

LAND SWAP AGREEMENT

THIS LAND SWAP AGREEMENT (“**Agreement**”) is made and entered into as of the ____ day of October, 2019 (the “**Effective Date**”), by and between Milwaukee County, a Wisconsin municipal body corporate (“**County**”) and Wisconsin Lutheran High School Conference, a Wisconsin non-profit corporation (“**WLHS**”).

RECITALS

A. County is the owner of that certain real property consisting of approximately 2.523 acres of vacant land located in the City of Milwaukee and State of Wisconsin 53213 (the “**County Property**”). The approximate boundary lines of the County Property are depicted and designated as “**WLHS Proposal**” on the drawing attached as Exhibit A to and made a part of this Agreement (the “**Swap Drawing**”).

B. WLHS has contracted to purchase approximately 4.23 acres of land known as 1699 10th Avenue, South Milwaukee, Wisconsin (“**WLHS Property**”). The approximate boundary lines of the WLHS Property are depicted in the drawing attached as Exhibit B to and made a part of this Agreement.

C. County is willing to convey the County Property to WLHS in exchange for WLHS conveying (or causing to be conveyed) the WLHS Property to County, all upon the terms and conditions hereinafter set forth.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which the parties each hereby acknowledge, County and WLHS agree as follows:

1. **AGREEMENT FOR LAND SWAP.** County hereby agrees to convey to WLHS the County Property, together with all appurtenances, including easements or rights-of-way relating thereto, and WLHS hereby agrees to convey (or cause to be conveyed) to County the WLHS Property, together with all appurtenances of the WLHS Property, including easements or rights-of-way relating thereto, in each case upon the terms and conditions and subject to the contingencies set forth in this Agreement. The exchange of the County Property and the WLHS Property is sometimes hereinafter referred to as the “**Land Swap**.”

2. **AGREEMENT TERM.** The initial term of this Agreement shall commence on the Effective Date and, unless earlier terminated in accordance with the provisions hereof, shall continue in effect until 11:59 p.m. on March 31, 2020. Any extension of this Agreement beyond the initial term requires the approval of the Milwaukee County Board of Supervisors (the “**County Board**”). If the Closing fails to occur prior to expiration of the initial term, and the County Board denies any requested extension,

this Agreement shall automatically terminate and the parties shall be released of all further liability hereunder.

3. DELIVERABLES.

A. County Deliverables. Within ten (10) days after the Effective Date, County shall deliver to WLHS true, correct and complete copies of such information, reports and other documentation in County's possession or control that may affect an informed evaluation of the physical conditions of the County Property or the operation or management of all or any portion thereof (the "**County Documents**"), other leases (if any), environmental and engineering reports (including testing reports), soils reports, surveys, governmental permits, communications or notices relevant to the County Property and any other relevant County Property records. County shall deliver to WLHS any additional County Documents that come into County's possession or control prior to Closing at such time as County acquires control of them, and if the delivery of such additional County Documents occurs less than ten (10) days prior to the Closing Date, WLHS shall have ten (10) days after receipt to review same and either approve or disapprove.

B. WLHS Deliverables. Within ten (10) days after the Effective Date, WLHS shall deliver to County true, correct and complete copies of such information, reports and other documentation in WLHS's possession or control that may affect an informed evaluation of the physical conditions of the WLHS Property or the operation or management of all or any portion thereof (the "**WLHS Documents**"), other leases (if any), tax bills, environmental and engineering reports (including testing reports), soils reports, surveys, governmental permits, communications or notices relevant to the WLHS Property and any other relevant WLHS Property records. WLHS shall deliver to County any additional WLHS Documents that come into WLHS's possession or control prior to Closing at such time as WLHS acquires control of them, and if the delivery of such additional WLHS Documents occurs less than ten (10) days prior to Closing, the County shall have ten (10) days after receipt to review same and either approve or disapprove.

C. No Reliance. Notwithstanding any provisions of this Agreement, each party agrees that the items provided by the other party pursuant to this Section 3 shall be for informational purposes only, and that, by providing such items, neither party is, and shall not be, making any representations or warranties to the other party with respect to the accuracy of the information or conclusions contained in any of the items. Each party shall rely solely upon its own investigations, inspections, and tests relating to the County Property or the WLHS Property, as the case may be, performed by such party. To the extent any investigations, inspections or tests of the County Property by WLHS involve activities undertaken on such County Property or other property owned by County, WLHS will obtain a County a Right of Entry Permit ("ROE Permit") in a form specified by County.

