

	SECOND AMENDMENT TO TOT LOT, PARKING LOT AND PARK LEASE
Document Number	Document Title

SECOND AMENDMENT
TO
TOT LOT, PARKING LOT, AND PARK LEASE

Recording Area

Name and Return Address

Mr. Gregg C. Hagopian
Assistant City Attorney
City Attorney's Office
200 East Wells Street, Room 800
Milwaukee, WI 53202

Tax Key Number:
Part of 354-0433-111-4
All of 354-1291-000
All of 354-1033-000

Drafted By:
Gregg C. Hagopian
Assistant City Attorney

SECOND AMENDMENT
TO
TOT LOT, PARKING LOT, AND PARK LEASE

THIS SECOND AMENDMENT TO LEASE (“Second Amendment”), dated as of this _____ day of _____, 2011, entered into by and between **THE CITY OF MILWAUKEE** (hereinafter “City”) and **COA YOUTH & FAMILY CENTERS** (a/k/a COA Youth & Family Centers, Inc., a/k/a Children’s Outing Association), a Wisconsin non-profit corporation (hereinafter “COA”).

W I T N E S S E T H :

WHEREAS, the City and COA entered into that certain “Tot Lot, Parking Lot, and Park Lease” dated as of December 1, 2003 (the “Lease”) pursuant to City Common Council Resolution File No. 020574 (which Lease was recorded in the Milwaukee County Register of Deeds Office on January 20, 2004 as Document No. 8719521); and

WHEREAS, the leased Premises under the Lease are comprised of the “Over-Bluff” and the “Bluff Lands” as depicted on **Exhibit A** attached hereto which is the same **Exhibit A** that is attached to the Lease; and

WHEREAS, the Bluff Lands are also known (and referred to in the Lease) as: Lot 1 of CSM 7274 and Parcel 3 of CSM 6784; and (as per RACM’s Land Disposition Report) 1895 and 1901 North Commerce Street; and

WHEREAS, the City and COA entered into a First Amendment to Lease, dated as of June 18, 2004 (the “**First Amendment**”), that, per its terms, allowed COA certain limited rights to name the Bluff Lands for a limited time so COA could receive a \$1,000,000 endowment grant from the Halbert and Alice Kadish Foundation (the “Kadish Foundation”) for ongoing maintenance and programming of the Premises leased to COA under the Lease, which First Amendment was authorized by Common Council Resolution File No. 040148 and by COA by a COA Resolution dated July 26, 2004, and which First Amendment was recorded in the Milwaukee County Register of Deeds Office on August 23, 2004 as Document No. 08848679; and

WHEREAS, the City and COA wish to further amend the Lease and to enter into this Second Amendment concerning various aspects of the mini-amphitheater at the Premises; and

WHEREAS, this Second Amendment was duly authorized by the Common Council by Common Council Resolution File No. _____ and by COA by a duly adopted resolution, dated _____, 2011;

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

1. **Defined Terms.** Capitalized terms herein not otherwise defined herein shall have the meanings ascribed to them under the Lease.
2. **Recording of Amendment.** This Second Amendment shall be recorded by the City in the Milwaukee County Register of Deeds Office at COA's expense.
3. **Other Parts of Lease Remain Unaffected.** Except as expressly amended by this Second Amendment, the Lease and all its provisions (as the Lease has already been amended by the First Amendment) shall, and do, remain in place and unaffected.
4. **Mini Amphitheater; COA Improvements.**

Per Lease ¶ 19.H., City improvement at the Premises included the City adding a mini amphitheater (the "**Amphitheater**"). The City did that, and the Amphitheater now consists of a land area without a pad and without a roof, three rows of seats, and a v-shaped path to the stage area. See **Exhibit B** attached for a current depiction of the Amphitheater.

COA wishes (i) to add a stage pad (the "**Pad**"), (ii) to add a roof to cover the Pad portion of the Amphitheater, (iii) to add four more rows of seats (i.e. concrete seating rows) north of the existing three concrete seating rows, (iv) to add a new, curved path to serve the Amphitheater that will connect to the v-shaped path, (v) to add landscaping (items (i) through (v) are all as generally depicted on **Exhibit C** attached hereto), and (vi) to extend electrical service to serve the Amphitheater (together, the "**COA Improvements**").

City is willing to allow COA, at its expense, to construct the COA Improvements on the following terms and conditions:

A. All construction (including associated landscaping) must be in strict conformance with plans and specifications that are approved by the City, by the Commissioner of the City's Department of City Development ("**DCD**") (or his designee, herein called "**Commissioner**"), prior to construction. This review and approval is independent of any permit or license needed to undertake construction. COA has hired, at COA's expense, an architect to prepare plans and specifications.

