

LICENSE AGREEMENT

This License Agreement ("Agreement"), is made as of this ____ day of _____, 2010 (the "Effective Date"), and is by and between the CITY OF MILWAUKEE, a Wisconsin municipal corporation ("CITY"), as licensor, and the LINCOLN VILLAGE BUSINESS ASSOCIATION, INC., a Wisconsin non-stock corporation ("LVBA"), as licensee.

RECITALS

- A. CITY owns certain real estate and improvements located at 2265 South Chase Avenue (the "Property"), depicted and shown on **Exhibit A** attached hereto.
- B. LVBA wishes to obtain from CITY a personal license to install on that portion of the Property identified and depicted on **Exhibit A** attached hereto (the "Premises") a sign as depicted on **Exhibit B** attached hereto (the "Sign"), and CITY is willing to grant such license on the terms and conditions contained herein.
- C. CITY authorized CITY entry into this License by CITY Resolution File No. _____, passed _____, 2010.
- D. LVBA duly authorized execution of this Agreement by its authorized signatories hereto.

AGREEMENT

For good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows.

- 1. **Recitals Incorporated.** The recitals above are hereby acknowledged and agreed to.
- 2. **Grant of License to LVBA.** CITY hereby grants to LVBA a personal and qualified license to enter onto the Property and to install and use the Sign on the Premises on the terms and conditions contained herein.
- 3. **No Real Property Interest.** This is a license and personal privilege. It is not a lease or other conveyance of any interest or estate in real property. LVBA is not a tenant. LVBA has no rights under Wis. Stat. Ch. 704. LVBA is not an easement holder.
- 4. **Term.** This License shall commence on the date noted above and shall continue in effect unless terminated as provided for herein.
- 5. **AS-IS, WHERE-IS.** CITY makes no warranty or representation whatsoever to LVBA, express or implied, regarding the Property or the Premises – LVBA hereby acknowledging that the Premises are being licensed to LVBA on an AS-IS, WHERE-IS BASIS, with all faults known or unknown, and whether or not suitable for LVBA's intended use.

6. **License Fee.** One dollar and other good and valuable consideration, receipt of which is hereby acknowledged by Licensor.
7. **Use.** LVBA shall have the right to enter, use and occupy the Premises, as a licensee and as a personal privilege, solely for the installation, use, and maintenance of the Sign, and to carry out LVBA's duties hereunder. No other use is permitted.
8. **Compliance with Laws and Regulations.** LVBA shall, at its sole cost and expense, comply with, and cause anyone claiming by, through, or under LVBA to comply with, any and all laws, statutes, ordinances and regulations, federal, state, county, and municipal, now or hereafter applicable to its respective use, occupancy, and existence at the Premises and applicable to its installation, use, and maintenance of the Sign – including, but not limited to, any applicable environmental law, rule or regulation of the State D.N.R. or the U.S. E.P.A.
9. **No Hazardous Substances or Contaminants.** LVBA shall not (and it shall prohibit anyone claiming by, through, or under LVBA to) store, use, discharge or dispose of any hazardous or toxic substances, pollutants or contaminants (“Contaminants”) on the Property or the Premises.
10. **Responsibility for Damage to Property.** LVBA shall be responsible (i) for remediating any Contaminants or environmental pollution on the Property or the Premises traced to, caused by, or attributable, directly or indirectly, to LVBA or to any person or entity using, occupying, or existing at, the Property or Premises by, through, or under LVBA, and (ii) for repairing any damage (environmental, physical, structural, or otherwise) to the Property or Premises (and to any improvement at the Property) caused by, or attributable, directly or indirectly, to LVBA or to any person or entity claiming by, through, or under LVBA. LVBA shall promptly provide prior written notice to CITY (and to the rest of the signatories hereto) of any damage to the Property or Premises, and of any Contaminant or environmental pollution on the Property for which LVBA is responsible. LVBA shall also provide prior written notice of, and obtain CITY's prior written approval before conducting, any remediation or repair work it intends to conduct at the Premises or the Property. LVBA is not responsible for remediating environmental pollution or Contaminants, or for repairing any damage at the Property or the Premises that existed thereat prior to the commencement of the Term, or that was caused by persons other than LVBA (or those claiming by, through, or under LVBA). Upon the expiration or termination of this Agreement, LVBA shall restore the Premises to the same condition that existed at the commencement of the Term.
11. **Installation of Sign by LVBA; Plans and Specs.** LVBA shall, at its expense, in a professional manner, in accordance with all applicable laws, rules and regulations, and according to plans and specifications approved by CITY (the “Plans and Specs”), install the Sign at the location shown on **Exhibit A.** No change in the CITY-approved Plans

