

COAST RESTAURANT

COPY

LEASE

The Pavilion Restaurant at William F. O'Donnell Park

THIS INDENTURE OF Lease, (herein called "Lease"), made and entered into as of 29th day of September, 1995, by and between MILWAUKEE COUNTY, a municipal corporation of the State of Wisconsin, as represented by the Department of Parks, Recreation and Culture (Parks Department) as lessor (herein called "Lessor"), and IMPEL, INC., a Wisconsin corporation, as lessee (herein called "Lessee");

WITNESSETH

1. DEMISED PREMISES. Lessor does hereby lease, let and demise unto Lessee, and Lessee does hereby lease and rent that portion of Miller Brewing Company Pavilion ("Building") located at what is commonly known as William F. O'Donnell Park situated in the City of Milwaukee, County of Milwaukee, State of Wisconsin, to wit: the north "food service" wing of the floor of the Building (comprised of 7,045 square feet) as shown on Exhibit A attached hereto and made a part hereof and on that certain parcel of real estate as shown on Exhibit B attached hereto and hereby made a part of the Lease, with all easements, licenses, rights, privileges, hereditaments and appurtenances thereunto belonging, all collectively referred to as the "Premises." In the event the Lessee chooses to design and construct, at the Lessee's sole expense, a new window wall under the balcony and enclosing the covered portion of the terrace at the east side of the Premises, effectively increasing the size of the Premises, that previous terrace space would be considered part of the Premises but not included in the square footage calculation of the lease price in the initial term of the Lease.

2. TERM. The Lease shall be for an initial term of ten (10) years ("the Initial Term") beginning on the Term Commencement Date (as defined below), the target date for which is November 1, 1995, subject to extension and earlier termination as hereinafter provided. For purposes hereof, the Term Commencement Date shall mean the first day of the month following the date upon which Lessee has substantially completed all of the alterations and tenant improvements described in Paragraph 11 hereof, so as to be able to open the Premises to the public and thereby commence its business operations. Notwithstanding the foregoing or anything in the Lease to the contrary, the Term Commencement Date shall be no later than January 1, 1996, unless otherwise agreed to in writing by the Lessor. The Initial Term shall expire at the end of the last day of the last month of the Initial Term. For purposes hereof, the term "Preoccupancy Commencement Date" shall mean the date upon which the Lease has been executed by both Lessor and Lessee.

3. EXTENDED TERM(S). Lessee shall have the option to extend the term of the Lease for two (2) consecutive five (5) year periods (each an "Extended Term"). Such option shall be exercised by written notice to Lessor given at least nine (9) months prior to the expiration of the Initial Term or the applicable Extended Term, provided, however, that Lessee is not in default in the performance of any of the covenants or conditions herein contained at the time of giving said notice or during the time thereafter of the Extended Term. Each Extended Term shall continue, except as set forth in Paragraph 4 herein, on the same covenants, agreements, terms, provisions and conditions as are applicable to the Initial Term. The phrase "term of the Lease" shall mean the Initial Term and any Extended Term which may become effective.

At the close of the eighteenth (18th) year of the lease, should the term extensions be exercised, the Lessor or his representative and the Lessee or his representative, shall mutually select a local or regional real estate industry representative to serve with them as a committee of

three to negotiate the terms of a possible lease extension beyond the twentieth (20th) year of the lease. Said negotiations shall be in good faith, shall be completed within a six (6) month term, and shall attempt to identify a lease rate and terms commensurate with the then-prevailing downtown restaurant market conditions. Said lease rate and terms will be incorporated into a new lease document which the Lessor shall present to the County Executive and County Board for its approval.

4. RENT.

(a) Rental Payments

Effective as of the Term Commencement Date, Lessee shall pay, as rent for the use and occupancy of the Premises, Lessor, c/o Director, Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226, or at such other place Lessor shall direct by written notice to Lessee, an annual base rent amount plus a share of certain facility and restaurant revenues generated by Lessee from the Premises based upon gross sales calculated on a calendar year basis, as follows:

GROSS SALES

ANNUAL RENT

\$0 - \$2,499,999

Annual rent of \$5 per square foot per year through the end of the tenth year and \$7.50 per square foot per year through the end of the twentieth year.

\$2,500,000+

The above annual rent, plus a profit-sharing premium beginning with the sixth year of the Term of the Lease of one and one half (1 1/2) percent of Gross Sales in excess of \$2,499,999 from restaurant activities as well as Revenue derived from Rentals and Catering performed within the Premises (as such terms are herein defined) and a profit-sharing premium of three (3) percent of the gross sales in excess of \$2,499,999 beginning in the eleventh year of the Term and running through the end of the twentieth (20) year of the Term.

The foregoing rent shall be payable quarterly in arrears as follows: A payment of one-fourth the annual base rental (which shall be prorated during the first year and last year of the Initial Term and the last year of any Extended Term) shall be made on or before each December 31, March 31, June 30 and September 30 of each year during the term of the Lease, commencing with December 31, 1995, and shall be made to Lessor, together with payment of any additional profit-sharing premium due hereunder for the immediately preceding calendar year, payment of which shall be made to Lessor on or before April 30 of each year, based upon the calendar year revenue calculations prepared by Lessee's independent accounting firm, using standard and accepted accounting principles, which accounting firm shall be satisfactory to Lessor. Lessor shall, commencing at the start of the sixth year and at its expense, have the right to audit Lessee's books and records including but not limited to cash register tapes, deposit receipts and like records relating to gross sales revenues derived from Lessee's use of the Premises, as further set forth in Paragraph 25 (j). Lessee hereby acknowledges and agrees to be bound by Milwaukee County Ordinance 56.32 which provides for the imposition of penalties and interest for delinquent rental payments, a copy of which is attached as Exhibit C.

Lessor and Lessee intend that the Annual Rental above shall be sufficient to cover the costs of base rent. This rental amount excludes the costs of water and sewer service to the

Premises, heating and cooling the Premises, providing the Premises with electricity and telephone service, providing maintenance and security for interior of the Building and providing preventive maintenance and cleaning of all mechanical systems (such reasonable cleaning, maintenance, and security measures as may, from time to time, be specified by Lessor) serving the Premises, all of which will be the sole responsibility of the Lessee. Notwithstanding any term to the contrary in this Lease, Lessee's duties as set forth in this subsection shall in no way modify, amend, limit, or restrict Lessor's obligations as set forth in paragraph 8 (b) hereof.

(b) Rental Adjustment(s). With respect to the annual base rental payment in the amounts (the "Pure Rent Base Amount") to be paid by Lessee as set forth in Paragraph 4 (a) hereinabove, Lessor and Lessee hereby agree that the amount shall be increased during the term of the Lease as hereinafter set forth. Commencing with January 1 of the second (2nd) calendar year of the term of the Lease, the Pure Base Rent shall be increased by fifty percent (50%) of the percentage increase, if any, in the "cost of living index" between the month in which the Term Commencement Date occurs, and the month of November immediately preceding the calendar year for which the computation is being made (or the next later month for which such index is available). The Pure Rent Base Amount, as adjusted, shall be payable for the next year of the Initial and Extended Terms in the manner provided for in Paragraph 4 (a) above.

The "cost of living index" shall be the index number for the last day for which computation has been made in the column for "All Terms" in the table entitled "Consumer Price Index - Milwaukee - All Items" for Urban Wage Earners and Clerical Workers as presently published in the Monthly Labor Review of the Bureau of Labor Statistics of the United States Department of Labor. In the event the Bureau ceases publishing the index number for the City of Milwaukee, the comparable index figure for the United States shall be used in lieu thereof. In the event the Bureau ceases publishing the Consumer Price Index, or materially changes the methods of its computation, components, base year, consumers whose experiences are included therein, or other features thereof, Lessor and Lessee shall accept comparable statistics on the purchasing power of the consumer dollar, as published at the time of such discontinuation or change, by the Bureau, another governmental agency or unit, or a responsible financial periodical of recognized authority, to be then chosen by Lessor. In the event the Bureau publishes more than one Consumer Price Index, the index shall be chosen by Lessor.

In the event Lessee exercises one or both of the options to extend provided for in Paragraph 3 above, the Pure Rent Base Amount shall be further adjusted in accordance with the formula set forth above commencing with the eleventh (11th) calendar year of the term of the Lease and so continuing for each of the calendar years of the term of the Lease.

By way of example, if the "cost of living index" increased by 5% between the Term Commencement Date and November of the first (1st) calendar year of the term of the Lease, the Pure Rent Base Amount payable for the second ((2nd)) year of the term of the Lease would be \$5.13 per square foot ($\5.00×1.025).

5. USE OF BUILDING

(a) Use of Premises. Lessee may use the Premises for a full-service, year-round restaurant and related lawful rental or catering activities, and, subject to Lessor's prior written approval, any other lawful purpose or purposes. This use as a restaurant will include the serving of alcoholic beverages and the provision of musical entertainment on the Premises. Lessee will make its best effort to offer a seasonal luncheon carry-out service. Lessee may make Premises or a part of the Premises available for rental use by the public during business or non-business hours under reasonable conditions established by the Lessee and reviewed by the Lessor.

