

**Use and Maintenance Agreement
Concerning the New Addition and Existing Facility**

This Use and Maintenance Agreement ("**Agreement**"), hereby made a part of that certain WB-15 Commercial Offer To Purchase and Addendum, dated April 22, 2004 ("**Offer**") between Milwaukee Public Schools, a public school district organized and existing under Wis. Stat. chapter 119 and the Constitution of the State of Wisconsin ("**MPS**") and Boys & Girls Clubs of Greater Milwaukee, Inc., a Wisconsin nonstock corporation ("**BGC**"), together referred to herein as the "**Parties**", is hereby entered into by and between the Parties on this 21st day of June, 2004 (the "**Effective Date**").

**ARTICLE I
INCORPORATION**

As provided in the Preamble to and in Section 4.6 of the Addendum to the Offer, to which this Agreement is attached, such Offer and this Agreement together shall constitute and be construed as a single instrument. Accordingly: (i) except as specifically modified by the terms of this Agreement, the terms of the Offer to which this Agreement is made part of shall remain in full force and effect; and (ii) any terms in this Agreement (capitalized or not) that are specifically defined in the Offer to which this Agreement is attached shall have the definitions given to them, respectively, in such Offer; and (iii) if any provision in this Agreement conflicts with or contradicts any provision in the Offer to which this Agreement is attached, then the provision in this Agreement shall control the interpretation of the Offer and this Agreement together as a single instrument.

**ARTICLE II
DEFINITIONS**

For purposes of this Agreement only, the following terms shall have the stated definitions:

"**BGC Space**" shall mean all areas color-keyed as "BGC Space" on the Schematic Plan.

"**Capital Maintenance**" shall mean all non-routine repair to, and all replacement, reconstruction, upgrading, and refurbishment of, each and every element, component, and item of tangible property comprising the New Addition or Existing Facility, including (without limitation) all of the following: all Common Areas (including all entryways, lobbies, stairways, corridors, washrooms, and locker rooms); all parking areas; all exterior portions (including windows, doors, walls, foundations, and roofs); all demising and load-bearing walls and structural elements; all mechanical, electrical, plumbing, climate control systems and installations; all other building control, media, and data systems; all systems provided for bringing utility services to the New Addition or the Existing Facility; the Pool; all elevators; and all grounds of the New Addition or the Existing Facility (including, without limitation, all plantings, ground coverings, and paved surfaces).

"**Commencement Date**" shall mean the first Non-Student Day after which MPS, its employees, agents, authorized representatives, students, sublessees, invitees, licensees, and frequenters shall have safe and ready access to all MPS Space, Shared Space, and Common Areas of the New Addition and the Existing Facility, as depicted on the Schematic Plan.

"**Common Areas**" shall mean all areas color-keyed as "Common Areas" on the Schematic Plan.

"**Existing Facility**" shall mean the real property that is legally described in Exhibit A attached hereto and incorporated herein by this reference, together with all improvements located upon such parcel of real property.

"**Expense Index**" shall mean, with respect to any School Year during the Maintenance and Utility Term, a multiplier equal to 1.25 times a certain fraction, (i) the numerator of which fraction shall be the

difference between the CPI-U on June 30 of such School Year [expressed below as a] less the CPI-U on June 30 of the immediately preceding School Year [expressed below as b], and (ii) the denominator of which fraction shall be the CPI-U on June 30 of the immediately preceding School Year [expressed below as b]. Otherwise expressed:

$$\text{Expense Index} = 1.25 \times [(a - b) \div b]$$

For purposes of this definition, "**CPI-U**" shall mean the Consumer Price Index for All Urban Consumers, U.S. City average for all items (1982-84=100), as published by the United States Bureau of Labor Statistics.

"**Indexed Expense Stop**" shall mean, with respect to any School Year during the Maintenance and Utility Term, the sum of (i) the actual Reimbursed Expenses for the immediately preceding School Year [expressed below as c], plus (ii) the product of actual Reimbursed Expenses for the immediately preceding School Year [c] multiplied by the Expense Index, plus (iii) \$10,000.00. Otherwise expressed:

$$\text{Indexed Expense Stop} = c + (c \times \text{Expense Index}) + \$10,000$$

"**Instructional Day**" shall mean each School Day and each Non-Student Day.

"**Laws and Regulations**" shall mean: (i) Wis. Stat. chapters 118 through 121; (ii) the orders, rules, and regulations of the Board of Fire Underwriters where the Existing Facility and New Addition are situated; and (iii) every other applicable law, ordinance, regulation, order, rule, judgment, requirement, consent agreement, or other declaration or measure of any governmental authority with jurisdiction over (i) the New Addition or the Existing Facility, or (ii) any portion of the same, or (iii) the sidewalks, curbs, roadways, alleys, entrances or railroad track facilities adjacent or appurtenant to the same, or (iv) exercising authority with respect to the use or manner of use of the Existing Facility or the New Addition, or such adjacent or appurtenant facilities, including (without limitation) the following: Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d, et seq.; Title IX of the Education Amendments of 1962, 20 U.S.C. § 1681, et seq.; the Age Discrimination Act of 1985, 42 U.S.C. § 6101, et seq.; § 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794; the Americans with Disabilities Act, 42 U.S.C. §§ 12101, et seq.; the Family Education Rights and Privacy Act, 20 U.S.C. § 1232g (as well as Wis. Stat. § 118.125); the Drug-Free Schools and Communities Act of 1986, 20 U.S.C. § 3171, et seq.; the Individuals with Disabilities Education Act, 20 U.S.C. § 1400, et seq., and the Asbestos Hazard Emergency Response Act, 15 U.S.C. §§ 2641-2656.

"**MPS Space**" shall mean all areas color-keyed as "MPS Space" on the Schematic Plan.

"**New Addition**" shall mean (i) the real property and improvements to be constructed thereon adjacent to the Existing Facility, as legally described in Exhibit B attached hereto and incorporated herein by this reference, whether owned by MPS or to be owned by MPS upon the closing of the Offer, together with (ii) when acquired by BGC and conveyed to MPS as required under Section 5.6 of the Addendum to the Offer, the Play Space Parcels.

"**Non-Instructional Day**" shall mean each and every weekday (Monday through Friday, inclusive) other than an Instructional Day.

"**Non-Student Day**" shall mean each and every day during which any employee of MPS must or may be present at the New Addition for the purpose of in-service training, parent-teacher conferences, or other scheduled activity.

"**Operating Hours**" shall mean all hours during which MPS or BGC shall keep the New Addition or the Existing Facility, or any part of the New Addition or Existing Facility, open for public, student, or member access for any purpose.

"**Ordinary Maintenance**" shall mean (i) all daily cleaning, clearing, and upkeep, interior as well as exterior (including all grounds maintenance), to the New Addition or Existing Facility and (ii) all required repairs to the New Addition or Existing Facility *other than* Capital Maintenance.

"**Pool**" shall mean (i) those areas of the Existing Facility denominated "Pool" and "Pool Equip[ment] Mechanical" on the Schematic Plan, including all wall materials, structural elements, and building components lying within or immediately adjacent to the floors, walls, ceilings, and other perimeters of the same, (ii) all mechanical and building systems and appurtenances serving the swimming pool in the Existing Facility, and (iii) all equipment, tools, chemicals, and other materials related to the use or maintenance of such swimming pool.

"**Reimbursed Expenses**" shall mean all of BGC's costs and expenses incurred for the following during any School Year within the Maintenance and Utility Term: (i) the cost and expense of BGC's discharging its Capital Maintenance and Ordinary Maintenance covenants under Sections V.2(i) and V.2(ii) of this Agreement; (ii) the insurance premiums paid by BGC for maintaining property insurance coverage with respect to the Existing Facility to the extent required of BGC under Section VII.1(a) of this Agreement; and (iii) the cost and expense (if any) to BGC of providing utility services to the Existing Facility as required under Section V.3 of this Agreement. Costs and expenses properly included within "Reimbursed Expenses" shall include the following: the total of all payments made to BGC employees directly engaged in reimbursable activities needed to discharge BGC's pertinent Capital Maintenance and Ordinary Maintenance covenants, including employee payroll taxes, employee insurance premiums, and employee plan contributions paid by BGC; and further including charges paid by BGC to any independent contractors directly engaged in reimbursable activities needed to discharge BGC's pertinent Capital Maintenance and Ordinary Maintenance covenants; the total amount paid for all supplies, replacement parts, equipment, and necessities incurred with respect to the same; the pro rata costs of machinery and equipment purchased or leased by BGC to perform the same. In no instance, however, shall aggregated Reimbursed Expenses in any School Year exceed the sum that MPS itself would have paid for expenses so incurred, as measured by MPS's districtwide cost averages for similar expenses as incurred for all school buildings.

"**Schematic Plan**" shall mean the space designation plan prepared by the Project architect, BMR Design Group, Inc., dated May 14, 2004, which Schematic Plan is set forth on the Attachment 1 that is attached to and hereby made a part of this Agreement.

"**School Day**" shall mean each and every day during which MPS shall conduct regularly-scheduled (or rescheduled) regular session classes at the New Addition.

"**School Year**" shall mean the period commencing on the Commencement Date and ending on the next succeeding June 30, as well as each successive period of July 1-June 30 thereafter during the Term of this Agreement.

"**Shared Space**" shall mean all areas color-keyed as "Shared Space" on the Schematic Plan.

ARTICLE III TERM

The term of this Agreement shall commence on the Commencement Date and shall end on the Ninety-Ninth (99th) anniversary of such Commencement Date (the "**Term**"), except that MPS's obligation to provide Capital Maintenance, Ordinary Maintenance, and utilities set forth in Article V.1 and Article VI.1 shall end on the Twentieth (20th) anniversary of such Commencement Date (the period between the Commencement Date and such anniversary being known as the "**Maintenance and Utility Term**").

ARTICLE IV
USE

1. **Use of New Addition and Existing Facility.** The Parties hereby agree that, as a necessary and unconditional incident to the conveyance of the New Addition to MPS under the Offer, MPS and BGC shall have the following rights with respect to the indicated spaces within the New Addition and Existing Facility. References to indicated spaces correspond to the spaces so denominated on the Schematic Plan.

a. **MPS Space.** The New Addition shall be reserved for the exclusive use at any time by MPS, including its officers, directors, students, employees, agents, attorneys, authorized representatives, students, sublessees, invitees, licensees, and frequenters of every kind; provided, however, that BGC shall have access to the New Addition from time to time pursuant to its expressed rights to use certain "Shared Space" under Article IV(1)(d) (entitled "BGC Shared Space in New Addition") and certain "Common Areas" pursuant to Article IV(1)(e) of this Agreement.

b. **BGC Space.** The Existing Facility shall be reserved for the exclusive use at any time by BGC, including its officers, directors, members, employees, agents, attorneys, authorized representatives, students, sublessees, invitees, licensees, and frequenters of every kind; provided, however, (i) that MPS shall have access to the Existing Facility from time to time pursuant to its expressed rights to use certain "Shared Space" under Article IV (1)(c) (entitled "MPS Shared Space in Existing Facility") and certain "Common Areas" pursuant to Article IV(1)(e) of this Agreement, and (ii) that BGC's use of certain restricted mechanical spaces of the Existing Facility shall be limited according to the requirements set forth in Section IV.4 of this Agreement.

c. **MPS Shared Space in Existing Facility.** The areas of the Existing Facility that are denominated as follows on the Schematic Plan shall be available for use by MPS as follows:

(i) **Gymnasium.** MPS shall have the exclusive use of space designated as "Gymnasium" on the first floor of the Schematic Plan between the hours of 7:30 a.m. to 2:30 p.m. during each School Day.

(ii) **Multipurpose Room.** MPS shall have the exclusive use of such space between the hours of 7:00 a.m. to 8:00 a.m. and 11:00 a.m. to 1:00 p.m. each School Day.

