

AMENDED AND RESTATED LEASE AGREEMENT

Between

DISCOVERY WORLD LTD. f/k/a PIER WISCONSIN  
LTD.

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

Original Date of Agreement: August 11, 2003

Amended and Restated as of           , 2017

Initial Term: July 1, 2003 – July 1, 2033

## AMENDED AND RESTATED LEASE AGREEMENT

This Amended and Restated Lease Agreement (this “Agreement”) is made and entered into as of the [ ] day of [ ] 2017, by and between DISCOVERY WORLD, LTD. f/k/a PIER WISCONSIN LTD., a Wisconsin nonstock corporation (hereinafter referred to as “TENANT”), and the CITY OF MILWAUKEE, a Wisconsin municipal corporation, by and through its BOARD OF HARBOR COMMISSIONERS (hereinafter collectively referred to as “CITY”).

WITNESSETH:

WHEREAS, TENANT and CITY entered into that Development and Lease Agreement (the “Prior Lease”) as of the 11<sup>th</sup> day of August 2003 pursuant to which TENANT would construct, maintain and operate certain improvements, including a structure now commonly known as Discovery World, on the Property owned by CITY and leased to TENANT;

WHEREAS, the Improvements contemplated in the Prior Lease have been completed and the parties have agreed upon the final legal description of the Property;

WHEREAS, in addition to the Improvements contemplated in the Prior Lease, TENANT also constructed a sculpture garden outside of the Property on land owned by CITY and the parties desire to enter into a Sculpture Garden Easement to define certain rights and obligations with respect to the sculpture garden;

WHEREAS, the parties desire to enter into a Basin Easement allowing TENANT to operate certain boat docks and other areas located around and near the Property;

WHEREAS, the parties desire to establish a public access easement to allow public pedestrian access to the walkway around the Improvements located on the Property;

WHEREAS, TENANT desires to construct an addition to Discovery World and CITY desires to allow such addition to occur on the Property in accordance with this Agreement;

WHEREAS, the parties acknowledge that CITY, in cooperation with the State of Wisconsin and Milwaukee County, is undertaking a project known as the Lakefront Gateway Project that involves reconfiguring freeway entrance and exit ramps and extending Lincoln Memorial Drive to the south and Clybourn Street to the east which will improve access to the Property and that as part of the Lakefront Gateway Project, a portion of the Property may be dedicated as public street as more particularly described herein;

WHEREAS, the parties desire to clarify certain other rights, obligations and provisions contained within the Prior Lease;

WHEREAS, in connection with the foregoing, TENANT and CITY desire to amend, restate and supersede the Prior Lease in its entirety as more particularly provided herein; and

WHEREAS, The execution of this Agreement was authorized by TENANT on [REDACTED], by the Board of Harbor Commissioners on [REDACTED], and by the Common Council through the adoption of Resolution File No. [REDACTED] on [REDACTED].

NOW, THEREFORE, in consideration of the premises, and their mutual obligations, TENANT and CITY hereby agree that the Prior Lease shall be superseded and replaced in its entirety by this Agreement and that all provisions of rights granted and covenants made in the Prior Lease and all previous leasehold agreements pertaining to the Property are hereby superseded in their entirety and shall have no further force or effect, and the parties hereto further agree as follows:

1. Definitions.

“Basin Easement” means the easement described in Section 44.

“Board” means the Board of Harbor Commissioners of the City of Milwaukee.

“Conservation Easement” means that Conservation Easement for Lakeshore State Park recorded in the Recording Office on March 29, 2006 as Document No. 09208873 including the substituted legal description anticipated in Section XX of the Conservation Easement which is attached as Exhibit “K” to this Agreement.

“Cruise Ship Dock” means the riprap breakwater extending east and south from the Property with a concrete access road extending to an east facing cruise ship dock.

“Discovery World” means the building existing on the Property on the date of this Agreement which houses the Discovery World museum operated by TENANT.

“Easements” means the Sculpture Garden Easement and the Basin Easement.

“Easement Areas” means the real property encumbered by the Easements.

“Environmental Laws” means all federal, state and local laws including statutes, regulations, ordinances, codes, rules and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances including, but not limited to, the Federal Solid Waste Disposal Act, the Federal Clean Air Act, the Federal Clean Water Act, the Federal Resource Conservation and Recovery Act of 1976, the Federal Comprehensive Environmental Responsibility Cleanup Liability Act of 1980, regulations of the Environmental Protection Agency (“EPA”), regulations of the Nuclear Regulatory Agency, the Wisconsin Spill Statute, and regulations of the WDNR, now or at any time hereafter in effect.

“Event of Default” means the occurrence of one or more of the events described in Paragraph 10A.

“Harbor” means the South Dock, East Dock and Schooner Harbor as described in the Operating Agreement.

“Hazardous Substances” means “hazardous materials,” “hazardous substances,” “hazardous wastes,” “toxins,” or “pollutants” (as defined by applicable Environmental Laws).

“Improvement” or “Improvements” mean collectively Discovery World, any enclosed permanent structures, underground parking, any improvements made under the Operating Agreement, capital improvements, installations, works of art, architectural features, signs, and site development constructed within the boundaries of the Property or Easement Areas during the term of this Agreement and shall include the Improvement Additions if Improvement Additions are constructed.

“Improvement Additions” means any future additions to or substantial modifications to the exterior appearance of the Improvements, including, if constructed, the Proposed Addition, made by TENANT after the date of this Agreement, but during the Term of this Agreement.

“Non-TENANT Caused Contamination” means any environmental condition of the Property except TENANT Caused Contamination, including any contamination, and violations of the Environmental Laws, arising out of the use by the public of the Property or Easement Areas.

“Operating Agreement” means the Amended and Restated Discovery World Dock and Harbor Operation Plan dated of even date herewith by and between CITY and TENANT attached hereto as EXHIBIT “J” (as may be amended, restated, supplemented or otherwise modified from time to time).

“Permitted Encumbrances” means easements, encumbrances and matters affecting title to the Property and the Easement Area which are set forth on EXHIBIT “F”.

“Preexisting Environmental Conditions” means any hazardous materials or Hazardous Substances, or conditions which existed on the Property or Easement Areas at the commencement of the Prior Lease, even though discovered by TENANT in the course of its investigation or activities.

“Prior Lease” means that certain Development and Lease Agreement dated as of the 11<sup>th</sup> day of August 2003 by and between TENANT and CITY.

“Property” means the real property described and depicted on EXHIBIT “B” and Exhibits “1B” through “4B”, which Exhibits reflect the final description and depiction of the Property and all underground facilities upon or beneath the Property.

“Proposed Addition” means the approximately 10,000 square foot, approximately 1 to 2.5 story addition proposed to be built on the Property by TENANT on the north side of and connected to Discovery World.

“Recording Office” means the Milwaukee County Register of Deeds Office.

“Sculpture Garden Easement” means the easement described in Section 43.

“Sculpture Garden Easement Area” means the real property described and depicted on EXHIBIT “I”.

“TENANT Caused Contamination” means any Hazardous Substances brought to the Property or generated by non-CITY parties, including but not limited to TENANT, TENANT Parties, TENANT’s sublessees, guests and invitees or agents or other non-CITY parties as a consequence of their presence or operation upon or beneath the Property, excepting any and all non-TENANT Caused Contamination.

“TENANT Parties” means TENANT, its agents, employees, and contractors.

“Termination Default” means the occurrence of one or more of the events described in Paragraph 10.

“WDNR” means the State of Wisconsin Department of Natural Resources.

