

## DEVELOPMENT AGREEMENT

This Development Agreement (“Agreement”) is made and entered into effective as of [\_\_\_\_], 2025 (“Effective Date”), by and between MILWAUKEE COUNTY through the MILWAUKEE COUNTY PARKS DEPARTMENT (“County”), and MILWAUKEE DOMES ALLIANCE, INC., a Wisconsin nonstock corporation (“MDA”, and together with the County, the “Parties” and each individually a “Party”).

### WITNESSETH:

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

**WHEREAS**, the County has operated and managed the Domes as a living plant museum since its 1965 opening, including caring for the over 1,800 plant and animal species housed in the Domes (the “Plant and Animal Collection”).

**WHEREAS**, MDA, formerly known as Friends of the Domes, Inc., is a 501(c)(3) not-for-profit privately-funded organization established in 1989, whose mission is to provide inspirational experiences that restore connections to nature and community in a one-of-a-kind horticultural oasis at the heart of Milwaukee. MDA has provided financial and programmatic support to the Domes since its inception and as of the date of this Agreement operates at the Domes pursuant to that certain Agreement between MDA and the County dated as of December 13, 2019 (the “Existing Domes Operating Agreement”).

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

**WHEREAS**, MDA has worked closely with the County to create a plan for the historic restoration and rehabilitation of the Domes and surrounding facilities to be implemented and carried out by MDA, a copy of which is attached as Exhibit A hereto (as may be subsequently amended, supplemented, or revised in the manner permitted by this Agreement, the “Plan”).

**WHEREAS**, on November 7, 2024, the Milwaukee County Board of Supervisors approved a budget amendment that codifies a \$30,000,000 commitment (“County Commitment”) to be paid over six years to MDA in support of the Plan and authorized the County to negotiate a long-term lease with MDA which would transfer operational control of the Domes to MDA.

**WHEREAS**, the Parties now wish to set forth the terms and conditions of the County Commitment as well as the obligations of the Parties required to implement the Plan and ensure the continued and successful future operation of the Domes for the benefit of the public.

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

**1. Defined Terms**

- a. “Affiliate” means, when used with respect to any person, any other person who, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with that person. For such purpose, “control” of a person means the possession, directly or indirectly, of the power to direct the management and policies of the person, whether through the exercise of voting rights, contract or otherwise.
- b. “Authority” means any federal, state, county, municipal, provincial, or other government or governmental, quasi-governmental or regulatory authority, director, agency, board, body, commission, instrumentality, court or tribunal, or any political subdivision of any thereof, of or within the United States or any other jurisdiction applicable to County or MDA and having jurisdiction or authority over the County, MDA, or all or any portion of the Domes Redevelopment Area.
- c. “Bondable Project Costs” means Project Costs consisting of hard construction costs that are eligible to be paid for through municipal bonds as set forth in Wisconsin Statutes Section 67.04, as determined by the Office of the Comptroller in consultation with the County’s bond counsel. For the sake of clarity and not by way of limitation, Bondable Project Costs do not include the following Project Costs: (i) soft costs and expenses incurred by MDA, its Affiliates, or the Developer in the entitlement, predevelopment, preconstruction, development; (ii) interest on Project Funding Sources, (iii) commitment fees, origination fees, reserves, escrows, and other similar fees, reserves, or escrows payable with respect to the Project Funding Sources; (iv) the cost of any title insurance policy; (v) legal fees for services rendered by counsel to the Developer, MDA, any Funding Source, or any other party required to be paid by MDA or its Affiliates in connection with the development of the Project or the closing of Project Funding Sources, (vi) architectural and engineering costs for the Project, (vii) the costs of any historic consultants, environmental consultants, tax credit consultants, accountants, or of any plan reviews or applications, (viii) the cost of any off-site improvements or other expenditures required in connection with the Project by governmental authorities; and (ix) costs relating to the movement or maintenance of the Plant and Animal Collection.
- d. “Budget” means, with respect to each Project Phase, the projected Project Costs for such Project Phase as fully balanced by the Project Funding Sources for such Project Phase, as approved by the County.
- e. “Capital Campaign” has the meaning set forth in Section 4(a) hereof.

- f. “Capital Campaign Proceeds” means the funds raised through the Capital Campaign for Project Costs from private individuals, corporations, foundations, and other available sources.
- g. “Claims” means claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments, awards, costs, and expenses (including, without limitation, reasonable attorneys' and consultants' fees and costs) of any kind or nature.
- h. “Collection Maintenance Plan” means, with respect to each Phase 1 Project, an agreement between MDA and the County for the care and maintenance of the Plant and Animal Collection in the applicable Project Phase Unit during construction of the particular Phase 1 Project.
- i. “Collection Site Plans” means, with respect to each Phase 1 Project, plans and specifications for the reconstruction of the Plant and Animal Collection in each Project Phase Unit, including a detailed description of the new plants to be planted and the existing Plant and Animal Collection to be replanted in the particular Project Phase Unit.
- j. “Commencement Date” means, with respect to the Phase 1A Project, the date of the Phase 1A Closing, with respect to the Phase 1B Project, the date of the Phase 1B Closing, with respect to the Phase 1C Project, the date of the Phase 1C Closing, and with respect to the Phase 2 Project, the date of the Phase 2 Closing.
- k. “Construction Contracts” means, with respect to any Project Phase, all contracts between MDA or its Affiliate and any general contractor, architect or engineer for the construction or design of a particular Project Phase in accordance with the Plans and Specifications for such Project Phase.
- l. “Construction Lender” means the maker of any loan secured by a leasehold mortgage on the applicable Project Phase Unit.
- m. “Construction Loan Proceeds” means, as to any Project Phase, the proceeds of any loan secured by a leasehold mortgage on the applicable Project Phase Unit the proceeds of which shall be used for Project Costs related to such Project Phase.
- n. “Construction Work” means, as to any Project Phase, the work required to be performed under the Construction Contracts for such Project Phase to complete the Project Phase in accordance with the applicable Plans and Specifications for such Project Phase.
- o. “County Commitment” has the meaning set forth in the Recitals to this Agreement.
- p. “County Commitment Tranche” has the meaning set forth in Section 4(c)(ii) hereof.

- q. “County Commitment Tranche Expiration Date” has the meaning set forth in Section 4(c)(iv).
- r. “County Leases” means collectively, the Primary Lease, the Greenhouse Lease and the Phase 2 Lease, but only to the extent the Phase 2 Lease is in effect.
- s. “Designated Personnel” has the meaning set forth in Section 8 hereof.
- t. “Developer” means The Alexander Company, Inc. a Wisconsin corporation or any successor thereto.
- u. “Domes” has the meaning set forth in the Recitals to this Agreement.
- v. “Domes Redevelopment Area” means that portion of Mitchell Park that is or will be subject to the Primary Lease, the Greenhouse Lease and the Phase 2 Lease.
- w. “Employee Share Plan” has the meaning set forth in Section 7 hereof.
- x. “Event of Default” has the meaning set forth in Section 10 hereof.
- y. “E-Verify Program” means: (a) the program currently operated by the U.S. Department of Homeland Security that electronically confirms an individual’s eligibility to work in the United States, authority for which is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, 110 Stat. 3009 (8 U.S.C. §1324a), as amended; or (b) any successor work authorization program designated by the U.S. Department of Homeland Security or such other federal agency as may be authorized to verify the work authorization status of newly-hired employees.
- z. “FFE” means all fixtures, furnishings, equipment, and other personal property owned by the County and used solely in connection with the operations or maintenance of the Domes as of the effective date of the Primary Lease.
- aa. “Financial Closing” means the execution, delivery and release by all parties thereto, of all documents evidencing and securing the Project Funding Sources for a particular Project Phase, it being understood that the County shall not consider a Financial Closing to have occurred for a particular Project Phase until such time as closing has occurred on the last of the Project Funding Sources required to close in order for funding to be fully committed for the Project Phase to be fully funded.
- bb. “Force Majeure” means events or circumstances that result in delays in a Party’s performance of its obligations hereunder due to causes beyond such Party’s control, including, but not restricted to, acts of God or of the public enemy, acts of the government (other than the County acting in its capacity as the County hereunder and in accordance with the terms of this Agreement) that prohibit a Party’s ability



to perform, fires, floods, earthquakes, terrorist acts, strikes, or reasonably unexpected delays in the issuance of required governmental permits or approvals, inability or delays in obtaining materials or labor, unusual delays in obtaining utility service and unusually severe weather; provided, however, a lack of funds or any other financial difficulty shall not constitute Force Majeure.

- cc. “Greenhouse Lease” means that certain Lease Agreement between the County and MDA for the Greenhouse Premises, to be executed at or prior to the Phase 1A Closing, under terms substantially similar to the terms of the Primary Lease.
- dd. “Greenhouse Premises” means the portion of Mitchell Park subject to the Greenhouse Lease, which includes certain greenhouses immediately adjacent to the Primary Leased Premises as depicted in the Greenhouse Lease, as more specifically set forth in Exhibit C attached hereto.
- ee. “Historic Tax Credits” means, for any applicable Project Phase, historic rehabilitation tax credits allowed for qualified rehabilitation expenditures incurred in connection with the “certified rehabilitation” of a “certified historic structure” pursuant to (i) Section 47 of the Internal Revenue Code of 1986, as amended from time to time, or any corresponding provision or provisions of prior or succeeding law and (ii) Wisconsin Statutes Section 71.07(9m), as may be monetized to pay for Project Costs.
- ff. “Laws” means, as of any date: (a) all applicable laws, rules, regulations, determinations, statutes, treaties, codes, ordinances, policies, standards, guidelines, permits, certificates, orders, and licenses of and interpretations by, any Authority; (b) all applicable judgments, decrees, injunctions, writs, orders, or like action of any court or other administrative, judicial, or quasi-judicial tribunal or agency of competent jurisdiction; (c) all applicable restrictive covenants, deed restrictions, and easements of record; and (d) to the extent not clearly included in the foregoing, all applicable common law or strict liability provisions and any judicial or administrative interpretations thereof; including, without limitation, any of the foregoing pertaining to aviation, health, safety, the environment, and the use and occupancy of the Domes Redevelopment Area.
- gg. “New Markets Tax Credit” means the new markets tax credit allowed pursuant to Section 45D of the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.
- hh. “Outside Commencement Date” shall mean, for each Phase 1 Project, the date that is the one-year anniversary of the last day of the Projected Commencement Date Period for such Phase 1 Project.
- ii. “Permitted Budget Change” means a change to the Budget for any Project Phase that: (a) does not result in any material change to the Plans and Specifications for any Project Phase, except as the same may be adjusted pursuant to a Permitted Plans

Change; (b) does not alter the County Commitment or any County Commitment Tranche, as the same may be adjusted in accordance with the terms of Section 4(c)(i); (c) results from any cost savings, application of contingency, provided that (i) no more than fifty percent (50%) of the contingency line item shall be reallocated until the rehabilitation for any Project Phase is at least fifty percent (50%) complete; (ii) no more than seventy-five percent (75%) of the contingency line item shall be reallocated until the rehabilitation for any Project Phase is at least seventy-five percent (75%) complete; and (iii) the remaining twenty-five percent (25%) of the contingency line item shall not be reallocated until the rehabilitation for any Project Phase is greater than seventy-five percent (75%) complete; and (d) unless otherwise addressed in (c) or the cost of such change is below the lowest threshold requiring approvals from other Project Funding Sources, the modification is accompanied by evidence of additional committed Project Funding Sources (or additional funds from existing Project Funding Sources) necessary to cover any increases to the Budget.

- jj. “Permitted Plans Change” means a change to the Plans and Specifications for any Project Phase that: (a) does not impact MDA’s ability to obtain Historic Tax Credits for such Project Phase unless a different Project Funding Source covers the inability to obtain Historic Tax Credits; (b) does not affect the structural integrity of such Project Phase; (c) does not make it unlikely, impracticable, or impossible for MDA to complete the applicable Project Phase on or prior to the completion date required by any Project Financing Documents or in accordance with the Budget, as the same may be adjusted pursuant to a Permitted Budget Change; (d) does not otherwise change the nature and character of the Domes; and (e) is consistent with, and has no material and negative effect on other Project Phases. Notwithstanding the foregoing, Permitted Plans Changes shall also include all interior changes to the Plant and Animal Collection in the Domes to the extent such changes do not violate the Collection Maintenance Plan.
- kk. “Phase 1A Closing” means the Financial Closing of the Phase 1A Funding Sources.
- ll. “Phase 1A Funding Sources” means any one or more of the following sources MDA may pursue, including without limitation Historic Tax Credits, the Construction Loan Proceeds, the Phase 1A County Commitment, the Capital Campaign Proceeds designated to the Phase 1A Project, bridge loans for any of the foregoing sources, and all other funding sources required to fully cover the Project Costs of the Phase 1A Project.
- mm. “Phase 1A Plans and Specifications” means those certain plans and specifications, including a Collection Site Plan, prepared by MDA for the Phase 1A Project, submitted as Preliminary Phase Plans pursuant to the process set forth in Section 3(b) hereof, and approved by the County in accordance with the provisions of this Agreement, as the same may be amended, modified or supplemented as permitted under this Agreement.

- nn. “Phase 1A Project” means the rehabilitation and improvement of the Show Dome and the Transition Dome, the family bathrooms, the building mechanical systems serving the entirety of the Domes, the lobby (excluding the bathrooms and entry way), the gift shop, the entry and the café, as further described on Exhibit G attached hereto, all in accordance with the Phase 1A Plans and Specifications, all as shall be further developed, revised and refined pursuant to the process set forth in this Agreement.
- oo. “Phase 1B Closing” means the Financial Closing of the Phase 1B Funding Sources.
- pp. “Phase 1B Funding Sources” means any one or more of the following sources MDA may pursue, including without limitation, the Historic Tax Credits, the Construction Loan Proceeds, the Phase 1B County Commitment, the Capital Campaign Proceeds designated to the Phase 1B Project, bridge loans for any of the foregoing sources, and all other funding sources required to fully cover the Project Costs of the Phase 1B Project.
- qq. “Phase 1B Plans and Specifications” means those certain plans and specifications, including a Collection Site Plan, prepared by MDA for the Phase 1B Project, submitted as Preliminary Phase Plans pursuant to the process set forth in Section 3(b) hereof, and approved by the County in accordance with the provisions of this Agreement, as the same may be amended, modified or supplemented as permitted under this Agreement.
- rr. “Phase 1B Project” is currently contemplated to mean the rehabilitation and improvement of the Desert Dome, the education center offices and the hallway to growing greenhouses, new bathrooms, together with landscaping in the Primary Leased Premises as further described on Exhibit H attached hereto, all in accordance with the Phase 1B Plans and Specifications, and all as shall be further developed, revised and refined pursuant to the process set forth in this Agreement.
- ss. “Phase 1C Closing” means the Financial Closing of the Phase 1C Funding Sources.
- tt. “Phase 1C Funding Sources” means any one or more of the following sources MDA may pursue, including without limitation, the Historic Tax Credits, the Construction Loan Proceeds, the Phase 1C County Commitment, the Capital Campaign Proceeds designated to the Phase 1C Project, bridge loans for any of the foregoing sources, and all other funding sources required to fully cover the Project Costs of the Phase 1C Project.
- uu. “Phase 1C Plans and Specifications” means those certain plans and specifications, including a Collection Site Plan, prepared by MDA for the Phase 1C Project, submitted as Preliminary Phase Plans pursuant to the process set forth in Section 3(b) hereof, and approved by the County in accordance with the provisions of this Agreement, as the same may be amended, modified or supplemented as permitted under this Agreement.