4. TITLE; SURVEY.

A. Promptly after the Effective Date, WLHS, at WLHS's expense will obtain commitments with respect to both the County Property and the WLHS Property (hereinafter referred to individually as a "**Title Commitment**" and collectively as the "**Title Commitments**") for the Title Policies (as defined

in Section 4 below) issued by the First American Title Insurance Company (the “**Title Company**”), together with legible copies of all documents (“**Exception Documents**”) that the Title Commitments identify as exceptions to coverage. Within forty-five (45) days after the Effective Date, WLHS also shall obtain, at WLHS’s expense and deliver to County surveys of the County Property and the WLHS Property (hereinafter referred to individually as a “**Survey**” and collectively as the “**Surveys**”), prepared by a surveyor licensed in the State of Wisconsin (“**Surveyor**”), conforming to the 2016 Minimum Standard Detail Requirements of ALTA/NSPS Surveys (the “**Survey Requirements**”) as are requested by County. Either party may waive this requirement with respect to the parcel it is obtaining in the exchange.

B. Prior to Closing, each party shall notify the other in writing (each, an “**Objection Notice**”) of any matters disclosed in the Title Commitments, Exception Documents and Surveys that are not acceptable to such party (the “**Objections**”), including the extent and impact of any environmental corridor or setback on Buyer’s intended use. For purposes of this Agreement, the term “**Permitted Exceptions**” shall mean (i) real estate taxes and assessments not yet due and payable; (ii) matters created by, through or under County (with respect to the WLHS Property) or WLHS (with respect to the County Property); (iii) matters disclosed in the Title Commitments that are acceptable to the applicable party; and (iv) Objections that the applicable party elects to take subject to, or is deemed to have elected to take subject to, as provided herein.

C. Each party may, within fourteen (14) days after receiving an Objection Notice from the other party (the “**Election Period**”), notify the objecting party which Objections, if any, such other party shall not remove or otherwise remedy prior to Closing (the “**Refusal Notice**”). Unless such other party provides the objecting party with such Refusal Notice within the Election Period, such other party shall remove or otherwise remedy all such Objections to the objecting party’s reasonable satisfaction on or before Closing. If such other party delivers a Refusal Notice and the objecting party does not terminate this Agreement prior to Closing, the objecting party shall be deemed to have waived its objections to those Objections that such other party has refused to remove or otherwise remedy, and such Objections shall become Permitted Exceptions.

D. The condition of title that each party approves (or is deemed to approve) in accordance with this Section 4 is the “**Approved Title.**” Each Survey that a party approves (or is deemed to have approved) in accordance with this Section 4 is an “**Approved Survey.**”

5. **LAND DIVISION.** The parties acknowledge and agree that the County Property is currently a part of a larger parcel of real estate and will need to be separated from such larger parcel by way of a lot line adjustment or land division to be approved by the applicable governmental authorities prior to Closing (hereinafter referred to individually as a “**Land Division**” and collectively as the “**Land Divisions**”). The parties shall cooperate in order to obtain the approval of a certified survey map, plat, or other appropriate mechanism as required by the City of Milwaukee to subdivide the applicable properties substantially as depicted and designated on the Swap Drawing and to satisfy all requirements with respect to each such Land Division in compliance with all governing laws so as to permit the Land Swap to occur. Prior to submission to the City of Milwaukee, County shall provide WLHS with a copy of the proposed preliminary and final certified survey map, plat or other appropriate mechanism for subdivision of the County Property for WLHS’s approval (which approval shall not be unreasonably withheld), WLHS shall pay all reasonable costs and expenses in connection with the Land Division of the County

Property. The parties acknowledge and agree that the legal descriptions of the County Property shall not be finalized until the Land Division is finalized and agreed to by the parties, and that the County Deed and County Property Title Policy (defined in Section 6(A) below) and the WLHS Deed(s) and the WLHS Property Title Policy(ies) (defined in Section 6(B) below) shall utilize the legal descriptions created by the applicable Land Division(s) and approved as provided herein.

