

Document Number	PARK LEASE Document Title
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PARK LEASE
HARBOR VIEW PLAZA

Recording Area
Name and Return Address
Jeremy R. McKenzie
City of Milwaukee
841 N. Broadway, 7th Floor
Milwaukee, WI 53202

Tax Key Number:
Part of _____

Drafted By:
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Assistant City Attorney
City of Milwaukee

TABLE OF CONTENTS

	<u>Page</u>
1. Recitals	1
2. Leased Premises.....	1
3. Term.....	2
4. Termination of Lease	2
5. Termination for Convenience	2
6. Rent/Additional Consideration	2
7. Use; Including Provisions Relating to Recreational Activities Under §895.52.....	2
8. TENANT Permitting Rights for the Park	3
9. Compliance with Laws and Regulations; Environmental; Nondiscrimination.....	4
10. Recreational Immunity Under §895.52.....	4
11. Insurance.....	5
12. Indemnification; Waiver of Subrogation	5
13. Public Records.....	6
14. Possible Restrictions/Encumbrances	6
15. Maintenance of Premises and Improvement; Notice of Damage	6
16. Special Trash Pick-Up Provisions	7
17. Improvements by TENANT	8
18. Leasehold Mortgages; Construction Liens	8
19. Utilities; Police and Fire Protection.....	8
20. Property Taxes, Assessments, Fees & Charges	8
21. City Entry Rights	9
22. City Audit Rights	9

23.	Defaults and Remedies	9
24.	Condemnation or Damage of Premises.....	10
25.	No Beneficial Interest	10
26.	Right to Assign and Sublet	11
27.	Fixtures and Personal Property on Premises.....	11
28.	Waiver.....	11
29.	Governing Law	11
30.	Notices	11
31.	Commissioner	12
32.	Severability of Provisions	12
33.	Captions	12
34.	Entire Agreement	13
35.	Signage; Brochures	13

EXHIBIT A: Legal Description of Premises

EXHIBIT B: Concept Plans

EXHIBIT C: Insurance Requirements

HARBOR VIEW PLAZA LEASE

THIS LEASE, is made and entered into as of this ___ day of _____, 2018, (the “Effective Date”) and is by and between **THE CITY OF MILWAUKEE** (“CITY”) and **HARBOR DISTRICT, INC.**, (“HARBOR DISTRICT”) or (the “TENANT”).

RECITALS

- A. CITY and TENANT, on September 1, 2015, entered into a Cooperation Agreement for Redevelopment of the Harbor District, and pursuant to that agreement, collaborated on the preparation of a Water and Land Use Plan, (“WaLUP”) adopted by the CITY on February 6, 2018 as Common Council File No. 171211.
- B. Public comment received for the WaLUP supported better public access to the waterfront, and Improved Waterfront Experience is identified as Catalytic Project #1 in the WaLUP.
- C. CITY owns certain public right of way and real estate and improvements located at 401 East Greenfield Avenue, in Milwaukee, Wisconsin (the “Premises”), more particularly described in Exhibit A attached hereto, and to be known as “Harbor View Plaza.”
- D. TENANT and CITY with neighborhood input, have collaborated to design a park space, to be known as “Harbor View Plaza,” for the Premises, with the goal of providing improved waterfront access and enhanced urban green space consistent with promoting the general welfare of the CITY and its citizens.
- E. TENANT commits, at its cost, to install and maintain various new improvements at the Premises substantially consistent with the concept plans attached as Exhibit B, including, but not limited to, an accessible kayak and canoe launch, a play structure and lookout tower, seating areas and other landscaping as described in final plans approved by the CITY (the “New Improvements”).
- F. CITY is willing to lease the Premises to TENANT on the terms and conditions set forth herein.
- G. The CITY authorized entry into this Lease and approval of the installation and construction of the New Improvements at the Premises by Common Council Resolution File No. 180322 passed _____, 2018.

NOW THEREFORE, for and in consideration of the mutual promises and covenants contained herein, and other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, CITY and TENANT agree as follows:

- 1. Recitals. The recitals above are hereby agreed to.
- 2. Leased Premises. Subject to the terms hereof, the CITY does hereby lease to TENANT the real property and improvements located at the Premises.