(b) Use of Lower Level Storage Space of Building. Lessee will have the exclusive use of at least 1,500 square feet of the lower level storage room in an area immediately south of the storage area used by the Betty Brinn Children's Museum and extending south to the next east-west support beam. Design and construction of walls or fencing securing said storage area, if desired, shall be the sole financial responsibility of the Lessee with the approval of the Lessor.

6. TAXES. Lessee agrees to pay personal property taxes due and owing with respect to any improvements made to, installed or located upon its Premises. If, during the term of the Lease, any special assessment is levied against the Building, then Lessor and Lessee shall be responsible for payments of such special assessment which becomes due and owing during the term of the Lease in such proportion as the square footage of the Premises bears to the square footage of the Building ("The Proportionate Share"). Nothing herein contained shall prevent Lessor and/or Lessee from protesting the validity or amount of any such assessment or from taking such action as may be required or permitted by law for enforcing and effecting such protest. In this connection, Lessor and/or Lessee may withhold the payment of any such protested assessments provided Lessor and/or Lessee proceed with such protest according to law and provide satisfactory security.

7. UTILITIES; LICENSES; FEES. Lessor agrees that it will be responsible for and shall pay, when due, all charges and costs for water, sewer, gas, heat, air conditioning, electricity and any and all other utilities, or other services, including telephone service, furnished to or consumed by Lessee in or upon the Premises during the term of the Lease. Lessee and Lessor understand that at the date of the signing of this lease a separate metering system for the calculation of such charges and costs used by and furnished to the Premises does not exist. Lessee can, at its sole expense, provide for the installation of a separate metering system for these expenses and pay for such expenses directly. If a separate metering system for these expenses is not constructed by the Lessee at the Lessee's expense, then Lessor agrees to pay such charges when due and then bill Lessee for such charges on a monthly basis, based on a sub-metering of the actual cost of these expenses.

Lessee, at its expense, shall acquire and pay for all permits or licenses which may be required for Lessee's business, and also to pay, when due, all occupation taxes and any other charges of a similar nature which may at any time be levied against the Premises by reason of Lessee's use and occupancy thereof. Lessor shall use reasonable, good faith efforts to support the Lessee's application for an alcoholic beverage license for the Building.

8. REPAIRS AND MAINTENANCE; JANITORIAL; SECURITY.

(a) Repairs and Maintenance. Lessor covenants and agrees that it will keep the Premises, including the adjacent park and parking structure, in a reasonably safe and serviceable condition according to current Parks Department standards and make the necessary repairs to the plumbing, heating, and air conditioning systems, leaking of water, gas or waste pipes, maintain adequate heat to prevent freezing of pipes, and shall otherwise perform all necessary repairs, replacements and maintenance to the Building, including necessary cosmetic repairs to the Building, which shall include (i) structural repairs and replacements, including maintenance to the roof, exterior walls, and foundation; (ii) repairs or replacements which are necessitated by the willful or negligent act or omission of Lessor, its agents, employees, invitees or representatives; (iii) repairs or replacements which are necessitated by reason of fire or other natural casualty, which events are governed by Paragraph 14 below; (iv) repairs or replacements which are necessitated by reason of a defect in the condition of the Building which existed prior to the Preoccupancy Commencement Date of the Lease; and (v) repairs or replacements which are

necessitated by reason of a breach of any warranty or representation of Lessor contained in the Lease or by reason of Lessor's failure to perform or observe any term, covenant or condition to be performed or observed by Lessor pursuant to the Lease. Lessor agrees to perform all repairs, maintenance and replacements of the type enumerated in subparagraphs (i) through (v) of this Paragraph 8 as expeditiously as is possible. In the event the Lessor cannot repair or maintain an item enumerated in subparagraphs (i) through (v) above, which directly impacts on the condition of the Premises and Lessee's intended use, Lessee may, after notice to Lessor to perform same and reasonable time for Lessor to do so, make said repair or maintenance and Lessor shall reimburse Lessee for the reasonable costs of said repair or maintenance. In the event of an emergency repair which prevents such notification, Lessee shall notify Lessor of said repair as soon as is practicable.

Lessor has provided Lessee with complete "as built" drawings, provided by J.H. Findorff & Co., showing the condition and configuration of current plumbing, heating, air conditioning and other mechanical systems of the Building and Premises. Lessor warrants and represents that it has no knowledge of existing defects in the plumbing, heating, air conditioning and other mechanical systems. Lessor further warrants and represents that it has no notice or knowledge of any existing material defects in the Building or the components of the Premises, including but not limited to the roof, walls, foundation and floors.

(c) Notwithstanding anything to the contrary hereinabove set forth, Lessee shall be responsible for the maintenance and repair of its improvements, trade fixtures, equipment and mechanical systems including such periodic janitorial and preventative maintenance of its improvements, trade fixtures and equipment, as may be required. Lessee further agrees to comply with such reasonable rules and regulations as Lessor may establish from time to time for the operation and maintenance of the Building.

(d) Janitorial. Lessee shall, at its own expense, provide, or cause to be provided, routine cleaning of and janitorial services of the Premises in a commercially reasonable manner throughout the term of the Lease. As a related item, Lessee shall provide routine and complete maintenance of the exhaust fan planned for installation on the northwest facade of the Building and of the Lessee's dumpster storage area at the Building's loading dock. Lessor shall provide, or cause to be provided, routine cleaning of and janitorial services of the Building throughout the term of the Lease. If extraordinary Building cleaning or janitorial services are required as a result of the Lessee's operation, Lessor shall provide Lessee with an itemized billing for those expenses; prompt payment of which by Lessee shall not be unreasonably withheld.

(e) Security. Lessor shall provide, or cause to be provided, routine periodic checks of the exterior areas to the Building, including the common areas of the Building and the parking structure, according to current Parks Department standards. Lessee shall be responsible for all security needs which may be required in connection with its use and occupancy of the Premises.

9. INDEMNITY AND SUBROGATION.

(a) The Lessee and Lessor ("Indemnifying Party") agree to the fullest extent permitted by law, to indemnify, defend and hold each other harmless, and their agents, officers, and employees, harmless from and against all loss or expense including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent act or omission of the Indemnifying Party or its agents which may arise out of or are connected with the activities covered by the Lease; Provided that the party seeking indemnification (an "Indemnitee") notify the other party (an "Indemnitor") in writing of the

existence of such loss, liability, claim, injury, damage or expense immediately after the Indemnitee has obtained actual knowledge that such a loss liability, claim, injury, damage or expense is threatened or pending, and further provided that the Indemnitee afford to the Indemnitor the right, but not the obligation, to assume the defense of such loss, liability, claim, injury, damage, costs and expenses, including reasonable attorneys' fees connected therewith or resulting therefrom.

(b) Lessee shall bear all costs associated with the insurance of owned, leased, or controlled personal property, leasehold improvements and betterments, and business interruption insurance as is necessary to protect the assets and interests of Lessee and the Lessor. Lessee will provide proof of financial responsibility for these costs by a certificate of insurance approved by Lessor; said proof of financial responsibility to be tendered to Lessor on the commencement date of the lease and thereafter on the anniversary date of the lease. Nothing in this paragraph shall be construed as a waiver by Lessor of its right to recover its initial \$50,000.00 deductible in the case of a loss associated with the premises.

10. INSURANCE. Lessee agrees to provide and maintain proof of financial responsibility to cover costs as may arise from claims of tort, statutes and benefits under Workers' Compensation laws and/or vicarious liability arising from employees' activities. Such proof shall include insurance coverage for Workers' Compensation claims as required by the State of Wisconsin, including employer's liability and business insurance covering general liability and automobile coverage in the following minimum amounts:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Wisconsin Workers' Compensation or Proof of All States Coverage Employer's Liability	As required by Wisconsin Statutes \$100,000/\$500,000/\$100,000
Comprehensive General Liability Bodily Injury and Property Damage (Incl. personal injury, fire, legal and contractual and products/ completed operations)	\$1,000,000 per occurrence \$5,000,000 general aggregate
Automobile Liability Bodily Injury and Property Damage (Incl. all autos owned, non-owned and/ or hired)	\$500,000
Uninsured Motorists	As required by Wisconsin Statutes

The County shall be named as additional insured, as its interests may appear, and be afforded a thirty day (30) written notice of cancellation of non-renewal. A certificate indicating the above coverages shall be submitted for review and approval by the County on the commencement date of the lease and each such anniversary date thereafter for the duration of this agreement. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" by Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions, shall be submitted to the County on an annual basis on the anniversary date of the signing of the lease to prove compliance with the insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc. or requests for a waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this agreement.

11. ALTERATIONS AND IMPROVEMENTS. Lessee may, at its sole expense, subsequent to the achievement of the "Financing Goal" (as hereinafter defined) and satisfaction or waiver of the contingency set forth in Paragraph 17(d) hereof, make whatever alterations and additions to the Premises and construct whatever improvements on the Premises as Lessee deems necessary or desirable in the conduct of its activities as a restaurant or other permitted uses on the Premises; provided, however, that Lessee shall first submit the plans and specifications for such improvements together with the name of Lessee's proposed contractor(s) to both the Milwaukee County Director of Parks, Recreation and Culture and to the Director of the Department of Public Works for Lessor's approval, which approval shall not be unreasonably withheld or delayed and which shall be deemed to be approved if no written objection thereto is given to Lessee by Lessor within fifteen (15) business days following Lessee's submission to Lessor of such complete plans and specifications and proposed contractor(s). In addition, Lessee shall, prior to commencing any alterations, additions and improvements, obtain all necessary permits and licenses from the appropriate governmental authorities.

