

## Wisconsin Department of Natural Resources

### Lease of Property & Facilities

This LEASE OF PROPERTY & FACILITIES (hereinafter referred to as "Lease") located within the Kettle Moraine State Forest – Southern Unit, in Waukesha and Jefferson Counties, and further described in Exhibits "A1" and "A2" (hereinafter referred to as the "Premises"), attached hereto and made a part hereof, is entered into by and between the State of Wisconsin Department of Natural Resources (hereinafter referred to as "Lessor" or "Department") and Milwaukee Board of School Directors (hereinafter referred to as "Lessee"). The Lessor and the Lessee are singularly referred to as "Party" or collectively referred to as "Parties".

**WHEREAS**, the Lessee supports the Department's broad conservation goals to protect and enhance natural resources and outdoor recreation on Department-owned properties;

**WHEREAS**, the Lessor will continue to provide guidance and administrative oversight in order to ensure the public's right, title and interest in the Kettle Moraine State Forest – Southern Unit are protected and furthered by the Lessee;

**AND WHEREAS**, the Department has the authority to enter into this Lease pursuant to ss. 23.09(2) and 26.08, Wis. Stats., and section NR 1.48 Wisconsin Administrative Code, which provide that the Department may execute leases for public use or public benefit, but not for private use.

**NOW THEREFORE**, for and in consideration of the base sum of one (\$1) Dollar and the mutual covenants and agreements contained herein, the Lessor and the Lessee do hereby agree as follows:

#### Relationship of the Parties

- 1) In this Lease, the Lessor and the Lessee include their respective employees, officers, members, directors, agents, volunteers, contractors, representatives, partners, assignors, and successors.
- 2) The Lessor recognizes the Lessee as an independent contractor for all purposes and the Lessee and Lessee's employees are not employees or agents of the Lessor for purposes of unemployment compensation coverage, workers' compensation insurance, social security benefits and federal/state withholding taxes. This Lease shall not be interpreted, construed, or inferred as creating a partnership or joint venture for purposes of creating joint or severable liability.

#### Use of the Premises

- 3) The Lessee shall use the Premises for public benefit, not for private use, consistent with the Lessor's Master Plan for the Southern Unit of the Kettle Moraine State Forest, and consistent with the Lessee's Mission. Any other use of the Premises must be authorized by the Lessor through a Special Use Permit. It is understood and agreed by Lessor and Lessee that Lessee's uses of the Premises for Oakridge Farm is consistent with Lessor's current Master Plan for the Southern Unit of the Kettle Moraine State Forest.
- 4) The Lessee intends to use the Premises as the home for its "Oakridge Farm." This farm provides environmental learning opportunities for Milwaukee Public Schools' students. This is the Lessee's primary use of the Premises. Additionally, Lessee may operate retreats for low-income children as well as for leadership, development and volunteer training purposes consistent with its Mission. It may also hold other special events approved by the property Superintendent. A copy of the Oakridge Mission is attached as Exhibit B.

- 5) The Lessee will provide sufficient funding and staffing to discharge all duties, responsibilities, liabilities and obligations contained in this Lease for purposes of operating and maintaining a farm environmental learning experience.
- 6) Lessor's authorized employees and agents shall be allowed onto the Premises at any time to conduct Lessor's business including, but not limited to: standard work activities, inspections, law enforcement and fire control. The Lessor shall not unnecessarily disrupt or interfere with the Lessee's business operation except in case of emergency.
- 7) The Lessee shall provide a person or persons (of immediate relation) to reside full time on the premises and will assume all financial considerations thereto. It shall be the understanding that this person(s) will handle day-to-day operations of the farm such as animal upkeep, daily maintenance and other duties normally associated with the "role of a farmer." The assignment of duties will be as prescribed by the Lessee.
- 8) To be consistent with the Lessor's policies regarding park personnel who live on state property, these personnel will be required to pay "rent." A schedule of rental cost will be established by the Lessee and be reviewed periodically. It is further agreed in this document that the rent shall be collected by the Lessee and will be used to offset the various operating expenses incurred by the Lessee.
- 9) If the Lessor determines that an emergency exists, the Lessor may order the Premises to be temporarily closed. If the Lessee determines that an emergency exists, the Lessee may temporarily close the Premises.
- 10) Lessor retains management, supervision and control over the Premises for the purpose of enforcing Chapter NR 45, Wisconsin Administrative Code and pertinent state laws, when needed to protect the Premises, the Southern Unit of the Kettle Moraine State Forest, or the public.