- A. **Recording of Lease.** In its discretion, CITY may record this Lease (or evidence thereof) in the Milwaukee County Register of Deeds Office; and TENANT agrees to cooperate with CITY in that regard.
- B. **CITY Leases to TENANT.** Subject to all the terms and conditions in this Lease, CITY hereby leases to TENANT and TENANT hereby leases from CITY on an **AS-IS, WHERE-IS BASIS**, and with all faults and defects, known or unknown, discovered or to be discovered, the real property, improvements and appurtenances located in Milwaukee and herein called the Premises.
- C. **Exclusivity** The Premises are being leased solely to TENANT on an exclusive basis subject to the restrictions on TENANT's uses as specified in Section 7 and 8 of this Lease. Except for closures related to maintenance or repairs, at no time shall TENANT exclude members of the general public from access to or use of the dock or Riverwalk located on the premises.
- D. **Ship Mooring.** In the event of a ship coming to dock along the 401 East Greenfield Avenue property and requiring use of the northernmost mooring cleat located in the Premises, the CITY shall provide TENANT at least 72 hours notice to remove the gangway and floating dock. Prior to the ship's arrival, the CITY will install temporary security fence, provided by TENANT, around the mooring cleat in a configuration as mutually agreed by TENANT and CITY, and remove a section of fence to the south for access along the dock wall to the cleat. Upon departure of the ship, TENANT shall be responsible for removing the temporary security fence and restoring the chain link fence to the south.
3. **Term.** The term of this Lease (the "Term") shall be 25 years, commencing on _____, 2018 and terminating on _____, 2043, unless sooner terminated as herein provided. TENANT shall have the option to extend this Lease contingent upon mutual agreement of the CITY and TENANT as to the terms and conditions of the extension term.
4. **Termination of Lease.** Upon the expiration or earlier termination of this Lease, TENANT shall peaceably and quietly deliver, yield up, and surrender possession of the Premises to CITY. TENANT shall remove from the Premises upon expiration or termination, and be responsible for, all personal property situated thereon, and leave the Premises in substantially the same or better condition as it was on the Effective Date. Any property not so removed shall, at CITY's option, either become the sole property of CITY or be stored on-site or off-site at TENANT's expense. The New Improvements shall become the property of CITY upon termination of the Lease.
5. **Termination for Convenience.** Notwithstanding anything to the contrary contained herein (including, but not limited to, any provision in the "condemnation" section below), if CITY, in its sole discretion, determines that the Premises are needed for a municipal purpose (other than park purposes) by any of its departments, then CITY may terminate

this Lease at any time upon one year's advance written notice to TENANT. This Section 5 is a material provision without which, CITY would not have entered into this Lease.

6. **Rent/Additional Consideration.** In lieu of monetary rent, as consideration for this Lease, TENANT shall construct and install the New Improvements at the Premises and shall assume responsibility for routine maintenance, of the Premises and the Improvements pursuant to Section 15 of this Lease.

7. **Use; Including Provisions Relating to Recreational Activities Under §895.52.** Subject to shared use with the general public for a park open to the public, TENANT shall have the right to use and occupy the Premises solely for the following uses:
 - A. Recreational activities, as defined in Wis. Stat. §895.52(1)(g) (as the same may be amended from time to time), that are consistent with activities generally associated with other public parks in Milwaukee County and other open green space and waterfront access in the City of Milwaukee and that are in compliance with federal, state and local law, regulations and ordinances (“Recreational Activities”).

 - B. Activities that are controlled and supervised by TENANT, or assignees of TENANT pursuant to Section 26 of this Lease, (herein called “Tenant-Controlled Activities”). Tenant-Controlled Activities may include activities that are not Recreational Activities and may include exclusive use of a portion of the Premises by TENANT for a temporary period.

 - C. Use of the Premises shall be limited to bicycle, pedestrian, and non-motorized watercraft users and to emergency, maintenance and utility related transportation vehicles.

TENANT uses of the Premises (including Tenant-Controlled Activities) must, in any event, be lawful and in compliance with all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to the Americans With Disabilities Act (including laws, regulations or ordinances requiring permits and/or licenses), and must be conducted so as not to unreasonably interfere with neighbors. No other uses may be permitted without CITY's prior written consent.

