

LEASE AGREEMENT
5529-5531 West North Avenue
Milwaukee, Wisconsin

This Lease Agreement (hereinafter referred to as “**Lease**”) is made as of the 1st day of October, 2023, by and between **Uptown Crossing - Business Improvement District 16**, a Wisconsin non-stock corporation, (“**Lessee**”) and **the City of Milwaukee**, a public body corporate under Wis. Stat. §66.1333(3), (“**Lessor**”).

RECITALS

A. Lessor is the owner of vacant land at 5529-5531 West North Avenue, Milwaukee, Wisconsin, Tax Key No. 346-1406-000, and more particularly described in **Exhibit A** (the “**Property**”).

B. Lessee is a Business Improvement District organization and wishes to activate and maintain this Property as a public amenity.

C. Lessee desires to lease the Property from Lessor and Lessor desires to lease the Property to Lessee as further described in this Lease.

AGREEMENT

The recitals above and any exhibits are hereby accepted, agreed to and incorporated herein.

1. Demise and Term. The Lessor hereby leases, demises and lets unto Lessee the Property for an initial term of 10 years (the “**Term**”). The Term shall commence on October 1, 2023, and terminate at midnight on October 1, 2033, unless extended or sooner terminated in accordance with this Lease.

2. Extension. This Lease may be extended for two additional five (5) year terms upon mutual written agreement between the Lessee and the Lessor provided that, a) the City determines that the programming is active at this location, and b) the Lessee is not in default of any provision under this Lease. Such extension will be on the same terms and conditions as the initial term.

3. Rent. Annual rent shall be paid in advance for each year on or before March 1. Annual rent shall be as follows: One Dollar per year, (\$1.00). Rent payments shall be addressed to the City of Milwaukee, 809 North Broadway, P.O. Box 324, Milwaukee, Wisconsin, 53201, ATTN: Property Manager.

4. Use of the Property. Lessee shall use the Property exclusively for outdoor seating, a stage, green space and public area. The Property shall remain available for use by the general public as green space during daytime and evening hours reasonably expected for similar green space in such a neighborhood. Lessee shall provide Lessor with an “**Operations Plan**” for the Property describing how the Property will be used; hours of use; any furniture, fixtures or other improvements that will be used in or added to the Property and how the Lessee plans to incorporate and guarantee public use of the Property as required herein. The Operations Plan shall be subject to Lessor’s prior written review and approval, which approval shall not be unreasonably withheld or delayed. Lessor shall have 30 days to approve or deny the Operations Plan or it shall be deemed approved as submitted. Any substantial amendments to the

Operations Plan shall be submitted on an as needed basis and shall also be subject to Lessor's review and reasonable approval within the same time frames set forth above.

5. Occupancy Subject to Existing Easements/Restrictions and Future Conveyance of Easements. Lessee's occupancy of the Property is subject to any recorded easements and restrictions of record which bind Lessor. (Certain restrictions may be of record but are not enforceable against the City or have become unenforceable under Wisconsin Statutes 893.33.) Lessor reserves the right to grant future easements in the Property as needed for utility or public infrastructure purposes so long as such uses do not unreasonably or materially interfere with Lessee's use of the Property as permitted under the terms of this Lease.

6. Termination and Vacation. This Lease shall terminate upon the earlier of (1) the end of the Term; (2) such time that Lessee gives notice (for any reason, including no reason) that it will no longer lease the Property or (3) other circumstances resulting in termination as otherwise provided herein. Upon such termination, any rent previously paid in advance to Lessor shall remain the property of Lessor and shall not be returned to Lessee. Lessee shall vacate the Property on or before the termination of this Lease. The Lessee shall return the Property to the Lessor in substantially the same condition in which it was received, except that Lessor reserves the right to allow improvements to remain that were permitted to be placed on the Property in accordance with an approved Operations Plan under Paragraph 4, above, and free and clear of all personal property placed by Lessee or its tenant during the term of this Lease. In the event the Lessee fails to vacate the Property in a timely fashion and in the prescribed state of clearance, as determined by the Lessor, after 30 days written notice to Lessee, the Lessor may have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance. Lessee hereby waives any public hearing requirement that would normally be required under sec. 66.0627, Wis. Stats. Improvements, such as buildings or fixtures, may with the Lessor's consent, be removed or otherwise become the Lessor's property at its election under Section 15, below.

