attempt any such contest without complying with the conditions of subsection (c) hereof, the County may, but shall not be obligated to, pay, discharge, compromise or adjust the payment of the obligation involved or any part thereof. In the event of any sale or sales to enforce or collect the same, the County may seek and effect any redemption therefrom as it may deem satisfactory, and the Tenant shall repay to the County the full amount so paid by the County, including any costs, expenses and reasonable attorneys' fees incurred by the County, on or before the first day of the next ensuing calendar month, together with interest thereon at the Delinquency Rate from the date of payment by the County. In any such event, the legality and validity of any such payment by the County, and the

regularity of all proceedings had in respect thereof or toward the enforcement thereof shall be conclusively deemed to exist, for the purpose of this Section.

e. Filings, Statements and Reports. As between the parties hereto, the Tenant alone shall have the duty of attending to the making and filing of any statement or report which may be provided or required by law as a basis of or in connection with the determination, equalization, reduction, payment or abatement of each obligation which is to be borne or paid by the Tenant in accordance with this Section. The County shall not be or become responsible therefor, nor for the contents of any such statement or report. The County shall not be obligated to make, join in or be a party to any protest or objection to any law, order, proceeding or determination, but shall cooperate with the Tenant to the extent required by law, provided the same can be done without any cost, expense or liability to the County.

f. Delivery of Notice. The County shall promptly deliver to the Tenant any and all tax notices or assessments which it may receive relating to the Leased Premises.

## **9. County Park Provisions.**

### **a. Tenant Reporting Requirements.**

- i. Within thirty (30) days of the end of each of Tenant's fiscal years during the Term, Tenant shall provide County with a report regarding Fund (as defined herein) activities, including funds received, monies spent, and any known long-term capital expenditure obligations, but only if such activities or obligations occurred during that same calendar year.
- ii. Within thirty (30) days of the end of each of Tenant's fiscal years during the Term, an operating budget for the then current fiscal year.
- iii. Within sixty (60) days after the conclusion of each Tenant's fiscal year during the Term, Tenant shall submit a written report to the County (each an "Annual Report") based on information then-available to Tenant in the ordinary course of its operations, describing: (a) the number and types of activities provided at the Leased Premises during the prior fiscal year; (b) the number of participants served by each of the activities; and (c) if applicable, the focus and types of any new activities planned for the upcoming fiscal year.
- iv. Every five years during the term of this Lease, Tenant will prepare, and Tenant and County shall submit, a written report to the Milwaukee County Board of Supervisors providing the same information contained in the Annual Reports but over the prior

five-year period. This process will both inform the County Board of the public benefits of Tenant's activities in the Park and provide the opportunity for public comment.

b. Special Events. Tenant may from time to time hold Special Events in the Park, outside the Leased Premises. Educational programs and events conducted by Tenant in furtherance of its Mission, including programs that activate the Park for the benefit of the County and the public, shall not require payment of any permit fee to the County, provided such use does not conflict with a prior reservation of the same space by a third party. Tenant shall not be required to obtain a Special Event Permit for such uses unless otherwise required by law, and any required permit shall be issued at no charge by the County. For other Special Events not covered by the foregoing exemption, Tenant shall obtain the written permission of the County and any required Special Event Permit and may be required to pay the standard County fee in effect at the time of such event. Tenant shall be fully responsible for cleaning any area outside the Leased Premises after the conclusion of any Special Event and returning such area to the condition that existed prior to the Special Event.

c. Admission Fees. Tenant shall have the right to set reasonable admission charges for public access to the Leased Premises and to increase such charges when needed, as determined by Tenant in its reasonable discretion, to compensate for increased operating costs and inflation and otherwise support the debt service payments for the Project Funding Sources, as described and defined in the Development Agreement. The approval of this Lease by the County Board of Supervisors shall relieve Tenant of the annual approval requirements under Milwaukee County General Ordinances ("MCGO") Sections 47.32.

d. Signage. Tenant shall have the right to place external signage on the Leased Premises with the prior written consent of County, not to be unreasonably withheld, conditioned, or delayed. Tenant shall have the right to operate, maintain, repair, and replace the automatic changeable message sign previously donated by the Tenant to the County along Layton Boulevard (the "Layton Sign"). Tenant will work with County regarding the design of the large identifying sign(s) and potential wayfinding signs in the Park in addition to the Layton Sign. Any material modifications, enlargements, or replacements of the Layton Sign beyond its current design and scope shall require the consent of the County, not to be unreasonably withheld, conditioned, or delayed. Tenant shall, at its own cost and expense: (i) be responsible for ensuring that the signage Tenant places on the Leased Premises or in any portion of the Park 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 Tenant places; (iii) insure the signage Tenant places as part of its property and also carry liability and property damage insurance with respect to the signage; (iv) ensure that the signage Tenant places 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 Tenant places.

e. Parks Logo. Tenant is responsible for all marketing and advertising to promote its activities. As is reasonable and appropriate, Tenant shall endeavor to acknowledge the County and include the County's provided logo in promotional materials, whether print or digital, controlled by Tenant and distributed to the general public regarding Tenant's activities and programming in the Leased Premises.

f. 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.

g. Public Access and Use of Leased Premises. Tenant activities in the Park shall at all times be subject to the requirements and restrictions in 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 Tenant 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 Special Events or are otherwise related to Tenant's Permitted Use of the Leased Premises. Likewise, Tenant 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 Tenant's Permitted Uses of the Leased Premises.

h. Hours of Operation. The Parties acknowledge and understand that pursuant to MCGO Section 47.27, 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 Lease is intended to limit or abrogate such authority; provided, however, (i) Tenant, its employees, contractors and service providers shall have access to the Leased Premises at all times and shall have the right to establish the operating hours of the Leased Premises, (ii) the County shall not limit public access to the Park and the Leased Premises during the Tenant's regular operating hours at the Leased Premises; (iii) the County agrees not to limit public access to the Park and Leased Premises outside of such normal operating hours when Tenant notifies County that such after-hours access will be reasonably necessary, (iii) the Tenant shall have the right to host Special Events in the Leased Premises until midnight of any night during the Term; and (iv) in the event the County closes its other parks or facilities due to inclement weather or other force majeure causes, Tenant shall have the right to maintain the Leased Premises and portions of the Park necessary for access thereto open to the public notwithstanding such County closures at no cost to the County. For the avoidance of doubt, Tenant's employees, invitees and attendees of Special Events shall have the right to access the Leased Premises, including via access roads and paths leading to the Leased Premises, regardless of whether the Park is open to the general public at such time.

i. Sound and Amplified Music Restrictions. All amplified music shall comply with all applicable codes, ordinances, statutes, rules, and regulations, including,



but not limited to MCGO §§ 47.022-023 and City of Milwaukee Ordinance § 80-60 as may be amended or replaced from time to time. If in any rolling twelve month period Tenant receives five (5) or more noise violations at the Leased Premises, within thirty (30) days of a written request thereof from County, Tenant and County shall meet, create and adopt a plan to reduce noise violations at the Leased Premises (a “Noise Reduction Plan”) and Tenant shall carry out the Noise Reduction Plans on a going forward basis. Tenant and County shall work in good faith to make adjustments or changes to the Noise Reduction Plan as needed to maintain the efficacy thereof.

j. County Approval of Items to be Sold or Rented. Tenant shall have the exclusive right to operate and manage the sale and rental of merchandise within the Leased Premises, except as otherwise mutually agreed in writing. Tenant may sell or rent any merchandise in connection with its operations without the need for County approval, except that any merchandise bearing the County’s name, logo, or other identifying marks (“Logo Merchandise”) shall be subject to the prior written consent of the County, which consent shall not be unreasonably withheld, conditioned, or delayed. The Parks Director or his/her designee shall have the right to prohibit the sale or rental of any Logo Merchandise that he/she reasonably determines to be inappropriate within the Milwaukee County Parks System.

k. Cleanliness; Garbage. Tenant is responsible for maintaining the Leased Premises in a state of cleanliness and repair to prevent injury to the public. Tenant is also responsible for the collection and disposal 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 mutually agreed upon location.

