

RACM & UEC LEASE
GH 5-27-2021 CAO 274885

THIS LEASE is made and entered into as of _____, 2021 (the “**Effective Date**”), is by and between the Redevelopment Authority of the City of Milwaukee, a Wis. Stat. 66.1333 entity (“**RACM**”), as landlord, and the Urban Ecology Center, Inc., a Wisconsin non-stock corporation (“**UEC**”), as tenant, and is for good and valuable consideration, receipt and sufficiency of which are acknowledged.

RECITALS

A. RACM owns those certain parcels at 400 S. Layton Boulevard, Milwaukee, TIN 424-0333-000 and at 500 S. 33rd Court, Milwaukee, TIN 424-0332-000, depicted on **EXHIBIT A** (individually and collectively herein called the “**RACM Land**”), and UEC wants to lease from RACM, and RACM is willing to lease to UEC, on the terms and conditions contained herein, that certain *portion* of the RACM Land depicted on **EXHIBIT A** as, and herein called, together with any and all existing and future improvements thereon, the “**Premises.**”

B. UEC used to occupy the Premises, and UEC constructed thereon, a stewardship pavilion that UEC used. That pavilion was damaged by fire. There remains at the Premises a concrete slab upon which the pavilion was built and that also served as a patio area with benches. UEC wants to build a new pavilion (“**Pavilion**”) on the Premises.

C. This Lease supersedes and replaces all prior agreements between RACM and UEC regarding the RACM Land, the Pavilion, the Premises, and UEC use and occupancy of the RACM Land and Premises.

AGREEMENT

1. **Recitals.** The recitals above are hereby agreed to.
2. **Lease; AS IS.**
 - a. RACM hereby leases the Premises to UEC for the limited purposes set forth herein, on the terms and conditions contained herein.
 - b. The Premises are on an **AS-IS, WHERE-IS BASIS**, with all faults and defects, known or unknown, discovered or to be discovered, and with no representations or warranties, express or implied. UEC has inspected and is familiar with the RACM Land and the Premises. RACM is without obligation to make any alterations, improvements, or changes to the RACM Land or Premises.

Notwithstanding the foregoing, however, UEC has no duty to remediate any environmental contamination affecting the RACM Land or Premises that existed on or before the date of this Lease (unless caused by UEC). If, however, UEC becomes aware of any contamination, UEC shall provide prompt notice of same to RACM.
3. **Term.** The Term of this Lease shall be for 15 years commencing on the Effective Date and ending at noon on the 15th anniversary of the Effective Date (“**Term**”). The Term, however, is subject to the provisions herein.

4. **Rent.** UEC agrees to pay to RACM within 10 days following the Effective Date rent of \$15 for the Premises for the Term, payable by check to “Redevelopment Authority of the City of Milwaukee” delivered either in person or by mail to RACM’s contact person listed in the “Notice” section below.
5. **Security Deposit.** No security deposit is required.
6. **Use; Permitted and Prohibited Uses.** UEC may use the Premises for the following limited purposes:
 - a. Demolishing the existing fire-damaged Pavilion and building a new Pavilion as provided herein.
 - b. Using the new Pavilion for UEC classes, UEC fieldtrips, and UEC storage.
 - c. Using the Premises for outdoor activities of UEC, for UEC classes, for UEC fieldtrips, , and to access the Menomonee River, the Hank Aaron State Trail, the Menomonee Valley Community Park, Three Bridges Park, and pedestrian ways at or near the Pavilion.
 - d. Conducting gardening and stewardship activity of plants (other than edible plants, edible vegetables, or unlawful plants).
 - e. Using the Premises for special events, so long as any such special event: is approved in writing by RACM in advance; and is conducted with requisite governmental permits and approvals. See, also, Section **16.c.** below. UEC request to RACM for approval of a special event shall include nature of event, date and time, anticipated attendance, sponsors and funders of the event, host of the event, clean-up and crowd control, whether food and/or beverages will be served, restroom plans, and such other matters as RACM shall request.

Other uses not expressly permitted are prohibited unless otherwise agreed to in writing by RACM.

Permitted storage shall be of items used in conjunction with UEC’s nature exploration and nature classroom activities, and include such items as bikes, waders, and boots.

