

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release (“Agreement”) is made and entered into by and between Grandview Management, Inc. d/b/a Zilli Hospitality Group (“ZHG”) and Milwaukee County, a political subdivision of the State of Wisconsin, through its Milwaukee County Parks department (the “County”) as of _____ (“Effective Date”). Grandview and the County are referred to together herein as the “Parties.”

WHEREAS, disputes between Grandview and the County have arisen relating to the respective duties and obligations of the Parties concerning the Boerner Botanical Gardens (the “Facility”) under the 2013 Boerner Catering and Facility Management Services Agreement, as amended by the May 2, 2019 First Amendment (the “Boerner Agreement”);

WHEREAS, such disputes include, but are not limited to, a disagreement over the sum owed to the County by Grandview for certain commissions and utility expenses incurred during the global COVID-19 pandemic, and any and all other issues relating to the Facility (together, the “Boerner Disputes”);

WHEREAS, the Parties desire to resolve the Boerner Disputes without further expenditure of time and money including attorneys’ fees and without the need for judicial intervention;

WHEREAS, the Parties have reached a final resolution and settlement of the Boerner Disputes on the following terms and conditions;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Amendment to Boerner Agreement to Add Renewal Option.** This Agreement having been authorized by the Milwaukee County Board of Supervisors (“Board”), the County and ZHG shall enter into a Second Amendment to the Boerner Agreement, pursuant to which the Operator is granted an option to renew the Boerner Agreement for an additional three years, subject to all other terms and conditions of the Boerner Agreement. (The fully executed Second Amendment to the Boerner Agreement is attached hereto and incorporated herein by reference as **Exhibit A.**)
2. **ZHG Payment to the County.** ZHG shall pay the County \$82,072.00 by check made payable to “Milwaukee County, Parks Department,” to be placed in the mail or hand-delivered to the County, within ten (10) business days of the execution of the Second Amendment to the Boerner Agreement.
3. **ZHG Release.** ZHG, its officers, directors, owners, employees, parent, subsidiaries, affiliates, agents, insurers, and successors and assigns hereby fully releases and discharges the County, its departments, divisions, employees, boards including the Board, committees, insurers, attorneys, sureties, representatives, agents, and successors and assigns, from and against any and

all claims, causes of action, liabilities, injuries, losses and damages, whether known or unknown, relating in any way to Boerner and the Boerner Agreement including, but not limited to, the Boerner Disputes. This release does not affect any rights or claims that may arise after the date of execution of the Second Amendment to the Boerner Agreement and the delivery of the payment described in paragraph 2, whichever is later.

4. **Milwaukee County Release.** The County, its departments, divisions, employees, boards including the Milwaukee County Board of Supervisors, committees, insurers, attorneys, sureties, representatives, agents, and successors and assigns hereby fully release and discharge ZHG, its officers, directors, owners, employees, parent, subsidiaries, affiliates, agents, insurers, and successors and assigns, from and against any and all claims, causes of action, liabilities, injuries, losses and damages, whether known or unknown, relating to Boerner and the Boerner Agreement including, but not limited to, the Boerner Disputes. This release does not affect any rights or claims that may arise after the date of execution of the Second Amendment to the Boerner Agreement and the delivery of the payment described in paragraph 2, whichever is later.

5. **No Admission of Liability.** The Parties understand and agree that this Agreement is a compromise of disputed claims and shall not be construed as, or be deemed to be, evidence of an admission or concession of any fault, liability, or damage whatsoever by either Party.

6. **Costs and Fees.** Each Party shall bear its own costs and fees related to the matters set forth in the Agreement.

7. **Survival and Continued Validity.** The provisions of this Agreement shall be binding on and inure to the benefit of each Party's legal successors and assigns and shall be deemed continuing and survive the Effective Date of this Agreement.

8. **Authority.** Each of the signatories for the Parties represents and warrants that they have full power, capacity, and authority to execute this Agreement on behalf of the Party so indicated.

