

	PARK LEASE
Document Number	Document Title

PARK LEASE

Recording Area

Name and Return Address

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EXHIBIT A: Legal Description of Premises

EXHIBIT B: Plans and Specifications for the Norris Park Redevelopment

EXHIBIT C: Proposal for Redevelopment and Use of the Norris Park Premises

EXHIBIT D: EBE Agreement

EXHIBIT E: Letter of Financial Responsibility

PARK LEASE

THIS LEASE, is made as of this ____ day of _____, 2009, (the “Effective Date”) and is by and between **THE CITY OF MILWAUKEE**, a Wisconsin municipal corporation, as the Landlord (hereinafter “CITY”) and **MARQUETTE UNIVERSITY**, a Wisconsin university and non-stock corporation, as the Tenant (hereinafter “MARQUETTE”).

RECITALS

- A. CITY owns certain real estate and improvements located at 1832 W. Kilbourn Avenue, in Milwaukee, Wisconsin (the “Premises”), more particularly described in **EXHIBIT A** attached hereto, and more commonly referred to as “Norris Park.”
- B. MARQUETTE wants to lease the Premises from CITY per the terms hereof, so Marquette, as a nonprofit, educational institution, can put the Premises to uses consistent with its not-for-profit educational purposes.
- C. CITY 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 Marquette’s intramural sports programs, and promote the general welfare of the CITY and its citizens.
- D. MARQUETTE has plans to improve the Premises to create playfields that will support recreational and intramural sports activities organized and managed by MARQUETTE. MARQUETTE’s plans include grading and landscaping, storm water management improvements, establishment of natural grass turf throughout the site, and installation of field lighting, fencing and security equipment (the “Project”).
- E. Marquette’s plans for the property are consistent with the Near West Side Comprehensive Plan which calls for rehabilitation of the Norris Park property into an appealing, multi-purpose green space which will improve the quality of life in the surrounding neighborhood.
- F. CITY is willing to lease the Premises to Marquette on the terms and conditions set forth herein.
- G. The CITY authorized CITY entry into this Lease by CITY Common Council Resolution File No. _____, passed _____, 2009.

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, CITY and Marquette agree as follows:

1. **Recitals.** The recitals above are hereby agreed to.
2. **Leased Premises.** Subject to the terms hereof, the CITY does hereby lease to Marquette the real property and improvements at 1832 W. Kilbourn Avenue, which is legally described on **EXHIBIT A.**
 - A. **Recording of Lease.** In its discretion, CITY may record this Lease (or evidence thereof) in the Milwaukee County Register of Deeds Office; and MARQUETTE agrees to cooperate with CITY in that regard.
 - B. **CITY Leases to MARQUETTE.** Subject to all the terms and conditions in this Lease, CITY hereby leases to MARQUETTE, and MARQUETTE hereby leases from CITY, 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 and herein called the Premises.
 - C. **Exclusivity/Nonexclusivity.** The Premises are being leased to MARQUETTE 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 25 years, commencing on _____, 2009 (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, MARQUETTE shall peaceably and quietly deliver, yield up, and surrender possession of the Premises to CITY. MARQUETTE 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 CITY’s option, either become the sole property of CITY or be stored on-site or off-site at MARQUETTE’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), CITY or MARQUETTE 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, effective on the May 30th immediately following six (6) months from the date the written notice was received by

the other party; provided that, on or before the effective date of any termination by CITY pursuant to this ¶4, CITY shall pay to MARQUETTE any unamortized Project Costs (as defined in ¶6 of this Lease). It is acknowledged and agreed that all Project Costs shall be amortized over 25 years from the date of substantial completion of the Project on a straight-line basis. This ¶4 in this Lease is a material provision without which, City would not have entered into this Lease.