Lessee shall commence construction of said improvements described in the approved plans and specifications as soon as reasonably practicable following Lessor's approval and shall have a period of one hundred eighty (180) days thereafter to complete the tenant improvements contemplated hereby (subject to extension by reason of force majeure). All of said work shall be completed in a first-class manner and consistent with the standards established for other work in the Building. Lessor shall have the right to inspect the work at reasonable times provided it does not interfere with Lessee's construction of such alterations and tenant improvements. Upon completion of such alterations, improvements and installation of furniture and fixtures, the Term Commencement Date shall be deemed to have begun on the first day of the month following such completion. As described in Paragraph 2, the target for the Term Commencement Date is November 1, 1995, but in no event later than January 1, 1996. Any and all alterations, additions and additional improvements shall be made in compliance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction of the Premises. At the termination of the lease, for whatever reason, the improvements and alterations made by Lessee pursuant to this paragraph shall become the property of Lessor. By way of example, it is contemplated by the parties that the following improvements and alterations made by Lessee, with the noted exclusions, will become the property of Lessor at the termination, for whatever reason, of the lease: heating, ventilation and air conditioning systems (but excluding the kitchen exhaust hoods); lighting systems in their entirety; and ceiling, wall, and floor coverings. This list is not intended to be exhaustive.

Lessee shall also indemnify and hold Lessor harmless from and against all statutory liens or claims or liens of any contractor, subcontractor, laborer or any other party which may arise in connection with any alteration, addition or improvement or building to the Premises. Any alteration, addition or Leasehold improvement installed on the Premises by Lessee shall become the sole property of the Lessor upon the expiration or termination of the Lease. In no event shall Lessee make any alterations or additions to the structure of the Building without the prior written consent of Lessor. Any request by Lessee for such structural alterations or additions shall also be submitted to the Lessor for consideration and appropriate action, if any.

12. TRADE FIXTURES OF LESSEE. At any time subsequent to the satisfaction or waiver of the Contingency set forth in Paragraph 17 herein, Lessee may furnish, install and maintain on the Premises any and all fixtures, equipment and other personal property useful in connection with Lessee's operation on the Premises. All such fixtures, furniture, equipment and other personal property installed in or located on the Premises upon expiration or the termination of the Lease may be removed by Lessee, with Lessee repairing any and all damage to the Premises

resulting from such removal. Lessor may, at its option and upon request of Lessee, purchase same for the remaining undepreciated book value. Depreciation shall be calculated on a straight line basis over a ten (10) year period.

13. ASSIGNMENT AND SUBLETTING. Lessee may not assign the Lease and its right, title and interest hereunder or sublet the Premises without obtaining Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. No such assignment or subletting shall release Lessee from its obligations hereunder unless Lessee obtains the written consent of Lessor,

14. DAMAGE OR DESTRUCTION. If, during the term of the Lease, including any time after which Lessee may have given notice to terminate the Lease, the entire Premises or such portion thereof as shall render the remaining portion thereof unsuitable for the continued conduct of Lessee's activities therein, shall be damaged or destroyed more than 85% by fire or other casualty, Lessee shall have the right, for a period of forty-five (45) days thereafter, by giving written notice to Lessor, to terminate the Lease, in which event: (a) Lessor shall be entitled to retain all insurance proceeds payable by reason of and with respect to damage or destruction to the buildings and improvements constructed by Lessor on the Premises; and (b) Lessee shall be entitled to retain all insurance proceeds payable by reason of and with respect to damage or destruction to the improvements owned or constructed by Lessee on the Premises, and all insurance proceeds relating to Lessee's fixtures, equipment, and other personal property. If Lessee does not elect to terminate the Lease or if the damage or destruction to the Premises does not render the remaining portion thereof unsuitable for the continued conduct of Lessee's activities thereon, then the Lease shall continue in full force and effect, and Lessee shall, in accordance with the provisions set forth in Paragraph 11 hereof, promptly commence and pursue diligently to completion whatever repairs to the Premises are necessary to restore the Premises to the same condition they were in prior to such damage or destruction, and Lessee shall be entitled to all insurance proceeds relating to the casualty. All such repairs shall be performed promptly and in a good and workmanlike manner in accordance with all statutes, laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Premises. Commencing on the date of such damage or destruction and continuing during the period in which Lessee is repairing and restoring the Premises pursuant to this Paragraph, the rental payable by Lessee shall abate in proportion to the floor area of that Premises of which Lessee is deprived for the period in which Lessee is deprived of the use of that floor area.

15. CONDEMNATION.

a. Total Taking. If, during the term of the Lease, the entire Premises shall be taken by any public or quasi-public authority under its power of condemnation of eminent domain (or is sold under threat thereof), the Lease shall terminate as of the date possession shall be taken by the acquiring authority. If any part of the Premises shall be taken as to render the remainder thereof unsuitable for the continued conduct of Lessee's activities thereon, Lessee shall have the right to terminate the Lease on thirty (30) days notice to Lessor given ninety (90) days after the date of such taking. In the event that the Lease shall terminate or be terminated, the rental and all other amounts payable to Lessee hereunder shall, if and as necessary, be apportioned and prorated to the date possession is taken by the acquiring authority.

b. Partial Taking. If the portion of the premises taken by any public or quasi-public authority under its power of condemnation of eminent domain (or sold under threat thereof) shall not render the remaining portion unsuitable for the continued conduct of Lessee's activities thereon, Lessor shall, to the extent possible, promptly restore the remaining portion of the Premises to the condition the same were in immediately prior to such taking, and the Lease shall

continue in full force and effect. Lessor shall use such portion of the Lessor's proceeds by reason of such taking necessary to repair and restore the Premises as herein provided. During the period in which Lessor is repairing and restoring the Premises pursuant to this Paragraph, the rental payable by Lessee shall abate in proportion to the area of the Premises of which Lessee is deprived for the period in which Lessee is deprived of the use of that floor area. If it is not possible to restore the remaining portion of the Premises to the same condition it was in immediately prior to such taking, and the Lessee had not elected to terminate the Lease pursuant to Paragraph 14(a) above, then the rent payable by Lessee for the remainder of the Lease shall abate proportionately to the area of the Premises of which Lessee is deprived.

c. Division of Compensation Award. Lessor and Lessee shall participate pro rata based upon their respective investments in the Premises and the value of the Leasehold hereby created as if the Lease would have expired at the end of the Lease term in all compensation awarded or paid upon a total or partial taking of the Premises. In determining the respective investments of Lessor and Lessee in the Premises, Lessee shall receive a credit for the value of Lessee's trade fixtures and improvements to the Premises, taken by any condemning authority, which credit shall take into account Lessee's proportionate share of the improvements, if any, for which Lessor had received rental compensation. In the event that a single entire award is made on account of the condemnation, Lessee and Lessor will be entitled to such proportion of the award as may be fair and reasonable. Any valuation shall also take into account Lessee's option rights.

*Notwithstanding the foregoing, nothing contained herein shall be construed to preclude Lessee from prosecuting any claim directly against the condemning authority in such condemnation proceedings for loss of business, and/or depreciation to, damage to and/or cost of removal of, and/or for the value of stock and/or Lessee's trade fixtures, furniture, equipment and other improvements made to the Premises, and any other property belonging to Lessee.

16. WARRANTY OF TITLE: QUIET ENJOYMENT Lessor hereby warrants that it has title to the Premises in fee simple free of all liens, charges and encumbrances, and that it has full right and authority to enter into the Lease. Lessor covenants and agrees that, so long as Lessee shall duly and punctually perform and observe all of its obligations under the Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises without any hindrance or molestation from Lessor or any other party. Lessor further warrants to Lessee that, as of the date of the Lease, Lessor has no knowledge of any material defect in the condition of the Premises not described in the condition report shared with the Lessee and that the Premises are in compliance with all building, zoning and other laws, rules, regulations and ordinances of federal, state and other governmental authorities and agencies having jurisdiction of the Premises, and there are no outstanding orders against the Premises.

17. DEFAULT: REMEDIES.

a. Default by Lessee. If (i) Lessee fails to pay any of the rental or other sums required hereunder and such failure to pay continues for thirty (30) days after written notice thereof to Lessee; or, (ii) default be made in the performance or observance by Lessee of any other terms, covenants or conditions herein contained and such default shall continue for forty-five (45) days after written notice thereof to Lessee (or if such default is not of a type that can reasonably be corrected within forty-five (45) days, as determined by Lessor, and Lessee fails to commence promptly and in good faith to proceed with due diligence to correct such default), then in any of the above-described events, Lessor may elect to terminate the Lease and declare the term of the Lease ended, to re-enter the Premises or any part thereof with judicial process and to expel and remove Lessee or any person or persons occupying the same and again to repossess and enjoy the Premises. Lessor shall also have the right, at its option, to cure any default by Lessee and recover

from Lessee the costs and expenses incurred by Lessor in curing such default.