8. **TENANT Permitting Rights for the Park.** To promote the orderly use and enjoyment of the Premises by the general public, TENANT may, in its discretion, adopt a permit system whereby members of the general public apply to TENANT for a permit to exclusively use a designated area of the Premises, for a temporary, specified period, for a lawful “Recreational Activity,” “Artistic Activity” or “Tenant-Controlled Activity” as allowed in Section 7. Any use for which TENANT issues a permit (while temporarily exclusive) must otherwise be in compliance with this Lease, including the provisions in Section 7. If TENANT elects to engage in such permitting, the following restrictions shall apply:

- A. TENANT shall not charge for the issuance of permits any amount beyond an amount sufficient to cover TENANT's reasonable expenses associated with TENANT's permitting process and with the issuance of the particular permit.
- B. The permit shall only allow the permittee the right to exclusively use a designated portion, which may not include closing of the waterfront access, of the Premises for a temporary period (in all cases, less than 72 hours);
- C. TENANT shall notify CITY's Commissioner of Public Works ("Commissioner") of said events in advance. TENANT may not allow anything that is unlawful or outside of the uses for which TENANT has authority to conduct under this Lease;
- D. TENANT's permit process shall provide written notice to applicants advising applicants and permittees: (i) that use is limited to "Recreational Activities," "Artistic Activities" and "Tenant-Controlled Activities" as defined in Section 7; (ii) that they must comply with all federal, state, and local laws, regulations, and ordinances; (iii) that TENANT may not authorize applicants or permittees to possess or consume alcoholic beverages on the Premises; and (iv) that they may not store, use, discharge or dispose of any hazardous or toxic substances, pollutants, or contaminants on any part of the Premises.
- E. TENANT may require permit applicants and/or recipients: (i) to sign waivers and releases; (ii) to assume financial and legal responsibility for their and their guests' acts, omissions, damages, etc.; and/or (iii) to provide evidence of insurance that TENANT may specify – in which case any waiver or release or acceptance of responsibility or insurance that TENANT requires shall also expressly run to the CITY's benefit and protect and cover CITY to the same extent as TENANT.
- F. In the event that CITY gives TENANT notice that a ship will be moored pursuant to Section 2(D) of this Lease during a time in which TENANT has issued a permit for use of the Premises, then TENANT shall either (i) modify the terms and conditions of the permit issued to allow the mooring and permitted event to occur simultaneously with priority given to the use of the mooring cleat by the ship, or (ii) cancel the permit during the duration of the mooring.

9. Compliance with Laws and Regulations; Environmental; Nondiscrimination.

- A. TENANT shall, at its sole cost and expense, comply with any and all laws, statutes, ordinances and regulations, federal, state, county or municipal, now or hereafter enforced or applicable to its respective existence at, or use, occupancy, or improvement, including but not limited to the Americans With Disabilities Act (including repair or maintenance) of, any part of the Premises.
- B. TENANT shall not store, use, discharge or dispose of any hazardous or toxic substances, pollutants or contaminants (collectively, "Contaminants") on any part of the Premises other than

conventional items such as cleaning materials which must nonetheless be stored, used, discharged, and disposed of in strict compliance with all applicable federal, state, and local laws, rules, and regulations.

- C. TENANT is leasing the Premises on an “AS IS, WHERE IS” basis.
- D. TENANT shall be responsible (i) for remediating any Contaminants or environmental pollution on any part of the Premises caused by TENANT or its permittees, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Premises caused by TENANT or its permittees.
- E. TENANT must obtain CITY’s prior written approval before conducting any environmental testing or investigation on or at any part of the Premises.
- F. TENANT shall not, with respect to its use and occupancy of the Premises and with respect to its issuance of permits for the Premises to members of the public, discriminate against any person on the basis of race, sex, sexual orientation, creed, national origin or identity, color, religion, marital status, age or handicap.

10. Recreational Immunity Under §895.52.

- A. CITY and TENANT intend on each of CITY and TENANT being protected by Wis. Stat. §895.52 (and any successor statute thereto) to the greatest extent possible.
- B. TENANT may not charge any admission fee for spectators or participants at any event on the Premises unless the event is a Tenant-Controlled Activity.
- C. TENANT agrees to comply with any duty it may have under Wis. Stat. §101.11.

11. Insurance. TENANT shall obtain and maintain in place during the entire Term, at its expense (as additional rent hereunder), insurance as described in strict compliance herewith:

A. **General Liability, Property, and Other Coverage.** General liability insurance that protects exposures associated with the operations of TENANT and its use of the Premises and its maintenance operations at the Premises including, but not limited to: liability for Tenant-Controlled Activities at the Premises; contractual liability protection for the risks assumed by TENANT in this Lease; and property insurance for TENANT-owned property. TENANT shall also obtain and maintain in place during the entire Term: workers compensation insurance, employers liability insurance and other insurance coverage in the types and amounts set forth in **Exhibit C**, attached hereto.