2. Demise of the Property. CITY hereby leases, demises and lets the Property unto TENANT subject to TENANT’s compliance with the terms and conditions set forth in this Agreement.

3. Intentionally Deleted.

4. Property Description. The Property, and the underground facilities upon or beneath the Property, is more particularly described on EXHIBITS “B”, “1B”, “2B”, “3B” and “4B” of this Agreement.

5. Term. The initial term of this Agreement shall be a period of thirty (30) years, commencing on July 1, 2003 and expiring at 11:59 P.M. on July 1, 2033 (the “Initial Term”), except as otherwise provided herein, including but not limited to terminations under Sections 9 through 12. This Agreement shall be automatically renewed upon identical terms and conditions for one additional successive period of thirty (30) years (the “Option Term”, and together with the Initial Term, the “Term”) unless TENANT sends a written notice to CITY, at least twelve (12) months prior to the end of the Initial Term of an election to not renew this Agreement.

6. Rent.

Rent during the Initial Term of this Agreement shall be an annual payment, payable to CITY, of 5% of all amounts in excess of \$5,000,000.00 of TENANT net income (as determined in accordance with Generally Accepted Accounting Principles, but in no event shall revenue or income generated from the sale of sponsorships or naming rights (collectively, “Naming Rights”) to any portion of the Improvement or the Property be considered net income unless the revenue

or income generated from the sale of such Naming Rights is not associated with or related to capital improvements, repairs or replacements).

Rent for the Option Term shall be the fair market rental of the Property for the Option Term as determined by the procedure below ("Fair Market Rental"), as of the date one year prior to the end of the Initial Term.

Fair Market Rental for the Option Term shall be determined as follows. CITY and TENANT shall meet and confer, and in good faith negotiate to determine the Fair Market Rental (which shall not be determined with reference to Rent for the Initial Term) for the Property for the Option Term. If they are unsuccessful in coming to an agreement on such Fair Market Rental, on or before ten (10) months prior to the end of the Initial Term, then the following procedure shall apply.

CITY and TENANT shall each give notice (the "Determination Notice") to each other setting forth their respective determination of the Fair Market Rental. In the event that the determinations set forth in such Determination Notices differ by less than ten percent of the higher, then the arithmetic average of the two determinations shall be the Fair Market Rental. If the two determinations differ by more than ten percent, then the Fair Market Rental shall be determined as follows: TENANT shall choose an appraiser and advise CITY in writing of the name of such appraiser. CITY shall, within ten days thereafter, also select an appraiser, and advise TENANT in writing of the name of such appraiser. Each party agrees to select a licensed real estate appraiser who is an individual of substantial experience with respect to the valuation of commercial real estate in the metropolitan Milwaukee area. Each party shall be responsible for paying the fees of the appraiser selected by it.



The two appraisers so appointed shall be instructed to each prepare a written appraisal which will show the Fair Market Rental of the Property as of the date one year prior to the commencement date of the Option Term. Each appraiser shall notify both parties in writing of their determination as described herein within sixty days after the appointment of CITY's appraiser. In the event that the difference, if any, in the Fair Market Rental amounts determined by such appraisals is less than or equal to ten percent of the Fair Market Rental amount in the higher appraisal, then the arithmetic average of the two appraisals shall be the Fair Market Rental for the Property, and such determination shall be conclusive and binding upon the parties. If the difference between such two appraisals is more than ten percent and CITY and TENANT cannot mutually agree on a Fair Market Rental amount, then within fifteen days after the date that the parties are notified of the Fair Market Rentals in such appraisals, the two appraisers previously retained shall jointly appoint a third appraiser meeting the same qualifications as the original two appraisers, and shall advise the parties in writing the name of such appraiser. Each of the parties thereto shall pay one-half of the fees of any such third appraiser. Such third appraiser shall then be instructed as the initial two appraisers were previously instructed to prepare an appraisal showing the Fair Market Rental for the Property as of a date one year prior to the commencement of the Option Term. Such third appraiser shall notify both parties, in writing of its determination as described herein within thirty days after its appointment, and the arithmetic average of the three appraisals thus determined shall be the Fair Market Rental for the Property, and shall be binding and conclusive upon the parties.

Once the Fair Market Rental has been determined using the above procedure, TENANT and CITY shall commence negotiations concerning the procedure for paying the Fair Market Rental during the Option Term, provided that TENANT shall have the option, but not the

obligation, to pay the Fair Market Rental in cash in one lump sum prior to commencement of the Option Term.

7. Use of the Property. TENANT shall use the Property and Easement Areas in the furtherance of TENANT's mission including the construction, maintenance, improvement and operation of the Improvements and the Easement Areas, and of the Sailing Vessel Denis Sullivan. The Improvements and the Sailing Vessel Denis Sullivan shall be used for the purpose of education of the general public; the promotion of the Port of Milwaukee and the City of Milwaukee, the State of Wisconsin and public and private entities therein; and for the establishment and maintenance of historical, cultural and environmental bonds between the Milwaukee community at large and the Great Lakes as a natural resource; and for the provision in Milwaukee of a tourism center based upon Great Lakes maritime history. The Property and Easement Areas may further be used for purposes of providing docking for the Sailing Vessel Denis Sullivan and the provision of other docking available to members of the public. Notwithstanding the above, in no event shall this Section 7 require that TENANT continue its use or operation of the Sailing Vessel Denis Sullivan.

Additional uses or changed uses of the Property not otherwise permitted hereunder are not permitted without the prior written approval of the Board. The Board's written consent to TENANT assigning, subletting, licensing or allowing the use of the Property to any other person or entity pursuant to Section 17A shall be deemed prior written approval of such entity's uses of the Property. TENANT shall comply with all Federal and State laws and regulations, and any ordinance or regulation of any municipal board or agency applicable to development in general in the City of Milwaukee, to enable development and use of the Property as herein specified or as may hereafter be approved by CITY. The uses stated above have been determined by CITY to

be recreational uses which enhance the enjoyment of the natural scenic beauty of the lakefront by the general public, including those persons who use the Improvements and uses which are in aid of navigation on the Great Lakes.

CITY, through the Board, has determined by its approval and execution of this Agreement, that the uses identified above constitute utilizing the lakefront in a manner which the Board deems appropriate and expedient and which the Common Council of CITY has approved by resolution, and that the Board considers this Agreement advisable, and that the uses identified above have been determined by the Board to be for the best interests of port and harbor development, and as a recreational use and a development which would support recreational use.

8. Occupancy Subject to Existing Easements and Restrictions.

TENANT'S interest in and occupancy of, the Property and Easement Areas shall be subject to the terms of this Agreement and the Easements and to the Permitted Encumbrances identified on attached EXHIBIT "F". TENANT may, at its own expense, purchase an ALTA owner's policy of title insurance insuring TENANT'S interest in and to the Property and Easement Areas subject only to such Permitted Encumbrances.

9. Termination and Vacation.

A. TENANT shall vacate the Property as provided below. The Property and all then-existing Improvements shall be returned to CITY by TENANT broom clean and in good order and condition within three hundred sixty (360) days after the expiration or earlier termination of this Agreement, except that CITY may elect, within 180 days after the termination or expiration of this Agreement, to require TENANT to raze any or all of the Improvements at TENANT's sole expense, or in the alternative CITY may elect to accept the Property in the condition that then exists. Notwithstanding the above, TENANT shall not be required to remove any roadways

and related facilities, nor utility lines or facilities, nor restore any earthen berms, but shall be required to identify their location, within 360 days after the expiration or termination of this Agreement. In the event that TENANT fails to vacate the Property as required in this Paragraph, within the time limits required, CITY shall have the option to cause the Property to be vacated as required by this Paragraph, and to assess the actual costs of such vacation against TENANT.