- vv. “Phase 1C Project” is currently contemplated to mean the rehabilitation and improvement of the Tropical Dome, the removal of existing restrooms, new entry ways, and improvements to Mitchell Park as further described on Exhibit I attached hereto, all in accordance with the Phase 1C Plans and Specifications and all as shall be further developed, revised and refined pursuant to the process set forth in this Agreement.
- ww. “Phase 1 Project” means, collectively, the Phase 1A Project, the Phase 1B Project and the Phase 1C Project.
- xx. “Phase 1 Project Financing Structure” has the meaning set forth in Section 4(d) hereof.
- yy. “Phase 2 Closing” means the Financial Closing of the Phase 2 Funding Sources.
- zz. “Phase 2 Funding Sources” means any one or more of the following sources MDA may pursue, including without limitation, the Construction Loan Proceeds, the County Commitment designated to the Phase 2 Project, Capital Campaign Proceeds designated to the Phase 2 Project, bridge loans for any of the foregoing sources, and all other funding sources required to fully cover the Project Costs of the Phase 2 Project.
- aaa. “Phase 2 Lease” means a lease between MDA and the County for the Phase 2 Leased Premises to be entered into upon fulfillment of the conditions set forth in Section 2(c), hereto.
- bbb. “Phase 2 Leased Premises” means that portion of Mitchell Park depicted on Exhibit E hereto, which shall be more fully described in the Phase 2 Lease.
- ccc. “Phase 2 Plans and Specifications” means those certain plans and specifications prepared by MDA for the Phase 2 Project, submitted as Preliminary Phase Plans pursuant to the Process set forth in Section 3(b) hereof, and approved by the County in accordance with the provisions of this Agreement, as the same may be amended, modified or supplemented as permitted under this Agreement.
- ddd. “Phase 2 Project” means the construction of a new two-story nature and learning center building on the Phase 2 Leased Premises as initially depicted on Exhibit J hereto.
- eee. “Plan” has the meaning set forth in the Recitals to this Agreement.
- fff. “Plans and Specifications” means, collectively the Phase 1A Plans and Specifications, the Phase 1B Plans and Specifications, the Phase 1C Plans and Specifications and the Phase 2 Plans and Specifications.

- ggg. “Plant and Animal Collection” has the meaning set forth in the Recitals to this Agreement.
- hhh. “Predevelopment Work” means all inspections, investigations, testing, sampling (provided that testing and sampling are subject to the limitations set forth in Section 2(a) below), permitting, surveys, environmental studies, and other such work on the Primary Leased Premises or Greenhouse Premises required to be performed prior to the Phase 1A Closing.
- iii. “Preliminary Phase Plans” means schematic design drawings, design development documents, Collection Site Plans, construction drawings, and schedules for the construction of a particular Project Phase, each as shall include such detail as the County may reasonably require.
- jjj. “Primary Lease” means that certain Lease Agreement between the County and MDA for the Primary Leased Premises to be executed at or prior to the Phase 1A Closing substantially in the form attached as Exhibit B hereto.
- kkk. “Primary Lease Condominium” has the meaning set forth in Section 2(d) hereof.
- lll. “Primary Leased Premises” means the portion of Mitchell Park subject to the Primary Lease, which includes the Domes, the Primary Parking Lot and certain surrounding areas, all as more specifically set forth in the Primary Lease.
- mmm. “Primary Parking Lot” means the parking lot on the Primary Leased Premises.
- nnn. “Project” means the Phase 1 Project and the Phase 2 Project.
- ooo. “Project Costs” means any and all hard and soft costs and expenses incurred by MDA, its Affiliates, or the Developer in the entitlement, predevelopment, preconstruction, construction, development, and initial financing of the Project. Project Costs include, without limitation, (i) amounts paid to contractors retained to construct the Project or any Project Phase or portion thereof, (ii) amounts paid for construction materials, fixtures, equipment, supplies and labor for the Project, (iii) interest on Project Funding Sources, as applicable, through Completion of the respective Project Phase, (iv) commitment fees, origination fees, reserves, escrows, and other similar fees, reserves, or escrows payable with respect to the Project Funding Sources, (v) the cost of any title insurance policy relating to the Project obtained for the benefit of the MDA or a Project Funding Source in connection with the transfer of the Leased Premises to the MDA or the closing of a Project Funding Source, (vi) legal fees for services rendered by counsel to the Developer, the MDA, any Funding Source, or any other party required to be paid by MDA or its Affiliates in connection with the development of the Project or the closing of Project Funding Sources, (vii) architectural and engineering costs for the Project, (viii) the costs of any historic consultants, environmental consultants, tax credit consultants, accountants, or of any plan reviews or applications, and (ix) the cost of any off-site

improvements or other expenditures required in connection with the Project by governmental authorities.

- ppp. “Project Phase Unit” has the meaning set forth in Section 2(d) hereof.
- qqq. “Projected Commencement Date Period” has the meaning set forth in Section 3(c)(iv) hereof.
- rrr. “Projected Completion Date” has the meaning set forth in Section 3(d) hereof.
- sss. “Project Financing Documents” means any documents entered into by MDA, Developer or any Affiliate or any one of the foregoing, evidencing or securing a Project Funding Source, including but not limited to construction loan documents, bridge loan documents, grant agreements, and Historic Tax Credit documents.
- ttt. “Project Funding Source” means collectively, the Phase 1A Funding Sources, the Phase 1B Funding Sources, the Phase 1C Funding Sources and the Phase 2 Funding Sources.
- uuu. “Project Phase” means any one or more of the Phase 1A Project, the Phase 1B Project, the Phase 1C Project and the Phase 2 Project.
- vvv. “Substantial Completion” means, as to any Project Phase, that the Project Phase has met the conditions for the final disbursement of Construction Loan Proceeds as set forth in the construction loan agreement, disbursement agreement or other similar document for the particular Project Phase. Substantial Completion of the Phase 1 Project means Substantial Completion of the Phase 1A Project, the Phase 1B Project and the Phase 1C Project.
- www. “TBE” has the meaning set forth in Section 5(j) hereof.
- xxx. “Unauthorized Alien” has the meaning set forth in 8 U.S.C. §1324a(h)(3).

## **2. Property Rights and Obligations.**

- a. Primary Lease. The County will lease the Primary Leased Premises including all improvements thereon and the Plant and Animal Collection therein to MDA pursuant to the Primary Lease, which Primary Lease will commence on or prior to the date of the Phase 1A Closing, will have a term of 99 years and will govern the operations of MDA at the Primary Leased Premises as well as MDA’s right to access and use the artist studio portion of the Mitchell Park Pavilion. The Parties acknowledge that the form of Primary Lease attached as Exhibit B is subject to further modification by Parties prior to execution thereof (which execution shall occur on or prior to the Phase 1A Closing) as may be required due to changes in the Plan approved by the County, reasonable requirements of any Project Funding Source, changes in applicable Laws, or as otherwise determined necessary by the

Parties. Prior to the commencement of the Primary Lease, MDA shall have access to the Primary Leased Premises in the normal course under the Existing Domes Operating Agreement and shall have the right to pursue Predevelopment Work at the Primary Leased Premises at its sole cost and expense subject in all respects to the insurance requirements and indemnification provisions set forth herein; provided, however, that MDA shall provide reasonable prior written notice to the County of any testing or sampling to occur on the Primary Leased Premises, including a description of the work and the reasons therefor.

- b. Greenhouse Lease. The County will lease the Greenhouse Premises and improvements thereon to MDA pursuant to the Greenhouse Lease, which Greenhouse Lease will commence on the same date as the Primary Lease, will have a term of 99 years and will govern the operations of MDA at the Greenhouse Premises. The Parties acknowledge that the form of Greenhouse Lease attached as Exhibit C is subject to further modification by Parties prior to the execution thereof, as may be required pursuant to any changes in applicable Laws or otherwise determined necessary by the Parties. Concurrent with the execution of the Greenhouse Lease, the County and MDA shall enter into an agreement governing the County's rights to store, maintain and care for plants in the Greenhouse Premises for the full term of the Greenhouse Lease for the benefit of all County parks, including the provision of non-exclusive access to the Greenhouse Premises to County horticultural employees in furtherance of County horticultural work therein. Prior to the commencement of the Greenhouse Lease, the County shall provide MDA with access to the Greenhouse Premises on similar terms and conditions pursuant to which MDA has access to the Primary Leased Premises during such time, to the extent applicable, including without limitation the right to undertake Predevelopment Work at the Greenhouse Premises on the terms set forth in this Agreement.
- c. Phase 2 Lease. The County will ground lease the Phase 2 Leased Premises to MDA pursuant to the Phase 2 Lease upon MDA's satisfaction, as determined by the County in the County's reasonable discretion, or the County's written waiver of the following conditions:
  - i. The Parties have agreed to the form of Phase 2 Lease, which shall have terms and conditions similar to those in the Primary Lease and the Greenhouse Lease and shall have a term that end concurrently with the end of the term of the Primary Lease and the Greenhouse Lease; and
  - ii. Substantial Completion of the Phase 1 Project; provided, however, that the County may waive this condition in its reasonable discretion if the other conditions in this Section 2(c) are satisfied; and
  - iii. MDA has delivered to the County evidence reasonably acceptable to the County that MDA has secured all Project Funding Sources for the Phase 2 Project; and

- iv. MDA has delivered the Phase 2 Plans and Specifications to the County, in accordance with the phased review required under Section 3(b) hereof, and the County has approved the same in its reasonable discretion; and
  - v. Neither MDA, nor any Affiliate of MDA, is in default under (i) this Agreement, (ii) the Primary Lease, (iii) the Greenhouse Lease, (iv) any other agreement between the MDA and the County relating to MDA's operations in the Primary Leased Premises or the Greenhouse Premises, (v) any Project Financing Document or (vi) any Construction Contract.
- d. Project Financing Structure. MDA shall have the right, subsequent to commencement of the term of the Primary Lease, to subject the Primary Leased Premises to a condominium form of ownership pursuant to Wisconsin Statutes Chapter 703 (the "Primary Lease Condominium"). The Primary Lease Condominium shall consist of four (4) units, including two (2) units in which the majority of the Phase 1A Project will occur, a unit in which a majority of the Phase 1B Project will occur, and a Unit in which a majority of the Phase 1C Project will occur (each a "Project Phase Unit"), each of which shall be subleased to a separate Affiliate of MDA and ultimately leased back to and operated by MDA through additional subleases to MDA Affiliates, as more fully set forth in the structure chart attached as Exhibit F hereto (as may be amended pursuant to the Budget approval process, the "Phase 1 Project Financing Structure"). The County shall have the right to review and approve all documents relating to the Primary Lease Condominium before the execution and recording thereof as well as all documents evidencing the Phase I Project Financing Structure; provided, however, that so long as such documents are reasonably necessary to secure Historic Tax Credits and other financing incentives for the Phase 1 Project, the County's review shall be limited to ensuring that MDA retains control of the Primary Leased Premises and the Phase 1 Project, that the Phase 1 Project can reach Substantial Completion with the Phase 1 Financing Structure in place, and that nothing in the Phase 1 Financing Structure will impede MDA's ability to operate the Domes as intended by the Plan for the term of the Primary Lease, subject to customary lender remedies pursuant to the Project Financing Documents. The review and approval of the foregoing shall not be unreasonably withheld, conditioned, or delayed and shall generally follow the review and approval timeline and procedures applicable to other items requiring County approval as set forth in Section 3(b) below.
- e. Public Purpose. The Domes Redevelopment Area shall be operated as a facility open to the general public, subject to such reasonable rules and regulations as MDA may promulgate in its discretion regarding matters such as, but not limited to: admission fees; days and hours of operation; the safety of employees and the general public; the safety, protection and security of the Plant and Animal Collection; the anonymity of donors who desire anonymity; and, to the extent permitted by law, the confidentiality of employee records and business records.



- f. Conveyance of FFE. Simultaneously with the execution of the Primary Lease, the County shall execute and deliver to MDA a bill of sale transferring the County's title to the FFE to MDA, without representation or warranty other than the County's ownership of the FFE free and clear of any liens and encumbrances other than those in favor of MDA, and the County's authority to convey the FFE to MDA.

### **3. Project Phasing.**

- a. Generally. Subject to the terms and conditions of this Agreement and as more specifically set forth herein, MDA, with the assistance and guidance of Developer, shall diligently carry out the Plan and the Project, at its sole cost and expense. MDA shall construct the Project (i) consistent with the standards established for other work in Milwaukee County Parks, (ii) in accordance with the Plans and Specifications and the terms and conditions of the Agreement, and (iii) in compliance with applicable Laws. Due to the complexity of the rehabilitation and redevelopment and the ability to secure Project Funding Sources, the Plan shall be divided into four (4) separate and distinct projects—the Phase 1A Project, the Phase 1B Project, the Phase 1C Project and the Phase 2 Project. Each Project Phase shall have a separate capital stack, separate Construction Contract and separate Project Financing Documents from each other Project Phase, provided it is anticipated that the Historic Tax Credit investor will be admitted into the organizational structure for each of the Phase 1A Project, Phase 1B Project, and Phase 1C Project in connection with the Phase 1A Project financing closing. The Phase 1 Project shall be completed on the Primary Leased Premises in accordance with the terms of this Agreement. If MDA elects to pursue the Phase 2 Project, the Phase 2 Project shall be completed on the Phase 2 Leased Premises; provided, however, that the County's obligation to enter into the Phase 2 Lease and approve the Phase 2 Project shall be subject to the terms and conditions of Section 2(c) hereof.
- b. Plan and Budget Review.
  - i. For each Project Phase, MDA shall provide the County Preliminary Phase Plans for review in two (2) stages, each of which shall have such details as requested by the County consistent with this subsection (b). The first stage shall reflect schematic plans for the applicable Preliminary Phase Plan, and the second stage shall reflect the design/development plans for the applicable Preliminary Phase Plan. Together with the submission of each set of plans, and at such other intervals as the County may request, MDA shall provide a preliminary Budget for the County's review consistent with such Preliminary Phase Plans.
  - ii. As soon as reasonably possible after receipt of written notice from the County that it has approved a stage of the Preliminary Phase Plan and Budget for a particular Project Phase pursuant to the process in (iii) below, MDA shall submit the next stage of the Preliminary Phase, Plan and Budget for the County's review and approval pursuant to the process in (iii) below,

all of which shall be consistent with earlier stages of the Preliminary Phase Plans approved by the County for the particular Project Phase.