B. **Policies.** All policies shall be endorsed to protect CITY and TENANT as their interests may appear. All policies shall be obtained by TENANT under valid and enforceable standard form policies issued by responsible insurance companies licensed to do business in the State of

Wisconsin. Certificates and actual policies evidencing insurance coverage shall be provided to CITY. The insurance company shall be required to provide CITY with 60-day written notice of any cancellation, non-renewal, or material change in the coverage required or provided hereunder.

C. **CITY Named As Additional Insured On All Contractor and Subcontractor Policies.** TENANT shall require, and any contractor or subcontractor providing work or materials to the Premises shall provide, the minimum types and limits of insurance set forth on **Exhibit C** and shall name the City of Milwaukee as an additional insured on said policies.

12. **Indemnification; Waiver of Subrogation.** In addition to any liability TENANT may have to CITY as a result of TENANT breach of any of its duties hereunder, notwithstanding anything to the contrary contained herein, TENANT also agrees to indemnify and save CITY harmless from and against any and all loss or claims, or damage or injury to persons (including death), property, or business, sustained in or about, or to, the Premises, and resulting from or attributable to the following:

A. The intentional or negligent acts or omissions of TENANT, its officers, directors, employees, agents, or contractors. Providing, however, that – subject to subparagraph B below – the CITY is not hereby imposing any contractual liability on TENANT to indemnify CITY for any loss, claim, damage, or injury caused or suffered by members of the public engaged in public use of the Premises, or by persons who are members of the public at events for which TENANT has issued a permit under Section 7 of this Lease; and/or

B. A Tenant-Controlled Activity (including, but not limited to, activities that only involve TENANT, its officers, directors, employees, agents or contractors).

CITY hereby waives, however, any and all rights of recovery against TENANT for any loss or damage to the extent, and only to the extent, CITY actually receives payment from TENANT's insurer toward the particular loss or damage. If the amount CITY collects from TENANT's insurer is less than the total loss or damage to CITY, then CITY's waiver shall only be a partial one.

13. **Public Records.** TENANT acknowledges that CITY is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Lease are subject to and conditioned on the provisions of Wis. Stat. §19.21, et seq. TENANT further acknowledges that it is obligated to assist the CITY in retaining and producing records that are subject to the Wisconsin Public Records Law and that the failure to do so shall constitute a material breach of this Lease, and that TENANT must defend and hold CITY harmless from liability under that law. Except as otherwise authorized under Wisconsin's Public Records Law, TENANT's records regarding this Lease and administration of the Lease shall be retained for 7 years.

14. **Possible Restrictions/Encumbrances.**

- A. **No Title Report.** CITY is, as indicated, leasing the Premises to TENANT on an “AS IS, WHERE IS” basis (except as otherwise provided herein). CITY has not obtained or provided to TENANT any title insurance commitment or title insurance policy with respect to the Premises. If TENANT wants such, it can acquire such on its own at its expense.
- B. **Other.** CITY retains the right to devote portions of the Premises to uses for utilities and other easements necessary for public welfare and convenience, as determined by the Commissioner.

15. Maintenance of Premises and Improvements; Notice of Damage.

- A. **Maintenance of Premises and Improvements by TENANT.** TENANT shall be responsible, at its expense, for all routine or non-routine, capital or non-capital, repair, husbandry and maintenance of the Premises and improvements on the Premises, including, the New Improvements and other improvements existing at the Premises on the Effective Date, (“Existing Improvements”). “Existing Improvements” shall not include any improvements removed by the CITY pursuant to subsection B. The Existing Improvements and New Improvements shall be collectively referred to herein as the “Improvements.” The foregoing includes, but is not limited to, TENANT being responsible for, at its expense:
 - (1) Picking up litter, trash and rubbish at the Premises on a routine basis so as to keep the same clean and litter-free.
 - (2) Removing snow and ice from the entire width of sidewalks along the perimeter of the Premises, and from walkways at the Premises in accordance with Milwaukee Code of Ordinances §§116-8 and 116-16.
 - (3) Promptly removing graffiti from the Premises and Improvements.
 - (4) Mowing any grass, including grass between the curb and sidewalk, on a regular basis.
 - (5) Removing weeds and pruning trees, bushes and vegetation at the Premises, and fertilizing, on an as-needed basis.
 - (6) Repairing and restoring any damage to the Premises or Improvements, as practicable and within a reasonable time.
 - (7) Repairing and maintaining electrical and plumbing typically associated with reasonable husbandry.
 - (8) Properly preparing the Premises and Improvements for winterization, weather and change of seasons.