If CITY elects to retain the Improvement(s) on the Property, CITY may require TENANT, within sixty (60) days of CITY's election, to convey its title to such Improvement(s) to CITY, free and clear of all liens and encumbrances created by acts of TENANT, unless approved by CITY. Any such election shall be made in writing within 180 days after the expiration or termination of this Agreement. No option with respect to the election to remove or not to remove such Improvement(s) shall rest with TENANT and TENANT shall have the obligation and responsibility to perform that which CITY shall direct.

B. Intentionally Deleted.

C. Intentionally Deleted.

10. Default. This Agreement is intended to be a long-term commitment between the parties. The fact that TENANT invested substantial monies in the construction of the Improvements precludes early termination of the entire Agreement, early transfer of the ownership of the Improvement(s), or demolition of the Improvement(s) as appropriate remedies for certain defaults. Therefore, in the event of any breach of this Agreement by TENANT, except for a "Termination Default" defined below, CITY shall have the remedies set forth in Paragraph 11. In the event of any breach of this Agreement by TENANT, which constitutes a Termination Default, CITY shall also have the remedies set forth in Paragraph 12.

A. The occurrence of one or more of the following events 1 through 5 of this Paragraph 10A shall be considered an “Event of Default” under the terms of this Agreement:

1. TENANT shall be adjudged a bankrupt, or a decree or order, approving as properly filed, a petition or answer asking for reorganization of TENANT under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of this State, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

2. TENANT shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or TENANT shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of TENANT under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

3. TENANT shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for TENANT; or

4. TENANT shall abandon the Property for a period of thirty (30) days or be delinquent in any payments due under this Agreement, other than rent payments which have given rise to a Termination Default, required to be made by TENANT hereunder and such delinquency shall continue for ninety (90) days after notice thereof in writing to TENANT; or

5. TENANT shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by TENANT, and such default shall continue for ninety (90) days after notice thereof in writing to TENANT.

B. The occurrence of one or more of the following events 1 through 3 of this Paragraph 10B shall be considered a "Termination Default" under the terms of this Agreement:

1. TENANT shall abandon the Property for a period of one (1) year.
2. TENANT shall make any assignment, transfer, conveyance or other disposition of its interest in the Property, other than those permitted by Paragraph 17, without the express prior written consent of CITY.
3. TENANT shall be delinquent in the payment of rent due under Paragraph 6 of this Agreement and such delinquency shall continue for one hundred eighty (180) days after notice thereof in writing to TENANT.

It is expressly not an Event of Default hereunder for TENANT to sublease or license any portion of the Property, to any other entity, for the uses allowed hereunder, as long as TENANT remains responsible for the actions of such sublessees and licensees.

11. Remedies for Events of Default. In the event that an Event of Default on the part of TENANT shall occur, then CITY may, but shall not be required to, cure such Event of Default. TENANT shall repay to CITY, on demand, the entire expense incurred by CITY in curing such Event of Default. If TENANT fails to make any such repayment within sixty (60) days after demand therefor, then CITY may pursue any available remedy, at law or in equity, except for the termination of this Agreement. Any act or thing done by CITY pursuant to the provisions of this Section shall not be construed as a waiver of any covenant, term or condition contained in this Agreement.

12. Remedies for Termination Defaults.

If any Termination Default continues for a period of one (1) year after written notice from CITY to TENANT, as provided herein, and unless such Termination Default is cured by

TENANT it shall be lawful for CITY, at its election in the manner and upon the terms herein provided, to declare this Agreement ended, and to recover possession of the Property and Easement Areas, either with or without process of law, to enter and to expel, and remove TENANT and all agents, employees and representatives of TENANT engaged in operating the Property and Easement Areas or occupying the Property and Easement Areas, using such force as may be necessary in so doing. TENANT shall thereafter vacate the Property and Easement Areas in accordance with the provisions of Paragraph 9A above. If any Termination Default shall occur which is: (a) curable; but (b) cannot with due diligence be cured within a period of one (1) year; and (c) if notice thereof in writing shall have been given to TENANT; and (d) if TENANT prior to the expiration of said one (1) year from and after the giving of such notice, commences to eliminate the cause of such Termination Default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such Termination Default and thereafter does so cure such Termination Default, then CITY shall not have the right to terminate this Agreement. However, the curing of any Termination Default in such manner shall not be construed to limit or restrict the right of CITY to terminate this Agreement and to enforce all of CITY'S rights and remedies hereunder, for any other Termination Default not so cured.

13. Force Majeure. If either party hereto is prevented from performing an obligation imposed upon it hereunder within the time specified, and such delay is for reasons which were not such party's fault or which were beyond such party's reasonable control, including, but not limited to, acts of God, war, insurrection, weather, strikes, or civil disturbances, then the time within which such party was to perform shall be extended for a period equal to the delay.

14. CITY Responsibilities. CITY was responsible for and completed the mutually agreed upon public improvement work on or adjacent to the Property.

15. Maintenance and Housekeeping. Maintenance of the Property and Easement Areas (including but not limited to the Improvements, the dockwalls (exclusive of repairs made necessary by catastrophic dockwall failure unless such failure is caused by TENANT), docks, mooring systems, railings and utility systems) as well as housekeeping and cleanliness, shall be the responsibility of TENANT. The standard of maintenance shall be approved by the Board. The unenclosed portions of the Property and Improvements shall, at all times be maintained by TENANT at a first class standard equivalent to similar institutional facilities. CITY retains the right to have any of its officers, agents or employees inspect the unenclosed portions of the Property at all reasonable times and the enclosed portions of the Property at all reasonable times, during normal business hours of TENANT, and upon reasonable notice, for the sole purpose of determining if TENANT is complying with this Agreement. TENANT shall be required to grant full access to the Property at such times and for such purposes.

CITY shall also retain the right to perform grass cutting, landscaping, snow removal or other site maintenance upon the Property and Improvements in the event that TENANT fails to do so as required herein after the notice as required herein. The costs of such work by CITY shall be reimbursed by TENANT. Maintenance responsibilities during any period of construction of Improvement Additions shall be modified to the level identified in any CITY approvals of the building plans.

16. Utilities. TENANT shall be solely responsible for the installation, maintenance and purchase of all utility services on the Property and Easement Areas that are required by TENANT during the Term of this Agreement. CITY shall be solely responsible for the maintenance of all of CITY's underground utility lines located on the Property which serve parcels other than the Property or the Easement Areas. TENANT shall locate all utility services



necessary to serve any Improvement Additions in the location identified in the preliminary design plans and the final construction plans submitted to CITY pursuant to Section 22C.

17. TENANT Assignment, Subleasing and Dock Operation.

A. TENANT shall not, except with the prior written consent of the Board or as otherwise provided herein, assign all or any portion of its interest in this Agreement, to any person or entity not affiliated with TENANT. Notwithstanding the above, TENANT may sublet, license, or allow use of any portion of the Property to any other person or entity, for the uses allowed under this Agreement, as long as TENANT remains responsible for the actions of such sublessees and licensees under this Agreement. CITY shall be provided with a copy of any such sublease, license or agreement granting such use.