5. **Rent.** MARQUETTE 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 City of Milwaukee, and shall be tendered to the Commissioner of the Department of City Development ("Commissioner") at the notice address for the Commissioner set forth below.
6. **Project.** MARQUETTE shall improve the Premises at its expense by grading and landscaping the site, planting new trees, installing storm water management improvements, establishing natural grass turf throughout the site, improving the existing field house and restrooms, and installing field lighting, new, higher quality fencing and security equipment substantially in accordance with final plans and specifications attached hereto as **EXHIBIT B** (the "Project"). All costs associated with the Project described in EXHIBIT B are "Project Costs" hereunder; however, for purposes of ¶4, Projects Costs shall not include Rent for the Premises; permit fees paid to the City of Milwaukee or any other governmental entity or quasi-governmental entity; utility company fees; financing and interest expenses; insurance premiums; attorney and accounting fees. MARQUETTE covenants and agrees that MARQUETTE shall construct and perform the Project in substantial accordance with the Final Plans, and that no additional buildings or structures shall be constructed on the Property without the prior written approval of the CITY.

MARQUETTE MUST SUBSTANTIALLY COMPLETE THE PROJECT WITHIN 12 MONTHS FOLLOWING THE EFFECTIVE DATE.

7. **EBE Requirements.** MARQUETTE shall comply with the requirements of the EBE Agreement, attached hereto as **EXHIBIT D**.
8. **MARQUETTE's Site-Development Costs.** MARQUETTE shall be solely responsible for all Project and site-development costs, and costs and expenses associated with the Premises and Project, including, but not limited to any necessary utility extensions or sidewalk improvements.
9. **MARQUETTE Testing/Excavation Prohibited.** MARQUETTE shall not undertake any excavation activities upon, or environmental investigation or environmental testing of the Premises without prior written approval of CITY. MARQUETTE is solely responsible for conducting whatever geotechnical investigations, testing and analysis it deems appropriate and prudent. CITY represents that it has no knowledge of the presence of any hazardous or toxic substances, pollutants, or contaminants on any part

of the Premises; however, MARQUETTE is advised that CITY has not obtained a Phase I environmental site assessment for the Premises nor has the CITY 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 CITY.

10. **No Survey.** CITY shall not provide any survey of the Property.
11. **Permits; Compliance with Laws.** MARQUETTE shall, at its expense, obtain all requisite governmental permits, licenses, and approvals (“Approvals”) necessary to construct and complete the Project, and it shall construct and act in conformance with the Approvals. MARQUETTE 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, MARQUETTE 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; and (c) that are in compliance with federal, state, and local law, regulations, and ordinances (herein called “Recreational Activities”).
 - (2) activities that are controlled and supervised by MARQUETTE (herein called “Marquette-Controlled Activities”). Marquette-Controlled Activities may include activities that are not “recreational activities” as defined in Wis. Stat. §895.52(1)(g).

MARQUETTE uses of the Premises (including Marquette-Controlled Activities) must, in any event, be lawful, consistent with the Proposal attached hereto as **EXHIBIT C**, and 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 CITY’s prior written consent.

13. **Marquette Permitting Rights for the Park.** To promote the orderly use and enjoyment of the Park by the general public, MARQUETTE may, in its discretion, adopt a permit system whereby members of the general public apply to MARQUETTE 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 Marquette-Controlled Activity. In the event the provisions of this Lease conflict with any provision of a permit system adopted by MARQUETTE, the

provisions of this Lease shall control. Any use for which MARQUETTE issues a permit (while temporarily exclusive) must otherwise be in compliance with this Lease, including the provisions in section 12 above. If MARQUETTE does elect to engage in such permitting, then:

- A. MARQUETTE shall clearly post the use policy and procedures on the Premises and on MARQUETTE's website, and
- B. MARQUETTE 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. MARQUETTE shall not charge for the issuance of permits any amount beyond an amount sufficient to cover MARQUETTE's reasonable expenses associated with MARQUETTE'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 MARQUETTE may not allow anything that is unlawful or concerning which MARQUETTE has no authority (for example, MARQUETTE 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. MARQUETTE'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 MARQUETTE 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. MARQUETTE 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 MARQUETTE may specify – in which case any waiver or release or acceptance of responsibility or insurance that MARQUETTE requires shall also expressly run to the CITY's benefit and protect and cover CITY to the same extent as MARQUETTE.