l. Parking. Tenant and Tenant’s employees, members, visitors, customers, and invitees shall have the non-exclusive right to use the parking spaces located outside of the Leased Premises but within the Park’s parking areas, as further described in Exhibit C (the “Park Parking Areas”), including access to the north parking lot for overflow parking, subject to reasonable security measures such as gating. The County reserves the right to regulate parking within the Park Parking Areas, including the right to preclude Tenant from parking in certain parking spaces or to require Tenant and its employees and invitees to park their vehicles only in areas specifically designated from time to time by the County for that purpose; provided, however, that: (a) any such regulation shall not unreasonably interfere with Tenant’s use of the north parking lot for overflow parking during periods of high attendance; and (b) the County shall not use or allow the use of the Park Parking Areas by third parties for storage of materials, equipment, or uses other than temporary vehicular parking. Tenant shall not permit vehicles to be abandoned or stored in the Park Parking Areas. County shall provide Tenant with keys or other means of access to utilize the Park Parking Areas.

m. Pavilion Studio. The County hereby grants to Tenant a license for the non-exclusive use of the “artist-in-residence” studio in the Park pavilion (the “Pavilion”), as

shown on Exhibit B attached hereto (the “Pavilion Studio”), which license shall continue for so long as Tenant employs an artist-in-residence, unless earlier terminated by County. Tenant may, at its option, relocate the artist-in-residence to Tenant’s office space within the Leased Premises and use the Pavilion Studio for Tenant’s office space, or vice versa, upon written notice to County, provided that such use of the Pavilion Studio is consistent with the purposes of this Lease and does not interfere with other activities in the Pavilion. The County may terminate such license upon closure of the Pavilion for any reason, or if, in the County’s reasonable discretion, it determines that the Pavilion Studio is required for other purposes. In the event of such termination, the County and Tenant shall work together to determine whether an alternate area in the Pavilion or the Park could be provided to Tenant for its artist-in-residence. Tenant shall at all times ensure that the Pavilion Studio is maintained in a clean and orderly state and Tenant’s use thereof shall not interfere with other activities in the Pavilion. Tenant shall have the right to use the event space at the Pavilion for Special Events on the same terms as apply to the remainder of the Park as set forth in Section 9(b) above.

n. Public Purpose. Tenant shall operate the Leased Premises as a facility open to the general public, subject to MDA’s rights set forth in this Section 9 and such other reasonable rules and regulations as MDA may promulgate in its discretion regarding matters such as, but not limited to: admission fees; days and hours of operation; the safety of employees and the general public; the safety, protection and security of the Plant and Animal Collections; the anonymity of donors who desire anonymity (subject to Section 24(v) hereof); and, to the extent permitted by law and Section 24(v) hereof, the confidentiality of employee records and business records.

o. Naming Rights. Tenant shall not grant naming rights to any portion of the Leased Premises without first obtaining County’s written consent, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that if Tenant provides County with written notice identifying the proposed name and the portion of the Leased Premises to which it would apply, and County does not object in writing on reasonable grounds (including, without limitation, that the proposed name would reflect unfavorably on the County, the Park, or the Project) within thirty (30) days after receipt of such notice for portions of the Leased Premises in the interior of the structures on the Leased Premises and consisting of an area less than 1,500 square feet, and within sixty (60) days for all other portions of the Leased Premises, County shall be deemed to have granted its consent. Tenant shall have the right to submit a list of potential names for consideration to the County for future naming right designations and the County shall review the same and provide Tenant with written notice of any names reasonably rejected by the County within sixty (60) days of submission thereof. Thereafter, Tenant may grant naming rights related to any name for which the County did not provide a timely objection.

## 10. **Maintenance and Repairs.**

a. Tenant Obligations. The Tenant, at its sole expense, shall maintain, replace, and keep in good order and repair and in a safe and sanitary condition, the entire Leased Premises, both exterior and interior, all Improvements from time to time located thereon (including, but not limited to, all plumbing systems, electrical systems, heating and air conditioning systems, and machinery and equipment), all the appurtenances thereof and thereto, and all sidewalks, driveways, parking lots, roads and passageways on the Leased Premises. Tenant is further responsible for plowing or shoveling the parking lots, access roads, and sidewalks within the Leased Premises and keeping the same free of ice and snow, and County shall be responsible for plowing or shoveling all parking lots, access roads, and sidewalks located outside the boundaries of the Leased Premises in the normal course of Park operations. Snow and ice removal by each party shall be performed within a reasonable time after accumulation so as to maintain safe pedestrian and vehicular access.

b. County Self-Help. Tenant shall perform its obligations under this Section 10(a) of this Lease promptly after learning of the need for such repairs, but in any event within thirty (30) days of the occurrence. If Tenant fails to make such repairs for which it is obligated within thirty (30) days after County's notice (except when the repairs require more than thirty (30) days for performance and Tenant commences the repair within thirty (30) days and diligently pursues the repair to completion), 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).

c. Emergency Repairs. In the event of an emergency repair situation, Tenant must notify County of the repair or replacement as soon as possible. Following such notice, County may inspect the repair or replacement work and require alterations if the repair or replacement is not reasonably satisfactory to County.

d. Hazard, Potential Hazard, Nuisance, or Annoyance. Any hazardous or potentially hazardous condition, nuisance, or annoyance on or emanating from the Leased Premises, shall be corrected promptly upon Tenant's actual knowledge of the condition, or receipt of oral or written notice from County. If, in County's reasonable discretion, a hazard or potentially hazardous condition presents an unreasonable and imminent risk of bodily injury, County may require Tenant to close its business and bar the public from the Leased Premises until the hazard or potentially hazardous condition has been abated. Closure of the operation under the circumstances of this Section shall not excuse Tenant from paying Fees as required in this Lease. Nothing in this Section shall be deemed to preclude County from pursuing any available remedy for Default (as defined in Section 19) of this Lease. Tenant's failure to promptly correct a nuisance, annoyance or hazardous or potentially hazardous condition under this Section shall be a material breach of this Lease.

e. Maintenance Reserve Fund. Tenant shall establish and maintain a Maintenance Reserve Fund (“Fund”) for the sole purpose of paying the costs of unanticipated maintenance of the Improvements on the Leased Premises. Tenant shall deposit into the Fund, on or before the Effective Date, the sum of Two Hundred Fifty Thousand Dollars (\$250,000), as adjusted pursuant to Section 4(e), and shall make such additional deposits from time to time as are necessary to ensure that, on or before the fifth anniversary of the Effective Date, the balance of the Fund equals Five Hundred Thousand Dollars (\$500,000), as similarly adjusted. All interest and other earnings on the Fund shall be retained in and added to the Fund. In the event the balance of the Fund falls below Two Hundred Fifty Thousand Dollars (\$250,000), as adjusted, Tenant shall, within thirty (30) days thereafter, deposit such additional amounts as are necessary to restore the balance to not less than such minimum amount. At any time when the balance of the Fund is less than Two Hundred Fifty Thousand Dollars (\$250,000), Tenant shall obtain prior written consent from the County for withdrawals from the Fund in excess of Twenty-Five Thousand Dollars (\$25,000), which consent shall not be unreasonably withheld, conditioned or delayed. Upon the expiration or earlier termination of the Lease, or at any time before the termination or expiration of the Lease, all funds then in the Fund shall be the property of Tenant to use as it desires; provided, however, that County shall have a right of set-off against the Fund for any amounts then due and payable from Tenant to County under this Lease from Tenant upon expiration or earlier termination of the Lease.

## **11. Alterations.**

a. Construction Work. Tenant shall execute on the Plan, including the renovation of the Domes in compliance with certain historic preservation standards and the renovation and construction of the surrounding Improvements (collectively, the “Construction Work”) in accordance with the Plans and Specification and the process set forth in the Development Agreement. Other than as specifically set forth in the Development Agreement, all Project Costs shall be the responsibility of the Tenant and County will not incur any costs, pay any expenses or issue any debt associated with the Leased Premises or the Improvements during the Term. To further the Project, Tenant shall have the right to subject its leasehold interest in the Leased Premises to a condominium form of ownership. County shall have the right to review and approve any declaration of condominium prior any recording thereof. Tenant shall, at all times, comply with the terms of the Development Agreement.

b. No Liens. The Construction Work shall comply with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Leased Premises. Except to the extent permitted by Section 16(h), Tenant shall not permit, create, incur or impose or cause or suffer others to permit, create, incur or impose any lien or other obligation against the Leased Premises or the County by reason of any work performed or materials furnished by, to or for the account of the Tenant, and the Tenant agrees to hold the County harmless of and from any and all claims or demands by any contractor, subcontractor, materialman, laborer or any other third person against the

Leased Premises or the County relating to or arising because of such work or materials. The Tenant may contest any lien or other obligation referred to herein by making the deposits or taking the action permitted for the contesting of taxes under the provisions of this Lease, or taking such other action permitted by law, provided that in any event, the County is reasonably satisfied that the Leased Premises and the County are secure from loss or damage.