#### **Term, Payment, Deposit and Taxes**

- 11) This Lease shall commence on date of signature and shall terminate December 31, 2024.
- 12) The Lessee shall pay the Lessor a rental fee of \$1 when it executes the lease.
- 13) In addition to the one time rent payment, Lessee agrees to remit to the Lessor a percentage of the net income the Premises may generate. Lessee shall calculate this payment each calendar year, and shall provide the Lessor with a description and accounting of third party activities, along with the payment, by January 31 of each subsequent year. These percentages shall be: 7% in the first five years, 8.5% in years 6 through 10, and 10% in years 11 through 15. It is understood by the parties that Lessee does not operate the premises as an income producing enterprise. It is anticipated that the premises will not generate any net income during the term of this Lease.
- 14) A fee shall be established not to exceed a per person fee greater than \$5.00. Such charge is to be collected by the Lessee. No fee for use by the Lessor will be charged under the structure of this agreement.
- 15) The Lessee shall be responsible for any and all taxes, assessments, or charges (except real estate taxes) that may be levied on the Premises by virtue of this Lease.

#### **Facilities and Maintenance**

- 16) Lessee shall comply with all laws of the State of Wisconsin and the United States, and all ordinances of Waukesha and Jefferson Counties and local townships as to sanitary, health, lodging and safety

conditions and other requirements for the use of the Premises as an educational center, and shall comply with any and all other laws or regulations that pertain to any other activities Lessee performs or permits on the Premises. Lessee shall keep the Premises and appurtenances thereto clean, sanitary, and in good repair, according to all applicable statutes and ordinances or pursuant to the directives of public officers thereunto duly authorized, all at its own expense.

- 17) Lessee, by executing the Lease, accepts the Premises in an "as is" "where is" condition. Lessee shall, at all times during the lease term, pay for and make all necessary repairs, maintenance and replacements of machinery, supplies, furniture, appliances, and facilities on the Premises, and keep and maintain the same in good condition and repair. Further, Lessee shall keep the Premises in a clean, tenantable condition and shall not permit any garbage, rubbish or refuse or any kind in any material amount to accumulate in or about the Premises. All repairs shall be made in a code-compliant, good and workmanlike manner, and in cases where licensure is required by law, repairs shall be made by licensed or certified professionals. Lessee agrees, upon completion of any and all of the repairs and maintenance made to the Premises by Lessee or its agents, to provide the Lessor with full and complete lien waivers from all contractors and material suppliers involved. Lessee has the right to make ongoing improvements to maintain the Premises, but any significant alterations, additions or improvements on or to the Premises, or any part thereof, require the prior written consent of the Lessor, which may not be unreasonably withheld. The foregoing, together with all repairs, maintenance and replacements required to be made by Lessee, shall be made in a good and workmanlike manner and in compliance with all governmental requirements. Lessee agrees not to create, incur, impose or permit or suffer to exist any lien, security interest or other obligation against the Premises for any reason, including by virtue of any repair or alteration permitted or required to be made by Lessee pursuant to the terms of this Lease. Lessee covenants and agrees to pay promptly all sums legally due and payable by Lessee on account of any labor performed or materials purchased for the Premises upon which a lien can or may be asserted against the Premises or to the improvements thereon.
- 18) Lessee agrees to ensure the availability of ADA facilities, and to comply with ADA requirements should it seek to alter, expand or change any improvements on the Premises whose modification triggers ADA compliance.
- 19) If any structure on the Premises, or any part thereof, cannot be used or is destroyed or damaged by virtue of whatever cause, the Lessor may elect to not rebuild, restore, replace or substantially repair such structure(s). Lessor must notify Lessee of its decision whether to rebuild, restore, replace, or substantially repair such structure(s) within sixty (60) days. In the event the Lessor does not rebuild, restore, replace (using similar construction) or substantially repair such structures, the parties may renegotiate the terms and conditions of this Lease. The Lessee may also terminate the lease pursuant to paragraph 36, below.
- 20) The Lessee is responsible for all necessary grass mowing, weed trimming, general cleaning and maintenance of the grounds and buildings, and the replacement of doors, windows, lights and related hardware. Painting of interiors and exteriors of all facilities as needed shall also be the responsibility of the Lessee.
- 21) Lessee shall provide all tools, equipment, and supplies that it deems necessary to conduct its business. The Lessee shall pay for all telephone and internet service related to the business of the Lessee. The Lessee shall be responsible for all electrical and heating utility expenses and agrees that all utility services shall be obtained in its name and all bills shall be sent directly to Lessee. Lessee is also responsible for septic system inspection, maintenance, and replacement (if necessary).
- 22) Lessee shall not create or allow any waste or nuisance upon the Premises, and shall haul, or contract to haul at Lessee's expense, all refuse and recyclables generated by the operation of the Premises.