6. DEED; TITLE POLICY.

A. County shall convey marketable and insurable title to the County Property to WLHS by a special warranty deed in form and substance acceptable to WLHS (the “**County Deed**”), free, clear and unencumbered except for the Permitted Exceptions. WLHS shall not be required to accept title to the County Property (or to convey the WLHS Property to County) unless the Title Company irrevocably commits to issue to WLHS an ALTA 2006 Owner’s Title Insurance Policy with respect to the County Property (collectively, the “**County Property Title Policy**”), with an effective date of the Closing Date, naming WLHS as the insured, with no exceptions to coverage other than the Permitted Exceptions, and with extended coverage over the general exceptions, insuring over (i) liens for labor, services or materials, whether or not of record; (ii) the rights of parties in possession; (iii) unrecorded easements; (iv) taxes or special assessments not shown by the public record; and (v) exceptions that a current, accurate survey would disclose. WLHS may satisfy itself prior to Closing that it will be able to obtain from the Title Company other express affirmative coverages, to the extent available, either by the terms of the County Property Title Policy or by endorsements thereto, but all in form and substance satisfactory to WLHS (collectively, the “**Additional Coverages**”). WLHS shall pay the premium for the basic Title Policy at Closing, for any extended coverage over the general exceptions, and for all other Additional Coverages in the County Property Title Policy.

B. WLHS shall convey (or shall cause the applicable titleholder to convey) marketable and insurable title to the WLHS Property to County by a special warranty deed (or a general warranty deed if conveyed by the applicable titleholder) or deeds in form and substance acceptable to County (the “**WLHS Deed**”), free, clear and unencumbered except for the Permitted Exceptions. County shall not be required to accept title to the WLHS Property (or to convey the County Property to WLHS) unless the Title Company irrevocably commits to issue to County one or more ALTA 2006 Owner’s Title Insurance Policies with respect to the WLHS Property (collectively, the “**WLHS Property Title Policies**”), with an effective date of the Closing Date, naming County as the insured, with no exceptions to coverage other than the Permitted Exceptions, and with extended coverage over the general exceptions, insuring over (i) liens for labor, services or materials, whether or not of record; (ii) the rights of parties in possession; (iii) unrecorded easements; (iv) taxes or special assessments not shown by the public record; and (v) exceptions that a current, accurate survey would disclose. County may satisfy itself prior to Closing that it will be able to obtain from the Title Company any Additional Coverages. WLHS shall pay the premium for the basic Title Policies at Closing, for any extended coverage over the general exceptions, and for all other Additional Coverages in the WLHS Property Title Policy(ies).

7. CLOSING.

A. Closing Requirements. The concurrent transfer of title of the County Property to WLHS and of the WLHS Property to County (“**Closing**”) shall occur on or before March 31, 2020, on a date

mutually agreed to by the parties (the “**Closing Date**”), unless this Agreement is otherwise extended pursuant to Section 2, in which case the parties will negotiate a new closing date. The Closing shall be effected through an escrow with the Title Company. It is the intent of the Parties to schedule a Closing Date prior to December 31, 2019; however, this agreement term expires on March 31, 2020, to allow additional time for any delays in closing. The transaction shall be closed by means of a “New York Style Closing” with concurrent delivery of the documents of title and delivery of the Title Policies. Each party shall provide any undertaking (“**Gap Undertaking**”) to the Title Company necessary for the New York Style Closing to occur. On the Closing Date, all matters to be performed under this Agreement incident to the transfers of title to the County Property and the WLHS Property shall be performed concurrently at the offices of Title Company. All documents to be delivered at Closing and all payments to be made shall be delivered on the Closing Date in escrow to the Title Company.

B. Simultaneous Closing Condition. County acknowledges that the closing of the acquisition of the WLHS Property by WLHS shall occur in a simultaneous transaction with the Land Swap contemplated herein. Therefore, notwithstanding anything to the contrary contained in this Agreement, WLHS’s obligation to convey the WLHS Property (and, likewise, County’s obligation to convey the County Property) is expressly conditioned upon the simultaneous closing of WLHS’s acquisition of the WLHS Property (collectively, the “**Simultaneous Closing Condition**”). If the Simultaneous Closing Condition is not satisfied at the time of Closing, WLHS shall, subject to the timeline set forth in Section 2 and any approved extension thereof, have the right to extend the deadline for satisfaction of the Simultaneous Closing Condition (and therefore extend the Closing Date) for a period not to exceed sixty (60) days. If the Simultaneous Closing Condition is not satisfied within such sixty (60) day period, and the parties do not agree in writing prior to the expiration of such sixty (60) day period to extend the Closing for an additional period of time, this Agreement shall automatically terminate and the parties shall have no further obligations to one another under this Agreement, except for those obligations hereunder that expressly survive the termination of this Agreement.