c. County Cooperation. Subject in all respects to the County's standard review and approval process, County will work in good faith to provide all applicable permits and waivers needed from the County for Tenant to perform the Construction Work, including those needed for utility services (for example electrical, telephone, internet and data, water, and gas), and will cooperate with Tenant, at no expense to County other than as set forth in the Development Agreement, as required for on time and on budget completion of Construction Work.

d. Other Alterations. Other than the Construction Work performed in accordance with the Development Agreement, Tenant shall not construct improvements upon the Leased Premises, demolish Improvements upon the Leased Premises, and/or make additions to, or changes or alterations in and upon, any or all of such Improvements (any such change referred to herein as a "Post Construction Alteration"), without the written consent of the County, such consent not to be unreasonably withheld, conditioned, or delayed; provided, however, that County consent shall not be required to the extent such Post Construction Alteration (i) does not change or inhibit the historic nature and character of the Leased Premises, and (ii) does not violate the Collection Maintenance Plan (and for avoidance of doubt, any modifications to the Plant and Animal Collection permitted or undertaken in accordance with the Collection Maintenance Plan shall not require separate approval under this Lease), and (iii) is less than \$50,000 for such Post Construction Alteration. Tenant shall provide County with notice of any Post Construction Alteration not requiring County's consent hereunder prior to commencement of such Post Construction Alteration. Such work shall be performed in a good and workmanlike manner at the sole expense of the Tenant, and shall comply with all federal, state, county and municipal statutes, laws and ordinances, and all rules, regulations and orders of any duly constituted authority. Any improvements or additions upon the Leased Premises at the expiration of this Lease shall be deemed a part of the Leased Premises, and shall be surrendered to the County in good condition and repair, reasonable wear and tear and damage by fire or other casualty not occurring through the neglect of the Tenant excepted.

## **12. Compliance with Laws.**

a. Generally. The Tenant shall obey, observe and comply with all federal, state, County and municipal statutes, laws and ordinances, and all rules, regulations and orders of any duly constituted authority, present or future, which are applicable to: (a) the Leased Premises (including any improvements now or hereafter erected thereon); or (b) the conduct of the Tenant's business at the Leased Premises. In addition to, but without limiting, the foregoing, the Tenant shall promptly comply with all orders, rules, rulings

and directives of the Board of Fire Underwriters and of any governmental authority or agency having jurisdiction thereof.

b. Environmental Laws. Tenant, in the operation of its business on the Leased Premises, shall comply with all applicable federal, state and local environmental laws and all amendments thereto and regulations implementing the same, together with all common law requirements, which relate to discharge, emissions, waste, nuisance or the environment as the same shall be in existence during the Term. Without limiting the generality of the foregoing, Tenant shall specifically comply with all applicable laws relating to the handling, storage or disposal of any hazardous material or toxic substance arising in connection with the use and occupancy of the Leased Premises by Tenant or any occupant of the Leased Premises during the Term, except to the extent arising out of any preexisting environmental conditions or other environmental conditions caused by County. All of the foregoing laws, regulations and requirements are hereinafter referred to as "Environmental Laws." Tenant shall obtain all environmental licenses, permits, approvals, authorizations, exemptions, classifications, certificates and registrations (collectively, "Permits") and make all applicable filings required of Tenant to operate at the Leased Premises. The Permits and required filings shall be made available for inspection and copying by County at the Leased Premises upon reasonable notice and during business hours. County represents and warrants to Tenant that, to County's knowledge, as of the Effective Date: (i) there are no unremedied violations of Environmental Laws; and (ii) there are no Hazardous Materials, as defined herein at, under, on, in, or emanating from the Leased Premises, except as disclosed in writing to Tenant.

c. ADA Requirements. Tenant shall, at Tenant's expense, 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. For the avoidance of doubt, Tenant shall not be required to bring portions of the Leased Premises that are not subject to renovation or improvement into compliance with the foregoing accessibility requirements until such renovation or improvement occurs.

d. Non-Discrimination. 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. Tenant shall 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.

e. No 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.

f. No Deficiencies. 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.

### **13. Indemnification.**

a. Generally. Subject to the waiver of subrogation set forth in Section 14 hereof, Tenant shall indemnify and hold harmless the Indemnified County Parties from and against any and all Claims imposed upon, incurred by, or asserted against, any Indemnified County Party in connection with, relating to, or as a result of: (a) any accident, injury to or death of persons, or loss of or damage to property occurring or located in the Leased Premises caused by Tenant or its Affiliates, agents, employees, or contractors; (b) any Claims by third parties relating to the condition of the Leased Premises caused by Tenant or its Affiliates, agents, employees, or contractors; (c) any failure on the part of Tenant or its Affiliates, agents, contractors, employees, tenants, subtenants, licensees, and/or invitees to comply with all laws and requirements of any permits in connection with use or occupancy of all or any portion of the Leased Premises; (d) performance of any labor or services, or the furnishing of any materials or other property, in each case by Tenant or its Affiliates, agents, employees, or contractors, on or relating to the Leased Premises; (e) Tenant's failure to comply in any respect with the terms, conditions, or provisions of this Lease; and (f) any act, or failure to act, occasioned wholly or in part by the recklessness or willful misconduct of Tenant or its Affiliates, agents, contractors, employees, tenants, subtenants, licensees, and invitees. If any Claim with respect to which this Section applies is brought against any Indemnified County Party, then such Indemnified County Party shall notify Tenant of such Claim and, upon request by such Indemnified County Party, Tenant, at its sole expense, shall defend such Claim using counsel reasonably approved by such Indemnified County Party in writing. Notwithstanding the foregoing, Tenant's indemnification obligations under this Section shall not apply if and to the extent that any Claim arises from or as a result of County's default under this Lease, or the recklessness or willful misconduct of any County Indemnified Party. Tenant's obligations accruing under this Section during the continuance of this Lease shall survive the expiration of the term of this Lease or the earlier termination hereof. Notwithstanding anything herein to the contrary, in no event shall Tenant be responsible for punitive, consequential or exemplary damages under this Lease. For purposes of this Section, "Indemnified County Parties" shall mean County and its agencies, officials, officers and employees.

b. Environmental Matters. 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 its introduction of any such Hazardous Materials into or onto the Leased Premises by Tenant or its agents. "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..

#### 14. **Insurance.**

a. Proof of Insurance. Before the Effective Date, Tenant shall furnish an original or electronic copy of Certificate(s) of Insurance to the County's Director of Risk Management, which shall be completed by a broker or agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate(s) or electronic copy of the form(s) must have the agent's signature, including the signer's company affiliation, title and phone number, and be sent directly from the agent to the County. The County shall have no duty to perform under this Lease until such certificate shall have been delivered to County, and no officer or employee other than County's Director of Risk Management shall have authority to waive this requirement. The liability limits required can be satisfied through a combination of primary and umbrella policies.

b. Required Coverage. Tenant shall obtain and maintain in full force and effect for the duration of this Lease and any extension thereof, at Tenant's sole expense, insurance coverage written on occurrence basis, by companies authorized and admitted to



do business in and to be served notice in the State of Wisconsin and rated A or better by A.M. Best Company and/or otherwise acceptable to County in the following types:

| <u>Type of Coverage</u>   | <u>Minimum Limit</u>  |
|---|---|
| Commercial General Liability including Bodily Injury & Property Damage, Contractual Products & Completed Operations | \$1,000,000 Per Occurrence<br>\$2,000,000 General Aggregate<br>Statutory (Waiver of Subrogation required) |
| Workers' Compensation   | \$100,000/\$500,000/\$100,000   |
| Employers' Liability  | \$1,000,000 per Accident  |
| "All risk" or "Special Form" coverage property insurance.   | Estimated replacement value of the Leased Premises plus the value of other property insured.              |

Additional information as to policy form; retroactive date, discovery provisions and applicable retentions, shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to County for approval prior to the commencement of activities under this Lease. Tenant agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

- i. Tenant's insurance shall name the County and its officers, employees, agents and elected representatives as additional insureds as respects operations and activities of, or on behalf of the named insured performed under contract with County, on Commercial General Liability and Automobile Liability;
- ii. Tenant's insurance shall be deemed primary with respect to any collectible insurance or self-insurance carried by County for liability arising out of Tenant's operations under the contract with the County;
- iii. Tenant's insurance shall state that the Tenant's insurance is primary without right of contribution from any insurance maintained by County arising out of operations of Tenant.
- iv. Tenant's Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of County.