and Specs may be made without the prior written consent of CITY. Prior to installation of the Sign, LVBA shall first obtain all required permits and approvals from CITY.

12. **Sign Maintenance.** LVBA is solely responsible for monitoring and maintaining the Sign in good repair and in accordance with all applicable laws and regulations at LVBA's sole cost and expense.
13. **Removal of Sign.** Upon termination of this Agreement, unless CITY agrees otherwise in writing, LVBA shall promptly remove the Sign and promptly restore and repair the Premises to its pre-existing condition. LVBA must repair any damage associated with the installation, use, maintenance or removal of the Sign.
14. **No Liens Are Permitted.** LVBA does not have any estate or interest in the Property or Premises, and it has no right to mortgage, pledge as collateral, or to hypothecate, any interest in the Property or Premises. LVBA shall not permit any lien, including, but not limited to, any lien under Wis. Stat. Ch. 779, Subch. I, any materialman, contractor, construction, or other lien to attach or to exist against the Property or the Premises as a result or consequence of LVBA action or inaction. If any such lien does attach, LVBA shall promptly provide all signatories hereto with notice of such, and LVBA shall promptly cause such lien to be removed from title at LVBA's sole expense.
15. **Lien Waivers.** Upon completion of any installation or repair work by LVBA, LVBA shall obtain, and, if CITY so requests, LVBA shall provide to CITY lien waivers from each contractor and subcontractor who performed work or labor, or who provided services, materials, or supplies with respect to the respective work.
16. **Utilities.** LVBA represents that the Sign shall not require any utility service at the Property or Premises.
17. **Insurance.** LVBA shall obtain and maintain in place during the entire Term, at its expense, insurance as described and in strict compliance with **Exhibit C** attached hereto. LVBA shall provide CITY with a certificate of insurance evidencing such coverage upon request.
18. **Indemnification.** To the fullest extent permitted by law, LVBA agrees to defend, indemnify, and hold harmless 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 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 Term of this License.

19. **Retained Rights.** CITY expressly retains its rights, title and interest in and to the Property (including the Premises) and nothing contained herein shall be deemed an amendment to any such rights, title or interest. CITY expressly retains all rights it has under Wis. Stat. §893.80.
20. **Defaults and Remedies.** CITY retains all rights at law and in equity in the event of a breach by LVBA hereunder, including, but not limited to, the right to seek specific performance, and the right to recover damages.
21. **Condemnation of or Damage to Premises.** If the Premises (or a part thereof), at any time during the Term, get 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 in whole or in part by fire or some other cause so as to render - in CITY's reasonable opinion - all or any significant portion of the Premises unfit for the continued use and purpose of LVBA, CITY may terminate this Agreement, and LVBA shall not be entitled to any part of the condemnation award or insurance proceeds (if any). Notwithstanding anything to the contrary contained herein, however, if the Premises or any part thereof are damaged by act, omission, default or negligence of LVBA, or anyone claiming by, through, or under LVBA, LVBA shall be responsible for repair or restoration at LVBA's cost and expense.
22. **No Right to Assign or Sub-License.** LVBA has no right to assign or transfer any interest whatsoever in and to this Agreement, or in and to the Property or Premises.
23. **Termination of Agreement.** Notwithstanding anything to the contrary contained herein, either the CITY or LVBA may (for any reason, including no reason) terminate this Agreement at any time upon 30 days prior advance written notice. Upon termination, LVBA shall peaceably and quietly deliver, yield up, and surrender the Premises and remove the Sign and repair and restore as called for herein. Any of LVBA's property not removed (including the Sign) shall, at CITY's option, either become the sole property of CITY or be stored on-site or off-site at LVBA's expense.
24. **Waiver.** No delay, waiver, omission or forbearance on the part of CITY to exercise any right hereunder shall be deemed a waiver of such right.
25. **Governing Law.** This Agreement shall be construed according to the laws of the State of Wisconsin.
26. **Notices.** All notices permitted or required hereunder shall be considered given **(i)** upon receipt if hand-delivered by commercial courier or otherwise personally delivered, **(ii)** if