C. Additional Closing Conditions to the Parties’ Obligation to Close. The following are also conditions precedent to the obligations of County and WLHS to consummate the Land Swap (collectively, the “**Additional Closing Conditions**”): as of Closing (i) all of the representations and warranties of each party hereunder are true and correct in all material respects; (ii) each party has performed in all material respects all of its covenants hereunder; (iii) no moratorium, statute, order, regulation, ordinance or judgment of any court or governmental agent has been enacted, adopted, issued or initiated prior to Closing that would materially and adversely affect the County Property, the WLHS Property or the Land Swap; (iv) the County Property is delivered to WLHS and the WLHS Property is delivered to County at Closing, in each case free and clear of any occupants or rights to possession; (v) the Title Company has issued or irrevocably and unconditionally committed to issue the County Property Title Policy and the WLHS Property Title Policies as provided in Section 6 hereof; (vi) all other conditions to the parties’ obligations to proceed to Closing in this Agreement are satisfied in all material respects; and (vii) each party has delivered all documents that this Agreement requires such party to deliver at Closing. If, at any time prior to Closing, either party is actually aware of any condition to such party’s obligations hereunder that is not fulfilled in any material respect or any default hereunder by the other party, such party shall not be obligated to consummate the Land Swap, but may do so at its option, provided that if such party so elects to consummate the Land Swap, such party shall be deemed to have waived such condition or such default, as applicable.

8. **CLOSING DELIVERIES.**

A. County's Closing Deliveries. On or before the Closing Date, County shall deliver to the Title Company the following documents and materials, all of which shall be in form and substance reasonably acceptable to WLHS:

(i) A general warranty deed, duly executed, acknowledged and in recordable form, accompanied by all necessary transfer tax declarations as applicable law may require for recording of such deed, conveying marketable and insurable title of the County Property to WLHS, subject only to the Permitted Exceptions (the "**County Deed**").

(ii) County's certificate that, as of Closing, all County's representations and warranties in this Agreement remain true and correct in all material respects to the same extent as if made on and as of the Closing Date.

(iii) An ALTA statement duly executed by County.

(iv) A GAP undertaking duly executed by County.

(v) Evidence reasonably satisfactory to the Title Company of County's authority to execute and deliver all documents required to be delivered by County to WLHS at Closing and perform all of County's obligations hereunder.

(vi) Such additional documents and instruments as the Title Company may reasonably request in order to effect the transactions contemplated hereby or any local, county or municipal statute, ordinance, code, rule or regulation may require.

B. WLHS's Deliveries at Closing. On or before the Closing Date, WLHS shall deliver to the Title Company the following documents and materials, all of which shall be in form and substance reasonably acceptable to County:

(i) One or more special warranty deeds (or general warranty deeds if the WLHS Property is conveyed to County by the existing titleholder), duly executed, acknowledged and in recordable form, accompanied by all necessary transfer tax declarations as applicable law may require for recording of each such deed, conveying marketable and insurable title of the WLHS Property to County, subject only to the Permitted Exceptions (the "**WLHS Deeds**"). County acknowledges and agrees that one or more of the WLHS Deeds may be a direct deed from the existing titleholder to County, provided such deed conveys marketable and insurable title to County, subject only to the Permitted Exceptions.

(ii) WLHS's certificate that, as of Closing, all WLHS's representations and warranties in this Agreement remain true and correct in all material respects to the same extent as if made on and as of the Closing Date.

(iii) A non-foreign status certification duly executed by WLHS or the existing titleholder, as applicable.

(iv) An ALTA statement duly executed by WLHS or the existing titleholder, as applicable.

(v) A GAP undertaking duly executed by WLHS or the existing titleholder, as applicable.

(vi) Evidence reasonably satisfactory to the Title Company of WLHS's or, as applicable, the existing titleholder's authority to execute and deliver all documents required to be delivered by WLHS to County at Closing and perform all of WLHS's obligations hereunder.

(vii) Such additional documents and instruments as the Title Company may reasonably request in order to effect the transactions contemplated hereby or any local, county or municipal statute, ordinance, code, rule or regulation may require.

C. Joint Deliveries at Closing. On the Closing Date, County and WLHS shall deliver to the Title Company the following documents and materials, all of which shall be in form and substance reasonably acceptable to the parties:

(i) Properly completed State of Wisconsin transfer tax forms.

(ii) A closing statement setting forth all costs and prorations required hereunder.

9. **CLOSING COSTS; PRORATIONS.**

A. County's Costs. County shall pay (i) the costs and other fees to remedy any Objections that County has agreed or is deemed to have agreed to remedy as provided in Section 4C above, (ii) all costs and expenses in connection with County's due diligence, and (iii) County's legal fees and expenses and the cost of all instruments, documents, and papers that County is required to deliver or to cause to be delivered hereunder.

