

**DEVELOPMENT AGREEMENT
FOR THE
RENOVATED BUILDING IN TIEFENTHALER PARK
BETWEEN
MILWAUKEE COUNTY PARKS DEPARTMENT AND
KELLOGG PEAK INITIATIVE, LLC**

This Development Agreement (this “Agreement”) is made and entered into effective _____, 2020 (the “Effective Date”), by and between the MILWAUKEE COUNTY PARKS DEPARTMENT (the “County”), and KELLOGG PEAK INITIATIVE, LLC (the “Developer” or “PEAK”). Referenced together, County and Developer are the parties (the “Parties”) to this Agreement.

WITNESSETH:

WHEREAS, PEAK is a 501(c)(3) not-for-profit privately funded organization, whose mission is to bring out the limitless potential in young leaders through extraordinary experiences and nurturing relationships; and

WHEREAS, since 2009, pursuant to that certain Lease Agreement effective as of September 9, 2009, by and between the County and PEAK, as successor-in-interest to Lake Valley Camp, Inc. (the “Existing Lease”), PEAK has occupied the pavilion (the “Pavilion”) within Tiefenthaler Park (the “Park”), and has successfully developed and operated its educational and community programs at the Park; and

WHEREAS, PEAK wishes to expand its presence and enhance its programming in the Park, and construct an expansion to the existing building improvements (the existing building improvements together with the expansion are, collectively, the “Renovated Building”) for the purposes of a community center and associated amenities (collectively, the “Project”), which Project work is represented in the preliminary plans attached hereto as Exhibit A (the “Preliminary Plans”); and

WHEREAS, to support the desired work and achieve the desired goals, the Parties desire to enter into (i) this Agreement and (ii) that certain Amended and Restated Lease Agreement dated as of the effective date herewith (the “New Lease”), which restates the terms of the Existing Lease and sets forth the terms of the lease of certain real property within the Park from the County to PEAK (the “Premises”); and

WHEREAS, the Milwaukee County Board of Supervisors, by virtue of adopting Resolution # _____ on _____, has authorized the County to negotiate this agreement with PEAK for and on behalf of Milwaukee County; and

WHEREAS, recognizing that the continued partnership of the Parties is beneficial to Tiefenthaler Park and is advantageous to both agencies, the Parties do herewith, in consideration of mutual promises and other good and valuable consideration, agree as follows:

1. USE OF THE PREMISES FOR IMPROVEMENTS: Developer shall furnish and complete the Project through a general contractor selected by Developer after the date of this Agreement (the "Contractor"). The Parties agree that the Developer shall obtain any and all approvals necessary for the improvements as contemplated by this Agreement.

2. CONDITION OF THE PREMISES: County makes no representation or warranty that the Premises, including but not limited to the land, electrical and other mechanical systems: (a) meet and comply with all federal, state, and local laws, ordinances and regulations; and (b) are in workable and sanitary order and state of repair at the time of delivery to Developer. Developer acknowledges that it has been made aware by County that Developer may use the Premises on an "as-is" basis which may or may not prove to be suitable for all purposes contemplated by Developer, either now or in the future. The County shall not be responsible for performing any grading or compaction work with respect to the Premises. The Developer is solely responsible for and must make adequate allowance for all excavation and disposal costs necessary for the Project including site restoration and soil relocation. The Developer shall be solely responsible for procuring all property development costs, including, but not limited to, extension of utilities to the Premises. Developer hereby releases and disclaims any claim, damage, loss, injury or obligation whatsoever of the County in any way relating to or arising out of the physical condition of the Premises and the matters described in this Section 2. Such disclaimer and release shall include any action at law or in equity, whether arising out of contract or tort law. Developer further acknowledges that it has freely inspected the Premises and is aware of its general overall condition. Notwithstanding anything to the contrary set forth in this Agreement, (i) Developer shall have the right to perform a Phase I environmental site assessment and other inspections of the Premises at any time after the Effective Date to assist Developer in determining the feasibility of the Project, and (ii) in the event the findings in such Phase I environmental site assessment or other inspection reports are not satisfactory to Developer for any reason, including, without limitation, potential environmental liability arising pursuant to Section 16 of this Agreement, (a) Developer may terminate this Agreement by written notice to the County and (b) the parties shall terminate the New Lease and reinstate the Existing Lease.