- 23) Added, repaired or replaced fixtures shall become the property of the Lessor subject to the rights of the Lessee under this Lease. If Lessee acquires moveable personal property for its use at the Premises, the Lessee retains title to that property.
- 24) The Lessee shall clearly identify the Premises as property of the State of Wisconsin Department of Natural Resources in all publications and signage, and to obtain the Department's written approval for any proposed signage before the signage is installed. All outdoor signage on the Premises shall be produced in a professional manner, and no signs, posters or other postings endorsing a political party, candidate or position shall be permitted on the Premises.
- 25) The Premises shall be smoke-free, and Lessee shall prohibit the sale or use of tobacco products, pyrotechnics or any illegal or illicit items on the Premises. The advertising of alcoholic beverages is also prohibited on the Premises, and the use/consumption of alcohol by individuals of legal drinking age shall adhere to a written policy approved by the Lessor.
- 26) Standing timber remains the property of the State of Wisconsin and may only be removed with the Lessor's prior written approval should a safety hazard exist.

#### **Liability and Insurance**

- 27) The Lessee shall secure and comply with all federal, state and local permits, approvals, licenses or certifications required for the operation and management of the Premises including but not limited to zoning, building, health, environmental permits and licenses, and it shall indemnify the Lessor from and against any costs, penalties, fines or forfeitures that may be levied for its failure to obtain and comply with such licenses, permits, approvals, and certifications.
- 28) Lessee shall indemnify the Lessor against any cause of action, demand, claim, liability, damage or expense, including reasonable attorney's fees, arising directly or indirectly out of the Lessee's negligent acts or omissions in the Lessee's exercise of the rights and duties granted by this Lease. In case any action or proceeding is brought against the Lessor by reason of such cause of action or claim, the Lessee upon notice from the Lessor, will defend the Lessor by counsel reasonable satisfactory to the Lessor.
- 29) Lessee shall maintain, at its cost, insurance covering the entire Premises and employees against loss or damage by fire and all other hazards now or at any time insurable by extended coverage endorsement to standard fire insurance policies.
- 30) During the term of the Lease, Lessee shall keep in full force and effect, at its expense on the Premises:
  - (a) a policy of commercial general liability insurance including contractual liability coverage in an amount not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate (or higher amounts); and
  - (b) insurance against fire, vandalism, malicious mischief, and such other perils as are from time to time included in a standard extended coverage endorsement, insuring the fixtures, equipment and all other property located on or within the Premises, in an amount equal to not less than their full replacement value.
- 31) The policies required under this section shall name Lessee and the Department of Natural Resources as insureds and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Department thirty (30) days prior written notice. Such insurance may be furnished by Lessee under any blanket policy carried by it or under a separate policy therefor. Such policies shall be with a carrier or carriers authorized to do business under the laws of the State of Wisconsin and having an "A-" or better rating in Best's Guide, and a copy of the paid-up policies or certificates or the insurer(s) evidencing the maintenance of such insurance policy(ies) shall be delivered by Lessee to the Lessor prior to commencement of the term of the Lease and annually thereafter, not less than thirty (30) days prior to the expiration of a coverage period.

