

PIER WISCONSIN LTD.
DEVELOPMENT AND LEASE AGREEMENT

This Easement and Lease Agreement ("Agreement") is made and entered into as of the ____ day of _____ 2003, by and between PIER WISCONSIN LTD. (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 is undertaking the construction of the Improvement to be located on the Property; and

WHEREAS, TENANT is successor in interest to the current lessee, Wisconsin Lake Schooner Education Association, under a January 1, 1998 lease ("Prior Lease") for a portion of the Property and it is the intent of this lease agreement to supersede and replace that prior lease; and

WHEREAS, The Improvement shall be undertaken in accordance with the terms and conditions described on EXHIBIT A; and

WHEREAS, The Improvement will be located upon the Property, which is under the jurisdiction of CITY and which was ceded to CITY by the State of Wisconsin; and

WHEREAS, The Property is more particularly described on EXHIBIT "B" ; and

WHEREAS, The Board of Harbor Commissioners has found and determined that the Improvement will be of great public benefit and is consistent with the terms of its

resolution adopted on June 16, 1978 reserving the area commonly known as the "North Harbor Tract", including the Property, for recreational use and developments which support recreational use; and

WHEREAS, The Common Council of the CITY has also found and determined that the Improvement is of great public benefit and is a recreational use which promotes the enjoyment and use of the natural scenic beauty of the Milwaukee lakefront by the general public and is a navigational use which will promote navigation on the Great Lakes; and

WHEREAS, This Agreement provides for the construction of the Improvement on the Property through the creation of the Construction Easement that will encompass the Property and adjacent areas needed for construction staging; and

WHEREAS, This Agreement provides for the long term operation of the Improvement through the lease of the Property to the TENANT; and

WHEREAS, The execution of this Agreement was authorized by TENANT on _____, by the Board of Harbor Commissioners on _____, and by the Common Council through the adoption of Resolution File No. 030309 on _____.

NOW, THEREFORE, In consideration of the premises, and their mutual obligations, the parties enter into this Agreement upon the following terms and conditions:

1. Definitions.

"Board" means the Board of Harbor Commissioners of the CITY of Milwaukee.

"Conditions" means the conditions subsequent set forth on EXHIBIT "C".

"Construction Easement" means the construction easement, in substantially the form attached as EXHIBIT "D".

"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 10(A).

"Excavated Soils" means soil excavated from the Property or Easement Area by TENANT in connection with the construction of the Improvement.

"Extra Disposal Costs" means the costs of disposal of the Excavated Soils in excess of costs for disposal of clean fill, plus costs of testing.

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

"Human Resource Requirements" means the requirements set forth on EXHIBIT "E".

"Improved Property" means that portion of the Property containing any enclosed permanent structures, exclusive of parking garages, constructed as a part of the Improvement.

"Improvement" means the Improved Property, other capital improvements, installations, works of art, architectural features, signs, and site development which are to be constructed within the boundaries of the Property during the term of this Agreement and which are undertaken in accordance with the terms and conditions of EXHIBIT "A".

"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 Construction Easement.

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

"Preexisting Environmental Conditions" means any hazardous materials or Hazardous Substances, or conditions which existed on the Property or Easement Area at the commencement of this Agreement, even though discovered by TENANT in the course of its investigation or activities.

"Prior Lease" means the January 1, 1998 lease between the CITY and the Wisconsin Lake Schooner Education Association.

"Project" means the construction, operation and maintenance of the Improvement.

"Property" means the real property depicted on EXHIBIT " B".

"TENANT Caused Contamination" means any Hazardous Substances brought to the Property or generated by non-CITY parties, including but not limited to 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.

"TENANT Parties" means the 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, including but not limited to the Conditions as set forth in EXHIBIT C, set forth in this Agreement; and TENANT agrees that this leasehold supersedes and replaces its current leasehold agreement for a portion of the Property.

3. Grant of Construction Easement. Upon the final approval of the design for the Improvement, the CITY will grant to the TENANT a Construction Easement in the form attached as Exhibit "D," for an area to be mutually agreed upon by the parties.