7. Termination Without Cause. Lessee may terminate this Lease by providing the Lessor with 90 days prior written notice thereof. Upon such termination, any rent previously paid in advance to Lessor shall remain the property of Lessor and shall not be returned to Lessee.

8. Lessee Default. The occurrence of one or more of the following events shall be considered events of default under the terms of this Lease:

a. Lessee shall be adjudged a bankrupt, or a decree or order shall be entered approving as properly filed a petition or answer asking reorganization of Lessee under federal bankruptcy laws, as now or hereafter amended, or under the laws of this State, and any such decree, judgment or order shall not have been vacated, stayed, or set aside within 60 days from the date of the entry or granting thereof; or

b. Lessee shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition or purporting to be pursuant to the federal bankruptcy laws as now or hereafter amended, or Lessee shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Lessee under any federal or state bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment or indebtedness, or reorganization; or

c. Lessee shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Lessee; or

d. Lessee shall fail to pay rent when due, and the failure is not cured within 30 days of written notice from Lessor of the non-payment; or

e. Lessee shall fail to perform any other terms or conditions of the Lease which are the responsibility of Lessee, and if such failure is not cured within 30 days after written notice by Lessor (or such longer period as is reasonably necessary to cure such default). If the failure is caused by events beyond Lessee's reasonable control, Lessee shall inform Lessor and shall use due diligence to cure the default as soon as feasible and shall not be considered in default; or

f. Lessee vacates or abandons the Property in excess of 30 days without previously notifying the Lessor in writing; except that a temporary closing for remodeling or repairs shall not be deemed vacation or abandonment; or

g. Lessee shall make any changes in use, or additional use of, the Property beyond the uses specified in this Lease and fail, within 30 days of written notice from Lessor, to cease such change in use or additional use; or

h. Lessee shall make any assignment, transfer, conveyance, sublet or other disposition of its interest in the Property, without the express written consent of Lessor.

9. Lessor Remedies for Lessee Default. In the event of default in Section 7.d, above, Lessee agrees that a late fee of \$25 will be assessed on all rental payments post marked after March 10th and for each additional month rent continues to remain unpaid. In the event of any default in any of the foregoing, following written notice sent by Lessor to Lessee of the default and at least 30 days to cure as specified in Section 7 (or 60 days as specified above in Section 7.a), if Lessee does not cure the default, Lessor may take the following actions:

a. Lessor may elect to terminate this Lease and re-enter the Property (as permitted by law), remove all persons and personal property, and store such personal property at the sole cost of the Lessee, without becoming liable for any loss or damage, except for loss or damage resulting from willful or negligent acts of Lessor or its employees.

b. Intentionally Deleted.

c. In the event that the Lessee has failed to perform any of the terms and conditions of the Lease other than paying rent, the Lessor may perform the covenant, term or condition of Lessee, which is in default after the expiration of any notice and grace periods permitted herein. Lessor's performance of such covenant shall not subject Lessor to liability for any loss, inconvenience or damage to Lessee except for loss or damage from willful or negligent acts of Lessor, its employees or agents. Lessor's performance of any such covenant shall not be construed as a waiver of Lessee's default or of any other right of Lessor in respect to such default, or as a waiver of any covenant, term or condition of this Lease. Lessor shall be entitled to reimbursement from Lessee as additional rent, for any reasonable sums expended under the provisions of this section. Lessee hereby waives any public hearing requirement that would normally be required under sec. 66.0627, Wis. Stats.

10. Maintenance and Orderliness of Property. Routine maintenance of the Property, including snow and ice removal from the Property and adjacent public right-of-way areas, landscaping, fencing,

removal of safety hazards including tripping hazards, and litter-free appearance of the Property shall be the responsibility of Lessee throughout the Term. Lessor retains the right to have any of its officers, agents, or employees inspect the Property at all reasonable times and Lessee shall be required to grant full access to the Property at such times.