- 32) The Lessee shall maintain, during the term of this Lease, worker's compensation insurance as required by Wisconsin Statutes for all employees engaged in work on the Premises.

#### **Screening and Non-Discrimination**

- 33) Lessee agrees that it will not discriminate against any youth visitor, volunteer, employee or applicant for employment because of age, race, religion, color, handicap, sex, marital status, arrest or conviction record, physical condition, developmental disability as defined in section 51.01(5), Wis. Stats., sexual orientation, or national origin. This provision shall include, but not be limited to, the following: admission to the farm, participation in farm activities, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Lessee agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Department setting forth the provisions of this nondiscrimination clause.
- 34) Lessee agrees to obtain background checks on its employees and volunteers from either the State of Wisconsin Department of Justice Record Check Unit or another licensed background check service approved by Lessor to determine their suitability to work and mingle with school-aged visitors to the farm.

#### **Termination and Renewal**

- 35) Failure of the Lessee to comply with the provisions of this Lease may result in termination of the Lease. Notification of non-compliance shall be made in writing to the Lessee by the Lessor and a 60-day cure period provided to the Lessee to make reasonable efforts to cure, unless a longer time is agreed to by the Parties. The only exception shall be when safety-related issues are involved (as determined by the Lessor) in which case the Lessee shall take immediate action to correct the compliance problem. The Lessor may include in its notice of non-compliance that the Lessor will perform the cure and that the cure will be made at the Lessee's expense. In the event the Lessee fails to cure the breach to the satisfaction of the Lessor, the Lessor may terminate this Lease by providing a thirty (30) written notice to the Lessee. Any and all rights, remedies and causes of action available to the Lessor whether in law or equity shall survive the termination date of the Lease.
- 36) Lessee may terminate this Lease by giving the Lessor at least one year's prior written notice of termination. If Lessee gives such notice, it shall remain responsible for maintaining the buildings, paying for utilities, and all other obligations associated with this Lease for the one year notice period. Upon termination, Lessee shall provide the terminated year's annual remittance (if any).
- 37) Upon termination of this Lease, the Lessee may remove its personally owned property or property owned by its organization within one (1) month from the date of termination. Any of the Lessee's unremoved personal property shall become the property of the Department or the Department may remove and dispose of this property at the sole cost and expense of the Lessee. Property installed that cannot be removed without damage or a decrease in value to the Premises shall not be removed and shall become property of the Lessor at no cost.
- 38) Provided that Lessee is not in default of any of its obligations under this Lease, Lessor shall not sell, transfer or assign (except for security purposes) all or any portion of the Leased Premises during the term of the Lease except as follows:
- a) In the event that the Lessor desires to sell, transfer and assign the Premises, and if Lessor receives a bona fide offer which is acceptable to it, Lessor shall, before accepting such offer, offer the Premises to Lessee on the same terms and conditions set forth in said bona fide offer. Promptly upon receipt of such bona fide offer, Lessor shall transmit a copy thereof to Lessee (in the same manner as notices are given hereunder), which shall be deemed to be an offer by Lessor to Lessee

to sell, transfer and assign the Premises to Lessee upon the terms and conditions set forth in said bona fide offer.

- b) Lessee shall have thirty (30) days after receipt of such offer from Lessor within which to accept (in the same manner as notices are given hereunder) the offer of Lessor. If accepted, the transaction shall be closed at such time and in the manner provided in said offer; provided, however, that such closing shall not in any event occur before the thirty (30) days after Lessee's acceptance hereunder.
- c) If Lessee fails to exercise its rights hereunder, the Premises may be sold, transferred and assigned pursuant to said bona fide offer subject to this Lease and all of the Lessee's rights hereunder.