- iii. The County shall provide to MDA written notice of its approval or rejection of any Preliminary Phase Plan, Budget or any other document subject to the County's review pursuant to this Section 3(b) for each Project Phase within thirty (30) days after receipt thereof; provided that in the case of a rejection, such notice shall: (A) specify the part or parts that the County is rejecting; (B) include the specific basis for such rejection; and (C) identify any information needed by the County to reevaluate the Preliminary Phase Plan, Budget, or other deliverable. Within thirty (30) days after any receipt of notice of rejection (or such other period to which the parties may agree in writing), MDA shall revise the applicable Preliminary Phase Plan, Budget, or other deliverable to address the cause of the County's rejection and shall provide any information identified by the County as needed in connection with a reevaluation of the applicable Preliminary Phase Plan, Budget or other item submitted for approval. In the event the County believes it has not received all of the necessary information or deliverables to provide its approval, the County shall notify MDA of any additional information or deliverables needed no later than ten (10) days of initial submission of documentation. The process set forth herein shall continue until the County has approved each stage of the applicable Preliminary Phase Plan, Budget, or other item(s) submitted for approval, such that there are final Plans and Specifications, Budget, and other items requiring the County's consent hereunder for the Project Phase. In the event that the County has rejected a Preliminary Phase Plan, Budget, or other item requiring County Approval more than two (2) times following the procedures above, the County will coordinate an in-person meeting with MDA and Developer in order to expedite the review and approval process. Notwithstanding anything herein to the contrary, (x) MDA shall not be liable to the County for delays or missed deadlines under this Agreement to the extent caused by the County's failure to respond within the timelines for County response set forth in this Agreement; and (y) any deadlines applicable to MDA set forth herein shall be extended for one (1) day for each day the County is delayed in responding following any deadlines for County response set forth in this Agreement, provided that MDA provides the County with written notice of such deadline expiration and notice that MDA is invoking the right to toll such deadlines during such delay period.
- iv. MDA may make Permitted Plan Changes to final Plans and Specification for any Project Phase and Permitted Budget Changes to the Budget for any Project Phase without the consent of County, provided that MDA shall deliver prompt written notice to the County of any Permitted Plan Change or Permitted Budget Change, which notice shall describe the nature of the Permitted Plan Change or Permitted Budget Change, as applicable. Any other changes to the Plans and Specifications or the Budget for any Project Phase which are not a Permitted Plan Change or Permitted Budget Change,

whether occurring before or after the commencement of the Construction Work for such Project Phase, shall require the prior written consent of County, which consent shall not be unreasonably withheld, conditioned, or delayed. The County shall provide its approval or feedback to any requested changes within the timelines set forth in subsection (iii) above.

- v. Notwithstanding that County has review and approval rights with respect to the Preliminary Phase Plans, MDA shall be responsible for the design and engineering of each of the Project Phases and the sufficiency of the Plans and Specifications and, as between County and MDA. The County's consent or approval of any Preliminary Phase Plans shall not constitute or be construed as a representation or warranty by the County that such plans comply with Laws (other than any approval process required pursuant to Chapter 47 of the Milwaukee County Code of Ordinances), such responsibility being solely with the MDA.
- c. Projected Commencement Dates. The periods during which the Commencement Dates of each Project Phase for the Phase 1 Project are projected to occur are as follows:
- i. Phase 1A Project: no later than December 31, 2028.
  - ii. Phase 1B Project: a date to be agreed upon between MDA and the County upon Substantial Completion of the Phase 1A Project, but in no event later than December 31, 2034.
  - iii. Phase 1C Project: a date to be agreed upon between MDA and the County upon Substantial Completion of the Phase 1B Project, but in no event later than December 31, 2034.

Following completion of the Phase 1C Project, MDA and the County shall agree upon a projected Commencement Date and Outside Commencement Date for the Phase 2 Project in the event MDA intends to pursue the same.

No Project Phase shall commence Construction Work until such time as (i) the County has approved the Plans and Specifications for such Project Phase in accordance with Subsection (b) above, (ii) the County and MDA have entered into a Collection Maintenance Plan for the portion of the Plant and Animal Collection located in the particular Project Phase Unit pursuant to Section 6 of this Agreement, (iii) the County and MDA have entered into the Employee Share Plan in accordance with Section 7 of this Agreement, and (iv) MDA has fully secured the Project Funding Sources for such Project Phase. The projected Commencement Date periods set forth herein ("Projected Commencement Date Periods") are estimates only and are subject to change; provided, however, that MDA shall work diligently to reach a Financial Closing and commence Construction Work for each Phase 1 Project during the Projected Commencement Date Period for such Phase 1 Project.

If at any time, MDA determines that a Commencement Date for all or any Project Phase will be materially delayed or that MDA is unable to commence any Project Phase, MDA shall provide prompt notice to the County of the same together with an explanation for the delay or inability and a plan for operation of the Domes that takes into account the impact of the delayed commencement or inability to commence a Project Phase, including revised operating proformas to the extent applicable, and the Parties shall agree to an update to the Projected Commencement Date Periods that take in to consideration the updated plans. The Commencement Date of each Phase 1 Project shall occur prior to the Outside Commencement Date for such Phase 1 Project. Unless otherwise agreed to in writing by the County, no Commencement Date for any Project Phase of the Phase 1 Project shall occur prior to Substantial Completion of the prior Project Phase of the Phase 1 Project.

- d. Projected Completion Dates. The projected completion date of each Project Phase (each a “Projected Completion Date”) shall be determined prior to the Financial Closing for the applicable Project Phase, and MDA shall notify the County of the same. In no event shall the County’s Projected Completion Date for any Project Phase differ from the outside deadline for completion set forth in the Project Financing Documents. MDA and Developer shall proceed diligently to achieve Substantial Completion of each Project Phase on or prior to the Projected Completion Date. Upon completion of each Project Phase, MDA shall deliver to the County all documents and materials necessary for the County to determine, in its reasonable discretion, that the Project Phase has reached Substantial Completion. Upon such determination by the County for each Project Phase, the County will issue to MDA a written confirmation of Substantial Completion.

#### **4. Project Funding**

- a. Capital Campaign. MDA shall implement and carry out a capital campaign for the Project at its sole cost and expense (the “Capital Campaign”). MDA shall ensure that all funds raised through the Capital Campaign that are specifically earmarked for Project Costs and included as a Project Funding Source are used solely to pay Project Costs. MDA shall provide Capital Campaign updates to the County within ten (10) days of written request therefor, provided that such requests shall be limited to one (1) update request per calendar quarter. MDA shall have the right to apply Capital Campaign Proceeds to Project Costs for Project Phases in amounts and at times it deems appropriate and necessary for the success of the Project: provided, however, that allocations or reallocations of Project Funding Sources between Project Phases that take place after the County’s approval of the Budget for each Project Phase, excluding Permitted Budget Changes, shall not be permitted without the County’s consent, which shall not be unreasonably withheld, conditioned, or delayed.
- b. Project Financing. MDA shall pursue financing for the Project at its sole cost and expense. Project financing may include construction loans, proceeds of the sale or allocation of Historic Tax Credits and any loans secured by the bridging thereof,

New Markets Tax Credit financing, and state, city or other governmental grants. The County will cooperate with MDA, at no additional cost or expense to the County, as reasonably necessary to secure any Project Funding Sources, including assisting MDA in securing a position for the Domes on the National Register of Historic Places, entering into reasonable recognition agreements or subordination and non-disturbance agreements as required by Project Funding Sources, and providing such other reasonable assurances as may be required by Project Funding Sources; provided, however, that the County shall not be obligated to enter into or to approve or consent to any agreement that would (i) allow for use of the Domes or any portion of the Domes Redevelopment Area for any purpose other than the operation of a horticultural conservatory with nature education and related programming and special event rentals that is open to the public at the times and in the manners agreed to in the Primary Lease, (ii) obligate the County to complete the Project, to pay for any Project Costs, or accept any other liabilities or obligations in excess of those set forth in this Agreement or the County Leases, or (iii) place a lien upon the County's interest in the any of the Domes Redevelopment Area. If at any time MDA has reason to believe that Project Funding Sources anticipated for any Project Phase will not be available to such Project Phase, MDA shall promptly notify the County of the same and provide to the County, within a reasonable time thereafter, a written plan to fill the financing gap caused by the projected loss of the particular Project Funding Source.

c. County Commitment.

- i. Subject to the limitations contained in Section 4(c)(ii) of this Agreement, the County shall fund the County Commitment in the manner set forth in Section 4(c)(iii) as follows:

A. Phase 1A Project (\$12,900,000 total)

- (1) \$5,000,000 shall be available to MDA on the date that is the later of March 1, 2026 and the date of the Phase 1A Closing.
- (2) \$5,000,000 shall be available to MDA on the date that is the later of March 1, 2027 and the date of the Phase 1A Closing.
- (3) \$2,900,000 shall be available to MDA on the date that is the later of March 1, 2028 and the date of the Phase 1A Closing.

B. Phase 1B Project (\$8,400,000 total)

- (1) \$2,100,000 shall be available to MDA on the date that is the later of March 1, 2028 and the date of the Phase 1B Closing.
- (2) \$5,000,000 shall be available to MDA on the date that is the later of March 1, 2029 and the date of the Phase 1B Closing.

- (3) \$1,300,000 shall be available to MDA on the date that is the later of March 1, 2030 and the date of the Phase 1B Closing.

C. Phase 1C Project (\$8,700,000 total)

- (1) \$3,700,000 shall be available to MDA on the date that is the later of March 1, 2030 and the date of the Phase 1C Closing.

- (2) \$5,000,000 shall be available to MDA on the date that is the later of March 1, 2031 and the date of the Phase 1C Closing.

It is the intent of this Section 4(c)(i) that the County Commitment be available to MDA in an amount that is roughly pro rata with the Budget for each Phase 1 Project, to be determined at the time of the Financial Closing of the Phase 1A Project (i.e. as of the date hereof, the County Commitment Tranches are based on the current Budget for the Phase 1A Project, which is approximately 43% of the Budget for the total Phase 1 Project and the County Commitment available under Section 4(c)(i)(A) is approximately 43% of the total County Commitment). In the event of a material change to the Budget for any Phase 1 Project such that the percent of the County Commitment available for a particular Phase 1 Project to the total County Commitment is materially greater than the percent of the Budget for such Phase 1 Project to the total Project Budget, the County shall have a right to reallocate the County Commitment to achieve a pro rata distribution prior to the Financing Closing for such Phase 1A Project. The County shall have the right to adjust County Commitment Tranches for the Phase 1B Project and Phase 1C Project prior to the Phase 1B Project Financing Closing based on the actual Phase 1A Project Cost and the Budget for the Phase 1B Project and Phase 1C Project at such time.

- ii. Notwithstanding anything to the contrary herein, the County shall have no obligation to fund the County Commitment or any portion thereof (each available tranche of the County Commitment under Sections 4(c)(i)(A), 4(c)(i)(B) and 4(c)(i)(C) is referred to herein as a “County Commitment Tranche”) until MDA has satisfied the following conditions or such conditions have been waived in writing by the County:
- A. No default or Event of Default has occurred and is continuing under this Agreement, any County Lease, any Project Financing Document or any Construction Contract (for the sake of clarity, a default or Event of Default that has been cured shall not prevent satisfaction of this condition).
- B. Construction Work for each Project Phase for which Construction Work has commenced is proceeding in accordance with the Plans and Specification and the Budget for such Project Phase and MDA

reasonably anticipates that the applicable Project Phase for which Construction Work has commenced will reach Substantial Completion by the applicable Projected Completion Date, subject to any Force Majeure delays.

- C. MDA has delivered to the County not more than thirty (30) days prior to the anticipated payment date of each County Commitment Tranche, a certification of MDA attesting to the requirements in Subsections A and B above together with any information reasonably requested by the County to verify the same.
  - D. If the County Commitment Tranche relates to the Phase 1B Project, the Phase 1A Project shall have reached Substantial Completion and if the County Commitment Tranche relates to the Phase 1C Project, the Phase 1B Project shall have reached Substantial Completion, unless MDA and the County otherwise agree in writing that any of the Phase I Projects will be undertaken concurrently.
  - E. The County, acting through the County Board of Supervisors and County Executive, has appropriated the applicable County Commitment Tranche. Notwithstanding any other provision of this Agreement to the contrary, the County shall not be obligated to provide, and MDA shall not receive, any portion of the County Commitment that is not appropriated within a budget adopted by the County.
  - F. The County has received an opinion of its bond counsel determining that the County is authorized to appropriate money or otherwise issue the necessary debt obligation to make the contribution associated with the County Commitment Tranche.
  - G. The County shall have received, not less than 60 days prior to the date of anticipated funding to MDA of any County Contribution Tranche, an accounting of all gifts, pledges, and pledge receivables grants received as of such date as part of MDA's Capital Campaign, certified as true and correct by the treasurer or equivalent officer of MDA. On an annual basis, MDA shall provide to the County the portion of the MDA's audited financial statements reflecting all gifts, pledges, and pledge receivables grants that MDA has received as of the fiscal year covered by such audited financial statement.
- iii. Each County Commitment Tranche shall be paid by the County to MDA or an Affiliate (as directed in writing by MDA), solely for the reimbursement of Bondable Project Costs incurred and paid for by MDA or the applicable Affiliate within sixty (60) days of submission to the County of evidence of

payment of such Bondable Project Costs. Requests for any portion of an available County Commitment Tranche shall not be made more than once per month. No payment of any portion of any County Commitment Tranche shall be made unless the conditions under Section 4(c)(ii)(A) and 4(c)(c)(ii)(B) remain true and correct. The County shall have the right, at any time, to establish additional reasonable and standard disbursement requirements such as completion of a draw request form, lien waivers and sworn statements as deemed necessary by the County. Prior to submission of any request for reimbursement from a County Commitment Tranche, the County will provide MDA with instructions for the submission of requests including the parties to whom requests should be submitted and the proper method of transmission.

- iv. Notwithstanding anything to the contrary herein, the County's obligation to fund any County Commitment Tranche shall expire on the third anniversary of the earliest date such County Commitment Tranche becomes available to MDA (i.e. March 1, 2029 for the first County Commitment Tranche, March 1, 2030 for the Second County Commitment Tranche, etc.) (each a "County Commitment Tranche Expiration Date").
  - v. In no event shall the County be obligated to provide funding for the Project in excess of the County Commitment or to fund any County Commitment Tranche after the applicable County Commitment Tranche Expiration Date.
  - vi. As security for the County Commitment, MDA will provide to the County a pledge of all Capital Campaign proceeds, subject only to the prior liens of Project Funding Sources thereon.
- d. Quarterly Reporting. MDA shall provide written project financing updates to the County every ninety (90) days with the first such report due to the County on the first day of the month immediately following execution of this Agreement. Such updates shall include (i) Capital Campaign status together with a list of all pledges received since the last quarterly update and cash-on-hand amounts, (ii) status on discussions with and commitments from any potential Project Funding Sources for the applicable Project Phase, (iii) notice of any changes to the Project Financing Structure and reasons therefor, and (iv) any other reasonable information requested by the County. If at any time MDA has reason to believe that Project Funding Sources for the applicable Project Phase will fall short of the amount required to complete the applicable Project Phase, MDA will notify the County of the same and provide to the County a written plan to fill the Project financing gap caused by such projected shortfall, which may include other Project Funding Sources or increases to existing Project Funding Sources to bridge such gap. MDA and the County (including staff from the Office of the Comptroller and the Office of Strategy, Budget, and Performance) shall meet on an as needed basis to review Project Funding Sources and Project status.



