

	PARK LEASE
Document Number	Document Title

PARK LEASE

#### Recording Area

##### Name and Return Address

Redevelopment Authority  
Attn: Dan Casanova, Econ. Dev.  
809 North Broadway, 2nd Floor  
Milwaukee, WI 53202

Tax Key Number:  
364-1549-000-8

**Drafted By:**  
**Kevin Sullivan**  
**Assistant City Attorney**  
**City of Milwaukee**

## **TABLE OF CONTENTS**

	<u>Page</u>
1. Leased Premises .....	2
A. Recording of Lease .....	2
B. AUTHORITY Leases to KGMB .....	2
C. Exclusivity/Nonexclusivity .....	2
2. Term .....	2
3. Termination of Lease .....	2
4. Termination for Convenience .....	2
5. Rent .....	3
6. Project .....	3
7. EBE Requirements .....	3
8. KGMB's Site-Development Costs .....	3
9. KGMB Testing/Excavation Prohibited .....	3
10. No Survey .....	3
11. Permits; Compliance with Laws .....	3
12. Use; Including Provisions Relating to Recreational Activities Under §895.52 .....	3
13. KGMB Permitting Rights for the Park .....	4
14. Compliance with Laws and Regulations; Environmental; Nondiscrimination .....	5
15. Recreational Immunity Under §895.52 .....	6
16. Insurance .....	6
17. Indemnification; Waiver of Subrogation .....	6
18. KGMB Annual Report to Commissioner .....	7
19. Possible Restrictions/Encumbrances .....	7

20.	Maintenance of Premises; Notice of Damage.....	7
21.	Special Trash Pick-Up Provisions .....	8
22.	Improvements by KGMB .....	8
23.	Leasehold Mortgages; Construction Liens .....	8
24.	Utilities; Police and Fire Protection .....	9
25.	Property Taxes, Assessments, Fees & Charges .....	9
26.	AUTHORITY Entry Rights.....	9
27.	AUTHORITY Audit Rights.....	10
28.	Defaults and Remedies .....	10
29.	Condemnation or Damage of Premises.....	11
30.	No Beneficial Interest .....	11
31.	Right to Assign and Sublet .....	12
32.	Fixtures and Personal Property .....	12
33.	Waiver.....	12
34.	Governing Law .....	12
35.	Notices .....	12
36.	Assistant Executive Director-Secretary .....	13
37.	Severability of Provisions .....	13
38.	Captions .....	14
39.	Entire Agreement .....	14
40.	Signage; Brochures .....	14

EXHIBIT A: Legal Description of Premises

EXHIBIT B: Milwaukee Urban Tree House Interpretive Plan – Conceptual Site Plan

EXHIBIT C: EBE Agreement

## EXHIBIT D: Redevelopment Authority's Insurance Requirements

## **PARK LEASE**

**THIS LEASE**, is made as of this \_\_\_\_ day of December, 2010, (the “Effective Date”) and is by and between **THE REDEVELOPMENT AUTHORITY OF THE AUTHORITY OF MILWAUKEE**, a public body corporate and politic organized and existing under the laws of the State of Wisconsin, as the Landlord (hereinafter “AUTHORITY”) and **KEEP GREATER MILWAUKEE BEAUTIFUL, INC.**, a Wisconsin non-stock corporation, as the Tenant (hereinafter “KGMB”).

## **RECITALS**

- A. AUTHORITY owns certain real estate and improvements located at 1255 North 22nd Street, in Milwaukee, Wisconsin (the “Premises”), more particularly described in **EXHIBIT A** attached hereto, and more commonly referred to as “Lynden Hill.”
- B. KGMB wants to lease the Premises from AUTHORITY per the terms hereof, so KGMB, as a non-profit, 501(c)(3) organization, can put the Premises to uses consistent with its mission.
- C. AUTHORITY believes that such uses in accordance with the terms of this Lease will, among other things, enhance urban green space, support community recreational activities, support KGMB’s mission, and promote the general welfare of the City of Milwaukee and its citizens.
- D. KGMB has plans to maintain the Premises to support recreational and educational activities organized and managed by KGMB. KGMB’s plans include lawn mowing, snow removal and other general maintenance. KGMB may also pursue physical improvements to the Premises by working with the USDA Forest Service and other partners to implement their Milwaukee Urban Tree House Interpretive Plan, dated May 2005 (the “Project”).
- E. AUTHORITY is willing to lease the Premises to KGMB on the terms and conditions set forth herein.
- F. The AUTHORITY authorized entry into this Lease by Resolution No. 10245, approved November 18, 2010 by the Board of Directors of the AUTHORITY and the Common Council of the City of Milwaukee authorized entry into this lease by Resolution File No. 100870, approved December 21, 2010.