(iii) **Staff Lounge and Staff Kitchen.** MPS shall have the nonexclusive use of such space, in common with BGC, between the hours of 7:30 a.m. to 3:00 p.m. each Instructional Day.

(iv) **Ex Ed Classroom.** MPS shall have the exclusive use of such space between the hours of 7:00 a.m. to 3:00 p.m. each School Day and between the hours of 7:00 a.m. and 12:00 noon each Non-Student Day, as well as the nonexclusive use of such space, in common with BGC, between the hours of 12:00 noon and 3:00 p.m. each Non-Student Day.

(v) **Art Room and Kiln Room.** MPS shall have the exclusive use of such space between the hours of 7:00 a.m. to 3:00 p.m. each School Day and between the hours of 7:00 a.m. and 12:00 noon each Non-Student Day, as well as the nonexclusive use of such space, in common with BGC, between the hours of 12:00 noon and 3:00 p.m. each Non-Student Day.

(vi) **Health Education and Nurse Office/Exam.** MPS shall have the nonexclusive use of such space, in common with BGC, between the hours of 7:30 a.m. to 3:00 p.m. each Instructional Day.

(vii) **Storage (Second Floor).** MPS shall have the nonexclusive use of such space, in common with BGC, during all Operating Hours.

(viii) MPS Offices (Second Floor) (3). MPS shall have the exclusive use of three (3) areas denominated "MPS Office" on the second floor of the Existing Facility during all Operating Hours.

(ix) MPS Art Storage. MPS shall have the exclusive use of such area during all Operating Hours.

(x) Mech[anical] Room. MPS shall have the exclusive use of such area during all Operating Hours.

(xi) Existing Penthouse. MPS shall have the nonexclusive use of such space, in common with BGC, during all Operating Hours

(xii) New Parking Lot. MPS shall have exclusive use of four parking places in the area of the Existing Facility denominated "New Parking Lot" during the hours of 7:00 a.m to 4:00 p.m on each Instructional Day.

(xiii) New Playground. MPS shall have the exclusive use of such space during the hours of 7:00 a.m. to 3:30 p.m. each School Day; provided, however, that BGC shall have the right, in its sole discretion, and at its sole expense, at any time during the Term to change the size or location of the New Playground area, or to expand the improvements on the Existing Facility to entirely occupy the New Playground area. If such area shall be re-sized or relocated, MPS's rights to use the re-sized or relocated area shall remain as set forth herein. If BGC shall expand the improvements on the Existing Facility to entirely occupy the New Playground area, however, then MPS's rights to use such area shall be terminated.

In using specified areas of the Existing Facility as permitted under this Section IV.1(c), MPS shall exercise the same care and supervision as shall be exercised in those areas of the New Addition reserved to MPS under Section IV.1(a) of this Agreement. In addition, MPS shall in every instance leave the space used under this Section IV.1(c) in a condition at least as tenantable, clean, and orderly as it was found when MPS commenced using such space. Finally, MPS shall, in the course of using specified areas of the Existing Facility under this Section IV.1(c), pay an equitable portion of the cost of all shared supplies consumed during such use, and shall take reasonable steps to safely secure its individual supplies; provided, however, that MPS and BGC may, through the agreement of their respective senior administrators assigned to the New Addition and Existing Facility, respectively, agree to share the cost of certain consumables (for example, printer paper) when they deem such appropriate.

d. **BGC Shared Space in New Addition**. The areas of the New Addition that are denominated as follows on the Schematic Plan shall be available for use by BGC as follows:

(i) Cafeteria. BGC shall have the exclusive use of such space between the hours of 3:00 p.m. to 9:00 p.m. each School Day and between the hours of 12:00 p.m. to 5:00 p.m. each Non-Student Day. BGC shall also have the nonexclusive use of such space between the hours of 9:00 a.m. to 5:00 p.m. each Non-Instructional Day.

(ii) Music Room. BGC shall have the exclusive use of such space between the hours of 3:00 p.m. to 9:00 p.m. each School Day and the nonexclusive use of such space, in common with MPS, between the hours of 12:00 p.m. to 5:00 p.m. each Non-Student Day. BGC shall also have the nonexclusive use of such space between the hours of 9:00 a.m. to 5:00 p.m. each Non-Instructional Day.

(iii) Music Room Storage. BGC shall have the nonexclusive use of such space, in common with MPS, during all Operating Hours. BGC shall provide the necessary personnel to receive and store its property in the music room storage space separate from MPS's property.

BGC is responsible for any loss or theft of its property while stored in the music room storage space.

(iv) Janitor [Closet]. BGC shall have the nonexclusive use of such space, in common with MPS, during all Operating Hours.

(v) Storage (2). BGC shall during all Operating Hours have the nonexclusive use, in common with MPS, of the space on the Basement Floor of the New Addition that is denominated "Storage" and color-coded as "Shared Space." In addition, BGC shall during all Operating Hours have the exclusive use of the space on the Basement Floor of the New Addition that is denominated "Storage" and color-coded as "BGC Space."

(vi) Receiving. BGC shall have the nonexclusive use of such space, in common with MPS, during all Operating Hours. BGC shall provide the necessary personnel to receive and store its supplies/property in the Receiving Area separate from MPS's supplies/property. BGC is responsible for any loss or theft of its supplies/property while stored in the Receiving Area.

(vii) Library. BGC shall have the exclusive use of such space between the hours of 3:00 p.m. to 9:00 p.m. each School Day and the nonexclusive use of such space, in common with MPS, between the hours of 12:00 p.m. to 5:00 p.m. each Non-Student Day. BGC shall also have the nonexclusive use of such space between the hours of 9:00 a.m. to 5:00 p.m. each Non-Instructional Day.

(viii) Library A/V Storage. BGC shall have the nonexclusive use of such space, in common with MPS, during all Operating Hours. BGC shall provide the necessary personnel to receive and store its property in the library A/V storage space separate from MPS's property. BGC is responsible for any loss or theft of its property while stored in the Library A/V Storage space.

(ix) Computer Lab. BGC shall have the exclusive use of such space between the hours of 3:00 p.m. to 9:00 p.m. each School Day and the nonexclusive use of such space, in common with MPS, between the hours of 12:00 p.m. to 5:00 p.m. each Non-Student Day. BGC shall also have the nonexclusive use of such space between the hours of 9:00 a.m. to 5:00 p.m. each Non-Instructional Day.

(x) Parent Center. BGC shall have the exclusive use of such space between the hours of 3:00 p.m. to 9:00 p.m. each School Day and between the hours of 12:00 p.m. to 5:00 p.m. each Non-Student Day. BGC shall also have the nonexclusive use of such space between the hours of 9:00 a.m. to 5:00 p.m. each Non-Instructional Day..

(xi) BGC Gym Office and Engineer Office (147 square feet, first floor). BGC shall have the exclusive use of such spaces during all Operating Hours.

(xii) Gym Storage. BGC shall have the nonexclusive use of such space, in common with MPS, during all Operating Hours. BGC shall provide the necessary personnel to receive and store its property in the gym storage space separate from MPS's property. BGC is responsible for any loss or theft of its property while stored in the gym storage space.

(xiii) Men's [Restroom] and Women's [Restroom]. BGC shall during all Operating Hours have the nonexclusive use, in common with MPS, of the spaces on the second floor of the New Addition (adjacent to the "Staff Lounge") that are denominated "Men's [Restroom]" and "Women's [Restroom]."

(xiv) New Parking Lot. BGC shall during all Operating Hours have the nonexclusive use of the area of the Existing Facility that is denominated "New Parking Lot."

(xv) Equipment Garage. BGC shall have the nonexclusive use of such space, in common with MPS, during all Operating Hours. BGC shall provide the necessary personnel to receive and store its property in the Equipment Garage separate from MPS's property. BGC is responsible for any loss or theft of its property while stored in the Equipment Garage.

(xvi) Play Space Parcels. When, after BGC's conveyance to MPS of the Play Space Parcels in the manner required under Section 5.6 of the Addendum to the Offer, MPS shall have completed any desired improvements to such Play Space Parcels, BGC thereafter shall have the nonexclusive use of such Play Space Parcels between the hours of 9:00 a.m. to 5:00 p.m. each Non-Student Day and 9:00 a.m. to 5:00 p.m. each Non-Instructional Day.

In using specified areas of the New Addition as permitted under this Section IV.1(d), BGC shall exercise the same care and supervision as shall be exercised in those areas of the Existing Facility reserved to BGC under Section IV.1(b) of this Agreement. In addition, BGC shall in every instance leave the space used under this Section IV.1(d) in a condition at least as tenantable, clean, and orderly as it was found when BGC commenced using such space. Finally, BGC shall, in the course of using specified areas of the New Addition under this Section IV.1(d), pay an equitable portion of the cost of all shared supplies consumed during such use, and shall take reasonable steps to safely secure its individual supplies; provided, however, that MPS and BGC may, through the agreement of their respective senior administrators assigned to the New Addition and the Existing Facility, respectively, agree to share the cost of certain consumables (for example, printer paper) when they deem such appropriate.

e. Common Areas. In addition to the reservations under Section IV.1(a) (as to MPS) and IV.1(b) (as to BGC), respectively, the areas color-keyed as "Common Areas" on the Schematic Plan (including, without limitation, the indicated corridors, stairways, elevators and related shafts, and entryways) shall be available for use by the Parties as follows:

(i) Common Areas in Existing Facility. During all Operating Hours, MPS shall have the nonexclusive use (in common with BGC) of all Common Areas in the Existing Facility for the following purposes: (i) all purposes necessary or incidental to MPS's programmatic use of spaces accorded MPS under Sections IV.1(c), IV.2 and IV.3 of this Agreement; (ii) all purposes necessary or incidental to MPS's complying with all Laws and Regulations (including, without limitation, for emergency exit purposes); and (iii) all purposes reasonably necessary to permit MPS to complete such cleaning and maintenance as shall be MPS's obligation under this Agreement.

(ii) Common Areas in New Addition. During all Operating Hours, BGC shall have the nonexclusive use (in common with MPS) of all Common Areas in the New Addition for the following purposes: (i) all purposes necessary or incidental to its use of spaces accorded BGC under Sections IV.1(d) and IV.4 of this Agreement; (ii) all purposes necessary or incidental to BGC's complying with all Laws and Regulations (including, without limitation, for emergency exit purposes); and (iii) all purposes reasonably necessary to permit BGC to complete such cleaning and maintenance as shall be BGC's obligation under this Agreement

In using the Common Areas as permitted under this Section IV.1(e), each Party shall exercise the same care and supervision as shall be exercised in those areas of the New Addition or Existing Facility reserved to them, respectively, under Section IV.1(a) and IV.1(b) of this Agreement. In addition, each Party shall in every instance leave a Common Area used under this Section IV.1(e) in a condition at least as tenantable, clean, and orderly as it was found when such Party commenced using such Common Area. Finally, each Party shall, in the course of using a Common Area under this Section IV.1(e), pay an equitable portion of the cost of all shared supplies consumed during such use, and shall take reasonable steps to safely secure its individual supplies; provided, however, that MPS and BGC may, through the agreement of their respective senior administrators assigned to the New Addition and Existing Facility, respectively, agree to share the cost of certain consumables (for example, printer paper) when they deem such appropriate.

2. **MPS's Supplemental Use of Existing Facility.** In addition to the rights arising under Section IV.1(c) of this Agreement, MPS shall further, as a necessary and unconditional incident to the conveyance of the New Addition to MPS under the Offer, have the following rights with respect to the indicated spaces within the Existing Facility.

