

1 LEASE

2 THIS INDENTURE OF LEASE, (herein called the "Lease"), made and entered
3 into as of the 26 day of July, 2007; by and between MILWAUKEE
4 COUNTY, a municipal corporation of the State of Wisconsin, as represented by the
5 Department Of Parks, Recreation & Culture as lessor (herein called "County" or
6 "Lessor"), and FRIENDS OF HOYT PARK AND POOL, INC. (FRIENDS), a Wisconsin
7 non-stock corporation, as Lessee.

8
9 PRELIMINARY STATEMENT

10
11 Milwaukee County is the owner of Hoyt Park, located adjacent to the
12 Menomonee River in Wauwatosa, Wisconsin. Hoyt Park was deeded by the City of
13 Wauwatosa to Milwaukee County in 1937 with the understanding that a swimming
14 pool would be constructed and maintained at that location. Milwaukee County
15 constructed Hoyt Park Pool and Bathhouse, which are located in the Park but have
16 not been operable since 2002. Friends of Hoyt Park, the predecessor of FRIENDS,
17 was formed as a grassroots citizens organization in February 2006, and was
18 established in April 2006 as a unit of The Park People. FRIENDS was incorporated
19 as a Wisconsin non-stock corporation on July 14, 2006 for the purposes of raising
20 funds, constructing, endowing, maintaining and operating a multi-generational,
21 family-oriented aquatic pool and community meeting facility and Related Facilities
22 at Hoyt Park for use by all Milwaukee County residents, and by visitors to
23 Milwaukee County. FRIENDS' proposed "Related Facilities" at Hoyt Park include a
24 coffee shop, a concessions stand, and similar facilities to support the Pool's overall
25 operation, which may also include the renovation of the existing Hoyt Park
26 Bathhouse for such uses. Pursuant to Adopted County Board Resolution (County
27 Board File No. 07-310, adopted July 26, 2007) Milwaukee County has agreed,
28 subject to contingency, to lease the site of the existing but inoperable Hoyt Park
29 Pool and Bathhouse to FRIENDS for these purposes.
30

31 WITNESSETH

32 1. DEMISED PROPERTY. Lessor does hereby lease, let and demise unto
33 Lessee, and Lessee does hereby lease and rent those portions of land, building and
34 Improvements (the "Property") located at what is commonly known as Hoyt Park
35 Pool and Bathhouse situated in the City of Wauwatosa, County of Milwaukee, State
36 of Wisconsin, as shown on Exhibit A attached hereto and made a part hereof and
37 on that certain parcel of real estate legally described on Exhibit B attached hereto
38 and hereby made a part of the Lease, with all easements, licenses, rights, privileges,
39 hereditaments and appurtenances thereunto belonging.
40

41 2. TERM. The Lease shall be for a term of fifty-five (55) years beginning on
42 the Term Commencement Date (as defined below), the target date for which is

1 August 2009, subject to extension and earlier termination as hereinafter provided.
2 Notwithstanding the foregoing or anything in the Lease to the contrary, the term
3 shall not commence prior to the Term Commencement Date without the written
4 consent of the Lessee. The Term shall expire at the end of the last day of the last
5 month of the Term. In the event the target date changes so that the Term
6 commences prior to or subsequent to August 2009, the expiration date of the Term
7 shall be revised accordingly. For purposes hereof, the term Preoccupancy
8 Commencement Date shall mean the date upon which the Lease has been executed
9 by both Lessor and Lessee.

10 3. CONTINGENCY. This Lease and the obligations of Lessor and Lessee
11 hereunder are contingent upon Lessee successfully meeting the Milwaukee County
12 "Due Diligence" requirements (see attached, as Exhibit E) and upon Lessee obtaining
13 on or before that date which is twelve (12) months from the Preoccupancy
14 Commencement Date or such other date as mutually agreed upon in writing by
15 Lessee and Lessor, (the "Contingency Expiration Date"), such grants, contributions
16 and/or funds from any other source in an amount of not less than One Hundred
17 percent (100%) of the estimated cost of the proposed Pool and associated facilities, as
18 well as \$350,000.00 cash in hand toward an eventual Endowment Fund of
19 \$1,000,000 for operating and maintaining the Property, the balance of which
20 Endowment Fund must be fully funded within two (2) years next following the
21 Preoccupancy Commencement Date. Cash in hand shall include funds on deposit in
22 Lessee's Endowment Fund together with non-contingent pledges for future payments
23 from foundations, individuals or corporations, the security of which is acceptable to
24 Lessor, which acceptance shall not be unreasonably withheld. In the event Lessee
25 has timely achieved its Financing Goal, which is (100%) of the estimated cost of the
26 proposed Pool and associated facilities plus \$350,000.00 toward the \$1,000,000.00
27 Endowment Fund, Lessee shall give written notice of same to Lessor on or before the
28 Contingency Expiration Date, in which event the Lease shall remain in force and effect
29 in accordance with the terms and conditions recited herein. The Term
30 Commencement Date shall be deemed to have begun on the first day of the month
31 following such written notice of Lessee having achieved its Financing Goal and
32 met Milwaukee County "Due Diligence" requirements, to the satisfaction of the
33 Milwaukee County Board of Supervisors. The target for the Term Commencement
34 Date is August 2009 or such other date as mutually agreed upon in writing by
35 Lessee and Lessor. In the event Lessee gives written notice to Lessor on or before the
36 Contingency Expiration Date that it has not achieved its Financing Goal and/or has
37 not met Milwaukee County "Due Diligence" requirements, or in the event Lessee
38 fails to give written notice to Lessor on or before the Contingency Expiration Date that
39 it has achieved its Financing Goal and met Milwaukee County "Due Diligence"
40 requirements, the Lease shall be deemed terminated and neither Lessor nor Lessee
41 shall have any further rights or obligations hereunder. However, Lessee may request
42 an extension of said Contingency Expiration Date in the event Lessee provides
43 satisfactory evidence to Lessor that Lessee has materially progressed towards such
44 Financing Goal and/or toward Milwaukee County "Due Diligence" requirements.
45

1 4. RENT.

2
3 (a) Rental Payments.

4
5 Effective as of the Term Commencement Date, Lessee shall pay, as rent for
6 the use and occupancy of the Property, Lessor, c/o Director, Milwaukee County
7 Department Of Parks, Recreation & Culture, 9480 Watertown Plank Road,
8 Wauwatosa, Wisconsin 53226, or at such other place Lessor shall direct by
9 written notice to Lessee, an annual base rent amount of one dollar.

10
11 The foregoing rent shall be payable in advance for all years of the current
12 term; upon commencement of each term, and shall be made to Lessor. Lessee
13 hereby acknowledges and agrees to be bound by Milwaukee County Ordinance
14 56.32, which provides for the imposition of penalties and interest for delinquent
15 rental payments.

16 Lessor and Lessee agree that interior and exterior building maintenance,
17 grounds maintenance, security, heating and cooling, utility, water and sewer
18 costs for the Property shall be the responsibility of the Lessee. Notwithstanding
19 any term to the contrary in this Lease, Lessee's duties set forth in this subsection
20 shall in no way modify, amend, limit, or restrict Lessee's obligations as set forth
21 in paragraph 9 (b) hereof.

22
23 (b) Additional Consideration.

24
25 Lessee shall establish an Endowment Fund (Fund) for maintenance and operation of
26 the Property, which shall total one million dollars (\$1,000,000). As additional
27 consideration, Lessee agrees to augment the Fund by depositing revenues
28 resulting from its operation (excess of revenues over expenses and depreciation) of
29 the Property and the interest accrued on any balance invested into the Fund.
30 Fund is to be used as follows:

- 31 • Major maintenance, repair and replacement to assure long-term major
32 maintenance, upkeep, repair, and replacement of the Property and the
33 improvements to be constructed on the Property.
34 • Operational expenses to cover potential future operating shortfalls, to
35 assure long-term continued operation of the Pool for community use, and,
36 for safety and security purposes.
37 • Additional improvements or non-routine maintenance to the leased
38 Property as may be agreed upon by Lessee and Lessor.

39
40 All payments and disbursements shall require approval of the Friends of Hoyt
41 Park and Pool's board of directors and that of an established Endowment Fund
42 Sub-Committee of said board. The Endowment Sub-Committee shall be
43 comprised of representatives from the Friends board of directors and such
44 person as the Milwaukee County Director of Administrative Services shall
45 designate, and such other person as the Milwaukee County Director Parks,

1 Energy and Environment shall designate. The Endowment Sub-Committee
2 shall be authorized to manage the Endowment Fund over its lifetime.
3 Management of the Fund shall include the establishment of an interest bearing
4 account(s), changing investment strategies, monitoring account activity, and
5 providing joint approval of all payments from account assets. Lessee shall
6 provide Lessor with quarterly reports relating to Endowment Fund activities,
7 including funds received, monies spent, and any long-term obligations, including
8 an annual report prepared by independent auditors.

