

(ATTACHMENT 1) ACTION ON A REQUEST TO APPROVE THE FIRST AMENDMENT TO THE CHILLED WATER AGREEMENT WITH SP MILWAUKEE PROPCO1, LLC, AT GOLDA MEIR UPPER CAMPUS LOCATED AT 235 WEST GALENA STREET

FIRST AMENDMENT

THIS FIRST AMENDMENT (this "**First Amendment**") is made and entered into as of the _____ day of _____, 2020, 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 Company, as successor-in-interest to Schiltz Park Associates II Limited Partnership, and Customer (the "**Agreement**"), 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. Drive, Milwaukee, Wisconsin (the "**Property**").

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

C. The term of the Agreement is currently scheduled to expire on August 31, 2020 (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 seven (7) months from the Current Expiration Date, through March 31, 2021. Therefore, from and after the date of this First Amendment, the expiration date of the Agreement shall be amended to be March 31, 2021. The period commencing on September 1, 2020, and continuing through March 31, 2021, is hereinafter referred to as the "**Extended Term**." The last sentence of Article 2 of the Agreement shall no longer apply; therefore, the term of the Agreement will not be extended beyond the end of the Extended Term unless and until the parties enter into a subsequent written agreement providing for the further extension of the term of the Agreement.

2. **Payment Obligations.** Customer shall continue to pay the rates for chilled water service to the Building, and all other amounts and charges due under the Agreement, through the Current Expiration Date in the same manner as set forth in the Agreement. During the Extended Term, Customer shall continue to pay the rates for chilled water service to the Building, and all other amounts and charges due under the Agreement, in the same manner as set forth in the Agreement.

3. **Default Remedies.** In addition to any other rights and remedies available to Company under the Agreement, at law, or in equity: (a) if Customer fails to pay any amount due to Company under the Agreement by the date due: (i) Customer shall pay a late fee equal to the greater of (A) five percent (5%) of the amount past due, or (B) \$50.00, which late fee represents an agreed upon charge for the administrative expense suffered by Company as a result of such late payment and not payment for the use of money or a penalty; and (ii) the amount past due (excluding late fees), shall bear simple interest from the date due until paid at eighteen percent (18%) per annum (however, if at the time such interest is sought to be imposed, such interest rate exceeds the maximum rate permitted under federal law or under

the laws of the State of Wisconsin, the interest rate shall be the maximum rate of interest then permitted by applicable law); and Customer agrees to pay said late fee and interest immediately and without demand; and (b) if Customer shall fail to comply with any term, provision or covenant of the Agreement, and shall not cure such failure within thirty (30) days after written notice thereof to Customer, Company may suspend and cease performing any or all of its obligations under the Agreement (including, without limiting the generality of the foregoing, suspending the provision of chilled water to the Building and Property) until such time as such failure is cured to Company's reasonable satisfaction and Company accepts such cure.

4. Representations and Estoppel.

(a) The Original Agreement stated that Customer leased the entire Building and Property pursuant to that certain lease dated November 1, 1990 (the "Lease"), by and between Wisconsin Preservation Fund, Inc., as "Landlord", and Customer as "Tenant." However, Customer has informed Company that it is unclear if such Lease ever actually existed, and that, to Customer's knowledge, no such lease is currently in place. 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 First 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 First 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.

5. 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 First Amendment are for convenience only and in no way define, limit or otherwise describe the scope or intent of this First Amendment, or any provision hereof, or in any way affect the interpretation of this First Amendment. Whenever terms are used in this First Amendment, but are not defined, such terms shall have the same meaning as set forth in the Agreement.

(b) Except as modified by this First 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 First 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 First Amendment. In the event of any conflict between the terms of the Agreement and the terms of this First Amendment, the terms of this First Amendment shall control.

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

(d) Customer represents and warrants that it is authorized to enter into this First Amendment under the terms and conditions of the Lease without further approvals, and that the Extended Term does not extend beyond the term of the Lease.

(e) 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.

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

(g) 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.

(h) 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.

(i) 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.

(j) The submission of this First 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 First Amendment and delivers the same to Customer. This First Amendment may be executed in multiple counterparts, all of which shall be deemed originals, but all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the duly authorized signatories of Company and Customer have signed and sealed this First 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: _____
Larry Miller, President Board of School Directors

By: _____
Keith P. Posley, Ed.D, Superintendent of Schools