c. Construction Insurance. In addition to the insurance identified above, during the course of construction activities, Tenant shall obtain and maintain for the benefit of the parties to the Lease, as their interests may appear, "All-Risk: Builder's Risk" insurance equal to one hundred percent (100%) of the value of the Project. Coverage shall also include (a) form work in place; (b) form lumber on site, (c) temporary structures, (d) equipment, and (e) supplies related to the work while at the site. In the event Tenant fails to maintain such insurance, County may, at its option, arrange therefor, and any premium incurred shall be reimbursed by Tenant to County upon demand.

d. Tenant's Risks. Tenant shall be responsible for obtaining any insurance it deems necessary to cover its own risks including, without limitation: (a) business interruption, such as business income, extra expense, or similar coverage; (b) personal property; (c) aircraft hull coverage; and/or (d) motor vehicle physical damage and/or theft. In no event shall County be liable for any: (i) business interruption or other consequential loss sustained by Tenant; (ii) damage to, or loss of, personal property; (iii) damage to, or loss of, an aircraft; or (iv) damage to, or loss of, a motor vehicle, whether or not such loss or losses are insured, even if such loss or losses are caused by the negligence of County.

e. Periodic Review. County shall have the right to periodically review the types, limits, and terms of insurance coverage. In the event County reasonably determines that such types, limits and/or terms should be changed, County will give Tenant a minimum of thirty (30) calendar days' notice of such determination and Tenant shall modify its coverage to comply with the new insurance requirements of County. Tenant shall also provide County with proof of such compliance by giving County an updated certificate of insurance within fifteen (15) calendar days.

f. Notices. Tenant shall notify County in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty (30) days prior to the change, or ten (10) days' notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to County at the following address:

Milwaukee County Risk Management  
901 N. 9<sup>th</sup> Street, Room 302  
Milwaukee, WI 53233

It is expressly understood and agreed that all operations of Tenant under this Lease between County and Tenant shall be covered by such policies of insurance as approved by County's Director of Risk Management and that all personal property placed in the Leased Premises shall be at the sole risk of Tenant. The procuring of policies of insurance shall not be construed to be a limitation upon Tenant's liability or as a full performance on its part of the indemnification provisions of this Lease.

g. Contractor Insurance. Tenant shall ensure that all Construction Work and any Post Construction Alteration is performed by contractors with commercially appropriate professional liability coverage. The general contractor for the Construction Work (whether one or more) and any Post Construction Alterations shall carry commercial general liability insurance, insuring for third party claims of legal liability against the contractor, and caused by bodily injury, property damage, personal injury or advertising injury, arising out of the activities of the contractor, and including the costs to defend such actions brought against the contractor. The policy shall include an endorsement(s) adding Tenant as Additional Insured.

15. **Right to Audit.** Tenant 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 Tenant related to the terms and performance of this Lease for a period of up to three years following the date of last payment, the end date of this Lease, or activity under this Lease, whichever is later. Any subtenant or other parties performing obligations under this Lease will be bound by the same terms and responsibilities as Tenant. All subleases or other agreements under this Lease will include written notice that the subtenant or other parties understand and will comply with the terms and responsibilities. Tenant and any subtenants understand and will abide by the requirements of Section 34.09 (Audit) and Section 34.095 (Investigations Concerning Fraud, Waste, and Abuse) of the Milwaukee County Code of General Ordinances.

16. **Assignment, Sublease, Mortgage and Transfer.**

a. Assignments Generally. Except as otherwise expressly permitted in this Section 16, Tenant shall not assign, sell, sublease, pledge, hypothecate, grant a lien or security interest in, or otherwise transfer all or any part of Tenant's interest in and to this Lease or leasehold, either voluntarily or by operation of law (a "Transfer"), without County's prior written consent, which consent shall be in County's sole and absolute discretion. If Tenant is an entity, any of the following shall be deemed a Transfer: (i) the sale, assignment, transfer or disposition of all or substantially all of Tenant's assets; (ii) the sale, assignment, transfer or disposition of 50% or more of the stock, partnership, membership or other direct or indirect interests (whether equity or otherwise and whether voluntary or otherwise) or voting rights in Tenant; and (iii) the merger, reorganization, share exchange, recapitalization, restructuring or consolidation of Tenant. For avoidance of doubt, the granting of any temporary licenses in connection with a Special Event and entering into catering or exclusive service contracts to the Leased Premises shall not be deemed a Transfer requiring County consent.

b. Subleases. Tenant shall have the right to sublet all or any portion of the Leased Premises to one or more tenants, subtenants or occupants by written subleases from time to time without County's consent; provided, however that such tenants, subtenants or occupants are Affiliates of Tenant. Without limiting the preceding provisions of this paragraph, any sublease or other agreement for the use or occupancy of the Leased Premises or any portion thereof entered into by Tenant shall:

- i. provide that it is subject to and subordinate in all respects to this Lease, recorded title matters, and the rights of County hereunder;
- ii. permit the tenant, subtenant or occupant to use the portion of the Leased Premises subject to the sublease only for the Permitted Use unless otherwise agreed to in writing by County;
- iii. include a term that does not extend beyond the term of this Lease;
- iv. require the tenant, subtenant or occupant to name County as an additional insured on any liability insurance required to be carried under the sublease, which liability insurance shall be in an amount not less than that required to be maintained by Tenant hereunder, and otherwise shall comply with the requirements for policies of liability insurance required to be maintained by Tenant hereunder; provided that the foregoing requirement shall be considered on an aggregate basis for the entire Premises, taking into account Tenant's insurance and all other tenants' insurance;
- v. include a provision requiring such tenant, subtenant or occupant, at County's option, to attorn to County if Tenant defaults under this Lease and if the tenant, subtenant or occupant is notified of Tenant's default and instructed to make its rental payments to County;
- vi. provide that any default notices sent by Tenant under any subtenant, tenant, or occupant sublease must be simultaneously sent to County.

Tenant shall provide County with complete copies of any and all subleases within ten (10) days after County's request. "Affiliate" shall mean any person, partnership, joint venture, corporation or other form of enterprise, domestic or foreign, including but not limited to subsidiaries whether one or more (an "Entity"), that directly or indirectly, control, are controlled by, or are under common control with or have an ownership interest in, with or of such Entity.

c. Effect of Consent. No Transfer shall relieve Tenant of any obligation under this Lease and Tenant shall remain fully liable hereunder unless a specific written release is given by County. Any consent by County to a particular Transfer shall not constitute County's consent to any other or subsequent Transfer. If consent is granted, Tenant shall provide a copy of the signed Transfer document to County promptly after execution. The Transfer documents shall contain a provision requiring that the transferee perform and observe all terms and conditions of this Lease and shall provide that County have the right to enforce such terms and conditions directly against such transferee.

d. Fee for Review of Requests of Transfer. County reserves the right to charge a fee for staff and legal time spent in the review of Tenant's requests for County's

consent to a Transfer. Any fee imposed shall be limited to the County's actual costs incurred in reviewing Tenant's request(s) under this Section. This fee may be imposed by County whether or not consent is granted.

e. Unpermitted Transfer Void. Any Transfer or attempted Transfer without County prior written consent or as otherwise permitted herein shall be null and void and of no effect. In addition to any other rights which County may have in the event of a Transfer or attempted Transfer without County's consent, County shall be entitled to preliminary and permanent injunctive relief and, as a matter of right, to the appointment of a receiver of rents and profits of any part or the whole of the Leased Premises without notice, with power to manage and operate the Leased Premises, and with such other powers as may be deemed necessary, and who, after deducting all proper charges and expenses attending the execution of the trust as receiver, shall apply the residue of the rents and profits to the obligations of Tenant under this Lease, including the costs of any attorney fees for the appointment of such receiver, in such order of priority as County shall elect.

f. Transfer by County. County shall have the right to transfer its interest in the Leased Premises or in this Lease to any governmental or quasi-governmental entity. In the event of such a transfer, Tenant shall attorn to said transferee and recognize the transferee as the new lessor under this Lease, but only on the condition that such transferee acknowledges the existence of this Lease and agrees not to disturb Tenant's rights hereunder. Thereafter, County shall be relieved, upon notification to Tenant of the name and address of County's successor, of any obligations and duties accruing from and after the date of the transfer so long as the transferee agrees to assume all obligations and duties of County under this Lease.