(i) **Gymnasium.** In addition to MPS's use of the Gymnasium under Section IV.1(c) of this Agreement, MPS shall further have the exclusive right to use the Gymnasium for one (1) MPS graduation ceremony in any School Year, which program shall require not more than twelve (12) hours of exclusive use (including set-up and take-down activities) during Operating Hours. The Parties agree that, as to each School Year during the Term, the particular date and time of such exclusive use by MPS and the particular requirements for related services (e.g., food services) to support such exclusive use shall be established no later than the first School Day of each such School Year by the written agreement of MPS's senior administrator at the New Addition and BGC's senior administrator at the Existing Facility.

(ii) **Health Education.** In addition to MPS's use of the Health Education and Nurse Office/Exam rooms under Section IV.1(c) of this Agreement, MPS shall further have the occasional right to exclusive use of the Health Education room after 3:00 p.m. on certain Instructional Days. The Parties agree that, as to each School Year during the Term, the particular date and time of such exclusive use by MPS and the particular requirements for related services (e.g., food services) to support such exclusive use shall be established no later than the first School Day of each such School Year by the written agreement of MPS's senior administrator of at the New Addition and BGC's senior administrator at the Existing Facility.

3. **BGC's Covenant Concerning Youth Services Agency.** The Parties, in planning for the Project, acknowledge the history of cooperation between BGC and MPS (including BGC's practice of providing memberships in the Boys & Girls Clubs of Greater Milwaukee and after-school programming to MPS's students at the Existing Facility and locations other than the Existing Facility). Accordingly, BGC covenants that throughout the Term—subject only to BGC's regularly scheduled closures of the Existing Facility for regular maintenance and training, which closures shall not affect more than ten (10) School Days in any School Year—BGC shall provide suitable youth programming (including, for purposes of illustration, memberships in the Boys & Girls Clubs of Greater Milwaukee and after-school programming) between the conclusion of each School Day and 6:00 p.m. each School Day to MPS's students. If BGC shall at any time fail to fully discharge such covenant (either on its own behalf or through the agency of some other youth-serving agency reasonably acceptable to MPS), then each reference in Section IV.1(c) of this Agreement to "3:00 each School Day" or "3:20 each School Day" shall automatically be deleted and the words "6:00 p.m. each School Day" shall automatically be inserted in each such place. Furthermore, within thirty (30) days after the effective date of such automatic modifications, the Parties shall execute a written memorandum acknowledging such changes. The after-school programming referenced herein is a benefit of paid or scholarship membership in BGC. BGC agrees that MPS shall incur no cost in connection with the required memberships. MPS in turn agrees (i) that it shall make application for available funding (if any) as a Community Learning Center at the earliest eligible date and (ii) that it shall reasonably cooperate with BGC's efforts to secure third-party funding, payment, or reimbursement to defray the cost to BGC of satisfying its obligations under this Section IV.3.

4. **BGC's Supplemental Use of New Addition.** In addition to the rights arising under Section IV.1(d) of this Agreement, BGC shall further, as a necessary and unconditional incident to the conveyance of the New Addition to MPS under the Offer, have the following rights with respect to the indicated spaces within the New Addition.

(i) **Kitchen.** BGC shall have the right to access the space designated as "Kitchen" on the basement floor of the Schematic Plan for up to six (6) occasional uses as shall be desired by BGC and permitted by MPS, subject only to: (i) MPS's not having previously scheduled such space; (ii) written agreement by BGC that all persons using such space on its behalf shall know and observe all preconditions for such use established by MPS (including, without limitation, training in the use

of pertinent equipment); and (iii) such other conditions as MPS may reasonably require. The Parties agree that, as to each School Year during the Term, the particular dates and times of such exclusive use by BGC and the particular requirements for related services (e.g., food services) to support such exclusive use shall be established no later than the first School Day of each such School Year by the written agreement of MPS's senior administrator at the New Addition and BGC's senior administrator at the Existing Facility..

(ii) Mechanical Spaces. BGC shall have the right to access certain mechanical spaces of the New Addition and Existing Facility only to address emergency conditions affecting utility or building services at the New Addition or Existing Facility, and then shall do so only to the extent (i) that such access shall be for the limited purpose of assessing and, if necessary, immediately addressing any such conditions, and (ii) that BGC shall, after so having access to the restricted mechanical spaces, immediately contact designated representatives of MPS's Division of Facilities and Maintenance Services to report on the pertinent conditions and (if permitted hereunder) address. Restricted mechanical spaces of the New Addition and Existing Facility shall be the spaces denominated as follows on the Schematic Plan: on the Basement Floor, "Boiler Mech[anical]," "Mech[anical]," "Meter Room," "Building Operations Storage," and "Elev[ator] Equip[ment]"; on the Third Floor, "Mechanical Room" and "Existing Penthouse."

5. MPS Administrative Policies. BGC hereby acknowledges that certain Administrative Policies and Procedures of MPS, a current copy of which MPS has provided to BGC ("Administrative Policies"), will affect both MPS's and BGC's uses of the New Addition and Existing Facility. These include the following:

(i) Before the Commencement Date, BGC shall provide to MPS its security plan for the Existing Facility—and thereafter shall promptly provide to MPS all subsequent amendments thereto—for MPS review and input to ensure compliance with all applicable MPS Administrative Policies, including Administrative Policy and Procedure 4.03. The security plan should address any security issues for MPS's employees or students in the Existing Facility, where BGC has primary responsibility for security. MPS's senior administrator in the New Addition may raise any security issues as necessary with BGC, and BGC covenants to exercise good faith in resolving these issues.

(ii) MPS's senior administrator in the New Addition and MPS's employees have responsibility at all times for the instruction and supervision of the MPS's students while in MPS's programs at the New Addition and Existing Facility. No employee of MPS should take instructional, supervision, security, or other responsibility for any participants or staff in BGC's programming, nor should any employee of MPS conduct team teaching, cooperative instruction, or other joint instructional activities with BGC or any participants or staff in BGC's programming.

(iii) Any MPS staff at the New Addition and any BGC staff at the Existing Facility may, however, plan non-instructional common activities (such as field trips and excursions, service activities, recreational activities, contests, performances, and the like), provided, however, (i) that such activities shall be strictly non-religious, (ii) that no religious materials, images, or literature shall be distributed at any time to any of MPS's staff (including its employees, parents, and volunteers) or students in connection with such common activities, and (iii) that such activities shall fully observe all requirements of the Administrative Policies including but not limited to Administrative Policy and Procedure 7.30 ("Field Trips and Excursions") and 7.39 ("School Ceremonies and Observances").

(iv) As provided under Administrative Policy and Procedure 2.05, responsibility for supervision of MPS's employees and its volunteers while within the scope of employment or engagement with MPS in MPS's programs at the New Addition and Existing Facility lies, as it does in MPS's other schools, with MPS's senior administrator in the New Addition. MPS's employees are accountable only to their supervisors. MPS's employees and volunteers should and will seek

the assistance of MPS's senior administrator in the New Addition in any instance in which anyone other than an authorized supervisory employee of MPS attempts to control or direct their activities.

6. **Modifications to MPS School Calendar.** The Parties acknowledge their common understanding that, as of the Effective Date, MPS intends its use of the New Addition and the Existing Facility to follow the patterns typical of a so-called "early" school, commencing regular classroom programming each School Day at (or about) 8:00 a.m. and dismissing regular classroom programming each School Day at (or about) 3:00 p.m., and that it further intends such "early" school schedule to follow MPS's customary regular session calendar, convening classes in accordance with Wis. Stat. §118.045(1)2001 and conducting such classes for a continuous class year of approximately 180 School Days, subject only to customary holiday and administrative recesses. MPS acknowledges that it may alter this calendar only with the consent of BGC, which consent shall not unreasonably be withheld, conditioned, or delayed.

7. **Good Faith.** The Parties recognize that the effort to coordinate their joint use of the Existing Facility and New Addition will give rise to circumstances yet unforeseen, and hence agree to act fully in a spirit of good faith and fair dealing to address such circumstances in a manner that fairly and efficiently accommodates the respective rights arising under the Offer (including, without limitation, this Agreement). Without limiting this obligation, the Parties further acknowledge that, where they respectively enjoy "nonexclusive use" of certain spaces under Sections IV.1(c) and IV.1(d) of this Agreement, they shall diligently and cooperatively seek to arrange fair use of such spaces through written schedules managed by their respective senior administrators assigned to the New Addition and Existing Facility.

ARTICLE V MAINTENANCE AND UTILITIES

1. **MPS Maintenance Covenant.** MPS shall, at all times observing MPS's standard programmatic response times and practices, undertake and duly perform all of the following, doing so in a good and workmanlike manner, and in such fashion as shall be reasonably necessary to keep the following portions of the New Addition and Existing Facility at all times in an operating condition at least as good as on the Commencement Date, fully in compliance with the schedule of cyclic maintenance set forth on Attachment 2 to this Agreement, with all Laws and Regulations, and otherwise in a state reasonably satisfactory for use of the affected premises in accordance with this Agreement: (i) all Capital Maintenance to the New Addition and the Existing Facility, except as specifically required of BGC under Section V.2, below ; and (ii) all Ordinary Maintenance to the New Addition.

2. **BGC Maintenance Covenant.** BGC shall undertake and duly perform all of the following, doing so in a good and workmanlike manner, and in such fashion as shall be reasonably necessary to keep the following portions of the New Addition and Existing Facility at all times in an operating condition at least as good as on the Commencement Date, fully in compliance with all Laws and Regulations, and otherwise in a state reasonably satisfactory for use of the affected premises in accordance with this Agreement: (i) all Ordinary Maintenance to the Existing Facility; (ii) all Capital Maintenance to the Pool and (to the limited extent, if any, not already required under Section V.2(i); all Ordinary Maintenance to the Pool; and (iii) all Capital Maintenance to the data network serving the BGC Space and any independent BGC data network. In addition, BGC expressly agrees that, during the Maintenance and Utility Term, BGC shall not undertake any Capital Maintenance to the Pool that may result in BGC's incurring any cost or expense in excess of \$5,000.00 without first reviewing the proposed maintenance with MPS and obtaining MPS's written consent to BGC's going forward with the same. BGC shall not be deemed to have breached its maintenance covenant under this Section V.2 if MPS withholds its consent hereunder. MPS shall approve all maintenance sought by BGC to be approved according to MPS's standard programmatic response times and practices. Further, BGC shall not be so required to obtain MPS's prior written consent to undertake any such Capital Maintenance to the Pool if immediate repairs are necessary to preserve the structural integrity of the Pool or to protect the occupants of the Pool from threat to their health, safety, or well being.

In discharging its obligations under this Section V.2, BGC further expressly covenants that it shall

undertake all good faith efforts to avail itself of, and to duly observe, MPS's best practices with respect to facility maintenance, including observing the schedule of cyclic maintenance set forth on Attachment 2 to this Agreement.

3. Required Utilities.

a. **During the Maintenance and Utility Term.** During the Maintenance and Utility Term, MPS shall, at its sole cost and expense, without interruption provide (or see to providing) to the New Addition and the Existing Facility all of the following, providing all of the same in such quantities as shall be reasonably satisfactory for use of the New Addition and the Existing Facility in accordance with Article IV and with Sections V.1 and V.2 of this Agreement, and making such services available through fixtures, outlets, and appurtenances now existing upon the New Addition and Existing Facility or installed thereon as part of the Project: (i) electricity; (ii) natural gas; (iii) hot and cold running water; and (iv) sanitary and storm sewer services (altogether, the "Required Utilities").

b. **After the Maintenance and Utility Term.** During portions of the Term after expiration of the Maintenance and Utility Term, MPS shall, without interruption, provide (or see to providing) the Required Utilities to the New Addition, and shall provide all of the same in such quantities as shall be reasonably satisfactory for use of the New Addition in accordance with Article IV and with Sections V.1 and V.2 of this Agreement, making such services available through fixtures, outlets, and appurtenances now existing upon the New Addition or installed thereon as part of the Project. Likewise, during portions of the Term after expiration of the Maintenance and Utility Term, BGC shall, without interruption, provide (or see to providing) the Required Utilities to the Existing Facility, and shall provide all of the same in such quantities as shall be reasonably satisfactory for use of the New Addition in accordance with Article IV and with Sections V.1 and V.2 of this Agreement, making such services available through fixtures, outlets, and appurtenances now existing upon the New Addition or installed thereon as part of the Project. The Parties acknowledge that their efficiently discharging their respective obligations under this Section V.3(b) may require that the New Addition and the Existing Facility be modified to permit separate metering of the Required Utilities. Accordingly, the Parties agree that, as part of their discussions under Section VI.2 of this Agreement, they shall also discuss plans to make (and an equitable distribution of costs incurred in executing) such additions and modifications to the New Addition and the Existing Facility as may be needed to accommodate such separate metering.