9. **Notices.** All communications or notices required under this Agreement shall be in writing and delivered by (a) hand-delivery; (b) email; (c) overnight delivery service; or (d) by U.S. mail, first-class registered or certified mail, postage prepaid, return receipt requested. Such communications or notices shall be addressed as follows, unless and until either of the parties notifies the other in accordance with this section of a change of address:

To Milwaukee County:
Milwaukee County
Dept. of Parks
Attn: Guy Smith, Director
9480 Watertown Plank Road
Wauwatosa, WI 53226
guy.smith@milwaukeecountywi.gov

To ZHG:
Zilli Hospitality Group
Attn: Jim Zilli, CEO
613 Grandview Blvd.
Waukesha, WI 53188
jim@zillihospitalitygroup.com

with a copy to:

Karen L. Tidwall, Deputy Corporation Counsel
Milwaukee County Office of Corporation Counsel
901 N 9th St.
Suite 303
Milwaukee, WI 53233
Karen.Tidwall@milwaukeecountywi.gov

10. Entire Agreement. This Agreement including Exhibit A and Exhibit B contains the complete and entire agreement and understanding of the Parties regarding the matters contained herein and may not be altered, modified, or changed in any manner except by a writing duly executed by the Parties to this Agreement. No statements, promises or representations have been made by any Party to another, or are relied upon, and no consideration has been or is offered, promised, expected, or held out, other than as stated in this Agreement. No Party is relying on any representations other than those expressly set forth herein. All prior and contemporaneous discussions and negotiations concerning the matters contained herein have been, and are, merged and integrated in and superseded by this Agreement.

11. Governing Law; Venue. This Agreement shall be governed, interpreted, and enforced in accordance with Wisconsin law, without regard to conflict of laws principles. Any litigation concerning the subject matter of this Agreement shall be brought in Milwaukee County Circuit Court.

12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. Signed copies of this Agreement may be delivered electronically, and such copies shall have the same force and effect as the original.

13. Further Assurances. Each Party agrees that it shall sign such additional and supplemental documents necessary to complete the transactions, settlements, and releases under this Agreement when reasonably requested to do by the other Party.

14. Public Records. Each Party understands that the County, as a governmental entity, is subject to the Wisconsin Public Records Law, Wis. Stat. §§ 19.31 to 19.39. ZHG shall assist the County in retaining and timely producing records that are determined to be subject to disclosure under Wisconsin Public Records Law upon any statutorily sufficient request having been made, and ZHG understands and agrees that any failure to do so shall constitute a material breach of this Agreement, whereupon ZHG shall indemnify, defend and hold the County harmless from and against any loss, damage, claims, actions, or liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of three years after the termination of this Agreement.

15. Audit Clause. ZHG shall allow the Milwaukee County Audit Services Division and Milwaukee County contract administrators (collectively, "County 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 ZHG directly relating to the terms of this Agreement for a period of up to three years

following the termination of the Boerner Agreement. Any subcontractors or other persons performing work under this Agreement will be bound by the same terms and responsibilities as ZHG. ZHG, or other party to the Boerner Agreement, and any subcontractors 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.

IN WITNESS WHEREOF, the Parties have duly executed and delivered this Agreement, intending to be legally bound.

[Signature Page to Follow]

Exhibit A

SECOND AMENDMENT
TO BOERNER CATERING AND FACILITY MANAGEMENT SERVICES
AGREEMENT

This Second Amendment to the Boerner Catering and Facility Management Services Agreement, as amended, is entered into by and between Grandview Management, Inc. d/b/a Zilli Hospitality Group (the “Operator”) and Milwaukee County, a political subdivision of the State of Wisconsin, through its Milwaukee County Parks department (the “County”) effective as of _____ (“Effective Date”). The County and the Operator are referred to together herein as the “Parties.”

RECITALS

WHEREAS, the County and ZHG are parties to the Boerner Catering and Facility Management Service Agreement dated September 7, 2013, as amended by the First Amendment dated May 2, 2019 (“Boerner Agreement”), pursuant to which the Operator provides food, beverage, bar, banquet, and facility management services at the Boerner Botanical Gardens Educational & Visitors Center (the “Facility”) in Whitnall Park, Hales Comers, Wisconsin;

WHEREAS, the Initial Term of the Boerner Agreement was for the period from September 7, 2013 through December 31, 2023, with an option for the Operator to renew the Agreement for one five-year period upon the expiration of the Initial Term, subject to all other terms and conditions of the parties’ agreement;