g. Estoppel Certificates. County and Tenant agree to execute and deliver to the other, at any time and within thirty (30) days after written request, a statement certifying, among other things: (a) that this Lease is unmodified and is in full force and effect (or if there have been modifications, stating the modifications); (b) the dates to which Rent has been paid; (c) whether or not the other party is in default in performance of any of its obligations under this Lease and, if so, specifying the nature of each such default; and (d) whether or not any event has occurred which, with the giving of notice, the passage of time, or both, would constitute such a default by the other party and, if so, specifying the nature of each such event. Each party shall also include in any such statement such other commercially reasonable information concerning this Lease as the other party reasonably requests. The parties agree that any statement delivered pursuant to this Section shall be deemed a representation of the party giving the statement which may be relied upon by the other party and by potential or actual purchasers and lenders with whom the party may be dealing, regardless of independent investigation. If any party shall request such estoppel certificates more than one (1) time in any consecutive twelve (12) month period except in connection with any initial construction financing for any Project Phase, as defined in the Development Agreement, the requesting party shall pay the other party a review fee of Five Hundred and 00/100 Dollars (\$500.00).

h. Leasehold Mortgages. Subject to the terms and conditions herein, and provided that no Event of Default then exists, Tenant and any subtenant described in Section 16(b) shall have the right during the Term to assign, pledge, hypothecate, mortgage or encumber their respective leasehold estate created by this Lease or any sublease permitted under Section 16(b) or their interest in the Improvements in connection with the financing of the Construction Work by way of a leasehold mortgage or other security instrument. The execution and delivery of a mortgage shall not give or be deemed to give a mortgagee any greater rights than those granted to Tenant or such subtenant hereunder. Tenant shall notify County promptly of any lien or other encumbrance of which Tenant has knowledge and which has been recorded against or attached to the Improvements, the Leased Premises or Tenant's leasehold estate hereunder whether by act of Tenant or otherwise. A mortgage may be made only for the purpose of financing the Project in accordance with the Development Agreement or reconstruction of Improvements approved by County in accordance with this Lease, any refinancing of the completed Project, and the refinancing of permitted mortgages. In addition, Tenant's right to enter into a mortgage shall be subject to the following limitations:

- i. no mortgage or other instrument purporting to mortgage, pledge, encumber or create an encumbrance on or against any or all of the interest of Tenant shall extend to or affect the fee simple interest in the Leased Premises, County's interest hereunder and estate in and to the Leased Premises or any part thereof, or adversely affect the rights or increase the liabilities or obligations of County (except, with respect only to adversely affecting the rights or increasing the liabilities or obligations of County, to the extent such instrument is in a form agreed to by the County);
- ii. County shall have no liability whatsoever for payment of the principal sum secured by any mortgage, or any interest accrued thereon or any other sum secured thereby or accruing thereunder;
- iii. County shall have no obligation to any leasehold mortgagee in its capacity as landlord hereunder unless and until any such leasehold mortgagee becomes the Tenant hereunder;
- iv. subject to the terms of this Lease and except as expressly specified herein, all rights acquired by a leasehold mortgagee under any mortgage shall be subject and subordinate to all of the provisions of this Lease and to all of the rights of County hereunder;
- v. notwithstanding any enforcement of the security of any mortgage, Tenant shall remain liable to County for the performance and observance of all of Tenant's covenants and obligations under this Lease; and

- vi. a leasehold mortgagee shall not, by virtue of its mortgage, acquire any greater rights or interest in or to Tenant's leasehold interest in the Leased Premises than Tenant has at any applicable time under this Lease.

If requested by Tenant, County shall enter into a commercially reasonable agreement for leasehold mortgagee protection provisions requested by the leasehold mortgagee, but in any event acceptable to County in its sole but commercially reasonable discretion, including, without limitation, provisions regarding (a) the provision of notice of any default to the leasehold mortgagee and a reasonable time for the leasehold mortgagee to cure such default, (b) the acceptance of performance by the leasehold mortgagee as if the same had been performed by Tenant, (c) permission for the leasehold mortgagee to enter upon the Leased Premises for performance of Tenant's obligations and the exercise of the leasehold mortgagee's rights, (d) agreement not to terminate this Lease without giving the leasehold mortgagee thirty (30) days to cure if the default is capable of being cured by the payment of money, and at least ninety (90) days to cure if the default is not capable of being cured by the payment of money, except in the case of emergency or safety hazard, (e) permission for the leasehold mortgagee (or other acquirer of Tenant's interests) in the event of foreclosure of the leasehold mortgage, assignment in lieu of foreclosure or other means, to be the substituted Tenant under this Lease, (f) permission for insurance proceeds resulting from a casualty and any award in connection with a condemnation or exercise of rights under eminent domain to be used first to repair or restore the damaged Improvements and the remainder to pay the debt owed to the leasehold mortgagee, (g) agreement to not amend material terms of this Lease or accept surrender of the Leased Premises from Tenant without the prior written consent of the leasehold mortgagee, and (h) any mortgagee so long as the provisions do not encumber County's interest in this Lease or the Leased Premises. As a condition of County's approval of any such agreement, Tenant shall pay County's reasonable out-of-pocket legal fees associated with the negotiation and preparation of the agreement.

#### **17. Casualty and Condemnation.**

a. Casualty. Subject to the availability of insurance proceeds by Tenant's insurers and lenders, if all or any portion of the Improvements shall be destroyed or damaged by fire or other during the Term, Tenant shall promptly and diligently rebuild or repair the Improvements to substantially its former condition. Notwithstanding the foregoing, should the Improvements or any portion thereof be damaged or destroyed in an amount in excess of fifty percent (50%) of the replacement cost thereof by fire or other casualty, and provided that at the time of such damage or destruction Tenant has in effect insurance in the amount, and in accordance with the other requirements of this Lease, then Tenant shall have the right to terminate this Lease by giving County written notice of such election within thirty (30) days after the date of any such damage or destruction; provided, however such termination shall not be effective until (i) any leasehold mortgagee is paid in full and its mortgage or other title encumbrances released, and (ii) Tenant completes demolition and removal of the Improvements and such other work as necessary to restore the Leased Premises in a safe, clean and paved and/or landscaped condition in compliance with this Lease and all applicable Laws, all with the advise and

consent of County. If Tenant elects to terminate this Lease, Tenant shall demolish and remove any remaining portion of the Improvements from the Leased Premises and do such other work as is necessary to restore the Leased Premises to a safe, clean and paved and/or landscaped condition in compliance with this Lease and all applicable Laws, as approved by County. Upon completion of the work, any insurance proceeds in excess of the amount needed to complete the work required above and pay off any debt secured by a lien on the Leased Premises shall be delivered to County. Tenant's restoration obligations shall survive any such termination. Upon any termination of this Lease pursuant to this Section 17(a), regardless of the amount of insurance proceeds available and/or remaining, Tenant shall satisfy and cause to be released any mortgages (including any leasehold mortgage), monetary liens or other monetary encumbrances placed or suffered to be placed on the Leased Premises or Improvements and Tenant's leasehold interest in the Leased Premises by Tenant. Upon completion of the work, any insurance proceeds in excess of the amount needed to complete the work required above, pay off any debt secured by a lien on the Leased Premises and shall pay all amounts due and owing to the County under this Lease shall become the property of Tenant.

b. Application of Insurance Proceeds. Subject to the rights of leasehold mortgagees, in the event Tenant elects, undertakes or is required to repair or restore the Improvements, the proceeds of any insurance policies which are required hereunder shall be first devoted exclusively to the repair and restoration of the damaged or destroyed portions of the Improvements and shall be disbursed in a reasonable manner to facilitate timely payment for the repair and restoration, including in installments.

c. Failure to Restore. If Tenant fails to repair or restore the Leased Premises as required by this Lease within the time periods set forth above, and provided that this Lease has not been terminated, County may make such repairs or replacements and recover from the Tenant the actual out-of-pocket cost and expense of such repair or replacement. The amount due to County as a result thereof shall bear interest at the Delinquency Rate from the date that is thirty (30) days following delivery of an invoice to Tenant to the date the Leased Premises are repaired and restored.

d. Tenant's Obligation. Protection against loss by fire or other casualty to any Improvements or other contents of the Leased Premises shall not, at any time, be an obligation of County.

e. Eminent Domain/Condemnation. If all or part of the Leased Premises shall be condemned by any governmental agency or political subdivision, then the Term shall end as of the date that title to the Leased Premises is taken, and all proceeds of the award that are paid in compensation for taking of property interests shall be allocated in the following priority: all proceeds shall belong to County other than proceeds which are required to be remitted to any leasehold mortgagees or are allocable to Improvements, fixtures, furniture, equipment, personal property, and any other property and leasehold improvements located on and/or installed, affixed or placed on the Leased Premises by or on behalf of Tenant which shall belong to Tenant; and all proceeds allocable to Tenant's leasehold interest shall belong to Tenant. Tenant shall also maintain and be entitled to



assert all claims that Tenant may have (including, without limitation, claims arising under Wis. Stat. chapter 32) for Tenant's relocation from the Leased Premises. To the extent permitted by Law, County agrees it will not cause or endorse the condemnation of the Leased Premises, or other areas to which Tenant is granted rights pursuant to this Lease, in whole or in part. Notwithstanding the foregoing, in the event of a partial taking, Tenant may (in its sole discretion) elect to continue the Lease in which event Tenant shall be entitled to an equitable reduction of rent.

