

SECOND AMENDMENT

THIS SECOND AMENDMENT (this "**Second Amendment**") is made and entered into as of the 1st day of April, 2021, by and between **SP MILWAUKEE PROPCO1, LLC**, a Delaware limited liability company ("**Company**"), and the **MILWAUKEE BOARD OF SCHOOL DIRECTORS** ("**Customer**").

RECITALS:

A. Pursuant to that certain Agreement dated February 25, 1991, by and between Schiltz Park Associates II Limited Partnership ("**Schiltz**") and Customer (the "**Original Agreement**"), as amended by that certain First Amendment by and between Company, as successor-in-interest to Schiltz, and Customer, dated August 31, 2020 (the "**First Amendment**"), Company has agreed to sell chilled water to Customer at the building (the "**Building**") located on that property known as 1600 North Martin Luther King, Jr. Dive, Milwaukee, Wisconsin (the "**Property**"). The Original Agreement, as amended by the First Amendment and by this Second Amendment, is hereinafter referred to as the "**Agreement**."

B. Customer operates and controls the entire Building and Property.

C. The term of the Agreement is currently scheduled to expire on March 31, 2021 (the "**Current Expiration Date**").

D. Company and Customer desire to amend and modify the Agreement as hereinafter set forth to extend the term and for other purposes as set forth herein.

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

1. **Extension of Term.** The term of the Agreement is hereby extended for a period of three (3) years from the Current Expiration Date, through March 31, 2024. Therefore, from and after the date of this Second Amendment, the expiration date of the Agreement shall be amended to be March 31, 2024. The period commencing on April 1, 2021, and continuing through March 31, 2024, is hereinafter referred to as the "**Extended Term**." However, the last sentence of Article 2 of the Agreement shall remain in full force and effect, except that the reference therein to the "term" shall be deemed to refer to the Extended Term.

2. **Capacity.** Through the Current Expiration Date, the Capacity shall continue to be as set forth in the Original Agreement. However, on and after April 1, 2021, the Capacity is hereby amended to be 575 tons of refrigeration per hour.

3. **Rates.**

(a) Customer shall continue to pay the rates for chilled water service to the Building through the Current Expiration Date in the same manner and amounts as set forth in the Agreement.

(b) During the Extended Term, Customer shall pay Company for chilled water for the Building at the following rates, which shall be payable without offset or deduction in the same manner as set forth in the Agreement:

Capacity Rate	Initially \$24.00 per month for each ton of Capacity, provided that such rate shall increase by three
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percent (3%) each year on April 1, with the first such increase effective as of April 1, 2022

Consumption Rate	\$0.3833 for each ton hour consumed
Lost Water Rate	\$10.00 for each 1,000 gallons of lost or leaked chilled water, if any

The subparagraph of Paragraph 6 of the Original Agreement which provides for escalation of rates based on the Consumer Price Index shall be inapplicable after the Current Expiration Date. However, the Consumption Rate, and Lost Water Rate set forth above in this Paragraph 3(b) shall each be escalated on an annual basis commencing April 1, 2022, by the greater of (i) the percentage increase, if any, in the Cost of Living Index (as hereinafter defined) for the month last published immediately preceding each adjustment date over the Cost of Living Index published for the identical month one year earlier; or (ii) the percentage increase, if any, in the rate charged the Company for electricity by Wisconsin Electric Power Company (or such other utility as may provide electricity to Company) during the 12 month period preceding each adjustment date (provided, however, in no event shall such rates as adjusted ever be less than the amount payable immediately prior to the adjustment). "Cost of Living Index" as used herein shall mean the index presently known as "Consumer Price Index, U.S. Average, All Items, All Urban Consumers (1982-84=100)" published by the Bureau of Labor Statistics, United States Department of Labor. If the computation and publication of the Cost of Living Index is transferred to another governmental bureau, such bureau's publication shall be substituted for the presently published index. If such Cost of Living Index is substantially revised, or its method of calculation is substantially altered, adjustments shall be made to such next index by Company as may be necessary to make it comparable to the original index used, provided, however, that the addition or elimination of particular items or commodities included in the Cost of Living Index shall not be deemed a "substantial" revision or a "substantial" alteration of its method of calculation. In the event the Bureau of Labor Statistics or other governmental bureau to whom the publication of the Cost of Living Index is transferred publishes such adjustment, then such adjustment as published shall be controlling upon the parties. In the event the Cost of Living Index is discontinued, the parties shall accept comparable statistics on the purchasing power of the consumer dollar as published at the time of such discontinuation by a responsible financial periodical of recognized authority to be then chosen by Company.