## 5. Project Construction.

- a. Permits MDA shall procure and pay the fees for all appropriate federal, state, and local licenses and permits required for the Predevelopment Work and the Construction Work, including, but not limited to, a right of entry permit for all utility and Construction Work in Mitchell Park. The County, at no cost or expense to the County, agrees to assist MDA with obtaining any licenses, permits, entitlements, and approvals, and executing such applications, forms, and documents in connection therewith, as MDA shall reasonably request. In furtherance of the foregoing, the County agrees to respond within thirty (30) days to any right of entry permit applied for by MDA or its Affiliates or contractors in connection with utility and Construction Work in Mitchell Park. MDA shall be responsible for all costs for disconnection and/or hookup of Utilities in conjunction with the Construction Work, as well as all costs from any impacts to areas outside the Domes Redevelopment Area that are related to the activities of MDA or its Affiliates in Mitchell Park. "Utilities" shall include storm and sanitary sewer, water, gas, phone, internet, and electricity.
- b. Non-Disturbance. Except as may be approved in writing by County, neither MDA, Developer nor any Affiliates of MDA or Developer shall unreasonably disturb or interfere with, and shall not permit unreasonable disturbance or interference with, Mitchell Park operations or the use of Mitchell Park by the public. MDA shall use commercially reasonable efforts to contain the Construction Work within the Domes Redevelopment Area and that the portion of Mitchell Park outside of the Domes Redevelopment Area is free and clear of equipment, debris and other materials; provided, however, that the County agrees to issue temporary construction easements, air rights easements, and similar agreements with respect to areas outside of the Domes Redevelopment Area to MDA to the extent necessary to support the Project. MDA shall be responsible for the collection and removal of all trash, litter and garbage associated with the Construction Work. Any failure of MDA to comply with the provisions of this Section 5(b), which failure continues for thirty (30) days after written notice from the County thereof, shall give the County the right to remove any disturbance, equipment or materials and dispose of the same as the County sees fit at the sole cost and expense of MDA.
- c. Cleanliness of Exterior Areas. MDA shall be responsible for the collection and removal of all trash, litter and garbage associated with MDA's activities in the Domes Redevelopment Area. MDA shall be responsible for maintaining the exterior of the buildings in the Domes Redevelopment Area during the Construction Work in a state of cleanliness to prevent injuries to the public. MDA agrees not to store or accumulate unused or excess materials, supplies, or equipment in such exterior portion of the Domes Redevelopment Area which may create a hazard to the public. The Parties will work in good faith to create an exterior storage plan for the Project to effectively address the visual and physical impact of the Construction Work on the greater Park and MDA will follow the same.

- d. Liens. At no time shall MDA or its Affiliates allow the attachment of mechanic's, supplier's, or similar liens to all or any portion of the Domes Redevelopment Area, or any other property owned by the County. If any mechanic's, supplier's, or similar lien is filed against all or any portion of the foregoing, or against the materials to construct the Project, for work claimed to have been done for, or materials claimed to have been furnished to, MDA or any Affiliate thereof, then MDA shall cause such mechanic's, supplier's, or similar lien to be discharged of record or bonded or insured over within sixty (60) days after MDA or its Affiliates receipt of notice of the filing.
- e. Site Inspections. The County and its agents, employees and consultants, at their sole cost and at their own risk, may enter upon any portion of the Domes Redevelopment Area to conduct periodic inspections of the Construction Work during regular business hours and upon reasonable prior written notice to MDA. An inspection performed by or on behalf of County, or an approval granted by the County, pursuant to this Agreement shall not mean that the County has accepted responsibility for: (i) compliance with the Laws; (ii) the proper application of construction means or methods; (iii) correcting any portion of any Project Phase if it later is determined that such portion is inconsistent with the proper completion of a subsequent portion of such Project Phase; or (iv) any material defects in the Construction Work. Any inspections performed by County pursuant to this Subsection shall not preclude, or be deemed to be in substitution of, inspections required or permitted to be performed by any other party under applicable Laws.
- f. Progress Reports. Commencing thirty (30) days after the commencement of Construction Work on any Project Phase, and occurring until Substantial Completion of all of the Project Phases, MDA shall provide to the County monthly reports prepared by MDA's general contractor, which shall include information regarding the status of each Project Phase for which Construction Work is then ongoing and such other information as the County may reasonably request.
- g. Unauthorized Aliens. MDA or its general contractor: (i) shall verify the work eligibility status of all newly-hired employees through the E-Verify Program; and (ii) shall not: (A) knowingly employ, or contract with, an Unauthorized Alien; or (B) retain an employee, or contract with a person that MDA learns is an Unauthorized Alien. To the extent required by IC §§22-5-1.7, MDA shall require its general contractor and each subcontractor to certify to MDA that, at the time of certification, the general contractor or such subcontractor: (i) does not knowingly employ, or contract with, any Unauthorized Aliens; and (ii) has enrolled, and is participating, in the E-Verify Program. MDA or its contractor shall maintain such certifications on file until the construction contract or the applicable subcontract expires or is terminated.
- h. No Discrimination. MDA shall not discriminate against any employee or applicant for employment because of race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service

veteran status. MDA agrees to: (i) post in conspicuous places, visible to employees and applicants for employment, notices setting forth the provisions of this Subsection; and (ii) state, in all solicitations or advertisements for employees placed or published by or on behalf of MDA, that all qualified applicants will receive consideration for employment without regard to race, sex, sexual orientation, gender identity, religion, color, national origin, ancestry, age, disability, or United States Military service veteran status. The foregoing shall apply notwithstanding any Law that may allow, or be interpreted to allow, discrimination on the basis of religious freedom or otherwise, and, to the fullest extent permitted by the Laws, MDA expressly waives any right that it may have to assert that any such Law relieves it from the obligation to comply with the terms and conditions of this Subsection.

- i. As-Built Surveys. Within sixty (60) days following Substantial Completion of the Phase 2 Project, MDA, at its sole cost and expense, shall obtain and provide to the County an as-built survey of the Domes Redevelopment Area and all improvements thereon, including the location of utilities. Any as-built drawings, of completed improvements, shall be prepared by an architect or engineer licensed by the State of Wisconsin.
- j. Construction Documents. Within one hundred twenty (120) days following Substantial Completion of each Project Phase, MDA shall provide to the County a complete set of construction documents to include: (a) as-built drawings; (b) a copy of all work orders and change orders; (c) a copy of all lien-waivers; (d) operation manuals or cut sheet drawings of any mechanical fixtures or equipment which was installed; (e) manufacturer's warranties or extended warranties; (f) a copy of all construction permits and signed drawings; and (g) City of Milwaukee occupancy permits, if applicable.
- k. Workforce Goals – Targeted Business Enterprise Participation. MDA shall use commercially reasonable efforts to ensure that Targeted Business Enterprises (“TBE”) have an equal opportunity to receive and participate in the Project and shall require that its contractors and subcontractors do the same, as required by Chapter 42 of the Milwaukee County Code of General Ordinances. MDA shall utilize commercially reasonable efforts to achieve its goal of a minimum of 25 percent (25%) TBE participation for Project Costs relating to the hard construction costs and a minimum of 17 percent (17%) TBE participation for Project Costs relating to professional services, in the event traditional construction methods are used. MDA’s community benefits compliance plan, which will require the approval of the County’s Office of Economic Inclusion, will restate these goals, outline the commercially reasonable efforts to be utilized to achieve the goals and specify the reporting requirements of MDA. Achievement of the foregoing TBE goals may be impacted by the actual available workforce across and within certain trades at the time of construction.
- l. Licensed Tradespersons. MDA agrees that all renovations and improvements shall

be performed by fully licensed contractors and subcontractors who shall utilize industry standard supplies, equipment, and construction methods in the performance of their duties. MDA shall require its contractors and subcontractors to obtain and maintain the insurance required as set forth in the County Leases. MDA shall have responsibility to enforce compliance with these insurance requirements and provide evidence of insurance for any contractor or subcontractor as acceptable to the County

6. **Plant and Animal Collection.** Pursuant to the terms of the Primary Lease, MDA shall have a leasehold interest in the Plant and Animal Collection, which the County will continue care for pursuant to Section 7 of this Agreement. Prior to the commencement of any Construction Work for any Phase 1 Project, MDA and the County shall enter into a Collection Maintenance Plan for the Plant and Animal Collection located in that particular Project Phase Unit, it being understood that the Construction Work on each Phase 1 Project may require the relocation or removal of portions of the Plant and Animal Collection and the potential loss of portions of the Plant and Animal Collection that may not survive Construction Work or relocation and replanting in accordance with each Collection Site Plan.
7. **Ongoing Employee Support.** Pursuant to the Primary Lease and the Greenhouse Lease, MDA shall take over full operations of the Domes as of the commencement of the term of each of the Primary Lease and the Greenhouse Lease. Such operation shall include the maintenance of the improvements in the Domes Rehabilitation Area and the operation of all programming in the Domes Rehabilitation Area, including staffing during regular business hours and special events. In order to support MDA's ongoing operations at the Domes, the County will provide County employees to support MDA operations as follows: (i) from the commencement of the term of the Primary Lease through the Substantial Completion of the Phase 1A Project, the County shall supply and pay for (a) all non-horticultural staff positions supplied and paid for by the County as of the date of this Agreement, and (b) all horticultural staff positions supplied and paid for by the County as of the date of this Agreement, for Domes operations at an assumed cost to the County of \$770,000 per year, escalating annually, and (ii) the County shall continue to supply and pay for horticultural staff for care of the Plant and Animal Collection at the Domes during the term of the Primary Lease at an assumed cost to the County of \$400,000 per year, escalating annually. MDA and the County shall enter into an employee share plan (the "Employee Share Plan") governing the terms of the County's provision of County employees to support MDA's operations at the Domes as set forth herein.
8. **County Rights of Access and Audit.** MDA its Affiliates, officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as "Designated Personnel") and any other party the Designated Personnel may name, following reasonable prior written notice, to audit, examine and make copies of any and all records of MDA and its Affiliates, related to the terms and performance of this Agreement for a period of up to three (3) years following the date of last payment, the end date of this contract, or activity under this contract, whichever is later. Any subcontractors or other parties performing work under

this Agreement will be bound by the same terms and responsibilities as MDA. All subcontracts or other agreements for work performed on this Agreement will include written notice that the subcontractors or other parties understand and will comply with the terms and responsibilities. MDA, its Affiliates and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances. Any and all County contracts and solicitations for contracts shall include a statement that contractor and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

9. **Insurance.** MDA or its general contractor for each Project Phase shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with the County as additional insured and loss payee on the insurance certificate, subject to any superior rights of any Project Funding Source pursuant to any Project Financing Documents. Coverage shall run during construction period for each Project Phase and is intended to terminate when the Project Phase reaches Substantial Completion. Prior to the commencement of Construction Work on any Project Phase, MDA shall supply the County with written evidence of Builder's Risk insurance and shall not commence construction until such evidence is supplied.

10. **Defaults and Remedies.**

- a. Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by MDA hereunder:
- i. the failure to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of MDA under this Agreement or any related agreement including any County Lease;
  - ii. the making or furnishing by MDA to the County of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;
  - iii. the failure of MDA to work diligently towards the Phase 1A Commencement Date such that there has been no demonstrable and material progress on the Plan within twelve (12) months from the date hereof, as determined by the County in its reasonable discretion; provided that so long as MDA continues to provide the quarterly reports in accordance with Section 4(d) above evidencing progress towards securing Project Funding Sources, MDA shall not be in default under this subsection (iii).
  - iv. the failure to achieve Substantial Completion of each Phase 1 Project by the Projected Completion Date therefor, subject to any Force Majeure delays.
  - v. the commencement of any proceedings in bankruptcy by or against MDA

or for the liquidation or reorganization of MDA, or alleging that MDA is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of MDA's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving MDA; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

- vi. the appointment of a receiver or trustee for MDA, for any substantial part of MDA's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of MDA; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within one hundred eighty (180) days after the commencement thereof;
  - vii. the entry of any judgment or order against MDA or an Affiliate in the amount of \$250,000 or more which is not covered by insurance and which remains unsatisfied or undischarged and in effect for one hundred eighty (180) days after such entry without a stay of enforcement or execution; and
  - viii. the occurrence of an event of default under any Project Funding Source, which default is not cured within any applicable cure period.
- b. Remedies. Upon the occurrence of an Event of Default, the County may terminate this Agreement and any other agreements to which the County and MDA are or shall be parties, discontinue payment of the County Commitment, discontinue the provision of County employees to MDA operations, and seek reimbursement of any County Commitment previously paid to MDA or an Affiliate. In addition, the County may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to damages, injunctive relief or the specific performance of the terms and conditions contained herein. Upon any termination of this Agreement, MDA will deliver to the County without representation or warranty by MDA, any such representations or warranties in connection therewith being hereby disclaimed by MDA, within 30 days thereof, all documents, reports, tests, studies and contracts relating to the Predevelopment Work and the Construction Work, including all Plans and Specifications, to the extent in MDA's possession or control, or reasonably obtainable by MDA.
- c. Curative Period. If MDA shall fail to perform a covenant which MDA is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have

occurred unless MDA has failed to cure such default within thirty (30) days of its receipt of a written notice from the County specifying the nature of the default; provided, however, with respect to those non-monetary defaults which are not capable of being cured within such thirty (30) day period, MDA shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured; provided, further, that the cure period for noncompliance with the non-disturbance covenant in Section 5(b) hereof shall be as provided for in Section 5(b).

- d. Right to Cure by Lender. In the event that an Event of Default occurs under this Agreement, and if, as a result thereof, the County intends to exercise any right or remedy available to it that could result in termination of this Agreement and all related agreements, including the County Leases, or the suspension, cancellation or reduction of the amount of the County Commitment disbursed hereunder, the County shall prior to exercising such right or remedy, send notice of such intended exercise to the Construction Lenders (with copies of such notice delivered to any investor in the Historic Tax Credits generated by the Project, whether state or federal, and the Construction Lender shall have the right (but not the obligation) to cure such Event of Default within 30 days after the later of (i) expiration of the cure period, if any, granted to MDA with respect to such non-monetary default or (ii) receipt by the Construction Lender of such notice from the County; provided, however, that if such non-monetary default is not reasonably capable of being cured by any Construction Lender within such sixty (60) day period, such period shall be extended for such reasonable period of time as may be necessary to cure such Event of Default, provided that the party seeking such cure must diligently and continuously prosecute the cure of such default until the same has been cured and, if possession of a particular Project Phase Unit is necessary to effect such cure, the party seeking such cure must have instituted appropriate legal proceedings to obtain possession to the extent such party has the right to do so.
- e. No Remedy Exclusive. Except as specifically provided to the contrary herein, no right or remedy herein conferred upon, or reserved to the County is intended to be exclusive of any other available right or remedy; instead, each and every such right or remedy shall be cumulative and in addition to every other right or remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission by the County to exercise any right or remedy upon any Event of Default shall impair any such right or remedy, or be construed to be a waiver thereof, and any such right or remedy may be exercised from time to time, and as often as may be deemed to be expedient.
- f. Events of Default by County. The following is hereby defined as, declared to be, and constitute an "Event of Default" by County for purposes of this Agreement: the failure of County to perform as provided in this Agreement any material term, condition or covenant to be performed or observed by County. In the event an Event of Default by County shall occur, MDA or its Affiliate shall send written notice to

County (the "Default Notice") specifying the nature of the Event of Default in detail, and County shall have ninety (90) days after receipt of the Default Notice to cure such Event of Default (or such reasonably longer period in the event such Event of Default cannot be cured in such ninety (90) day period and County, upon receipt of Default Notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion). In the event that the County does not cure an Event of Default within such ninety (90) day period (or such other reasonable time as necessary if such Event of Default cannot be cured within ninety (90) days and County, upon receipt of Default Notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion), MDA or its Affiliate may pursue any available remedy against County, either at law or in equity, including, without limitation, the right to pursue specific performance and collect actual damages (but not consequential damages) for County's failure to perform.