B. TENANT will operate, pursuant to the Basin Easement and the Operating Agreement, with a term co-extensive with the Term of this Agreement, the Harbor and any additional dock or piers, approved by the Board (such approval not to be unreasonably withheld) and other appropriate governmental agencies. TENANT shall, on or before March 31st of each year, submit an annual, i.e., April 1st to March 31st, budget to the Board setting forth proposed recreational vessel docking and slip rates as well as the proposed operating or improvement expenses for maritime activities within the Property and the Harbor. Maritime activities, the budget referenced above, and docking or slip rental charges within that portion of the harbor are subject to the approval by the Board. For the avoidance of doubt, TENANT has no obligation to maintain or operate the Cruise Ship Dock.

18. Naming Rights. To the extent that CITY has the authority to confer Naming Rights, TENANT, subject to CITY's approval, shall have the following Naming Rights opportunities: (1) the footprint of the Improvements; (2) the Harbor; and (3) any areas identified

as the “Amphitheater.” TENANT may confer Naming Rights to any areas inside the Improvements.

19. Indemnification. Except as limited below, TENANT hereby agrees to indemnify and save harmless CITY from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses, including reasonable attorney’s fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of the Improvements on the Property and the Easement Areas, or in the carrying on of its business as hereinbefore set forth on the Property and Easement Areas, except when such liability, claim, demand, judgment or loss arises from a negligent act of CITY, its agents, contractors or employees. Notwithstanding the above, TENANT shall not be required to indemnify CITY for any such risks arising out of the public access to the Property or Easement Areas, except, and only to the extent, of TENANT’S contribution to such risks by its acts, including the design, construction and maintenance of the Improvements and the maintenance of the Property and Easement Areas, or the acts of its agents, contractors and employees. Nothing in this Paragraph shall override the language in Paragraph 27 regarding the liability of TENANT relating to environmental matters.

20. Insurance. TENANT shall secure and maintain in force throughout the Term of this Agreement insurance in the types and amounts set forth on EXHIBIT “G”. TENANT shall furnish CITY a certificate of insurance naming CITY and the Board as additional named insureds with respect to the insurance provided under this Section. The certificate of insurance shall provide that the company will furnish CITY with the standard commercial thirty (30) day written notice of cancellation, nonrenewal or material change.

TENANT shall retain insurance coverage and shall fully and timely pay all required insurance premiums throughout the Term of this Agreement and without interruption. CITY retains the right, at its sole discretion to require TENANT to adjust the coverage limits, of such insurance annually effective on each January 1 during the Term of this Agreement, to such insurance coverages and limits which are customarily provided at that time, by similar enterprises, and are commercially reasonable at that time. Failure of TENANT to maintain the required coverage shall not relieve it of any contractual responsibility or obligation under this Agreement. CITY shall have the right to review all policies providing the required coverage, to confirm they meet the requirements contained herein.

The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no CITY official or employee has any interest, direct or indirect, or is receiving any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

21. Taxes and Charges. TENANT shall pay and discharge before delinquent, all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the Term hereof properly levied, assessed, imposed or charged on the Property or the Improvements.

22. Improvement Additions. CITY and TENANT recognize the special significance of the Property's position on the lakefront. TENANT acknowledges that it may only construct Improvement Additions after satisfying the following requirements.

A. The Improvement Additions must be built in compliance with all applicable building codes and with all permits as are applicable generally to all construction of such size and type.

B. The Improvement Additions must comply with all zoning requirements applicable to the Property.

C. As a contractual requirement of this Agreement, TENANT shall not construct Improvement Additions upon the Property without the prior written consent of CITY as provided in this Paragraph 22C. The Board reserves the right to review and approve the plans for the construction, renovation or alteration of the Improvement Additions prior to their implementation by TENANT, such approval not to be unreasonably withheld, conditioned or delayed. The review and approval of such plans shall include consideration of aesthetics, design and the impact of the proposal upon the Property and surrounding area. Notwithstanding the foregoing, the following shall be permitted and subject only to prior design and aesthetic approval of the Board: construction, renovation or alteration of the Improvement Additions that are (1) necessary to comply with laws, regulations and orders of any governmental body; (2) necessary to make the Property safe, sanitary and comfortable for employees, patrons and visitors; and (3) necessary to repair, replace or upgrade existing Improvement Additions which, in the reasonable judgment of TENANT, are in disrepair, worn out, obsolete or outmoded. Plans for any underground construction must be approved by CITY's Commissioner of Public Works. Such approvals are required prior to the issuance of any building permit for the Improvement Additions or the commencement of construction. Any material proposed changes to such approved plans, shall be similarly submitted to CITY and must be approved by CITY in the same manner as stated above, prior to TENANT commencing construction incorporating any such proposed changes. Any future revisions and expansions to the Improvement Additions must be similarly submitted to, and approved by, CITY in the same manner as stated above. TENANT shall provide "as-built" drawings of the Improvement Additions, and any and all future revisions

and expansions thereto, to CITY within one hundred twenty (120) days following issuance of an occupancy permit or completion of construction, if no occupancy permit is required.

D. By executing this Agreement, CITY acknowledges that the plans for the Proposed Addition are approved as required by Paragraph 22C, but must still meet the requirements and any approval process necessary under Paragraphs 22A and 22B.

E. CITY makes no representations or warranties that the Property is suitable for the construction of any Improvement Additions, including the Proposed Addition. TENANT shall be solely responsible for all due diligence necessary prior to construction of any Improvement Additions. Any additional construction costs necessary due to soil conditions or contamination or other conditions of the Property shall be solely the responsibility of TENANT.

23. Compliance with Laws and Orders. TENANT agrees to observe fully and to comply with any lawful rule, regulation or directive which shall emanate from any state, federal or local departments or agencies having jurisdiction over the Property or Easement Areas generally, and not by reason solely of this Agreement, except as specifically provided in Paragraph 27, concerning environmental conditions.

24. Permits and Licenses. TENANT shall be solely responsible for obtaining any and all permits and licenses that may be required now or hereafter for its maintenance or operation of the Improvements or any Improvement Additions, from any Federal, State, local or other governmental body or authority, and any construction permits required by any Federal, State or County governmental body, and the permits and approvals from CITY required in Paragraph 22 above.

25. Intentionally Deleted.

26. Public Access. TENANT agrees that this Agreement and the lease of the Property are subject to, and CITY hereby reserves from the lease of the Property, a nonexclusive perpetual easement as described below.

These specific easement rights are to insure the rights of the public to use and enjoy the Improvements, and all facilities contained therein, at such times as the Improvements are open for business, during announced special events, for publicly available tours, for special classes and educational events made available to CITY and area residents, for public access to the scenery of the lakefront during inclement weather, for access to the lakefront by those with physical disabilities, and similar purposes, and which access rights to the Property and Improvements are subject to reasonable rules and regulations of TENANT, to protect the exhibits of TENANT, protect the safety of the visitors to TENANT, and to allow for proper sharing of uses.

This public access easement shall also include public pedestrian access, as shown in red and green on Exhibit "L," from the eastern end of East Michigan Street and the Conservation Easement to, on and across an outdoor walkway located on the south and east sides of Discovery World, on a 24-hours a day, seven-days a week basis, including times when the Improvements are not open for business. The public pedestrian access may not be closed to accommodate private events or events to which the general public is not granted admission free of charge, except that the portion shown in red on Exhibit "L" may be closed periodically for such events, but only if all portions shown in green on Exhibit "L" remain open for public access and are marked with signage substantially similar to what is shown on Exhibit "M" to notify the public that the public pedestrian access remains open and available for public use. Any change in the signage must be reviewed and approved by the Port Director before use by TENANT.