4. **Phone Service.** MPS shall at all times provide (or see to providing) reasonable telephone service to the New Addition, doing so in such quantities as shall be reasonably satisfactory for use of the New Addition in accordance with Article IV and with Sections V.1 and V.2 of this Agreement. BGC likewise shall at all times provide (or see to providing) reasonable telephone service to the Existing Facility, doing so in such quantities as shall be reasonably satisfactory for use of the Existing Facility in accordance with Article IV and with Sections V.1 and V.2 of this Agreement. MPS and BGC shall pay separately for all telephone tolls and telephone use charges incurred with respect to authorized telephone use within the New Addition and the Existing Facility, respectively.

**ARTICLE VI
REIMBURSEMENT AND SHARING OF EXPENSES**

1. During the Maintenance and Utility Term.

a. **Payment of Reimbursed Expenses.** During the Maintenance and Utility Term, MPS shall reimburse BGC for all Reimbursed Expenses. MPS shall make reimbursement under this Section VI.1(a) through payment in four (4) equal quarterly installments, each payable on the first day of each calendar quarter during a School Year. BGC agrees that, for the limited purpose of facilitating MPS's budgeting of such reimbursement, BGC shall provide MPS, by October 31 of each School Year during Term, a written estimate of the Reimbursed Expenses that BGC projects for the next consecutive School Year. In addition:

(i) For the purpose of establishing quarterly amounts payable by MPS for Reimbursed Expenses, BGC shall provide MPS, not later than thirty (30) before the first day of each School Year, written notice of its estimate of the Reimbursed Expenses that will be due in the School Year for which such notice is given. MPS shall pay to BGC, as a Reimbursed Expenses deposit, in quarterly installments (each payable on the first day of July, October, January, and April during a School Year), one-quarter (1/4) of the estimated Reimbursed Expenses due in any such School Year, as projected by BGC. If at any time during any School Year it appears to BGC that the Reimbursed Expenses due BGC for any School Year will vary from BGC's written estimate thereof by more than ten percent (10%), BGC may, by written notice to MPS, revise its estimate for such year. Subsequent Reimbursed Expenses deposits by MPS during such School Year shall be based on the revised estimate. Notwithstanding any other term or provision of this Agreement to the contrary, MPS shall make quarterly payments on account of each item of Reimbursed Expenses, the amount of which is to be estimated by BGC, based on BGC's most recent estimate thereof until BGC notifies MPS of a revision of such estimate.

(ii) Within thirty (30) days after the end of each School Year during which deposits against estimated Reimbursed Expenses were paid by MPS, BGC shall calculate total actual Reimbursed Expenses for such School Year, and shall deliver to MPS an itemized written statement of the same. If the amount actually payable by MPS as Reimbursed Expenses with respect to such School Year shall exceed the total deposits paid by MPS based on BGC's estimates, BGC shall bill MPS for the excess amount and MPS shall promptly pay to BGC the amount so billed. If the amount actually payable by MPS as Reimbursed with respect to such School Year shall be less than the deposits paid by MPS based on BGC's estimate, MPS shall, at BGC's option, either (i) receive a credit for the excess amount against MPS's next deposit(s) of Reimbursed Expenses due under this Agreement, or (ii) receive, within thirty (30) days after BGC's delivery of the itemized statement of Reimbursed Expenses, a refund of the excess so paid by MPS. All charges, allocations, and calculations hereunder shall be made pursuant to generally accepted accounting principles.

The Parties acknowledge that BGC shall diligently seek to keep all Reimbursed Expenses at the lowest levels consistent with BGC's due and timely discharge of its covenants under Articles V and VII of this Agreement. Accordingly, BGC agrees that, if actual Reimbursed Expenses with respect to any School Year during the Maintenance and Utility Term shall exceed the Indexed Expense Stop, then MPS shall withhold from the incentive payment (if any) due BGC under Section XI.5 of this Agreement with respect to the then-current School Year an amount equal to the sum by which actual Reimbursed Expenses for the then-current School Year shall exceed the Indexed Expense Stop.

b. Audit of Reimbursed Expenses. MPS shall, within 180 days after the close of any School Year, have the rights (i) to challenge any item in the requisite itemized statement of actual Reimbursed Expenses for such School Year, and (ii) to conduct an audit of BGC's accounting records for Reimbursed Expenses in such School Year. Any such challenge or audit shall be conducted at BGC's offices, and shall be preceded by a written notice delivered no less than ten (10) business days before the date MPS wishes the audit to commence. The cost of such challenge or audit shall be paid by MPS. If, however, (i) such challenge or audit shall reveal that the aggregated payments by MPS of estimated Reimbursed Expenses shall have exceeded the total actual Reimbursed Expenses with respect to such School Year, and (ii) such excess shall be more than ten percent (10%) of the total actual Reimbursed Expenses in the first School Year, or more than three percent (3%) of the total actual Reimbursed Expenses in any other School Year, then BGC shall, in addition to crediting or refunding MPS's overpayment as provided under Section VI.1(a)(ii), also promptly pay to MPS an additional penalty amount equal to ten percent (10%) of the sum so credited or refunded to MPS. If MPS shall not, by written notice to BGC, timely challenge an item in or request an audit of BGC's itemized statement of actual Reimbursed Expenses, such statement shall be conclusively binding upon MPS and shall not be contestable by MPS.

c. Exceptions from Reimbursed Expenses. Notwithstanding any other provision of this Agreement:

(i) MPS shall contract for third party support and maintenance of the computers, wiring, and software utilized in the Computer Lab, and shall invoice BGC for an equitable, pro rata share of the cost of such contract, which share shall be based upon the number of member hours the Computer Lab is used by BGC. BGC shall have the right to review and approve such support and maintenance contract and, if desired, to enter into a substitute contract for the same services—in which event MPS shall reimburse BGC for an equitable, pro rata share of the cost of such contract. The out of pocket (or, if BGC shall enter into a substitute contract, the unreimbursed) cost to BGC of such support and maintenance contract shall not be included within Reimbursed Expenses.

(ii) Throughout the Term, each Party shall be responsible for the cost of repairing damage by vandalism to any interior space of the New Addition or Existing Facility to the extent that such damage occurs when such Party has the right under Article IV of this Agreement to use the space so vandalized. The cost to BGC of such repairs shall not be included within Reimbursed Expenses. During the Maintenance and Utility Term, MPS shall bear the cost of repairing damage by vandalism to the outside of the Existing Facility and the New Addition.

2. After the Maintenance and Utility Term.

a. Capital and Ordinary Maintenance Expenses. During portions of the Term after expiration of the Maintenance and Utility Term, MPS and BGC shall each bear an equitable pro rata share of the combined expense of providing all Capital Maintenance and all Ordinary Maintenance to the New Addition and the Existing Facility. The Parties acknowledge the complexity of accurately determining, so far in advance of their contemplated operation, such equitable pro rata shares—particularly with respect to a facility functioning that the Parties expect to act substantially as a single operating unit. The Parties further acknowledge the likelihood that the pertinent determination will be subject to new and changed circumstances yet unforeseen. Accordingly, the Parties agree that, during a period commencing on the eighteenth (18th) anniversary of the Commencement Date and ending one hundred and eighty (180) days after so commencing—and again for a period of 180 days beginning every five (5) years thereafter (e.g., on the twenty-third (23rd), twenty-eighth (28th), thirty-third (33rd) anniversaries, and so forth)—the Parties shall negotiate regularly, diligently, and fully in a spirit of good faith and fair dealing to determine (or redetermine, as the case may be) the pertinent pro rata shares. Such determination (and redeterminations) shall be based on the respective uses of the New Addition and the Existing Facility and on such other factors as the Parties may convincingly demonstrate in the light of their experience during the Maintenance and Utility Term, and during the subsequent five (5) year periods. Further, the Parties acknowledge that they shall cooperate in diligently seeking to keep all building expenses at the lowest levels consistent with their respective due and timely discharge of their covenants under Articles V and VII of this Agreement.

If the Parties shall fail to agree on the pertinent pro rata shares during the stated period(s), the determination (or redetermination, as the case may be) of such shares shall immediately thereafter be submitted to binding arbitration by a panel of three (3) independent arbitrators, as follows:

(i) Each Party shall name as its representative a neutral, disinterested individual having at least seven (7) years of experience in the use and management of commercial and public buildings. Within fifteen calendar days of their appointment, the independent representatives shall select a third, neutral, disinterested party, having experience at least equivalent to their own, to act as Chair of their deliberations.

(ii) Within fifteen calendar days of selection of the Chair, each Party shall each submit to the neutrals, in writing, their arguments and supporting documentation. Each Party agrees that it shall exercise reasonable best efforts to ensure that such supporting documentation shall include at least accurate historical information of building expenses (including at a minimum all Reimbursed Expenses) for not less than the immediately preceding ten (10) School Years.

(iii) Within fifteen (15) calendar days after receiving such submissions, the neutrals shall issue a written decision setting forth the respective pro rata shares, as determined by the majority of the neutrals, which decision shall bind to each Party until the next required redetermination. The Parties hereby agree that such decision shall be binding and enforceable in any court of competent jurisdiction.

All expenses of engaging the neutrals required hereunder shall be divided equally between the Parties.

b. **Insurance and Vandalism Expenses.** In addition, during portions of the Term after expiration of the Maintenance and Utility Term:

(i) MPS shall bear the full cost and expense of providing insurance coverages required under Section VII.2 of this Agreement, and BGC shall bear the full cost and expense of providing insurance coverages under Section VII.1 of this Agreement; and

(ii) MPS shall bear the cost of repairing vandalism to the outside of the New Addition, and BGC shall bear the cost of repairing vandalism to the outside of the Existing Facility.

ARTICLE VII INSURANCE

1. **BGC's Insurance Obligations.**

a. **BGC's Property Insurance.** At all times during the Term, BGC shall, at its sole expense, maintain in full force and effect a policy of general property insurance (the "**BGC's Property Policy**") insuring the Existing Facility, in an amount equal to the Full Replacement Cost of the same, against the following: all risks of physical loss or damage covered under a Special Form endorsement (ISO Commercial Risk Services Copyright 1990); losses caused by flood or other water damage; and all losses caused by earth movement, testing and start-up, collapse, electrical injury, mechanical breakdown, and explosion of steam boilers. BGC's Property Policy shall also include coverages for (i) debris removal; (ii) building materials and supplies of others; and (iii) other extra expenses (such as relocation costs of programming and students) in the event BGC causes situations(s) that render the premises uninhabitable. In addition to the foregoing, BGC's Property Policy shall also satisfy the following requirements:

(i) BGC's Property Policy shall protect and include the interests of MPS, and any other occupant of the Existing Facility (together with their respective officers, directors, employees, and volunteers), and hence shall name all of the same as loss payees, as their interests may appear.