## **Agreement**

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

1. **Recitals.** The recitals above are hereby agreed to.
2. **Leased Premises.** Subject to the terms hereof, the AUTHORITY does hereby lease to KGMB the real property and improvements at 1255 North 22nd Street, Milwaukee, WI, ("Premises") which is legally described on **EXHIBIT A.**
  - A. **Recording of Lease.** In its discretion, AUTHORITY may record this Lease (or evidence thereof) in the Milwaukee County Register of Deeds Office; and KGMB agrees to cooperate with AUTHORITY in that regard.
  - B. **AUTHORITY Leases to KGMB.** Subject to all the terms and conditions in this Lease, AUTHORITY hereby leases to KGMB, and KGMB hereby leases from AUTHORITY, 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 defined as the Premises.
  - C. **Exclusivity/Nonexclusivity.** The Premises are being leased to KGMB on an exclusive basis subject only to continued public use and enjoyment as specified in ¶¶ 12 and 13 of this Lease.
2. **Term.** The term of this Lease (the "Term") shall be 5 years, commencing on \_\_\_\_\_, (the "Commencement Date") and terminating on \_\_\_\_\_, unless sooner terminated as herein provided.
3. **Termination of Lease.** Upon the expiration or earlier termination of this Lease, KGMB shall peaceably and quietly deliver, yield up, and surrender possession of the Premises to AUTHORITY. KGMB shall remove from the Premises upon expiration or termination, and be responsible for, all personal property situated thereon, and leave the Premises in a broom-clean condition. Any property not so removed shall, at AUTHORITY's option, either become the sole property of AUTHORITY or be stored on-site or off-site at KGMB's expense.
4. **Termination for Convenience.** Notwithstanding anything to the contrary contained herein (including, but not limited to, any provision in the "condemnation" section below), AUTHORITY or KGMB may, in each of its sole discretion, and without cause, and for any reason, including no reason, terminate this Lease at any time upon a minimum of six (6) months advance written notice. This ¶4 in this Lease is a material provision without which, AUTHORITY would not have entered into this Lease.
5. **Rent.** KGMB shall pay an annual rental of One Dollar (\$1), payable in full on the first day of the Term without demand therefor and without setoff or deduction. Rent shall be payable to the AUTHORITY, and shall be tendered to the Assistant Executive Director-Secretary of the AUTHORITY ("Assistant Executive Director-Secretary") at the notice address set forth below.

6. **Project.** KGMB may improve the Premises at its expense in a manner which follows the USDA Forest Service's Milwaukee Urban Tree House Interpretive Plan, dated May 2005, a conceptual site plan from which is attached as **EXHIBIT B** (the "Project"). No additional buildings, structures or improvements shall be constructed on the Property without the prior written approval of the AUTHORITY. All costs associated with the Project shown in EXHIBIT B are the responsibility of KGMB.
7. **EBE Requirements.** KGMB shall comply with the requirements of the EBE Agreement, attached hereto as **EXHIBIT C** for general maintenance or any work done as part of the Project.
8. **KGMB's Site-Development Costs.** KGMB shall be solely responsible for all Project costs, and costs and expenses associated with the Premises and Project, including, but not limited to any necessary utility extensions or sidewalk improvements.
9. **KGMB Testing/Excavation Prohibited.** KGMB shall not undertake any excavation activities upon, or environmental investigation or environmental testing of the Premises without prior written approval of AUTHORITY. KGMB is solely responsible for conducting whatever geotechnical investigations, testing and analysis it deems appropriate and prudent. AUTHORITY represents that it has no actual knowledge of the presence of any hazardous or toxic substances, pollutants, or contaminants on any part of the Premises; however, KGMB is advised that AUTHORITY has not obtained a Phase I environmental site assessment for the Premises nor has the AUTHORITY undertaken any other environmental investigation of the Premises. This representation shall not, in any event, form the basis for or support any liability or cause of action against AUTHORITY.
10. **No Survey.** AUTHORITY shall not provide any survey of the Property.
11. **Permits; Compliance with Laws.** KGMB shall, at its expense, obtain all requisite governmental permits, licenses, and approvals ("Approvals") necessary to make any improvements to the Premises, and it shall construct and act in conformance with the Approvals. KGMB agrees to comply with all applicable federal, state and local laws regarding the Project, including requirements of the Americans With Disabilities Act.
12. **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, KGMB shall have the right to use and occupy the Premises solely for the operation of:
  - (1) "recreational activities:" (a) as defined in Wis. Stat. §895.52(1)(g) (as the same may be amended from time to time); and (b) that are consistent with activities generally associated with other public parks in Milwaukee County and other open green space in the City of Milwaukee; and (c) that are in compliance with federal, state, and local law, regulations, and ordinances (herein called "Recreational Activities"); and
  - (2) activities that are controlled and supervised by KGMB (herein called "KGMB-Controlled Activities"). KGMB-Controlled Activities may include activities that are not "recreational activities" as defined in Wis. Stat. §895.52(1)(g).

KGMB use of the Premises (including KGMB-Controlled Activities) must, in any event, be lawful, in compliance with all applicable federal, state, and local laws, regulations, and ordinances (including laws, regulations or ordinances requiring permits or licenses), and must be conducted so as not to unreasonably interfere with the legal rights of neighbors. No other uses may be permitted without AUTHORITY's prior written consent.