4. Condition of System. Customer agrees to accept the equipment, pipes and systems for the provision and metering of the chilled water to the Building (the "**System**") for the remainder of the term (as extended hereby) in its current "AS-IS" and "WHERE-IS" and "WITH ALL FAULTS" condition as of the date of this Second Amendment, and Company shall have no obligation to make any improvements or modifications to the System. However, Company shall, during the term of the Agreement, maintain the portion of the System located on Company's property in good working order and condition. Customer shall continue to be responsible, at Customer's sole cost and expense, for the repair, maintenance and replacement of the System (or any portion thereof) located on or under the Property up to the point of delivery and shall keep the same in good repair, order and condition. For clarification, the "point of delivery" as used in the Agreement and this Second Amendment is the property line of the Property. If Customer fails to make required repairs to the System (or any portion thereof) located on or under the Property promptly, Company, at Company's election, shall have the right to make such repairs, and Customer shall reimburse Company on demand for Company's actual costs of such repair. Upon the expiration or earlier termination of the Agreement (as amended), Company shall have the right, but not the obligation, to remove all or any portion of the System located on the Property.

5. Indemnities; Waiver of Claims.

(a) Except to the extent caused by the negligence or willful misconduct of Company or its personnel, directors, managers, and officers, Customer shall indemnify, defend and hold harmless Company, its personnel, directors, managers, and officers from and against any and all liabilities, claims, losses, injuries or damages, including, without limitation, all costs, expenses, court costs and attorneys' fees, caused by, resulting from or in connection with the provision of water to the Building, the negligence or willful misconduct of Customer or its personnel, directors, managers, and officers, or any breach of the Agreement (as amended) by Customer.

(b) Customer waives and releases all claims against Company, its agents, employees, representatives and contractors for damage to any property or injury to, or death of, any person in, upon, or about the Building or the Property arising at any time and from any cause, except to the extent caused by the negligence or willful misconduct of Company. Without limiting the foregoing, Customer agrees that Company, its agents, employees, and representatives will not be liable for any loss, injury, death, or damage (including consequential damages) to persons, property, or Customer's business occasioned by theft, act of God, public enemy, injunction, riot, strike, insurrection, war, vermin, court order, requisition, order of governmental body or authority, electricity, computer or electronic equipment or systems malfunction, fire, explosion, falling objects, steam, water, rain or snow, leak or flow of water, rain or snow from the Building or Property or into the Building or Property or from the roof, street, subsurface or from any other place or by dampness or from the breakage, leakage, obstruction, or other defects of the pipes, sprinklers, wires, appliances, plumbing, air conditioning, or lighting fixtures of the Property, or from construction, repair, alteration of the System or from any acts or omissions of any other party on the Property, or from any other cause whatsoever, except to the extent caused by the negligence or willful misconduct of Company or its agents, employees, or representatives.

6. Insurance.

(a) Effective immediately, Customer shall maintain the following coverages in the following amounts at all times:

(i) Commercial general liability (CGL) insurance, on an occurrence basis, with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage, \$50,000.00 for fire damage legal liability, \$2,000,000 for personal and advertising liability, \$5,000 for medical payments, \$4,000,000 general aggregate other than products, and \$4,000,000 general aggregate for products and completed operations. Any general aggregate limit must apply separately to this location. CGL insurance shall be written on ISO occurrence form CG 00 01 01 96 (or a substitute form providing equivalent coverage) and shall include contractual liability coverage, including, without limitation, coverage of the performance by Customer of the indemnity agreements set forth in the Agreement, as amended. In addition, Company and any other parties reasonably requested by Company shall be included as additional insureds under the CGL policy, using ISO policy forms CG 2010 and CG 2037, or a substitute providing equivalent coverage, on a primary and noncontributory basis, and including waiver of subrogation. Such additional insured coverage shall extend to not only ongoing operations but also to completed operations. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs afforded to Company. There shall be no endorsement or modification of the CGL to make it excess over other available insurance; alternatively, if the CGL states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured. Customer waives all rights against Company and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the commercial general liability or commercial umbrella liability insurance maintained pursuant to this Paragraph 6.