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

c. Remedies Not Exclusive. Any right or remedy conferred on Lessor or Lessee under the Lease shall not be deemed to be exclusive of any other right or remedy which might otherwise be available hereunder or at law or in equity. The rights and remedies hereunder shall be cumulative and may be exercised and enforced concurrently and whenever and as often as the occasion therefore arises.

d. Contingency. The Lease and the obligations of Lessor and Lessee hereunder are contingent upon Lessee obtaining within ninety (90) days from the Preoccupancy Commencement Date ("Contingency Expiration Date") written lender or equity financing commitments in the minimum amount of Eight Hundred Fifty Thousand Dollars (\$850,000) (the "Financing Goal") which amount is adequate, in the reasonable judgment of both Lessor and Lessee, to permit the Lessee to construct necessary improvements on the Premises and provide the necessary operating capital for such items required for Lessee's intended use of the Premises as a restaurant and a written personal guarantee covering the Lessee's obligations as specified in this Lease. In the event Lessee seeks to achieve the Financing Goal with equity funds, in order to show that sufficient liquid assets are available for this project, Lessee shall provide Lessor with personal financial statements, signed as to their accuracy by the Lessee, a written verification from the Lessee's financial institution that funds or assets cited in the personal financial statements relating to the financial institution are accurate, and a copy of the last two year's profit and loss statements from the Lessee's Jennifer's Restaurant in Waukesha, signed as to their accuracy by the Lessee and their accountant, should the Lessee's current liquid reserves stated on their personal financial statement not be sufficient to meet the Financing Goal.

In the event Lessee has timely achieved its Financing Goal and provided said written guarantee, Lessee shall give written notice of same to Lessor on or before the Contingency Expiration Date, in which event the Lease shall remain in force and effective in accordance with the terms and conditions recited herein. In the event Lessee on or before the Contingency Expiration Date not achieved its Goal, the Lease shall be deemed terminated and neither Lessor nor Lessee shall have any further rights or obligations hereunder. However, Lessee may request a thirty (30) day extension of said Contingency Expiration Date in the event Lessee provides satisfactory evidence to Lessor that Lessee has materially progressed towards such Financing Goal.

As an additional contingency, in the event the Lessee has not met its Financing Goal, completed construction, outfitted the Premises and opened to the public as a restaurant by July 1, 1996, this Lease shall be deemed terminated and neither Lessor nor Lessee shall have any further

rights or obligations hereunder.

18. Parking, Deliveries and Waste Removal. Lessor hereby agrees to make available to Lessee at all times during the term of the Lease up to twenty five (25) unreserved and four (4) reserved parking spaces for use by Lessee's employees at a rental rate equal to the monthly rate in effect from time to time in the parking structure, a rate which is currently \$65.00 per month. Lessor will maintain a twenty four (24) hour access to the parking structure for Lessee's employees and clientele.

Lessor will provide its clientele with parking structure stickers, to be affixed to the clientele's short-term parking tickets, which will give the Lessee's clientele one and one half (1 1/2) hour of "free" parking. At the close of each month, Lessor will bill Lessee for 60% of the value of that month's accumulated parking tickets. Lessee will pay for the previous month's billing within fifteen (15) days of receipt of said bill.

Lessee and its vendors will be allowed access to the premises during the hours of 5 a.m. until 5 p.m. for the purpose of business deliveries and waste removal, using the loading dock and dumpster area near the Michigan St. entrance to the parking structure. Any business deliveries or waste removal service which requires actual entrance into the building will be accompanied by a management staff employee of the Lessee. The cost of the dumpster and dumpster tipping fees, the cost of any animal fat storage containers and their removal fees, and any special costs of cleanup generated by the location of said dumpster and container, will be assumed solely by the Lessee. Lessee will be allowed to place said dumpster in a loading dock location agreeable to both Lessee and Lessor and to create a fenced and screened animal fat storage area immediately adjacent to the fenced Lessor equipment area southeast of the loading dock.

19. Early Access to Premises. As of the Preoccupancy Commencement Date, Lessee shall be allowed access to the Premises for the purposes of: (i) holding such events and/or tours in the Premises as Lessee deems necessary in its efforts to achieve its Financing Goal; and (ii) allow its architects and consultants access to prepare plans, specifications, and drawings for the improvements to the Premises. Upon Lessor's confirmation that Lessee has achieved its Financing Goal, Lessor shall provide Lessee with keys to the Building and Premises,

20. Signs. Lessee shall have the right and privilege of attaching, affixing, painting or exhibiting signs on the interior of the Premises, on the exterior of the Building and at the entrances to the Park, only with the written approval of Lessor which shall not be unreasonably withheld or delayed, provided that: a) any and all signs shall comply with wishes of the Miller Brewing Company, the major O'Donnell Park project donor; b) such signs if and when taken down shall not damage the Building or parking structure, or, if any damage occurs, Lessee shall promptly repair the same; and c) it is expressly understood by Lessee that any such signage shall be subject to the applicable terms and conditions set forth by the City of Milwaukee. It is hereby intended that Lessor and Lessee shall cooperate in order to arrive at a mutually agreeable signage program which shall facilitate the exposure of Lessee's Premises to the general public while at the same time being esthetically compatible with the appearance and status of the Building and O'Donnell Park.

21. Control of Access and Compatible Use. Lessee hereby acknowledges and agrees that it will not, in its operations, adversely and unreasonably impact the security and rental functions of the Miller Room and the operation, rental, and security functions, during business or nonbusiness hours, of the Betty Brinn Children's Museum.

22. Definitions.

(a) "Gross Sales" shall mean the total revenues earned by Lessee from all activities at or provided from the Premises, as well as revenues derived from rental of the Premises.

(b) "Revenues Derived from Rentals and Catering" shall mean the aggregate amount of rental income actually received by Lessee from third parties outside of the Normal Business Hours of Lessee each year during the term of the Lease, or income received from third party for catering services provided by Lessee within the Premises.

(c) "Normal Business Hours of Lessee" shall mean the hours when the restaurant is expected to be open to the public. Those hours are now expected to include a seven (7) day per week service on a 24-hour basis.

23. Prohibited Practices.

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

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

24. Miscellaneous.

(a) Notices. Whenever in the Lease it shall be required or permitted that notice be given by any party hereto to the other, such notice shall be given by certified or registered mail, and any notice so sent shall be deemed to have been given on the date that the same is deposited in the United States mail, postage prepaid. Notices shall be addressed to Lessor at Milwaukee County Department of Parks, Recreation and Culture, 9480 Watertown Plank Road, Wauwatosa, Wisconsin 53226, Attn: Director (with a copy to Corporation Counsel, Room 303, Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, Wisconsin 53233), and to Lessee at Dr. Syed A. Hussain, Impel, Inc., 929 E. Wisconsin Avenue, Milwaukee, WI, 53202, or at such other address as either party may from time to time specify in writing in lieu thereof. It is further agreed that each party hereto will promptly furnish to the other party hereto a copy of any notice it may receive from any third person which may affect the rights of any party hereunder.

(b) Access. Lessor, its agents and representatives, shall, upon reasonable notice to Lessee, be entitled to enter upon the Premises at reasonable times during normal business hours for the purpose of examining and inspecting the condition thereof, and exercising any right or power reserved to Lessor under the Lease; provided, however, such entry shall be done in a manner so as not to unreasonably interfere with the conduct of Lessee's activities thereon, and such entry shall only be made if Lessor is accompanied by a responsible employee of Lessee, and provided, further that no person shall be allowed or permitted on the Premises if such person is engaged in any activities, enterprises or business that compete, directly or indirectly, with any product or business of Lessee. The Parks Department East Region Manager and O'Donnell Park Unit Manager will be provided with a single access key to the Premises, as soon as the Department's locks to the Premises are changed.

(c) Disadvantaged Business Enterprise (MBE/WBE) Utilization. The Lessee will submit a plan to the Lessor for the utilization of the MBE/WBE firms on the construction of improvements. Said plan will contain, but not be limited to, the following information:

- 1) Name(s) of M/WBE(s) firms(s) being considered for utilization.
- 2) Description of services that will be provided by the M/WBE(s).
- 3) Dollar amount of the work assigned to the M/WBE(s). The Lessee will have a seventeen percent (17%) goal of utilization of M/WBE's in the construction of improvements, which will be reviewed by the Lessor's Disadvantaged Business Development (DBD) Office. The Lessee will contact the DBD Office for a list of certified MBE/WBE firms.