13. **KGMB Permitting Rights for the Park.** To promote the orderly use and enjoyment of the Park by the general public, KGMB may, in its discretion, adopt a permit system whereby members of the general public apply to KGMB for a permit to use a designated area of the Park, for a temporary, specified period, for a specified "Recreational Activity" as allowed in section 12 above, that is lawful, and that is NOT a KGMB-Controlled Activity. In the event the provisions of this Lease conflict with any provision of a permit system adopted by KGMB, the provisions of this Lease shall control. Any use for which KGMB issues a permit (while temporarily exclusive) must otherwise be in compliance with this Lease, including the provisions in section 12 above. If KGMB does elect to engage in such permitting, then:
- A. KGMB shall clearly post the use policy and procedures on the Premises;
  - B. KGMB shall conduct outreach to neighborhood stakeholders, MPS, and other potential users of the site regarding the opportunity to access the site for community use;
  - C. KGMB shall not charge for the issuance of permits any amount beyond an amount sufficient to cover KGMB's reasonable expenses associated with KGMB's permitting process and with the issuance of the particular permit;
  - D. The permit shall only allow the permittee the right to use a designated portion of the Park for a temporary period (in all cases, less than 12 hours), and KGMB may not allow anything that is unlawful or concerning which KGMB has no authority (for example, KGMB has no authority to allow permittees to possess or consume alcohol);
  - E. The permit may only allow use for a "Recreational Activity" as defined in Section 12 above;
  - F. KGMB's permit process shall provide written notice to applicants advising applicants and permittees: (i) that use is limited to "Recreational Activities" as defined in Section 12; (ii) that they must comply with all federal, state, and local laws, regulations, and ordinances; (iii) that KGMB 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; and
  - G. KGMB 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 KGMB may specify – in which case any waiver or release or acceptance of



responsibility or insurance that KGMB requires shall also expressly run to the AUTHORITY's benefit and protect and cover AUTHORITY to the same extent as KGMB.

**14. Compliance with Laws and Regulations; Environmental; Nondiscrimination.**

- A. KGMB 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 repair or maintenance) of, any part of the Premises.
- B. KGMB shall not store, use, discharge or dispose of any hazardous or toxic substances, pollutants or contaminants ("Contaminants") on any part of the Premises other than conventional household 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. KGMB is leasing the Premises on an "**AS IS, WHERE IS**" basis.
- D. KGMB shall be responsible (i) for remediating any Contaminants or environmental pollution on any part of the Premises caused by KGMB, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Premises caused by KGMB.
- E. KGMB must obtain AUTHORITY's prior written approval before conducting any environmental testing or investigation on or at any part of the Premises.
- F. KGMB shall not, with respect to its use and occupancy of the Premises, and KGMB-Controlled Activities thereat, and with respect to its issuance of permits for the Park 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.

**15. Recreational Immunity Under §895.52.**

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

**16. Insurance.** KGMB shall obtain and maintain in place during the entire Term, at its expense (as additional rent hereunder), insurance as described in **EXHIBIT D**, listing the City of Milwaukee and Authority as additional insured parties.

17. **Indemnification; Waiver of Subrogation.** In addition to any liability KGMB may have to AUTHORITY as a result of KGMB breach of any of its duties hereunder, notwithstanding anything to the contrary contained herein, KGMB also agrees to indemnify and save AUTHORITY 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:

- A. the intentional or negligent acts or omissions of KGMB, its officers, directors, employees, agents, or contractors. Providing, however, that – subject to subparagraph B below - the AUTHORITY is not hereby imposing any contractual liability on KGMB to indemnify AUTHORITY 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 KGMB has issued a permit under section 12 of this Agreement; or
- B. a KGMB-Controlled Activity (including, but not limited to, activities that only involve KGMB, its officers, directors, employees, agents or contractors).

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

18. **KGMB Annual Report to Assistant Executive Director-Secretary.** On or before each December 31st during the Term of this Lease, KGMB shall provide a written report to the Assistant Executive Director-Secretary concerning KGMB's use and activities at the Premises during the preceding 12-month period ending on the November 30th prior to that December 31st deadline. That Report shall identify and explain KGMB-Controlled Activities during the preceding year, and also, with respect to section 13 above, identify all permits issued, to whom, and for what purpose, and permit fee (if any) charged. The Report shall also contain a report as to revenues and expenses associated with the Premises for the Report Year.

19. **Possible Restrictions/Encumbrances.**

- A. **No Title Report.** AUTHORITY is, as indicated, is leasing the Premises to KGMB on an “AS IS, WHERE IS” basis. AUTHORITY has not obtained or provided to KGMB any title insurance commitment or title insurance policy with respect to the Premises. If KGMB wants such, it can acquire such on its own at its expense.
- B. **Other.** AUTHORITY retains the right to devote portions of the Premises to uses for utilities and other easements necessary for public welfare and convenience provided said utilities and easements do not unreasonably interfere with KGMB's use of the Premises.