4. Substitution of Descriptions. The Property is more particularly described on EXHIBIT "B" (consisting of a description). At the time TENANT secures the approval of CITY of the final site plan as identified in the Conditions, or upon completion of the Improvement, such approved site plan, including a legal description and drawing of the final configuration of the Property, as defined by a survey map to be

prepared by a certified land surveyor and approved by the CITY's Commissioner of Public Works, shall be substituted as the final Amended EXHIBITB, to reflect the final location of, and the final square footage of, the Property, and the final location of the Improvement as well as all underground facilities upon or beneath the Property. Corresponding amended exhibits shall be substituted as final exhibits to the Construction Easement.

5. Term. The initial term of this Agreement shall be for a period of 30 years, commencing on July 1, 2003 and expiring at 11:59 P.M. on July 1, 2033, except as otherwise provided herein, including but not limited to terminations under Sections 9 to 13.

This Agreement shall be automatically renewed upon identical terms and conditions for one additional successive period of thirty (30) years (the "Option Term") unless TENANT sends a written notice to CITY, at least 6 months prior to the end of the initial term of an election to not renew this Agreement.

6. Rent.

Rent for the initial Term of this Agreement shall be a one time payment of \$6.50 per square foot of land located underneath the Improved Property (but in no case shall the Rent be on less than \$390,000.00) plus an additional annual payment 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), payable to the CITY upon approval by the TENANT and CITY of the final design for the Improvement and upon

the satisfaction or waiver of all Conditions in Exhibit C. This one-time payment will constitute rent for the initial Term of this Agreement, except as provided in Section 41.

Rental for the Option Terms 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, or the first Option Term, whichever is applicable.

Fair Market Rental for the Option Terms 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 next ensuing Option Term. If they are unsuccessful in coming to an agreement on such Fair Market Rental, on or before 10 months prior to the end of such initial Term or Option Term (the "Termination Date"), 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. The 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. Such appraiser shall notify both parties in writing of their determination as described herein, within sixty days after the appointment of CITY's appraiser. Provided 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, 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, the TENANT shall have the option of paying such rental in cash in one lump sum prior to commencement of the next Option Term.

7. Use of the Property and Construction Easement. TENANT shall use the Property and the Construction Easement in the furtherance of TENANT's mission including the construction, maintenance and operation of the Improvement, and of the sail-training vessel Denis Sullivan. The Improvement and the 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 TENANT may also sublease a portion of the Improvement to the James Lovell Museum of Science, Economics and Technology ("Discovery World") for uses consistent with the educational mission of Discovery World in the areas of science, economics and technology. The property and construction easement shall further be used for purposes of providing docking for the Denis Sullivan and the provision of other docking available to members of the public. Additional uses or changed uses of the Property are not permitted without the prior written approval of CITY. 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 CITY, 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 Improvement and uses which are in aid of navigation on the Great Lakes.

The CITY, through its Board of Harbor Commissioners, has determined by its approval and execution of this document, 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 the CITY has approved by resolution, and that the Board of Harbor Commissioners 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.

TENANTS interest in and occupancy of, the Property and the Construction Easement shall be subject only 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 Area subject only to such Permitted Encumbrances.

9. Termination and Vacation.

A. Termination and vacation date. TENANT shall vacate the Property as provided below. The Property shall be returned to CITY by TENANT in substantially the same condition in which it was received (without the currently existing improvements), within 360 days after the expiration of this Agreement, or any renewal or subsequent term, however effected, except that CITY may elect, within 180 days after the termination or expiration of this Agreement, to require the TENANT to raze the Improvement TENANT has constructed on the Property 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 on the Property, CITY may require TENANT, within 60 days of the CITY's election, to convey its title to such Improvement to CITY, free and clear of all liens and encumbrances created by acts of TENANT Parties. 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 shall rest with TENANT and TENANT shall have the obligation and responsibility to perform that which CITY shall direct.