(9) Keeping the Premises and Improvements in good and clean condition.

B. **Improvements Removed by CITY.** Any CITY-owned improvements located on the Premises on the Effective Date that are inconsistent with the concept plans attached as Exhibit B shall be removed by the TENANT, at its expense, as part of TENANT's installation of the New Improvements.

C. **Notice of Damage/Repair to CITY.** TENANT shall provide prior written notice to CITY of any repair or maintenance work required of TENANT that is estimated to cost over \$10,000 or that may materially affect the structure or appearance of any Improvements at the Premises and obtain CITY's prior written approval before undertaking any such repair or maintenance work.

16. **Improvements by TENANT.** With the exception of maintenance and repair work required of TENANT under Section 15 and installation of the New Improvements, TENANT shall not make any alterations or additions to the Premises without CITY's prior written consent and without first having obtained all other necessary approvals and permits. (See Section 31 of this Lease regarding approval by CITY).

17. **Leasehold Mortgages; Construction Liens.** TENANT has no right to mortgage, pledge as collateral or hypothecate its interest in this Lease, or in any part of the Premises, or in any buildings, improvements, or fixtures at the Premises. TENANT shall take all actions and precautions required to ensure that the Premises do not become attached by, or with, any lien, including, but not limited to, any construction lien, or lien of or by any laborer, contractor, subcontractor, materialman, or supplier (including any lien under Subch. I of Wis. Stat. Ch. 779) relating directly or indirectly to any work that TENANT (or anyone claiming by, through or under TENANT) may perform or have done at the Premises. TENANT shall indemnify, defend and hold harmless CITY and the Premises of, from and against, any such lien which may attach, or be asserted against, the Premises, together with all costs in connection therewith.

18. **Utilities; Police and Fire Protection.** TENANT is responsible for all utility costs, including the cost of bringing utilities to the Premises, associated with use of the Premises during the Term of this Lease including sewer, water, snow and ice fees, and electricity including the cost of any separate metering required for the utilities. CITY shall provide police and fire protection to the Premises to the same extent and on the same basis it provides same to other citizens of the City.

19. **Property Taxes, Assessments, Fees and Charges.**

A. In that the Premises are owned by CITY, the Premises are property-tax exempt under Wis. Stat. §70.11(2). See, especially, last sentence of §70.11(2), "[l]easing the property exempt under this subsection, regardless of the lessee and the use of the leasehold income, does not render that property taxable." If the Premises subsequently become, under state law, in the CITY Assessor's opinion, subject to

general property taxes during the Term hereof, however, TENANT shall be responsible for, and timely pay, such taxes, with the understanding that TENANT may dispute such by following the procedure set forth in Wis. Stat. § 74.35(2m).

- B. Unless otherwise entitled to lawful exemption, TENANT shall pay all taxes, assessments, charges, and fees levied or assessed upon the Premises or its own personal property and its own trade fixtures on, or at, the Premises.
- C. TENANT shall pay any special charge, special assessment, special tax, or fee that may be levied against the Premises at any time during the Term. Said charges, assessments, taxes and fees expressly include those both known and unknown as of the Effective Date of this Lease.

20. CITY Entry Rights. CITY has the right, without notice, to enter the Premises at any time. And, notwithstanding the foregoing, CITY (and its contractors) shall have the right to be on the Premises at any time without notice to inspect, maintain, repair, replace or reconstruct any CITY utilities or improvements now or hereafter at the Premises. CITY's entry, in any event, shall be conducted in such a way so as to minimize interference or disruption of TENANT's (or anyone claiming by, through or under TENANT) lawful use and occupancy of the Premises. In addition to the foregoing, CITY also expressly retains (and does not waive) all rights available to it at law to enter and inspect the Premises (or any part thereof) including, but not limited to, all legal rights of CITY's building inspectors, health inspectors, fire inspectors, electrical inspectors, assessors, fire and police personnel, etc. to enter and inspect.