20. **Maintenance of Premises; Notice of Damage.**

A. **Maintenance by KGMB.** KGMB 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 thereat as practicable. The foregoing includes, but is not limited to, KGMB being responsible for, at its expense:

- (1) Picking up and removing litter, trash, and rubbish at the Premises on a routine basis so as to keep the same reasonably clean and litter-free.
- (2) Removing snow and ice from the entire width of sidewalks surrounding the Premises in accordance with Milwaukee Code of Ordinances §§116-8 and 116-16.
- (3) Promptly removing graffiti from the Premises and improvements thereat.
- (4) Mowing the grass 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 thereat, as practicable and within a reasonable time.
- (7) Electrical and plumbing repairs and maintenance work.
- (8) Properly preparing buildings and fixtures for winterization, weather and change of seasons.
- (9) Keeping the Premises, buildings and fixtures in good and clean condition.

B. **KGMB Notice of Damage/Repair to AUTHORITY.** KGMB shall provide prior written notice to AUTHORITY of any repair or maintenance work required of KGMB above 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 AUTHORITY's prior written approval before undertaking any such repair or maintenance work.

21. **Special Trash Pick-Up Provisions.** KGMB shall be solely responsible for all trash and litter pick-up and removal from the Premises. AUTHORITY shall bear no expense or obligation associated with trash removal from the Premises.

22. **Improvements by KGMB.** With the exception of the Project and maintenance and repair work required of KGMB under the "maintenance" section above, KGMB shall not make any alterations or additions to the Premises without AUTHORITY's prior written consent. All improvement requests shall be submitted in writing to the AUTHORITY's Real Estate Officer with a copy to the Assistant Executive Director-Secretary. All requests shall be deemed approved if not responded to within thirty (30) days. Notwithstanding the foregoing, all buildings or structures shall require the written consent of the Assistant Executive Director-Secretary. In the event KGMB undertakes

improvements on the Premises, the construction of which require compliance with prevailing wage requirements under §66.0903, Wis. Stats., or such other statutes or administrative rules as may be applicable, then, and in such event, KGMB shall undertake all actions and incur such costs as are necessary to comply with such prevailing wage laws and shall indemnify, defend and hold harmless AUTHORITY for all costs, expenses, loss, wages, damages or other economic consequences arising out of the applicability of or KGMB's failure to comply with said laws.

23. **Leasehold Mortgages; Construction Liens.** KGMB 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. KGMB 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 KGMB (or anyone claiming by, through, or under KGMB) may perform or have done at the Premises. KGMB shall indemnify, defend, and hold harmless AUTHORITY 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.
24. **Utilities; Police and Fire Protection.** KGMB is responsible for all utility costs associated with use of the Premises during the Term of this Lease including sewer, water, and electricity. The City of Milwaukee 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 of Milwaukee.
25. **Property Taxes, Assessments, Fees & Charges.**
- A. In that the Premises are owned by AUTHORITY, 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, KGMB shall be responsible for, and timely pay, such taxes, with the understanding that KGMB may dispute such by following the procedure set forth in Wis. Stat. § 74.35(2m).
  - B. Unless otherwise entitled to lawful exemption, KGMB shall pay all taxes, assessments, charges, and fees levied or assessed upon the Premises or upon its own personal property and its own trade fixtures on, or at, the Premises.
  - C. KGMB 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 or fees expressly include those both known and unknown as of the effective date of this Lease.
26. **AUTHORITY Entry Rights.** AUTHORITY has the right, without notice, to enter the Premises at any time. AUTHORITY's entry shall be conducted in such a way so as to minimize interference or disruption of KGMB's (or anyone claiming by, through, or

under KGMB) lawful use and occupancy of the Premises. In addition to the foregoing, AUTHORITY 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 the City of Milwaukee's building inspectors, health inspectors, fire inspectors, electrical inspectors, assessors, fire and police personnel, etc. to enter and inspect).

27. **AUTHORITY Audit Rights.** KGMB shall keep accurate and complete books, records, and accounts with respect: (i) to the Premises and the Lease, including information regarding all permits issued for use of the Premises; (ii) to use and occupancy of and events at the Premises; and (iii) to improvements, maintenance and repair undertaken by KGMB with respect to the Premises. Those books, records and accounts shall be made available to AUTHORITY for its review and inspection upon AUTHORITY's request. KGMB shall provide to AUTHORITY, at KGMB's expense, and upon AUTHORITY'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 KGMB improvements, repair or maintenance work;
- (d) articles of incorporation or bylaws of KGMB (or any amendment to the same);
- (e) insurance policy or proof of financial responsibility KGMB has or had in place hereunder.

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

28. **Defaults and Remedies.** KGMB shall be in default hereunder:

- A. if KGMB fails to perform any of its covenants or duties under this Lease and such failure is not cured by KGMB (i) with all due dispatch after written notice from AUTHORITY to KGMB 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 AUTHORITY to KGMB (or if such failure is not of a type that can reasonably be corrected within 30 days, then if KGMB fails to commence promptly and proceed with due diligence to correct such failure);
- B. if KGMB is adjudged bankrupt, or if KGMB files a petition or answer seeking bankruptcy, insolvency status, or reorganization of KGMB under federal or state bankruptcy or insolvency law, or if KGMB consents to the appointment of a receiver to administer KGMB or its affairs, or if KGMB dissolves or institutes any proceeding for dissolution;
- C. if KGMB makes any sublease, assignment, transfer, hypothecation, conveyance, or other disposition of its interest in the Premises (or any part thereof) without AUTHORITY's prior written consent;

- D. if KGMB merges into another entity, or permits one or more other entities to consolidate or merge into it without AUTHORITY's prior written consent;

In the event of any default by KGMB hereunder, KGMB hereby authorizes and empowers AUTHORITY to exercise any right or remedy available to AUTHORITY 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 the Court to manage the Premises (or parts of it), (iii) the right to evict KGMB and anyone claiming by, through, or under KGMB, from the Premises (or parts of it), (iv) the right, if AUTHORITY evicts or removes KGMB (or anyone claiming by, through, or under KGMB) from the Premises (or any part of it), to store personal property of KGMB (or anyone claiming by, through, or under KGMB) in a storage facility or public warehouse at the sole cost of KGMB.