9
10 **5. USE OF PROPERTY.**

11
12 (a) Use of Property. The Parties agree that Lessee accepts the Property
13 subject to all existing easements and/or restrictions on the Property and
14 surrounding area, and Lessee shall obtain any and all approvals necessary for
15 its use as contemplated. The Lessor does not represent that the Property are
16 suitable to Lessee's proposed use. The Lessor is not responsible for any
17 required approvals, zoning changes, building permits or other required
18 authorizations from regulatory agencies, without limitation. Lessee enters into
19 this Lease with this knowledge and understanding. Lessee shall use the
20 Property consistent with its Primary Function, to construct, endow, maintain
21 and operate an aquatic pool and Related Facilities at Hoyt Park, including a
22 concessions stand, and similar facilities to support the Pool's overall operation
23 (among them a coffee shop/casual restaurant in the existing Bathhouse, to the
24 extent subsequently permitted and approved by Lessor). Subject to Lessor's prior
25 written approval, which shall not be unreasonably withheld or delayed, Lessee
26 may use the Property for related ancillary functions such as offices, meeting
27 space, gift shop, food service, restrooms, performance spaces, and other lawful
28 purposes not inconsistent with the Primary Function and consistent with the
29 purpose of increasing public access to the Property and the surrounding Park.
30 Any proposed change of use or deviation from Lessee's Primary Function will
31 require Milwaukee County Board and County Executive approval. The grounds
32 shall be developed and landscaped in a manner that will enhance public access to
33 and enjoyment of the adjacent areas of Hoyt Park and promote park and open
34 space uses. Approval in writing must be obtained from the Department of Parks,
35 Recreation and Culture for any naming privileges sought in relation to the pool,
36 pool components, coffee shop, casual restaurant or related facilities, which
37 approval shall not be unreasonably withheld or delayed, except that the names of
38 individuals or family names or the names of foundations do not require such
39 approval. Lessor's failure to respond within 10 business days to a written or
40 electronic request by Lessee for approval of a naming privilege shall constitute
41 approval, if, in such written or electronic request, Lessee shall have notified
42 Lessor of the time constraint. Lessor may request and Lessee shall not
43 unreasonably refuse a reasonable extension of time within which to respond if
44 needed.

1 (b) Public Access and Use of Property. Lessee understands that the Property
2 exterior to the buildings and Pool area is a public park and is to remain open and
3 accessible to the public. The entire site surrounding the Property shall remain
4 open and available to the public on a daily basis. Lessee may utilize the areas
5 surrounding the building(s) subject to the then current policies; procedures,
6 conditions and fees established by the Department Of Parks, Recreation &
7 Culture for permits, rentals and/or special event permits. Lessee understands
8 that it will have to obtain any parking permits required by the City of Wauwatosa.
9 Lessee uses and Public uses, in these adjacent areas shall at all times also be
10 subject to the requirements and restrictions in Milwaukee County General
11 Ordinances Sections 47.02 and 47.16, and to all other rules, regulations, policies,
12 and procedures applicable to Properties and space owned by the Lessor and open
13 for general use by the public. Lessor further represents it will use its best effort
14 to promptly respond and enforce reported violations of the above-referenced
15 ordinances, policies, procedures, rules and regulations. Said ordinances are
16 all attached hereto as Exhibit C.
17

18 (c) Governance. Lessee agrees that during the term of this Lease, the
19 Milwaukee County Executive, or designee, and the Chair of the Milwaukee
20 County Board of Supervisors, or designee, shall each be a member of
21 Lessee's board of directors.
22

23 (d) Non-Discrimination. In furtherance of Lessee's uses of the Property
24 intended and permitted under this Lease Agreement, Lessee shall not
25 discriminate against any invitee or frequenter because of race, color, national
26 origin, age, sex or handicap.
27

28 6. ENVIRONMENTAL. Lessee shall, to the full extent provided for under
29 any environmental laws, rules and regulations, be responsible for any repair,
30 cleanup, remediation or detoxification arising out of (1) any hazardous
31 materials brought onto or introduced into the Property or surrounding areas by
32 Lessee, its agents or guests, and/or (2) hazardous materials whose presence
33 pre-exists the commencement of Lessee's lease term, located in and on the
34 Property, that are discovered or disturbed as a result of Lessee's construction
35 activities on, at or near the Property. Lessee shall indemnify, defend and hold
36 Lessor harmless from any liability, cost, damage, claim or injury (including
37 reasonable attorney fees) arising therefrom. Prior to the Term Commencement
38 Date, Phase I or other environmental reports and geotechnical reports may be
39 obtained at Lessee's expense to help determine anticipated remediation
40 requirements and expenses, as well as for identifying structural issues on, in
41 and under the site, or to provide recommendations or suggestions for further
42 review.
43

44 7. TAXES. Lessor and Lessee intend that the Property shall not be
45 subject to general and special real estate taxes and assessments, it being the
46 parties' intention that the Property constitute "property owned by any county"

1 within the meaning of Sec. 70.11(2), Wis. Stats., and Lessor and Lessee will
2 take such steps as are as reasonably necessary to establish and uphold such tax
3 exemption. Notwithstanding the foregoing, if the Property is now or hereafter
4 subject to such taxes and assessment, Lessee agrees to pay any real estate,
5 personal property or other taxes due and owing with respect to any
6 improvements made to, installed or located upon its Property. If, during the
7 term of the Lease, any special assessment is levied against the Property, then
8 Lessor and Lessee shall be responsible for payments of such special
9 assessment which becomes due and owing during the term of the Lease in
10 such proportion as the square footage of the Property bears to the square
11 footage of the Property being assessed (The Proportionate Share). Nothing
12 herein contained shall prevent Lessor and/or Lessee from protesting the
13 validity or amount of any such assessment or from taking such action as may
14 be required or permitted by law for enforcing and effecting such protest. In this
15 connection, Lessor and/or Lessee may withhold the payment of any such
16 protested assessments provided Lessor and/or Lessee proceed with such
17 protest according to law and provide satisfactory security.

18
19 8. UTILITIES: LICENSES. FEES. Lessee agrees to pay, when due, all
20 charges and costs for installation and operation of water, sewer, gas, heat,
21 air conditioning, electricity, telephone and any and all other utilities or
22 services. Lessee will at its sole expense, provide for the installation of a
23 separate metering system for these expenses.

24
25 Lessee, at its expense, shall acquire and pay for all permits or licenses
26 which may be required for Lessee's business, and also to pay, when due, all
27 occupation taxes and any other charges of a similar nature which may at any
28 time be levied against the Property by reason of Lessee's use and occupancy
29 thereof.

30
31 Lessor shall provide any easements or permits required from Milwaukee
32 County to allow for the installation, operation and maintenance of the needed
33 utilities.

34
35 9. REPAIRS AND MAINTENANCE:

36
37 (a) Repairs and Maintenance. Lessee shall be responsible for interior
38 and exterior maintenance and repairs to the building(s), and the Property.

39
40 (b) Lessee covenants and agrees that it will keep the Property,
41 including the buildings and those portions of the Property outside of and
42 beyond the buildings, in a reasonably safe and serviceable condition
43 according to Department Of Parks, Recreation & Culture standards and
44 make the necessary repairs to the plumbing, heating, and air conditioning
45 systems, leaking of water, gas or waste pipes, maintain adequate heat to
46 prevent freezing of pipes, and shall otherwise perform all necessary repairs,

1 replacements and maintenance to the Property, including necessary
2 cosmetic repairs to the Property, which shall include such things as
3 chipping paint, rotted wood, or cracking stucco, as follows: (i) structural
4 repairs and replacements, including maintenance to the pool as well as to
5 the roof, exterior walls, and foundation of any structure; (ii) repairs or
6 replacements which are necessitated by the willful or negligent act or
7 omission of Lessee, its agents, employees, invitees or representatives; (iii)
8 repairs or replacements which are necessitated by reason of fire or other
9 natural casualty, which events are governed by Paragraph 17 below; (iv)
10 repairs or replacements which are necessitated by reason of a defect in the
11 condition of the Property which existed prior to the Preoccupancy Commencement
12 Date of the Lease; and (v) repairs or replacements which are necessitated by
13 reason of a breach of any warranty or representation of Lessee contained in the
14 Lease or by reason of Lessee's failure to perform or observe any term, covenant or
15 condition to be performed or observed by Lessee pursuant to the Lease. Lessee
16 agrees to perform all repairs, maintenance and replacements of the type
17 enumerated in subparagraphs (i) through (v) of this Paragraph 9 as expeditiously
18 as is reasonable. In the event the Lessee cannot repair or maintain an item
19 enumerated in subparagraphs (i) though (v) above, which directly impacts the
20 condition of the Property and its use, Lessor may, after notice to Lessee to
21 perform same and reasonable time for Lessee to do so, make said repair or
22 maintenance and Lessee shall reimburse Lessor for the reasonable costs of said
23 repair or maintenance. In the event of an emergency repair which prevents such
24 notification, Lessor shall notify Lessee of said repair as soon as is possible.