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

- A. MARQUETTE 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. MARQUETTE 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. MARQUETTE is leasing the Premises on an “**AS IS, WHERE IS**” basis.
- D. MARQUETTE shall be responsible (i) for remediating any Contaminants or environmental pollution on any part of the Premises caused by MARQUETTE, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Premises caused by MARQUETTE.
- E. MARQUETTE must obtain CITY’s prior written approval before conducting any environmental testing or investigation on or at any part of the Premises.
- F. MARQUETTE shall not, with respect to its use and occupancy of the Premises, and Marquette-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. CITY and MARQUETTE intend on each of CITY and MARQUETTE being protected by Wis. Stat. §895.52 (and any successor statute thereto) to the greatest extent possible.
- B. MARQUETTE may not charge any admission fee for spectators at any event on the Premises unless the event is a Marquette-Controlled Activity.
- C. MARQUETTE agrees to comply with any duty it may have under Wis. Stat. §101.11.

16. **Insurance.** MARQUETTE shall obtain and maintain in place during the entire Term, at its expense (as additional rent hereunder), insurance as described in strict compliance herewith:

A. **General Liability, Property, and Other Coverage.** MARQUETTE shall provide proof of financial responsibility for self-retention and excess insurance to protect against exposures associated with the operations of use of the Premises and to cover costs as may arise from property damage to physical assets and statutory liability and claims of tort. MARQUETTE reserves its right to self-insure lines of coverage as permitted by applicable laws. CITY acknowledges that MARQUETTE has the financial resources to self-retain loss exposures under General liability covering the Premises of not less than \$1,000,000/occurrence and \$2,000,000 aggregate and Automobile insurance in the amount of \$1,000,000 (including coverage for insured, uninsured, underinsured, owned and non-owned vehicles). MARQUETTE shall provide Worker's Compensation coverage in accordance with Wisconsin statutory limits including Employers Liability for accident, disease or sickness to \$500,000 minimum limit. MARQUETTE shall be financially responsible for risks that may fall under deductibles or may be self-retained and may purchase excess insurance over retentions as part of an accepted risk management program. Real and personal property coverage includes blanket limits covering MARQUETTE owned property; and insurance covering equipment stored at the Premises, the fieldhouse facility, and the contents of the fieldhouse facility per all risk property forms with deductibles appropriate to its size under acceptable insurer and risk management standards.

B. **Policies.** CITY agrees that the letter of financial responsibility describing the insurance and risk management program of MARQUETTE at **Exhibit E** fulfills MARQUETTE's obligation under this Section 16.

17. **Indemnification; Waiver of Subrogation.** In addition to any liability MARQUETTE may have to CITY as a result of MARQUETTE breach of any of its duties hereunder, notwithstanding anything to the contrary contained herein, MARQUETTE also agrees to indemnify and save CITY 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 MARQUETTE, its officers, directors, employees, agents, or contractors. Providing, however, that – subject to subparagraph B below - the CITY is not hereby imposing any contractual liability on MARQUETTE to indemnify CITY 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 MARQUETTE has issued a permit under section 12 of this Agreement; or

- B. a Marquette-Controlled Activity (including, but not limited to, activities that only involve MARQUETTE, its officers, directors, employees, agents or contractors).

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

18. **Marquette Annual Report to Commissioner.** On or before each December 31 during the Term of this Lease, MARQUETTE shall provide a written report to the Commissioner concerning MARQUETTE's use and activities at the Premises during the preceding 12-month period ending on the November 30 prior to that December 31 deadline. That Report shall identify and explain Marquette-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. The first annual report provided under this Paragraph shall also include a final accounting of all Project Costs as defined in ¶6.