3. TERM: This Agreement shall commence on the Effective Date and expire on the County's acceptance of the improvements contemplated herein (the "Term"). The Developer agrees (i) to commence construction of the Project, defined as commencement of site improvements for the Project on or before a date that is within eighteen (18) months of the effective date of this Agreement (the "Project Commencement Date") and (ii) to substantially complete construction of the Project within thirty-six (36) months from the commencement of construction (the "Project Completion Date"), or such longer period of time as may be needed to complete construction if Developer is diligently pursuing construction. If Developer fails to commence construction by Project Commencement Date, County shall have the right to declare a default on this Agreement, on ten (10) days written notice. If Developer fails to substantially complete construction by Project Completion Date (or such specified longer period of time), County shall have the right to declare a default on this Agreement, on ten (10) days written notice of the eighteen (18) month anniversary from the commencement of construction. The Project Commencement Date shall be confirmed by the Developer's Project architect delivering certificates to the County stating that construction on the Project has been commenced. The Project Completion Date shall be confirmed by the County upon the Developer's Project architect delivering certificate to the County stating that construction on the Project has been substantially completed and the Developer

completing a final punch list of tasks as required by the County. In the event the Developer ceases construction of the Project, other than due to a Force Majeure Delay, for sixty (60) consecutive days, such event shall be deemed a "Construction Stoppage." Notwithstanding anything to the contrary set forth herein, a default under this Agreement shall not be deemed to be a default under the New Lease.

4. SCOPE OF WORK: County agrees to use reasonable efforts to assist Developer in its efforts to complete the Project. Using reasonable efforts shall not impose on County any obligation to budget or pay for the improvements to the Premises but may require County staff time and advisory support. County shall not be responsible for securing any required approvals, zoning changes, building permits or other required authorizations from regulatory or governmental agencies, but County agrees to assist Developer in obtaining rezoning, licenses, permits or approvals, at Developer's sole cost and expense. The County acknowledges that it has approved the Preliminary Plans. Prior to commencing construction of the Project, the Developer shall submit to County detailed concept plans for the Project ("Plans") for approval, which approval shall not be unreasonably withheld, conditioned or delayed. The Plans will be consistent with the Project as herein defined. Any Material Alteration to the Plans must be approved by the Milwaukee County Parks Executive Director, which approval shall not be unreasonably withheld, conditioned or delayed. "Material Alteration" means any change to the equipment type, location, or construction materials, or any change to the borders and extent of the Project. Material Alteration does not include an alteration required by any municipality or other governmental agency or otherwise required by law, or an alteration required due to shortages or unavailability of materials (though substitute must be of comparable quality). The Project's scope of work shall include, but not be limited to, construction of the following:

- a. New improvements in the Renovated Building including common spaces, multi-purpose rooms, learning labs and kitchens, administrative space, and auxiliary and support space.
- b. A new parking lot with secured access and fencing.
- c. A new service drive connecting the Renovated Building to Cherry Street.
- d. Outdoor learning space/amphitheatre seating in the park adjacent to the Renovated Building.

5. BUDGET: Prior to the construction of the Project, Contractor or Developer will submit a final budget and proposal to County for the above referenced project for approval, which approval shall not be unreasonably withheld, conditioned or delayed.

6. CONSTRUCTION:

a) Prerequisites. Developer plans to renovate, improve, and alter the Premises, including the construction of the improvements, are contingent upon Developer obtaining an amount of not less than one hundred percent (100%) of the estimated cost of the construction and renovation to the Premises. All costs associated with the construction and renovation of the Premises, including disconnection and/or hookup of Utilities in conjunction with such construction

or renovation, shall be the responsibility of Developer. "Utilities" shall include sewer, water, gas, phone, internet, and electricity.

b) County Approval. Prior to the start of any construction or renovation of the Premises, including any subsequent alterations or renovations, Developer shall submit detailed construction plans and specifications to the County and to the Architecture and Engineering Section of the Milwaukee County Department of Administrative Services, together with the name of Developer's proposed Contractor(s), for review and approval, which approval shall not be unreasonably withheld, conditioned or delayed. Submittals shall include, but not be limited to, shop drawings containing product information and materials and products shall be approved by County. Conditions for approval shall include, but not be limited to provision that Developer shall obtain and comply with, prior to commencing any alterations, additions and improvements, all necessary permits and licenses from the appropriate governmental authorities.