B. WLHS's Costs. WLHS shall pay (i) the costs and expenses relating to the negotiation of this Agreement and other agreements contemplated herein, (ii) all of the closing costs due to the Title Company, (iii) all costs and expenses of or related to the issuance of the County Property and WLHS

Property Title Policies, (iv) the costs related to endorsements to the County Property and WLHS Property Title Policies and other fees to remedy any Objections that WLHS has agreed or is deemed to have agreed to remedy as provided in Section 4C above, (v) all State, County and local documentary, transfer, stamp, and similar taxes, if any, in connection with the transfer of the WLHS Property to County, (vi) the costs and expenses related to the Land Divisions of the County Property, including the recording fees payable in connection with the recording of the certified survey map or plat creating the subdivision and the recording fees for the Land Divisions with respect to the County Property and WLHS Property, (vii) the recording fees payable in connection with the recording of the County Deed and WLHS Deeds, (viii) all costs and expenses of Additional Coverages in the County Property Title Policy desired by WLHS and in the WLHS Property Title Policy desired by County, (ix) all costs and expenses in connection with WLHS's due diligence review, and (x) WLHS's legal fees and expenses and the cost of all instruments, documents, and papers that WLHS is required to deliver or to cause to be delivered hereunder.

C. Prorations. General real estate taxes and assessments for the County Property (if any) and the WLHS Property shall be adjusted ratably as of the Closing Date. WLHS shall be responsible for all pending and accrued real estate taxes for the WLHS Property prior to and through the Closing Date (including real estate taxes for the year in which the Closing occurs, regardless when such taxes are due and payable), and County shall be responsible for such pending and accrued real estate taxes for the County Property, if any, prior and through the Closing Date (including real estate taxes for the year in which the Closing occurs, regardless when such taxes are due and payable). The amount of the current general taxes not then ascertainable shall be adjusted on the basis of the most recent ascertainable tax bills for the WLHS Property and such proration shall be final.

10. **EASEMENTS.**

A. Easements. As additional consideration for WLHS entering into this Agreement, County agrees to grant to WLHS a temporary construction easement over portions of the real property adjacent to the County Property for purposes of construction of improvements on the County Property after Closing (the "**Temporary Construction Easement**"). Prior to Closing, the parties shall negotiate the form and substance of an easement agreement reasonably acceptable to both parties granting the Temporary Construction Easement for a period not to exceed six (6) years after the Closing Date (the "**Temporary Construction Easement Agreement**"). The Temporary Construction Easement Agreement shall be recorded at Closing and shall be a Permitted Exception.

11. **DEFAULT**. If either party fails to perform such party's obligations hereunder (except as excused by the other's default), the party claiming default shall make written demand for performance. If the party upon whom such demand is served fails to comply with such demand within ten (10) days from the date such demand is delivered, then the party serving such demand shall be entitled to exercise any and all of its remedies available in law or in equity, including specific performance, it being agreed that specific performance is an appropriate remedy under the circumstances.

12. **COUNTY'S REPRESENTATIONS AND WARRANTIES**. As a material inducement to WLHS's execution and delivery of this Agreement and the performance by WLHS of its obligations hereunder, County does hereby acknowledge, warrant, represent and agree to and with WLHS that as of the Effective Date through and including the Closing Date:

A. Conflicts and Pending Action. There is no agreement to which County is a party or, to County's knowledge, which is binding on County which is in conflict with this Agreement. County has not received notice from any applicable governmental authority of any pending or threatened action against County that relates to the County Property, including but not limited to condemnation proceedings. To County's knowledge, no pending or threatened litigation or governmental proceeding affects the County Property, and no unresolved legal or administrative actions, suits or proceedings or no unresolved arbitrations affect the County Property. County has not received notice from any third party of any pending or threatened litigation affecting the County Property.

B. Due Authorization. County has full power and authority pursuant to County Board File No. _____ to execute, deliver, and carry out the terms and provisions of this Agreement and each of the other agreements, instruments, and documents herein required to be made or delivered by County pursuant hereto, and has taken all necessary action and obtained all required consents to authorize the execution, delivery and performance of this Agreement and such other agreements, instruments and documents. The individuals executing this Agreement and all other agreements, instruments, and documents herein required to be made or delivered by County pursuant hereto on behalf of County are and shall be duly authorized to sign the same on County's behalf and to bind County thereto.