UEC shall not:

- a. Conduct any on-site retail sales.
 - b. Apply fertilizers or insecticides that are prohibited under federal or state law.
 - c. Knowingly or negligently apply or introduce any refuse, unclean fill, contaminated soils, toxic substances or pollutants, or performing acts that jeopardize or inhibit the use of nearby property.
 - d. Remove trees, bushes or shrubs without RACM’s prior written approval.
 - e. Use the Premises for motorized vehicles or vehicular parking.
 - f. Use the Premises for fireworks, or for any fires, whether in a fire pit or otherwise.
 - g. Use the Premises or Pavilion for any activity in violation of federal, state, or local law, including codes and ordinances of the City of Milwaukee including, but not limited to, excessive noise.
 - h. Use the Premises for spectator sports activities for a fee, or for a dog park.
 - i. Conduct environmental or geotechnical testing without RACM’s prior written approval.
 - j. Rent out to others, or charge others a fee, to use the Premises or Pavilion.
7. **Improvements.** If and when adequate funding, and necessary permits and approvals, are secured by UEC, UEC shall demolish and remove the fire-damaged Pavilion from the Premises, and build a new Pavilion, at UEC expense, in accordance with applicable federal, state, and local law (including zoning requirements), and per requisite government permits. Such demolition, if it occurs, shall be undertaken and be completed in **Year 2021**. Commencement of construction, if it occurs, and subsequent completion of construction of the new Pavilion shall take place prior to **December 31, 2022**. UEC shall

not commence construction, however, until RACM has approved **(a)** UEC's plans and specifications for the new Pavilion, and **(b)** UEC's proof of adequate funding to undertake the construction of the new Pavilion. See, also, Section **26** below.

Construction of the new Pavilion must be per plans and specifications approved in writing by RACM. UEC shall provide to RACM a copy of architectural plans for the new Pavilion.

All windows, doors, and entryways to the Pavilion must contain locks, and UEC shall provide RACM with a set of keys and/or security codes for access.

The new Pavilion must contain dawn to dusk lights, with motion detectors, and a security camera.

The existing concrete slab and Leopold Eagle Scout benches at the Premises shall remain in place.

No fencing may be installed without RACM's prior written consent.

UEC plans must designate any signage, and signage is subject to RACM's prior written consent.

Any other improvements to the Premises must first be approved in writing by RACM.

RACM shall own the Pavilion at the Premises. RACM shall not improve the Premises or modify the Pavilion without the prior written approval of UEC (not to be unreasonably withheld, conditioned, or delayed).

8. **Routine Maintenance.** UEC shall be responsible for routine maintenance and associated expenses of the Premises, the Pavilion, approved signage, the Leopold benches, the dawn-to-dusk lighting, and the security camera. UEC shall maintain the Premises and Pavilion in a clean, safe and attractive manner to standards required by the City Municipal Code. Maintenance shall include, but is not limited to, keeping the Premises free from noxious weeds, litter and other debris, trimming shrubs, mowing grass, raking leaves, shoveling snow and preventing nuisances, hazards and soil erosion.

9. **Damage to Improvements.** If any improvements, such as the Pavilion or concrete slab, are damaged or destroyed, by any cause, other than routine wear and tear, during the Term (including by vandalism), UEC shall **(a)** repair same, at UEC expense, within 30 days following said damage or destruction or vandalism (this includes graffiti removal), or **(b)** if the repair cost is estimated to be excess of \$5,000, and if UEC did not cause the damage or destruction, then, UEC and RACM shall negotiate possible resolution of the matter and if agreement is reached, they shall reduce that agreement to a written amendment hereto. If no such agreement is reached, then either UEC or RACM may terminate this Lease upon 30 days' advance written notice to the other.

Any repair or replacement undertaken by UEC hereunder shall be in substantial compliance with the original plans or such other plans as may be approved by RACM in writing.

10. **Utilities; Electricity; No Water.** UEC shall be responsible for installation and payment of all electrical utility services at the Premises during the Term. Any installation of utility service or infrastructure shall be subject to UEC's and RACM's prior written approval (and be part of Plans submitted to RACM for RACM's prior written approval), and shall be done per City Code and with required permits.

There is no water service, or toilet or restroom facilities, at the Premises. Neither RACM nor UEC have any duty to install or provide same.

11. **Inspection by RACM and City.** Representatives of RACM and representatives of City, with proper identification, shall be permitted to inspect the Premises and Pavilion (including interior) at any time.

12. **UEC Reports to RACM.** UEC shall report to RACM, within 20 days of noted occurrence, any incident of vandalism or damage or destruction to the Premises, or to the Pavilion or to any other improvements to the Premises.

13. **Protection of Premises.** UEC shall at all times exercise due diligence in the protection and use of the Premises and Pavilion. UEC shall be responsible and liable for damages to the Premises or Pavilion caused by the willful or negligent acts or omissions of UEC.

14. **Vacation/Departure at Lease End.** UEC shall vacate the Premises on or before the expiration of the Term, or, if applicable upon the termination of this Lease. The Premises (including Pavilion if constructed, concrete slab, and benches) shall be returned to RACM by UEC in substantially the same condition in which it was received, subject to normal wear and tear. As indicated above, RACM shall own the Pavilion. UEC shall remove all non-attached personal property upon vacation of the Premises unless otherwise approved by RACM. The lighting and security camera shall remain on-site at the Premises and installed. If UEC fails to vacate in a timely fashion, RACM shall (in addition to all other rights and remedies available at law and in equity) have the right to have a court evict. See also Sections 7 and 26.

