

**FIRST AMENDMENT
TO
LEASE AGREEMENT**

Between

**The City of Milwaukee
Board of Harbor Commissioners**

And

Milwaukee World Festival, Inc.

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THIS INDENTURE, made and entered into at Milwaukee, Wisconsin, effective as of the 1st day of September, 2004, by and between the CITY OF MILWAUKEE, a municipal corporation of the State of Wisconsin, acting by and through its BOARD OF HARBOR COMMISSIONERS, as heretofore authorized by law (hereinafter collectively referred to as “CITY”), and MILWAUKEE WORLD FESTIVAL, INC., a Wisconsin not-for-profit corporation (hereinafter referred to as “FESTIVAL”);

WITNESSETH:

WHEREAS, CITY and FESTIVAL have entered into a Lease Agreement dated as of January 1, 2001 (the “Lease”) for real property commonly known as the Henry Maier Festival Grounds (the “Property”); and

WHEREAS, the Lease contemplated the creation of the Lakeshore State Park adjacent to the Property (the “State Park”); and

WHEREAS, CITY, FESTIVAL, and the State of Wisconsin are entering into a Conservation Easement – Lakeshore State Park dated as of the 1st day of September, 2004 in order to facilitate the construction, operation, and maintenance of the State Park; and

WHEREAS, the creation of the State Park makes it necessary for the CITY and FESTIVAL to enter into this First Amendment to Lease Agreement in order to amend the legal description of the Property, to amend and restate paragraph 8 of the Lease entitled “Development of the State Park” and to amend and restate paragraph 10 of the Lease entitled “Access to the Property”; and

WHEREAS, the parties desire to reaffirm the Lease in all respects with the exception of the specific amendments hereinafter set forth.

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

1. DESCRIPTION OF THE PROPERTY.

EXHIBITS “A” and “B” to the Lease depicting and legally describing the Property are hereby amended and restated and shall be in the forms attached to this First Amendment as **EXHIBIT “A-1”** and **EXHIBIT “B-1”** respectively.

2. DEVELOPMENT OF STATE PARK.

Paragraph 8 of the Lease is hereby amended and restated to read as follows:

“8. DEVELOPMENT OF STATE PARK. FESTIVAL and CITY shall cooperate with the State of Wisconsin in the implementation of the construction, operation, and maintenance of the State Park. FESTIVAL shall make a capital contribution for construction of the State Park or North Harbor Tract development in the amount of \$2,000,000.00, which amount shall be disbursed pursuant to the terms of a mutually acceptable disbursing agreement or as otherwise agreed by the parties. FESTIVAL and the State of Wisconsin may enter into additional agreements regarding the coordination of their respective operations. Copies of all such agreements shall be provided to CITY by FESTIVAL.”

3. ACCESS TO THE PROPERTY.

Paragraph 10 of the Lease is hereby amended and restated to read as follows:

“10. ACCESS TO THE PROPERTY. It is the intent of the parties to maximize public access to the Property and to the State Park. This paragraph establishes minimum requirements for such public access. The Annual Access Calendar for 2004 is attached as EXHIBIT “C”. Commencing in 2005, FESTIVAL shall present an Annual Access Calendar to CITY not later than April 1st of each year during the term of this Agreement. Prior to final preparation of each Annual Access Calendar, FESTIVAL shall meet and confer with representatives of CITY to discuss its content. Each Annual Access Calendar shall be subject to the approval of CITY so as to assure consistency with the minimum requirements of this paragraph. During construction of Capital Improvements Program I and the State Park, FESTIVAL shall continue to make public access available at substantially the same level as during 2001, subject to coordination of such access with the reasonable requirements of FESTIVAL’s and the State of Wisconsin’s contractors and provision for the safety of the general public.

A. Public Access Areas. For purposes of providing public access to the Property and the State Park, four Public Access Areas are identified on EXHIBIT “N”. (EXHIBIT “N” is hereby amended and restated and shall be in the form attached to this First Amendment as **EXHIBIT “N-1”**.) The Public Access Areas are as follows:

- 1) Permanent Riverwalk and Lakewalk.
- 2) Land Based Lakewalk.
- 3) Chicago Street Corridor.
- 4) Children’s Play Area.