25
26 (c) Notwithstanding anything to the contrary hereinabove set forth, Lessee
27 shall be responsible for the maintenance and repair of its improvements, trade
28 fixtures, equipment and mechanical systems including such periodic janitorial
29 and preventative maintenance of its improvements, trade fixtures and equipment,
30 as Lessee may require. Lessee further agrees to comply with such reasonable
31 rules and regulations as Lessor may establish from time to time for the upkeep
32 and maintenance of the Property.

33
34 (d) Janitorial. Lessee shall, at its own expense, provide, or cause to be
35 provided, routine cleaning of and janitorial services to the entire Property in a
36 commercially reasonable manner throughout the term of the Lease.

37 (e). All repairs, modifications and skilled maintenance shall be performed
38 by licensed professionals (i.e. plumbers, electricians, etc).

39
40 10. Security. Lessor shall provide, or cause to be provided, routine periodic
41 checks of the exterior areas of the Property, including the common areas of the
42 Property and the portion of the parking lot adjacent to the Property, on days when
43 Lessee operates the Pool, beginning one hour before and ending one hour after the
44 Pool's hours of operation, according to Department Of Parks, Recreation &
45 Culture standards. Lessee shall be responsible for any security necessary in

1 connection with its use, operation and occupancy of the Property. In addition,
2 Lessee shall restore and repair, at its sole cost and expense, all facilities damaged
3 and defaced as the result of vandalism, graffiti, or other wanton destruction by
4 third parties.

5
6 11. Lessor (its Department Of Parks, Recreation & Culture) shall be
7 provided the opportunity to "bid" on all work and services to be performed for
8 Lessee that are let out for bid by Lessee.

9
10 12. INDEMNITY AND SUBROGATION.

11
12 (a) The Lessee and Lessor (the "Indemnifying Party") agree to the fullest
13 extent permitted by law, to indemnify, defend and hold each other harmless,
14 and their agents, officers, and employees, from and against all loss or expense
15 including costs and attorney's fees by reason of liability for damages including
16 suits at law or in equity, caused by any wrongful, intentional, or negligent act
17 or omission of the Indemnifying Party or its agents which may arise out of or
18 are connected with the activities covered by the Lease; provided that the party
19 seeking indemnification (an "Indemnitee") notify the other party (an
20 "Indemnitor") in writing of the existence of such loss, liability, claim, injury,
21 damage or expense immediately after the Indemnitee has obtained actual
22 knowledge that such a loss liability, claim, injury, damage or expense is
23 threatened or pending, and further provided that the Indemnitee afford to the
24 Indemnitor the right, but not the obligation, to assume the defense of such
25 loss, liability, claim, injury, damage, costs and expenses, including reasonable
26 attorneys' fees connected therewith or resulting therefrom. Lessor's liability
27 shall be limited by Wisconsin Statutes 345.03(3) for automobile and 893.80(3)
28 for general liability

29
30 (b) Lessor shall purchase all risks property insurance for the buildings
31 and structures, designated as property owned by the County in accordance
32 with §8, supra, relative to Sec. 70.11(2), Wis. Stats, taxes, for which Lessee will
33 reimburse Lessor for the costs of the premiums. Lessee shall notify Lessor
34 upon completion of any new building or structure that will be designated as
35 property owned by the County for the purpose of adding it to Lessor's property
36 insurance. Lessee shall purchase property insurance for its personal property,
37 leasehold improvements and betterments and business interruptions, as is
38 applicable, to protect the interests of lessee and lessor. Lessee shall bear all
39 costs of all such insurance including applicable deductibles in the event a
40 covered loss should occur. Lessee will provide a certificate of insurance from
41 an insurer in a form reasonably approved by Lessor as evidence of Lessee's
42 financial responsibility for its personal property, leasehold improvements and
43 betterments and business interruptions.

1 13. INSURANCE. Lessee agrees to evidence and maintain and/or cause its
 2 contractors to evidence and maintain proof of financial responsibility to cover
 3 costs as may arise from claims of tort, statutes and benefits under Workers'
 4 Compensation laws and/or vicarious liability arising from employees at least to
 5 the minimum limits established now and in the future by Milwaukee County's
 6 Risk Manager. Such evidence shall include insurance coverage for Workers'
 7 Compensation claims as required by the State of Wisconsin, including
 8 employer's liability and business insurance covering general liability and
 9 automobile coverage in the following minimum amounts:

Type of Coverage	Minimum Limits
Wisconsin Workers Compensation Employers Liability & Disease	Statutory \$100,000/\$500,000/\$100,000
General Liability (including Contractual Liability, Premises Operations, Independent Contractor's Protective, Broad Form Property Damage)	
Bodily Injury & Property Damage	\$1,000,000 Per Occurrence
To include Personal Injury, Fire, Products and Completed Operations Contractual Liability and X, C and U (Products and Completed Operations to be maintained for 2 years after final payment. Broad Form Property Damage Coverage shall include completed operations)	\$2,000,000 Aggregate
Professional Liability (Errors and Omissions) (required for Constructions Managers, Architects, Engineers and Designers)	\$1,000,000 per occurrence/claim
Environmental Impairment Insurance	\$1,000,000 Aggregate (If required)
Automobile Liability Bodily Injury & Property Damage All autos	\$1,000,000 Per Accident

38 Except for Environmental Impairment insurance, Professional Liability,
 39 Worker's Compensation and Employers Liability, Milwaukee County shall be
 40 named as an additional Insured in the general liability and automobile liability
 41 policies as its interests may appear as respects the services provided in this
 42 agreement; in the event there is a General Contractor, then the Lessee and
 43 Milwaukee County shall be named as additional Insureds. A thirty (30) day
 44 written notice of cancellation or non-renewal shall be afforded to Milwaukee
 45 County. Any Requests for Proposal (RFPs) issued by the Lessee must require
 46 these insurance provisions of the bidders and their subcontractors.

47
 48 The insurance specified above shall be placed with an A rated carrier per Best's
 49 Rating Guide approved to do business in the State of Wisconsin. Any
 50 deviations or waiver of required coverages or minimums shall be submitted in

1 writing and approved by Milwaukee County's Risk Manager as a condition of
2 this agreement. Waivers may be granted when surplus lines and specialty
3 carriers are used.

4
5 A certificate of insurance shall be submitted for review to Milwaukee County for
6 each successive period of coverage for the duration of this agreement.

7
8 Lessee shall provide proof of Fidelity (employee dishonesty) Insurance in
9 amounts that are acceptable to the Milwaukee County Risk Manager.

10
11 Lessee shall also evidence and maintain or cause its Endowment managers to
12 evidence and maintain Fiduciary Insurance in an amount sufficient to fully
13 insure the amounts held in such funds.

14
15 Builders Risk. The Lessee or its general contractor shall provide Builders Risk
16 insurance coverage on a completed value form insuring for special perils.

17
18 Performance Bond and Payment Bond. The Contractor shall furnish bonds
19 covering faithful performance of the contract and payment of obligations
20 arising thereunder. Bonds may be obtained through the Contractor's usual
21 source and the cost thereof shall be included in the contract sum. The amount
22 of each bond shall be equal to 100 percent of the contract sum. The Contractor
23 shall deliver the required bonds to the Lessee/Lessor with the Construction
24 Contract and prior to the commencement of the work.

