

**SECOND AMENDMENT
TO
LEASE AGREEMENT**

Between

**The City of Milwaukee
Board of Harbor Commissioners**

And

Milwaukee World Festival, Inc.

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LEASE AGREEMENT**

THIS INDENTURE, (the “Second Amendment”) made and entered into at Milwaukee, Wisconsin, effective as of the __ day of _____, 20__, by and between the CITY OF MILWAUKEE, a municipal corporation of the State of Wisconsin, acting by and through its BOARD OF HARBOR COMMISSIONERS, as heretofore authorized by law (hereinafter collectively referred to as “CITY”), and MILWAUKEE WORLD FESTIVAL, INC., a Wisconsin not-for-profit corporation (hereinafter referred to as “FESTIVAL”);

W I T N E S S E T H:

WHEREAS, CITY and FESTIVAL entered into a Lease Agreement dated as of January 1, 2001 (the “Lease,” or alternatively, the “Agreement”) for real property commonly known as the Henry Maier Festival Grounds (the “Property”); and

WHEREAS, CITY and FESTIVAL subsequently amended the Lease pursuant to that certain First Amendment to Lease Agreement dated as of February 1, 2005; and

WHEREAS, FESTIVAL is contemplating construction of Capital Improvements on approximately twenty (20) acres of the southern portion of the Property (the “South End Redevelopment”) and desires an extension to the Lease term before proceeding with the design of said Capital Improvements in order to ensure adequate time for a return on its investment; and

WHEREAS, FESTIVAL also desires to extend the Festival Season, as that term is defined in the Lease, in order to allow for the scheduling of additional events on the Property; and

WHEREAS, CITY desires a supplemental annual fee from FESTIVAL to partially offset certain public safety service expenses which CITY incurs with respect to FESTIVAL’S use of the Property; and

WHEREAS, CITY supports FESTIVAL’S desired Lease and Festival Season extensions provided public access to the Property is maximized, and to that end, the parties have agreed that best efforts will be used in designing Capital Improvements to enhance public access to the Property and to develop and/or promote free or lower admission cost community events, subject to certain limitations as set forth in this Second Amendment; and

WHEREAS, this Second Amendment also reflects the Parties’ mutual goal of implementing certain Sustainability Goals upon the Property (defined below); and

WHEREAS, in consideration of the Lease and Festival Season extensions provided for herein, and in acknowledgment of CITY’s increasing costs of providing public services to FESTIVAL, FESTIVAL has agreed to pay CITY Rent and an annual Supplemental Service Fee (defined below) in accordance with the terms of this Second Amendment; and

WHEREAS, FESTIVAL’S desired Lease and Festival Season extensions and CITY’S desire for the Supplemental Service Fee from FESTIVAL in connection with its use of the Property make it necessary for CITY and FESTIVAL to enter into this Second Amendment to Lease Agreement; and

WHEREAS, this Second Amendment to Lease Agreement is also entered into for the additional purposes of modifying the insurance provisions of the Lease to allow for periodic review and adjustment of FESTIVAL’S required liability coverage and modifying the sublease provisions of the Lease to allow FESTIVAL to sublease certain areas of the Property for parking purposes with the approval of the Port Director; and

WHEREAS, the parties desire to reaffirm the Lease in all respects with the exception of the specific amendments hereinafter set forth.

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

1. DEFINITIONS.

- a. The following definitions set forth in Paragraph 1 of the Lease are hereby amended and restated to read as follows:

Annual Report: Means a report summarizing attendance, activities, events, and compliance with EBE Requirements. The Annual Report shall also summarize FESTIVAL'S efforts and progress in developing Community Events, implementing Sustainability Goals on the Property, and enhancing public access to the Property.

Festival Season: A period of time commencing April 1st of each year and ending the following November 30th.

Non-Festival Season: A period of time commencing December 1st of each year and ending the following March 31st.

Rent: Means payments to be made by FESTIVAL during the term of this Agreement pursuant to the schedule attached as **EXHIBIT "O-3"** together with the Financing Charges and Supplemental Service Fee.

- b. The following definitions are hereby added to Paragraph 1 of the Lease:

City Development Area: Means that portion of the Property identified and described on the attached **EXHIBIT "T."**

Community Events: Means free or lower admission cost events that are undertaken by FESTIVAL, in cooperation with the CITY, or any established

community organization, in order to enhance public access to the Property consistent with FESTIVAL'S organizational goals of fulfilling educational, charitable, recreational and eleemosynary purposes. CITY acknowledges that FESTIVAL is not obligated to commit financial resources to Community Events, but will solicit sponsors or other organizations that will present and/or support Community Events.