11. Utilities. The Property does not currently have electric, water, or sewer services. Should Lessee want to install those services, Lessee shall be solely responsible for the installation and purchase of all utility services required by Lessee during the Term of this Lease.

12. Indemnification. To the fullest extent permitted by law, Lessee hereby agrees to indemnify and save harmless Lessor 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 or damage to the Property or to any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from: (1) Lessee's negligent or willful actions or omissions or those of Lessee's agents, employees, guests, tenants, licensees, invitees, or contractors; (2) the construction, maintenance or operation of Lessee's improvements and equipment; or (3) the carrying on of Lessee's or its tenants' business—except when such liability, claim, demand, judgment, loss or suit arises from a negligent or willful act of the Lessor, its contractors or employees;

13. Insurance. Lessee will furnish a Certificate of Insurance showing insurance written by a company licensed in the State of Wisconsin approved by the Lessor and covering any and all liability or obligations which may result from the operations by Lessee, its agents, employees, guests, tenants, licensees, invitees, or contractors. Lessee may satisfy this requirement as to Lessee's tenant by having such tenant provide a Certificate of Insurance to Lessor as well. Such Certificate(s) of Insurance shall name the Lessor as an additional insured. The Certificate(s) shall provide that the insurer will furnish Lessor with a 30-day written notice of cancellation, nonrenewable or material change to such insurance coverage. Said insurance shall be written in comprehensive form and shall protect Lessee and Lessor against all claims arising from injuries to members of the public or damage to property of others arising out of any act or omission of Lessee, or its agents, employees, guests, tenants, licensees, invitees, or contractors in accordance with **Exhibit B**. Lessor shall approve the form and proof of insurance. Failure of the Lessee to maintain adequate coverage shall not relieve it of any contractual responsibility or obligation under this Lease, but shall be considered a default under section 7.e. of this Lease. Lessor shall have the right to review policies providing the required coverage. However, any policy that meets the minimum requirements of Exhibit B shall be considered adequate coverage.

14. Taxes. Property is tax-exempt and property taxes will not be levied on Lessee.

15. Status of Improvements. Unless otherwise approved in the Operations Plan, Lessee shall make no substantial improvements upon the Property without the prior consent of the Lessor. Lessee shall provide the Lessor with plans and specifications when seeking the Lessor's consent for intended improvements. Consent to improvements by Lessor does not relieve Lessee or its tenant of any requirements to obtain any and all permits, licenses or other approvals typically required to make such improvements or to operate the business located at the Property.

Upon termination of this Lease, Lessee shall, upon notice from the Lessor, be required and obligated to remove from the Property at any time within 30 days after the termination of this Lease, however affected, all buildings, or other improvements and any and all appurtenances thereto brought or placed upon said Property by Lessee. In the event such removals are not completed within said 30 days, the Lessor may, in lieu of removal, require Lessee to convey title to such improvements to the Lessor, free

and clear of all liens and encumbrances. Any such election shall be made in writing and communicated to Lessee. No such option with respect to election of either to remove or not to remove shall rest with the Lessee and Lessee shall have the obligation and responsibility to perform that which the Lessor shall direct.

16. Eminent Domain/Distribution of Awards. In the event the Property or any part thereof is taken as a result of any eminent domain proceeding, or is voluntarily transferred in lieu of, or under threat of condemnation to any authority under the power of eminent domain, the interest of Lessor and Lessee in the award, including attorney's fees and interest, shall be provided by law. Provided, that the Lessee shall not have, nor maintain, any claim or interest in real estate, severance damages, relocation benefits, or any other claim under Chapter 32 of the Wisconsin Statutes.

a. Total Taking. In the event of a total taking of the Property, this Lease shall cease on the date title of the Property vests in the condemning authority and Lessee's obligation to pay rent shall terminate on that date. Upon such termination, Lessor and Lessee shall be relieved of any further rights and obligations under this Lease and Lessee shall remove all its personal property as provided under Sections 5 and 14, above.