This outdoor public access easement may be subject to temporary closures or limitations in access as reasonably necessary for construction, maintenance, repairs, security, to protect the safety of the public or to avoid the acquisition of adverse or prescriptive rights. Any such temporary closure shall require the prior approval of CITY's Port Director, which approval shall not be unreasonably withheld, conditioned or delayed and, if no response to a request for approval is received within ten (10) days, the request shall be deemed approved. Notwithstanding the forgoing, no approval to temporarily close the public access easement shall be required in the event of an emergency or when ordered closed by the Milwaukee Police Department, Milwaukee Fire Department, CITY's Port Director or United States Coast Guard for security or safety purposes, in which case the CITY's Port Director shall be notified by TENANT of such closure as soon as reasonably practical. The public access easement shall, at TENANT's sole costs, be kept in good repair, lit for safety, identified with appropriate signage in multiple locations to notify the public that the public access easement is available for use by the public and be compliant with the requirements of the Americans with Disabilities Act of 1990, including changes made by the ADA Amendments Act of 2008 (P.L. 110-325), which became effective on January 1, 2009, and as further amended from time to time.

27. Environmental Compliance and Obligations.

A. Compliance with Environmental Laws. TENANT shall fully comply with all Environmental Laws, subject to the limitations contained herein. TENANT shall, at its sole cost and expense, promptly take all actions to investigate and test for the presence of any TENANT Caused Contamination upon or beneath the Property and Easement Areas, and/or shall remediate any TENANT Caused Contamination on the Property or Easement Areas as may be required by any federal, state or local governmental agency or political subdivision.

B. No Liability for Preexisting Environmental Conditions. However, notwithstanding anything contained in this Agreement to the contrary, TENANT shall not be liable for any investigation or remediation, or orders relating to the same, for Preexisting Environmental Conditions. CITY shall fully comply, or cause compliance by any responsible party, with all Environmental Laws with respect to any Preexisting Environmental Conditions upon the Property and Easement Areas.

It is emphasized that TENANT shall require no investigation or remediation of the Property by CITY.

C. Intentionally Deleted.

28. Time of the Essence. It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Agreement.

29. Waiver. One or more waivers by either party of any covenant or condition of this Agreement shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by either party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.



30. Sole Agreement and Amendment. This Agreement, the Easements and the Exhibits to which reference is made herein contain all of the agreements and covenants made between the parties hereto, and shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement. All Exhibits referenced herein are attached hereto and incorporated herein by this reference.

31. Notice. Any notice provided for herein or given pursuant to this Agreement, shall be deemed in compliance herewith and served upon mailing if sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To CITY:

BOARD OF HARBOR COMMISSIONERS  
2323 South Lincoln Memorial Drive  
Milwaukee, WI 53207  
Attention: Municipal Port Director

and to

Commissioner of City Development  
809 North Broadway  
Milwaukee, WI 53202

and to

Commissioner of Public Works Department  
841 North Broadway  
Milwaukee, WI 53202

To TENANT:

Discovery World Ltd.  
Attention: President  
500 North Harbor Drive  
Milwaukee, WI 53202

Copy to: Attorney Sarah Jelencic  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202-5306

32. Records.

A. TENANT shall keep accurate, full and complete books and accounts with respect to the calculation of Rent, calculation of net income used to calculate Rent, any agreements related to Naming Rights and any and all other records required under the terms of this Agreement. All such books and accounts shall be maintained in accordance with Generally Accepted Accounting Principles consistently applied and shall be kept for a period of seven (7) years.

B. CITY acknowledges that as a 501(c)(3) corporation, TENANT is required to file audited financial statements that are available to the public. Upon request from CITY, TENANT shall provide CITY with copies of such audited financial statements. If such information is insufficient for CITY to determine whether TENANT's annual net income exceeds Five Million and NO/100 Dollars (\$5,000,000.00), then TENANT shall cooperate with CITY to provide additional information, provided that TENANT may keep the identities of donors and specific terms of certain donations confidential, as permitted by law.

C. The parties acknowledge that CITY is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. §19.21, et seq. TENANT acknowledges that it is obligated to assist CITY in retaining and producing records related to this Agreement that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Agreement.

33. Governing Law. This Agreement shall be governed by the internal laws of the State of Wisconsin.

34. Severability. If any term or provision of this Agreement or any Exhibit hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Agreement and Exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by applicable law.

35. Nondiscrimination. TENANT hereby agrees that in its use of the Property and Easement Areas and in the activities undertaken pursuant to this Agreement it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

36. Conflict of Interest. No officer or employee of CITY during his/her tenure or for one (1) year thereafter, shall have any interest, direct or indirect, in this Agreement or the proceeds hereof.

37. Authority of CITY. Any matters contained herein which require the consent of CITY, may be delegated to a particular department of CITY, or to CITY's Port Director and his designees except that approval of the design criteria of the Improvements and Improvement Additions, and all revisions or expansions thereto, on the Property and Easement Areas shall be exercised through the CITY's Commissioner of City Development, for all construction above ground, and CITY's Commissioner of Public Works, for all construction below ground.

38. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same Agreement.

39. Recordation. Upon execution, a memorandum of this Agreement and the Easements shall each be recorded by TENANT in the Recording Office and CITY shall be provided a copy of the recording information.

40. CITY Condition. IT IS FURTHER AGREED AND UNDERSTOOD that this Agreement shall not be effective until it is submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

41. Intentionally Deleted.

42. Paragraph and Section. The terms “Paragraph” and “Section” as used in this Agreement shall be synonymous.

43. Sculpture Garden Easement. CITY hereby grants to TENANT a non-exclusive easement (the “Sculpture Garden Easement”) over and on the Sculpture Garden Easement Area subject to the terms and limitations set forth in this Agreement, including the provisions contained in EXHIBIT “H”, and any restrictions, covenants and easements of record. The Sculpture Garden Easement is granted solely to the extent reasonably necessary for the purpose of using, operating, maintaining and removing sculpture garden installations for the benefit of the public in accordance with all applicable federal, state and local laws, statutes, ordinances, codes and regulations. The Sculpture Garden Easement shall terminate upon termination of this Agreement. CITY reserves the right to grant additional easements over, across, upon or under the area of the Sculpture Garden Easement provided such easements do not unreasonably

interfere with TENANT's use of the Sculpture Garden Easement or the Property or risk damage to the sculpture garden installations.

44. Basin Easement. CITY hereby grants to TENANT an easement (the "Basin Easement") over and on the land, docks and breakwater that are subject to the Operating Agreement attached as EXHIBIT "J" (as amended and restated, and as may be amended, restated, supplemented or otherwise modified from time to time, the "Operating Agreement"). TENANT's use of the Basin Easement shall be limited by and consistent with the terms of the Operating Agreement. The Basin Easement and the Operating Agreement shall terminate upon termination of this Agreement. CITY reserves the right to grant additional easements over, across, upon or under the area of the Basin Easement provided such easements do not unreasonably interfere with TENANT's use of the Basin Easement or the Property.

45. Lakefront Gateway Project Dedication. As part of the Lakefront Gateway Project, a portion of the Property having the width of a standard public street, but not to exceed the existing paved area, and located on the westernmost boundary of the Property and directly east of and adjacent to the Sculpture Garden Easement may be dedicated by CITY as public right-of-way to connect East Michigan Street and East Clybourn Street. Such dedication may be done unilaterally by CITY upon providing 60-days' notice to TENANT. However, TENANT shall be allowed to maintain an access point on the dedicated public right-of-way to allow reasonable, 24/7 access to its parking garage. If and when that dedication occurs, the dedicated portion shall no longer be part of the Property or subject to this Agreement.