(ii) BGC's Property Policy may be subject to a deductible of not more than \$10,000 for each occurrence. BGC shall be responsible for payment of any such deductible.

b. **BGC's Commercial General Liability Insurance.** At all times during the Term, BGC shall, at its sole expense, maintain in full force and effect a policy of commercial general liability insurance ("**BGC's Liability Policy**") for bodily injury and property damage, including both blanket contractual liability and broad form property damage coverages, with only such listed exclusions as are reasonably acceptable to MPS. Such policy of insurance shall have no sublimits for sexual abuse and molestation, use of gym equipment and athletic activities. In addition to the foregoing, BGC shall require that BGC's Liability Policy also satisfy the following requirements:

(i) BGC's Liability Policy shall protect and include the interests of MPS, and any other licensee of the Existing Facility (together with their respective officers, directors, employees, and volunteers) and hence shall name all of the same as named additional insureds.

(ii) BGC's Liability Policy shall protect BGC's interests when using the New Addition or MPS property for programs and activities and MPS shall be listed under this extension of

coverage as an additional insured.

(iii) BGC's Liability Policy shall have the following limits: \$1 million per occurrence, \$2 million general aggregate liability limit (other than products and completed operations) of \$2 million per project; \$1 million for products liability and completed operations; personal and advertising injury limit of \$1 million; fire damage limit for any one fire of \$50,000; and medical expense limit for any one person of \$5,000.

(iv) BGC's Liability Policy shall be subject to a deductible of not more than \$50,000 for each occurrence. BGC shall be responsible for payment of any such deductible.

c. **BGC's Automobile Liability.** If applicable, at all times during the Term, BGC shall, at its sole expense, maintain in full force and effect a policy of automobile liability insurance ("**BGC's Automobile Liability Policy**") for "any auto," including owned, non-owned, and hired automobiles. In addition to the foregoing, BGC shall require that BGC's Automobile Liability Policy also satisfy the following requirements:

(i) BGC's Automobile Liability Policy shall protect and include the interests in the work of MPS, and any other licensee of the Existing Facility (together with their respective officers, directors, employees, and volunteers), and hence shall name all of the same as additional named insureds.

(ii) BGC's Automobile Liability Policy shall have a limit of \$1 million.

(iii) BGC's Automobile Liability Policy shall be subject to customary deductibles reasonably satisfactory to MPS. BGC shall be responsible for payment of any such deductibles.

d. **BGC's Workers Compensation and Employer's Liability.** At all times during the Term, BGC shall, at its sole expense, (i) purchase and maintain Workers Compensation benefits as required by the State of Wisconsin ("**BGC's Workers Compensation Coverage**"), and (ii) maintain in full force and effect a policy of employer's liability insurance ("**BGC's Employer's Liability Policy**") covering all of BGC's employees. In addition to the foregoing, BGC shall require that BGC's Employer's Liability Policy also satisfy the following requirements:

(i) BGC's Workers Compensation Coverage shall at least satisfy the minimum statutory limits specified by all Laws and Regulations.

(ii) BGC's Employer's Liability Policy shall have sufficient limits to meet the underlying insurance requirements for BGC's Umbrella Policy, below, but shall not in any event be less than the following: for bodily injury by accident, \$100,000 each accident; for bodily injury by disease, \$100,000 each employee, with a policy limit of \$500,000.

(iii) In addition, coverages required under this Section VII.1 shall be modified to include a waiver of subrogation endorsement in favor of each of the following, together with their respective officers, directors, agents, employees, and volunteers: (i) the Board of School Directors of the City of Milwaukee; and (iii) the City of Milwaukee.

(iv) BGC's Employer's Liability Policy shall be subject to a deductible of not more than \$50,000. BGC shall be responsible for payment of any such deductible.

e. **BGC's Umbrella Coverage.** At all times during the Term of this Use Agreement, BGC shall, at its sole expense, maintain in full force and effect a policy or policies of umbrella insurance ("**BGC's Umbrella Coverage**"), in the amount of \$5 million per occurrence and \$5 million in the aggregate, and which shall provide coverages following form and as broad as the underlying BGC's Liability, BGC's Automobile Liability, and BGC's Employer's Liability Policies. The specified limits shall be

dedicated limits, and shall not be impaired by exhaustion of the aggregate.

f. **Insurance Obligations of any Tenant or Contractor of BGC.** If BGC shall let, license, or otherwise permit occupancy of any part of the New Addition or the Existing Facility, as permitted under this Agreement, to any person or entity other than BGC, or if BGC shall engage any contractor with respect to the New Addition or the Existing Facility, BGC shall, as a condition and express term of such lease, license, contracting, or occupancy, require that such lessee, licensee, contractor (including all subcontractors engaged by every such contractor), or occupant maintain insurance coverages that are substantially the same as those required of BGC under Sections VII.1(a)-VII.1(e) of this Agreement. If BGC shall fail to require that such lessee, licensee, contractor, or occupant maintain insurance coverages that are substantially the same as those so required, or if actual coverages of BGC's lessee, licensee, contractor (including all subcontractors of the same), or occupant shall not satisfy the stated requirements, BGC shall be deemed to have indemnified MPS and its employees, officers, directors, agents, authorized representatives, students, permitted sublessees, invitees, licensees, and frequenters, and hereby does indemnify the same, to the same extent as contemplated under Article VII of this Agreement for any Liabilities arising in connection with such lessee, licensee, contractor (including any subcontractor of the same), or occupant of BGC.

g. **General Requirements of BGC's Insurance Coverages.**

(i) The insurance policies maintained under this Section VII.1 shall, unless otherwise agreed to in writing by the Parties, be placed with insurers who have a Best's Insurance Reports rating of no less than A- and a financial size of no less than Class VIII, and who are authorized to do business in the State of Wisconsin. Such policies shall further be endorsed to state that coverage shall not be suspended, voided, cancelled, or reduced, in coverage or limits, except after thirty (30) days prior written notice to both BGC and MPS.

(ii) All insurance coverage for additional insureds shall be on a primary and noncontributory basis. All policies shall provide that any insurance maintained by the additional insureds is excess and noncontributing with any insurance required hereunder. The insurance coverage for the additional insureds shall be at least as broad as that provided by the Additional Insured - Designated Person or Organization Endorsement (ISO Commercial Risk Services Form #CG 20 26 1185) or the most recent State of Wisconsin approved version of the same.

h. **Evidences of Required Insurance.**

(i) Before the Commencement Date, BGC shall provide MPS either: (i) suitable certificates of insurance evidencing all of the insurance coverages required under this Section VII.1; or (ii) certified copies of the policies evidencing the same. If coverage is evidenced by certificates of insurance, BGC shall also provide MPS with certified copies of the pertinent insurance policies within sixty (60) days after commencing the work.

(ii) If any of the insurance coverages required under this Section VII.1 should be poised to expire during the Term, BGC shall provide MPS, no less than twenty (20) days before such expiration of the insurance, either: (i) suitable certificates of insurance evidencing renewal or continuation of the required insurance policies; or (ii) certified copies of such insurance policies. If renewal is evidenced by certificates of insurance, BGC shall also provide MPS with certified copies of the required insurance policies within thirty (30) days after the expiration of coverage.

i. **Waiver of Claims.** BGC hereby agrees that, except as expressly prohibited by any Laws and Regulations, neither the MPS nor any of its officers, directors, contractors (except BGC itself), agents, authorized representatives, students, sublessees, invitees, licensees, or frequenters of any kind shall be liable for, and thus that BGC hereby waives all claims against MPS (and any of its officers, directors, contractors, agents, authorized representatives, students, sublessees, invitees, licensees, and frequenters) with respect to, any damage or injury to person, property, or business (i) that shall occur on

or about the Existing Facility or the New Addition which is caused by BGC or otherwise in connection with the same, and (ii) that shall be covered (or would have been covered, if such required insurance had been maintained) by a policy of insurance required under this Agreement to be carried by BGC, and then only to the extent covered by such policy of insurance.

2. **MPS's Insurance Obligations.**

a. **MPS's Property Insurance.** At all times during the Term, MPS shall, at its sole expense, maintain in full force and effect a policy of general property insurance (the "**MPS's Property Policy**") insuring the New Addition in an amount equal to the replacement cost of the same, insuring the same against the following: all risks of physical loss or damage covered under a Special Form endorsement (ISO Commercial Risk Services Copyright 1990); losses caused by flood or other water damage; and all losses caused by earth movement, testing and start-up, collapse, electrical injury, mechanical breakdown, and explosion of steam boilers.

b. **MPS's Commercial General Liability Insurance.** At all times during the Term, MPS shall, at its sole expense, maintain in full force and effect a policy of commercial general liability insurance (the "**MPS's Liability Policy**") for bodily injury and property damage coverages, including both blanket contractual liability and broad form property damage coverages. In addition to the foregoing, MPS's Liability Policy shall also satisfy the following requirements:

(i) The MPS's Liability Policy shall protect and include the interests of MPS, its officers, directors, employees, and volunteers.

(ii) The MPS's Liability Policy shall have the following limits: \$1 million per occurrence; general aggregate liability limit (other than products and completed operations) of \$2 million per project; personal and advertising injury limit of \$1 million; fire damage limit for any one fire of \$50,000; and medical expense limit for any one person of \$5,000.

c. **MPS's Automobile Liability.** At all times during the Term, MPS shall, at its sole expense, maintain in full force and effect a policy of automobile liability insurance (the "**MPS's Automobile Liability Policy**") for "any auto," including owned, non-owned, and hired automobiles. In addition to the foregoing, BGC shall require that the MPS's Automobile Liability Policy also satisfy the following requirements:

(i) The MPS's Automobile Liability Policy shall protect and include the interests in the work of MPS, its officers, directors, employees, and volunteers.

(ii) The MPS's Automobile Liability Policy shall have a limit of \$1 million.

d. **MPS's Workers Compensation and Employer's Liability.** At all times during the Term, MPS shall, at its sole expense, (i) purchase and maintain Workers Compensation benefits as required by the State of Wisconsin (the "**MPS's Workers Compensation Coverage**"), and (ii) maintain in full force and effect a policy of employer's liability insurance (the "**MPS's Employer's Liability Policy**") covering all of MPS's employees present at the Demised Premises. In addition to the foregoing, MPS's Employer's Liability Policy shall also satisfy the following requirements:

(i) The MPS's Workers Compensation Coverage shall at least satisfy the minimum statutory limits specified by applicable Laws and Regulations.

(ii) The MPS's Employer's Liability Policy shall have limits not less than the following: for bodily injury by accident, \$100,000 each accident; for bodily injury by disease, \$100,000 each employee, with a policy limit of \$500,000.

e. **MPS's Umbrella Coverage.** At all times during the Term, MPS shall, at its sole expense, maintain in full force and effect a policy or policies of umbrella insurance (the "**MPS's Umbrella Coverage**"), which shall increase by \$5 million per occurrence and \$5 million aggregate the limits of the MPS's Liability, MPS's Automobile Liability, and MPS's Employer's Liability Policies, and which shall provide coverages following form and as broad as the underlying MPS's Liability, MPS's Automobile Liability, and MPS's Employer's Liability Policies. The specified limits shall be dedicated limits for BGC and MPS's project(s) hereunder, and shall not be impaired by exhaustion of the aggregate.

f. **General Requirements of MPS's Insurance Coverages.** The insurance policies maintained under this Section VII.2 shall, unless otherwise agreed to in writing by the Parties, or unless self-insured by MPS pursuant to Section VII.2(h), below, be placed with insurers who have a Best's Insurance Reports rating of no less than A- and a financial size of no less than Class VIII, and who are authorized to do business in the State of Wisconsin. Such policies shall further be endorsed (if such endorsement shall be available) to state that coverage shall not be suspended, voided, cancelled, or reduced, in coverage or limits, except after twenty (20) days prior written notice to BGC and MPS.

g. **Evidences of Required Insurance.**

(i) Before the Commencement Date, MPS shall provide BGC either (i) suitable certificates of insurance evidencing all of the insurance coverages required under this Section VII.2, or (ii) certified copies of the policies evidencing the same. If coverage is evidenced by certificates of insurance, MPS shall also provide BGC with certified copies of the pertinent insurance policies within sixty (60) days after commencing the work.