**18. Termination.**

a. Duties Upon Termination. Upon the expiration or earlier termination of this Lease, Tenant shall have fully performed all of its obligations under this Lease beyond all applicable notice and cure periods including: (a) delivery to County of all keys to any doors and to any Improvements located on the Leased Premises; (b) removal of all personal property, fixtures, furniture and equipment; (c) surrender of the Leased Premises in good and clean condition, ordinary wear and tear excepted, in compliance with all applicable Laws; and (d) performance of any other obligations required to be performed pursuant to this Lease prior to termination under this Lease. Ordinary wear and tear shall not include deterioration that could have been prevented by proper maintenance practices or by Tenant otherwise performing Tenant's obligations under this Lease.

b. Title to Improvements. All Improvements shall be the property of Tenant during the Term of this Lease, or owned by an Affiliate of Tenant pursuant to a sublease described in Section 16(b) shall be the property of such Affiliate, as applicable in each case until the expiration or earlier termination of this Lease. Upon expiration or earlier termination of this Lease for any reason, all above-grade Improvements (excluding any items described in subsection (c) below) shall become the property of County without payment to Tenant. In the event that Tenant makes any Post Construction Alterations to the Leased Premises pursuant to Section 11(d) of this Agreement, at the time of granting its consent thereto, County shall notify Tenant whether such Post Construction Alterations must be removed upon the termination or expiration of this Lease.

c. Tenant's Personal Property. Furniture, decorations, detached floor covering, curtains, blinds, furnishings, and removable trade fixtures shall remain the property of Tenant if placed on the Leased Premises by Tenant, at Tenant's expense. At or before the termination of this Lease, Tenant, at Tenant's expense, shall remove from the Leased Premises any and all of Tenant's removable personal property and shall repair any damage to the Leased Premises resulting from the installation or removal of such personal property. Title to any items of Tenant's trade fixtures and other personal property which remain on the Leased Premises after the date that is sixty (60) days following the termination date of this Lease may, at the option of County, be automatically taken by County, and County shall have the option, in its sole discretion, of: (a) retaining any or all of such trade fixtures and other personal property without any requirement to account to Tenant therefore; or (b) removing and disposing of any or all of such trade fixtures and other personal property and recovering from Tenant the

reasonable cost thereof, plus interest from the date of expenditure at the Delinquency Rate. Tenant's obligation to pay such costs shall survive termination of the Lease.

d. Time for Removal. The time for removal of any property which Tenant may be required to remove from the Leased Premises upon expiration or earlier termination of this Lease shall be as follows: (a) by the expiration of this Lease; or (b) if this Lease is terminated prior to the Expiration Date due to an uncured Event of Default or for any other reason, then all removal must occur within sixty (60) calendar days of the actual earlier termination date, and Tenant must continue to pay Rent during that period.

e. Holding Over. If Tenant holds over after the expiration or earlier termination of this Lease with the consent of County, and County and Tenant have not agreed, in writing, to the terms and provisions of a new lease (or to the extension of this Lease) prior to such expiration or earlier termination, Tenant shall be deemed a month-to-month holdover tenant ("Holdover Tenant"), and Tenant shall remain bound by all terms, covenants, and agreements hereof, except that: (a) the tenancy shall be from month to month; (b) Rent shall adjust to market rate rent as of the date of expiration or earlier termination of this Lease; (c) at County's option, title to the Improvements shall vest in County as of the expiration or earlier termination of this Lease; and (d) such month-to-month tenancy may be terminated at any time by thirty (30) calendar days prior written notice from either party to the other. In the event that Tenant is a Holdover Tenant beyond December 31<sup>st</sup> of any Lease year, Tenant shall be responsible for payment of all taxes, if any, for the entire calendar year pursuant to the requirements of this Lease. In the event County deems Tenant a Holdover Tenant, County shall be entitled to evict Tenant, but to the extent permitted by applicable law, may still collect Rent due by Tenant as set forth herein.

19. **Default.** The occurrence of any of the following shall constitute an "Event of Default" (also referred to as a "Default").

a. Default in Rent. An Event of Default shall occur if Tenant fails to pay any Rent or Additional Rent within ten (10) business days after receiving written notice thereof from County; provided that, after the second (2nd) notice in any consecutive twelve (12) month period, no written notice from County will be required, and Tenant's failure to pay any payment of Rent or Additional Rent when due will constitute an Event of Default.

b. Default in Other Covenants. An Event of Default shall occur if Tenant fails to comply with any term, covenant, or condition of the Development Agreement, Collection Maintenance Plan, or this Lease (other than the payment of Rent or Additional Rent or such other covenant addressed separately in this Section 19) within thirty (30) calendar days after written notice by County describing the nature of the Default. Notwithstanding the foregoing, if a non-monetary failure is of a nature that it cannot be remedied within thirty (30) days, despite reasonably diligent efforts, then the 30-day period shall be extended as reasonably necessary for the defaulting party to remedy the failure, so long as the defaulting party commences to remedy the failure within the 30-

day period and diligently pursues such remedy to completion. Furthermore, if any Event of Default threatens to cause serious harm to County or other tenants or persons, then County shall not be required to serve any notice before proceeding to request immediate injunctive relief; provided that such injunctive relief shall in no way limit Tenant's cure rights granted pursuant to this Section 19 prior to County's right to terminate the Lease.

c. Reserved.

d. Failure to Maintain Fund Balance. An Event of Default shall occur if Tenant fails to maintain a balance of Two Hundred Fifty Thousand Dollars (\$250,000) in the Fund and such failure continues for a period of one hundred and eighty (180) days of receipt of notice from County that the shortage has occurred.

e. Insolvency. An Event of Default shall occur if any of the following occur: (a) an assignment by Tenant for the benefit of creditors; (b) the filing by Tenant of a voluntary petition in bankruptcy; (c) an order for relief is entered against Tenant, in any case under applicable bankruptcy or insolvency law, or any comparable law that is now or hereafter may be in effect, whether for liquidation or reorganization, which proceedings if filed against Tenant are not dismissed within one hundred eighty (180) calendar days; (d) the filing of an involuntary petition of bankruptcy against Tenant that is not dismissed within one hundred eighty (180) calendar days; and (e) attachment of or the levying of execution on the leasehold interest that is not dismissed within one hundred eighty (180) calendar days, shall all constitute an Event of Default hereunder. In these instances, no notice that an Event of Default has occurred shall be required from County.

f. Material Misrepresentation. An Event of Default for which no notice or opportunity to cure need be given may be declared, at County's option, if County discovers that Tenant made a material and intentional misrepresentation to County which induced County to enter into this Lease.

g. Assignment or Transfer. An Event of Default shall occur if Tenant suffers or permits an assignment or transfer of this Lease or any interest herein in violation of this Lease.

## **20. Remedies on Default.**

a. Termination. If an Event of Default occurs under this Lease, County may terminate this Lease at any time after the occurrence (and during the continuation) of such Event of Default by giving written notice of such termination to Tenant. Termination of this Lease shall thereafter occur on the date set forth in such notice. Acts of maintenance or preservation, and any appointment of a receiver upon County's initiative to protect its interest hereunder shall not in any such instance constitute a termination of Tenant's right to possession. No act by County other than giving notice of termination to Tenant in writing shall terminate this Lease.

b. Termination of Possession. If an Event of Default occurs under this Lease, County may, without terminating this Lease, terminate Tenant's right to possession of the Leased Premises, in which event Tenant shall immediately surrender possession of the Leased Premises and Improvements.

c. Re-Entry. County may re-enter the Leased Premises, or any part thereof, by suitable action or proceeding at law, or, in the event of abandonment of the Leased Premises by Tenant, by force, or by other lawful means, without being liable for indictment, prosecution or damages therefore, and may repossess the Leased Premises and remove any person or property therefrom, by lawful means, to the end that County may have, hold and enjoy the Leased Premises.