c) Construction Standards. All development and landscaping shall be completed in a first-class manner and consistent with the standards established for other work in Milwaukee County Parks. Any and all alterations, additions and improvements shall be made in compliance with all statutes, laws, ordinances, rules, and regulations of any governmental authority having jurisdiction over the Premises. Developer shall also indemnify and hold County harmless from and against all statutory liens or claims of liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement to the Premises undertaken by or on behalf of Developer. Any structures, alterations, additions or improvements installed on the Premises by Developer (including generic signage permanently affixed to the Premises) shall become the property of County upon the expiration or termination of this Agreement. In no event shall Developer make any alterations or additions to the Premises without the prior written consent of County, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, in the event of an emergency, such consent shall not be required so long as notice shall be given as soon as reasonably possible thereafter.

d) Builder's Risk. Developer or its general Contractor shall provide Builder's Risk insurance coverage on a completed value form insuring for special perils, with Milwaukee County as additional insured and loss payee on the insurance certificate. Coverage is during construction period and is intended to terminate when the work has been completed. Prior to construction, Developer shall supply the Parks Director with written evidence of Builder's Risk insurance. Developer shall not commence construction activities without written approval from the Parks Director and his/her designee, which approval shall not be unreasonably withheld, conditioned or delayed. The Parks Director shall provide a written response to the Developer within ten (10) days of receiving written evidence of Developer's Builder's Risk insurance documents.

e) Construction Escrow. Developer agrees to provide evidence reasonably satisfactory to the County that the total amount of funds necessary to construct the proposed renovations to the Premises are immediately available and dedicated to such purpose and documentation is in place to provide for the orderly disbursement of such funds during the course of construction to pay for all permits, material, labor, supplies, and any other miscellaneous items used or necessary for the construction of the renovations. The County agrees that a letter from the

Developer's banking institution stating that Developer has such funds available for the purposes set forth above shall satisfy the requirements set forth herein.

f) Workforce Goals – Targeted Business Enterprise Participation. Developer 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. Developer 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. Developer's community benefits compliance plan, which will require the approval of the County's Office of Community Business Development Partners, will restate these goals, outline the commercially reasonable efforts to be utilized to achieve the goals and specify the reporting requirements of Developer. Achievement of the foregoing TBE goals may be impacted by the actual available workforce across and within certain trades at the time of construction.

g) Licensed Tradespersons. Developer 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. Developer shall require its contractors and subcontractors to obtain and maintain adequate insurance coverages with liability limits not less than that required of Developer by County. Developer 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.

h) Construction Documents. Developer agrees that within sixty (60) days after the conclusion of each construction phase, project, renovation or improvement, Developer shall provide to County a complete set of construction documents to be included as a minimum: (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; (g) City of Milwaukee final occupancy permits, if applicable.

i) Permits, Licenses and Other Costs. Developer shall procure and pay the fees for all appropriate federal, state, and local licenses and permits required for its activities.

j) Removal of Equipment and Supplies. Upon expiration or termination of this Agreement, Developer shall remove, at its costs, all of its equipment, supplies, and related items from the Premises within thirty (30) days of the expiration or termination date and shall restore the Premises to a parklike condition (excepting any improvements constructed and/or performed by Developer, which may remain), reasonably satisfactory to the Parks Director or his/her designee. Damage caused to the Premises by any removal of personal property to the Premises will be repaired by Developer. If for any reason Developer does not comply in a timely manner with its obligations under this paragraph (which shall mean within thirty (30) days of the expiration of the Agreement), then the County may make such repairs or remove, dispose of, or retain such property as the County sees fit. It is mutually agreed that the County may recover from

Developer any and all reasonable costs, as determined by the County, related to this Section. Developer agrees to surrender the Premises in good condition, subject to ordinary wear and tear and casualty.

k) Nondiscrimination and Affirmative Action. In construction of the Project and performance of its duties and obligations hereunder, the Developer shall not discriminate against any employee or applicant for employment race, color, national origin or ancestry, age, sex, sexual orientation, gender identity and gender expression, disability, marital status, family status, lawful source of income, or status as a victim of domestic abuse, sexual assault or stalking which shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeships. The Developer will post in conspicuous places, accessible to employees, notices setting forth the provisions of the foregoing nondiscriminatory clause. The Developer will use commercially reasonable efforts to implement the principles of equal employment opportunities through an effective affirmative action program, which program shall have as its objective to increase the utilization of women, minorities and handicap persons, and other protected groups in the Developer's employment at the Project for so long as it is located there, and in construction of the Project. The Developer will include this requirement in any and all contracts and subcontracts entered into under this Agreement.