(ii) If any of the insurance coverages required under this Section VII.2 should be poised to expire during the Term, MPS shall provide BGC, no less than twenty (20) days before such expiration of the insurance, either (i) suitable certificates of insurance evidencing renewal or continuation of the required insurance policies or (ii) certified copies of such insurance policies. If renewal is evidenced by certificates of insurance, MPS shall also provide BGC with certified copies of the required insurance policies within sixty (60) days after the expiration of coverage.

h. **MPS's Self-insurance.** Notwithstanding the requirements of this Section VII.2, above, BGC expressly acknowledges that MPS shall have the right to self-insure each of the risks required to be insured by MPS pursuant to this Section VII.2. If MPS shall desire to exercise its right to self-insure one or more such risks, MPS shall so notify BGC, and MPS shall thereupon assume the risks of, and—if legally liable—shall pay from its assets, the costs, expenses, damages, claims, losses, and liabilities relating to loss or damage so insured.

i. **Blanket Insurance Coverages.** Likewise notwithstanding the requirements of Section VII.2, above, MPS shall not be prevented from taking out insurance of the kind and in the amount required by this Section VII.2 under a blanket insurance policy or policies of insurance, which policies may cover other properties owned or operated by MPS as well as the New Addition; provided, however, that any such blanket policy of insurance shall be sufficient to cover MPS's obligations under this Section VII.2.

j. **Waiver of Claims.** MPS hereby agrees that, except as expressly prohibited by any Laws and Regulations, neither BGC nor any of its officers, directors, employees, contractors, representatives, or agents of any kind shall be liable for, and thus that MPS hereby waives all claims against BGC (and any of its officers, directors, employees, contractors, representatives, and agents) with respect to, any damage or injury to person, property, or business (i) that shall occur on or about the New Addition which is caused by MPS or otherwise in connection with the same and (ii) that shall be covered (or would have been covered, if such required insurance had been maintained) by a policy of insurance required under Section VII.2(a) of this Agreement to be carried by MPS (or by MPS's self-insurance, pursuant to Section VII.2(h), of the risks required to be insured under such Section VII.2(a)), and then only to the extent covered by such policy of insurance.

**ARTICLE VIII
INDEMNIFICATION**

1. BGC shall indemnify and save and hold MPS and its employees, officers, directors, agents, authorized representatives, students, permitted sublessees, invitees, licensees, and frequenters harmless against any and all claims, demands, suits, losses, damages, costs, expenses, obligations, judgments, or other forms of liability to third parties, actual or claimed, and including reasonable attorneys' fees (altogether, "Liabilities") for any injury to property or persons occurring or allegedly occurring in connection with the negligence or intentionally wrongful act or omission of BGC or its employees, officers, directors, contractors, representatives or guests and invitees of any kind with respect to the Existing Facility or its use of the New Addition. Upon timely written notice from MPS, BGC shall defend MPS in any such action or proceeding brought in connection with such covenant to indemnify and save harmless. BGC hereby acknowledges that its obligations under this Section VIII.1 shall survive the expiration or earlier termination of this Agreement for acts or omissions allegedly occurring before the expiration or termination of this Agreement.

2. In addition, BGC shall indemnify and save and hold MPS harmless against any and all Liabilities (including reasonable attorneys' fees) arising out of or in connection with any material misrepresentation, breach, or inaccuracy of any of the representations and warranties made by BGC in this Agreement. Upon timely written notice from MPS, BGC shall defend MPS in any such action or proceeding brought in connection with such covenant to indemnify and save harmless. BGC hereby acknowledges that its obligations under this Section VIII.2 shall survive the expiration or earlier termination of this Agreement for acts or omissions allegedly occurring before the expiration or termination of this Agreement.

3. MPS shall indemnify and save and hold BGC and its employees, officers, directors, agents, authorized representatives, students, permitted lessees, invitees, licensees, and frequenters harmless against any and all Liabilities for any injury to property or persons occurring or allegedly occurring in connection with the sole negligence or intentionally wrongful act or omission of MPS or its employees, officers, directors, or students with respect to the New Addition or its use of the Existing Facility. Upon timely written notice from BGC, MPS shall defend BGC in any such action or proceeding brought thereon. MPS hereby acknowledges that its obligations under this Section VIII.3 shall survive the expiration or earlier termination of this Agreement for acts or omissions allegedly occurring before the expiration or termination of this Agreement.

4. In addition, MPS shall indemnify and save and hold harmless BGC against any and all Liabilities (including reasonable attorneys' fees) arising out of or in connection with any material misrepresentation, material breach, or inaccuracy of any of the representations and warranties made by MPS in this Agreement. MPS hereby acknowledges that its obligations under this Section VIII.4 shall survive the expiration or earlier termination of this Agreement for acts or omissions allegedly occurring before the expiration or termination of this Agreement.

5. MPS may, at its sole election (and, if so electing, at its sole cost and expense), defend any suit that may arise out of or by reason of any claim that this Agreement or any part of it violates any Laws and Regulations binding upon MPS. In no event, however, shall MPS be liable to indemnify BGC for any lost profit or other cost or expense resulting from termination or modification of this Agreement as a consequence of any such suit.

6. Each Party shall give prompt written notice to the other Party of the assertion of any claim or the commencement of any litigation for which indemnification is sought and shall cooperate with the indemnifying Party in the defense of the claim or litigation.

**ARTICLE IX
HAZARDOUS MATERIALS**

1. Compliance with Hazardous Materials Laws. In BGC's use and occupancy of the New

Addition, BGC shall fully comply with all Hazardous Materials Laws to the same extent as all other Laws and Regulations. In MPS's use and occupancy of the Existing Facility, MPS shall fully comply with all Hazardous Materials Laws to the same extent as all other Laws and Regulations.

2. Removal of Hazardous Materials.

a. Upon the expiration or earlier termination of this Agreement, BGC shall, with respect to any Hazardous Materials generated, stored, reused, or disposed of on the New Addition by BGC during the Term, (i) cause such Hazardous Materials to be removed from the New Addition; and (ii) take all remedial action required by all Laws and Regulations. During the Term, however, BGC shall not take any remedial action in response to the presence of any Hazardous Materials generated, stored, reused, or disposed of on the New Addition by BGC without first (i) notifying MPS of BGC's intention to do so; and (ii) affording MPS reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect their respective interests in the New Addition.

b. Upon the expiration or earlier termination of this Agreement, MPS shall, with respect to any Hazardous Materials generated, stored, reused, or disposed of on the Existing Facility by MPS during the Term, (i) cause such Hazardous Materials to be removed from the Existing Facility; and (ii) take all remedial action required by all Laws and Regulations. During the Term, however, MPS shall not take any remedial action in response to the presence of any Hazardous Materials generated, stored, reused, or disposed of on the Existing Facility by MPS without first (i) notifying BGC of MPS's intention to do so; and (ii) affording BGC reasonable opportunity to appear, intervene, or otherwise appropriately assert and protect their respective interests in the Existing Facility.

3. Cost of Compliance with Hazardous Materials Laws. BGC shall be responsible only for such part of the cost of compliance with Hazardous Materials Laws, or corrective action required by the same, as shall result from a breach by BGC of BGC's expressed covenants contained in this Agreement. MPS shall be responsible only for such part of the cost of compliance with Hazardous Materials Laws, or corrective action required by the same, as shall result from a breach by MPS of MPS's expressed covenants contained in this Agreement.

4. Hazardous Materials Indemnification. BGC and MPS, respectively, shall each indemnify, defend (with counsel reasonably acceptable to the indemnified part), protect and hold the other (and the other's officers, directors, employees, agents, attorneys, authorized representatives, students, sublessees, invitees, licensees, and frequenters of every kind) free and harmless from and against any and all claims, liabilities, damages, costs, penalties, forfeitures, losses or expenses (including attorneys' fees) for death or injury to any person or damage to any property whatsoever (including water tables and atmosphere) to the extent arising or resulting from the discharge by MPS or BGC, respectively, of Hazardous Materials, in, on, under, upon or from the New Addition or Existing Facility, or from the transportation or disposal of Hazardous Materials to or from the New Addition or Existing Facility, whether caused knowingly or unknowingly, the standard herein being one of strict liability. The respective indemnities hereunder shall apply, without limitation, and whether foreseeable or unforeseeable, to the costs of any repairs, clean-up or detoxification or decontamination of the New Addition or Existing Facility required by Hazardous Materials Laws, as well as to costs of implementation of any closure, remedial action, or other plans in connection therewith required by Hazardous Materials Laws, and shall survive the expiration of or early termination of the Term. For purposes of the indemnity provided herein, any acts or omissions of MPS or BGC, respectively, or of their respective officers, directors, employees, agents, attorneys, authorized representatives, students, sublessees, invitees, licensees, and frequenters of every kind, shall be strictly attributable such Party.

5. Acts or Omissions Regarding Hazardous Materials. For purposes of the covenants and agreements contained in this Article, any acts or omissions of MPS, its employees, agents, authorized representatives, students, sublessees, invitees, licensees, and frequenters (whether negligent, intentional, willful or unlawful) shall be strictly attributable to MPS, and; any acts or omissions of BGC, its employees,

agents, customers, sublessees, assignees, invitees, contractors, or subcontractors (whether negligent, intentional, willful or unlawful) shall be strictly attributable to BGC.

6. **Survival.** The respective rights and obligations of BGC and MPS under this Article shall survive the expiration or earlier termination of this Agreement.

ARTICLE X DEFAULT

1. **BGC's Default.**

a. **Event of BGC Default.** If any of the following events shall occur during the Term of this Agreement, it shall be considered an "**Event of BGC Default:**"

(i) If BGC shall become insolvent, or proceedings shall be commenced against BGC in any court under any bankruptcy act or for the appointment of a trustee or receiver of BGC's property and shall not be dismissed within sixty (60) days, or BGC shall file any assignment for the benefit of creditors, or BGC is not generally paying its debts as the same become due, BGC is taken over by any government regulatory agency having the jurisdiction to do so and such agency does not fully comply with the obligations imposed on BGC under this Agreement, or BGC shall abandon or vacate its rights to use the Existing Facility or advise MPS in writing that it intends to discontinue its business operations at the Existing Facility; or

(ii) If BGC shall fail to perform or shall violate any of the other covenants, conditions, obligations, or restrictions of this Agreement, and if such failure to perform or such violation shall remain uncured for a period of twenty (20) days or more after notice of such failure of violation from MPS to BGC; provided, however if such failure or violation materially affects the health, safety or welfare of the Existing Facility, or BGC fails to provide MPS access to the Existing Facility as provided in Sections IV.1(c), IV.1(e)(i), IV.2, and IV.3 of this Agreement, BGC shall have no more than twenty-four (24) hours to cure such failure or violation.

b. **MPS Remedies for BGC Default.** In the event of any Event of BGC Default, MPS shall, without any notice (except, if applicable, the notice before an Event of BGC Default required under circumstances set forth in Section X.1(a) of this Agreement), be entitled to exercise at its option, whether concurrently, successively, or in any combination, any and all remedies available at law or in equity, including without limitation any one or more of the following: (i) in the case of BGC's failure to timely observe any covenant(s) under Section XI.3 of this Agreement, immediate termination of all of BGC's rights to use or occupy the New Addition pursuant to this Agreement, without terminating or otherwise modifying the Agreement; (ii) injunctive relief; and (iii) recovery from BGC of all cost, damage, loss, and expense (including attorneys' fees) reasonably paid or incurred by MPS as a result of any such Event of BGC Default. In addition to, and not in lieu of, the foregoing, if the pertinent Event of BGC Default shall involve a failure by BGC to perform any covenant, condition, obligation, or restriction under this Agreement pertaining to the maintenance of the Existing Facility required under Section V.2 of this Agreement, then MPS may at its option, but shall not be obligated to, immediately upon giving BGC the notice of default contemplated under Section X.1(a)(ii) of this Agreement, or at any time thereafter, and without further notice, cure such Event of BGC Default for the account and at the expense of BGC. Any sum or sums so paid by MPS, together with interest not to exceed statutory limits, shall be due and payable from BGC to MPS upon demand.