- g. County agrees that damages will not be an adequate remedy at law and that MDA and its Affiliates shall have the right to an injunction or other judgment of specific performance to enforce any provision in this Agreement, the County ordinances or any other State or Federal law. MDA shall be entitled to its reasonable attorneys' fees in any action, in which it prevails, to enforce such provisions of this Agreement, including reasonable attorney fees.

**11. Representations.** Each of County and MDA represents and warrants that:

- a. It has (i) the power and authority to enter into this Agreement and to perform its obligations hereunder;
- b. it has been authorized by proper action to execute and deliver, and to perform its obligations under, this Agreement;
- c. neither the execution and delivery of this Agreement by it, nor the performance by it of its obligations hereunder: (i) violates any Laws or the terms and conditions of any indenture, material agreement, or other instrument to which it is a party, or by which it or any of its properties or assets is bound; (ii) conflicts with, results in a breach of, or constitutes a default under any such indenture, agreement, or other instrument; or (iii) results in the creation or imposition of any prohibited lien, charge, or encumbrance of any nature upon any of its properties or assets; and
- d. this Agreement, once executed, will be its legal, valid, and binding obligation.

**12. Indemnification.** Subject to the waiver of subrogation set forth in this Section 12, MDA shall indemnify and hold harmless the Indemnified County Parties from and against any and all Claims imposed upon, incurred by, or asserted against, any Indemnified County Party in connection with, relating to, or as a result of: (a) any accident, injury to or death of persons, or loss of or damage to property occurring or located in the Domes



Redevelopment Area caused by MDA or its Affiliates, agents, employees, or contractors; (b) reserved; (c) any failure on the part of MDA or its Affiliates, agents, contractors, employees, tenants, subtenants, licensees, and/or invitees to comply with all Laws and requirements of any permits in connection with use or occupancy of all or any portion of the Domes Redevelopment Area; (d) Reserved ; (e) a default by MDA of its obligations pursuant to this Agreement; and (f) any act, or failure to act, occasioned wholly or in part by the negligence or willful misconduct of MDA or its Affiliates, agents, contractors, employees, tenants, subtenants, licensees, and invitees. If any Claim with respect to which this Section applies is brought against any Indemnified County Party, then such Indemnified County Party shall notify MDA of such Claim and, upon request by such Indemnified County Party, MDA, at its sole expense, shall defend such Claim using counsel reasonably approved by such Indemnified County Party in writing. Notwithstanding the foregoing, MDA's indemnification obligations under this Section shall not apply if and to the extent that any Claim arises from or as a result of County's default under this Agreement, or the recklessness or willful misconduct of any County Indemnified Party. MDA's obligations accruing under this Section during the continuance of this Agreement shall survive the expiration of the term of this Agreement or the earlier termination hereof. Notwithstanding anything herein to the contrary, in no event shall MDA be responsible for punitive, consequential or exemplary damages under this Agreement. For purposes of this Section, "Indemnified County Parties" shall mean County and its agencies, officials, officers and employees.

Each Party hereto does hereby waive, remise, release and discharge the other Party hereto and any officer, director, shareholder, beneficiary, partner, agent, employee or representative of such other party, of and from any liability whatsoever hereafter arising from loss, damage or injury caused by fire or other casualty for which insurance containing a waiver of subrogation is carried by the injured Party at the time of such loss, damage or injury to the extent of any recovery by the injured Party under such insurance or to the extent such recovery would have been made had the injured Party carried the insurance it is required to carry under the terms of this Agreement, the County Leases, or any other agreement to which the Parties are a party or as such insurance may be required under applicable law. Each party agrees to obtain a waiver of subrogation endorsement from its respective insurer to each applicable insurance policy where possible

13. **Assignment.** MDA shall not assign this Agreement without the prior written consent of the County, which consent the County may withhold in its sole and absolute discretion. Notwithstanding any permitted assignment, MDA shall remain liable to perform all of the terms and conditions to be performed by it under this Agreement, and the approval by County of any assignment shall not release MDA from such performance. Notwithstanding the foregoing to the contrary, the County hereby consents to: (a) any collateral assignment of this Agreement, in whole or in part, to one or more Project Funding Sources as collateral for Project financing to the extent required pursuant to any Project Financing Documents; and (b) any assignment of this Agreement, in whole or in part, to any Affiliate of MDA as contemplated by the structure chart attached as Exhibit F hereto, to the extent necessary for such Affiliate to undertake its respective obligations with respect to the Project or as otherwise required by any Project Funding Source. To the extent that any Project Funding

Source requires reasonable amendments to this Agreement in order to address Project Funding Source concerns, the County will review such requirements in good faith and will not unreasonably withhold its consent thereto.

- 14. Approvals.** Whenever the consent or approval of County is required under this Agreement (other than consent or approvals relating to the release of any County Commitment Tranche or portion thereof, which shall be approved by the Office of the Comptroller), the person authorized to provide consent or approval on behalf of County shall be the Parks Executive Director or his or her designee provided that notices and other items to be provided in connection with obtaining any such consent or approval shall simultaneously be delivered to Milwaukee County Corporation Counsel or any successor designated by the Parks Executive Director, as County's authorized representative. Any approval granted by the County under this Agreement or the County Leases with respect to the design, construction, operation, maintenance, or removal of any portion of the Project shall be deemed an approval of the subject matter thereof pursuant to Chapter 47 of the Milwaukee County Code of Ordinances.
- 15. Notice.** Any notice required or permitted to be given by either party to this Agreement shall be in writing, and shall be deemed to have been given when: (a) delivered in person to the other party; (b) sent by email to the applicable email addresses below, provided that such notice is also sent the next business day by one of the other methods identified in this Section 15, or (c) sent by national overnight delivery service, with confirmation of receipt, addressed as follows:

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

with a copy to: Milwaukee County Corporation Counsel  
901 N 9th Street, Suite 303  
Milwaukee, WI 53233  
Attn: Corporation Counsel  
Phone: (414) 278-4300  
Email: [scott.brown@milwaukeecountywi.gov](mailto:scott.brown@milwaukeecountywi.gov)

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

with a copy to: Michael Best & Friedrich LLP

One South Pinckney Street, Suite 700  
Madison, Wisconsin 53703  
Attn: Hamang Patel  
Phone: (608) 283-2278  
Email: hbpatel@michaelbest.com

Either Party may change its address for notice by written notice delivered to the other Party as provided above. The Parties agree to provide a copy of all written notices to any Project Funding Sources upon MDA providing written notice of the name and notice address of such Project Funding Source(s) pursuant to this Section 15.

16. **Force Majeure.** Notwithstanding anything to the contrary set forth herein, if either Party is delayed in, or prevented from, observing or performing any of its obligations (other than the obligation to pay money) under, or satisfying any term or condition of, this Agreement as a result of Force Majeure; then: (a) the Party asserting Force Majeure shall deliver written notice to the other Party; (b) such observation, performance, or satisfaction shall be excused for the period of days that such observation, performance, or satisfaction is delayed or prevented; and (c) the deadlines for observation, performance, and satisfaction, as applicable, shall be extended for the same period; provided that the Party claiming Force Majeure shall exercise commercially reasonable efforts to minimize the effect thereof.
17. **Public Records Law.** MDA acknowledges that the County is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21 et seq. MDA shall assist the County in retaining and timely producing records that are subject to Public Records Law upon any statutory request having been made. Except as otherwise authorized by the County in writing, records that are subject to Public Records Law shall be maintained for a period of three (3) years after expiration of this Agreement. In the event that the County receives a request to disclose any MDA information defined as “Confidential Information” or labeled as such by MDA, the County will promptly provide MDA notice of the public records request to enable MDA to resist any required disclosure and/or to obtain suitable protection regarding such required disclosure by the County. In the event the designation of “Confidential Information” of such MDA information is challenged by the requestor and MDA resists disclosure by the County, MDA shall provide legal counsel or other necessary assistance to the County to defend the designation of confidentiality and agrees to indemnify and hold the County harmless for any costs or damages arising out of the County’s agreement to withhold such MDA information from disclosure. Alternatively—or in the event the County declines to resist a request to disclose any such document—MDA may instead exercise itself any right available to it under the law to attempt to prevent disclosure by the County.
18. **Partnership.** Nothing contained herein shall be deemed or construed by the Parties, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the Parties, it being understood and agreed that no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship other than that defined in this Agreement.

19. **Miscellaneous.** Subject to Section 13, this Agreement shall inure to the benefit of, and be binding upon, the County and MDA and their respective successors and assigns. This Agreement may be modified only by a written agreement signed by both the County and MDA. The invalidity, illegality, or unenforceability of any one or more of the terms and conditions of this Agreement shall not affect the validity, legality, or enforceability of the remaining terms and conditions hereof. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Wisconsin. All proceedings arising in connection with this Agreement shall be tried and litigated only in the state courts in Milwaukee County, Wisconsin, or the federal courts with venue that includes Milwaukee County, Wisconsin. MDA waives, to the extent permitted under applicable law: (a) the right to a trial by jury; and (b) any right MDA may have to: (i) assert the doctrine of "forum non conveniens"; or (ii) object to venue. All Exhibits to this Agreement are attached hereto and incorporated herein by reference. This Agreement may be executed in counterparts and signatures delivered in "pdf" or other electronic format shall be deemed original. In the event the Primary Lease is terminated pursuant to Section 20 of the Primary Lease, this Agreement shall automatically terminate except for those provisions that specifically survive the termination of this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized person of each party hereto as of the date first above written.

MILWAUKEE COUNTY through the  
MILWAUKEE COUNTY PARKS  
DEPARTMENT

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

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

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

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized person of each party hereto as of the date first above written.

MILWAUKEE DOMES ALLIANCE, INC.,  
a Wisconsin nonstock corporation

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

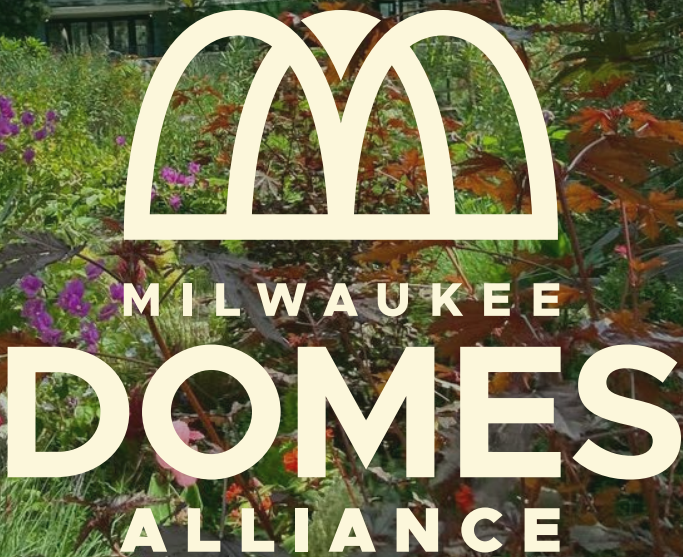
Name: \_\_\_\_\_

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

EXHIBIT A

The Plan.

THE DOMES:  
Reimagined





# THE DOMES: Reimagined

**The Mitchell Park Horticultural Conservatory (the Domes) is a beloved and iconic part of Milwaukee—with a major role to play in our future.**

Originally constructed in the early 1960s in what was at the time an industrial valley, the Domes are a vital architectural and educational asset to our community. Rising from the smokestacks, these glorious glass bubbles were said to be a “willful act of hope”. Today, they remain deeply rooted in the memories of many. Significantly, the Domes are the only cultural institution located on Milwaukee’s near south side.

The Domes now face the challenge of decades of deferred maintenance. Coupled with declining admissions due to limited investments in programming and marketing, there has been no clearly defined future path for Milwaukee’s beloved Domes. Without outside funding, many considered Milwaukee County’s only option to be demolition.

Now, however, we have the opportunity not only to save the Domes, but to reimagine them for our community today—and for generations to come. Through a bold new partnership between Milwaukee County Parks and the Milwaukee Domes Alliance, we can preserve the Domes’ historic past, ensure a sustainable future, and enliven a cultural pillar for the needs of our community today—from connecting kids to nature to investing in the near south side.





# THE DOMES:

## Existing Conditions

**The Mitchell Park Domes suffer from three significant issues that this plan - The Domes Reimagined - addresses:**

### 1. PHYSICAL LIMITATIONS

Although modern for its time, the building layout and systems within the Domes are dated and fail to adequately meet current operational needs. These deficiencies impact the visitor experience, create staff inefficiencies, and reduce opportunities for innovative programming. There is limited education and event space, and no provision for food and beverage. Many people skip the gift shop because it's too small to accommodate more than a handful of people.