B. Commencement of Construction and Early Termination. The TENANT shall not commence construction of the Improvement until it has complied with all the Conditions set forth in EXHIBIT C. If TENANT has not satisfied all of the Conditions and commenced construction of the Improvement by December 31, 2004, this Agreement shall automatically terminate and be of no further force or effect; and TENANT shall vacate the Property and Construction Easement free and clear of all materials and equipment brought to the Property and Construction Easement by the TENANT and those claiming by and through TENANT. In the event that TENANT fails to vacate the Property and Construction Easement in such state, as determined by CITY, after thirty (30) days' written notice to TENANT, CITY shall have the option to have such clearance conducted as in its reasonable judgment is necessary in order to bring the Property and the Construction Easement to the prescribed state of clearance and to assess the costs of such action against TENANT. Notwithstanding the above, the rights of the Lake

Schooner Education Association and/or the TENANT as the successor in interest to the Lake Schooner Education Association under the Prior Lease shall be reinstated for the term and upon all terms and conditions of the Prior Lease and the Schooner Denis Sullivan shall be maintained in the City of Milwaukee consistent with the terms and conditions of the Prior Lease.

C. Termination for Failure to Substantially Complete the Project. The Property is hereby leased to TENANT, for the permitted uses contained herein, for the exclusive use of TENANT and for construction of the Improvement. This Agreement shall automatically terminate and be of no further force or effect in the event that the Improvement is not substantially completed by December 31, 2008. If the Agreement is terminated as provided in this subsection, TENANT shall vacate the Property as provided in subsection B above and if the TENANT fails to vacate, the CITY shall have all rights and remedies as provided in subsection B above.

10. Default. This Agreement is intended to be a long-term commitment between the parties. The fact that TENANT is investing substantial monies in the construction of the Project, precludes early termination of the entire Agreement, early transfer of the ownership of the Improvement, or demolition of the Improvement 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 or a termination under paragraph 9B or C above, 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 10(A) 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 10(B) 1 through 3 shall be considered a "Termination Default" under the terms of this Agreement:

1. TENANT shall abandon the Property for a period of one year after construction has commenced.

2. TENANT shall make any assignment, transfer, conveyance or other disposition of its interest in the Property, other than an assignment permitted by paragraph 18, 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 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 withdraw funds from the Reserve Fund to make such repayment or, if such funds are insufficient to make such repayment, pursue any other 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 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 Construction Easement, 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 Construction Easement or occupying the Property and Construction Easement, using such force as may be necessary in so doing. TENANT shall thereafter vacate the Property 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 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 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 declare the term of this Agreement as ended. However, the curing of any Termination Default in such manner shall not be construed to limit or restrict the right of CITY to declare this Agreement ended and terminated 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. The CITY shall be responsible for the mutually agreed upon public improvement work on or adjacent to the Property at a cost not to exceed the initial amount of Rent paid by the TENANT under Paragraph 6. above.

15. Maintenance and Housekeeping. Maintenance of the Property (including but not limited to the Improvement, the dockwalls (exclusive of repairs made necessary by catastrophic dockwall failure unless such failure is caused by TENANT), breakwater, docks, Cruise Ship Dock, 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 of Harbor Commissioners. The unenclosed portions of the Property and Improvement 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 the Property 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 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 the period of construction of the Improvement, shall be modified to the level identified in CITY approvals of the building plans identified in paragraph 23C.

16. Utilities. TENANT shall be solely responsible for the installation, maintenance and purchase of all utility services on the Property and Construction Easement 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 Construction Easement. TENANT shall locate all utility services necessary to serve the Improvement in the location identified in the final Site Plan adopted in accordance with EXHIBIT "A".

17. TENANT Assignment, Subleasing and Cruise Ship Dock Operation.

A. TENANT shall not, except with the prior written consent of CITY 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 Discovery World for uses specified in Paragraph 7. above and 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 a mutually agreed upon operating agreement with a term co-extensive with this Lease term, the Cruise Ship Dock, harbor west of the Cruise Ship Dock, and any additional dock or piers, approved by the Board of Harbor Commissioners (such approval not to be unreasonably withheld) and other appropriate governmental agencies. TENANT shall deposit all net income from the operation of the Cruise Ship Dock and other docks and piers into a segregated Dock and Pier Fund from which TENANT may make withdrawals for dock or pier construction and breakwater and dock maintenance. TENANT shall, on or before March 31st of each year, submit an annual, i.e., April 1st to March 31st, budget to the Board of Harbor Commissioners setting forth proposed cruise ship and recreational vessel docking and slip rates as well as the proposed operating or improvement expenses for maritime activities within that portion of the harbor located within the boundaries of the Property. 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 of Harbor Commissioners.