19. **Possible Restrictions/Encumbrances.**

- A. **No Title Report.** CITY is, as indicated, is leasing the Premises to MARQUETTE on an "AS IS, WHERE IS" basis. CITY has not obtained or provided to MARQUETTE any title insurance commitment or title insurance policy with respect to the Premises. If MARQUETTE wants such, it can acquire such on its own at its expense. CITY calls to MARQUETTE's attention, and MARQUETTE is aware of, and agrees to comply with, the following:

1. The Premises are subject to requirements associated with the USDA Forest Service *Green Schools* initiative grant program.

- B. **Other.** CITY 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 MARQUETTE's use of the Premises.

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

- A. **Maintenance by MARQUETTE.** MARQUETTE 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, MARQUETTE 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.
- (10) All painting and, at the fieldhouse building, repairing or replacing broken or damaged windows, doors, and lightbulbs.
- (11) All interior and exterior maintenance of the fieldhouse building. The fieldhouse building shall be maintained in good repair and in a structurally sound condition.

B. **MARQUETTE Notice of Damage/Repair to CITY.** MARQUETTE shall provide prior written notice to CITY of any repair or maintenance work required of MARQUETTE above that is estimated to cost over \$10,000 or that may materially affect the structure or appearance of any building at the Premises and obtain CITY's prior written approval before undertaking any such repair or maintenance work.

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

22. **Improvements by MARQUETTE.** With the exception of the Project and maintenance and repair work required of MARQUETTE under the “maintenance” section above, MARQUETTE shall not make any alterations or additions to the Premises without CITY’s prior written consent. All improvement requests shall be submitted in writing to the CITY’s Real Estate Officer with a copy to the Commissioner. 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 Commissioner. In the event MARQUETTE 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, MARQUETTE 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 CITY for all costs, expenses, loss, wages, damages or other economic consequences arising out of the applicability of or MARQUETTE’s failure to comply with said laws.
23. **Leasehold Mortgages; Construction Liens.** MARQUETTE 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. MARQUETTE 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 MARQUETTE (or anyone claiming by, through, or under MARQUETTE) may perform or have done at the Premises. MARQUETTE shall indemnify, defend, and hold harmless CITY 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.** MARQUETTE is responsible for all utility costs associated with use of the Premises during the Term of this Lease including sewer, water, and electricity. CITY 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.
25. **Property Taxes, Assessments, Fees & Charges.**
- A. In that the Premises are owned by CITY, 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, MARQUETTE shall be responsible for, and timely pay, such taxes, with the

understanding that MARQUETTE may dispute such by following the procedure set forth in Wis. Stat. § 74.35(2m).

- B. Unless otherwise entitled to lawful exemption, MARQUETTE 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. MARQUETTE 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. **CITY Entry Rights.** CITY has the right, without notice, to enter the Premises at any time. CITY's entry shall be conducted in such a way so as to minimize interference or disruption of MARQUETTE's (or anyone claiming by, through, or under MARQUETTE) lawful use and occupancy of the Premises. In addition to the foregoing, CITY 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 CITY's building inspectors, health inspectors, fire inspectors, electrical inspectors, assessors, fire and police personnel, etc. to enter and inspect).
27. **CITY Audit Rights.** MARQUETTE 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 MARQUETTE with respect to the Premises. Those books, records and accounts shall be made available to CITY for its review and inspection upon CITY's request. MARQUETTE shall provide to CITY, at MARQUETTE's expense, and upon CITY'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 MARQUETTE improvements, repair or maintenance work;
 - (d) articles of incorporation or bylaws of MARQUETTE (or any amendment to the same);
 - (e) Insurance policy or proof of financial responsibility MARQUETTE has or had in place hereunder.