7. DEFAULTS AND REMEDIES:

a. Events of Default by the Developer. Any one or more of the following events are hereby defined as, declared to be, and constitute an "Event of Default" by the Developer for purposes of this Agreement: (a) a Construction Stoppage (as defined in Section 3 hereof) by the Developer after the construction of the Project has commenced, subject to extension for Force Majeure Delays; (b) the Developer fails to commence construction of the Project by the Project Commencement Date subject to extension for Force Majeure Delays; (c) the Developer fails to complete construction of the Project by the Project Completion Date, subject to extension for Force Majeure Delays or (d) the failure of the Developer to perform any other term, condition or covenant to be performed or observed by the Developer, subject to extension for Force Majeure Delays. In the event an Event of Default by the Developer shall occur, the County shall send written notice to the Developer (the "Default Notice") specifying the nature of the Event of Default in detail, and the Developer 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 the Developer, 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 Developer does not cure such 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 the Developer, upon receipt of Default Notice, promptly commences the process of curing such Event of Default and diligently and continuously pursues such cure to completion), the County may pursue any available remedy against the Developer, either at law or in equity, including, without limitation, the right to pursue specific performance and collect actual damages (but not consequential damages) for the Developer's failure to perform (including, without limitation, the cost to restore the site to its previous condition, the damages, if any, related to, or arising out of, the infrastructure related to the Premises and the cost of financing used to construct such infrastructure, and any guaranty thereof, any costs

associated with overtime or additional labor forces in order to timely construct the Project, and other outside fees, including reasonable attorneys' fees).

The Developer agrees that damages will not be an adequate remedy at law and that the County 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. Venue for such action shall be Wisconsin State Court with venue in Milwaukee County. The County shall be entitled to its reasonable attorneys' fees in any action, in which it prevails, to enforce such provisions of this Agreement, including the actual costs of Milwaukee County Corporation Counsel's office if it is the attorney for the County or reasonable attorney fees for other attorneys that may be hired by the County.

b. Rights and Remedies Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times of any other rights or remedies for the same default or any other default by the other party.

8. COMPLIANCE WITH LAWS: Developer shall, at Developer's expense, promptly comply with all laws, rules, and regulations made by any governmental authority having jurisdiction over Developer's use of the Premises pertaining to: (a) accessibility, ensuring that the Premises and environs are fully accessible pursuant to the American with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 and such accessibility is approved by the Milwaukee County Office of Persons with Disabilities; and (b) Developer's activities on the Premises. Developer shall procure, maintain, and pay the fees for any appropriate federal, state, and local licenses and permits required for its activities.

9. CLEANLINESS OF SURROUNDING AREAS: Developer shall be responsible for the collection and removal of all trash, litter and garbage associated with Developer's activities. Developer shall be responsible for maintaining the areas immediately surrounding the Premises during construction in a state of cleanliness to prevent injuries to the public. Developer agrees not to store or accumulate unused or excess materials, supplies, or equipment which may create a hazard to the public or result in unsightly surroundings.

10. SIGNAGE AND NAMING RIGHTS:

a. Temporary Signage. Developer may display appropriate signage relating to the Renovated Building with County's prior written consent, which may not be unreasonably withheld, conditioned, or delayed (the "Signage"). Developer hereby covenants and agrees that Developer shall, at its own cost and expense: (i) be responsible for ensuring that the Signage is in compliance with all applicable codes, ordinances, statutes, rules and regulations, including any action or rule of any landmark commission having jurisdiction; (ii) obtain and comply with all consents, approvals and permits necessary from all governmental and quasi-governmental authorities and landmark commissions having jurisdiction over the Signage; (iii) insure the Signage as part of its property and shall also carry liability and property damage insurance with respect to the Signage; (iv) ensure that the Signage is in good condition and repair; and (v) pay all costs associated with creating, designing, manufacturing, installing, cleaning, maintaining, repairing and replacing (if necessary) the Signage.

b. Naming Rights. Developer shall not sell, advertise, promise, allow, or issue naming rights to any portion of the Premises without the prior written authorization of the Parks Director.