46. Plaque. In recognition of the CITY's contributions throughout the planning, design, development, construction and operation of the Improvements, TENANT covenants to install a plaque recognizing CITY's contributions.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Agreement under seal as of the day and year first above written.

ACKNOWLEDGEMENTS

**CITY OF MILWAUKEE**

\_\_\_\_\_  
Tom Barrett, Mayor

\_\_\_\_\_  
James R. Oczwarski, City Clerk

COUNTERSIGNED:

\_\_\_\_\_  
Martin Matson, Comptroller

Signatures of Tom Barrett, Mayor; James R. Oczwarski, City Clerk; and Martin Matson, Comptroller are hereby authenticated this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Mary L. Schanning, Deputy City Attorney

**BOARD OF HARBOR COMMISSIONERS**

\_\_\_\_\_  
Timothy K. Hoelter, President

\_\_\_\_\_  
Donna Luty, Secretary

STATE OF WISCONSIN  
MILWAUKEE COUNTY

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 2017, Timothy K. Hoelter, President, and Donna Luty, Secretary of the Board of Harbor Commissioners, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

\_\_\_\_\_  
NOTARY PUBLIC, State of Wisconsin  
My Commission Expires \_\_\_\_\_





## INDEX TO EXHIBITS

- A. Intentionally Deleted
- B. Property Description
  - 1B. Property Description: As-built Storm Sewer
  - 2B. Property Description: As-built Sanitary Sewer
  - 3B. Property Description: As-built Water Mains
  - 4B. Property Description: As-built Gas, Electric and Fiber Optic Locations
- C. Intentionally Deleted
- D. Intentionally Deleted
- E. Intentionally Deleted
- F. Permitted Encumbrances
- G. Insurance Requirements
- H. Sculpture Garden Easement
- I. Sculpture Garden Easement Area
- J. Operating Agreement
- K. Conservation Easement Legal Description
- L. Public Access Easement

EXHIBIT A

*[Intentionally Deleted]*

EXHIBIT B  
PROPERTY DESCRIPTION

*[See Attached]*

EXHIBIT 1B

PROPERTY DESCRIPTION: AS-BUILT STORM SEWER

*[See Attached]*

EXHIBIT 2B

PROPERTY DESCRIPTION: AS-BUILT SANITARY SEWER

*[See Attached]*

EXHIBIT 3B

PROPERTY DESCRIPTION: AS-BUILT WATER MAINS

*[See Attached]*

EXHIBIT 4B

PROPERTY DESCRIPTION: AS-BUILT GAS, ELECTRIC AND FIBER OPTIC

LOCATIONS

*[See Attached]*

Exhibit 4B - 1

EXHIBIT C

*[Intentionally Deleted]*

Exhibit C - 1



EXHIBIT D

*[Intentionally Deleted]*

EXHIBIT E

*[Intentionally Deleted]*

Exhibit E - 1

## EXHIBIT F

### PERMITTED ENCUMBRANCES

Municipal and zoning ordinances

Recorded utility easements

Restrictions contained in Lake Bed Grants

Public Trust restrictions

Conservation Easement for Lakeshore State Park recorded in the Recording Office on March 29, 2006 as Document No. 09208873 including the substituted legal description anticipated in Section XX of the Conservation Easement which is attached as Exhibit K to this Agreement.

EXHIBIT G

INSURANCE REQUIREMENTS

Comprehensive General Liability Insurance (including but not limited to Products and Completed Operations and Contractual Liability, as applicable to TENANT's obligations under this Agreement) with limits not less than:

Each Occurrence Limit:	\$1,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Policy Aggregate:	\$2,000,000

Automotive Liability Insurance with Limits not less than:

Bodily Injury and Property Damage Combined Single Limit:	\$1,000,000 per occurrence
---	----------------------------

Worker's Compensation Insurance in accordance with Chapter 102, Wisconsin Statutes and any applicable federal law.

Umbrella Coverage: \$10,000,000 in aggregate

All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. TENANT shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, TENANT shall provide CITY full, complete and accurate copies of the insurance policies required by this Agreement. Once in every 5-year period during the Term of this Agreement, CITY may review the extent and limits of the insurance coverage required herein. After said review, should CITY determine an increase in the extent and/or limits of insurance coverage is required, TENANT shall be so notified in writing and TENANT shall cause such increases to be placed in effect within 30 days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown herein or increased by CITY beyond what similarly situated non-profits operating similar facilities in the southeastern Wisconsin area then carry for insurance.

## EXHIBIT H

### TERMS OF THE SCULPTURE GARDEN EASEMENT

1. Public Access. The Sculpture Garden Easement Area shall be available for public use at all times, except for such times as the Sculpture Garden Easement Area must be temporarily closed as reasonably necessary for construction, maintenance, repairs, security, to protect the safety of the public or to avoid the acquisition of adverse or prescriptive rights. TENANT shall have the right periodically to temporarily close off any portion of the Sculpture Garden Easement Area for any of these purposes. Public use shall be limited to normal and customary pedestrian and recreational uses appropriate for a public space of the size, scope and of the Sculpture Garden Easement Area and otherwise in accordance with the terms of the Agreement and this EXHIBIT H and provided further that the public access and rights granted herein shall exclude any commercial activities or operations not expressly permitted by CITY.

2. Improvements. TENANT shall not modify the exterior appearance of existing improvements within the Sculpture Garden Easement Area or install new improvements within the Sculpture Garden Easement Area after the date of this Agreement without the prior written consent of CITY.

3. Assignment. TENANT may not assign its rights under the Sculpture Garden Easement, except to parties to whom the Agreement may be assigned, under the provisions of Paragraph 17 of the Agreement; however, TENANT may license or allow the use of the Sculpture Garden Easement Area for special events of limited duration subject to the provisions of the Agreement and this EXHIBIT H.

4. Rent. There shall be no additional consideration other than the covenants set forth herein to be paid by TENANT for the Sculpture Garden Easement.

5. Reservation of Rights. CITY reserves the right to grant or create any additional easements over, across, upon, or under the Sculpture Garden Easement Area provided said easements do not unreasonably interfere with TENANT's use of the Sculpture Garden Easement Area or damage the existing improvements or structures..