c. **No Waiver.** No failure by MPS to insist upon the performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach of the same shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by BGC or MPS, and no breach of those terms, shall be waived, altered or modified except by a written instrument executed by the Parties. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach of this Agreement. No waiver of any default of

BGC herein shall be implied from any omission by MPS to take any action on account of such default, if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by MPS shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

2. **MPS's Default.**

a. **Event of MPS Default.** If any of the following events shall occur during the Term of this Agreement, it shall be considered an "**Event of MPS Default:**"

(i) If MPS shall become insolvent, or proceedings shall be commenced against MPS in any court under any bankruptcy act or for the appointment of a trustee or receiver of MPS's property and shall not be dismissed within sixty (60) days, or MPS shall file any assignment for the benefit of creditors, or MPS is not generally paying its debts as the same become due, MPS is taken over by any government regulatory agency having the jurisdiction to do so and such agency does not fully comply with the obligations imposed on MPS under this Agreement; or

(ii) If MPS shall fail to perform or shall violate any of the other covenants, conditions, obligations, or restrictions of this Agreement, and if such failure to perform or such violation shall remain uncured for a period of twenty (20) days or more after notice of such failure of violation from BGC to MPS; provided, however, if such failure or violation materially affects the health, safety or welfare of the New Addition, or MPS fails to provide BGC access to the New Addition, as provided in Sections IV.1(d), IV.1(e)(ii), and IV.4 of this Agreement, MPS shall have no more than twenty-four (24) hours to cure such failure or violation.

b. **BGC Remedies for MPS Default.** In the event of any Event of MPS Default, BGC shall, without any notice (except, if applicable, the notice before an Event of MPS Default required under circumstances set forth in Section X.2(a) of this Agreement, be entitled to exercise at its option, whether concurrently, successively, or in any combination, any and all remedies available at law or in equity, including without limitation any one or more of the following: (i) injunctive relief; and (ii) recovery from MPS of all cost, damage, loss, and expense (including attorneys' fees) reasonably paid or incurred by BGC as a result of any such Event of MPS Default. In addition to, and not in lieu of, the foregoing, if the pertinent Event of MPS Default shall involve a failure by MPS to perform any covenant, condition, obligation, or restriction under this Agreement pertaining to the Capital Maintenance of the New Addition or Existing Facility required under Section V.1 of this Agreement, then BGC may at its option, but shall not be obligated to, immediately upon giving MPS the notice of default contemplated under Section X.2(a)(ii) of this Agreement, or at any time thereafter, and without further notice, cure such Event of MPS Default for the account and at the expense of the MPS. Any sum or sums so paid by BGC, together with interest not to exceed the statutory rate, shall be due and payable from MPS to BGC upon demand.

c. **No Waiver.** No failure by BGC to insist upon the performance of any of the terms of this Agreement or to exercise any right or remedy consequent upon a breach of the same shall constitute a waiver of any such breach or of any of the terms of this Agreement. None of the terms of this Agreement to be kept, observed or performed by BGC or MPS, and no breach of those terms, shall be waived, altered or modified except by a written instrument executed by BGC. No waiver of any breach shall affect or alter this Agreement, but each of the terms of this Agreement shall continue in full force and effect with respect to any other then-existing or subsequent breach of this Agreement. No waiver of any default of BGC or MPS herein shall be implied from any omission by BGC to take any action on account of such default, if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by BGC shall not be construed as a waiver of a subsequent breach of the same covenant, term, or condition.

ARTICLE XI

MISCELLANEOUS

1. **Access Outside of Regular Hours.** The Parties agree that, in certain circumstances, MPS will require access to the Existing Facility before 7:00 a.m. MPS will exercise its best efforts to provide BGC advanced notice of these instances. In any event, BGC shall make reasonable arrangements to accommodate such access by MPS
2. **Summer Session Classes.** The Parties recognize that MPS may at some point during the Term of this Agreement schedule summer session classes for the New Addition. Accordingly, the Parties agree to negotiate in good faith the necessary modification of the times set forth in Sections IV.1(c), IV.2, and IV.3 of this Agreement in order to coordinate the shared use of the Existing Facility and New Addition during MPS summer sessions on the New Addition.
3. **Operating Covenants.** BGC understands that MPS intends to finance, or has already financed, all or a portion of MPS's interest in the Project with the proceeds of tax-exempt bonds (the "**Bonds**"). BGC further understands that the tax-exempt status of the Bonds is dependent in part on the truth and accuracy of the representations and warranties made by BGC in this Section XI.3 and on compliance by BGC with its covenants set forth herein.

Accordingly, as of the Effective Date, BGC represents and warrants as follows:

a. **Compliance with Requirements of Tax-exempt Financing.**

(i) BGC represents and warrants that it (i) is a nonprofit corporation qualified as an exempt organization under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "**Internal Revenue Code**"), (ii) is exempt from federal income taxes pursuant to Section 501(a) of the Internal Revenue Code, and (iii) is not a private foundation under Section 509 of the Internal Revenue Code. (BGC's status as described in the preceding sentence shall be referred to as its "**Tax-exempt Status**.") BGC has previously delivered to MPS certain determination letters and/or rulings from the Internal Revenue Service confirming BGC's Tax-exempt Status, which documents BGC hereby represents and warrants to be true, correct, and currently effective.

(ii) BGC covenants and agrees that BGC (i) shall take all actions within BGC's control to comply with such requirements of the Internal Revenue Code (and of all regulations, procedures, rulings, advice, memoranda, and other authority promulgated with respect to the same) as must be observed to avoid any loss of exemption from federal income taxation to which interest on the Bonds would otherwise be entitled, and (ii) shall neither act nor fail to act in any fashion that would adversely affect such exemption from federal income taxation with respect to such interest on the Bonds.

b. **Continuous Maintenance of Tax-exempt Status.** BGC covenants and agrees that BGC shall protect and preserve such Tax-exempt Status and shall take no action to jeopardize such Tax-exempt Status. BGC shall notify MPS in writing immediately following any commencement by the Internal Revenue Service of any inquiry, challenge, or investigation, whether by audit or otherwise, relating to BGC's Tax-exempt Status.

c. **Ownership and Use of Project Premises.**

(i) BGC represents and warrants that, as of the Effective Date, no use of the Existing Facility or the New Addition constitutes an "unrelated trade or business" of BGC within the meaning of Section 513 of the Internal Revenue Code. BGC further covenants that, at all times from and after the Effective Date, BGC's use of the New Addition and Existing Facility shall not constitute an "unrelated trade or business" of BGC within the meaning of Section 513 of the Internal Revenue Code.

(ii) BGC further represents and warrants that BGC's use of the Existing Facility and the New Addition shall not involve any use or management of the same by any third parties except only such use or management as may be (i) required or permitted by this Agreement, (ii) undertaken with the written consent of MPS, or (iii) undertaken or permitted pursuant to contracts that conform with (A) the requirements of Revenue Procedure 97-13 and (B) applicable regulations of the United States Department of the Treasury.

d. **Establishment Clause.** BGC understands that MPS is subject to the strictures of the First Amendment to the United States Constitution respecting "an establishment of religion" and of comparable provisions in article 1, Section 18 of the Wisconsin Constitution (which constitutional provisions are referred to collectively as the "**Establishment Clause**"). BGC thus expressly represents and warrants that it shall not act or fail to act with respect to the Existing Facility or the New Addition in a manner that would cause MPS's use of the New Addition or the Existing Facility as a public school to contravene the Establishment Clause. Without limiting the generality of the foregoing, BGC agrees that: (i) whenever one or more of MPS's students shall be (i) physically present as MPS's student(s) within any of the areas of the Existing Facility or the New Addition denominated "MPS Space," "Shared Space," or "Common Areas" on the Schematic Plan, and (ii) engaged in any program or activity other than one that is solely directed by BGC and in which the student is enrolled, then BGC shall not conduct any religious activity or permit any organized religious activity to occur within the MPS Space, Shared Space, or Common Areas so occupied by MPS's student(s). BGC further agrees that, whenever one or more of MPS's students shall be (i) physically present as MPS's student(s) within the MPS Space, Shared Space, or Common Areas, and (ii) engaged in any program or activity other than one that is solely directed by BGC and in which the student is enrolled, then BGC shall keep all MPS Space, Shared Space, and Common Areas clear of religious communications, symbols, and images. BGC and MPS each recognize that the application of the Establishment Clause to particular situations may present difficult legal questions, and hence agree to act in good faith to resolve Establishment Clause issues that might arise, and to do so with the purpose of avoiding any constitutional violation by MPS in connection with its use of the Existing Facility.

Acknowledging that the tax-exempt status of the Bonds depends in part on the truth and accuracy of the representations, warranties, and covenants, above, made by BGC in this Section XI.3, and on BGC's compliance with the covenants of BGC set forth, above, in this Section XI.3, BGC accordingly covenants and agrees that it shall without charge, at least annually and within ten (10) days after written request by MPS for such certificate, timely provide a certified written statement (the "**Annual Certificate**"), duly executed, acknowledged, and delivered, for the benefit of the following: (i) MPS, (ii) the holder or trustee of any Bonds, (iii) the Redevelopment Authority of the City of Milwaukee, (iv) the State of Wisconsin, and (v) any other person or entity reasonably specified by MPS. Such Annual Certificate shall certify the accuracy and correctness of the following statements (or, if any such statement shall not be correct on the date of certification, shall state with particularity the detail in which incorrect): (i) that—except by reason of a change in applicable Laws and Regulations, which change may be relied on without adverse effect on the tax-exempt status of the Bonds—all representations and warranties under this Section XI.3 are fully true and correct as of the date of the Annual Certificate; and (ii) that—except by reason of a change in applicable Laws and Regulations, which change may be relied on without adverse effect on the tax-exempt status of the Bonds—BGC is, on the date of the Annual Certificate, fully in compliance with all covenants under this Section XI.3. The Parties intend that any Annual Certificate delivered pursuant to this Section XI.3 may be relied on by the person(s) to whom it is addressed. If BGC does not deliver the Annual Certificate as directed within the required ten (10) day period (without any extension or allowance of time whatsoever except only the cure period afforded under Article X of this Agreement), or if any statement so delivered by BGC shall be inaccurate in any material respect, then BGC shall be in default of this Agreement and shall immediately be subject to any or all of the remedies provided under Article X.