WHEREAS, pursuant to the First Amendment to the Boerner Agreement dated May 2, 2019, the Operator was granted the renewal option to extend the term of the agreement for an additional three (3) years after the expiration of the five-year renewal term, subject to all other terms and conditions of the parties’ agreement;

WHEREAS, the Operator exercised the Five-Year Renewal Term option, extending the term of the Boerner Agreement from January 1, 2024 through December 31, 2028;

WHEREAS, certain disputes have arisen between the Operator and the County relating to their respective obligations under the Boerner Agreement;

WHEREAS, the Parties reached a settlement of any and all disputes concerning the Boerner Agreement and the Facility on the terms set forth in a Settlement Agreement and Mutual Release attached hereto as Exhibit A, which grants the Operator the option to extend the term of the Boerner Agreement for an additional three years to be exercised, if at all, following the expiration of the five-year and three-year renewal terms; and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting File No. XXXXX on DATE, has authorized the Director of the Department of Parks, Recreation

and Culture to enter into this Second Amendment to the Boerner Agreement;

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The Parties acknowledge and agree that the Recitals are true and correct and are incorporated into the Agreement as if set forth in full herein.
2. **Second Amendment to Term Renewal Option.** Article II, § 2.2 of the Boerner Agreement is hereby deleted in its entirety and replaced and superseded by the following:

“2.2 Renewal Options. The Operator has been granted three options to renew the Agreement to extend its terms for three (3) consecutive periods after expiration of the Initial Term, each a "Renewal Term," subject to all other terms and conditions of the Boerner Agreement, which applied to the Initial Term. The first Renewal Term shall be for a period of five years to commence on January 1, 2024. The second Renewal Term shall be for a period of three years to commence on January 1, 2029, if the option is exercised. The third Renewal Term shall be for a period of three years to commence on January 1, 2032, if the option is exercised. Operator shall exercise these options, if at all, by providing the County written notice of exercise not later than eighteen (18) months prior to the expiration of the then current term; provided, however, that in order to exercise the options, the Operator (i) shall not be default under the Boerner Agreement, and (ii) the Facility must be operating and Operator must be continuing to provide food, beverage, bar, banquet and facility management services to the Facility, in accordance with all other terms and conditions of the Boerner Agreement.

Attached as Exhibit B is a chart reflecting the term provisions and renewal deadlines of the Boerner Agreement.

3. **Conflict.** In the event of a conflict between this Amendment and the Boerner Agreement, the terms of this Amendment shall govern, control, and prevail.
4. **Remainder of Boerner Agreement in Full Force and Effect.** Except as set forth in this Amendment, the Boerner Agreement is unaffected and shall continue in full force and effect in accordance with its terms.
5. **Binding.** This Amendment and each party's obligations hereunder shall be binding on the respective party and its representatives, assigns, and successors. Each Party has signed this Amendment through its authorized representative.

EXHIBIT B

**SCHEDULE - BOERNER CATERING AND FACILITY
MANAGEMENT SERVICES AGREEMENT**

	<u>Period</u>	<u>Start Date</u>	<u>End Date</u>	<u>Renewal Date</u>
Initial Term	1	1/1/2014	12/31/2014	
	2	1/1/2015	12/31/2015	
	3	1/1/2016	12/31/2016	
	4	1/1/2017	12/31/2017	
	5	1/1/2018	12/31/2018	
	6	1/1/2019	12/31/2019	
	7	1/1/2020	12/31/2020	
	8	1/1/2021	12/31/2021	
	9	1/1/2022	12/31/2022	Renewed 6/24/22
	10	1/1/2023	12/31/2023	
Renewal Term 1	11	1/1/2024	12/31/2024	
	12	1/1/2025	12/31/2025	
	13	1/1/2026	12/31/2026	
	14	1/1/2027	12/31/2027	Renew by 6/1/27
	15	1/1/2028	12/31/2028	
Renewal Term 2	16	1/1/2029	12/31/2029	
	17	1/1/2030	12/31/2030	Renew by 6/1/30
	18	1/1/2031	12/31/2031	
Renewal Term 3	19	1/1/2032	12/31/2032	
	20	1/1/2033	12/31/2033	
	21	1/1/2034	12/31/2034	