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

- 1) **Non-Discrimination:** The Lessee certifies that it will not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex or handicap which includes, but is not limited to, the following: employment, upgrading, demotion or transfer, recruitment, or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship. The Lessee will post in conspicuous places, available for employment, notices setting forth the provisions of the non-discriminatory clause. Attached hereto as Exhibit E is an Equal Employment Opportunity Certificate which shall be executed and delivered by Lessee simultaneously with the execution and delivery of the Lease.
- 2) **Affirmative Action Program:** The Lessee certifies that it will strive to implement the principles of equal employment opportunity through an effective affirmative program which shall have as its objective to increase the utilization of women, minorities and handicapped persons and other protected groups, at all levels of employment in all divisions of its work force, where these groups may have been previously under-utilized and under-represented. The Lessee also agrees that in the event of any disputes as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has exercised good faith efforts to meet all requirements.
- 3) **Non-Segregated Facilities:** The Lessee certifies that it does not and will not maintain or provide segregated facilities for its employees, and that it does not permit its employees to perform their services at any location under its control where segregated facilities are maintained.
- 4) **Reporting Requirement:** When applicable, the Lessee certifies that it will comply with all reporting requirements and procedures established in Title 41 Code of Federal Regulations, Chapter 60.
- 5) **Affirmative Action Plan:** The Lessee certifies that if it has 50 or more

employees, it has filed or will develop and submit (within 120 days of contract award) a written affirmative action plan. Current Affirmative Action Plan, if required, must be filed with any of the following: The Office of Federal Contract Compliance Programs or the State of Wisconsin, or the Milwaukee County Department of Audit, Room 319 Courthouse Annex, 907 North Tenth Street, Milwaukee, Wisconsin 53233.

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

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

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

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

(h) Provisions Severable. If any provision of the Lease shall be held or declared to be invalid, illegal or unenforceable under any law applicable thereto, such provision shall be deemed deleted from the Lease without impairing or prejudicing the validity, legality and enforceability of the remaining provisions hereof.

(i) Governing Law. This Lease shall be governed by the laws of the State of Wisconsin.

(j) Records and Audits. Lessee shall allow Lessor or their designated agent to review Lessee's audited financial statements, prepared by the Lessee's accountant under standard and accepted accounting principals, on an annual basis, in order for the Lessor to monitor Lessee's ongoing financial status. The Lessee shall allow the Lessor, the Milwaukee County Department of Audit, or any other party the Lessor may name, when and as they demand, to audit, examine and make copies of, excerpts or transcripts from any records or other information directly relating to matters under this Agreement. Any subcontracting by the Lessee in performing the duties described under this contract shall subject the subcontractor and/or associates to the same audit terms and conditions as the Lessee.

(k) Preferred Caterers List. In the event that the Lessor establishes a Preferred Caterers List for rental clients seeking to rent the Miller Room of the Building, the Lessor will include the Lessee on this Caterers List, under the terms and conditions and with the same privileges offered to the other caterers on the list.

(l) Promontory Pavilion Usage. The use of the Promontory Pavilion, the 1,500 square foot rental room located at the north end of the South Lawn of O'Donnell Park, shall for the foreseeable future continue to be used as a rental facility. In the event that it is considered as food service or restaurant facility, the Lessee shall have a first right-of-refusal on said use, presuming that Lessee submits a proposal competitive to that of other proposers. For the purposes of this

acknowledged that they executed the foregoing instrument as such officers, as the deed of said corporation and by its authority.

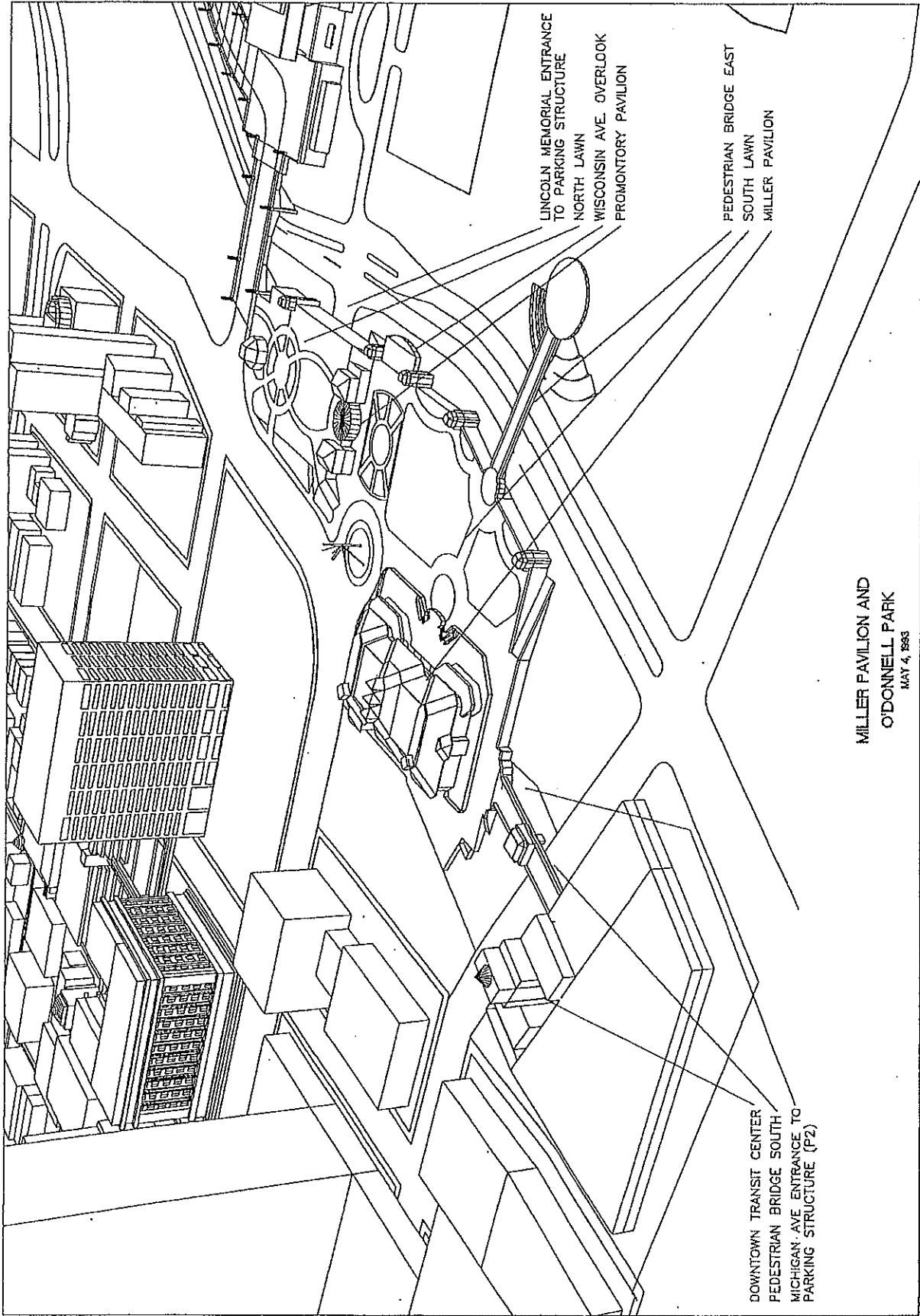
Joseph P. Salomone
Joseph P. Salomone, Notary Public
State of Wisconsin
My commission: 12, 1995
(Notary Seal) SALOMONE
STATE OF WISCONSIN

Exhibit Listing:

- A. Floor Plans of Building
- B. Land Use Plan of O'Donnell Park
- C. County Ordinances 56.32, 47.02, and 47.16
- D. Equal Employment Opportunity Certificate

APPROVED AS TO FORM
Matthew Karaslesowicz
CORPORATION COUNSEL

Reviewed
John R. Pott 8-29-95



LINCOLN MEMORIAL ENTRANCE
TO PARKING STRUCTURE
NORTH LAWN
WISCONSIN AVE. OVERLOOK
PROMONTORY PAVILION

PEDESTRIAN BRIDGE EAST
SOUTH LAWN
MILLER PAVILION

DOWNTOWN TRANSIT CENTER
PEDESTRIAN BRIDGE SOUTH
MICHIGAN AVE ENTRANCE TO
PARKING STRUCTURE (P2)

MILLER PAVILION AND
O'DONNELL PARK
MAY 4, 1983

K A H L E R
S L A T E R
A R C H I T E C T S

WISCONSIN AVE.