### 2. LIMITED REVENUE OPPORTUNITIES

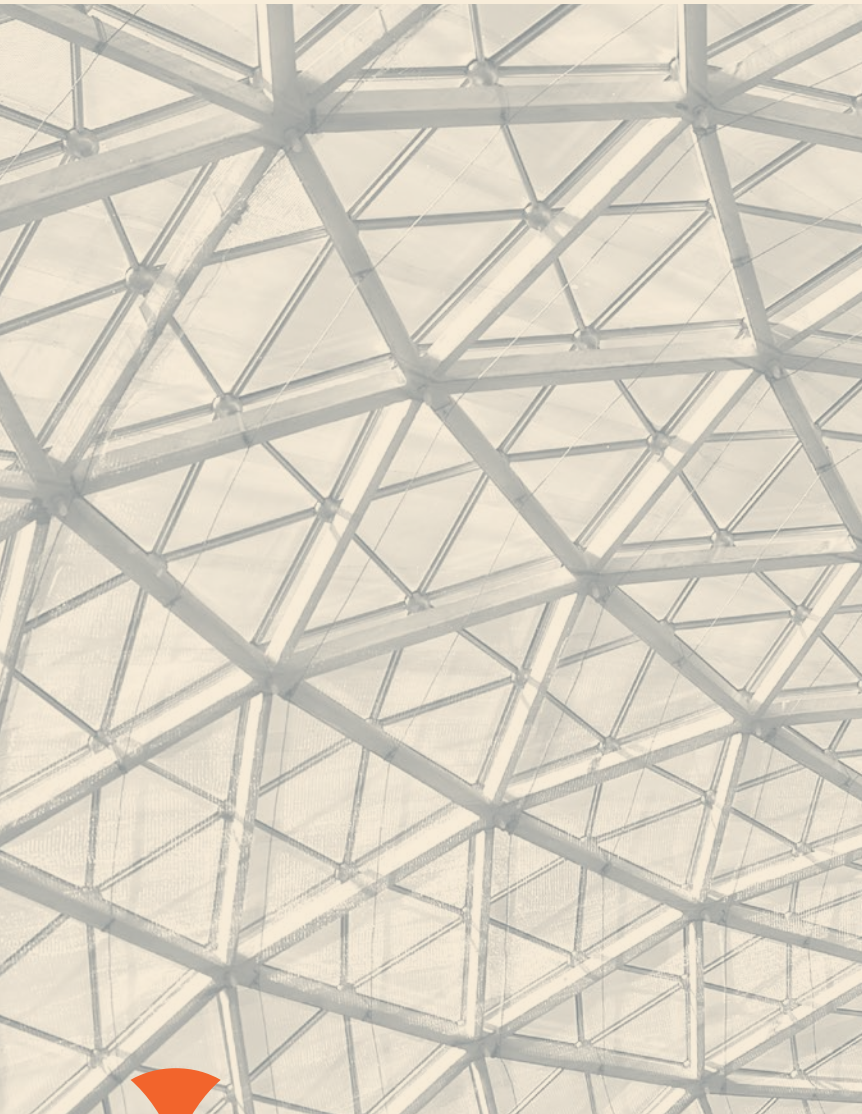
The physical limitations of the Domes create an unstable revenue model. A typical visitor stay is only about one hour, which limits admission fees and discourages repeat visitation. Inadequately sized education and event spaces, along with challenging acoustic, glare, and lighting conditions, hinder the ability to host school field trips, weddings, and conferences. Operating under the County budget hinders marketing strategies.

### 3. IGNORING MITCHELL PARK

The orientation of the Domes creates a disconnect between the Conservatory itself and the larger 61-acre Mitchell Park. Many visitors to the Domes skip visiting Mitchell Park simply due to a lack of inviting pathways into the park, along with a lack of updated amenities.







### NOT-SO-GREEN GREENHOUSES

The heating and air conditioning systems in the Domes are dated and inefficient, increasing operational costs and staffing challenges. The old system cannot anticipate extremes of heat or cold, or large variations between nighttime and daytime temperatures. These shortcomings result in excessive time expended by staff to monitor the climate in each Dome.

The 1/4" thick glass originally installed in the Domes inadequately captures solar heat, which requires supplemental heat to be pumped into each dome. Replacing the 1/4" wire glass with 1/2" insulated glass will result in a projected savings of up to 50% in annual energy costs. Further, other clean energy and green infrastructure solutions will be implemented to bring the Conservatory operations in line with its mission of environmental stewardship.

### INADEQUATE SUPPORT SPACES

Existing offices often double as storage rooms due to insufficient storage space for office supplies, educational materials, and gift shop merchandise. The majority of office spaces are accessible only by stairs (no ADA accessibility) and are below ground with no daylighting.



### AN AGING FACILITY

The three domes have more than 6,000 individual glass panels that need to be replaced. Internal drains on the aluminum glass frames are clogged beyond repair. Thus, water seeping through the glass is causing cosmetic damage to the concrete structure. If left unchecked, this damage will become beyond repair in the next decade. In addition, the facility lacks the amenities of a modern horticultural conservatory, limiting its ability to drive sufficient operating revenue.





# A **Smart Plan** to Ensure a Future for Mitchell Park and Its Conservatory

The challenges facing Milwaukee's only indoor botanical gardens are complex; however, the path forward is elegantly simple.

By reimagining the facility, using existing space differently, and adding new features, the Domes can become a modern conservatory able to generate sufficient revenue to achieve a sustainable business model.

## 1. ADDING MORE PUBLIC SPACE & ACTIVITIES

Creative internal reorganizing and strategic building additions maintain the iconic experience of the Domes while adding modern services such as a café, a dome just for kids, and state-of-the-art educational spaces.

## 2. ADDRESSING FINANCIAL SUSTAINABILITY

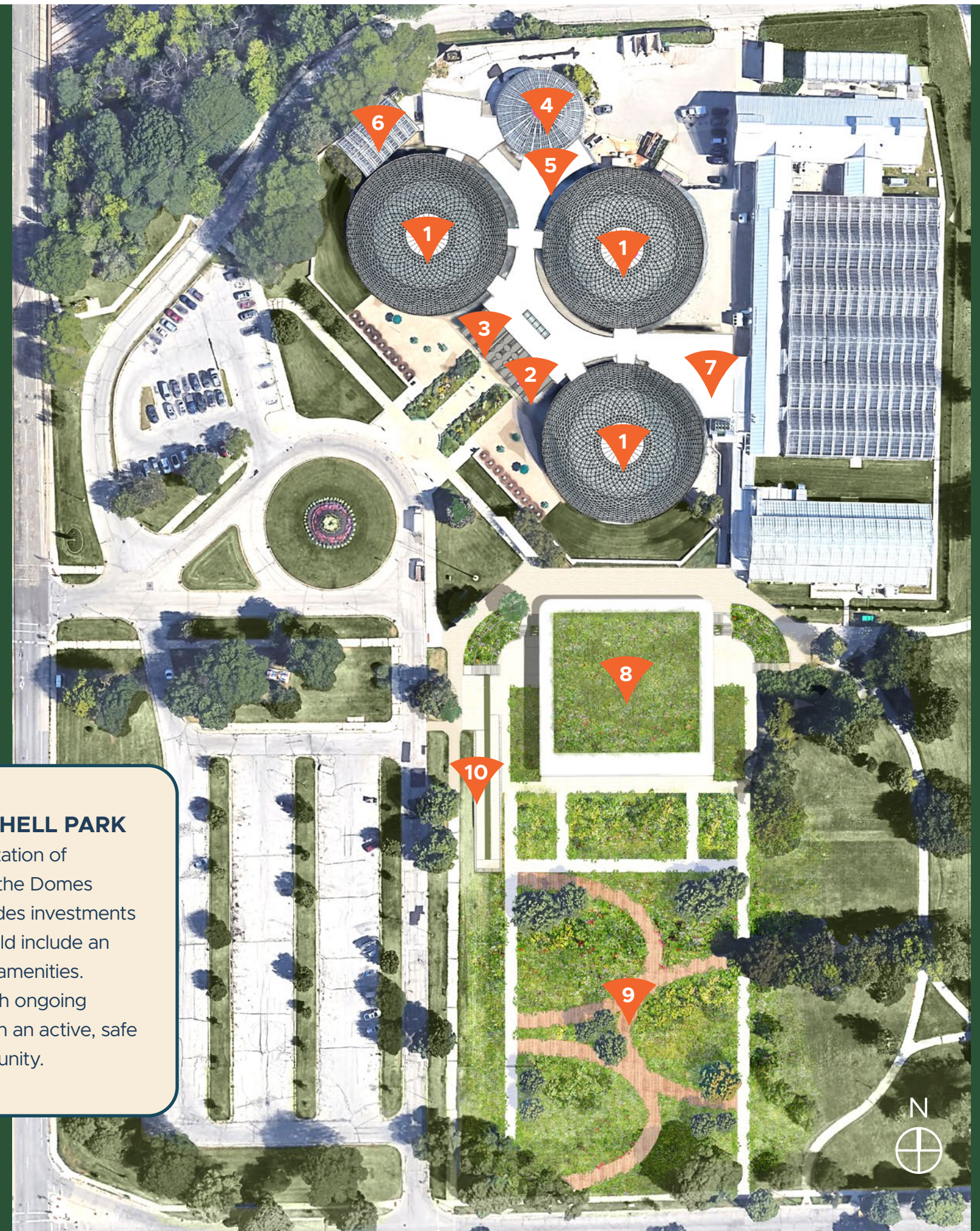
This project drives significantly more revenue through admissions, events, retail sales, and educational programs.

## 3. REVITALIZING MITCHELL PARK

Like the Domes, its home base—Mitchell Park—faces challenges with safety and deferred maintenance. Through strategic investments in infrastructure and ongoing programming, this project creates a safer, more appealing park with stronger connections to the Domes.

### REVITALIZING MITCHELL PARK

In addition to the rehabilitation of the sunken garden area, the Domes Reimagined project includes investments in the park itself. This could include an outdoor plaza and other amenities. These projects, along with ongoing programming, will result in an active, safe park for the entire community.





## 1 RESTORING THE DOMES

This essential project will replace the failing glazing system on each of the three domes. The enhanced glass will better supply plants with light and maintain appropriate temperatures conserving energy. Updated heating and air conditioning units will better control humidity levels and reduce energy consumption.

## 2 A NEW ENTRY EXPERIENCE

Long ticketing lines are a thing of the past with this new expanded entry area. By relocating the outdated bathrooms, a second ticket lobby open during peak events allows visitors to spend less time in line and more time in the Domes.

## 3 A BETTER GIFT SHOP

At twice the size, the new Domes Gift Shop can realize its retail sales potential. An open, welcoming appearance from the lobby encourages visitors to linger and browse the unique and expanded gift selection.

## 4 LITTLE SPROUTS DOME

Children love the Domes, but are often told to “not touch” as they reach for a cactus or elephant palm leaf. The new Little Sprouts Dome is a “yes touch!” space with all the climbing, digging, and playing children need to explore their love of nature.

## 5 NEW CAFÉ

An exciting new café will allow visitors to enjoy an espresso, beer, or glass of wine. Food options will also be available, enabling families to stay for lunch or mid-day snacks. Plants grown in the Domes may be used to make unique handmade syrups or extracts.

## 6 NEW SUPPORT GREENHOUSE

A new modern greenhouse will support the growing that currently occurs in the Little Sprouts Dome. Its location is key to support the set up of the shows in the Show Dome.

## 7 MODERN RESTROOMS AND OFFICE SPACE

Visitors will enjoy updated restrooms conveniently located near the lobby and education room. New support spaces and offices allow staff to more efficiently operate the Domes from a central location.

## 8 NATURE LEARNING CENTER

The new education and events building will play an essential role in the Domes’ mission to educate and create lifelong lovers of nature. The center will become a key destination for conferences, school field trips, and large private events.

## 9 STORMWATER GARDENS

As recently as 1990, the area of the park just south of the conservatory contained a beautiful sunken garden. It was removed due to maintenance costs and, today, it is underutilized turf that is often flooded. Envisioned as the “Sunken Gardens 2.0”, this project envisions a native ecosystem with walking paths, artwork from local artists, and education stations. The community will have access to this garden year-round at no charge.

## 10 ACCESSIBLE RAMP

A new terraced ramp allows all visitors access to the sunken gardens and the lower level plazas at the Nature Learning Center.



# A NEW ENTRY EXPERIENCE: For Inviting, Accessible Visits

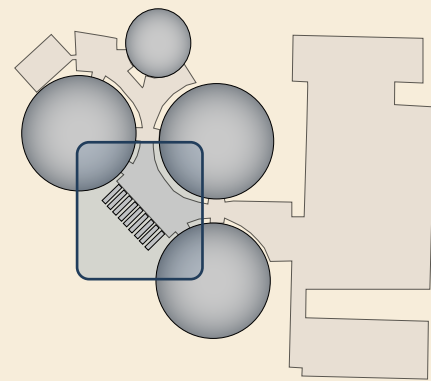
## CURRENT CHALLENGES

The existing ticket lobby is congested. Regular visitors to the Domes are familiar with waiting in long lines in the rain and snow before getting inside. This also impacts admissions revenue as many visitors choose to stay away or go elsewhere when long waiting lines are present.

## DOMES REIMAGINED SOLUTIONS

By relocating the existing, dated bathrooms, space is freed up for an expanded ticketing and entry lobby, which effectively doubles the entry capacity.

Accessibility and technological updates to the existing ticket booth will ensure a comfortable and efficient experience for all visitors.



Key Plan





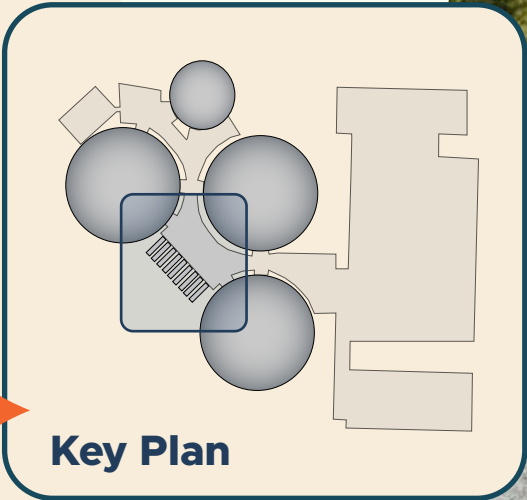
EXPANDED GIFT SHOP:  
**Driving More  
Revenue and  
a Better Visitor  
Experience**

**CURRENT CHALLENGES**

Although well positioned near the main entry, the retail sales through the gift shop are hindered due to its small size. Not only is the amount of retail space limited, but also it's challenging to maneuver within the space creating an uncomfortable shopping experience.

**DOMES REIMAGINED SOLUTIONS**

By relocating the existing office space to the west, the gift shop doubles in size, providing an open floor plan for visitors. Creating multiple gift shop entrances will encourage visitors to linger and explore the plants and gifts for sale. Providing access to three existing exterior windows also creates a more appealing daylight space. Securing the gift shop can occur with roll down shutters, or a series of glass doors at each opening.