15. **Right to Negotiate Renewal.** At the end of the Term, UEC shall have the right to negotiate renewal of this Lease. Any renewal or extension shall be at RACM's sole discretion and may be subject to the approval of RACM's Board and the City's Common Council. Any renewal must be in writing and requires signature by RACM, City, and UEC.

16. **Indemnification of RACM and City; UEC Insurance; Recreational Immunity.**

a. UEC shall indemnify and hold harmless RACM and the City, from and against any and all liabilities, claims, demands, costs and expenses of every kind and nature, arising from any injury or damage to any person (including death) or property sustained in or about the Premises during the Term (and/or other period of UEC occupancy) to the extent due to the negligence or willful act or omission of UEC, its employees, agents, servants, invitees, or members.

b. UEC shall at all times during the Term maintain in full force and effect with an insurance company licensed to do business in Wisconsin the insurance according to the limits and conditions described in **EXHIBIT B**. Prior to commencement of the Term, UEC shall deliver to RACM, and thereafter not less than 30 days prior to the expiration of any such policy or within 10 days of RACM request, UEC shall deliver to RACM a Certificate of Insurance evidencing insurance as required hereby, together with satisfactory evidence of proof of payment of premiums. The Certificate of Insurance required hereby shall: (1) name RACM as an additional insured; and (2) contain an endorsement requiring 30 days' written notice from the insurance company to all named insureds prior to cancellation of the policy or any material reduction in coverage, scope or amount of the policy.

c. The parties are desirous of protections under Wis. Stat. 895.52 – recreational immunity. Any event at the Premises at which admission fees for spectators will be charged is subject to RACM's prior written approval. Wis. Stat. 895.52 (4).

17. **Compliance with Law.** UEC shall, during the Term, at UEC's expense, comply, and require its class attendees, members, and invitees to comply, with applicable federal, state, and local laws, ordinances, rules and regulations regarding the Premises, use and occupancy of same, and the carrying out of UEC duties, including, but not limited to, complying with applicable rules and requirements of the City police, fire, and health departments and the department of neighborhood services.

18. **Liens and Claims.** UEC shall not permit to be enforced against the Premises or any part thereof, any mechanic's, material supplier's, contractor's or subcontractor's lien arising from any work of construction, repair, restoration, replacement or improvement to the Premises by UEC or any agent, contractor, or subcontractor of UEC. UEC shall pay or otherwise cause the removal of any such lien, claim or demand before any action is brought to enforce it against the Premises (or promptly following the commencement of such an action).

19. **Property Taxes and Other Charges.** The RACM Land is property-tax exempt for real property taxes under RACM ownership per Wis. Stat. 66.1333 (12). To the extent that UEC is not tax exempt, UEC shall pay all taxes levied on UEC *personal property*. RACM shall be responsible for special assessments for public improvements levied against the RACM Land by the City or any other governmental entity during the Term. UEC shall be responsible for any special charges, charges, fines or penalties levied by the City, resulting from UEC use, occupancy or duty hereunder.

20. **Default; Breach.** In the event of default or breach by either party hereto, in addition to any right hereunder, the non-defaulting party shall have all rights and remedies available at law and in equity against the defaulting party, including, but not limited to, the right to terminate, the right to require eviction, the right to seek specific performance, and the right to recover damages. RACM expressly retains all rights under Wis. Stat. 893.80.

21. **Assignment and Sublicensing.** UEC shall not assign, sublicense, sublet, sell or otherwise transfer any portion of UEC's interest under this Lease, without the prior written consent of RACM. Subject to the foregoing, this Lease binds and inures to the benefit of the parties hereto and their successors and assigns. Any sublease approved by RACM must be pursuant to a written sublease that is subject and subordinate to this Lease, that has been approved in advance by RACM, and that requires the subtenant to comply with the terms and obligations of this Lease unless expressly provided therein to the contrary.

22. **Non-Discrimination.** UEC agrees that in its use of and activities at the Premises, UEC shall not discriminate or 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.

23. **Exhibits.** The Exhibits attached hereto are incorporated herein.

24. **Time of the Essence.** Time is of the essence concerning provisions of this Agreement.

25. **Notice; Contact Persons.** Except as otherwise provided for herein, notices under this Lease shall be in writing, and shall be provided to the respective party-contact person specified in the table below, by personal delivery, U.S. mailing or commercial delivery service, or email. Contact persons may, as necessary, be changed from time to time by written notice hereunder provided from one party to the other.