**29. 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 AUTHORITY's reasonable opinion (which shall be reached by AUTHORITY within 100 days of the condemnation, transfer, or damage, and after consultation with KGMB) - all or any significant portion of the Premises untenable or unfit for the continued use and purpose of KGMB, and for the carrying out of KGMB'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 AUTHORITY, providing, however, that KGMB shall be entitled to any award or insurance directly relating to KGMB's personal property (including KGMB's trade fixtures and moveable equipment), to KGMB's leasehold interest, and/or to any tenant-relocation award or benefit that the condemning authority or insurer may award or pay to KGMB.

- B. **Waiver; Participation.** In the event of any condemnation or damage pursuant to subpara. A. above, KGMB waives any claim for damage or compensation from AUTHORITY. KGMB 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.

**30. 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: KGMB 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 KGMB and AUTHORITY. The sole relationship hereunder between KGMB and AUTHORITY is merely that of tenant (KGMB) and landlord (AUTHORITY).

31. **Right to Assign and Sublet.** KGMB may NOT assign this Lease or sublet any portion of the Premises without AUTHORITY's prior written consent, providing, however, that, subject to the terms and conditions of this Lease, KGMB may use the Premises for KGMB-Controlled Activities and KGMB, under ¶13, may issue permits.
32. **Fixtures and Personal Property.** Subject to the terms hereof, KGMB may install and affix to the Premises such trade fixtures, moveable equipment and personal property as KGMB may deem desirable, which shall remain KGMB's sole property. Said fixtures and personal property expressly include, but are not limited to, lighting, security system equipment, and other fixtures needed as part of the Project. KGMB shall have the right at any time during the Term of this Lease, to remove or change, at KGMB's sole expense, subject to AUTHORITY approval, if applicable, under ¶22 of this Lease, any of its trade fixtures, moveable equipment and personal property, providing, however, that (with the exception of temporary repairs, maintenance, upgrades and replacements) KGMB shall not remove any such item that would compromise any structure or utility at, constituting, or serving any building on the Premises (including, but not limited to, any HVAC, plumbing or electrical system), and providing further that, in all cases, KGMB shall, at its expense, promptly repair any damage caused by or attributable to any removal or change by KGMB of its trade fixtures, equipment or personal property.
33. **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.
34. **Governing Law.** This Lease shall be construed according to the laws of the State of Wisconsin.
35. **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 fax or e-mail to the respective fax number or e-mail address set forth below. Either party may by like notice at any time, and from time to time, designate a different address, fax, 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 faxed or e-mailed during business days when City Hall is open for business during business hours (8:30 a.m.- 4:30 p.m.), when faxed or e-mailed, or (c) if mailed, three days after the postmark on such notice, in accordance with this section.

**To AUTHORITY:**

David P. Misky  
Assistant Executive Director-Secretary  
Redevelopment Authority of the City of Milwaukee  
809 North Broadway, Second Floor  
Milwaukee, WI 53202  
Phone: (414) 286-8682

Fax: (414) 286-0395  
E-mail: dmisky@milwaukee.gov

**Copy to:**

Kevin Sullivan  
City Attorney's Office  
800 City Hall  
200 East Wells Street  
Milwaukee, WI 53202  
Phone: (414) 286-2625  
Fax: (414) 286-8550  
E-mail: ksulli@milwaukee.gov

**To KGMB:**

Joe Wilson  
Executive Director  
Keep Greater Milwaukee Beautiful, Inc.  
1313 West Mt. Vernon Avenue  
Milwaukee, WI 53233-2620  
Phone: 414-272-5462  
Fax: 414-272-5060  
E-mail: jwilson@kgmb.org

36. **Assistant Executive Director-Secretary.** Unless otherwise provided for herein, all submissions to AUTHORITY, and all approvals or consents required to be obtained from AUTHORITY, hereunder, as landlord, shall, respectively, be submitted to, or obtained from, as the case may be, AUTHORITY's Assistant Executive Director-Secretary or his or her designee.
37. **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.
38. **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.
39. **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.
40. **Signage; Brochures.** Any signage at the Premises must first be approved by each of KGMB and AUTHORITY. KGMB also agrees to include on any of its brochures or pamphlets advertising or concerning KGMB's operations or programs at the Premises evidence of AUTHORITY ownership of the Premises.