11. COUNTY RIGHTS OF ACCESS AND AUDIT: The Contractor, Developer, or other party to the contract, its officers, directors, agents, partners and employees shall allow the County Audit Services Division and department contract administrators (collectively referred to as Designated Personnel) and any other party the Designated Personnel may name, with or without notice, to audit, examine and make copies of any and all records of the Contractor, Developer, or other party to the contract, related to the terms and performance of the 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 on this Agreement will be bound by the same terms and responsibilities as the Developer. 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. The Contractor, Developer, or other party to the contract, 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 the Contractor, Developer, or other party to the contract, and any subcontractors understand and will abide by the requirements of Chapter 34 of the Milwaukee County Code of General Ordinances.

12. INSURANCE:

a. Developer agrees to maintain policies of insurance and proof of financial responsibility to cover costs as may arise from claims for damages to property of and/or claims which may arise out of or result from Developer's activities, by whomever performed, in such coverage and amounts set forth in this Section 12. Reasonably acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement. A certificate of insurance shall be submitted for review for each successive period of coverage for the duration of the agreement, unless otherwise specified by the County, in the minimum amounts: General Liability \$1,000,000 per occurrence \$2,000,000 general aggregate, Workers' Compensation Statutory limit and Employer's Liability \$100,000/\$500,000/\$100,000. Milwaukee County shall be named as an additional insured on the General Liability policy. A waiver of subrogation shall be afforded to Milwaukee County on the Workers' Compensation policy. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County. All Carriers must be approved to do business in the State of Wisconsin and be A rated or better per AM Best's Rating Guide. Milwaukee County assumes no responsibility for any loss or damages to Developer's personal property while in use or stored on the Premises.

b. Developer shall cause its consultants, contractors, and subcontractors to have and maintain in connection with any work being performed through this agreement insurance policies with at least the following coverages and limits (Limits can be obtained through Umbrella and/or Excess policies that follow form to the underlying policy) listed below. Acceptable proof of such coverage shall be furnished to the County prior to commencement of activities under this agreement.

Type of Coverage

Minimum Limits

Workers' Compensation and Employer's Liability & Disease to include Waiver of Subrogation	Statutory \$100,000/\$500,000/\$100,000
General Liability to include: Bodily Injury and Property Damage, Personal Injury, Products and Completed Operations	\$5,000,000 Per Occurrence \$5,000,000 General Aggregate
Automobile Liability to include: Bodily Injury & Property Damage All Autos	\$1,000,000 Per Accident
Professional Liability (If applicable, required for Construction Managers, Architects, Engineers and Designers)	\$2,000,000 Per Claim \$2,000,000 Aggregate
Contractor's Pollution Liability (If applicable, required for employed general contractor)	\$1,000,000 Per Occurrence or Claim

Developer shall cause its consultants, contractors, and subcontractors to name Milwaukee County as an additional insured on the General, Automobile, Contractor's Pollution Liability policies and provide a waiver of subrogation in favor of Milwaukee County on the Workers' Compensation and Contractor's Pollution Liability policies as respects to the services provided in this agreement. All Carriers must be authorized to do business in the State of Wisconsin and be A rated or better per AM Best's Rating Guide. Certificates of insurance shall be submitted for review to Milwaukee County for each successive period of coverage for the duration of this agreement. A thirty (30) day written notice of cancellation or non-renewal shall be afforded to Milwaukee County. Any deviations or waiver of required coverages or minimums shall be submitted in writing and approved by Milwaukee County's Risk Manager as a condition of this agreement.

15. INDEMNIFICATION: To the fullest extent permitted by law, Developer shall indemnify the County for, and hold it harmless from all liability, claims and demands on account of personal injuries, property damage and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to the Premises, based on any injury, damage or loss being caused by any wrongful, intentional, or negligent acts or omissions of Developer, its agents, or employees; provided, however, Developer shall have no

obligation to indemnify the County for any liability, claims, damage, injury, loss or expenses relating to or arising from the negligence or willful misconduct of the County or its employees, agents or contractors. Developer shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand or action. Milwaukee County's liability shall be limited by Wis. Stats. § 345.05(3) for automobile and for § 893.80(3) general liability.