If to RACM:	If to UEC:
--------------------	-------------------

<p>Dave Misky Department of City Development 809 North Broadway, 2nd Floor Milwaukee, WI 53202-3617</p> <p>Telephone: (414) 286-8682 Email: dmisky@milwaukee.gov</p>	<p>Ken Leinbach, Executive Director Urban Ecology Center, Inc. 1500 East Park Place Milwaukee, WI 53211</p> <p>Telephone: (414) 964-8505 Email: kleinbach@urbanecologycenter.org</p>
---	--

26. **Termination.** In addition to other rights and remedies RACM has hereunder and at law and in equity:

a. RACM may terminate this Lease, upon 90 days' prior written notice from RACM to UEC, if UEC has not timely completed demolition and removal of the fire-damaged Pavilion prior to **December 31, 2021**.

b. RACM may terminate this Lease, upon 120 days' prior written notice from RACM to UEC, if UEC has not timely completed construction of the new Pavilion prior to **December 31, 2022**.

c. RACM may terminate this Lease, upon 60 days' prior written notice from RACM to UEC, if UEC is in breach of its duties hereunder, and if UEC has failed to cure within the 30-day period following said notice.

27. **Open Records.** UEC understands that this Lease, and certain documents associated herewith, are or may be subject to Wisconsin's open records law. See Wis. Stat. Ch. 19, including Subch. II. UEC agrees to cooperate with RACM regarding open records requests relating to this Lease, the Premises, and/or the Pavilion.

28. **Signature; Counterparts.** This Lease may be executed in one or more counterparts which, when taken together, shall constitute one and the same document. Facsimile, email or PDF signatures shall be accepted as originals.

29. **Entire Agreement; Amendment.** This Lease constitutes the entire agreement between the parties regarding the subject matter of this Lease and all prior statements and agreements, written or oral, regarding the subject matter of this Lease are terminated and of no effect. This Lease may only be amended by a written agreement signed by all the parties hereto.

30. **Severable.** The terms and provisions of this Lease are deemed separable and severable such that the invalidity or unenforceability of any term or provision shall not affect or impair the validity or enforceability of the remaining terms and provisions.

31. **Waiver.** One or more waivers by a party of any covenant or condition of this Lease 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 a 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.

32. **RACM Consent/Approval.** Whenever RACM consent or approval is required hereunder, the same shall be determined on behalf of RACM by the DCD Commissioner or the Commissioner's designee (the DCD Commissioner is also the Executive Director of RACM).

IN WITNESS WHEREOF, RACM and UEC hereby agree to the terms and conditions herein, and caused this Lease to be signed and entered into as of the date first written above.

<p>RACM: REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE</p> <p>By: _____ Frances Hardrick, Chair</p> <p>And By: _____ David P. Misky, Asst. Ex. Dr./Sec.</p> <p>RACM Res. _____</p> <p>City Common Council Res. _____</p>	<p>UEC: URBAN ECOLOGY CENTER, INC.</p> <p>By: _____ Edward Hammon, President</p> <p>And By: _____ Antoine McDuffie, Secretary</p>
--	--

**EXHIBIT A
RACM LAND**

The Premises area depicted includes the lands underneath the overhead right-of-way shown (underneath S. 35th Street). The Premises area does not include public right-of-way.



EXHIBIT B
Insurance Requirements

Insurance certificates must be sent for inspection and approval prior to commencement of the Lease to: David Misky by email to dmisky@milwaukee.gov.

<u>TYPE OF INSURANCE</u>	<u>LIMITS</u>
<u>Workers' Compensation</u>	Statutory limits
<u>Employers Liability</u>	
Bodily Injury by Accident	Each Accident \$100,000
Bodily Injury by Disease	Each Employee \$100,000
	Policy Limit \$500,000
<u>Public Liability</u>	
A Comprehensive General or Commercial General Insuring Agreement that provides:	
<u>*Occurrence Coverage*</u>	
Premises /Operations Protection	
Products Completed Operations Protection	
Independent Contractors (owners, contractors protective coverage)	
Contractual Liability for Risks Assumed in Lease	
 NOTE: If claims made coverage is provided, the policy must be amended so all protected occurrences are covered regardless of when the claim is made.	
 Bodily Injury/Property Damage	Each occurrence \$1,000,000
	General occurrence \$1,000,000
	Products/completed operation aggregate \$2,000,000
 <u>Automobile</u>	
Business Auto Policy that provides:	
Liability coverage for all owned, non-owned and hired vehicles	
Sudden and Accidental Pollution Coverage	
Provide MCS-90 Endorsement when applicable in accordance with the Motor Carrier Act of 1980	
Bodily Injury/Property Damage	Each accident \$1,000,000

Per the "Insurance" section of the Lease, RACM must be named as "Additional Insured" and be provided with the required Certificate of Insurance.