## **EXHIBIT A**

### **LEGAL DESCRIPTION OF PREMISES**

Lots 1 through 28 and All Vacated Alleys, Block 12, Lynden Place, Located in the Southwest 1/4 of Section 19, Township 7 North, Range 22 East, County of Milwaukee, City of Milwaukee, Wisconsin.

Address: 1255 North 22nd Street

Tax Key Parcel No.: 364-1549-000-8

## Milwaukee Urban Tree House Interpretive Plan – Conceptual Site Plan



**© 2006 Interneet Design Group**

© 1998 The McGraw-Hill Companies  
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without prior written permission from The McGraw-Hill Companies, Inc.

## **EXHIBIT C**

### **EMERGING BUSINESS ENTERPRISE AGREEMENT** **FOR THE LYNDEN HILL PROJECT**

**THIS EMERGING BUSINESS ENTERPRISE AGREEMENT** is entered into by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation, (hereinafter the "CITY"), and Keep Greater Milwaukee Beautiful, Inc., a Wisconsin non-stock corporation (hereinafter "DEVELOPER"), and the Redevelopment Authority of the City of Milwaukee, (hereinafter "RACM").

**WHEREAS**, DEVELOPER, CITY and RACM have entered into a Lease for Lynden Hill, the property at 1255 North 22nd Street, which may include future improvements to the property (the "Project").

**WHEREAS**, DEVELOPER acknowledges that the CITY and RACM have established policies regarding the utilization of Emerging Business Enterprise ("EBE") consistent with Chapter 360 of the Milwaukee Code of Ordinances.

**WHEREAS**, DEVELOPER acknowledges that the sale of property by the CITY is conditioned upon the DEVELOPER and its agents agreeing to use best efforts to attain a minimum 18% EBE participation in the construction of the Project.

**NOW, THEREFORE**, in consideration of the mutual promises set forth herein, **IT IS AGREED:**

#### **I. DEFINITIONS**

- A. The EBE is a small business concern that is owned, operated and controlled by one or more individuals who are at a disadvantage, as defined in Chapter 360 of the Milwaukee Code of Ordinances. The individuals must have day-to-day operational and managerial control, interest in capital, financial risks and earnings commensurate with the percentage of their ownership. EBEs are certified as such by the City of Milwaukee Certification Program. **Note: businesses that were certified under the old name of Disadvantaged Business Enterprise ("DBE") will continue to qualify for the program.**
- B. JOINT VENTURE is an association of two (2) or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and/or knowledge.

#### **II. EMERGING BUSINESS ENTERPRISE PROGRAM**

- A. DEVELOPER agrees to report to the CITY's Emerging Business Enterprise Program (EBEP) Manager regarding its utilization of EBEs in its contracting activities for the Project work performed by DEVELOPER. DEVELOPER agrees to:
  - (1) Provide a list of all categories of work on the Project with budget allowances, for which bids will be solicited and highlight those categories, based upon DEVELOPER's knowledge and experience, which are conducive to EBE participation, prior to bids being solicited. **(See Attachment: Exhibit A)**
  - (2) Submit an EBE Monthly Report to CITY's EOEP Office the 20<sup>th</sup> of each month on the form attached as Exhibit B.
- B. DEVELOPER and its agents, in developing and constructing the Project, agree to make best efforts to utilize EBEs, as defined in Chapter 360, Milwaukee Code of Ordinances, for a minimum 25% of the total Project costs deemed eligible pursuant to EBE guidelines:
  - (1) Demonstrable efforts, when exercised by DEVELOPER in conjunction with the Project, is defined as DEVELOPER completing the following activities, as appropriate:

- a. Advertise in general circulation and trade association media, as well as in community newspapers regarding contracting and subcontracting opportunities. Advertising in the Daily Reporter and two other publications shall be the minimum acceptable level of performance (**Exhibit C**).
- b. Provide interested EBEs and the agencies listed in **Exhibit D**, with adequate information about Project plans, specifications, and contract/subcontract requirements at least two weeks prior to the contract bidding process. DEVELOPER shall document Community Agency Contacts by completing the Contact Sheet attached as **Exhibit D1** and submitting the completed Contact Sheet to EBEP prior to commencement of bidding.
- c. Conduct pre-bid conferences and a pre- bid walk-through two (2) weeks in advance of the contract bid date, as appropriate.
- d. Provide written notice to all pertinent construction trades and professional services EBEs listed in the current City of Milwaukee Directory, soliciting their services in sufficient time (at least 2 weeks) to allow those businesses to participate effectively in the contract bidding process. To identify EBEs for the Project, utilize the current *Official City of Milwaukee EBE Directory* published by the City of Milwaukee Emerging Business Enterprise Program. The directory can be accessed on-line at: [www.milwaukee.gov](http://www.milwaukee.gov)

Follow-up with EBEs who show an interest in the Project during the initial solicitation process (See **Exhibit E - EBE Solicitation Form**).