C. Compliance with Law. County has not received any notice that the County Property or its use is in violation of any law, ordinance or regulation, including any applicable local, state and federal environmental laws or regulations ("**Environmental Laws**"). To County's knowledge: (i) no release of a Hazardous Material (hereinafter defined) has occurred at the County Property, (ii) the County Property has not been used as a dump site, waste disposal area or for any similar usage, and (iii) no underground storage tanks, petroleum products or solid, hazardous or toxic materials exist on the surface or under the subsurface of the County Property or in any surface or ground waters on or under the County Property. The term "**Hazardous Material**" includes, without limitation, oil and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls, radon, urea formaldehyde, radioactive materials, pesticides (other than typical pesticides used in normal quantities in connection with farming operations) and all other materials classified or regulated as hazardous or toxic under any Environmental Laws.

D. Special Assessments. To County's knowledge, no special assessments have been levied or are contemplated by governmental authorities which would affect the County Property.

E. Leases. There are no leases or occupancy agreements affecting any portion of the County Property there are no adverse or other parties in possession of the County Property or any part thereof, and no party will be granted prior to Closing, any license, lease or other right or interest relating to the use or possession of the County Property or any part thereof, except with the prior written consent of WLHS.

13. **WLHS'S REPRESENTATIONS AND WARRANTIES.** WLHS hereby makes the following representations and warranties to County as of the Effective Date through and including the Closing Date:

A. Conflicts and Pending Action. There is no agreement to which WLHS is a party or, to WLHS's knowledge, which is binding on WLHS which is in conflict with this Agreement. WLHS has not received notice from any applicable governmental authority of any pending or threatened action against WLHS that relates to the WLHS Property, including but not limited to condemnation proceedings. To WLHS's knowledge, no pending or threatened litigation or governmental proceeding affects the WLHS Property, and no unresolved legal or administrative actions, suits or proceedings or no unresolved arbitrations affect the WLHS Property. WLHS has not received notice from any third party of any pending or threatened litigation affecting the WLHS Property.

B. Due Authorization. WLHS has full power to execute, deliver, and carry out the terms and provisions of this Agreement and each of the other agreements, instruments, and documents herein required to be made or delivered by WLHS pursuant hereto, and has taken all necessary action and obtained all required consents to authorize the execution, delivery and performance of this Agreement and such other agreements, instruments and documents. The individuals executing this Agreement and all other agreements, instruments, and documents herein required to be made or delivered by WLHS pursuant hereto on behalf of WLHS are and shall be duly authorized to sign the same on WLHS's behalf and to bind WLHS thereto.

C. Compliance with Law. WLHS has not received any notice that the WLHS Property or its use is in violation of any law, ordinance or regulation, including any applicable Environmental Laws. To WLHS's knowledge: (i) no release of a Hazardous Material has occurred at the WLHS Property, (ii) the WLHS Property has not been used as a dump site, waste disposal area or for any similar usage, and (iii) no underground storage tanks, petroleum products or solid, hazardous or toxic materials exist on the surface or under the subsurface of the WLHS Property or in any surface or ground waters on or under the WLHS Property.

D. Bankruptcy Matters. WLHS has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors.

E. OFAC Compliance. WLHS is currently in compliance with and shall at all times during the term of this Agreement remain in compliance with the regulations of the Office of Foreign Assets Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) and any statute, executive order (including the September 24, 2001, Executive Order Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism), or other governmental action relating thereto.

F. Special Assessments. To WLHS's knowledge, no special assessments have been levied or are contemplated by governmental authorities which would affect the WLHS Property.

G. Leases. To WLHS's knowledge, there are no leases or occupancy agreements affecting any portion of the WLHS Property, there are no adverse or other parties in possession of the WLHS Property or any part thereof (other than the existing titleholders, whose rights of possession will terminate upon conveyance of the portions of the WLHS Property owned by such existing titleholders, and no party

other has been granted, or will be granted prior to Closing, any license, lease or other right or interest relating to the use or possession of the WLHS Property or any part thereof, except with the prior written consent of County. Prior to Closing, WLHS enter into new leases with any other third party which are not terminable by WLHS with respect to the WLHS Property as of the Closing Date without cost to County.

14. **ACTIONS AFTER THE EFFECTIVE DATE.** The parties covenant to do the following through the Closing Date:

A. Title. Neither party shall make or permit any changes to the condition of title to the County Property or the WLHS Property, as the case may be, that would change the Approved Title or the Approved Surveys except with the other party's advance written consent, which consent may be withheld in such other party's sole discretion. In this regard, neither party shall sell, assign, or create any right, title, or interest in the County Property or the WLHS Property, as the case may be, or any part thereof, or create, or permit to exist, any lien, encumbrance or charge thereon (or suffer the foregoing to occur), except with the other party's advance written consent, which consent may be withheld in such other party's sole discretion.