Supplemental Service Fee: Means payments to be made by FESTIVAL during the term of this Agreement pursuant to the schedule attached as **EXHIBIT "O-4."** The Supplemental Service Fee is intended to offset a portion of the increased costs of public safety services. CITY and FESTIVAL acknowledge and agree that payment of the Supplemental Service Fee is directly related to the increased cost of CITY providing public safety services to FESTIVAL. FESTIVAL further acknowledges and agrees that CITY shall have no obligation to provide public safety services to FESTIVAL at any particular level; however, the CITY, acting through its Board of Harbor Commissioners, and FESTIVAL will meet annually, consistent with past practices, to discuss the provision of certain public safety services by the CITY to FESTIVAL, including police, fire and emergency services. FESTIVAL further acknowledges that the level of public safety services may change from time to time.

Sustainability Goals: Means efforts to secure and implement state of the art, higher efficiency mechanical and electrical systems; lower embodied energy in construction materials and processes; integration of landscaped areas;

responsible use of natural resources; energy conservation; use of renewable energy sources; and enhancement of existing public transportation services to the Property.

2. TERM.

Paragraph 2 of the Lease is hereby amended and restated to read as follows:

“2. TERM.

A. The term of the Lease shall be extended by ten (10) years (the “Lease Extension”), so that the Lease term shall be thirty (30) years commencing as of January 1, 2001, and terminating on December 31, 2030. If, prior to December 31, 2015, FESTIVAL has not substantially completed construction of its South End Redevelopment, or if the substantially completed South End Redevelopment expenditure is less than \$10 Million, the CITY may, within its sole discretion at any time after December 31, 2015, elect to terminate the Lease Extension, so that the Lease term shall expire as of December 31, 2020, as originally provided in the Lease. Notwithstanding the above, the December 31, 2015 deadline may be extended as follows:

- a. The period of time the South End Redevelopment is delayed by unforeseen conditions that require a suspension of construction activity or additional work to comply with applicable federal, state or local statutes, regulations and/or any “stop work” orders;
- b. The period of time any “force majeure” conditions delay or suspend the project; and,
- c. The period of time that any required approvals from City or State agencies, boards, commissions or governmental entities (“Approval Authorities”) for the project, are continued, deferred or delayed at the request of the Approval Authorities.

B. CITY shall notify FESTIVAL in writing if it intends to exercise its termination rights under this paragraph. In the event of termination of the Lease Extension under this paragraph, all other terms of the Agreement, including all other terms of this Second Amendment, shall remain in full force and effect for the remaining original term of the Lease, terminating December 31, 2020. If the South End Redevelopment is timely completed, then if, prior to January, 2027, FESTIVAL and CITY have not agreed on the terms of an extension of this Lease Agreement, or a new Lease Agreement, designated representatives of FESTIVAL and CITY shall meet in January, 2027 to confer and negotiate in good faith the terms of either a new Lease Agreement or an extension of this Lease Agreement. The parties shall make all reasonable efforts to successfully conclude such negotiations by July 1, 2027. The same shall apply in the event CITY terminates the Lease Extension because the South End Redevelopment is not timely completed; however, the applicable meet and confer and negotiation conclusion dates shall be January, 2017 and July 1, 2017, respectively. ”

3. RENT/SUPPLEMENTAL SERVICE FEE.

a. Paragraph 3 of the Lease is hereby amended and restated to read as follows:

“3. RENT/SUPPLEMENTAL SERVICE FEE.

A. Payment of Rent and Supplemental Service Fee. FESTIVAL shall pay rent in accordance with **EXHIBIT “O-3”**, subject to the provisions of this paragraph 3 and paragraph 38. In addition, FESTIVAL shall pay the Financing Charges in accordance with the Financing Documents and the Supplemental Service Fee in accordance with the schedule set forth in **EXHIBIT “O-4”**, attached hereto.

B. 2009 Supplemental Service Fee Payment. Upon execution of this Second Amendment, FESTIVAL shall pay to CITY a lump sum payment of One Hundred Thousand Dollars (\$100,000), accounting for the 2009 Supplemental Service Fee.

b. EXHIBIT "O" to the Lease setting forth a Schedule of Rent Payments is hereby amended and restated and shall be replaced and superseded by EXHIBIT "O-3" in the form attached hereto.

4. APPROVAL OF OTHER CAPITAL IMPROVEMENTS.

Paragraph 7 of the Lease is hereby amended and restated to read as follows:

"In addition to the approval and financing of Capital Improvements Program I and Capital Improvements Program II described above, CITY reserves the right to review and approve the plans for the construction, renovation or alteration of all other Capital Improvements prior to their implementation by FESTIVAL. The review and approval of such plans shall include consideration of the following factors:

1. Aesthetics, design and the impact of the proposed Capital Improvements upon the Property and surrounding area.
2. Whether the Capital Improvements will enhance public access to the Property during open dates throughout the Festival Season and Non-Festival Season. Any conditions placed upon approval of Capital Improvements related to public access shall be specified in each Annual Access Calendar.
3. Whether the Capital Improvements will promote Sustainability Goals.
4. Whether the Capital Improvements will allow for year-round use, subject to regulatory and constitutional requirements that may apply to the development and use of the Property.
5. Whether the plan for use of the Capital Improvements will accommodate any Community Events.
6. Whether the Capital Improvements will meet or exceed all requirements of the Americans with Disabilities Act.