- e. Negotiate in "good faith" with interested EBEs, not rejecting EBE bids as unqualified or too high without sound reasons based on a thorough review of the bid submitted and maintain documentation to support the rejection of any EBE bid. Bids that are not cost effective, and/or time prohibitive will be considered "rejectable" bids. (See **Exhibit F - Bid Rejection Form**).
  - f. Utilize the services available from the City of Milwaukee Office of Emerging Business Enterprises in identifying EBEs available to perform the work.
  - g. Include in Project bid documents and advertisements an explanation of Project goals for EBE participation to prospective contractors and subcontractors.
  - h. Use best efforts to facilitate the following:
    - i) Joint ventures, limited partnerships or other business relationships intended to increase EBEs' areas of expertise, bonding capacity, credit limits, etc.
    - ii) Training Relationships
    - iii) Mentor/protege Agreements
- C. If the DEVELOPER completes the aforementioned activities and demonstrates "good cause" for not meeting the 18% goal for EBE participation, it shall be deemed that the DEVELOPER has acted in "good faith" to achieve the requirement.
- D. If the DEVELOPER meets or exceeds the 18% EBE requirement in conjunction with said Project, it shall be deemed that the DEVELOPER has achieved or exceeded RACM and the CITY's EBE goal, for the purposes of fulfilling the terms of this Agreement.
- E. Contract or subcontract amounts awarded to EBE suppliers, that do not manufacture products they supply, may only be counted for up to 20% of the 18% EBE participation goal.

IN WITNESS WHEREOF, the parties have executed this EBE Agreement as of this \_\_\_\_day of \_\_\_\_\_, 2010.

**REDEVELOPMENT AUTHORITY  
OF THE CITY OF MILWAKEE**

\_\_\_\_\_  
By: Louis A. Smith  
Chair

\_\_\_\_\_  
By: David P. Misky  
Assistant Executive Director/Secretary

**CITY OF MILWAUKEE**

\_\_\_\_\_  
By: Tom Barrett  
Mayor

\_\_\_\_\_  
By: \_\_\_\_\_  
City Clerk

**COUNTERSIGNED:**

\_\_\_\_\_  
By: \_\_\_\_\_  
City Comptroller

**KEEP GREATER MILWAUKEE BEAUTIFUL,  
INC., DEVELOPER**

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

**08-13-04**

*1031-2004-763:84045*

**EXHIBIT A**  
**CATEGORIES OF WORK**  
(Use Exhibit A Excel Spreadsheet )



## EXHIBIT B

### DEPARTMENT OF ADMINISTRATION

### EMERGING BUSINESS ENTERPRISE PROGRAM

#### EBE MONTHLY REPORT

(1) Report for the Month of \_\_\_\_\_ (Final: yes \_\_\_\_ no \_\_\_\_)

(2) Prime Contractor/Firm \_\_\_\_\_

(3) Full Address & Phone Number: \_\_\_\_\_

(4) Description of service performed and/or material supplied \_\_\_\_\_

(5) Purchase Order /Contract # \_\_\_\_\_ (6) Project Number \_\_\_\_\_

(7) Start Date: \_\_\_\_\_ (8) Prime Contractors Total \$: \_\_\_\_\_

(9) Completion Date: \_\_\_\_\_ (10) Prime Contractor YTD \$: \_\_\_\_\_

(11) EBE % goal \_\_\_\_\_ and \$ goal \_\_\_\_\_

List all EBE subcontractor firm(s) utilized in connection with the above contract, either as service performed and/or supplier for the month. This form shall be signed and returned. **If this represents the final report, be sure to indicate at the top of form.**

NAME OF EBE FIRM(s)	SERVICE PERFORMED/ MATERIAL SUPPLIED	AMOUNT PAID FOR THE MONTH	TOTAL \$ PAID Y-T-D
<b>TOTAL PAID TO EBE(s)</b>			

I/we hereby certify that I/we have read the above and approved this information to be precise and confirmed.

(12) Report Prepared By: \_\_\_\_\_  
(Name) (Title) (Phone Number)

(13) Authorized Signature: \_\_\_\_\_  
(Name) (Title) (Phone Number)

(14) Date \_\_\_\_\_

Note: This form should be submitted no later than the **20<sup>th</sup> of every month** to **Emerging Business Enterprise Program, 200 East Wells Street, Room 606, Milwaukee, WI** or fax to **(414) 286-8752, Attn: Ossie Kendrix**

***EXHIBIT C***  
**EBE MARKETING PLAN**

**PUBLICATIONS/ADVERTISING CONTACTS**

Milwaukee Times  
(Published weekly)

**2216 North King Drive**

Milwaukee, WI 53212  
Tele. No: (414) 263-5088  
Fax: (414) 263-4445  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

The Milwaukee Courier  
(Published weekly)  
2431 West Hopkins Street  
Milwaukee, WI 53206  
Tele No: (414) 449-4860  
Fax: (414) 449-4872  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

Milwaukee Community Journal, Inc.  
(Published twice weekly)  
3612 North King Drive  
Milwaukee, WI 53212  
Tele No: (414) 265-5300  
Fax: (414) 265-1536  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

Daily Reporter  
(Published daily M-F)  
704 West Wisconsin Avenue  
Milwaukee, WI 53233  
Tele No: (414) 276-0273  
Fax: (414) 276-8057  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