25
26
27 14. ALTERATIONS AND IMPROVEMENTS. Lessee shall, at its sole expense,
28 subsequent to the achievement of Financing Goal (as herein defined), comply
29 with Milwaukee County Due Diligence requirements and satisfaction or waiver
30 of the contingency set forth in Paragraph 3 hereof, restore, improve,
31 rehabilitate, remodel and make alterations and additions to and improvements
32 on the Property as Lessee and Lessor deem necessary or desirable in the
33 conduct of Lessee's Primary Function and/or in the construction, maintenance
34 and operation of an aquatic pool and community meeting facility and Related
35 Facilities at Hoyt Park ; provided, however, that Lessee shall first submit the
36 conceptual plans and specifications for such improvements to the Milwaukee
37 County Board and the Milwaukee County Executive for Lessor's approval.
38 Thereafter, but prior to the start of any construction activities, Lessee will
39 submit any, every and all detailed construction plans and specifications, and
40 any revisions thereto, to the Director of the Department Of Parks, Recreation &
41 Culture, or to the Architecture and Engineering Division of the Milwaukee
42 County Department Of Transportation And Public Works, at Lessor's option,
43 and to the extent required, to the Milwaukee County Public Art Committee,
44 together with the name of Lessee's proposed contractor(s), for review and
45 approval, which approval shall not be unreasonably delayed or withheld.
46 Lessor's failure to respond within 15 business days to a written or electronic

1 request by Lessee for approval of construction plans, or within 10 days
2 regarding revisions, shall constitute approval, if, in such written or electronic
3 request, Lessee shall have notified Lessor of the time constraint. Lessor may
4 request and Lessee shall not unreasonably refuse a reasonable extension of time
5 within which to respond if needed. Lessor's Architecture and Engineering
6 Division personnel shall be included in all planning meetings. Lessee shall
7 reimburse Lessor for the cost of a Milwaukee County Project Manager during
8 construction phases of the facilities, in an amount not to exceed \$15,000.00. It
9 is expressly understood that the Director of the Department Of Parks,
10 Recreation & Culture, or the Architecture and Engineering Division, cannot
11 and will not approve any revisions that, in their opinion, are not consistent
12 with Lessee's Primary Function and/or not consistent with the conceptual
13 design, plans and specifications approved by the Milwaukee County Board and
14 the Milwaukee County Executive. It is understood by the parties that Lessee
15 anticipates that its improvements to the Property may proceed in stages, with
16 the Pool and immediately Related Facilities and community meeting facility
17 being financed, submitted to the Director for approval, and constructed first,
18 and with the coffee shop/casual restaurant in the Bathhouse, and, community
19 meeting facility, to be financed, submitted to the Director for approval, and
20 constructed at a later date, dependent on the timing of Lessee's fundraising. All
21 the provisions and requirements of this paragraph 14 and its subparts shall
22 apply with equal force and effect to any later construction of the proposed
23 coffee shop/casual restaurant.

24
25 (a) Conditions for Approval Shall Include, but not be limited to provision
26 that: (1) Lessee shall obtain, prior to commencing any alterations, additions
27 and improvements, all necessary permits and licenses from the appropriate
28 governmental authorities; and (2) Lessee shall commence construction of said
29 improvements described in the approved plans and specifications as soon as
30 reasonably practicable following Lessor's approval and shall have a period of
31 eighteen (18) months or other period of time mutually agreed upon by Lessee
32 and Lessor, thereafter to complete the tenant improvements contemplated
33 hereby (subject to extension by reason of force majeure). A separate schedule
34 for later construction of the proposed coffee shop/casual restaurant in the
35 Bathhouse shall be agreed upon by Lessor and Lessee upon submission by
36 Lessee and approval by the Director of Lessee's plans for those improvements,
37 along with Lessee's demonstration of its ability to finance those additional
38 improvements.

39
40 (b) The grounds shall be developed and landscaped in a manner that will
41 enhance public access to and enjoyment of the adjacent areas of Hoyt Park and
42 promote open space uses. All of said work shall be completed in a first-class
43 manner and consistent with the standards established for other work in the
44 Property. Lessor shall have the right to inspect the work at reasonable times
45 provided it does not interfere with Lessee's construction of such alterations and
46 tenant improvements. Any and all alterations, additions and additional

1 improvements shall be made in compliance with all statutes, laws, ordinances,
2 rules and regulations of any governmental authority having jurisdiction of the
3 Property, Lessee shall also indemnify and hold Lessor harmless from and
4 against all statutory liens or claims or liens of any contractor, subcontractor,
5 laborer or any other party which may arise in connection with any alternation,
6 addition or improvement or Property to the Property. Any structures,
7 alterations, additions or Leasehold improvements installed on the Property by
8 Lessee, as well as such Lessee-owned furnishings, fixtures, equipment and
9 supplies associated with the Property that are necessary for the continued
10 operation of the Premise, shall become the property of the Lessor upon the
11 expiration or termination of the Lease. In no event shall Lessee make any
12 alterations or additions to the Property without the prior written consent of
13 Lessor, which consent shall not be unreasonably delayed or withheld. Routine
14 instances of maintenance, painting, repair and like-kind replacement of
15 materials needing repair or replacement do not constitute alterations or
16 additions requiring such approval, providing they do not individually exceed
17 \$3,000 in cost. This cost threshold shall be adjusted annually for inflation,
18 using the United States Consumer Price Index, Midwest area, all items less
19 shelter.

20
21 15. IMPROVEMENTS; TRADE FIXTURES

22
23 (a) Improvements. Permanent improvements to the Property made by
24 Lessee shall, upon termination of the lease, become the property of Lessor.

25
26 (b) Trade Fixtures Of Lessee. At any time subsequent to the satisfaction
27 or waiver of the Contingency set forth in Paragraph 3 herein, Lessee may
28 furnish, install and maintain on the Property any and all fixtures, equipment
29 and other personal property useful in connection with Lessee's operation on
30 the Property.

31
32 (c) Upon expiration of the Lease or the early termination of the Lease, as
33 a result of Lessee's voluntary election to relinquish its lease before the end of
34 the lease term, or Lessee's uncured default, Lessor shall thereby acquire, free
35 and clear, title to Property including all permanent alterations, modifications,
36 additions and improvements to the Property, all Endowment Fund reserves, all
37 pool equipment and supplies, all Lessee-owned concession equipment and
38 supplies and all other Lessee-owned equipment and supplies necessary and
39 appropriate for the continued operation of the Property.

40
41 16. ASSIGNMENT AND SUBLETTING. Lessee may not assign the Lease and its
42 right, title and interest hereunder, nor sublet the Property, nor any portions of the
43 Property, whether devoted to coffee shop/concession stand or similar use to
44 vendors/concessionaires, or otherwise, without Lessor's express written consent,
45 which consent shall not be unreasonably delayed or withheld.

1 17. DAMAGE OR DESTRUCTION. If, during the term of the Lease, including
2 any time after which Lessee may have given notice to terminate the Lease, the entire
3 structural portion of the Property or such portion thereof as shall render the remaining
4 portion thereof unsuitable for the continued conduct of Lessee's activities therein, shall
5 be damaged or destroyed more than 85% by fire or other casualty, Lessee shall have
6 the right, for a period of forty-five (45) days thereafter, by giving written notice to
7 Lessor, to terminate the Lease, in which event: (a) Lessor shall be entitled to retain all
8 insurance proceeds payable by reason of and with respect to damage or destruction to
9 the Property and improvements constructed by Lessor on the Property; and (b). Lessee
10 shall convey and remit to Lessor all insurance proceeds payable by reason of and with
11 respect to damage or destruction to the improvements owned or constructed by Lessee
12 on the Property, and all insurance proceeds relating to Lessee's futures, equipment,
13 and other personal property, to the extent such things are necessary and
14 appropriate for the continued operation of the leased property. If Lessee does not
15 elect to terminate the Lease or if the damage or destruction to the Property does not
16 render the remaining portion thereof unsuitable for the continued conduct of Lessee's
17 activities thereon, then the Lease shall continue in full force and effect, and Lessee
18 shall, in accordance with the provisions set forth in Paragraphs 9 and 14 hereof,
19 promptly commence and pursue diligently to completion whatever repairs to the
20 Property are necessary to restore the Property to the condition the same were in prior
21 to such damage or destruction and Lessee shall be entitled to all insurance proceeds
22 relating to the casualty. All such repairs shall be performed promptly and in a good
23 and workmanlike manner in accordance with all statutes, laws, ordinances, rules and
24 regulations of any governmental authority having jurisdiction over the Property.
25 Commencing on the date of such damage or destruction and continuing during the
26 period in which Lessee is repairing and restoring the Property pursuant to this
27 Paragraph, the rental payable by Lessee shall abate in proportion to the floor area of
28 that Property of which Lessee is deprived for the period in which Lessee is deprived of
29 such area.