B. All construction (including associated landscaping) must be in conformance with applicable federal, state, and local law – including, but not limited to, the American with Disabilities Act, and in conformance with applicable governmental permits, licenses and approvals which COA must obtain at its expense.

C. COA must provide to the City, to its DCD, full and complete copies of construction contracts concerning the COA Improvements and a verification of source and availability of funds sufficient to enable COA to undertake, and complete, and pay for, the COA Improvements (including paying for all site preparation, for all plans and specifications associated with the COA Improvements, and for completing construction). COA must obtain the Commissioner's prior approval of same before commencing construction.

D. No construction may commence until the COA has obtained the written approval of the Commissioner of plans and specifications (item A above), COA has obtained requisite permits (item B above), and COA has obtained the written approval of the Commissioner of contracts and fund-availability (item C above).

5. **City Limited Cost-Share.** Upon completion of construction of the COA Improvements as per this Second Amendment, COA shall present to the City (to the Commissioner) evidence of all costs associated therewith and verification of COA full payment of those costs (including lien waivers). Upon Commissioner approval of such costs and verification of payment, the City shall pay to COA (as a cost-sharing measure) an amount equal to up to a maximum of **\$50,000**, to be used to reimburse actual costs COA actually incurred for the landscaping, the extra four rows of seats, and for the new, curved path. If COA's actual costs associated with those specific items is less than \$50,000, then the City shall pay COA to reimburse COA only for those actual costs. If COA's actual costs associated with those specific items is equal to or more than \$50,000, then the City's payment to COA to reimburse COA for those actual costs is limited to \$50,000, and COA is responsible for the remaining costs as well as for all other costs associated with construction and completion of the COA Improvements. City has no other cost-sharing duty.
6. **City Ownership.** The City shall own all the "COA Improvements" (as that term is defined in ¶ 4 above). COA's right, title and interest in those COA Improvements are merely a tenant's interest governed by and subject to the Lease, as amended, as those COA Improvements are and shall be realty owned by the City and leased by the City to COA under, and subject to, the Lease, as amended.
7. **COA Maintenance.** COA shall be fully responsible, at its expense, for all routine and nonroutine, capital and noncapital, maintenance, repair and replacement of the

Amphitheater (including the stage, the Pad, the roof, all the concrete seating rows, and electrical service and utilities serving the Amphitheater), and the same shall be added as a new item **15.A.(12)** in the Lease. Concerning Lease ¶ **22**, COA acknowledges, that COA shall be, and is, fully responsible for timely paying all costs of electrical utility service to serve the Amphitheater (whether for sound, for lighting, for signage, or for other purpose). See ¶ 3 above.

8. **Limited Amphitheater-Naming Rights.** COA has received pledges from third parties for \$150,000 concerning the COA Improvements. Subject to COA submitting to the Commissioner evidence of actual donation by private donor(s), and to obtaining the Commissioner's prior approval (including approval of what the proposed "name" shall be), COA may allow limited naming rights for the Amphitheater to recognize the private donor or private donors. The naming rights shall identify the private person or person(s) COA wishes to recognize. It is understood by COA and the City that, notwithstanding anything to the contrary contained herein or in the Lease (as amended), the City retains all rights relating to the naming of the Premises (or any part thereof), and that, upon the expiration or termination of the Lease, naming rights for any and all portions of the Premises (including the Amphitheater and the Bluff Lands), remain with the City in its sole discretion, and are then terminable by the City in its sole discretion.
9. **Counterparts.** This document may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document. Original signatures must be provided for recording purposes.

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

[signatures appear on following page]

CITY: CITY OF MILWAUKEE	COA: COA YOUTH AND FAMILY
--------------------------------	----------------------------------

	CENTERS, INC.
By: _____ Mayor Tom Barrett Per Common Council File No. _____ CITY CLERK _____ Ronald Leonhardt, City Clerk Countersigned: By: _____ Michael J. Daun, Deputy Comptroller <p style="text-align: center;">MILWAUKEE CITY ATTORNEY APPROVAL AND AUTHENTICATION OF CITY SIGNATURES</p> Gregg C. Hagopian, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the CITY representatives above per Milw. Code of Ordinances § 304-21, and also authenticates the signatures of each of the CITY representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b). By: _____ GREGG C. HAGOPIAN Assistant City Attorney State Bar No. 1007373 Date: _____	By: _____ Thomas P. Schneider, Executive Director And By: _____ Lina Cicero, President And By: _____ Mark Kultgen, Treasurer <p style="text-align: center;">COA AUTHENTICATION</p> _____, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the COA representatives above, and also authenticates the signatures of each of the above COA representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b). By: _____ Name Printed: _____ State Bar No. _____ Date: _____
1050-2002-1343. CAO Doc. No. 173035.	