16. ENVIRONMENTAL INDEMNIFICATION: Developer shall, to the fullest extent provided for under any environmental laws, rules and regulations, be responsible for any required repair, cleanup, remediation or detoxification arising out of any Hazardous Materials brought onto or introduced into the Premises or surrounding areas by Developer or its agents and/or (b) Hazardous Materials whose presence pre-exists the commencement of any improvements made by Developer, located in the Premises, that are discovered or disturbed as a result of Developer activities on, at, or near the Premises. Developer shall indemnify, defend and hold the County harmless from any liability, cost, damage, claim or injury (including reasonable attorney fees) arising therefrom. "Hazardous Materials" as the term is used herein shall mean any substance: (a) the presence of which requires investigation or remediation under any Federal, State or local statute, regulation, ordinance, order, action or policy; or (b) which is or becomes defined as a "hazardous waste" or "hazardous substance" under any Federal, State or local statute, regulation, ordinance, or amendments thereto.

17. ASSIGNMENT AND SUBLETTING: Developer may not assign this Agreement without the prior written approval of the Parks Director or his designee, which shall not be unreasonably withheld, conditioned or delayed..

18. TERMINATION: County may terminate this Agreement: (a) if Developer fails to cure any default within the time periods set forth in Section 7 hereof; or (b) if Developer ceases to do business as a going concern, ceases to pay its debts as they become due, or admits in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution or other judicial seizure is made with respect to, substantially all of Developer's assets or Developer's interest in this Agreement. Developer may terminate this Agreement at its sole and absolute discretion upon one hundred eighty (180) days' prior notice to County.

19. FORCE MAJEURE: Notwithstanding anything to the contrary contained in this Agreement, neither the Developer nor the County shall be considered in breach or default of its obligations with respect to the construction of the Project (including the Project Commencement Date, Construction Stoppage or the Project Completion Date) or the construction of any items of the infrastructure, as the case may be, in the event that a delay in the performance of such obligations is due to causes which were beyond its reasonable control, such as adverse weather conditions, strikes, acts of God, acts of a public enemy, acts of any governmental authorities (including the County in the case of the Developer), fire, flood, epidemics, embargoes or shortages of material from all reasonable sources, which shall not in any event include any economic hardship or delay due to the condition of the economy or real estate market ("Force Majeure Delay"). In the event of a Force Majeure Delay, the time for performance of the affected obligation shall be extended for the period of the Force Majeure Delay; provided, however, the delayed party

shall, within fifteen (15) business days after the occurrence of the event causing the Force Majeure Delay, deliver written notice to the other party of the cause thereof. Failure to deliver written notice of such delay, with back up documentation if appropriate, shall constitute a waiver of the delayed party's right to claim an extension of its time period because of the Force Majeure Delay.

20. PARTNERSHIP: Nothing contained herein shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent or of partnership, or of joint venture by the parties hereto, 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.

21. NOTICES: All notices with respect to this Agreement shall be in writing, and e-mail shall constitute writing for the purposes of the foregoing. Except as otherwise expressly provided in this Agreement, a notice shall be deemed duly given and received upon delivery, if delivered by hand or after posting via US Mail, to the Party addressed as follows:

To Developer: Kellogg PEAK Initiative, LLC
2480 W. Cherry Street
Milwaukee, WI 53205
Attn: Dan Schiller, Executive Director

To County: Milwaukee County Parks
Executive Director
9480 Watertown Plank Rd.
Wauwatosa, WI 53226
guy.smith@milwaukeecountywi.gov

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

22. WAIVERS: Waiver by the County or the Developer of any breach of any term, covenant or condition herein shall not be deemed to be a waiver of any future breach of the same or any other term, covenant or condition of this Agreement.

23. SEVERABILITY: Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall nevertheless remain in full force and effect.

24. ENTIRE AGREEMENT AND AMENDMENTS: This Agreement, including exhibits, and all documents referenced herein, contains all the covenants and agreements between the County and the Developer relating in any manner to development of the Project and other matters set forth in this Agreement. No prior oral agreements or understandings pertaining thereto shall be valid or of any force or effect, and the covenants and agreements of this Agreement shall not be altered, modified or amended except in writing signed by the County and the Developer. The County and the Developer reserve the right to modify and amend this Agreement without the joinder or approval of any other party.