6. Termination.

a. CITY shall have the right to undertake development, or to offer a lease or easement to another entity for development of any or all of the Sculpture Garden Easement Area or to dedicate the Sculpture Garden Easement Area or any portion of it as public right-of-way pursuant to the terms of this subsection. Prior to approval of any such development or dedication by the CITY, CITY shall meet and confer with TENANT to discuss such development or dedication and shall give due consideration to the impact such development or dedication will have on the TENANT's use of the Property and will cooperate with TENANT in the design and construction of such development or dedication. If, after meeting and conferring as required herein, such development or dedication is not compatible with TENANT's use of the Sculpture Garden Easement Area, CITY may, upon ninety (90) days written notice to TENANT, terminate the Sculpture Garden Easement as it relates to all or any portion of the Sculpture Garden Easement Area.

b. Upon termination of the Sculpture Garden Easement in its entirety or as it relates to any portion of the Sculpture Garden Easement Area, TENANT shall, at CITY's request and cost, within three (3) months after such request, remove and relocate all sculptures and other improvements located in the effected portion of the Sculpture Garden Easement Area that were installed by TENANT unless CITY provides written notice to TENANT that the sculptures and/or improvements can remain. After removal, the sculptures and other improvements may,

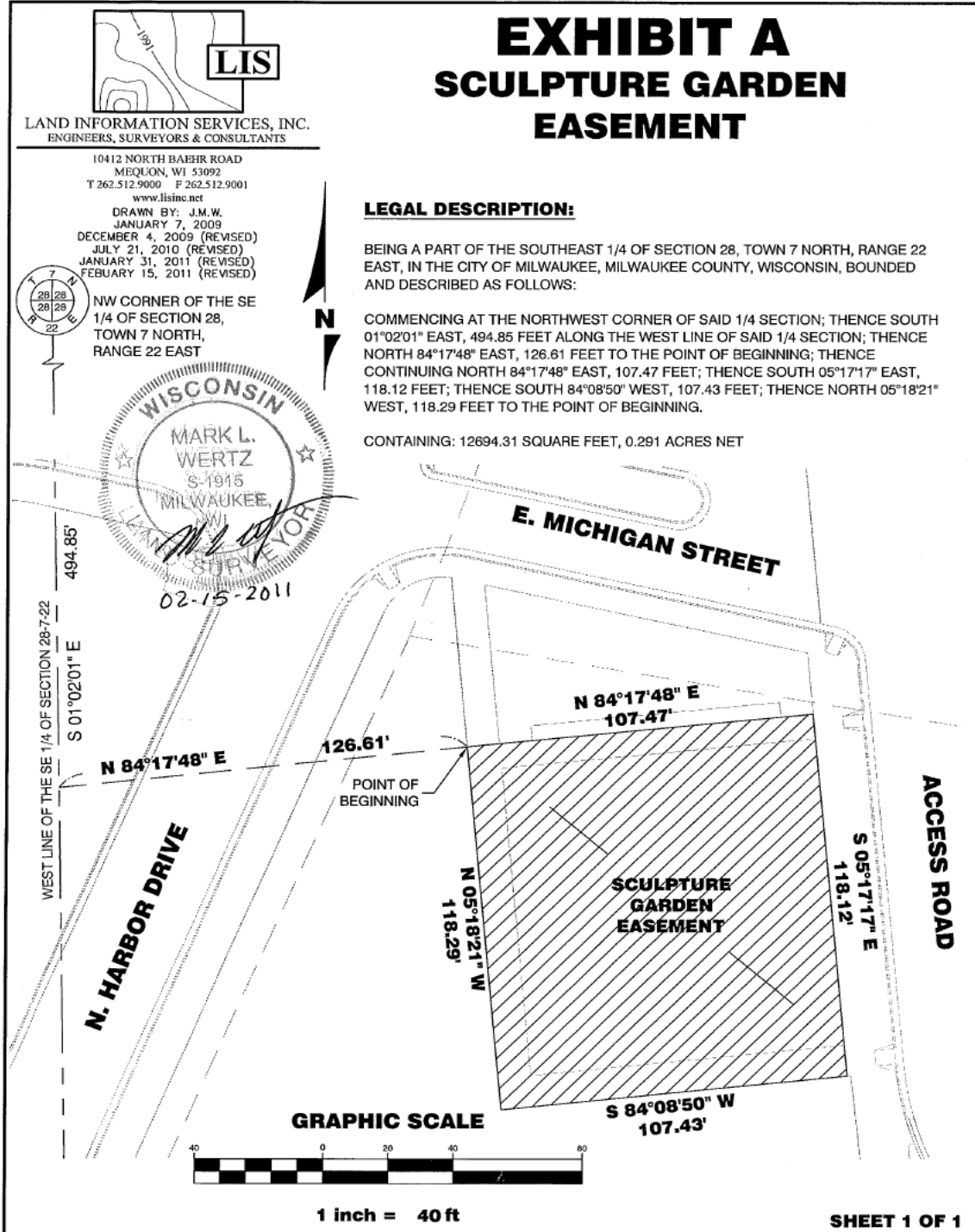
subject to the reasonable approval of CITY, be relocated to another location within the Property and be maintained by TENANT. If the sculptures and improvements are not relocated to the Property, then CITY and TENANT shall mutually agree both on a new location and the party or parties to be responsible for the maintenance thereof. It is TENANT's current intent to locate the sculptures on the Property or near the Property and, if reasonable and practical, to continue to be responsible for the maintenance of such sculptures. In the event TENANT and CITY cannot mutually agree on a new location and maintenance responsibility following relocation, CITY shall have no obligation to relocate the sculptures and improvements and instead the sculptures and improvements shall be return to TENANT's custody and control. CITY shall reimburse TENANT for all costs and expenses incurred by TENANT in removing and relocating such sculptures and other improvements within thirty (30) days after receipt of invoices or other reasonable evidence of costs and expenses incurred by TENANT.

7. Miscellaneous.

a. All terms of the Sculpture Garden Easement, including the benefits and burdens, shall run with the land and shall be binding upon and inure to the benefit of and be enforceable by all parties hereto and their respective successors and assigns, subject to CITY's termination rights set forth in Paragraph 6 of this EXHIBIT H above.

EXHIBIT I

SCULPTURE GARDEN EASEMENT AREA



X:\SURVEY\2007\S07017\dwg\S07017NR4EX.dwg, EXHIBIT

Exhibit I - 1



EXHIBIT J

OPERATING AGREEMENT

**Amended and Restated Discovery World Dock and Harbor Operation Plan**

“Operating Agreement”

[REDACTED] [REDACTED], 2017

The Board of Harbor Commissioners (the “Board”) and Discovery World, Ltd. f/k/a Pier Wisconsin Ltd., a Wisconsin nonstock corporation (“Discovery World”) have developed the following operational plan for marine areas within the Discovery World leasehold and operating easements.

This Operating Agreement amends, restates and entirely supersedes that certain Operating Agreement dated June 29, 2007 by and between the Board of Harbor Commissioners and Discovery World whereby Discovery World operated and maintained the Cruise Ship Dock and Breakwater, the South Dock, the East Dock and Schooner Harbor (as such terms are used, described and/or defined below or in the Agreement) in connection with that certain Development and Lease Agreement dated August 11, 2003 (the “Prior Lease”). Discovery World and the City of Milwaukee have entered into that Amended and Restated Lease Agreement (the “Agreement”) dated of even date herewith to, among other things, terminate Discovery World’s operation and maintenance obligations over the Cruise Ship Dock.

**Statement of Purpose:**

The Agreement permits Discovery World to operate, pursuant to a mutually agreed upon operating agreement, the harbor west of the Cruise Ship Dock and additional docks or piers approved by the Board. The additional docks and piers at this time are the Recreational Boating Facilities installed under WDNR Grant RBF-995 (the “Grant”) along the South side of the Discovery World leasehold. This mutually agreed upon Operating Agreement satisfies that provision of the Agreement. This Operating Agreement is attached to the Agreement and all applicable provisions of the Agreement are inserted as requirements of this Operating Agreement.

It is the intent of Discovery World to provide recreational vessels with safe and accessible docking facilities from which visitors may visit Milwaukee lakefront and downtown attractions. The South Dock, East Dock and Schooner Harbor shall be collectively referred to herein as the “Harbor” and shall all be encumbered by the Basin Easement.

**1. Discovery World Marine Areas:**

- a. Discovery World Public Dock (the “South Dock”)

The South Dock is composed of a 450-foot long floating dock extending east to west along the south side of the Property, It is 10 feet wide and has a mean depth of not less than 12 feet. It is ADA accessible, has 18 mooring cleats and has 30-ampere electrical service available. There are no other amenities.