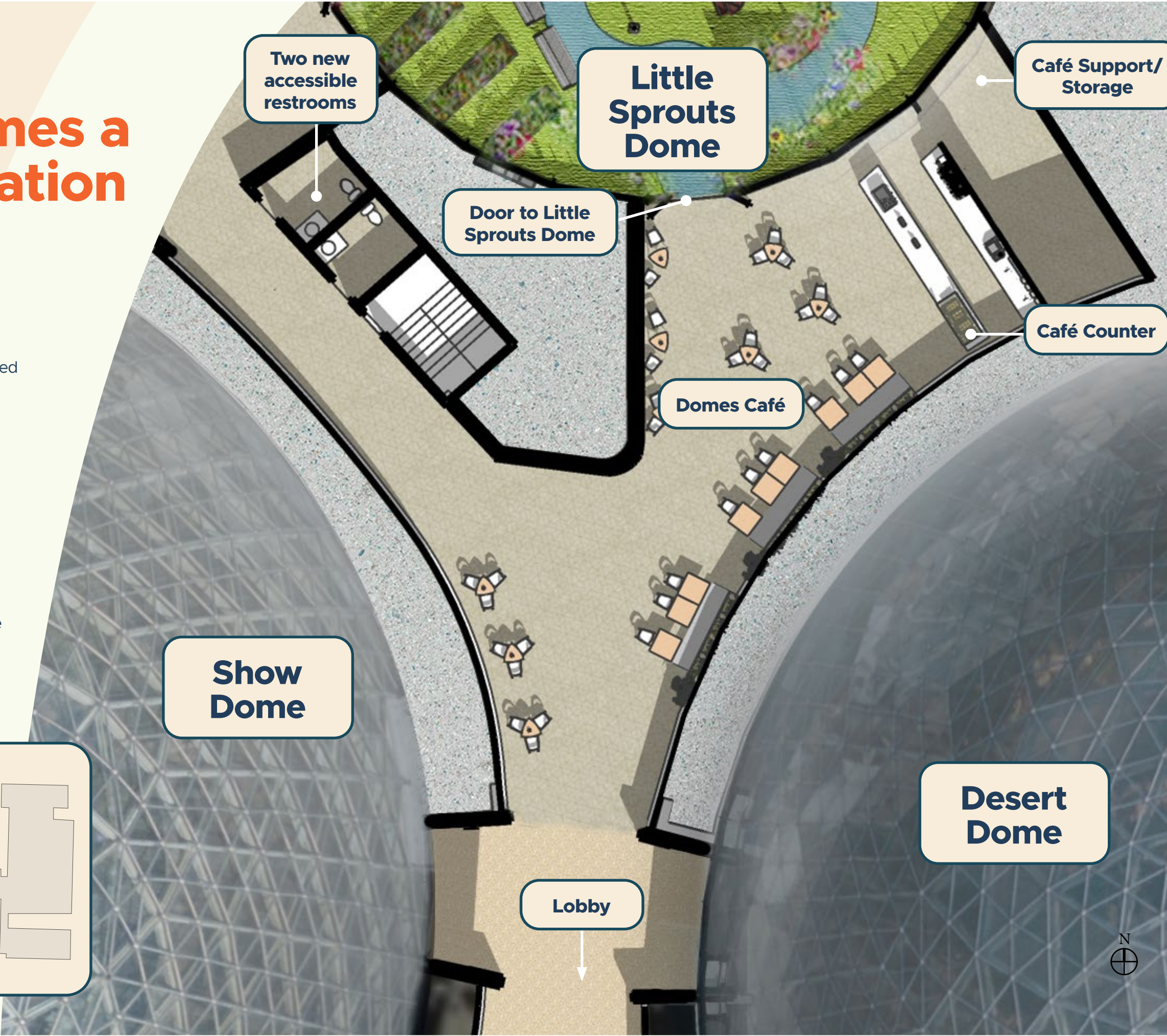
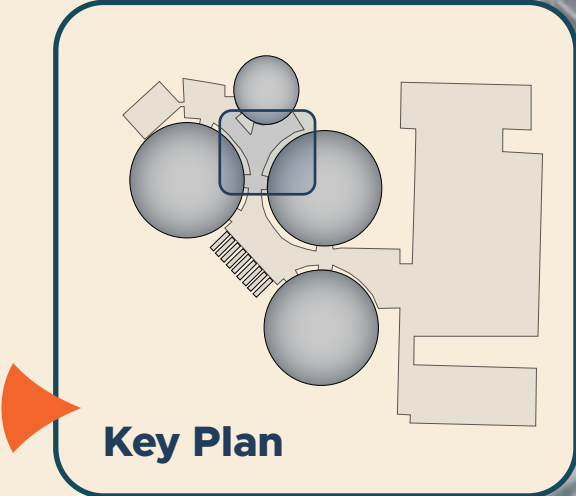
# AN INVITING NEW CAFÉ: Making the Domes a Daylong Destination

## CURRENT CHALLENGES

When the Domes first opened in 1965, visitors could purchase refreshments at a concessions stand in the middle of the lobby. That feature was eventually removed and the current facility does not include a café, which limits the time visitors spend at the Conservatory. This deficiency impacts revenue from both admissions and retail sales.

## DOMES REIMAGINED SOLUTIONS

This plan creates a new boutique café offering a unique selection of beverages as well as grab-and-go snacks. The menu is envisioned to include: beer, wine, espresso, sandwiches, and snacks. An option to feature handmade syrups using herbs grown in the Domes is being considered.





# LITTLE SPROUTS DOME: Getting Kids Close to Nature

## CURRENT CHALLENGES

The current facility lacks sufficient spaces for youth and families to explore, learn, and play.

## DOMES REIMAGINED SOLUTIONS

A new children-focused garden will be installed in an existing “fourth” dome. A place for hands-on education and getting wiggles out, the Little Sprouts Dome encourages environmental understanding and advocacy from the earliest ages.

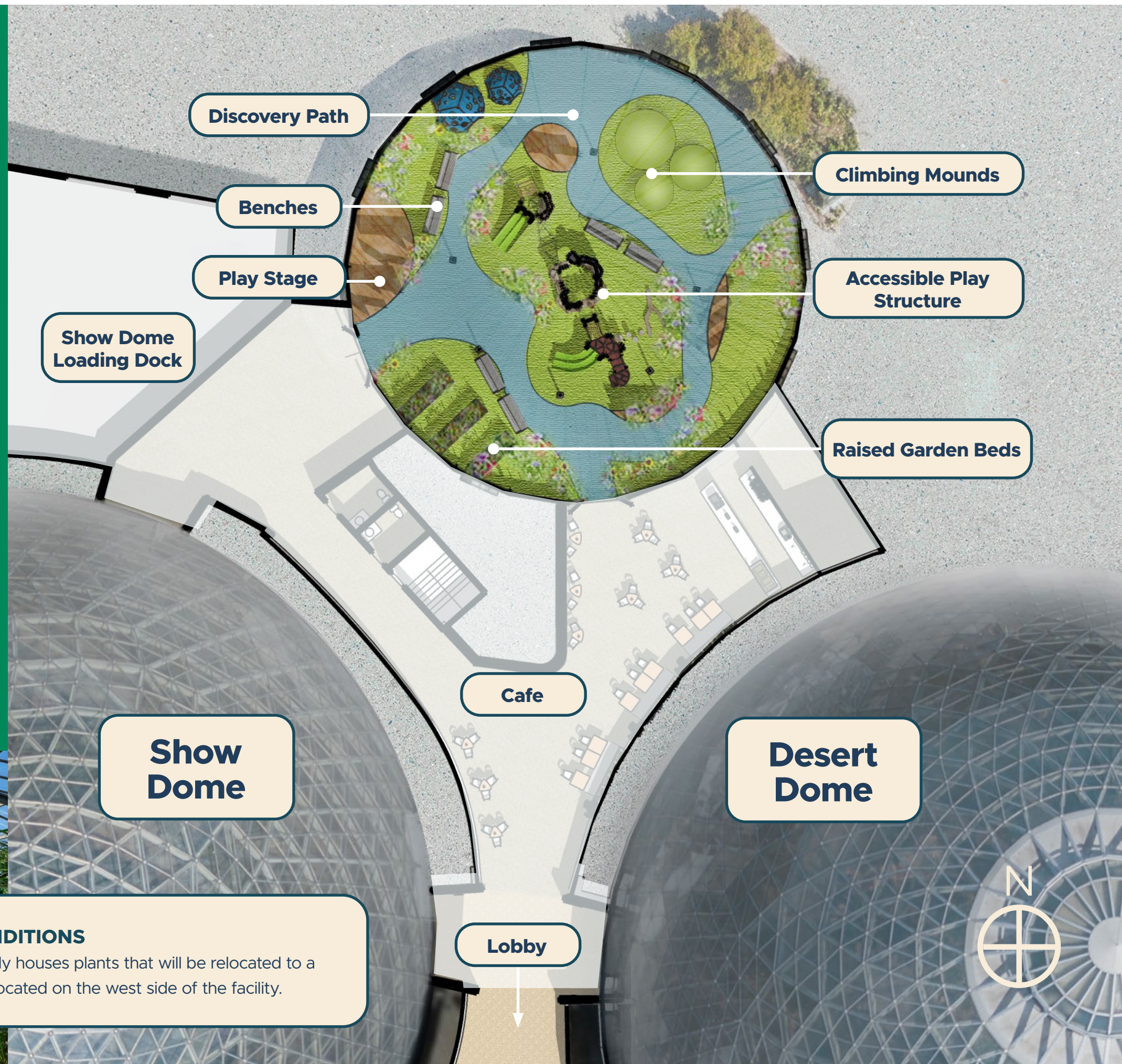
### Key Features:

- ▶ Large accessible play structure
- ▶ Raised beds for growing
- ▶ Educational discovery path
- ▶ Hands-on activities



## EXISTING CONDITIONS

This dome currently houses plants that will be relocated to a new greenhouse located on the west side of the facility.





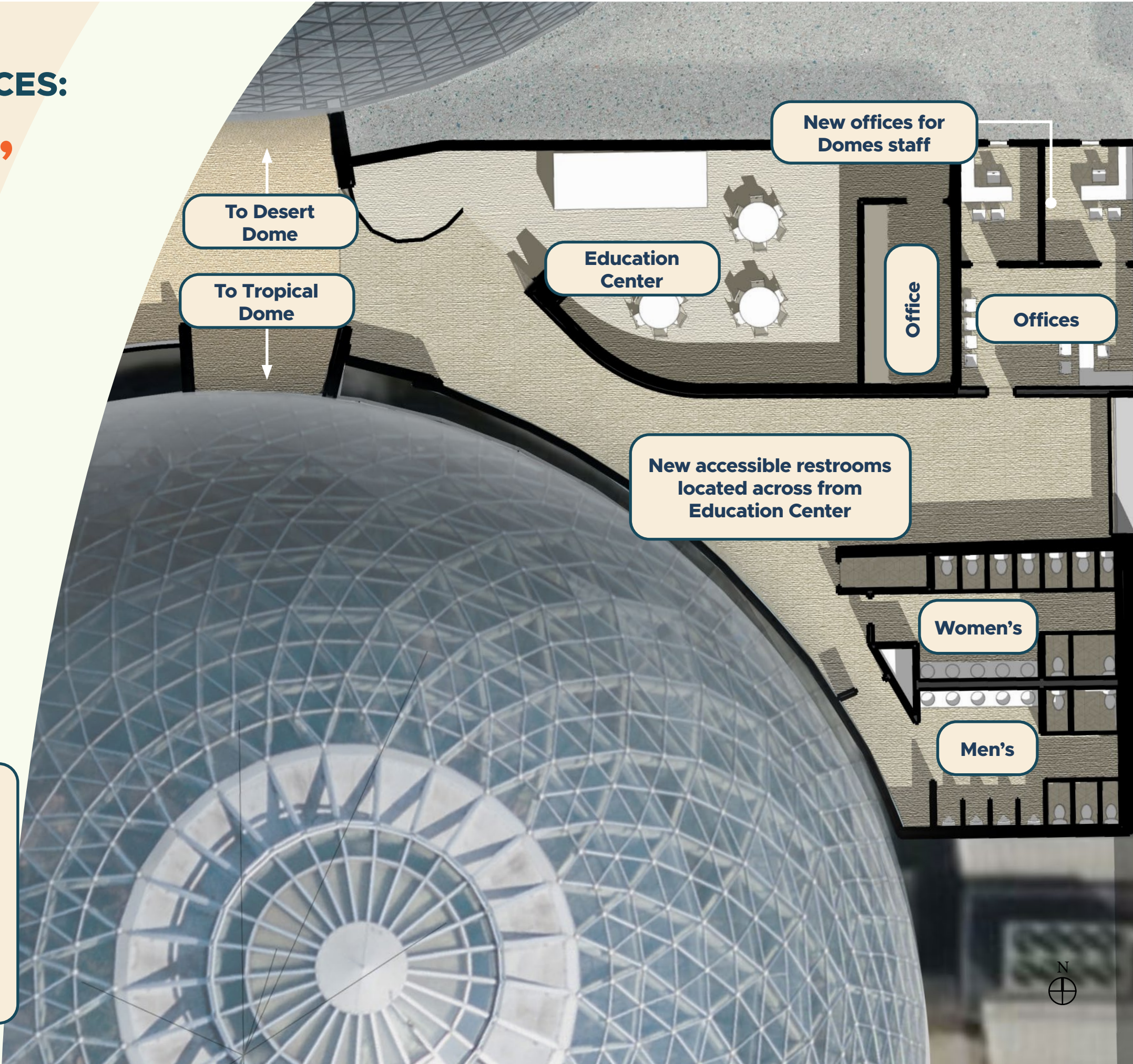
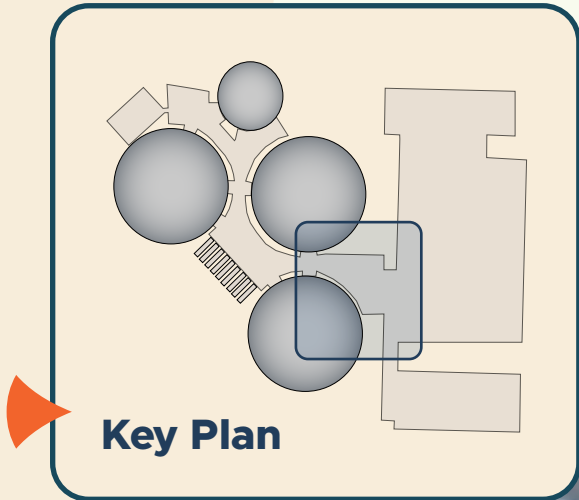
# UPDATED SYSTEMS AND SPACES: Creating a Modern, Energy-Efficient Conservatory

## CURRENT CHALLENGES

Modernization to the support spaces within the Domes is long overdue. The restrooms are outdated and not up to current accessibility codes. The staff spaces are small and lack the basic provisions office spaces have today (conference room, kitchenette, accessibility). The Education Center lacks necessary storage, so nearly a quarter of the room is taken up by stacked tables and chairs.

## DOMES REIMAGINED SOLUTIONS

The Domes Reimagined plan strategically captures underutilized outdoor space to provide new areas for modern restrooms and offices. In addition to the many stalls shown on this page, smaller restrooms for family use will be located next to the café and Little Sprouts Dome.





# NATURE LEARNING CENTER: Making the South Side an Environmental Epicenter

## CURRENT CHALLENGES

The Domes currently lacks the education and event space needed to generate sufficient revenue and to support mission impact. The existing greenhouse event space on the east side of the facility is not a fully conditioned space and cannot function properly as an event space during the warmer months.