d. Reletting. County, at its option, may relet the whole or any part of the Leased Premises from time to time, either in the name of County or otherwise, to such tenants, at such rental rate, and upon such conditions (including concessions and free rent periods) as County, in its sole discretion, may determine to be appropriate. County shall not be liable for refusal to relet the Leased Premises or, in the event of any such reletting, for failure to collect any Rent due upon such reletting; and no such failure shall operate to relieve Tenant of any liability under this Lease or otherwise affect any such liability. County may make such physical changes to the Leased Premises as County, in its sole discretion, considers advisable or necessary in connection with any such reletting or proposed reletting, without relieving Tenant of any liability under this Lease or otherwise affecting Tenant's liability.

e. Rent Recovery. Whether or not County retakes possession of or relets the Leased Premises, County shall have the right to recover unpaid Rent and Additional Rent and all damages caused by the Default. Damages shall include, without limitation: (a) all Rent and Additional Rent due and payable as of the effective date of such termination; (b) all reasonable legal expenses and other reasonable related costs incurred by County as a result of the Default; (c) all reasonable costs incurred by County in restoring the Leased Premises to a good order and condition, or in remodeling, renovating or otherwise preparing the Leased Premises for reletting; and (d) all commercially reasonable costs incurred by County in reletting the Leased Premises including, without limitation, any brokerage commissions, if any. Should County relet the Leased Premises prior to the scheduled Expiration Date, and if rent to be paid under any such new lease through the Expiration Date ("New Rent") exceeds the Rent that would have been payable under this Lease for the same period, and if Tenant previously paid Rent damages to County following a Default, then County shall refund to Tenant the amount, if any, by which the New Rent exceeds the Rent damages paid to County.

f. Continuation of Subleases and Other Agreements. Following the occurrence of an Event of Default and termination of Tenant's interest in this Lease, County shall have the right, in its sole and absolute discretion and without abrogating any other remedies available to County, to assume any and all subleases and all agreements entered into by Tenant for the maintenance or operation of the Leased Premises and Improvements. Tenant hereby further covenants that, upon request of County following

an Event of Default and termination of Tenant's interest in this Lease, Tenant shall execute, acknowledge and deliver to County such further instruments as may be necessary or desirable to vest or confirm or ratify vesting in County the then existing subleases and other agreements then in force, as above specified.

g. Equitable Relief. In addition to the other remedies provided in this Lease, County shall be entitled at any time after an Event of Default to seek injunctive relief or an order for specific performance. In addition, after the occurrence of an Event of Default, County shall be entitled to any other equitable relief that may be available.

h. Right to Sue More Than Once. County may sue periodically to recover damages during the period corresponding to the remainder of the Term, and no action for damages shall bar a later action for damages subsequently accruing.

i. Notice of Action to Retake, File Suit, or Terminate. Prior to taking any action to terminate the Lease, or to re-enter or re-take possession of the Leased Premises, or to sue Tenant for damages for default, County will provide Tenant with at least ten (10) days' notice of County's intent to pursue the particular remedy or remedies if the default is not cured within the applicable period. Such notice may be given in and/or concurrently with, or separately from, the notices specified above.

j. Remedies Cumulative and Nonexclusive. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by County of any such rights or remedies will not preclude the simultaneous or later exercise by County of any other such rights or remedies. All such rights and remedies are nonexclusive. Notwithstanding anything herein to the contrary, in no event shall Tenant or County be responsible for punitive, consequential or exemplary damages under this Lease; provided that the foregoing limitation shall not apply in the event of damages caused by any holdover by Tenant beyond the date that is two (2) months following the expiration of the Term.

k. No Waiver. No failure by County to insist upon the strict performance of any term of this Lease or to exercise any right, power or remedy consequent upon a breach of any such term, shall be deemed to imply any waiver of any such breach or of any such term unless clearly expressed in writing by County. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect, with respect to any other then existing or subsequent breach.

l. Curing Tenant's Defaults. Following and during the continuance of an Event of Default, County, without waiving rights with respect to such failure, may (but shall not be obligated to) perform the same for the account of and at the expense of Tenant, without notice in a case of emergency, and in any other cases, only if such failure continues after the expiration of forty-five (45) calendar days from the date County gives Tenant notice of the failure. County shall not be liable to Tenant for any claim for

damages resulting from such action by County; provided, however, County shall be responsible for any damages caused by the negligence or willful misconduct of County, its agencies, officials, officers, or employees. Tenant agrees to reimburse County within thirty (30) days any amounts County may spend in complying with the terms of this Lease on behalf of Tenant, which obligation shall survive termination of the Lease. County shall have the same rights and remedies in the event of the nonpayment of amounts due to be reimbursed under this Section as in the case of Default by Tenant in the payment of any Rent.

21. **Default by County.** County shall be deemed to be in default hereunder only if County shall fail to perform or comply with any obligation on its part hereunder and (i) such failure shall continue for more than the time period of any cure period provided herein, or if no cure period is provided herein, for more than ninety (90) days after written notice thereof from Tenant, or, (ii) if such default cannot reasonably be cured within the period set forth in (i) then County shall not within such period commence with due diligence and reasonable dispatch the curing of such default, or, having so commenced, shall thereafter fail or neglect to prosecute or complete with due diligence and reasonable dispatch the curing of such default. Upon the occurrence of default by County described above, Tenant shall have the right: (a) to recover from County any amount necessary to compensate Tenant for all actual damages incurred by Tenant as a result of County's default; and (b) to seek equitable relief in accordance with applicable Laws where appropriate and where such relief does not impose liability on County in excess of that permitted by Section 24(k) of this Lease; provided, however, in no event shall Tenant be entitled to recover or obtain from County any damages or losses other than Tenant's actual damages. Notwithstanding anything herein to the contrary, County's liability shall, in all events, be limited by Wisconsin State Statutes § 345.05(3) for automobile and § 893.80(3) for general liability.

22. **Authority.** If Tenant is a corporation, or limited liability company or other entity, each individual executing this Lease on behalf of Tenant represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, limited liability company or other entity, as the case may be, and that this Lease is binding upon said corporation in accordance with its terms without the joinder or approval of any other person.

23. **Notices.** All notices with respect to this Lease shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Lease, 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:

if to the County: 9480 W. Watertown Plank Road  
Wauwatosa, Wisconsin, 53226  
Attn: Parks Executive Director  
Phone: (414) 257-4782  
Email: [guy.smith@milwaukeecountywi.gov](mailto:guy.smith@milwaukeecountywi.gov)

with a copy to: Milwaukee County Corporation Counsel  
901 N 9th Street, Suite 303

Milwaukee, WI 53233  
Attn: Corporation Counsel  
Phone: (414) 278-4300  
Email: scott.brown@milwaukeecountywi.gov

If to Tenant: Milwaukee Domes Alliance, Inc.  
524 S. Layton Boulevard  
Milwaukee, Wisconsin, 53215  
Attn: Christa Beall Diefenbach, Chief Executive Officer  
Phone: (414) 257-5608  
Email: cbeall@milwaukeedomes.org

with a copy to: Michael Best & Friedrich LLP  
One South Pinckney Street, Suite 700  
Madison, Wisconsin 53703  
Attn: Hamang B. Patel  
Phone: (608) 283-2278  
Email: hbpatel@michaelbest.com

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

#### **24. General Provisions.**

a. Attorneys Fees. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the United States Bankruptcy Code), is instituted in connection with any controversy arising out of this Lease or to interpret or enforce any rights or obligations hereunder, the prevailing party shall be entitled to recover attorney, paralegal, accountant, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law. If County or Tenant are required to seek legal assistance to enforce any term of this Lease, such fees shall include all of the above fees, whether or not a proceeding is initiated. Payment of all such fees shall also apply to any administrative proceeding, trial, and/or any appeal or petition for review.

b. Brokers. Neither party has been represented by a broker in this transaction. No obligation to pay a commission shall arise from the execution of this Lease and each party shall hold the other party harmless from any commission claims arising out of this transaction.

c. Calculation of Time. "Legal Holiday" shall mean any holiday observed by the federal government or the State of Wisconsin. "Business Day" shall mean Monday

through Friday and shall exclude Saturday, Sunday, and Legal Holidays. Unless referred to as Business Days, all periods of time referred to herein shall include Saturdays, Sundays, and Legal Holidays. However, if the last day of any period falls on a Saturday, Sunday, or Legal Holiday, then the period shall be extended to include the next day which is not a Saturday, Sunday, or Legal Holiday. Pursuant to Wis. Stats. § 801.15(1)(b), when the period of time prescribed or allowed is less than 11 days, Saturdays, Sundays, and holidays shall be excluded in the computation.

d. Capacity to Execute. County and Tenant warrant and represent to one another that this Lease constitutes a legal, valid, and binding obligation of that party. The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the party or parties for whom they purport to be acting.