30
31 18. CONDEMNATION:

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

39 b. Partial Taking. If the portion of the Property taken by any public, or quasi-
40 public authority (which Milwaukee County hereby agrees not to do) under its power of
41 condemnation of eminent domain (or sold under threat thereof) shall not render the
42 remaining portion unsuitable for the continued conduct of Lessee's activities thereon,
43 the Lease shall continue in full force and effect. Lessor shall use such portion of the

1 Lessor's proceeds by reason of such taking necessary to repair and restore the
2 Property as herein provided.

3
4 c. Division of Compensation Award. Lessor and Lessee shall participate pro
5 rata based upon their respective investments in the Property and the value of the
6 Leasehold hereby created as if the Lease would have expired at the end of the Lease
7 term in all compensation awarded or paid upon a total or partial taking of the
8 Property. In determining the respective investments of Lessor and Lessee in the
9 Property, Lessee shall receive a credit for the value of Lessee's trade fixtures and
10 improvements to the Property, taken by any condemning authority. In the event that
11 a single entire award is made on account of the condemnation, Lessee and Lessor
12 will be entitled to such proportion of the award as may be fair and reasonable. Any
13 valuation shall also take into account Lessee's option rights. Notwithstanding the
14 foregoing, nothing contained herein shall be construed to preclude Lessee from
15 prosecuting any claim directly against the condemning authority in such
16 condemnation proceedings for loss of business, and/or depreciation to, damage to
17 and/or cost of removal of, and/or for the value of stock and/or Lessee's trade
18 fixtures, furniture, equipment and other improvements made to the Property, and
19 any other property belonging to Lessee.

20
21 19. INDEMNITY. Lessee shall indemnify and save Lessor harmless from all
22 losses and damage to any person or property resulting from the willful or negligent act
23 or omission of Lessee, its employees, agents, representatives or licensees, or resulting
24 from the failure of Lessee to perform or observe any of the terms, covenants and
25 conditions of this lease to be performed or observed by Lessee. Lessor shall indemnify
26 and save Lessee harmless from all losses and damage to any person or property
27 resulting from the willful and negligent act or omission, of Lessor, its employees,
28 agents, representatives or licensees, or resulting from the failure of Lessor to perform
29 or observe any of the terms, covenants and conditions of this lease to be performed or
30 observed by the Lessor; provided, however, that Lessor is notified within ten (10) days
31 of any event which might give rise to a claim of indemnification and that Lessor shall
32 have the right to defend any claim or action arising hereunder. The foregoing
33 indemnities shall not be construed to limit or adversely affect the ability of Lessor or
34 Lessee to avail itself of the benefits of the insurance coverages set forth in this lease.

35
36 20. WARRANTY OF TITLE, QUIET ENJOYMENT, ETC. Lessor hereby
37 warrants that it has title to the Property in fee simple, free of all liens, charges
38 and encumbrances, and that it has full right and authority to enter into this
39 Lease. Lessor covenants and agrees that, so long as Lessee shall duly and
40 punctually perform and observe all of its obligations under the Lease, Lessee
41 shall peaceably and quietly have, hold and enjoy the Property without any
42 hindrance or molestation from Lessor or any other party.

1 21. DEFAULT REMEDIES

2
3 a. Default by Lessee. If (i) Lessee fails to pay any of the rental or other
4 sums required hereunder and such failure to pay continues for thirty (30) days
5 after written notice thereof to Lessee; or, (ii) default be made in the
6 performance or observance by Lessee of any other terms, covenants or
7 conditions herein contained and such default shall continue for forty-five (45)
8 days after written notice thereof to Lessee (or if such default is not of a type
9 that can reasonably be corrected within forty-five (45) days as determined
10 by Lessor, and Lessee fails to commence promptly and in good faith to proceed
11 with due diligence to correct such default), then in any of the above-described
12 events, Lessor may elect to terminate the Lease and declare the term of the
13 Lease ended, to re-enter the Property or any part thereof with judicial process
14 and to expel and remove Lessee or any person or persons occupying the same
15 and again to repossess and enjoy the Property. Lessor shall also have the right,
16 at its option, in the event its written notice of default is not cured by Lessee
17 within the time provided in this Lease, to cure any default by Lessee and
18 recover from Lessee the costs and expenses incurred by Lessor in curing such
19 default. In the event of termination of this Lease as a result of Lessee's default,
20 the end of the lease term or Lessee's voluntary relinquishment of its lease
21 before the end of the lease term, Lessor shall thereby acquire free and clear
22 title to Property including all improvements, modifications, and additions to the
23 Property, all Endowment Fund reserves, all pool equipment and supplies, all
24 Lessee-owned concession equipment and supplies and all other Lessee-owned
25 equipment and supplies necessary and appropriate for the continued operation
26 of the leased property.

27
28 b. Default by Lessor. In the event of default by Lessor in the performance or
29 observance of any of the covenants or conditions herein contained and which shall
30 continue for forty-five (45) days after written notice thereof to Lessor (or if such
31 default is not of a type that can reasonably be corrected within forty-five (45) days,
32 then if Lessee fails to commence promptly and in good faith to proceed with due
33 diligence to correct such default), then in any of the above described events, Lessee
34 shall have the right at its option to immediately terminate the Lease, to cure any
35 default by Lessor and deduct the costs and expenses incurred by Lessee in curing
36 such default from the rental and any other amounts thereafter accruing to Lessor, or
37 to offset the amount of damages incurred as a consequence of any claim described
38 above from the rental and any other amount thereafter accruing to Lessor. All
39 amounts expended by Lessee in curing Lessor's defaults or as a consequence of any
40 claim shall be paid by Lessor upon demand by Lessee. In the event of any alleged
41 default hereunder by either Lessor or Lessee, the parties shall endeavor, in good
42 faith, to utilize an alternative dispute resolution mechanism, which utilizes retired
43 judicial officials prior to the commencement of any litigation.

44 c. Remedies Not Exclusive. Any right or remedy conferred on Lessor or Lessee
45 under the Lease shall not be deemed to be exclusive of any other right or remedy

1 which might otherwise be available hereunder or at law or in equity. The rights and
2 remedies hereunder shall be cumulative and may be exercised and enforced
3 concurrently and whenever and as often as occasion therefore arises.

4
5 d. No Waivers of Rights. The failure of Lessor or Lessee to insist upon strict
6 performance of any of the terms, covenants or conditions herein contained shall not
7 be deemed a waiver of any of its rights or remedies and shall not be deemed a waiver of
8 any subsequent breach or default in any of said terms, covenants and conditions.

9
10 22. PARKING. Lessor shall maintain the roads and parkways within Hoyt
11 Park that connect the parking lot adjacent to the Property to the surrounding
12 Wauwatosa streets, such that public access via automobile to the parking lot is
13 available.

14
15 23. EARLY ACCESS TO PROPERTY: As of the Preoccupancy
16 Commencement Date, Lessee shall be allowed access to the Property for the
17 purposes of allowing its architects and consultants access to conduct
18 environmental and geotechnical due diligence and to conduct investigations
19 necessary to prepare plans, specifications, and drawings for the improvements
20 to the Property. In furtherance hereof, Lessor shall provide Lessee with keys to
21 The Property upon the Pre-occupancy Commencement Date. All Lessee events
22 and activities that occur wholly or partially outside the leased Property at any
23 time shall comply with then current County ordinances and requirements for
24 Special Events permits or other applicable permits or approvals. Lessee agrees
25 to apply for a right of entry permit from Milwaukee County Department Of
26 Parks, Recreation & Culture (as well as any other necessary permits as
27 applicable), unless otherwise agreed to by and between Lessor and Lessee in
28 writing, at least forty-eight (48) hours before its architects and consultants
29 enter the Property to conduct environmental and geotechnical due diligence
30 and conduct such other investigations necessary to prepare plans,
31 specifications, and drawings for the improvements to the Property or to
32 conduct tours in the Property necessary to achieve Lessee's Financing Goal.

33
34 24. SIGNS. Lessee shall have the right and privilege of attaching, affixing,
35 painting or exhibiting signs on the interior of the Property, on the exterior of
36 the Property and at the entrances to the Park only with the written approval of
37 Lessor, provided that: a) any and all signs shall comply with the ordinances of
38 the City of Wauwatosa; and b) such signs if and when taken down shall not
39 damage the Property or, if any damage, occurs, Lessee shall promptly repair
40 the same; and c) it is expressly understood by Lessee that any such signage
41 shall be subject to the applicable terms and conditions set forth by the City of
42 Wauwatosa and the Department Of Parks, Recreation and Culture. It is hereby
43 intended that Lessor and Lessee shall cooperate in order to arrive at a mutually
44 agreeable signage program which shall facilitate the exposure of Lessee's
45 Property to the general public while at the same time being esthetically
46 compatible with the surrounding Park.