39) With the mutual agreement of the Lessor and Lessee, this lease may be renewed for an additional two (2), five (5) year terms.

#### **Changes, Modifications or Waiver**

40) This Lease sets forth the entire understanding of the Lessor and the Lessee and supersedes any prior understandings, agreements, leases, or communications. No change to, waiver of, or modification to any provision of this Lease shall be valid unless in writing signed by both Parties. No waiver of any breach, term, or condition of the Lease by either Party, whether by conduct or otherwise, in any one or more instances, shall constitute a further waiver of the same or any other breach; term or condition. Failure, delay or forbearance of any Party to insist on strict performance of any provision of the Lease, or to exercise any rights or remedies hereunder, shall not be construed as a waiver.

#### **Interpretation and Severability**

- 41) This Lease shall be construed and enforced in accordance with the laws of the State of Wisconsin. Enforcement of this Lease shall be by proceedings in law and in equity against any person or Party violating or attempting to violate any term or condition in this Lease, either to restrain or prevent the violation or to obtain any other relief.
- 42) If any term or condition of this Lease shall be deemed invalid or unenforceable, the remainder of this Lease or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby. Each term and condition shall be valid and enforceable to fullest permitted by law.

#### **Notice**

43) For purposes of this Lease, notices shall be provided to the following persons:

##### For the Lessee:

Name: Dr. Keith P. Posley  
Title: Superintendent of Schools  
Milwaukee Board of School Directors  
Address: 5225 W. Vliet Street  
Milwaukee, WI 53208

Name: Larry Miller  
Title: President  
Milwaukee Board of School Directors  
Address: 5225 W. Vliet Street  
Milwaukee, WI 53208

For the Lessor:

Name: Anne Korman  
Bureau of Parks and Recreation  
Title: Superintendent  
Address: S91 W39091 Hwy 59  
Eagle, WI 53119  
  
Telephone: 262-594-6204  
Email: anne.korman@Wisconsin.gov

Name: Ben Bergey  
Bureau of Parks and Recreation Management  
Title: Bureau Director  
Address: PO Box 7921  
Madison, WI 53707-7921  
  
Telephone: (608) 266-2185  
Email: Benjamin.Bergey@Wisconsin.gov

IN WITNESS WHEREOF, the Lessor and the Lessee has caused this Lease to be signed by its authorized representative(s).

For the Lessor:

STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

Ben Bergey  
Ben Bergey

9/2/19  
Date

Anne Korman  
Anne Korman

8/19/19  
Date

For the Lessee:

MILWAUKEE BOARD OF SCHOOL DIRECTORS

\_\_\_\_\_  
Dr. Keith P. Posley

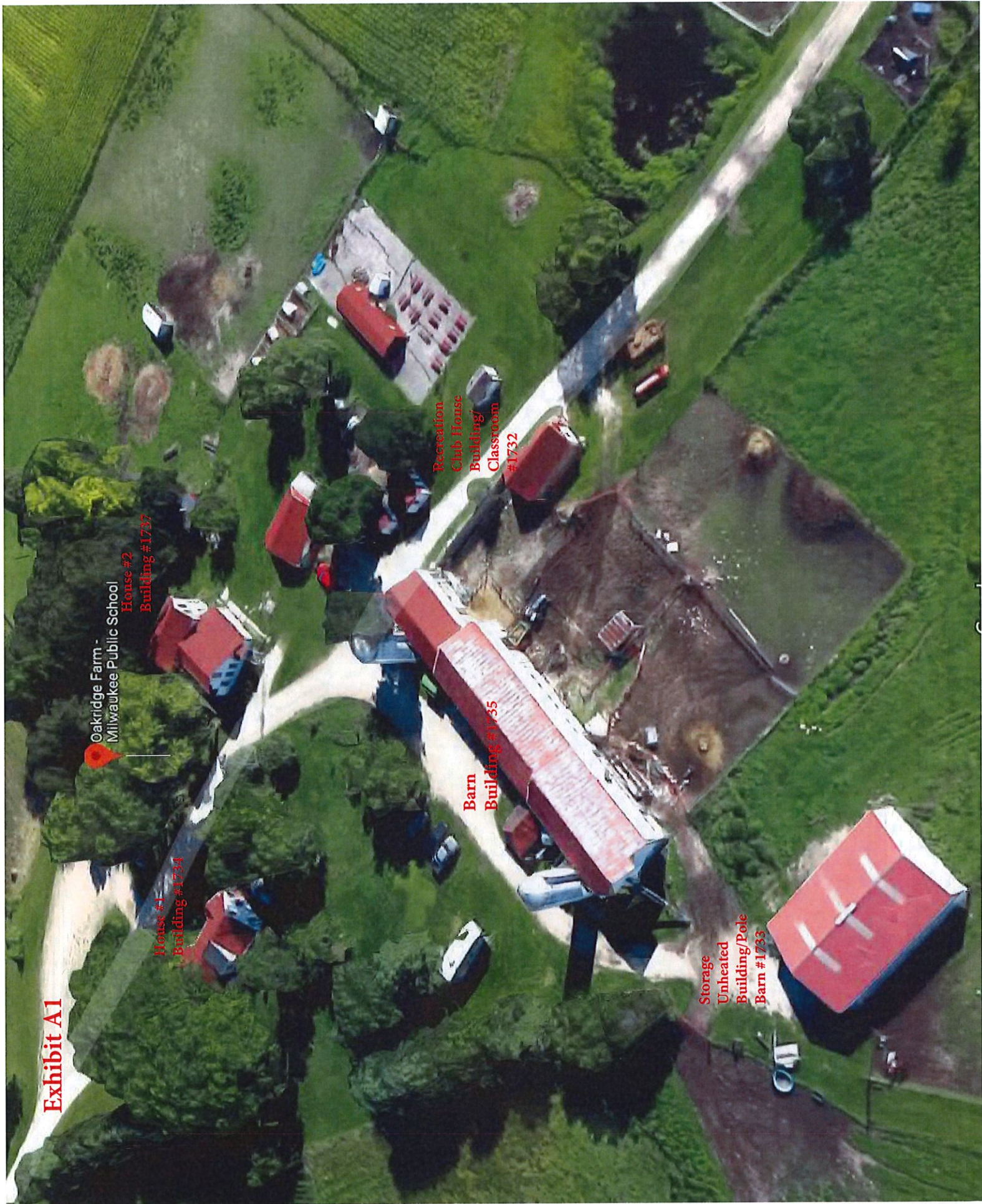
\_\_\_\_\_  
Date

\_\_\_\_\_  
Larry Miller

\_\_\_\_\_  
Date



**Exhibit A1**



Oakridge Farm -  
Milwaukee Public School  
House #2  
Building #1737

House #1  
Building #1734

Recreation  
Club House  
Building/  
Classroom  
#1732

Barn  
Building #1735

Storage  
Unheated  
Building/Pole  
Barn #1733



# Oak Ridge Lease Exhibit A2

Map Features



1: 7,920



DISCLAIMER: The information shown on these maps has been obtained from various sources and are of varying age, reliability and resolution. These maps are not intended to be used for navigation nor are these maps an authoritative source of information about legal land ownership or public access. No warranty, expressed or implied, is made regarding accuracy, applicability for a particular use, completeness or legality of the information depicted on this map. For more information, see the DNR Legal Notices web page: <https://dnr.wi.gov/legal/>

Projection: NAD\_1983\_HARN\_Wisconsin\_TM

Notes

## **Exhibit B**

Milwaukee Recreation's mission is to enrich and strengthen the community by promoting healthy lifestyles, personal development, and fun through memorable recreational and educational experiences for people of all ages and abilities.