(ii) Umbrella liability coverage in a minimum amount of not less than \$5,000,000 to apply as excess coverage over commercial general liability.

(iii) Commercial property insurance covering all portions of the System located on or under the Property, as well as all of Customer's property. Such insurance shall cover the perils insured under the ISO special causes of loss form (CP 10 30) and shall include coverage for vandalism and malicious mischief, terrorism coverage for both certified and non-certified acts of terrorism, water damage, sprinkler leakage coverage, and boiler and machinery (systems breakdown). The amount insured shall equal the full replacement cost value new without deduction for depreciation of the covered items. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form.

(iv) Worker's compensation insurance providing statutory benefits to Customer's employees, as well as employers liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident or \$1,000,000 each employee for bodily injury by disease. Customer waives all rights against Company and its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability obtained by Customer. Customer shall obtain an endorsement to effect this waiver.

(v) Customer shall also maintain and provide such other form or forms of insurance, changes in amounts of coverage, or endorsements as Company may reasonably require from time to time.

(b) The minimum limits of policies of insurance required of Customer hereunder shall in no event limit the liability of Customer under the Agreement, as amended, and Company makes no representation or guaranty that the insurance required hereunder shall be sufficient or adequate to protect Customer. All insurance shall: (i) be issued by an insurance company having a rating of not less than A- X in Best's Insurance Guide or which is otherwise acceptable to Company and licensed to do business in the State of Wisconsin; and (ii) provide that said insurance shall not be canceled or non-renewed unless thirty (30) days' prior written notice shall have been given to Company and the certificate holder. The insurance required above shall have deductibles reasonably acceptable to Company. Customer shall deliver all policies or certificates thereof to Company upon request by Company, and at least thirty (30) days before the Current Expiration Dates thereof. Failure of Company to demand such certificate or other evidence of full compliance with these insurance requirements or failure of Company to identify a deficiency from evidence that is provided shall not be construed as a waiver of Customer's obligation to maintain such insurance. In the event Customer shall fail to procure such insurance, or to deliver such policies or certificate, Company may suspend chilled water service until such time as Customer makes such deliveries and/or procure such policies for the account of Customer.

(c) All insurance policies required to be carried by Customer with respect to this Paragraph 6 shall be procured and maintained in full force and effect by Customer at its sole cost and expense and continue in full force and effect during the term of the Agreement and any renewals or extensions thereof.

(d) Customer shall include in all policies of property insurance covering the System located on the Property and Company's other property a waiver by the insurer of all right of subrogation against Company in connection with any loss or damage thereby insured against. Any additional premium for such waiver shall be paid by the primary insured. Anything in the Agreement, as amended, to the contrary notwithstanding, and to the full extent permitted by law, Customer waives all right of recovery

against Company (and any officers, directors, partners, employees, agents and representatives of Company), and agrees to release Company from liability, for loss or damage to the extent such loss or damage is covered by valid insurance in effect covering Customer at the time of such loss or damage, or would be covered by the insurance required to be maintained by Customer under this Paragraph 6. If the release, as set forth above, should contravene any law with respect to exculpatory agreements, the liability of the party in question shall be deemed not released but shall be secondary to the liability of the other's insurer.