1
2 25. CONTROL OF ACCESS. Lessor hereby acknowledges and agrees that,
3 in order for Lessee to control access to the Property, Lessee shall have the right
4 to exclusively control access to the structure(s)' interior.
5

6 26. DEFINITIONS.
7

8 (a) Normal Business Hours of Lessee shall mean the hours when the
9 facility is expected to be open to the public, which hours of operation and other
10 similar programmatic issues shall be reviewed between Lessor and Lessee from
11 time to time.
12

13 (b) "Contingency Expiration Date" is defined in Section 3, and is a date
14 twelve months from the Preoccupancy Commencement Date.
15

16 (c) "Financing Goal" is defined in Section 3 as such grants, contributions
17 and/or funds from any other source in an amount of not less than 80% of the
18 estimated project cost..
19

20 (d) "Preoccupancy Commencement Date" shall mean the date upon which
21 the Lease has been executed by both Lessor and Lessee.
22

23 (e) "Term Commencement Date" is defined in Section 3 the target date for
24 which is August 2009.
25

26 27. PROHIBITED PRACTICES.
27

28 (a) During the term of this Agreement, Lessee shall not hire, retain or
29 utilize for compensation any member, officer or employee of the County or any
30 person who, to the actual knowledge (without inquiry) of Lessee, has a conflict
31 of interest.
32

33 (b) Lessee hereby acknowledges that portion of Lessor's Code of Ethics,
34 which states in part: No person may offer to give to any County officer of
35 employee or his immediate family, and no County officer of employee or his
36 immediate family may solicit or receive anything of value pursuant to an
37 understanding that such officers or employees vote, official actions or judgment
38 would be influenced thereby.
39

40 (c). Non-Discrimination: The Lessee will not discriminate against any
41 person using or wanting to use the Property because of race, color, national
42 origin, age (40 and over), sex or handicap. Lessee may require young children
43 using the Property to be accompanied by an adult, and may establish
44 requirements for adult supervision of groups of children. Likewise, fees shall
45 be reasonable, and, uniform for all Milwaukee County residents, except that
46 different fees may be charged adults, seniors and children. The reasonableness

1 of fees shall be determined in relation to the long-term financial sustainability
2 of Lessee's operation of the Property, which is dependent upon fees being
3 sufficient to cover operating costs, since Lessor's tax funds are not available to
4 subsidize Lessee's fee income.

5
6 28. MISCELLANEOUS.
7

8 (a) Notices. Whenever in the Lease it shall be required or permitted that
9 notice be given by any party hereto to the other, such notice shall be given by
10 certified or registered mail, and any notice so sent shall be deemed to have
11 been given on the date that the same is deposited in the United States mail,
12 postage prepaid. Notices shall be addressed to Lessor at Milwaukee County
13 Department Of Parks, Recreation & Culture, 9480 Watertown Plank: Road,
14 Wauwatosa, Wisconsin 53226, Attn: Director (with a copy to Corporation
15 Counsel, Room 303, Milwaukee County Courthouse, 901 North Ninth Street,
16 Milwaukee, Wisconsin 53233), and to Lessee at FOHPP, c/o Denise Lindberg,
17 President, 6222 Washington Circle, Wauwatosa, WI 53213 (with a copy to
18 Attorney Dennis M. Grzezinski, 312 East Wisconsin Avenue, Suite 210,
19 Milwaukee, WI 53202), or at such other address as either party may from time
20 to time specify in writing in lieu thereof. It is further agreed that each party
21 hereto will promptly furnish to the other party hereto a copy of any notice it
22 may receive from any third person, which may affect the rights of any party
23 hereunder.
24

25 (b) Access. Lessor, its agents and representatives shall, upon reasonable
26 notice to Lessee, be entitled to enter upon the Property at reasonable times
27 during normal business hours for the purpose of examining and inspecting the
28 condition thereof, and exercising any right or power reserved to Lessor under
29 the Lease provided, however, that except in the case of an emergency such
30 entry shall be done in a manner so as not to unreasonably interfere with the
31 conduct of Lessee's activities thereon, and such entry shall except in the case
32 of an emergency only be made if Lessor is accompanied by a responsible
33 employee of Lessee.
34

35 (c) Disadvantaged Business Enterprise (DBE) Utilization. Lessee shall use
36 reasonable efforts to cause its contractors to establish Disadvantaged Business
37 Enterprise (DBE) participation goals, consistent with Milwaukee County DBE
38 goals of 25% for construction and 17% for professional services, for the
39 planning, development and construction of improvements and to use good faith
40 efforts to achieve those goals. The Milwaukee County Community Business
41 Development Partners shall assist the Lessee in soliciting potential DBE
42 vendors for the improvements and monitor such goal attainment. Lessor's
43 contact regarding DBE participation is Freida Webb, Director, CBDP, at 414-
44 257-5248 or . Lessor will provide an annual DBE report to the CBDP office
45 during the year(s) of construction.
46

1 (d) Equal Employment Opportunities. In, accordance with Section 56.17 of the
2 Milwaukee County General Ordinances and Title 41 of the Code of Federal
3 Regulations, Chapter 60, the Lessee Certifies to the Lessor as to the following:
4

5 1) Non-Discrimination: The Lessee certifies that it will not
6 discriminate against any employee or applicant for employment because of race, color,
7 national origin, age, sex or handicap which includes, but is not limited to, the
8 following: employment, upgrading, demotion or transfer, recruitment, or recruitment
9 advertising; layoff or termination; rate of pay or other forms of compensation; and
10 selection for training, including apprenticeship. The Lessee will post in conspicuous
11 places, available for employment, notices setting forth the provisions of the non-
12 discriminatory clause. Attached hereto as Exhibit D is an Equal Opportunity
13 Certificate that shall be executed and delivered by Lessee simultaneously with the
14 execution and delivery of the Lease.
15

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

25 3) Affirmative Action Plan: The Lessee certifies that if it has 50 or
26 more employees, it has filed or will develop and submit a written Affirmative Action
27 Plan. Current Affirmative Action Plan, if required, must be fled with any of the
28 following. The Office of Federal Contract Compliance Programs or the State of
29 Wisconsin, or the Milwaukee County Department of Audit, Room 319 Courthouse
30 Annex, 907 North Tenth Street, Milwaukee, Wisconsin 53233.
31

32 4) Non-Segregated Facilities: The Lessee certifies that it does not and
33 will not maintain or provide segregated facilities for its employees, and that it does not
34 permit its employees to perform their services at any location under its control where
35 segregated facilities are maintained.

36 5). Reporting Requirement: When applicable, the Lessee certifies that
37 it will comply with all reporting requirements and procedures established in Title 41
38 Code of Federal Regulations, Chapter 60.

39 6) Compliance: The Lessee certifies that it is not currently in receipt
40 of any outstanding letters of deficiencies, show cause, probable cause, or other such
41 notification of noncompliance with EEO regulations.

42 (e) Surrender of Property. Lessee upon termination of the Lease, by lapse of
43 time or otherwise, agrees peaceably to surrender the Property to Lessor.

1 (f) Holding Over. If Lessee, with the consent or acquiescence of Lessor,
2 remains in possession of the Property after the termination of the Lease and without
3 the execution of a new Lease, Lessee shall be deemed to be occupying the Property as
4 a tenant from month-to month, subject to all the applicable terms, conditions and
5 covenants of the Lease and existing Wisconsin laws.

6 (g) Benefit. The Lease and all of the covenants and conditions herein
7 contained shall be binding upon and inure to the benefit of the parties hereto and their
8 respective successors and assigns.

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

21
22 (i) Governing Law. The Lease shall be governed by the laws of the State of
23 Wisconsin.

24
25 (j) Records and Audits. The Lessee shall allow the Lessor, the Milwaukee
26 County Department of Audit, or any other party the Lessor may name, when and as
27 they demand, to audit, examine and make copies of, excerpts or transcripts from any
28 records or other information directly relating to matters under this Agreement. In
29 addition, Lessee will provide Lessor with an annual audited operating statement,
30 detailing expenditures and revenues, which Lessee will provide on a schedule
31 coincident with its annual corporate financial audit. Any subcontracting by the Lessee
32 in performing the duties described under this contract shall subject the subcontractor
33 and/or associates to the same audit terms and conditions as the Lessee. Lessee (or
34 any sub Lessee) shall maintain and make available to the Lessor aforementioned audit
35 information for no less than three years after the conclusion of each lease term.

36
37 (k) Independent Contractor. Nothing contained in this Lease shall
38 constitute or be construed to create a partnership or joint venture between the
39 County and its successors or assigns and Lessee or its successors or assigns.
40 In entering into this Lease, and in acting in compliance herewith, Lessee is at
41 all times acting and performing as an independent contractor duly authorized
42 to perform the acts required of it hereunder. This Lease does not create the
43 relationship of principal and agent, of partnership or joint venture, or of any
44 association between Milwaukee County and Lessee.