e. Covenants, Conditions and Restrictions. This Lease is subject and subordinate to the effect of any covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, and any other matters of record now or hereafter imposed upon or pertaining to the Leased Premises and to any applicable land use or zoning laws or regulations, and any other matters of record pertaining to the Leased Premises.

f. Counterparts; Electronic Signatures. This Lease may be executed in one or more counterparts and each counterpart when executed and delivered shall be an original, but all of which shall constitute one instrument. Signatures delivered via e-mail or in "PDF" or other electronic format shall be deemed originals.

g. Entire Agreement. As of the Effective Date, this Lease, the Development Agreement and the Collection Maintenance Plan represent the entire agreement between County and Tenant relating to Tenant's leasing of the Leased Premises and the Plant and Animal Collection. It is understood and agreed by Tenant that neither County nor County's agents or employees have made any representations or promises with respect to this Lease or the making of or entry into this Lease, except as expressly set forth in this Lease. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Lease. All oral agreements, if any, are void and expressly waived by Tenant. This Lease has been thoroughly negotiated between County and Tenant; therefore, in the event of ambiguity, there shall be no presumption that such ambiguity should be construed against the drafter. Except for the agreements identified on Exhibit D, this Lease replaces and supersedes all prior agreements between the County and Tenant (or its predecessors) with respect to the Leased Premises and Park.

h. Delay Due to Force Majeure. For all purposes of this Lease, a party whose performance of its obligations hereunder is hindered or affected by events of Force Majeure shall not be considered in breach of or in default in its obligations hereunder to



the extent of any delay resulting from Force Majeure. For the avoidance of doubt, the lack of funds or any other financial difficulty shall not be an event of Force Majeure and in no event shall an event of Force Majeure be an excuse for paying Rent or any other costs or expenses due under this Lease in a timely manner. A party seeking an extension of time pursuant to the provisions of this Section shall give notice to the other party describing with reasonable particularity (to the extent known) the facts and circumstances constituting Force Majeure within (a) a reasonable time (but not more than thirty (30) days) after the date that the claiming party has actual knowledge of the scope and magnitude of the applicable Force Majeure event or (b) promptly after the other party's demand for performance. "Force Majeure" means events or circumstances which result in delays in a party's performance of its obligations hereunder due to causes beyond such party's control, including, but not restricted to, acts of God or of the public enemy, acts of the government that prohibit a party's ability to perform, acts or delays of the other party or its Agents, fires, floods, earthquakes, tidal waves, terrorist acts, strikes, freight embargoes, governmental moratorium or reasonably unexpected delays in the issuance of required governmental permits or approvals, inability to obtain materials, and unusually severe weather. Force Majeure does not include failure to obtain financing, a lack of funds or any other financial difficulty.

i. Governing Law. This Lease shall be governed, construed, and enforced in accordance with the laws of the State of Wisconsin without reference to any conflict of law provision that would call for the application of the law of another jurisdiction. The exclusive forum for the resolution of any dispute, action, or proceeding arising out of or related to this Lease shall be the state or federal courts located in Milwaukee County, Wisconsin. Each party hereby waives any objection to personal jurisdiction, venue or forum non conveniens with respect to any such suit, action or proceeding, and agrees to voluntarily appear and submit to the jurisdiction of such courts.

j. Interpretation of Lease. This Lease is the result of arm's length negotiations between County and Tenant and shall not be construed against either party. Nothing contained in this Lease, including the method of computation of rentals or construction of Improvements on the Leased Premises, shall be deemed or construed as creating the relationship of principal and agent, partners, joint venturer, or any other similar such relationship, between the parties hereto.

k. Limitation of County Liability. County shall have no liability to Tenant for loss, damage or injury suffered by Tenant on account of theft or any act or omission of a third party, including other tenants. County shall only be liable for its own willful misconduct or negligence or as otherwise described in this Lease and then only to the extent of actual and not consequential damages. Although this Lease gives County certain rights of inspection, such rights shall impose no obligation on County to make any inspections nor impose liability on County if County fails to make such inspections.

l. Modification. This Lease may not be modified or amended except by a written instrument duly executed by the authorized signatories for the parties hereto.

m. No Implied Warranty. In no event shall any consent, approval, acquiescence, or authorization by County be deemed a warranty, representation, or covenant by County that the matter approved, consented to, acquiesced in or authorized is appropriate, suitable, practical, safe or in compliance with any applicable law or this Lease. Tenant shall be solely responsible for such matters and County shall have no liability, therefore.

n. No Intended Third Party Beneficiary. Nothing in this Lease gives or shall be construed to create a benefit to any party who is not a signatory party to this Lease.

o. No Limit on County Powers. Nothing in this Lease shall limit, in any way, the power and right of County to exercise its governmental rights and powers, including its powers of eminent domain.

p. No Waiver. Waiver by County of strict performance of any provision of this Lease shall not be deemed a waiver of or prejudice County's right to require strict performance of the same provision in the future or of any other provision of this Lease.

q. Severability. If any provision contained herein is held to be invalid or unenforceable, the remaining provisions, or the application of such provisions to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision contained herein shall be valid and enforceable to the fullest extent permitted by law.

r. County Consent or Action. In the event this Lease is silent as to the standard for any consent, approval, determination or similar discretionary action, the standard shall be in the reasonable discretion of County. If Tenant requires County's consent or approval pursuant to any provision of this Lease, such consent or approval shall not be unreasonably withheld. All approvals required by County under this Lease shall be made by the Parks Director or its designee unless, in the Parks Director's opinion, such approval requires approval of other County officials.

s. Cooperation. Tenant and County acknowledge and agree that after the Effective Date, it is the intent that Tenant maintain all permits, licenses, contracts, and approvals necessary for operation of the Leased Premises for the Permitted Use. To the extent transferrable, County shall assign or transfer to Tenant all such permits, licenses, and approvals, and any contracts in the County's name that Tenant expressly identifies in writing that Tenant wishes to assume with respect to the Leased Premises. In the event that Tenant is required to submit any forms or other applications for approval for new permits, licenses, or approvals or to assign or transfer any existing permits, licenses, or

approvals, County shall, within a reasonable time after written request from Tenant therefor, at no cost or ongoing obligation or liability to County, execute such reasonable applications, consents, or other documentation reasonably requested by Tenant.

t. Survival. Any covenant or condition (including, but not limited to, indemnification provisions) set forth in this Lease, the full performance of which is not specifically required prior to the expiration or earlier termination of this Lease, and any covenant or condition which by their terms are to survive the termination of this Lease, shall survive the expiration or earlier termination of this Lease and shall remain fully enforceable thereafter.

u. Memorandum of Lease. Tenant or County, at its sole cost and expense, shall have the right to record a memorandum of this Lease, in form and substance reasonably satisfactory to the other party. Tenant and County shall have no right to record any other documents against the Leased Premises without the consent of the other party except as contemplated by this Lease.

v. Public Records Law. Tenant acknowledges that County is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease are subject to and conditioned on the provisions Tenant hereby agrees that it shall be obligated to assist County in retaining and timely producing records that are subject to Public Records Law upon any statutory request having been made. Except as otherwise authorized by County in writing, records that are subject to Public Records Law shall be maintained for a period of three (3) years after expiration of this Lease. In the event that County receives a request to disclose any Tenant information defined as “Confidential Information” or labeled as such by Tenant, County will promptly provide Tenant notice of the public records request to enable Tenant to resist any required disclosure and/or to obtain suitable protection regarding such required disclosure by County. In the event the designation of “Confidential Information” of such Tenant information is challenged by the requestor and Tenant resists disclosure by County, Tenant hereby agrees to provide legal counsel or other necessary assistance to County to defend the designation of confidentiality and agrees to indemnify and hold County harmless for any costs or damages arising out of County’s agreement to withhold such Tenant information from disclosure. Alternatively—or in the event County declines to resist a request to disclose any such document— Tenant may instead exercise itself any right available to it under the law to attempt to prevent disclosure by County.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Lease has been duly executed and delivered by the duly authorized person of each party hereto as of the Effective Date.

**TENANT:**

MILWAUKEE DOMES ALLIANCE, INC.

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

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

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

**COUNTY:**

Milwaukee County

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

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

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

*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

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



**[Insert Legal Description]**

**Exhibit B**

**Pavilion Studio**

[To be inserted]

Exhibit C  
Park Parking Areas





**Exhibit D**  
**Surviving Contracts**

Development Agreement

Collection Maintenance Plan

That certain Greenhouse Lease between County and Tenant dated as of the date hereof.