Further, in the event that the proposed Capital Improvements are intended to create a source of revenue from a use that is substantially different in nature or concept from the Permitted Uses, the review and approval of such plans may include consideration of projected profits to be generated by the proposed new uses associated with the new Capital Improvements as well as CITY participation in such profits. Any such participation by CITY shall allow FESTIVAL to first recoup its investment in such Capital Improvements.

Notwithstanding the foregoing, the following Capital Improvements shall be permitted and subject only to prior design and aesthetic approval of CITY:

1. Capital Improvements necessary to comply with laws, regulations and orders of any governmental body.
2. Capital Improvements necessary to make the Property safe, sanitary and comfortable for employees, patrons and visitors.
3. Capital Improvements to provide green space, trees, shrubs or other plantings.
4. Capital Improvements necessary to repair, replace or upgrade then existing facilities which, in the reasonable judgment of FESTIVAL, are in disrepair, worn out, obsolete or outmoded, unless the cost of such repair, replacement or upgrading exceeds 50% of the replacement cost of the existing facility in which case the review and approval of such plans shall include the additional factors enumerated in 1 through 5, above.

Failure of CITY to respond in writing within ninety (90) days following receipt of a written request from FESTIVAL to approve proposed Capital Improvements shall be deemed to constitute approval of such request by CITY.

FESTIVAL shall pay all costs and expenses arising out of any construction, renovation or alteration of the Property and it shall keep the Property free and clear from all liens of mechanics or materialmen, and all liens of a similar character arising out of the construction, renovation or alteration of the Property.”

5. USE OF THE PROPERTY.

Paragraph 9 of the Lease is hereby amended and restated to read as follows:

- a. “FESTIVAL shall use the Property solely for Permitted Uses and for such other uses as may be approved in advance by CITY. FESTIVAL shall not schedule events during the Non-Festival Season without the prior written consent of CITY.
- b. FESTIVAL shall, subject to financial considerations and unforeseen Property conditions, use best efforts to develop Community Events on the Property, to implement Sustainability Goals on the Property, and to enhance public access to the Property.
- c. CITY and FESTIVAL also agree that both will work together to continue to reduce vehicle and pedestrian congestion and other adverse impacts upon the surrounding neighborhood by promotion and expansion of mass transit use to the grounds wherever financially possible, and by continuing to work positively with the Historic Third Ward

Association as well as other neighboring groups and institutions. CITY acknowledges that FESTIVAL has worked with success on these issues in the recent past.

d. CITY and FESTIVAL agree to meet from time-to-time at the request of either party to discuss FESTIVAL's efforts and progress with respect to development of Community Events on the Property, implementation of Sustainability Goals on the Property, enhancement of public access to the Property, and reduction of vehicle and pedestrian congestion and other adverse impacts upon the surrounding neighborhood.

Notwithstanding the foregoing, the future scheduling of Amphitheater events, as well as recreational activities and the leasing of recreational equipment for use by the general public shall be deemed approved by the CITY.”

6. ACCESS TO THE PROPERTY.

a. The introductory paragraph of Paragraph 10 of the Lease is hereby amended and restated to read as follows:

“It is the intent of the parties to maximize public access to the Property and to the State Park. This paragraph establishes minimum requirements for such public access. The Annual Access Calendar for 2009 is attached as **EXHIBIT “C”**. Commencing in 2010, FESTIVAL shall present an Annual Access Calendar to CITY not later than February 1st of each year during the term of this Agreement if events are proposed on the Property between April 1st and Memorial Day. If no events are proposed between April 1st and Memorial Day, FESTIVAL shall present an Annual Access Calendar to CITY not later than April 1st of each year during the term of this Agreement. Prior to final preparation of each Annual Access Calendar, FESTIVAL shall meet and confer with representatives of CITY to discuss its content. Each Annual Access Calendar shall be subject to the approval of CITY so as to assure consistency with the minimum requirements of this paragraph. During construction of the South End Redevelopment, and any subsequent Capital Improvements, FESTIVAL shall continue to make public access available at substantially the same level as during 2009, subject to coordination of such access with the reasonable requirements of FESTIVAL'S contractors and provision for the safety of the general public.

b. Subparagraph 10.B.6) is hereby added to the Lease to read as follows:

“(6) South End Redevelopment. The South End Redevelopment area shall be accessible to the public in accordance with standards set forth by CITY as part of the

approval process for said Capital Improvement plan. Such public access standards shall be reflected in the Annual Access Calendar.”