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

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

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

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

28
29 (p) Conveyance. Upon conveyance of all of its interest in the Leased
30 Property, a party shall be relieved of any further liability under this Agreement
31 arising on and after the date of transfer and such transferee shall be deemed to
32 have assumed all rights and obligations of the transferor hereunder arising on
33 and after the date of transfer. It is expressly understood that the transferor
34 shall notify the other party to this lease of any such conveyance.

35
36 (q) Covenants Running With the Land All of the covenants set forth in
37 this Agreement are intended to be and shall be construed as covenants
38 running with the land for the term set forth herein, binding upon, inuring to
39 the benefit of, and enforceable by the parties hereto and their respective heirs,
40 successors and assigns.

41
42 (r) Counterparts. This Agreement may be signed in counterparts,
43 which, when taken together, shall be deemed an original for all purposes.

44
45 (s) No Responsibility. There is no responsibility/liability on the
46 County except for acts by the County or agents of the County, and then only to

1 the extent of actual cost of repair, which the County may have verified by a
2 mutually agreed upon independent third party.

3
4 (t) Approvals. All approvals are subject to there being no conflicts
5 with existing and applicable laws, rules or regulations, or other factors beyond
6 the reasonable control of the Lessor.

7
8 (u) Utilities. Lessee is to be responsible for locating and plotting
9 utilities and other infrastructure of the County and others that may be present
10 in the area and which may be impacted by Lessee's operations and activities.
11 Lessee is also responsible for any damage to these items caused by operations
12 and programming and maintenance and repair work done by the Lessee under
13 cover of this Agreement.

14
15 (v) Safety and Security. Intentionally Omitted.

16
17 (w) No Alterations by County. Nothing set forth anywhere in this
18 Agreement shall be construed to obligate County to remove or modify any
19 existing improvements in, on or under the Leased Area.

20
21 (x) Authority. Each of the parties hereby represents and warrants
22 that the individual executing this Easement Agreement on its behalf has full
23 power and authority to bind such party to the terms and conditions hereof.
24 The parties shall each, at all times, provide the other party with written notice
25 as to the contact person regarding this Agreement.

26
27 (y) Further Assurances. The parties hereto agree to execute
28 immediately upon presentation and deliver such additional documentation as
29 may be required from time to time by either of the parties hereto to further
30 evidence and/or as are necessary to carry out the terms and conditions of this
31 Agreement.

32
33
34
35
36

Signature Page Follows

1 IN WITNESS WHEREOF, Lessor and Lessee have executed this
2 instrument under seal as of the day and year first above written.
3

4 LESSOR: MILWAUKEE COUNTY

LESSEE: FRIENDS OF HOYT PARK
POOL AND POOL, INC.

5 By: Sue Black
6 Name Printed Sue Black
7 Title Director

By: Denise Lindberg
Name Printed Denise Lindberg
8 Title President FOHPP, Inc.
Executive Director

9 Attest: [Signature]
10 Name Printed Joe Roszak
11 Title Chief of Recreation + Business
12 Development

Attest Paul Kuglitsch
13 Name Printed Paul Kuglitsch
14 Title Contracts Administrator

15 Approved as to form: John Skupchak
16 Corporation Counsel
17 Reviewed by: Joe Roszak
18 Risk Management
19

20
21 STATE OF WISCONSIN)
22)SS
23 COUNTY OF MILWAUKEE)

24
25 Personally came before me this 24th day of November, 2009, the above-named
26 Sue Black and Joe Roszak, to me known to be the Parks Director
27 and Chief of Business respectively, of MILWAUKEE COUNTY, and
28 acknowledged that they executed the foregoing instrument as the deed of said political
29 subdivision and by its authority.

30 Kimberly Stockley
31 Notary Public, State of Wisconsin
32 My commission: 09/22/2013
33

(Notary Seal)

34
35
36 STATE OF Wisconsin)
37)SS
38 COUNTY OF Milwaukee)

39
40 Personally came before me this 24th day of November, 2009, the above-named
41 Denise Lindberg and Paul Kuglitsch, to me known to be the Executive Director
42 and Contracts Administrator, respectively, of FRIENDS OF HOYT PARK AND POOL, INC ,
43 and acknowledged that they executed the foregoing instrument as the deed of said
44 corporation .

45 Feggy A. Kupraczyk
46 Notary Public, State of Wisconsin
47 My commission: July 29, 2012
48 (Notary Seal)

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13

Exhibit Listing:

A. Site Plan of Property

B. Legal Description and Plat of Land

C. Milwaukee County General Ordinance Sections

D. Equal Opportunity Certificate

E. Due Diligence

[Faint, mostly illegible handwritten notes and text covering the majority of the page.]

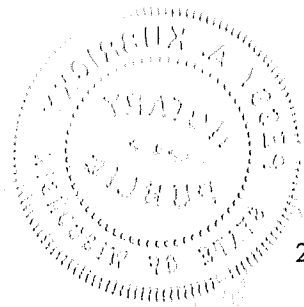


Exhibit B

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2
3 That part of Lot 17, 18, and 19, in James Ludington and John C. Loomis
4 Subdivision, being a part of the NW ¼ of Section 21, Township 7 North, Range
5 21 East, in the City of Wauwatosa, Milwaukee County, State of Wisconsin,
6 described as follows:

7 Commencing at the northwest corner of said Section 21; thence South
8 01° 18' 50" East 2197.19 feet along the west line of said Northwest ¼; thence
9 North 88° 41' 10" East 616.57 feet to the Point of Beginning; thence North 49°
10 57' 49" East 277.88 feet; thence North 60° 24' 47" East 141.10 feet; thence
11 South 55° 33' 42" East 177.12 feet; thence South 10° 00' 00" East 64.92 feet;
12 thence South 16° 30' 02" West 175.51 feet; thence South 46° 36' 14" West
13 65.76 feet; thence South 80° 01' 50" West 159.95 feet; thence South 49° 57'
14 49" West 72.26 feet to the northeast line of a Milwaukee Metropolitan Sewerage
15 District Access Easement recorded as Document #09378045 at the Milwaukee
16 County Register of Deeds; thence North 41° 53' 07" West along said northeast
17 Access Easement line, 273.08 feet to the Point of Beginning.

18 Said parcel contains 131,607 square feet or 3.021 acres of land, more or
19 less.
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Exhibit C

General Ordinance 47.02 and 47.16

47.02. Permit for public meetings and assemblies

- (1) Public meetings, religious services, assemblies and like events, and sporting or athletic events are allowed in parks and parkways only by written permit issued by the director of parks, recreation and culture, or designee.
 - (a) Application for permits shall be made in writing and received by the director of parks, recreation and culture no less than ten (10) working days prior to the event and shall state:
 - (1) The name, address and telephone number of applicant.
 - (2) The name and address of the person(s), corporation or association sponsoring the activity.
 - (3) A description of the activity to be conducted.
 - (4) The name of the park or parkway and the part thereof for which the permit is requested
 - (5) The date of the proposed activity, and the hour at which it will begin and end.
 - (6) The estimated anticipated attendance.
 - (7) Special needs, i.e., kitchen, utilities, parking, tent, sound, security and others.
 - (8) Any contemplated sale or solicitation. Section 47.04 of the Code shall be complied with.
 - (b) A permit shall be issued to an applicant for the facility requested if:
 - (1) Subsection (a) has been complied with.
 - (2) The place requested has not been reserved by other permittees.
 - (3) The site of facility requested will safely accommodate the anticipated attendance, the activity will not physically damage the site and the activity is not proscribed by law; and for athletic or sporting events, the site is duly designated for the activity to be conducted.
 - (4) The person issuing the permit shall give to the permittee a copy of sections 47.16, 63.01 and 63.02 of the Code.
- (2) *Parades and processions.* Parades or processions shall be allowed in any park and parkway only by a written permit issued by the director of parks, recreation and culture, or designee.