21. CITY Audit Rights. TENANT shall keep accurate and complete books, records, and accounts with respect: (i) intentionally deleted; (ii) to the Premises and the Lease; (iii) to use and occupancy of and events at the Premises; and (iv) to maintenance and repair undertaken by TENANT with respect to the Premises and the Improvements. Those books, records and accounts shall be made available to CITY for its review and inspection upon CITY's request. TENANT shall provide to CITY, at TENANT's expense, and upon CITY's demand, copies of any:

- (a) of the aforementioned books, records and accounts;
- (b) agreement, permit, or license with respect to special events at or use of the Premises (or any part thereof);
- (c) invoices or contracts relating to TENANT repair or maintenance work;
- (d) articles of incorporation or bylaws of TENANT (or any amendment to the same);
or
- (e) insurance policy TENANT has or had in place hereunder.

CITY has the right to have an auditor (whether an employee of CITY's Comptroller Office or an independent auditor) review and audit any of the above.

22. Defaults and Remedies. TENANT shall be in default of this Lease under the following circumstances:

A. TENANT fails to perform any of its covenants or duties under this Lease, including but not limited to TENANT'S maintenance obligations, and such failure is not cured by TENANT (i) with all due dispatch after written notice from CITY to TENANT if the failure jeopardizes health, safety or welfare and poses a substantial immediate threat of danger or injury; and (ii) in all other cases, within 30 days after written notice from CITY to TENANT (or if such failure is not of a type that can reasonably be corrected within 30 days, then if TENANT fails to commence promptly and proceed with due diligence to correct such failure);

B. TENANT is adjudged bankrupt or TENANT files a petition or answer seeking bankruptcy, insolvency status, or reorganization of TENANT under federal or state bankruptcy or insolvency law or TENANT consents to the appointment of a receiver to administer TENANT or its affairs, or TENANT dissolves or institutes any proceeding for dissolution or termination;

C. TENANT makes any sublease, assignment, transfer, hypothecation, conveyance or other disposition of its interest in the Premises (or any part thereof) without CITY's prior written consent;

In the event of any default by TENANT hereunder, TENANT hereby authorizes and empowers CITY to exercise any right or remedy available to CITY under Wisconsin law, or in equity, or hereunder, including, without limitation, (i) the right to terminate this Lease or take possession of the Premises (or any part of it) without terminating this Lease, (ii) the right to have a receiver appointed by a court to manage the Premises (or parts of it), (iii) the right to evict TENANT and anyone claiming by, through, or under TENANT, from the Premises (or parts of it), (iv) the right, if CITY evicts or removes TENANT (or anyone claiming by, through, or under TENANT) from the Premises (or any part of it), to store personal property of TENANT (or anyone claiming by, through, or under TENANT) in a storage facility or public warehouse at the sole cost of TENANT.

23. Condemnation or Damage of Premises.

A. **Condemnation or Damage That Terminates Lease.** If the Premises (or a significant part thereof) are at any time during the Term condemned by any public authority with the power of eminent domain (or are voluntarily transferred in lieu of, or under threat of, condemnation), or if the Premises are damaged by fire or some other cause so as to render – in CITY's reasonable opinion (which shall be reached by CITY within 90 days of the condemnation, transfer, or damage, and after consultation with TENANT) – all or any significant portion of the Premises untenable or unfit for the continued use and purpose of TENANT, and for the carrying out of TENANT's operations and use at the Premises, this Lease shall be deemed terminated as of the date of the condemnation or transfer or loss. In such event, the proceeds from any condemnation award or insurance shall be payable to CITY, providing, however, that TENANT shall be entitled to any award or insurance directly relating to TENANT's personal property (including TENANT's trade fixtures and moveable equipment), to TENANT's leasehold

interest, and/or to any tenant-relocation award or benefit that the condemning authority or insurer may award or pay to TENANT.

B. Waiver; Participation. In the event of any condemnation or damage pursuant to subsection A., above, TENANT waives any claim for damage or compensation from CITY. TENANT shall have the right, to the extent of its tenant-interest, or insurable interest, as the case may be, to participate in any condemnation proceedings or the settlement of any insurance claim.

24. No Beneficial Interest. No provision herein calling for sharing in insurance or condemnation proceeds, and no other provision of this Lease, shall constitute, or be deemed to be evidence of: TENANT having any beneficial ownership of the Premises (or any part thereof, or in any land, fixtures, improvements, or buildings thereat); or any partnership or agency relationship between TENANT and CITY. The sole relationship hereunder between TENANT and CITY is merely that of tenant (TENANT) and landlord (CITY).