4. **Covenants Concerning Publicity.**

a. **Development and Opening.** The Parties acknowledge that the Project is made possible only through funding secured with the help of various governmental bodies, elected officials, philanthropic and

community service organizations, and the like, and that each of these supporters of the Project rightfully expects to be credited for its role in the Project's development. Accordingly, the Parties covenant that, from and after the Effective Date, they shall always and in utmost good faith cooperate and consult with one another to coordinate any publicity, announcements, media coverage, public or private opening or dedication events, and other similar events or efforts.

b. MPS Employee and Student Matters. BGC acknowledges that MPS shall, in using and occupying the Existing Facility and the New Addition, regularly be in charge both of MPS's employees and of minor children located thereon in their status as MPS students. BGC further acknowledges that MPS's relationship with its employees may be the subject of one or more labor agreements, and that MPS's responsibilities to its minor students may involve requirements to keep certain data in confidence. Accordingly, BGC covenants and agrees that, (i) except as to communications to MPS itself or to BGC's own employees, agents, officers, directors, or legal advisors, BGC shall not at any time communicate with any person or entity about, or convey to any such person or entity, any information whatsoever concerning MPS's employees or MPS's students (in their status as MPS students) employed or present at or otherwise related to the Existing Facility or the New Addition, and (ii) inquiries for any such communication or conveyance shall immediately be referred in writing by BGC to MPS.

c. BGC Employee and Member Matters. MPS acknowledges that BGC shall, in using and occupying the Existing Facility and the New Addition, regularly be in charge both of BGC's employees and of minor children located thereon in their status as BGC members. MPS further acknowledges that BGC's relationship with its employees may be the subject of one or more labor agreements, and that BGC's responsibilities to its minor members may involve requirements to keep certain data in confidence. Accordingly, MPS covenants and agrees that, (i) except as to communications to BGC itself or to MPS's own employees, agents, officers, directors, or legal advisors, MPS shall not at any time communicate with any person or entity about, or convey to any such person or entity, any information whatsoever concerning BGC's employees or BGC's members (in their status as BGC members) employed or present at or otherwise related to the Existing Facility or the New Addition, and (ii) inquiries for any such communication or conveyance shall immediately be referred in writing by MPS to BGC.

5. Incentive Payments. In consideration of the right to use the Existing Facility as set forth herein; and BGC's express intention to cooperate with MPS in enrolling and serving Neighborhood Students (as defined below) at the New Addition and Existing Facility, MPS hereby agrees to pay to BGC during the Maintenance and Utility Term, periodic Incentive Payments as follows: For each School Year of the Maintenance and Utility Term during which the average daily attendance for the school program(s) operated by MPS at the New Addition and Existing Facility includes more than eighty-five percent (85%), but not more than ninety-five (95%) Neighborhood Students, MPS shall pay to BGC, by the last day of such School Year, the sum of \$15,000.00; and for each School Year of the Maintenance and Utility Term during which the average daily attendance for school program(s) operated by MPS at the New Addition and Existing Facility includes more than ninety-five percent of Neighborhood Students, MPS shall pay to BGC, by the last day of such School Year, the sum of \$30,000.00. All Incentive Payments shall be applied by BGC to support programming at the Existing Facility.

For the purposes of this Section XI.5, the term "**Neighborhood Students**" shall mean all students who do not require transportation services administered by MPS. MPS agrees that it shall provide to BGC, by the last day of each School Year, a written summary stating (i) the total number of students enrolled at the MPS school operating at the New Addition during such School Year and (ii) the total number of such students who are Neighborhood Students, within the agreed meaning of this Section XI.5, in such School Year.

6. Proportionality of Signage. MPS and BGC shall have the right to erect, each at its own cost, identifying and directional signage on the exterior and interior of any building improvements upon, and on the landscaped improvements of, the New Addition and the Existing Facility, respectively. In erecting identifying signage on the exterior of any such building improvements, MPS and BGC agree that the maximum total surface area of such signage allowed by any governmental authority to be so displayed

shall be allocated equally between the Parties. Further, in erecting identifying and directional signs upon the Existing Facility, BGC shall not install any signage that may either (i) unreasonably confuse any employee, agent, authorized representative, student, sublessee, invitee, licensee, or frequenter to or on the Existing Facility as to MPS's presence (or the location of MPS's presence) thereon, or (ii) violate the Establishment Clause. Similarly, in erecting such signs upon the New Addition, MPS shall not install any signage that may unreasonably confuse any employee, agent, authorized representative, member, sublessee, invitee, licensee, or frequenter to or on the New Addition as to BGC's presence (or the location of BGC's presence) thereon.

7. **Compliance with Laws and Regulations.** In their respective use, occupancy, maintenance, repair, and replacement of all or any part of the New Addition or the Existing Facility, BGC and MPS shall fully comply with all Laws and Regulations.

8. **Notices.** All notices, demands, and requests given under this Agreement by any Party to any other shall be in writing. All notices, demands and requests shall be sent by (i) personal delivery, (ii) independent parcel delivery or overnight courier service, or (iii) United States registered or certified mail, postage prepaid, in each instance addressed as follows:

To BGC: Boys & Girls Clubs of Greater Milwaukee
Mardak Center for Administration and Training
1558 North 6th Street
P.O. Box 12486
Milwaukee, Wisconsin 53212
Attention: President

With a copy to: Fox, O'Neill & Shannon, S.C.
622 North Water Street
Suite 500
Milwaukee, Wisconsin 53202
Attention: William F. Fox, Esq.

To MPS: Milwaukee Public Schools
5225 West Vliet Street
Milwaukee, Wisconsin 53208
Attn: Superintendent

With a copy to: Office of the City Attorney
City Hall
200 East Wells Street
Milwaukee, Wisconsin 53202
Attn: City Attorney

and to: Quarles & Brady LLP
411 East Wisconsin Avenue
Milwaukee, Wisconsin 53202
Attn: Michael J. Ostermeyer

or to such other address as BGC or MPS, respectively, may from time to time designate by written notice to the other. Notices, demands, and requests served in the manner required shall be deemed to be sufficiently served or given, and to have been received, for all purposes hereunder as of the first to occur of the following: (i) on actual receipt of such notice, demand, or request, or (ii) on the first day after such notice, demand, or request shall have been deposited for delivery by sender with the selected delivery agent. Failure to give such notice to counsel does not invalidate any notice, demand or request if best efforts were made in giving such notice, demand or request to counsel.

9. **Severability.** If any covenant, condition, provision, term, or agreement of this Agreement shall, to any extent, be held invalid or unenforceable, the remaining covenants, conditions, provisions, terms and agreements of this Agreement shall not be affected thereby, but each covenant, condition, provision, term, or agreement of this Agreement shall be valid and in force to the fullest extent permitted by law.

10. **Assignment.** BGC affirms and acknowledges that its right hereunder to use certain portions of the New Addition is in the nature of a license, and hence that such right is personal to BGC and not transferable by it. Accordingly, BGC shall not attempt to sublet its interests hereunder in the New Addition, or in any portion of the same, nor shall it attempt to assign, mortgage, pledge, transfer or otherwise encumber or dispose of its interests under this Agreement. Any effort to so transfer such interests shall be void *ab initio* and, hence, of no force and effect.

11. **Captions.** The caption of each article and section of this Agreement is for convenience and reference only, and in no way defines, limits, or describes the scope or intent of such article or section, or of this Agreement.

12. **Relationship of Parties.** This Agreement does not create the relationship of principal and agent, or of partnership or joint venture, or of any association or relationship between BGC and MPS.

13. **Entire Agreement.** All negotiations between MPS and BGC concerning the New Addition and Existing Facility are merged into and incorporated within this Agreement. Attached to and hereby made a part of this Agreement are the following: Attachment 1 (Schematic Space Designation Plan); Attachment 2 (MPS Cyclic Maintenance Schedule); Exhibit A (Legal Description of the Existing Facility Realty); and Exhibit B (Legal Description of the New Addition Realty). **This Agreement, including the Offer and the incorporated Attachments listed above, thus constitutes the entire agreement between MPS and the BGC with respect to the New Addition and the Existing Facility, and shall not be modified, amended, or supplemented in any manner whatsoever except by an instrument in writing executed by the Parties.**

14. **No Merger.** There shall be no merger of this Agreement or any estate created by this Agreement with any other estate or interest in the New Addition or the Existing Facility by reason of the fact that the same person, firm, corporation, or other entity may acquire, hold, or own (whether directly or indirectly); (i) this Agreement or any estate created by this Agreement or any interest therein; and (ii) any such other estate or interest in the New Addition or the Existing Facility, or any portion of the same. No such merger shall occur unless all persons, firms, corporations, or other entities having an interest (including a security interest) in (i) this Agreement, or any estate created by it; and (ii) any such other estate or interest in the New Addition or the Existing Facility, or any portion of the same, shall join in a written instrument expressly effecting such merger and shall duly record the same.

15. **Survival.** All obligations (together with interest or money obligations at the statutory rate) accruing before expiration or other termination of the Term of this Agreement shall survive the expiration or other termination of this Agreement.

16. **Governing Law; Waiver of Jury Trial.** This Agreement shall be governed by the laws of the State of Wisconsin. All covenants, conditions and agreements of MPS arising hereunder shall be performable in Milwaukee County. Any suit arising from or relating to this Agreement shall be brought in the Circuit Court of Milwaukee County, Wisconsin, and the Parties thus waive the right to sue and to be sued elsewhere. **IN ADDITION, THE PARTIES HEREBY VOLUNTARILY AND KNOWINGLY WAIVE TRIAL BY JURY, TO THE EXTENT PERMITTED BY LAWS AND REGULATIONS, IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BY EITHER PARTY AGAINST THE OTHER PARTY IN ANY MATTER THAT MAY ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE USE OR OCCUPANCY OF THE NEW ADDITION OR THE EXISTING FACILITY, OR ANY ACT OR OMISSION OF ANY PARTY WITH RESPECT TO THIS AGREEMENT OR THE NEW ADDITION OR THE EXISTING FACILITY.**

17. **Time is of the Essence.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor.

18. **Subject to Review.** BGC acknowledges that, as to form, content, and execution, this Agreement is fully subject to review and approval on MPS's behalf by the City of Milwaukee Office of the City Attorney, and hence that this Agreement shall not be binding on MPS unless such approval shall be indicated by the signature of the City Attorney upon it.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be duly executed as of the Effective Date.

**BOYS & GIRLS CLUBS OF
GREATER MILWAUKEE, INC.**

By: _____
Name: _____
Title: _____ *President & CEO*

By: _____
Name: _____
Title: _____

MILWAUKEE PUBLIC SCHOOLS

By: _____
Name: _____
President, Board of School Directors

By: _____
William G. Andrekopoulous
Superintendent

**Approved as to form, content, and execution by the
City of Milwaukee Office of the City Attorney.**

By: _____
Grant F. Langley
City Attorney

By: _____
Name: _____
Title: _____

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**BOYS & GIRLS CLUBS OF
GREATER MILWAUKEE, INC.**

By: _____
Name: John J. Sullivan
Title: President & CEO

By: _____
Name: _____
Title: _____

MILWAUKEE PUBLIC SCHOOLS

By: _____
Name: _____
President, Board of School Directors

By: William G. Andrekopoulous
William G. Andrekopoulous
Superintendent

**Approved as to form, content, and execution by the
City of Milwaukee Office of the City Attorney.**

By: _____
Grant F. Langley
City Attorney

By: _____
Name: _____
Title: _____

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**BOYS & GIRLS CLUBS OF
GREATER MILWAUKEE, INC.**

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

MILWAUKEE PUBLIC SCHOOLS

By: *Peter Blewett*
Name: Peter Blewett
President, Board of School Directors

By: _____
William G. Andrekopoulous
Superintendent

**Approved as to form, content, and execution by the
City of Milwaukee Office of the City Attorney.**

By: _____
Grant F. Langley
City Attorney

By: _____
Name: _____
Title: _____

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**BOYS & GIRLS CLUBS OF
GREATER MILWAUKEE, INC.**

By: _____
Name: _____
Title: _____


By: _____
Name: _____
Title: _____

MILWAUKEE PUBLIC SCHOOLS

By: _____
Name: _____
President, Board of School Directors

By: _____
William G. Andrekopoulous
Superintendent

**Approved as to form, content, and execution by the
City of Milwaukee Office of the City Attorney.**

By:  _____
Grant F. Langley
Dip City Attorney

By: _____
Name: _____
Title: _____

Attachment 1
Schematic Plan

NOTE :
ATTACHMENT A-LOCATED IN ANOTHER ELECTRONIC FILE
ATTACHMENT B-LOCATED IN ANOTHER ELECTRONIC FILE