B. Public Access. The Public Access Areas shall be available for use by the public engaged in the sport of fishing and other recreational activities as specified by the Annual Access Calendar, generally as follows:

- 1) Permanent Riverwalk and Lakewalk. The Permanent Riverwalk and Lakewalk shall be accessible to the public 365, or 366, as applicable, days per year, during all hours when the State Park is open to the public and during such additional hours as may be specified pursuant to the terms of the Conservation Easement dated as of September 1, 2004 by and among CITY, FESTIVAL, and the State of Wisconsin (the “Conservation Easement”). Those portions of the Permanent Riverwalk and Lakewalk located between the south end of Erie Street and the cul-de-sac, as depicted on EXHIBIT “N”, shall also be accessible to the public for vehicular traffic, subject to reasonable rules and regulations adopted by the Board of Harbor Commissioners by resolution, after consultation with FESTIVAL, or as specified pursuant to the terms of the Conservation Easement.
- 2) Land Based Lakewalk. The Land Based Lakewalk shall be accessible to the public during the Non-Festival Season during all daylight hours when the State Park is open to the public or as otherwise agreed by the parties. The Land Based Lakewalk and the Chicago Street Corridor shall also be accessible to the public during the Festival Season, during any period of at least five (5) consecutive days when the area is not used for the set-up, production or tear-down of an event by FESTIVAL, an Ethnic or Cultural Festival or other uses, as specified in the Annual Access Calendar.
- 3) Chicago Street Corridor. The Chicago Street Corridor shall be accessible to the public during the Non-Festival Season during all daylight hours when the State Park is open to the public or as otherwise agreed by the parties.

- 4) Children's Play Area. The Children's Play Area shall be accessible to the public during the Non-Festival Season, during all daylight hours when the State Park is open to the public or as otherwise agreed by the parties.
- C. Safety. FESTIVAL and CITY each reserve the right to preclude access to any Public Access Area at times when access is deemed unsafe.
- D. Non-Exclusive Public Access Easement. CITY hereby reserves a Non-Exclusive Public Access Easement over the Public Access Areas for the term of this Agreement. The terms and conditions governing such easement are set forth on EXHIBIT "Q".
- E. Non-Exclusive State Park Access. CITY hereby reserve the right to establish a Non-Exclusive State Park Easement, to dedicate areas for public right-of-way or public use, or to convey to the State of Wisconsin a limited fee interest over the Public Access Areas in order to facilitate the construction, operation, and maintenance of the State Park. The terms and conditions governing such easement, dedication or conveyance are set forth in EXHIBIT "R". Notwithstanding the foregoing, CITY and FESTIVAL acknowledge that they have approved the terms of the Conservation Easement.
- F. CITY Access. CITY, by its duly authorized agents contractors or employees, shall have the right to enter upon the Property:
- (a) For general inspection purposes, subject only to prior verbal notice to FESTIVAL.
- (b) In order to conduct environmental audits and/or other geotechnical or environmental testing for the purpose of determining environmental conditions, and except in cases of an emergency, and subject to the requirements/requests of any federal, state or local governmental authority, upon seven (7) days written notice to FESTIVAL, and subject to the prior written consent of FESTIVAL. City shall provide FESTIVAL with a copy of the proposed scope of any such work. Subject to the requirements/requests of any federal, state or local governmental authority, City shall endeavor to implement such testing in a manner that limits the necessity for subsurface disturbance to the greatest extent possible. Any surface or facilities disturbed by such tests shall be restored by City to the original grade or condition to the extent practicable.
- (c) Subject to the conditions of the foregoing paragraph (b), during the Non-Festival Season, for the purpose of conducting soil or engineering

tests upon seven day written notice to FESTIVAL, or at any time upon 24 hour notice in the case of emergencies.

4. ARTICLES AND BY-LAWS.

Paragraph 40 of the Lease is hereby amended and restated to read as follows:

40. ARTICLES AND BY-LAWS.

FESTIVAL shall, not later than its 2002 annual meeting, amend its Articles and By-Laws in a manner consistent with EXHIBIT "D" and shall maintain such amended By-Laws in full force and effect during the term of this Agreement, unless otherwise approved by CITY.

In addition, FESTIVAL may amend its Articles and By-Laws in a manner consistent with EXHIBIT "D-1" and shall maintain such amended By-Laws in full force and effect during the term of this Agreement, unless otherwise approved by CITY.

5. TERMS AND CONDITIONS.

All terms and conditions of the Lease are incorporated herein and are hereby modified to conform herewith, but in all other respects are to be and shall continue in full force and effect.

IN WITNESS WHEREOF, the parties hereto, have caused this First Amendment to Lease Agreement to be executed by their proper respective officers and their corporate seals to be affixed hereto on the day and year first above written.

**CITY OF MILWAUKEE,
a Wisconsin municipal corporation**

Tom Barrett
Mayor

Ronald D. Leonhardt
City Clerk

COUNTERSIGNED:

W. Martin Morics
City Comptroller

**BOARD OF HARBOR COMMISSIONERS
OF THE CITY OF MILWAUKEE**

Daniel Steininger
President

Donna Luty
Secretary

**MILWAUKEE WORLD FESTIVAL, INC.
a Wisconsin corporation**

President

Secretary

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