- 1 (a) Application for permit shall be made in writing and be
2 received by the director of parks, recreation and culture not
3 less than ten (10) days prior to the event and shall state:
4 (1) The name and address of the applicant.
5 (2) The name and address of the person(s), corporation
6 or association sponsoring the parade or procession,
7 and the purpose of the event.
8 (3) The name of the park or parkway through which the
9 parade or procession is to pass.
10 (4) The date of the parade or procession, its designated
11 route and the time it will pass through the park or
12 parkway.
13 (5) The estimated number and kind or type of vehicles
14 and approximate number of persons expected to
15 participate in the parade or procession.
- 16 (b) A permit shall be issued by the director of parks, recreation
17 and culture, or designee, for the parade or procession
18 provided.
19 (1) Subsection (a) has been complied with.
20 (2) The site and route will safely accommodate the
21 anticipated number of vehicles and persons.
22 (3) In the event a requested permit is denied or is not
23 issued, the person applying therefor shall be so
24 notified within three (3) working days from the date
25 application was received. Written notice shall be
26 mailed by certified mail to the address on the permit
27 application in the name of the applicant unless it
28 shall have previously been personally delivered to
29 said applicant. The notice shall indicate the area
30 requested, the reason for the denial, alternatives, if
31 any, and shall state that if the applicant desires a
32 review before the committee on parks, energy and
33 environment respecting the propriety of the permit
34 denial, he/she shall, within ten (10) days of receipt of
35 denial, make written request to the committee on
36 parks, energy and environment for review. Within
37 three (3) working days of the receipt of notice of
38 request for review, the committee on parks, energy
39 and environment shall hold a hearing on the
40 propriety of the denial. Notice of the hearing thereof
41 shall be given to the person denied the permit. This
42 procedure is not intended to exclude or limit any
43 other legal remedy available to the applicant.
44 (4) Interference with permittee prohibited. No person
45 shall, in any manner, disturb, harass or interfere
46 with any person or party holding a written permit,

1 not with any of their equipment or property.

2 (5) No permittee shall, in any manner, disturb, harass or
3 interfere with any member of the public in the park
4 or parkway, nor with any of their equipment or
5 property.

6 (6) With permit issuance, the permit issuer shall provide
7 to permittee a copy of sections 47.16, 63.01 and
8 63.02 of the Code.
9

10 **47.21. Handbill, etc. within any park or parkway.**

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12 Except in relation to and conjunction with activity for which a permit has
13 been issued, no person shall put or affix any card, handbill, sign, placard
14 or banner within any park or parkway.
15

16 **47.22. Noise**

17
18 (1) No person shall use or operate any radio, phonograph, musical
19 instrument or other mechanical, electrical sound making, reproducing
20 or amplification device in a park or parkway so as to be heard at a
21 distance greater than fifty (50) feet from the above-described instrument
22 or device, radios or phonographs.

23 (2) No such radio, phonograph, musical instrument or above described
24 device may be used or operated within the park within fifty (50) feet of
25 the legal boundaries of the park or parkway such that the device can be
26 heard outside the park or parkway.

27 (3) The director of parks, recreation and culture, or designee, or the county
28 board, may authorize or permit musical shows, cultural events, public
29 gatherings and exhibitions which are not limited by this section.
30

31 **47.16. Disorderly conduct; smoking prohibited.**

32
33 (1) *Disorderly conduct.* No person shall engage in violent, abusive, indecent,
34 profane, boisterous, unreasonably loud or otherwise disorderly conduct
35 under circumstances in which such conduct tends to cause or provoke a
36 disturbance.

37 (2) *Person guilty of disorderly conduct to be removed.* No person violating
38 any of the prohibitions enumerated in subsection (1) of this section shall
39 be allowed to remain in any park or parkway.

40 (3) *Smoking; when prohibited.*

41 (a) No person shall be permitted to smoke or to hold a lighted
42 cigarette, cigar or pipe in any building where domestic or wild
43 animals are exhibited, nor in any building or section of a building,
44 or in any park or parkway area where officially posted notices so
45 prohibit.

46 (b) *Dropping lighted cigars, etc., on roadway.* No person shall throw or

1 drop a lighted cigar or cigarette stub or empty a lighted pipe from
2 an automobile moving along a park or parkway drive.

3
4 Any person violating any of the provisions of subsection (1) of this section
5 shall,for each offense, forfeit a penalty not to exceed two hundred fifty dollars
6 (\$250.00); the cash deposit thereof shall be sixty dollars (\$60.00) and the
7 penalty assessment shall be seven dollars and twenty cents (\$7.20), and in
8 default of payment thereof, shall be imprisoned in the county jail or house of
9 correction of the county for a period not to exceed ninety (90) days in the
10 discretion of the court.

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Exhibit D

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATE FOR MILWAUKEE COUNTY CONTRACTS

In accordance with Section 56.17 of the Milwaukee County General Ordinances and Title 41 of the Code of Federal Regulations, Chapter 60, SELLER or SUCCESSFUL BIDDER or CONTRACTOR or LESSEE or (Other-specify) Friends of Hoyt Park & Pool, Inc. (Henceforth referred to as VENDOR) certifies to MILWAUKEE COUNTY as to the following and agrees that the terms of this certificate are hereby incorporated by reference into any contract awarded.

Non-Discrimination

VENDOR certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or disability which includes but is not limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship.

VENDOR will post in conspicuous places, available to its employees; notices to be provided by the County setting forth the provisions of the non-discriminatory clause.

A violation of this provision shall be sufficient cause for the County to terminate the contract without liability for the uncompleted portion or for any materials or services purchased or paid for by the contractor for use in completing the contract.

Affirmative Action Program

VENDOR certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative action program, which shall have as its objective to increase the utilization of women, minorities, and persons with disabilities and other protected groups, at all levels of employment in all divisions of the seller's work force, where these groups may have been previously under-utilized and under-represented.

Non-Segregated Facilities

VENDOR certifies that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained.

Subcontractors

VENDOR certifies that it has obtained or will obtain certifications regarding non-discrimination, affirmative action program and non-segregated facilities from proposed subcontractors that are directly related to any contracts with Milwaukee County, if any, prior to the award of any sub-contracts, and that it will retain such certifications in its files.

Reporting Requirements

Where applicable, VENDOR certifies that it will comply with all reporting requirements and procedures in Title Code 41 Code of Federal Regulations, Chapter 60.

Affirmative Action Plan

VENDOR certifies that, if it has 50 or more employees, it has filed or will develop and submit (within 120 days of contract award) for each of its establishments a written affirmative action plan. Current Affirmative Action plans, if required, must be filed with ANY one of the following: The Office of Federal Contract Compliance Programs or the State of Wisconsin, or the Milwaukee County Department of Audit, Milwaukee County-City Campus, 9th Floor, 2711 W. Wells Street, Milwaukee, Wisconsin 53208. If a current plan has been filed, indicate where filed _____ and the year covered _____. Please provide proof of your AA Plan approval.

VENDOR will also require its lower-tier subcontractors who have 50 or more employees to establish similar written affirmative action plans.

Employees

VENDOR certifies that it has 0 employees in the Standard Metropolitan Statistical Area (Counties of Milwaukee, Waukesha, Ozaukee and Washington, Wisconsin) and 0 employees in total.
(No. of employees) (Total No. of employees)

Compliance

VENDOR certifies that it is not currently in receipt of any outstanding letters of deficiencies, show cause, probable cause, or other notification of noncompliance with EEO regulations.

Executed this 24 day of Nov 2009 by:

Firm Name Friends of Hoyt Park & Pool, Inc.

Address 6222 Washington Circle

City, State, Zip Wauwatosa, WI 53213

Telephone 414-453-9641

Executive Director
(Title)

WARNING: An unsigned form shall be considered as a negative response.

By Denise Lindberg
(Signature)
Denise Lindberg
(Please Print Name Here)

Exhibit E

1
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3 Procedure REVISION DATE CHAPTER TITLE CHAPTER NO. ADMINISTRATIVE
4 MANUAL Financial & Management 7 MILWAUKEE COUNTY Accounting

5
6 ORIG ISSUE DATE SECTION TITLE SECTION NO. 09-28-O 1

7 **Due Diligence 7.92**
8

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

- 12
- 13 • Letter of Full Disclosure and Cooperation
- 14 • Cash flow projections for the venture.
- 15 • Operating budget impact.
- 16 • Debt management responsibilities, schedules and procedures.
- 17 • Legal liability for all priorities.
- 18 • Financial reporting systems and controls.
- 19 • Right-to-audit provisions.
- 20 • Project feasibility studies and market analysis.
- 21 • Key factors for success/failure of the venture.
- 22 • Governance structure and procedures.
- 23 • Public policy impacts (e. g. Affirmative Action, Disadvantaged
24 Business).
- 25 • Employee/labor relations impacts (including benefits).
- 26 • Environmental concerns.
- 27 • Tax consequences.
- 28 • Capital management (e. g. maintenance).
- 29 • Conflicts of interest/ethics.
- 30 • Performance measurements.
- 31 • Organization Chart and Mission Statement
- 32 • Name of Lending institution or Bank to determine single or combined
33 reporting

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