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

28. Defaults and Remedies. MARQUETTE shall be in default hereunder:

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

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

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 CITY's reasonable

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

- B. **Waiver; Participation.** In the event of any condemnation or damage pursuant to subpara. A. above, MARQUETTE waives any claim for damage or compensation from CITY. MARQUETTE 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: MARQUETTE 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 MARQUETTE and CITY. The sole relationship hereunder between MARQUETTE and CITY is merely that of tenant (MARQUETTE) and landlord (CITY).
31. **Right to Assign and Sublet.** MARQUETTE may NOT assign this Lease or sublet any portion of the Premises without CITY's prior written consent, providing, however, that, subject to the terms and conditions of this Lease, MARQUETTE may use the Premises for MARQUETTE-Controlled Activities and MARQUETTE, under ¶13, may issue permits.
32. **Fixtures and Personal Property.** Subject to the terms hereof, MARQUETTE may install and affix to the Premises such trade fixtures, moveable equipment and personal property as MARQUETTE may deem desirable, which shall remain MARQUETTE's sole property. Said fixtures and personal property expressly include, but are not limited to, lighting, security system equipment, and fencing installed as part of the Project. MARQUETTE shall have the right at any time during the Term of this Lease, to remove or change, at MARQUETTE's sole expense, subject to CITY 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) MARQUETTE 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, MARQUETTE shall, at its expense, promptly repair any damage caused by or attributable to any removal or change by MARQUETTE 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 CITY:

Commissioner of Dept. of City Development
City of Milwaukee
809 North Broadway, Second Floor
Milwaukee, WI 53202
Phone: (414) 286-5800
Fax: (414) 286-5467
E-mail: rmarco@milwaukee.gov

Copy to:

Danielle M. Bergner
City Attorney's Office
800 City Hall
200 East Wells Street
Milwaukee, WI 53202
Phone: (414) 286-2620
Fax: (414) 286-8550
E-mail: dbergner@milwaukee.gov

To MARQUETTE:

Rana H. Altenburg
Vice President
P.O. Box 1881
Milwaukee, WI 53201-1881
Phone: 414-288-7430
Fax: 414-288-5936
E-mail: Rana.Altenburg@marquette.edu

Copy to:

Douglas O. Smith
Associate General Counsel
P.O. Box 1881
Milwaukee, WI 53201-1881
Phone: 414-288-7343
Fax: 414-288-3152
E-mail: Douglas.Smith@marquette.edu

36. **Commissioner.** Unless otherwise provided for herein, all submissions to CITY, and all approvals or consents required to be obtained from CITY, hereunder, as landlord, shall, respectively, be submitted to, or obtained from, as the case may be, CITY's Commissioner of the Department of City Development 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 MARQUETTE and CITY. MARQUETTE also agrees to include on any of its brochures or pamphlets advertising or concerning MARQUETTE's operations or programs at the Premises evidence of CITY ownership of the Premises.

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

MARQUETTE:
MARQUETTE UNIVERSITY

CITY:
CITY OF MILWAUKEE

By: _____
Rev. Robert Wild, S.J.

President

By: _____
Elaine M. Miller,
Special Deputy Commissioner

**Milwaukee City Attorney
Approval and Authentication**

Danielle M. Bergner, as a member in good standing of the State Bar of Wisconsin, hereby approves the signatures of the Milwaukee representatives above, and also authenticates the signatures of each of the above Milwaukee representatives/signatories per Wis. Stat. § 706.06 so this document may be recorded per Wis. Stat. § 706.05 (2)(b).

By: _____
DANIELLE M. BERGNER
Assistant City Attorney
State Bar No. 1049359

Date: _____

MARQUETTE NOTARIES

STATE OF WISCONSIN)
)ss.
COUNTY OF MILWAUKEE)

Personally came before me this ____ day of _____, 2009, _____, the above named Rev. Robert Wild, S.J., President of Marquette University to me known to be such person who executed the foregoing instrument and acknowledged the same in such capacity.

Notary Public, State of Wisconsin

My Commission: _____

1050-2009-1404:146299

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Lots 12 through 38 & Vacated Alley, Block 19 of Well's Addition Located in the Southeast 1/4 of Section 19 and the Northeast 1/4 of Section 30, Township 7 North, Range 22 East, County of Milwaukee, City of Milwaukee, Wisconsin.

Address: 1832 W. Kilbourn Avenue

Tax Key Parcel No.: 363-2589-100-3