18. Naming Rights. To the extent that the City has the authority to confer naming rights, the TENANT, subject to the City's approval, shall have the following naming rights opportunities: (1) the footprint of the Improvement; (2) the harbor area within all areas west of the breakwater and cruise ship dock and (3) any areas to be identified as the "Proposed Plaza" or "Amphitheater".

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 Improvement on the Property and the Construction Easement, or in the carrying on of its business as hereinbefore set forth on the Property and Construction Easement, 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 Construction Easement, except, and only to the extent, of TENANTS contribution to such risks by its acts, including the design, construction and maintenance of the Improvement and the maintenance of the Property and Construction Easement, 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 or any extension thereof 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 Board of Harbor Commissioners as additional named insureds with respect to the insurance provided under this section. The Certificate 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 Improvement.

22. Status of Improvements. CITY and TENANT recognize the special significance of the Property's position on the lakefront, and acknowledge that TENANT will be constructing the Improvement on the Property. TENANT acknowledges that it may only construct the Improvement after satisfying the following requirements.

A. The Improvement 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. On the Completion Date, the Improvement must comply with all zoning requirements applicable to the Property.

C. As a contractual requirement of this Agreement, TENANT shall not construct the Improvement upon the Property or otherwise substantially modify the exterior appearance of the Improvement (as provided in the final CITY approved design) upon the Property without the prior written consent of CITY. All preliminary design plans and final construction plans for the Improvement, or modifications thereto, to be constructed upon the Property, shall be submitted by TENANT to CITY. Plans for above-ground construction must be approved by Commissioner of CITY Development. Plans for any underground construction must be approved by CITY'S Commissioner of the Department of Public Works. Such approvals are required prior to the issuance of

any building permit for the Improvement or the commencement of construction. Any material proposed changes to such approved plans, shall be similarly submitted to CITY and must be approved by the CITY, prior to TENANT commencing construction incorporating any such proposed changes. Any future revisions and expansions to the Improvement must be similarly submitted to, and approved by, the CITY. TENANT shall provide "as-built" drawings of the Improvement and any and all future revisions and expansions thereto, to CITY within 120 days following issuance of an occupancy permit or completion of construction, if no occupancy permit is required.

The Improvement, and any modifications thereto, which do not violate the use provisions of this Agreement, shall not be subject to the approvals required in this paragraph 23(C), but must still comply with the requirements of this paragraph 23(A) and (B), which shall apply to the Improvement in the same manner as generally applied to other improvements in the CITY.

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 Area generally, and not by reason solely of this Agreement, except as specifically provided in paragraph 28, 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 Improvement or any future improvements, 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 from the CITY required in paragraph 23 herein.

25. Human Resource Requirements. TENANT shall comply with the Human Resource Requirements set forth in EXHIBIT "E".

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 Improvement, and all facilities contained therein, at such times as the Improvement is 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 Improvement 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.

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 Construction

Easement, and/or shall remediate any TENANT Caused Contamination on the Property or Construction Easement 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 Area.

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

C. Excavation Disposal Costs. CITY and TENANT acknowledge that there is a possibility that the Excavated Soils may contain levels of Hazardous Substance such that they must be tested for content, disposed of in a manner different from, and for a cost in excess of, the cost of disposal of clean fill. The costs of constructing the Improvement on the Property may be increased as a result of the existence of any Non-TENANT Caused Contamination, and such costs may be directly related to the Excavated Soils. All Disposal Costs shall be paid by TENANT notwithstanding the fact that they are actually Non-TENANT Caused Contamination. CITY agrees that any delay in the Project arising out of the existence of such Excavated Soils, shall not be counted toward any default, notice or cure time contained herein, nor against any time period for completion of construction. CITY further agrees to cooperate with TENANT to secure any public or

other funding which may be available to pay for such Extra Disposal Costs. If TENANT determines, in its sole judgment, that the cost for disposal of the Excavated Soils is prohibitive, it may notify the CITY in writing that it wishes to terminate this lease agreement; and the lease agreement shall be terminated upon delivery of such notice to the CITY subject to TENANT's compliance with the provisions of Section 9.A.