(e) Notwithstanding the foregoing, but subject to the terms of this Paragraph 6(e), Customer shall have the right to "Self-Insure" (as hereinafter defined) for the risks which would otherwise be covered by the insurance required under this Paragraph 6. "Self-Insure" shall mean that Customer is itself acting as though it were the insurance company providing the insurance required under the provisions of this Paragraph 6 and Customer shall pay any amounts due in lieu of insurance proceeds because of Self-Insurance, which amounts shall be treated as insurance proceeds for all purposes under the Agreement. Without limiting the generality of the foregoing, for purposes of the waivers set forth above in this Paragraph 6, all loss or damages resulting from risks for which Customer has elected to Self-Insure shall be deemed to have been covered by insurance carried by Customer. All amounts which Customer pays or is required to pay and all loss or damages resulting from risks for which Customer has elected to Self-Insure shall not limit any of Customer's indemnification obligations set forth in the Agreement. If an event or claim occurs for which a defense and/or coverage would have been available from the insurance company but for Customer's decision to Self-Insure, Customer shall: (i) undertake the defense of any such claim, including a defense of Company, at Customer's sole cost and expense; and (ii) use its own funds to pay any claim or replace any property or otherwise provide the funding which would have been available from insurance proceeds but for such election by Customer to Self-Insure to such extent. The right to Self-Insure is personal to Customer and no assignee shall be entitled to Self-Insure.

7. Notices. Article 13 of the Agreement is hereby deleted and replaced with the following:

13.

Except for legal process, which may also be served as by law provided, any notice or communication required or permitted hereunder shall be in writing and shall be sent either by: (i) personal delivery service with charges therefor billed to shipper; (ii) nationally recognized overnight delivery service (such as Federal Express, United Parcel Service, Airborne, etc.) with charges therefor billed to shipper; or (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested. All such notices and communications shall be addressed to Company or Customer, as the case may be, at the addresses set forth below, or at such other street addresses (not a Post Office Box) within the continental United States as Company or Customer may have designated by notice to the other given as provided above. Any notice or communication sent as above provided shall be deemed given or delivered: (A) upon receipt, if personally delivered (provided delivery is confirmed by the courier delivery service); (B) on the date of delivery by any nationally recognized overnight delivery service; or (C) if sent by United States Mail, on the date appearing on the return receipt therefor, or if there is no date on such return receipt, the receipt date shall be presumed to be the postmark date appearing on such return receipt. Notice shall be considered given and received on the latest original delivery or attempted delivery date to all persons and addresses to which notice is to be given, as indicated on the return receipt(s) of the United States Mail or delivery receipts of the personal delivery service or nationally recognized overnight delivery service. Any notice or communication which cannot be delivered because of failure to provide notice of a change of address as herein provided or for which delivery is refused shall be deemed to have been given and received on the date of attempted delivery. Any notice or communication required or

permitted hereunder may be given by authorized counsel for the party giving such notice or communication. Any notice or communication required or permitted hereunder shall be addressed as follows:

Company: Company's Address for Payments:

SP Milwaukee Propco1, LLC
1555 N RiverCenter Drive Suite 100
Milwaukee, Wisconsin 53212

Company's Address for Notices:

SP Milwaukee Propco1, LLC
1001 Woodward Avenue
5th Floor
Detroit, Michigan 48226
Attn: Mr. John A. Coury

Customer: Milwaukee Board of School Directors
Department of Facilities and Maintenance
Services
1124 N. 11th Street
Milwaukee, Wisconsin 53233
Attention: Director

8. Representations and Estoppel.

(a) Customer hereby represents and warrants to Company that: (i) the Building and Property are owned by the City of Milwaukee, Wisconsin, a Wisconsin municipal corporation; and (ii) notwithstanding the fact that Customer does not own the Building or Property, Customer has the power and authority to operate and control the Building and Property, including, without limitation, to make and enter into contracts (including this Second Amendment) pertaining to and encumbering the Building and Property, in its own name and on its own behalf.

(b) As of the date of this Second Amendment, Customer hereby represents, warrants and agrees that: (i) there exists no breach, default or event of default by Company under the Agreement, or any event or condition which, with notice or passage of time or both, would constitute a breach, default or event of default by Company under the Agreement; (ii) the Agreement continues to be a legal, valid and binding agreement and obligation of Customer; and (iii) Customer has no current offset or defense to its performance or obligations under the Agreement.