AFTER-HOUR
PARKING
ACCESS

ELEVATORS
TO PARKING

HANDICAPPED
RAMPS

ELEVATOR
ACCESS TO
MUSEUM

CONTROL
POINT

FOOD SERVICE

BALCONY ABOVE

INFO &
TICKETS

UP

ATRIUM ABOVE

NO ACCESS
TO ABOVE

SEATING

ELEV. ACCESS TO
3RD FLOOR OFFICES
KEYED-OFF

FREIGHT
ELEVATOR
KEYED OFF

MEETING ROOM

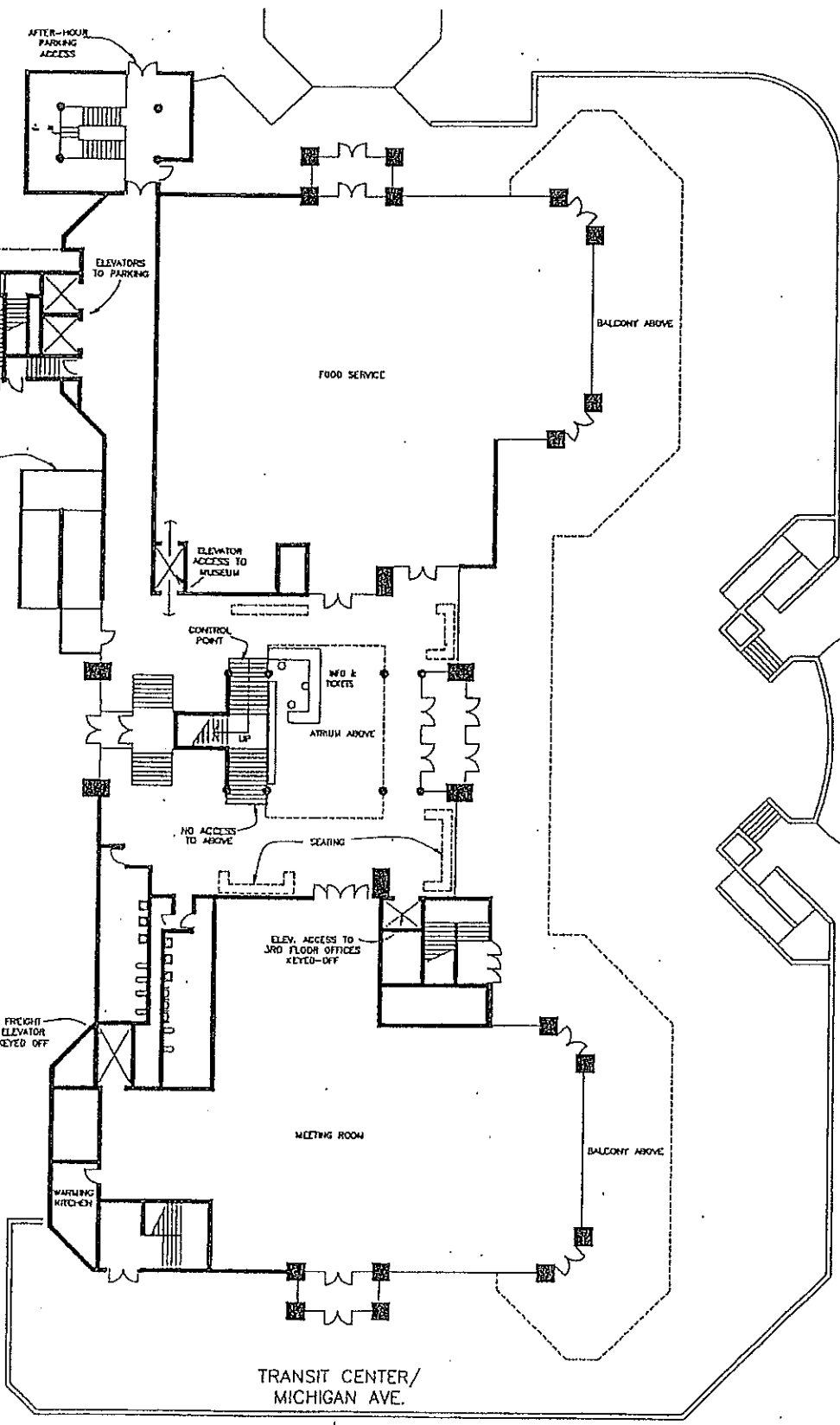
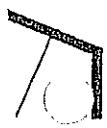
BALCONY ABOVE

WARMING
KITCHEN

O'DONNELL
PLAZA

TRANSIT CENTER/
MICHIGAN AVE.

FIRST FLOOR
MAY 4, 2003
KAHLER
SLATER
ARCHITECTS



COPY

ASSIGNMENT AND ASSUMPTION OF
COMMERCIAL LEASE

THIS ASSIGNMENT AND ASSUMPTION OF LEASE made on the 16th day of October, 2002 by and between Impel, Inc. a Wisconsin Corporation ("Assignor") and Grandview Management, Inc. d/b/a Ellen's Prestige Catering, a Wisconsin corporation ("Assignee").

1. Assignor acknowledges that it entered into a Lease Agreement ("Lease") with Milwaukee County, a municipal corporation of the State of Wisconsin, as represented by the Department of Parks, Recreation and Culture ("Parks Department" or "Lessor") on the 29th day of September, 1995 for the restaurant space at O'Donnell Park a copy of which Lease is attached hereto.
2. Assignor represents that it is not aware of any default on any Lease payments to Lessor. Assignor further represents that it is not aware of any other defaults or unresolved issues related to its Lease other than the list of necessary repairs documented in a July 12, 2002 letter to Assignor from the Parks Department. Assignee has agreed to make, at its sole cost and expense, any and all necessary repairs called for in the July 12, 2002 letter and to fully release Assignee for any liability pertaining thereto.
3. Assignee represents to Assignor that it has examined the attached Lease and any Addenda and that it is familiar with and agrees to all its terms and conditions. Assignee assumes the Lease and all the terms, covenants and conditions imposed upon the lessee.
4. Assignor, for good and valuable consideration, does assign to Assignee all of its right, title and interest in the Lease Agreement from and after October 16, 2002 (the "Effective Date") for the remainder of the term of the Lease and any renewals and extensions of the Lease subject only to the covenants, conditions and limitations contained in the Lease.
5. Assignee assumes the Lease and all the terms, covenants and conditions imposed by the Lease upon the Lessee and agrees to perform and comply with all such terms, covenants and conditions on and after the Effective Date as if Assignee had originally executed the Lease.
6. Assignor hereby agrees to defend, indemnify and save and hold Assignee harmless from any and against any and all claims, demands, judgments, suits, actions, causes of action, liens, liabilities, fees or expenses (including reasonable and necessary court costs, attorneys' fees and expenses incurred on appeal or retrial) which may be paid, incurred or suffered by Assignee in connection with or as a result of the Lease or the relationships

arising therefrom, and which results from any event, occurrence, action or omission of Assignor or its predecessors in title, prior to the Effective Date except for any duty, obligation, claim, demand, judgment, liability, fee or expense which is made by Lessor or a party acting on Lessor's behalf.

7. Assignee hereby agrees to defend, indemnify and save and hold Assignor harmless from any and against any and all duties, obligations, claims, demands, judgments, damages, suits, actions, causes of action, liens, administrative orders, penalties, liabilities, fees or expenses (including reasonable and necessary court costs, attorneys' fees and expenses incurred on appeal or retrial) which may be paid, incurred or suffered by Assignor in connection with or as a result the Lease or the relationships arising therefrom, and which results from any event, occurrence, action or omission of Assignee or its successors in title, from the Effective Date.
8. Assignor and Assignee certify that consent by the Milwaukee County Board of Supervisors for Assignment of the Lease has was obtained on September 17, 2002 and the Resolution approving such assignment was signed by the County Executive on October 9, 2002.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date written above.

ASSIGNOR: Impel, Inc.

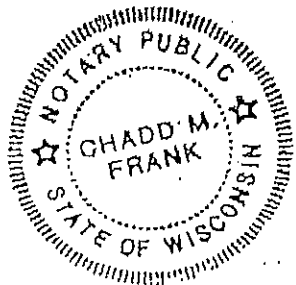
A. Afzal Hussain
By: Ps
Its: President

Attest: A. Afzal Hussain
By: _____
Its: President

State of Wisconsin)

County of _____)

Personally came before me this ___ day of October, 2002, the above-named S. Afzal Hussain and S. Afzal Hussain, to me known to be the President and Secretary of Impel, Inc., a Wisconsin corporation and acknowledged that they executed the foregoing instrument on behalf of such corporation.



Ghadd M. Frank
Ghadd M. Frank, Notary Public
State of Wisconsin
My Commission: 1-12-03

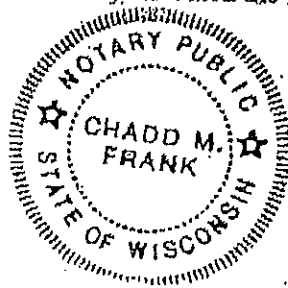
(Notary Seal)

ASSIGNEE: Grandview Management, Inc. d/b/a Ellens Prestige Catering

By: [Signature]
Its: [Signature]

State of Wisconsin)
County of Waushara)

Personally came before me this 16 day of October, 2002, the above-named James Zilli and V.P., to me known to be the V.P. and of Grandview Management, Inc., a Wisconsin corporation and acknowledged that they executed the foregoing instrument on behalf of such corporation.



[Signature]
Notary Public
State of Wisconsin
My Commission: 1-12-03

(Notary Seal)

CONSENT OF LESSOR

Lessor hereby consents to this assignment of the Lease from Impel, Inc. to Grandview Management, Inc. Landlord further states and represents to Grandview Management, Inc. that as of the date hereof, to Landlord's actual knowledge, except for those items set forth in the letter dated July 12, 2002, from Lessor to Impel, Inc. (a copy of which letter is attached hereto) which items shall be remedied by Grandview Management, Inc., Impel, Inc. is not in default under the terms of the Lease nor does Lessor know of any present circumstances which with the passage of time could constitute a default under this Lease.