25. AUTHORITY: The Developer hereby acknowledges and agrees that it is a validly formed and existing limited liability company formed in the State of Wisconsin. The undersigned signatory has the requisite power and authority, statutory and otherwise, to enter into and perform this Agreement pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the County, Developer shall deliver copies of its limited liability company resolution or other authorizing documentation demonstrating that it has the power and authority to enter into this Agreement. The County hereby acknowledges and agrees that the undersigned signatories have the requisite power and authority, statutory or otherwise, to enter into and perform this Agreement, pursuant to its terms and conditions without any further notice or consent from any person or entity. Promptly following request by the Developer, the County shall deliver copies of its authorizing documentation demonstrating that it has the power and authority to enter into this Agreement.

26. RULES OF CONSTRUCTION: Unless the context clearly indicates to the contrary, the following rules shall apply to the construction of this Agreement:

- a. Words importing the singular number shall include the plural number and vice versa.
- b. The captions and headings herein are solely for convenience of reference only and shall not constitute a part of this Agreement nor shall they affect its meaning, construction or effect.
- c. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and masculine genders, and words of the neuter gender shall be deemed and construed to include correlative words of the masculine and feminine genders.
- d. The laws of the State of Wisconsin shall govern this Agreement.
- e. Since both parties to this Agreement have had adequate opportunity to review and negotiate its terms, in no event shall this Agreement be construed against the drafter.

Signature page follows

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

PEAK:

KELLOGG PEAK INITIATIVE, LLC

By: _____ Date: _____

Name: _____

Title: _____

COUNTY:

MILWAUKEE COUNTY DEPT. OF PARKS
RECREATION AND CULTURE

By: _____ Date: _____

Name: _____

Title: _____

[Signature Page 1 of 2]

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____

Community Business Development Partners

Reviewed by:

Approved for execution:

By: _____ Date: _____

Risk Management

By: _____ Date: _____

Corporation Counsel

Approved as to funds available per Wisconsin Statutes Sec. 59.255(2)(e):

By: _____ Date: _____

Comptroller

Approved:

By: _____ Date: _____

County Executive

Approved as compliant under sec. 59.42(2)(b)5, Stats.:

By: _____ Date: _____

Corporation Counsel

[Signature Page 2 of 2]

Exhibit A
Conceptual Plans for the Project





Common Spaces (~2,000sf)	Qty.	Area (ASF)	Total ASF	Comments
Vestibule + Lobby	1	250	250	
Reception (secure)	1	150	150	
Interior Lobby + Gathering	1	600	600	with cubbies, waiting area for parents
Stairs & Elevator	1	840	840	
Restrooms	1	500	500	with locker rooms/shower + gender neutral option
Multi Purpose (~4,500sf)				
Multipurpose Room (gym, cafeteria)	1	3600	3600	
MP Room Storage	1	260	260	(table/chairs, games, puzzles)
Core Program Spaces (~4,000sf)				
Servery + Learning Kitchen	1	450	450	
Learning Lab	4	380	1520	Half could be 3 season (adventure, maker, civtron)
Learning Lab Support/Storage Bays	0	60	0	Within Lab space
Auxiliary Program Spaces (~3,000sf)				
Library/Quiet/Alcove	0	300	0	Integrate into Labs/NIP
Computer Room	0	300	0	Integrate into Labs/Teens
Teens Room	1	800	800	
Merch/Snack Store	1	60	60	
Overnight Rooms	0	140	0	Separate M/F. Dual purpose
Health Check Areas	0	60	0	Dual purpose with Learning Labs
Staff Spaces (~3,000sf)				
Phone/Private Rooms	1	80	80	
Workstations	12	36	432	
Offices	2	100	200	
Hoteling Stations	3	36	108	Touchdown space for LVC Staff
Small Conference Room	0	120	0	Dual purpose with Learning Labs
Medium Conference Room	0	200	0	Dual purpose with Learning Labs
Kitchens	1	150	150	
Breakroom/Kitchenette Seating	1	200	200	coffee shop vabe
Central Services	1	20	20	(Printer/Phone/luminator)
Wellness Room	0	80	0	convert (1) phone room as required
Open Collaboration Table	1	120	120	
Booth	1	85	85	
Staff Restroom	1	65	65	w/shower
Support (~1,500sf)				
Building Storage	1	450	450	
Custodial	1	80	80	
MEP	1	500	500	
Restrooms	1	600	600	with access to park
Laundry Room	1	100	100	for skill development
Subtotal Common Floor Amenities			Subtotal ASF	
			12,220	
				Grossing factor @ 30%
				15,965