9. Miscellaneous.

(a) The parties hereby acknowledge and agree that the recitals set forth above are true and accurate as of the date hereof. The captions inserted in this Second Amendment are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Second Amendment, or any provision hereof, or in any way affect the interpretation of this Second Amendment. Whenever terms are used in this Second Amendment, but are not defined, such terms shall have the same meaning as set forth in the Agreement.

(b) Except as modified by this Second Amendment, Company and Customer do hereby ratify and reaffirm each and every provision, term, covenant, agreement and condition of the Agreement. The Agreement, as modified by this Second Amendment, sets forth the entire agreement between Company and Customer and cancels all prior negotiations, arrangements, agreements and understandings, if any, between Company and Customer regarding the subject matter of this Second Amendment. In the event of any conflict between the terms of the Agreement and the terms of this Second Amendment, the terms of this Second Amendment shall control.

(c) Customer represents and warrants that the person executing this Second Amendment is authorized to execute and deliver this Second Amendment and that all necessary approvals and consents have been obtained to bind Customer under this Second Amendment and the Agreement in accordance with their terms.

(d) If any clause or provision of the Agreement, as may be amended from time to time, is illegal, invalid or unenforceable under present or future laws effective during the term, then and in that event it is the intention of the parties hereto that the remainder of the Agreement shall not be affected thereby.

(e) Time is of the essence of the Agreement, as may be amended from time to time, and all of its provisions.

(f) The Agreement, as may be amended from time to time, shall be governed by and construed under the internal laws of the State of Wisconsin, without regard to the conflicts of laws rules of such state. Any action brought to enforce or interpret the Agreement, as may be amended from time to time, shall be brought in the court of appropriate jurisdiction in Milwaukee County, Wisconsin. In any action or proceeding between Company and Customer, the prevailing party shall be entitled to recover all of its costs and expenses in connection therewith, including, but not limited to, reasonable attorneys' fees actually incurred, without regard to the applicability of any fee-limiting statute.

(g) No default or provision of the Agreement, as may be amended from time to time, shall be deemed to have been waived by Company unless such waiver is in writing and signed by Company. Company's acceptance of payment following default under the Agreement, as may be amended from time to time, or acceptance of less than the full amount due (even if Customer writes the words "accord and satisfaction" or words of similar import on its check) shall not be construed as a waiver of such default, nor excuse any delay or partial payment upon subsequent occasions.

(h) No custom or practice which may develop between the parties in connection with the terms of the Agreement, as may be amended from time to time, shall be construed to waive or lessen either party's right to insist upon strict performance of the terms of the Agreement, as may be amended from time to time, without a written notice thereof to the other party.

(i) The submission of this Second Amendment to Customer shall not be construed as an offer and Customer shall not have any rights with respect thereto unless Company executes a copy of this Second Amendment and delivers the same to Customer. This Second Amendment may be executed in multiple counterparts, all of which shall be deemed originals, but all of which constitute one and the same instrument.

10. *Limitation of Liability.* CUSTOMER AGREES, ON ITS BEHALF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS, THAT ANY LIABILITY OF COMPANY WITH RESPECT TO THIS AGREEMENT SHALL NEVER EXCEED THE AMOUNT OF ONE MILLION DOLLARS (\$1,000,000.00) AND CUSTOMER SHALL NOT BE ENTITLED TO ANY JUDGMENT IN EXCESS

OF SUCH AMOUNT. IN ADDITION, NO ASSETS OF ANY PARTNERS, SHAREHOLDERS, MEMBERS OR OTHER PRINCIPALS OF COMPANY SHALL BE SUBJECT TO LEVY, EXECUTION OR OTHER JUDICIAL PROCESS FOR THE SATISFACTION OF ANY CLAIM BY CUSTOMER.

IN WITNESS WHEREOF, the duly authorized signatories of Company and Customer have signed and sealed this Second Amendment as of the day and year first set forth above.

COMPANY:

SP MILWAUKEE PROPCO1, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

CUSTOMER:

MILWAUKEE BOARD OF SCHOOL DIRECTORS

By: _____

Name: Robert E. Peterson

Title: President, Milwaukee Board of School
Directors

By: _____

Name: Keith P. Posley, Ed.D

Title: Superintendent of Schools