"Lessor"
Milwaukee County

Susan L. Baldwin

By: _____
Title: DIRECTOR OF PARKS, RECREATION AND CULTURE

Attest: _____
By: _____
Title: _____

State of Wisconsin)
)
County of Milwaukee)

Personally came before me this 16th day of October, 2002, the above-named SUSAN L. BALDWIN and _____, to me known to be the PARKS DIRECTOR and _____ of Milwaukee County. and acknowledged that they executed the foregoing instrument on behalf of such political subdivision on its authority.

Dorothy A. Bogdan Notary Public
State of Wisconsin
My Commission: Expires 4/2/06

(Notary Seal)

**Memorandum of Understanding
between
Milwaukee County, Department of Parks, Recreation and Culture
and
Grandview Management, Inc.**

This Memorandum of Understanding (MOU) is made this 17th day of April 2007 between Milwaukee County, Department of Parks, Recreation and Culture ("County") and Grandview Management, Inc. ("Grandview"). Referenced together, the County and Grandview Management are the "Parties" of this MOU.

WITNESSETH:

WHEREAS, in September 1995 Milwaukee County "County" entered into a lease agreement with Impel, Inc. for the operation of a restaurant at O'Donnell Park "Restaurant Lease"; and

WHEREAS, in October, 2002 the County approved an Assignment of Lease between Impel, Inc. and Grandview Management, Inc., d/b/a Ellen's Prestige Catering to operate the site as the "Coast Restaurant" for the remainder of the term of the Restaurant Lease; and

WHEREAS, in December, 2002, the County entered into an agreement with Grandview Management, Inc., d/b/a Ellen's Prestige Catering to provide exclusive rights for food and beverage catering in the Harbor Lights Room at the downtown Transit Center at O'Donnell Park with the term of the agreement to expire on December 31, 2006 "Harbor Lights Agreement"; and

WHEREAS, in December, 2002, the County entered into an agreement with Grandview Management, Inc., d/b/a Ellen's Prestige Catering to provide exclusive rights for food and beverage catering in the Miller Room at O'Donnell Park, with the term of the agreement to run concurrent with that of the Restaurant Lease "Miller Room Agreement"; and

WHEREAS, in October, 2003, the Parks Department entered into a Letter of Agreement authorizing Grandview to employ a salesperson to promote the Harbor Lights and Miller Room venues due to budgetary cutbacks which eliminated a Parks employee previously providing this service; and the intent of the Parties was to renew the Letter Agreement on an annual basis "Letter Agreement" (which renewal has not been formalized) and:

WHEREAS, in January, 2006, the County entered into an agreement with Grandview Management, Inc., d/b/a Ellen's Prestige Catering to provide beverage catering at the Mitchell Park Domes with the term of the agreement to expire on December 31, 2006 "Domes Agreement"; and

WHEREAS, in April, 2006 the Milwaukee County Department of Audit completed an audit of Parks Facilities Leases, recommending a number of substantive changes to the agreements with Grandview Management; and

WHEREAS, because the above cited agreements were written at different times and by different staff personnel, there is no uniformity among the terms and conditions, nor operating procedures associated with each of the agreements, creating ambiguity in the interpretation and compliance with their terms; and

WHEREAS, the Parties desire to address any conflicts between the terms of the above-cited agreements and resolve any ambiguities in the agreements regarding the Coast Restaurant, patron parking, the booking and rentals of the Miller and Harbor Lights Rooms, and the catering services at the Mitchell Park Domes; and

WHEREAS, the Parties wish to assure the continued success and growth of these venues and understand that a harmonious partnership is mutually beneficial to the Parties and to the clients and public, which these venues serve;

NOW THEREFORE, for valuable consideration given and received by the County and Grandview Management, the receipt of which is hereby acknowledged by all parties, the Parties enter into this Memorandum of Understanding:

Management and Operating Procedures

Term of the MOU

This MOU will become effective upon the later of its approval by the County Board of Supervisors AND the date of signing by both Parties. The MOU shall have an expiration date of the later of December 31, 2007, or the signed award of successive agreements to either Grandview Management (including any of its associated or parent companies) or the award to any other caterer, vendor, or company as the result of a competitive Request for Proposal.

Yield Management Pricing for Harbor Lights and Miller Rooms

The Parties agree to utilize a "Yield Management" model for the pricing of the Harbor Lights and Miller Rooms during off-peak times. Yield Management is herein defined as rental costs that are determined based upon demand for bookings during various times of the year. Bookings of these rooms are much higher in April through early November, and significantly lower November through March.

The following rates shall be applied, based upon previous sales and market analysis. Changes to the rates will be as agreed upon between the Parties from time to time.

- Both rooms to be priced the same.
- High season: 4/1 – 11/15 \$1,300 for each room
- Low season: 11/16 – 3/31 \$ 500 for each room

It is anticipated that parking revenue will increase annually due to additional bookings.

North and South Gardens

Grandview Management will assume exclusive responsibility for all catering, booking, and managing events in the North and South Gardens. Grandview will work with the County to develop website applications to support that marketing effort. The events at the Gardens will be catered by Coast. The revenues generated by the North and South Gardens will be included in the 3% commissions on annual sales over \$2.5 million included in the Coast Restaurant revenue and collected as rent under the Restaurant Lease.

Mitchell Park Domes

Grandview Management will assume exclusive rights for all food and beverage catering at the Mitchell Park Domes. County will continue to receive a 30% commission on the sale of all beverages. In lieu of paying a commission on the food sales, Grandview agrees to provide adequate personnel to conduct site tours and booking arrangements. Grandview further agrees to coordinate the booking responsibilities between the Mitchell Park and O'Donnell Park sites through the use of websites and dedicated phone lines. The Parties agree to continue to subtract the estimated \$40,000+ cost savings to the Parks from the annual commissions over the guaranteed minimums, as provided for in the 2003 Letter of Agreement.

Sales Activities and Support

The Parties agree to work cooperatively to promote bookings and sales at all locations through the sharing of technology, client lists and website development.

Definition of food and beverages

The definition of food and beverages upon which commissions are to be paid will apply solely to "food" and "beverages" as is currently the case. Pass-through rentals of furniture, tableware, and other non-food products will remain exempt from commission payments.

Refunds

Grandview Management will continue to use its discretion in the providing of refunds due to client dissatisfaction with the event. In order to improve customer service on the part of both Grandview and Parks staff, Grandview will provide written reports of any such refunds to Parks management on a timely basis.

Annual Audit

Prior to April 15 of each year, Grandview agrees to provide the Parks Director with an annual third-party audit report for each location/agreement. Details of the audit reports will be negotiated from time to time between the Parties.

Coast Restaurant Parking

County shall charge a flat fee of \$2.50 per car with no time limit to all Coast Restaurant patrons parking in the O'Donnell parking structure. This fee may be increased by Parks no more than \$.25 per year for each of the remaining years of the Restaurant Lease.

Entire Agreement

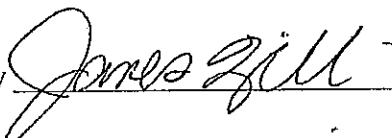
This Memorandum of Understanding constitutes the entire scope of the changes to the operating procedures, which have been modified and agreed to between the Parties hence forward. All terms and conditions contained in the Restaurant Lease and all agreements herein referenced, remain in full force and effect except as herein expressly modified or interpreted in this Memorandum of Understanding.

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

**MILWAUKEE COUNTY
DEPARTMENT OF PARKS, RECREATION AND CULTURE**

by  Date _____
Sue Black, Director

GRANDVIEW MANAGEMENT, INC.

by  Date 4/17/07
JAMES ZILLI
Print Name
C.E.O.
Title

**AMENDMENT TO AGREEMENT
WITH
GRANDVIEW MANAGEMENT, INC.
FOR THE OPERATION OF THE
COAST RESTAURANT AT O'DONNELL PARK**

THIS AMENDMENT TO AGREEMENT is made and entered into this 25th day of April, 2007, by and between MILWAUKEE COUNTY, through its DEPARTMENT OF PARKS, RECREATION AND CULTURE ("County"), and GRANDVIEW MANAGEMENT, INC. ("Grandview").

THAT, WHEREAS, on September 29, 1995 County entered into a lease agreement with Impel, Inc. for the operation of a restaurant at O'Donnell Park; and

WHEREAS, on October 16, 2002 County entered into an assignment and assumption of lease with Grandview Management, Inc., d/b/a/ Ellen's Prestige Catering to operate the site as the "Coast Restaurant" for the remainder of the term of the original restaurant lease with an expiration date of November 1, 2010, and

WHEREAS, in April 2007 County and Grandview entered into a Memorandum of Understanding (MOU) which provided clarification regarding certain terms, conditions, and operating procedures of the various Agreements with Grandview Management; and

WHEREAS, among the items agreed to in the MOU was the intent that Grandview Management will assume exclusive responsibility for all catering, booking, and managing events in the North and South Gardens and that all revenues generated from the catering services provided in the North and South Gardens will be included in the 3% commissions on annual sales over \$2.5 million included in the Coast Restaurant revenue and collected as rent under the Restaurant Lease;

NOW, THEREFORE, for and in consideration of the respective covenants and agreements between the parties hereto, and the fees, charges and rentals to be paid County by Grandview, and other good and valuable considerations, it is agreed between County and Grandview that the aforementioned original agreement dated September 29, 1995, is hereby amended as of the date of execution of this amendment in the following particulars, to wit:

The following sentence shall be added to the end of the third paragraph under Item 4.
"RENT": "Effective April 1, 2007, all revenues generated from catering services provided in the North and South Gardens shall be included in the appropriate commissions on annual sales over \$2.5 million."