B. Maintenance and Operation of Property. County shall maintain (or cause to be maintained) the County Property in substantially its current condition, and WLHS shall maintain (or cause to be maintained) the portions of the WLHS Property which are currently owned by WLHS in substantially its current condition. Neither party shall make (or cause to be made) any material alterations to or upon the County Property or the WLHS Property, as the case may be, except with the other party's advance written consent, which consent may be withheld in the other party's sole discretion.

C. Agreements. Neither party shall make any agreement concerning the County Property or the WLHS Property, as the case may be, which would affect such party's ability to perform its obligations under this Agreement except with the other party's advance written consent, which consent may be withheld in such other party's sole discretion.

D. Representations and Warranties. Each party shall immediately notify the other party of any act or omission that to its knowledge would render any of its or the other party's representations and warranties herein untrue or misleading in any material respect.

15. **SURVIVAL.** All representations and warranties by the respective parties contained herein are intended to and shall (i) remain true and correct through and including the Closing, (ii) be deemed to be material, and (iii) survive the delivery of the County Deed and the WLHS Deeds for a period of one (1) year.

16. **SUCCESSORS AND ASSIGNS.** This Agreement and the rights and obligations set out herein may not be assigned by either party without first obtaining the written consent of the other party, which consent may be withheld in such other party's sole discretion. Subject to the foregoing, the terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

17. **NO THIRD PARTY BENEFITS.** This Agreement is for the sole benefit of County and WLHS and their respective permitted successors and assigns. No other person shall have any right or remedy or other legal interest of any nature under or by reason of this Agreement.

18. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original (including facsimile or pdf signatures), but all of which, taken together, shall constitute one and the same Agreement. It shall not be necessary in making proof of this Agreement or any counterparts hereof to produce or account for any of the other counterparts. The parties hereto may deliver this Agreement by facsimile/pdf, and each party shall be permitted to rely upon the signatures so transmitted to the same extent and effect as if they were original signatures.

19. **ENTIRE AGREEMENT.** This Agreement contains all of the covenants, conditions and agreements between the parties and shall supersede all prior correspondence, agreements and understandings, both verbal and written. The parties intend that this Agreement constitutes the complete and exclusive statement of its provisions. No extrinsic evidence may be introduced in any proceeding involving this Agreement.

20. **NOTICES.** All notices required or permitted to be given pursuant to the terms hereof shall be in writing and shall be delivered either by (a) certified mail, return receipt requested, in which case notice shall be deemed delivered three (3) Working Days (defined in Section 22 below) after deposit, postage prepaid in the U.S. mail, (b) a nationally recognized overnight courier, in which case notice shall be deemed delivered the next Working Day after deposit with such service or courier, (c) facsimile or e-mail (followed with “hard copy” sent by regular mail within 24 hours thereafter), in which case notice shall be deemed delivered when the facsimile or other electronic transmission is sent, except that if the facsimile or e-mail is sent after 6:00 p.m. Central time on a Working Day, then notice shall be deemed delivered on the next Working Day, or (d) personal delivery, in which case notice shall be deemed delivered when received or refused (as applicable). All such notices shall be addressed as follows:

If to County: Milwaukee County Office of Corporation Counsel
901 North Ninth Street, Suite 303
Milwaukee, WI 53233
Attn: David N. Farwell, Esq.
Email: David.Farwell@milwaukeecountywi.gov

With a copy to: Milwaukee County Parks
9480 W. Watertown Plank Rd.
Wauwatosa, WI 53226
Attn: Parks Executive Director
Email: guy.smith@milwaukeecountywi.gov

If to WLHS: Wisconsin Lutheran High School
330 North Glenview Avenue
Milwaukee, WI 53213
Attn: Dr. Kenneth J. Fisher
Email: ken.fisher@wlhs.org

With a copy to: Davis & Kuelthau, s.c.
111 East Kilbourn Avenue, Suite 1400
Milwaukee, WI 53202
Attn: Joseph E. Tierney IV, Esq.
Email: jtierney@dkattorneys.com

The foregoing addresses may be changed by written notice to the other party as provided herein.

21. **CONSTRUCTION OF AGREEMENT.** In construing this Agreement, all headings and titles are for the convenience of the parties only and shall not be considered a part of this Agreement. Whenever required by the context, the singular shall include the plural and the masculine shall include the feminine and vice versa. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had prepared it. All Exhibits attached hereto are incorporated in this Agreement by reference thereto.

22. **TIME.** Time is of the essence of every provision herein contained. Whenever the date or deadline for any action to be taken is not a Working Day, the relevant date or deadline shall be the next Working Day. For purposes of this Agreement, the term “**Working Day**” shall mean any day that is not a Saturday, Sunday or an official state or federal holiday in the State of Wisconsin.