**EXHIBIT D**  
**EBE MARKETING PLAN**

**COMMUNITY AGENCY CONTACTS**

**National Association of Minority Contractors**

3100 West Concordia Ave  
Milwaukee, WI 53216  
(414) 449-0837

**The Milwaukee Urban League**

435 West North Avenue  
Milwaukee, WI 53212  
(414) 374-5850

**African American Chamber-Commerce**

6203 West Capitol Dr  
Milwaukee, WI 53216  
(414) 462-9450

**Hispanic Chamber of Commerce of Wisconsin**

816 West. National Ave.  
Milwaukee, WI 53204  
(414) 643-6963

**Wisconsin Minority Business Opportunity Center**

1915 North Dr. Martin Luther King Jr. Drive, Suite 213-F  
Milwaukee, WI 53212  
(414) 372-3773

**Hmong Wisconsin Chamber of Commerce**

3616 West National Avenue. Suite 99  
  
Milwaukee, WI 53215  
(414)649-8331

**Lao Family Community Inc.**

2331 West Vieau Place Milwaukee, WI 53204  
414-385-3380

**EXHIBIT D1**  
**Emerging Business Enterprise (EBE)**  
**Contact Sheet**

[illegible]

**EXHIBIT E**  
**EMERGING BUSINESS ENTERPRISE (EBE)**  
**SOLICITATION FORM**

Name & Address of EBE Firm \_\_\_\_\_

Name of Individual Contacted \_\_\_\_\_ Phone Number \_\_\_\_\_

Type of Work \_\_\_\_\_ Date and Time of Contact \_\_\_\_\_

Quotation or Proposal Received \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

REMARKS: THESE SHOULD INCLUDE ANY FOLLOW UP ACTIONS. IN THE EVENT THAT  
THE EMERGING BUSINESS ENTERPRISE WILL NOT BE UTILIZED, INCLUDE AN  
EXPLANATION OF THE REASON (s) WHY THE FIRM WILL NOT BE USED. FOR EXAMPLE: IF  
THE ONLY REASON FOR NON-UTILIZATION WAS PRICE, THE EXPLANATION SHOULD  
REFLECT WHAT STEPS WERE TAKEN TO REACH A COMPETITIVE PRICE LEVEL.

REMARKS:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**EXHIBIT F**  
**Emerging Business Enterprise (EBE)**  
**Rejection of Bid Form**

<b>Name and Address of EBE firm</b>	<b>Type of Work</b>	<b>Bid Submitted by EBE</b>	<b>Actual Bid Award</b>	<b>Reasons for bid rejection</b>	<b>Approved By</b>
1					
2					
3					
4					
5					
6					
7					
8					

## EXHIBIT D

### Redevelopment Authority's Insurance Requirements

Insurance certificates must be sent for inspection and approval prior to commencement of the project to: Elaine Miller, Real Estate Manager, Department of City Development, 809 North Broadway, Milwaukee, WI 53202-3617 or by facsimile to (414) 286-0395.

#### TYPE OF INSURANCE LIMITS

##### Workers' Compensation

Statutory limits

##### Employers Liability

Bodily Injury by Accident

Each Accident \$100,000

Bodily Injury by Disease

Each Employee \$100,000

Policy Limit \$500,000

##### Public Liability

A Comprehensive General or Commercial General  
Insuring Agreement that provides:

##### \*Occurrence Coverage\*

Premises/Operations Protection

Products Completed Operations Protection

Independent Contractors (owners, contractors  
protective coverage)

Contractual Liability for Risks Assumed to  
this agreement

**NOTE:** If claims made coverage is provided, the  
policy must be amended so all protected occurrences  
are covered regardless of when the claim is made.

Bodily Injury/Property Damage

Each occurrence \$1,000,000

General occurrence \$1,000,000

Products/completed  
operation aggregate \$2,000,000

##### Automobile

Business Auto Policy that provides:

Liability coverage for all owned, non-owned  
and hired vehicles

Sudden and Accidental Pollution Coverage

Provide MCS-90 Endorsement when applicable  
in accordance with the Motor Carrier Act of 1980

Bodily Injury/Property Damage

Each accident \$1,000,000

**THE REDEVELOPMENT AUTHORITY AND THE CITY OF MILWAUKEE MUST BE  
NAMED AS ADDITIONAL INSURED PARTIES ON THE POLICY.**

### Indemnification

To the fullest extent permitted by law, contractor agrees to defend, indemnify, and hold harmless the Redevelopment Authority and the City of Milwaukee, its officers, agents and employees from and against all claims, demands, damages, liability, suits, judgments and decrees, attorney's fees, losses, costs and expenses of any kind or nature whatsoever which may come against the Authority or City on account of injury or death of any person or persons or damage to any property occurring directly or indirectly from the performance or lack of performance or work hereunder, or negligence or carelessness, by contractor or its employees, agents or servants, including, without limitation, claims related to hazardous substances or environmental liability. The term "hazardous substance" shall include all substances identified as hazardous by Federal, State, County or Municipal Law, Statute, Ordinance, Order or Regulation related to the protection of the environment (including, without limitation, any regulations promulgated by the Federal Environmental Protection Agency or the Wisconsin Department of Natural Resources). The indemnifications contained herein shall survive the completion of the work.