7. EASEMENTS AND RESTRICTIONS.

Paragraph 16 of the Lease is hereby renamed, amended and restated to read as follows:

“16. EASEMENTS, RESTRICTIONS, and CITY DEVELOPMENT RIGHTS.

This Agreement is subject to the Permitted Encumbrances. In addition, CITY reserves the right to grant or create, or to require FESTIVAL to grant or create, any additional reasonable and necessary non-exclusive easements, to convey to the State of Wisconsin a limited fee interest over the Public Access Areas, or to dedicate areas for public right-of-way or public use, as necessary for the construction of and access to the State Park, off-shore improvements adjacent to the Property and Capital Improvements located on the Property; provided, however, that FESTIVAL and CITY shall confer prior to the creation of any such easement, limited fee interest, or right-of-way so that any rights of access shall be at locations and be limited to such times that the exercise thereof does not interfere with FESTIVAL’s activities, including the scheduling and conduct of Ethnic and Cultural Festivals, or otherwise unreasonably deprive FESTIVAL of the use of the Property. CITY shall use its best efforts to exclude or minimize interference with FESTIVAL’s activities and shall create any such easement, limited fee interest, or right-of-way accordingly. The Parties acknowledge and agree CITY’s rights under this Paragraph expressly include the creation and expansion of right-of-way associated with the extension of Harbor Drive pursuant to CITY’s Third Ward Area Plan, adopted by the Common Council on May 20, 2005 and amended on July 12, 2006.

CITY reserves the right to reasonably modify any existing easement granted to the Milwaukee Metropolitan Sewerage District; provided that no such modification shall materially interfere with FESTIVAL’s use and enjoyment of the Property.

In addition to all other rights reserved by the CITY, at any time during the term of the Lease Extension, CITY shall have the right to undertake development of the City Development Area, or any portion thereof, or to offer said area to another entity for development. CITY shall be required to provide not less than twelve (12) months’ prior written notice to FESTIVAL of CITY’s intent to exercise its development rights under this paragraph. If FESTIVAL demonstrates good cause for requiring additional notice, then additional time may be given to address FESTIVAL’s concerns, but not to exceed an additional six (6) months. In the event CITY exercises its rights under this paragraph, the Lease shall terminate as to the area identified by the CITY in its notice to FESTIVAL, effective upon the date specified by CITY. Upon termination under this paragraph, if any, Rent for the remaining term of the Lease shall be reduced on a pro rata basis based on the square footage of area terminated by CITY as compared with the square footage of the entire Property. Nothing in this paragraph shall be construed to limit FESTIVAL’s ability to submit development proposals to the CITY for the City Development Area, and

CITY agrees it will consider and evaluate any such proposals as it would any other development proposal for the area.”

8. INSURANCE.

Subparagraph D of Paragraph 23 of the Lease is hereby amended and restated to read as follows:

“**23.D. Adjustments.** FESTIVAL and CITY agree that, from time-to-time during the term of this Agreement, they shall meet and confer with each other at the other party’s request in order to discuss modification of the insurance coverage required under this section to assure that, at all times, such insurance issues against such risks and is in such amounts as are customary for entities of like size similarly situated. Insurance coverage required under this section may be modified upon approval of the Board of Harbor Commissioners, Port Director, and City Attorney.”

9. ASSIGNMENT/SUBLEASE.

Subparagraph B of Paragraph 25 of the Lease is hereby amended and restated to read as follows:

“**25.B. Sublease.** FESTIVAL shall not sublease the Property or license the Property for any period longer than fourteen (14) consecutive days without the prior written consent of CITY. All approved subleases and all licenses shall be in conformity with the purposes, provisions, and uses permitted by this Agreement. Copies of all subleases and licenses shall be provided to CITY upon written request. Notwithstanding the foregoing, FESTIVAL may sublease or license surface parking lot areas located on the Property for a period longer than fourteen (14) consecutive days, but not to exceed 120 days, with the prior written consent of the Port Director, subject to City Attorney approval.”

10. TERMS AND CONDITIONS.

All terms and conditions of the Lease are incorporated herein and are hereby modified to conform herewith, but in all other respects are to be and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto, have caused this Second Amendment to Lease Agreement to be executed by their proper respective officers and their corporate seals to be affixed hereto on the day and year first above written.

**CITY OF MILWAUKEE,
a Wisconsin municipal corporation**

Tom Barrett
Mayor

Ronald D. Leonhardt
City Clerk

COUNTERSIGNED:

W. Martin Morics
City Comptroller

**BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF MILWAUKEE**

Timothy Hoelter
President

Donna Luty
Secretary

**MILWAUKEE WORLD FESTIVAL, INC.
a Wisconsin corporation**

Dan Minahan, Chairman

Don Smiley
President and Chief Executive Officer

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