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 and the Construction Easement referenced herein, and the Exhibits to which reference is made herein contain all of the agreements and covenants made between the parties hereto, 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 the 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:

Pier Wisconsin Ltd.
Attention: President
500 North Harbor Drive
Milwaukee, WI 53202

Copy to: Attorney Frank Steves
von Briesen & Roper
411 East Wisconsin Avenue
Milwaukee, WI 53201-3262

32. Records.

A. TENANT shall keep accurate, full and complete books and accounts with respect to the cost of constructing the Project and shall include a provision in all of its contracts requiring its contractors and subcontractors to do the same. TENANT shall also keep any and all other records required under the terms of this Easement and Lease

Agreement. All such books and accounts shall be maintained in accordance with generally accepted accounting principles consistently applying, and shall be kept for a period of six years.

B. The CITY Comptroller shall have the right, upon reasonable notice to TENANT, its contractors or subcontractors as the case may be, to examine the books and accounts of the TENANT, its contractors or subcontractors during normal hours of business.

C. After substantial completion of the Project, the TENANT shall submit to the Board of Harbor Commissioners a complete set of “as-built” plans and specifications as well as a copy of all approved shop drawings.

D. The TENANT shall assist the CITY in responding to any request for records relating to this Easement and Lease Agreement made under Subchapter II of Chapter 19, Stats.

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 Area 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 the 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 the Municipal Port Director and his designees except that approval of the design criteria of the Improvement, and all revisions or expansions thereto, on the Property and Construction Easement shall be exercised through the Commissioner of CITY Development, for all construction above ground, and the 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 document and the Construction Easement shall each be recorded by TENANT in the Milwaukee County Register of Deed's 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.. Reduction of Property Leasehold.

A. Subject to subsections B and C below, the CITY may, upon one year's written notice to the TENANT, remove from the leasehold any area on Municipal Pier, as depicted on Exhibits B-1 and B-2, not within the boundaries of either the Improved Property, areas of underground parking, or the areas containing the improvements on Municipal Pier commonly known as the "Amphitheater" and "Proposed Plaza."

B. The TENANT may at any time within 180 days after having received the notice described in subsection A, elect to invalidate the CITY's notice and add the affected area to the Improved Property. If TENANT so elects, TENANT agrees to pay to the CITY additional rent calculated on the basis of the square foot rental then applicable times the number of square feet of the affected area, prorated for time remaining on the lease. Upon payment of such additional rental, the affected area shall be added to the Improved Property and EXHIBIT "F" shall be amended accordingly.

C. The rights of the CITY and TENANT under this section are subject to the following: (1) the CITY shall not exercise its rights under subsection A above prior to July 1, 2016; and (2) if the CITY elects to remove the property previously improved by the TENANT (but not the "Amphitheater" nor the "Proposed Plaza"), the CITY agrees to pay to the TENANT the depreciated cost of the Improved Property at a rate of \$2.32 per

square foot of property removed (which square foot figure represents the depreciated value of the improvements in 2016) from the leasehold, declining by \$.195 per square foot for each year after 2016. After 2028, the CITY may remove the property with no reimbursement to TENANT, the original improvements having been fully depreciated.

42. Paragraph and Section.

The terms "Paragraph" and "Section" as used in this Agreement shall be synonymous.

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

JOHN O. NORQUIST, Mayor

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

W. MARTIN MORICS, Comptroller

DANIEL J. STEININGER, President
Board of Harbor Commissioners

DONNA C. LUTY, Secretary
Board of Harbor Commissioners

Pier Wisconsin Ltd.

Chairperson

Secretary

STATE OF WISCONSIN)

ss.

MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, John O. Norquist, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)

ss.

MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, Ronald D. Leonhardt, the (Deputy) City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)

ss.

MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, W. Martin Morics, the (Deputy) City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)

ss.

MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, Daniel J. Steininger, President, and Donna C. 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: _____

STATE OF WISCONSIN)

ss.

MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, _____, Chairperson of Pier Wisconsin Ltd., who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires: _____

STATE OF WISCONSIN)

ss.

MILWAUKEE COUNTY)

Personally came before me this ____ day of _____, 2003, _____
Secretary of Pier Wisconsin Ltd., who by its authority and on its behalf executed the
foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires: _____

Approved as to content, form and execution this
_____ day of _____, 2003

PATRICK B. MCDONNELL
Deputy City Attorney

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