Discovery World has inspected the facility, accepts it as is, and agrees that the facility meets their needs. Discovery World will make no claim against the City that the facilities are inadequate. Any desired improvements will be done by Discovery World in accordance with the Agreement.

The South Dock will provide recreational vessels a location to dock small-craft during daylight and early evening hours without charge.

The following policies shall apply:

- Discovery World will maintain and operate this space on a first-come-first-served basis;
- Discovery World reserves the right to refuse docking rights or to move any vessel to any South Dock location without cause and without notice.
- A utility fee will be charged for vessels using shore-power.
- The Agreement requires Discovery World to submit an annual budget to the Board setting forth proposed recreational vessel docking and slip rates as well as the proposed operating and improvement expenses for marine activity within that portion of the Harbor. It is mutually agreed that Discovery World will comply with all provisions of the Agreement and Grant in setting the proposed budget. The budget is subject to approval by the Board. For April 1, 2017 to March 31, 2018 the proposed charges are overnight dockage fee of \$4.50/ft. Overnight boaters must register by 6 p.m. to secure an overnight docking space. Length of stay is limited to 4 days. Vessels not removed by 11:00 PM will be charged for an overnight stay.
- Boats at all times must be secured to dock cleats. It is the responsibility of the boater to secure the vessel with his or her own dock lines.
- Consumption of alcoholic beverages may be limited at the sole discretion of Discovery World on the Harbor docks or moored vessels. This use must comply with all pertinent Federal, State and Municipal regulations.
- The use of open grills on the dock or on vessels tied to the dock is not permitted.
- Vessels left unattended are the responsibility of the owner. Vessels left beyond 6:00 PM without registering for the evening and will be assessed. Boats left unattended and not registered with Marina Attendant will be reported to the appropriate municipal agency (WDNR, Police, Sheriff, or U.S. Coast Guard).

Exhibit J - 2

- No vessel may operate any commercial vessel or enterprise from the South Dock without the express written permission of Discovery World.

b. The Sullivan Wharf and East Dock (the “East Dock”)

Pursuant to the Agreement, the East Dock is leased to Discovery World and is not a public dock. However, it may be reserved and used by other vessels when not in use by the *Sailing Vessel Denis Sullivan* or otherwise by Discovery World vessels. The length of this dock is 150 feet. Its depth is 16 feet. It has 4 bollards spaced 35 feet apart. The dock power supply is 240 volts, 50 ampere and 30 ampere. It also has potable water. Vessels utilizing the East dock will pay \$4.50/ft.

c. Harbor and Anchorage Area (“Schooner Harbor”)

This area is composed of the area west of the Cruise Ship Dock and south of the South Dock. This is approximately 500 feet (east/west) by 200 feet (north/south.) Discovery World reserves the right to fit the area with mooring buoys in order to maintain a maneuverable inner harbor and to deny any vessel the right to enter or to anchor within this area. All placement of mooring buoys and navigation restrictions shall comply with existing and future federal, state and municipal laws. Discovery World shall be responsible for securing any necessary permits.

Discovery World has inspected the facility, accepts it as is, and agrees that the facility meets their needs. Discovery World will make no claim against the City that the facilities are inadequate. Any desired improvements will be done by Discovery World in accordance with the Agreement.

**2. Cooperation with Other Agencies:**

Discovery World shall cooperate with all affected institutions and government agencies in the enforcement of policies for public use of the Harbor.

In witness hear of, the parties hereto have by their duly authorized officers executed this Operating Agreement as of the day and year first stated above.

**For the Board of Harbor Commissioners:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: President Board of Harbor Commissioners

**For Discovery World:**

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

Name: Joel Brennan

Title: President & CEO

EXHIBIT K  
CONSERVATION EASEMENT LEGAL DESCRIPTION

*[See Attached]*

Exhibit K - 1

EXHIBIT L  
PUBLIC ACCESS EASEMENT



4/24/2017

Google Maps

Google Maps

Google

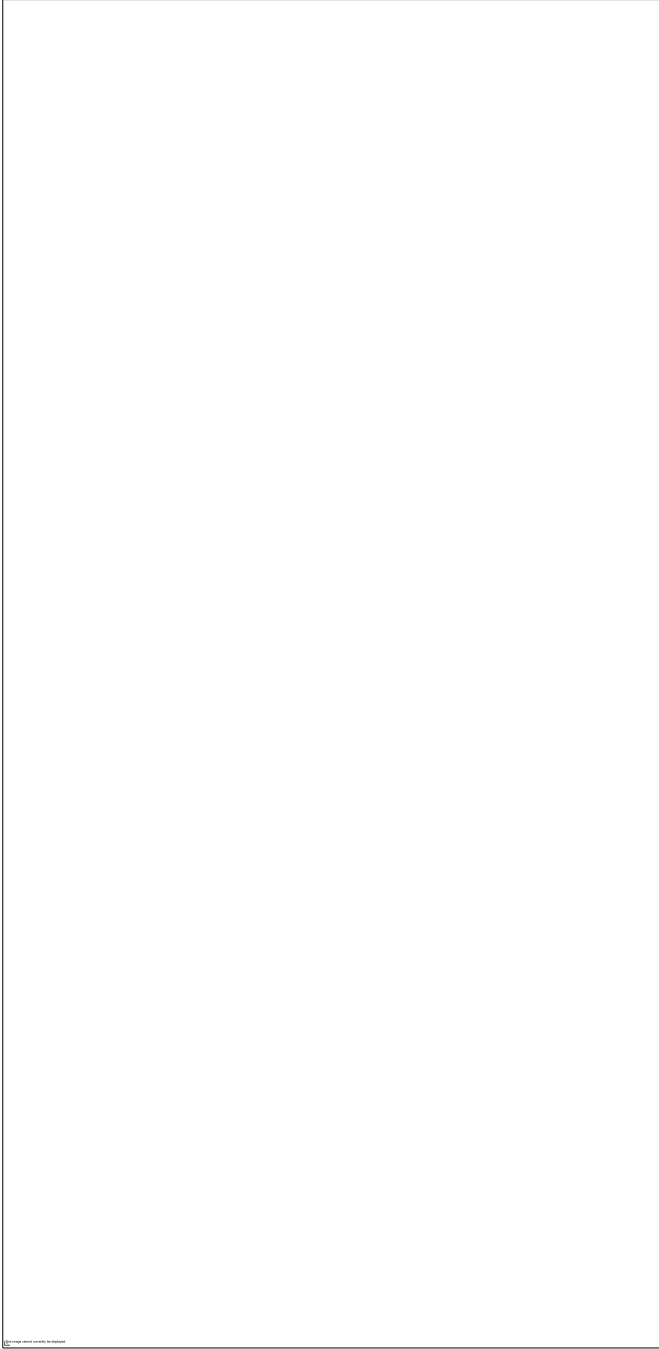
Imagery ©2017 Google, Map data ©2017 Google 50 ft.

<https://www.google.com/maps/@43.0356787,-87.8956138,157m,35y,39.4314data=!3m1!1e37m1=en>

1/1

Exhibit L – 1

EXHIBIT M  
PUBLIC ACCESS EASEMENT SIGNAGE



3 signs at 24 in. x 36 in. for sandwich boards. (2 of right arrow sign to be printed)  
Smaller sign is 24 in. x 18 in. to hang on chain.

Exhibit M - 1