Except as specifically provided herein, the terms and conditions of the original agreement between County and Impel, Inc, and as assigned to Grandview Management in the Assignment and Assumption of Commercial Lease date October 16, 2002, as amended, shall remain in force and effect.

IN WHITNESS WHEREOF, the parties hereto have caused these presents to be signed by their respective officers on the dates indicated.

GRANDVIEW MANAGEMENT, INC

by: James Zill
Title: C.F.O.
Date: 4/25/07

MILWAUKEE COUNTY PARKS, RECREATION AND CULTURE:

by: Sue Black
(Sue Black Director)
Date: 4-23-07

**Memorandum of Understanding
between
Milwaukee County, Department of Parks, Recreation and Culture
and
Grandview Management, Inc.
for the
Operation of Coast Restaurant**

This Memorandum of Understanding (MOU) is made this 7 day of ^{April} ~~March~~ 2009 ^{PK} between Milwaukee County, Department of Parks, Recreation and Culture ("County") and Grandview Management, Inc., d/b/a Ellen's Prestige Catering ("Lessee"). Referenced together, the County and Grandview Management are the "Parties" of this MOU.

WITNESSETH:

WHEREAS, in September 1995 Milwaukee County entered into a lease agreement with Impel, Inc. for the operation of a restaurant at O'Donnell Park "Restaurant Lease" (copy attached); and

WHEREAS, in October, 2002 the County approved an Assignment of Lease between Impel, Inc. and Grandview Management, Inc., d/b/a Ellen's Prestige Catering to operate the site as the "Coast Restaurant" for the remainder of the term of the Restaurant Lease; and

WHEREAS, pursuant to the terms and conditions of the original "Restaurant Lease" the Parties entered into the first of two five-year extended terms effective January 1, 2005 and expiring December 31, 2010; and

WHEREAS, on April 1, 2007 the Parties amended the original "Restaurant Lease" to provide that all revenues generated from catering services in the North and South Gardens be included in the appropriate commissions on annual gross sales in excess of \$2,499,999 from the Coast Restaurant; and

WHEREAS, Lessee has requested that it be permitted to change the format of the restaurant from a full-time walk-in facility to one which will be open on selective dates as well as upon a reservation-only basis at remaining times; and

WHEREAS, the Parties wish to assure the continued success and growth of the restaurant venue and understand that a harmonious partnership is mutually beneficial to the Parties and to the clients and public, which these venues serve;

NOW THEREFORE, for good and valuable consideration given and received by the County and the Lessee, the receipt of which is hereby acknowledged by all parties,

the Parties enter into this Memorandum of Understanding for the continued operation of the Coast Restaurant.

Management and Operating Procedures

Term of the MOU

This MOU will become effective upon the date of signing by both Parties. The MOU shall have an expiration date concurrent with the expiration of the current five-year extended term of the Restaurant Lease, December 31, 2010. At such time should Lessee elect to extend the term of said Lease, provided such election is exercised by written notice to Lessor given at least nine (9) months prior to the expiration of the current five-year extended term, the terms and conditions of the MOU may be extended, terminated, or modified in whole or in part upon good faith negotiations and mutual agreement between the Parties. In addition, the Parties hereby agree to negotiate in good faith possible changes, additions, or deletions to a final five-year term effective January 1, 2011, provided such changes shall not increase the Rent, except as provided for in paragraph 4(b) of the Restaurant Lease, shorten the term of the Lease, nor materially alter the rights or responsibilities of the Parties under the Lease.

Hours / Days of Operation

The Restaurant shall be open for public walk-in business on the following days and times as a minimum:

Tuesdays through Fridays year round	(4:00 p.m. – 8:00 p.m.)
Valentine's Day	(4:00 p.m. – 10:00 p.m.)
Mother's Day	(10:00 a.m. – 4:00 p.m.)
Father's Day	(10:00 a.m. – 4:00 p.m.)
Sweetest Day	(4:00 p.m. – 10:00 p.m.)
Thanksgiving Day	(11:00 a.m. – 4:00 p.m.)
New Year's Eve	(4:00 p.m. - ??)

Sunday Brunches	Seasonal beginning late April or early May through late September or October
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Lessee agrees to open up to twenty times per year to non-profit organizations and community groups (collectively "Non-Profit Groups") with free access to the rooms and audiovisual capabilities, as well as to provide complimentary coffee, water, and soda provided such Non-Profit Groups shall provide Lessee with a minimum of thirty (30) days' prior notice of its requested use of the Premises and provided further that such requested space has not been previously reserved by another party for the Non-Profit Group's requested date and time.

Restaurant Name Change

Lessee shall be permitted to change the name from "Coast Restaurant" to "Zilli Lake and Gardens."

Permitted Use

Parties agree that the proposed "Reservation-only food service" format may be added to the definition of permitted use of the Building contained in Paragraph 5.(a) "Use of Premises" of the original Restaurant Lease.

Rental/Commission Payments

Parties agree that all terms and conditions for the payment of commissions based upon gross sales in excess of \$2,499,999 annually, as provided for in Paragraph 4.(a) "Rental Payments" of the original Restaurant Lease, applies equally to all gross sales from the new reservation-only food service format. There shall be no deductions from gross sales in the calculation of commissions due the County. Deductions for "pass-throughs" or rental items charged to the clients shall not be permitted. Gross sales include all amounts collected by Lessee for food and beverage sales and rental of the Premises and North and South Gardens, as well as all rental or sales of related furnishings, equipment, and entertainment, but does not include sales tax and gratuities.

Parking

During the times the Restaurant is open for public walk-in business a flat fee of \$3.00 will be designated for employees and patrons of the Restaurant upon validation of the parking ticket by the Restaurant. Lessor, during the term of this MOU and any subsequent extension of the Restaurant Lease, may raise the rate for such parking by a maximum of twenty-five cents (\$0.25) per calendar year. During the times the Restaurant is closed for public walk-in business, i.e. closed or operating in a Reservation-only food service format, a flat fee of \$3.00, subject to any subsequent annual increase, will be designated for Restaurant employees upon validation of the parking ticket by the Restaurant, and patrons of the Restaurant will pay the daily posted rate.

Menu

The restaurant will have menus minimally including but not limited to offering both entrée size portions and tapas, or small plate dining, which features servings of eclectic selections. These items will satisfy the customers in terms of a meal based on the portion size.

By way of example a menu could include such items as:

Entrée Size Portions

Pan Asian chicken salad
Turkey burger
Lobster mac and cheese

True small plates

Maryland crab cakes crispy calamari
Pear pizzetta
Bruschetta

Lessee may increase the hours of operation of the Restaurant and revise menu items to meet customers demand, subject to the minimum requirements established above, at Lessee's discretion

Staffing

The restaurant anticipates providing between three and eight servers depending upon demand. Serving staff will be determined by day part and by studying historical reservation data. The restaurant shall be staffed sufficiently to ensure it meets reasonable customer expectations.

Construction

Lessee shall be permitted to make alterations and cosmetic changes to the Restaurant as indicated in its "Revised Business Model" of January 28, 2009 (copy attached) only upon receipt of written approval from the Parks Director, which approval shall not be unreasonably withheld or delayed. All proposed construction shall remain subject to the terms and conditions of Paragraphs # 11 and #12 of the original "Restaurant Lease."

Annual Audit

Prior to April 30 of each year, Lessee agrees to provide the Parks Director with an annual audit report *"based upon the calendar year revenue calculations prepared by Lessee's independent accounting firm, using standard and accepted accounting principals"* as indicated in Paragraph #4(a) of the original Restaurant Lease.

Entire Agreement


This Memorandum of Understanding constitutes the entire scope of the changes to the operating procedures, which have been modified and agreed upon between the Parties henceforward. All terms and conditions contained in the Restaurant Lease and all agreements herein referenced, remain in full force and effect except as herein expressly modified or interpreted in this Memorandum of Understanding.

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

MILWAUKEE COUNTY
DEPARTMENT OF PARKS, RECREATION AND CULTURE

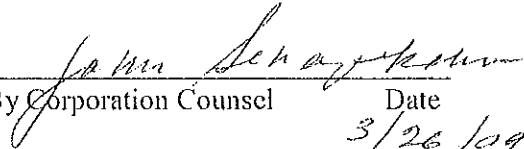
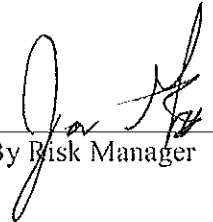
by  Date _____
Sue Black, Director

GRANDVIEW MANAGEMENT, INC.

by  Date 4/9/09
JAMES ZILLI
Print Name
C.F.O.
Title

Approved as to form and Independent
Contractor status by Corporation
Counsel

Reviewed by County's Risk Manager

 
By Corporation Counsel Date 3/26/09 By Risk Manager Date 3/26/09