23. **APPLICABLE LAW.** This Agreement shall be governed by the internal laws of the State of Wisconsin. Nothing contained in this Agreement shall be construed to constitute a waiver by the County of any otherwise applicable immunity, limited immunity, or limitation on liability under Wisconsin law.

24. **NO ORAL MODIFICATION OR WAIVER.** This Agreement may not be changed or amended orally, but only by an agreement in writing. No waiver shall be effective hereunder unless given in writing, and waiver shall not be inferred from any conduct of either party.

25. **NO BROKERS.** County and WLHS each represents and warrants to the other party that its sole contact with the other party regarding this transaction has been directly with the other party without a broker and that no broker or finder can properly claim a right to a commission or finder's fee based upon contacts between the claimant and the warranting party with respect to the other party, the County Property or the WLHS Property. County and WLHS shall indemnify, defend and hold the other party harmless from and against any loss, cost or expense, including, but not limited to, attorneys' fees and court costs, resulting from any claim for a fee or commission by any broker or finder in connection with the County Property or the WLHS Property and this Agreement resulting from the indemnifying party's actions.

26. **ACQUISITION “AS IS.”**

A. County Acknowledgement. County acknowledges and agrees that, except as stated in this Agreement, the WLHS Deeds and other documents delivered by WLHS pursuant to this Agreement at Closing, WLHS has not made, and is not making, any representation, statement, warranty or promise to County about the WLHS Property, including, but not limited to, the physical aspects and condition of any portion of the WLHS Property, the condition of the soil on the WLHS Property, the presence or absence of Hazardous Material, the feasibility, desirability, suitability, fitness or adaptability of the WLHS Property for any particular use, the assessments, fees or charges that may be assessed by any district, taxing authority, or governmental or quasi-governmental entities, or the value of the WLHS Property, all such warranties, express or implied, including, but not limited to, those of fitness for a particular purpose, habitability and use, being hereby disclaimed by WLHS. County shall have an opportunity to conduct a physical inspection of the WLHS Property and such other investigations as it deems necessary or appropriate. County is acquiring the WLHS Property in “**AS IS**” physical condition and in “**AS IS**” state of repair.

B. WLHS Acknowledgement. WLHS acknowledges and agrees that, except as stated in this Agreement, the County Deed and other documents delivered by County pursuant to this Agreement at Closing, County has not made, and is not making, any representation, statement, warranty or promise to WLHS about the County Property, including, but not limited to, the physical aspects and condition of any portion of the County Property, the condition of the soil on the County Property, the presence or absence of Hazardous Material, the feasibility, desirability, suitability, fitness or adaptability of the County Property for any particular use, the assessments, fees or charges that may be assessed by any district, taxing authority, or governmental or quasi-governmental entities, or the value of the County Property, all such warranties, express or implied, including, but not limited to, those of fitness for a particular purpose, habitability and use, being hereby disclaimed by County. WLHS shall have an opportunity to conduct a physical inspection of the County Property and such other investigations as it deems necessary or appropriate. WLHS is acquiring the County Property in “**AS IS**” physical condition and in “**AS IS**” state of repair.

27. **PUBLIC RECORDS LAW.** The Parties understand that the County is bound by the public records law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. § 19.21 *et seq.* WLHS hereby agrees that it shall be obligated to assist the County in retaining and timely producing records that are subject to the Wisconsin Public Records Law upon any statutory request having been made, and that any failure to do so shall constitute a material breach of this Agreement, whereupon WLHS shall then and in such event be obligated to indemnify, defend and hold the County harmless from liability under the Wisconsin Public Records Law occasioned by such breach. Except as otherwise authorized by the County in writing, records that are subject to the Wisconsin Public Records Law shall be maintained for a period of seven (7) years after expiration or termination this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed one or more copies of this Agreement as of the date set forth below.

COUNTY:
MILWAUKEE COUNTY, WISCONSIN

By: _____
Guy Smith, Parks Director

WLHS:

Wisconsin Lutheran High School Conference, a
Wisconsin non-profit corporation

By: _____
Dr. Kenneth J. Fisher, President

Approved with regards to County Ordinance Chapter 42:

By: _____ Date: _____
Community Business Development Partners

Reviewed by:

By: _____ Date: _____
Risk Management

Approved for execution:

By: _____ Date: _____
Corporation Counsel

*Approved as to funds available per
Wisconsin Statutes Section 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

EXHIBIT A

SWAP DRAWING

See Attached

EXHIBIT B

WLHS PROPERTY

See Attached