sent by facsimile, then the notice must be sent during business hours (i.e. 8:30 A.M to 4:30 P.M., Monday through Friday) on days that Milwaukee's City Hall is open for business, and the notice shall be deemed given when sent as per the following and so long as the notice is successfully sent (i.e. the sender does not receive any error or "busy" or "inability to send" notification), and (iii) within two business days of depositing same in the U.S. mail, postage-paid, addressed by name and address to the party intended as follows:

A. **If to CITY:**
City of Milwaukee
c/o City Real Estate
809 North Broadway
Milwaukee, WI 53202
Fax: 414-286-0395
Phone: 414-286-5820

With a 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

B. **If to LVBA:**
Lincoln Village Business Association, Inc.
c/o Dan Nowakowski
1133 W. Lincoln Ave.
Milwaukee, WI 53215

The parties hereto may, from time to time, as needed, change the recipient and address information above by providing notice of new/replacement information by notice as required hereunder.

27. **Director.** All submissions to CITY, and all approvals or consents required to be obtained from CITY, hereunder, shall be submitted to, or obtained from the Commissioner of the Department of City Development, or his designee.
28. **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 Agreement, 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.

29. **Captions.** The captions in this Agreement are for convenience and reference, and in no way define or limit the scope or intent of the various provisions, terms, or conditions hereof.
30. **Entire Agreement.** This writing constitutes the entire agreement between the parties hereto and may not be amended or altered in any manner except in writing signed by the parties hereto.
31. **Counterparts; Facsimiles; No Recording.** This Agreement may be executed in one or more counterparts, which, when taken together, shall constitute one and the same document. Facsimile signatures shall be accepted as originals. This Agreement, being a personal license, shall not be recorded in the Register of Deeds Office.
32. **Open Records.** This Agreement and certain documents relating thereto are, or may be, subject to Wisconsin's Open Records Law (see Wis. Stat. Ch. 19, Subch. II, and, esp. Wis. Stat. §19.36(3) which includes records produced or collected under this Agreement). Subject to exercising its legal rights under law, LVBA agrees to cooperate with CITY in the event CITY receives a request under Wisconsin's Open Records Law for this Agreement or for any record relating to, or produced or collected under, this Agreement, that failure to do so will be a material breach, and that LVBA will defend and hold CITY harmless with respect to liability concerning any such breach. Except as otherwise authorized under Wisconsin's Open Records Law, LVBA records regarding this Agreement, the Property, the Premises and the Sign shall be retained for 7 years.
33. **Drafter Doctrine.** The doctrine of construing contracts against the drafter shall not apply to this Agreement, as the parties hereto had the opportunity to review and negotiate this Agreement prior to entry.

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

**CITY:
CITY OF MILWAUKEE**

By: _____
Elaine Miller
Special Deputy Commissioner
Department of City Development

**LVBA:
LINCOLN VILLAGE BUSINESS ASSOCIATION, INC.**

By: _____

Name Printed: _____

Title: _____

EXHIBIT A: DEPICTION OF THE PROPERTY AND PREMISES
EXHIBIT B: DEPICTION OF PROPOSED SIGN
EXHIBIT C: INSURANCE REQUIREMENTS

1050-2009-3349:153855