b. Partial Taking. In the event of a partial taking which leaves the Property in such shape or size that the remaining portion can, in Lessee's sole discretion, continue to be used for allowable uses under this Lease, the Lease concerning the condemned portion shall terminate on the date title to that portion vests in the condemning authority. Lessee shall remove its personal property and vacate the condemned portion as provided under Sections 5 and 14, above. The Lease for the portion not taken shall remain in effect. In the event of a partial taking, which leaves the Property in such shape or size, that the remaining portion cannot, in Lessee's sole discretion, continue to be used for operating Lessee's or its tenant's business, this Lease shall terminate as of the date of the taking.

17. Environmental Condition of Property. Lessee is leasing the Property in an "as is, where is" condition and the Lessor makes no representations as to its environmental condition. Lessee shall hold the Lessor harmless from any claims it may have due to the existing environmental condition of the Property (i) traced to, caused by, or attributable, directly or indirectly, to Lessee's use of the Property, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Property (and to any improvement at the Property) caused by, or attributable, directly or indirectly to Lessee's use of the Property; provided, however, Lessee shall have no liability under (i) or (ii) to the extent the hazardous substance(s) or damage are present or caused by a third party unrelated to Lessee. In furtherance of the foregoing, Lessor acknowledges that Lessee is not responsible for remediating environmental pollution or hazardous substance(s), or for repairing any damage at the Property that existed prior to the commencement of the Term, or that was caused by persons other than Lessee (or its employees, agents or servants).

Should Lessee wish to perform any environmental testing on the Property, Lessee must get the Lessor's prior written approval. Lessee agrees that it will not cause or suffer to come onto, under, or migrate from the Property any hazardous substance(s) as defined in any law, order, rule or regulation currently existing or as may hereinafter be enacted, amended or promulgated, of any federal, state, municipal, county or other governmental or quasi-governmental authority, department or agency. Lessee further agrees to dispose of any such hazardous substance(s) in compliance with all such governmental laws, order, rules or regulations. Lessee shall promptly give notice to the Lessor of any forms, submissions, notices, reports or other communication relating to any hazardous substance(s) in, under, or about the Property. Lessee shall also provide prior written notice of, and obtain Lessor's prior written approval before conducting, any remediation or repair work required under (i) or (ii) that it intends to conduct at the Property; provided,

however, such notice and consent shall not be required in the case of an emergency.–Lessee shall indemnify and hold Lessor harmless from any and all demands, claims, causes of action, costs and reasonable attorney fees as a result of Lessee’s violation of any such law, order, rule, or regulation or any adverse effect which occurs as a result of Lessee’s violation by Lessee or Lessee’s agents, employees, guests, tenants, licensees, invitees, or contractors.

18. Compliance with Laws and Orders. Lessee agrees to observe fully and to comply with any applicable lawful rule, regulation or directive, which shall emanate from any state, federal or local departments or agencies having jurisdiction over the Property or Lessee’s use thereof.

19. Time is of the Essence. It is expressly understood and agreed to by the Lessor and Lessee that time is of the essence for each term and provision of the Lease.

20. Waiver. One or more waiver by the Lessor or Lessee of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given the Lessor with respect to any act by Lessee requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by Lessee.

21. Sole Agreement and Amendment. This Lease and the attached to which reference is made herein contain all the agreements and covenants made between the parties hereto, shall be binding upon the parties hereto and may not be modified orally or in any other manner than by agreement, in writing, signed by each of the parties of this Lease.

22. Notice. Any notice provided herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage pre-paid, return receipt requested, or by receipted personal delivery to the parties as follows:

To Lessor:	To Lessee:
Dept. of City Development	Uptown Crossing BID 16
Attn: Property Manager	Attn: Tracy Staedter
809 North Broadway	1665 North Water Street
P.O. Box 324	Milwaukee, WI 53202
Milwaukee, Wisconsin 53202	

23. Governing Law: The laws of the State of Wisconsin shall govern this Lease. If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease 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 Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

24. Nondiscrimination. Lessee hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate or permit discrimination or restriction on the basis of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, victimhood of domestic abuse or sexual assault, past or present membership in the military service, HIV status, domestic partnership, genetic identity,

homelessness, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories in the lease or rental, or in the use or occupancy of the Property or the Adjacent Property or any improvements located or to be erected thereon, or any part thereof.