25. Right to Assign and Sublet. Except for an assignment to Business Improvement District #51 ("BID 51"), TENANT may NOT assign this Lease or sublet any portion of the Premises without CITY's prior written consent, providing, however, that, subject to the terms and conditions of this Lease, TENANT may, under Section 8, issue permits. While TENANT may assign its rights to hold Tenant-Controlled Activities on the Premises pursuant to Section 7.C., such assignment must also receive prior written consent from the CITY. Should TENANT assign its rights under this Lease to BID 51, and should BID 51 subsequently be terminated while this Lease, or any extension thereof, is in force, then all of TENANT's rights assigned to BID 51 shall automatically be reassigned to TENANT.

26. Fixtures and Personal Property on Premises. In addition to the New Improvements and subject to the terms hereof, TENANT may, with prior approval of the Commissioner, install and affix to the Premises such trade fixtures, moveable equipment and personal property as TENANT may deem desirable, which shall remain TENANT's sole property. TENANT shall have the right at any time during the Term of this Lease, to remove or change, at TENANT's sole expense, any of its trade fixtures, moveable equipment and personal property at the Premises, providing, however, that (with the exception of temporary repairs, maintenance, upgrades and replacements) TENANT shall not remove any such item that would compromise any Improvements or utility facilities on the Premises and providing further that, in all cases, TENANT shall, at its expense, promptly repair any damage caused by or attributable to any removal or change by TENANT of its trade fixtures, equipment or personal property. The New Improvements and Existing Improvements shall be the sole property of CITY unless otherwise agreed in writing by CITY and TENANT.

27. Waiver. No delay, waiver, omission or forbearance on the part of either party to exercise any right, option, duty or power arising out of any breach or default by the other party of any of the terms, provisions or covenants contained herein, shall be deemed a waiver by that party of such right, option, or power, as against the other party for any subsequent breach or default by that party.

28. **Governing Law.** This Lease shall be construed according to the laws of the State of Wisconsin.
29. **Notices.** Any notice required or permitted under this Lease may be personally served or given and shall be deemed sufficiently given or served if sent by United States mail, with postage prepaid thereon, to the respective addresses set forth below, or if sent by e-mail to the respective e-mail address set forth below. Either party may by like notice at any time, and from time to time, designate a different address or e-mail to which notices shall be sent. Notices given in accordance with these provisions shall be deemed given and received (a) when personally served, or (b) if e-mailed during business days when City Hall is open for business during business hours (8:30 a.m.- 4:30 p.m.), when e-mailed, or (c) if mailed, three days after the postmark on such notice, in accordance with this Section.

To CITY:

Commissioner of Public Works
City of Milwaukee
841 North Broadway, Room 501
Milwaukee, WI 53202
Phone: (414) 286-8314
Email: ghassan.korban@milwaukee.gov

Copy to:

Jeremy R. McKenzie
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2601
Email: jmcken@milwaukee.gov

To TENANT:

Harbor District, Inc.
600 East Greenfield Ave., Room 124
Milwaukee, WI 53204
Attn: Executive Director
Phone: (414) 643-1266
Email: Lilith@harbordistrict.org

Copy to:

Godfrey & Kahn, S.C.

833 East Michigan Street, Suite 1800
Milwaukee, WI 53202
Phone: (414) 273-3500
Email: mbynum@gklaw.com

30. **Commissioner.** Unless otherwise provided for herein, all submissions to CITY and all approvals or consents required to be obtained under this Lease from CITY, as landlord, shall be submitted to or obtained from the Commissioner, or his designee. This Section shall not apply to amendments to this Lease which must be approved by CITY's Common Council.
31. **Severability of Provisions.** If any of the terms or provisions contained herein shall be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions and conditions of this Lease, or the application of such to persons or circumstances other than those to which it is declared invalid or unenforceable, shall not be affected thereby, and shall remain in full force and effect and shall be valid and enforceable to the fullest extent permitted by law.
32. **Captions.** The captions in this Lease are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions hereof.
33. **Entire Agreement.** This Lease constitutes the entire agreement between the parties hereto and may not be amended or altered in any manner except in writing signed by both parties.
34. **Signage; Brochures.** Any signage to be placed at the Premises for longer than one year must first be approved by each of TENANT and CITY. TENANT also agrees to include on any of its brochures or pamphlets advertising or concerning TENANT's operations or programs at the Premises evidence of CITY ownership of the Premises.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