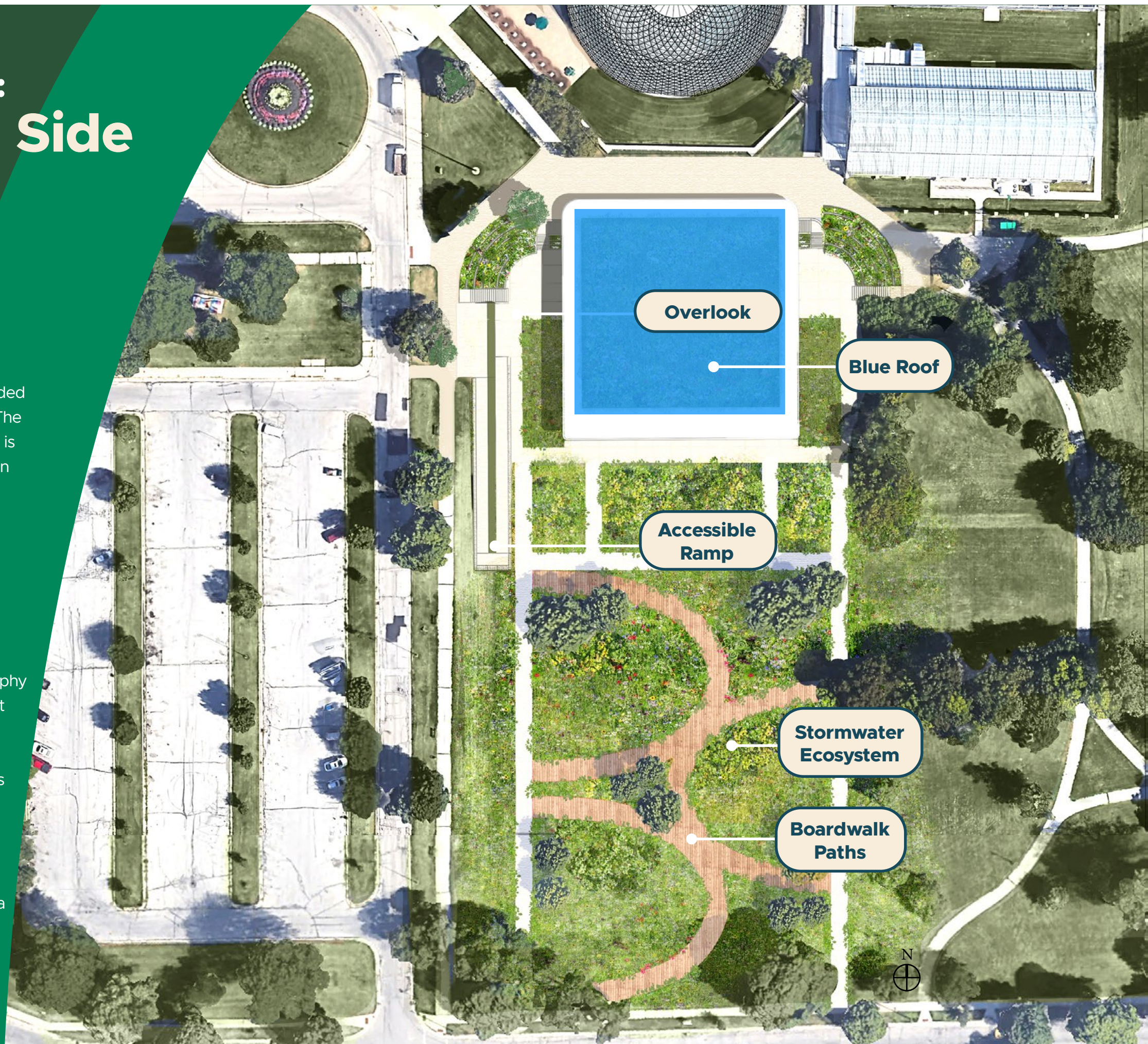
## DOMES REIMAGINED SOLUTIONS

The new Nature Learning Center building serves a key role in providing dedicated education focused spaces to support the programming and mission goals of the Domes.

The two-story building takes advantage of the sloping topography of the south grassy lawn to maintain a low profile and important views of the dome structures.

Envisioned as a highly-sustainable building, the project breathes new life into the historic sunken garden site by reintroducing plantings and paths that support a modern stormwater management approach.

The roof of the building could provide ample rooftop gardens, a solar array, or a blue roof as potential sustainable features.





**FUNDING THE PROJECT**

This exciting vision also comes with a funding solution; necessary funds would come from private philanthropy, tax credit financing, and other public funding sources. Milwaukee County has agreed to match donations from private philanthropy up to \$30 million.

Milwaukee Domes Alliance is taking the lead on both the private philanthropic campaign and securing the municipal and other public funding.

Although there is much work to be done, significant progress has been made. Milwaukee Domes Alliance has added more staff and hired experts to assist with planning and implementation.

**HISTORIC POTENTIAL**

In March 2017, the Mitchell Park Domes was designated as a National Treasure by the National Trust for Historic Preservation. In 2016, The Cultural Landscape Foundation included the Domes in its Landslide Program that monitors “threatened cultural landscapes.” The Mitchell Park Domes was named to the National Trust for Historic Preservation’s list of America’s 11 Most Endangered Historic Places in 2016 and 2023.

The Mitchell Park Domes is both an engineering marvel and a nationally significant example of Mid-Century Modern architecture. Listing the Domes on the National Register of Historic Places and pursuing tax credits for rehabilitation are critical components of this project.

**PROJECT TIMELINE**

Important conversations are already happening. The project team has already had several meetings with The State Historic Preservation Office and the National Parks Service about the opportunity for designation and tax credits.

The design and construction will be completed in two phases. Once fundraising is complete, the first phase will begin and includes the redesign and restoration of the entire Domes facility.

The replacement of the glazing will occur in strategic steps to allow time for temporary rehousing of the plants. Although it is likely some plant loss will occur, the more rare and important species will be protected during the restoration process.

The Nature Learning Center is envisioned as a second phase that will allow the offices and education spaces within the Domes to be relocated to the new facility.

**PROJECT TEAM**

Milwaukee Domes Alliance (Formerly known as Friends of the Domes)  
Milwaukee County Parks System  
The Alexander Company

**DESIGN TEAM**

The Kubala Washatko Architects  
GRAEF  
McEnroe Consulting Engineers

**COST ESTIMATION**

J.P Cullen



MILWAUKEE

**DOMES**

ALLIANCE



TK  
WA

EXHIBIT B

Primary Lease.

*[See attached]*

# EXHIBIT C

## Greenhouse Premises



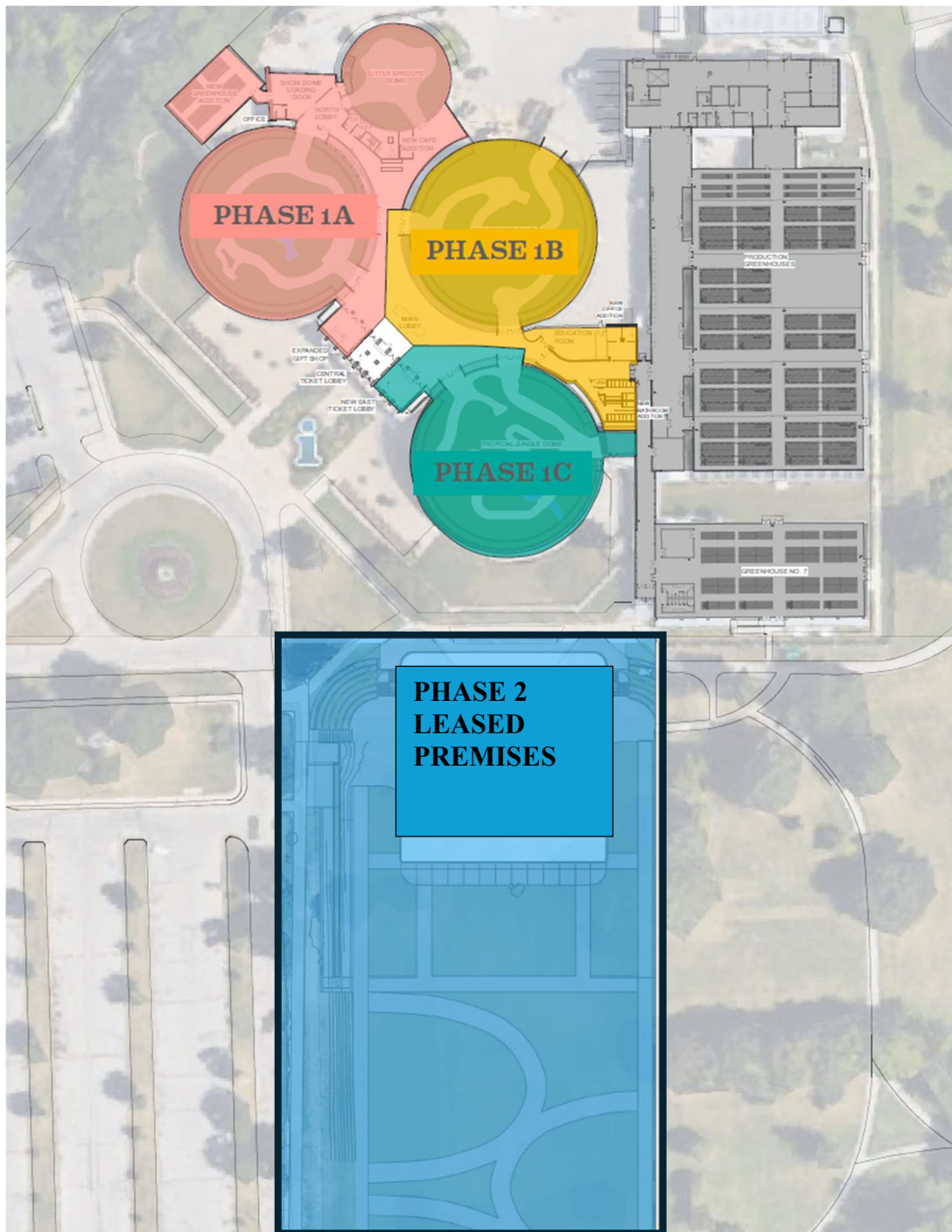
EXHIBIT D

Primary Leased Premises.

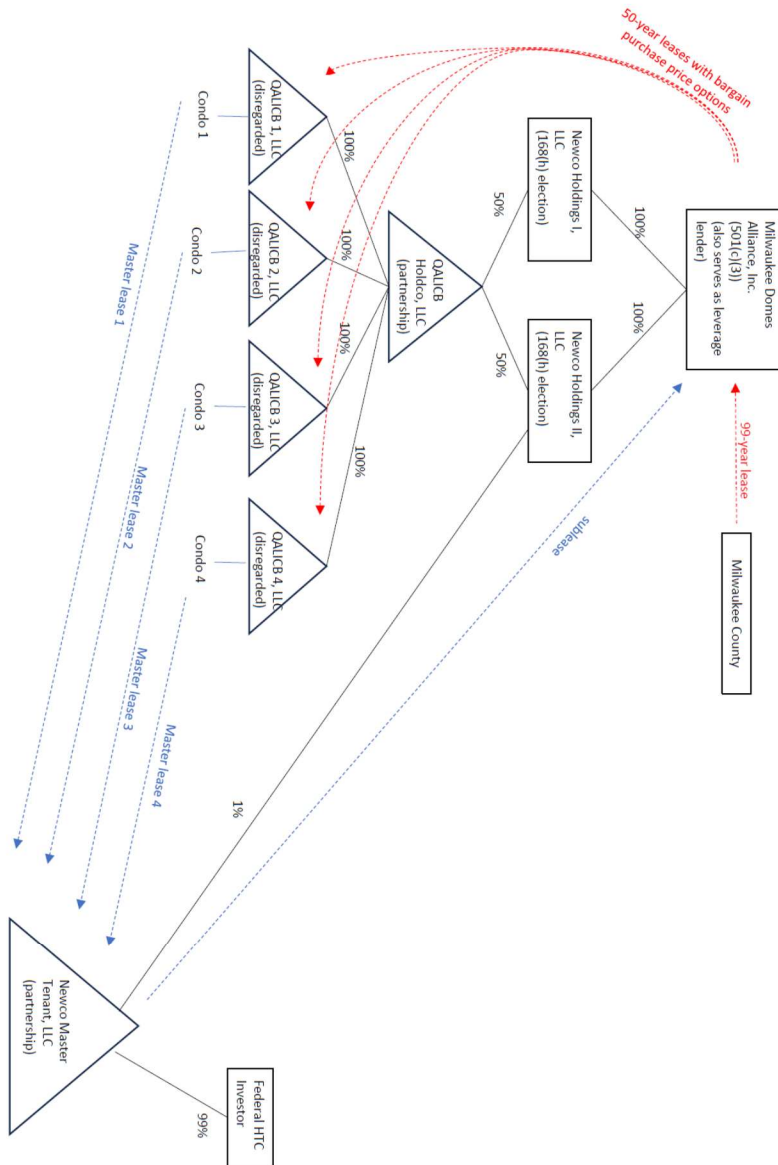




Phase 2 Leased Premises.



## Phase 1 Project Financing Structure



**MILWAUKEE DOME ORG CHART**

**Key:**  
Operating Lease  
Capital Lease

## EXHIBIT G

### Phase 1A Project.

- Show Dome improvements, including:
  - Glazing replacement
  - Precast concrete structure (patching as needed)
  - Removal of existing safety wire mesh
  - Updated mechanical systems
  - Updated show lighting system
  - Updated plant collection and interpretive plans
  - Path updates to comply with accessibility codes
  - New exit doors to comply with code required egress
- Transition Dome (Little Sprouts Dome) improvements, including:
  - Glazing replacement
  - Steel structure improvements (paint/repairs as needed)
  - Updated mechanical systems
  - Updated lighting system
  - Children's garden equipment and educational installations
  - New entrance to Dome from Cafe
- Loading Dock
  - Updated mechanical and electrical
  - Updates to storage systems as needed
  - Required separations between loading dock and public spaces
- New Cafe Addition
  - Enclosure of existing roof space to create a cafe space
  - Provisions of food and beverages, menu to be determined
  - Areas of seating
- New Family Toilets
  - Two (2) new family toilets to serve the cafe and Little Sprouts Dome
  - Provision of changing tables and designed to accommodate adult and children's use
- Expanded Gift Shop
  - Relocation of existing office space to allow the gift shop to expand
  - Create a more open and connected gift shop entrance
  - Updated HVAC and lighting
- Lobby
  - Updates to ceiling and lighting
  - Restoration of existing historic skylight

## EXHIBIT H

### Phase 1B Project.

- Arid Dome improvements, including:
  - Glazing replacement
  - Precast concrete structure (patching as needed)
  - Removal of existing safety wire mesh
  - Updated mechanical systems
  - Updated show lighting system
  - Updated plant collection and interpretive plans
  - Path updates to comply with accessibility codes
  - New exit doors to comply with code required egress
- New Office Space Addition
  - Small building addition to provide for office space relocated due to gift shop expansion
  - New storage space for building storage as needed
- New Multi Stall Toilet Rooms Addition
  - New multi-stall toilet rooms in existing exterior space between buildings
  - Provides updated restrooms that are fully accessible
  - Provides updated janitors closet and necessary building maintenance spaces
- Improved Access from Greenhouses
  - Updates to pathway between Domes and Greenhouses

## EXHIBIT I

### Phase 1C Project

- Tropical Dome improvements, including:
  - Glazing replacement
  - Precast concrete structure (patching as needed)
  - Removal of existing safety wire mesh
  - Updated mechanical systems
  - Updated show lighting system
  - Updated plant collection and interpretive plans
  - Path updates to comply with accessibility codes
  - New exit doors to comply with code required egress
- Expanded entry
  - Removal of existing toilet rooms
  - Creation of new entry and ticketing vestibule to facilitate guest arrivals

## EXHIBIT J

### Phase 2 Project

- New Nature Learning Center Building in Sunken Garden
  - New offices for MDA
  - New event space
  - New education facilities
  - Sustainable building
- New Sunken Garden "Fourth Ecosystem"
  - Stormwater garden to manage site runoff
  - Educational programming