25. Lessor's Authority. Any matters not herein expressly provided for shall be handled and disposed of in the discretion of the Lessor. Any discretion herein granted to the Lessor may be exercised through the Lessor's Commissioner of City Development and/or their designee(s).

26. Assignment, Subletting, and Mortgages. Lessee shall not assign this Lease, nor sublet the Property or any part thereof. Lessee shall not grant a mortgage on the Lessee's leasehold interest, nor in any way convey or transfer the Property without prior written consent to the Lessor. Consent of the Lessor to one or more assignment, sublease or mortgage shall not operate to exhaust the Lessor's rights under this section. Lessee shall in no way be released from any part of its obligations under this Lease in the event, with or without the previous consent of the Lessor, the Lessee assigns or in any manner transfers this Lease or any estate or interest therein.

In the event that the Lessee requests Lessor's consent in any assignment, subletting or other transfer of Lessee's interest in this Lease, then Lessee shall reimburse Lessor, as additional rent, for any costs and expenses, including reasonable attorney fees for attorneys who are not an employee of Lessor and expenses, incurred by Lessor in connection with any such proposed assignment, subletting or other transfer in question. Notwithstanding the anything to the contrary contained herein, Lessee shall have the right to grant third parties the ability to host events at the Property in accordance with the Operation Plan.

27. Counterparts. This Lease 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 Lease.

28. Recording. A memorandum of this Lease may be recorded in the Register of Deeds at the discretion and cost of either Lessor or Lessee.

29. Authority. Lessor and Lessee represent that each has the full power and authority to consummate the transaction contemplated by this Agreement, and all actions, proceedings and/or resolutions of Lessor and Lessee necessary to consummate such transaction have been taken in accordance with applicable law.

[Signature Page To Follow]

IN WITNESS WHEREOF, the parties hereto by their duly authorized officers executed this Lease Agreement under seal as of the day and year first above written.

Lessee:
Uptown Crossing BID 16

Lessor:
City of Milwaukee

By: _____
Name: Tracy Staedter
Its: Executive Director
Date: _____

By: _____
Name: Amy E. Turim
Its: Real Estate Manager
Date: _____

This Lease was drafted by the Department of City Development

EXHIBIT A
Legal Description

Lot 6, Block 1 in Traveler's Heights, in the Northwest 1/4 of Section 23, Town 7 North, Range 21 East, in the City of Milwaukee, Milwaukee County, State of Wisconsin.

Address: 5529-31 West North Avenue

Tax Key No. 346-1406-000

EXHIBIT B
Insurance Requirements

Insurance certificates must be sent for inspection and approval to: Department of City Development, City of Milwaukee, 809 North Broadway, Milwaukee, WI 53202-3617 or by facsimile to (414) 286-0395.

<u>TYPE OF INSURANCE</u>	<u>LIMITS</u>
<u>Worker's Compensation</u>	Statutory limits
<u>Employers Liability</u>	
Bodily Injury by Accident	Each Accident: \$1,000,000
Bodily Injury by Disease	Each Employee: \$1,000,000
<u>Public Liability</u>	
A Comprehensive General or Commercial General Policy Insuring Tenant's Use of the Premises that provides:	
<ul style="list-style-type: none"> • Premises/Operations Protection • Products/Completed Operations Protection • Independent Contractor Protection (owners, contractors coverage) • Contractual Liability Coverage • Non-owned Automobile Liability Coverage • Bodily Injury/Property Damage 	Each Occurrence: \$1,000,000 General Aggregate: \$2,000,000 Products/Comp. Operations aggregate: \$2,000,000

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.

THE CITY OF MILWAUKEE MUST BE NAMED AS ADDITIONAL INSURED PARTY ON LESSEE'S POLICY AND ANY CONTRACTOR OR SUBCONTRACTOR POLICIES OF INSURANCE.