<p>HARBOR DISTRICT, INC.</p> <p>By: _____ Its: _____</p>	<p>CITY OF MILWAUKEE</p> <p>_____ Tom Barrett, Mayor</p> <p>_____ James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED:</p> <p>_____</p>
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	Martin Matson, City Comptroller
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STATE OF _____)
)ss.
 COUNTY OF _____)

Personally came before me this ____ day of _____, 2018, the above named _____, the _____ of Harbor District, Inc. to me known to be such person who executed the foregoing instrument and acknowledged the same in such capacity.

 Print Name: _____
 Notary Public, State of _____
 My Commission: _____

**Milwaukee City Attorney
 Approval and Authentication**

Jeremy R. McKenzie, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the Milwaukee representatives above, and also authenticates the signatures of each of the above Milwaukee representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: _____
 JEREMY R. MCKENZIE
 Assistant City Attorney
 State Bar No. 1051310

Date: _____

EXHIBIT A

Legal Description of the Premises

EXHIBIT B

Concept Plans

EXHIBIT C

Insurance Requirements

Insurance certificates must be sent for inspection and approval prior to the tenant's occupancy of the Premises and prior to any work being performed at the Premises by contractors or subcontractors of the tenant. Certificates should be sent to: Manager of Real Estate Services, City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202-3617.

A. General Requirements

A certificate of insurance acceptable to City evidencing the insurance requirements is to be provided. The certificate shall state that the issued insurance policies meet the requirements as outlined below. All certificates are to be provided within 30 days of final execution of this Contract. If such certificate is not received, the City of Milwaukee has the authority to declare this Contract terminated.

All policies shall state that the City shall be afforded a thirty (30) day written notice of cancellation, non-renewal or material change by any insurers providing the coverage required by City for the duration of this Contract.

Insurance companies must be acceptable to City and must have a current A.M. Best rating of A- VIII or better.

All policies shall be written on an occurrence form, other than professional liability as noted below.

If subcontractors are used, each must meet all requirements in sections A and B.

B. The minimum insurance requirements are as follows:

(1) Workers' Compensation and Employer's Liability

Workers' Compensation	Statutory Coverage
Bodily Injury by Accident	\$100,000 each accident
Bodily Injury by Disease	\$500,000 policy limit
Bodily Injury by Disease	\$100,000 each employee

- Employer's Liability at limits noted above or higher limits if needed to meet Umbrella underlying insurance requirements.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.

(2) Commercial General Liability

Commercial General Liability	\$1,000,000 each occurrence
General Aggregate	\$2,000,000 aggregate

Personal & Advertising Injury Limit	\$1,000,000 each
occurrence Products - Completed Operations Aggregate	\$2,000,000
aggregate Medical Expense	\$ 5,000 each
person	

- Coverage must be equivalent to ISO form CG0001 or better.
- The City of Milwaukee shall be added as an additional insured using ISO form CG2026 or its equivalent.
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.
- The policy shall include independent contractors (owners/contractors protective) and contractual liability.
- Coverage will apply on a primary and non-contributory basis. We suggest the following wording:

“If you have agreed in a written contract that this policy will be primary and without right of contribution from any insurance in force for an Additional Insured for liability arising out of your operations, and the contract was executed prior to the bodily injury, property damage, personal injury or advertising injury, then this insurance will be primary over, and we will not seek contribution from, such insurance.”
- Coverage shall apply to the risks associated with or arising out of the services provided under this contract.

(3) Auto Liability

Combined Single Limit	\$1,000,000 each accident
Medical Expense	\$ 10,000 each person

- If the Contractor owns or has any long term leased vehicles, coverage must be for Any Auto (Symbol 1). If there are no owned or long term leased vehicles, then coverage must be for Hired and Non-Owned Auto Liability (Symbols 8 and 9).
- Coverage shall be modified to include a Waiver of Subrogation Endorsement in favor of City including its directors, officers, agents, employees and volunteers.
- The City of Milwaukee shall be added as an additional insured.
- Coverage shall include contractual liability for risks assumed in this contract.
- Coverage shall apply to the risks associated with or arising out of the services provided under this contract.
- If Federal or State government(s) require a Motor Carrier filing, such filing shall be made available to City upon request.

(4) Umbrella (Excess) Liability

