

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, 2021 by and between the **CITY OF MARQUETTE**, a Michigan municipal corporation, of 300 W. Baraga Avenue, Marquette, Michigan 49855, hereinafter (“Lessor”), and **Moosewood Nature Center, Inc.**, a Michigan corporation, of 2 Peter White Drive, Marquette, Michigan 49855, hereinafter (“Lessee”).

Recitals

- A. Lessor is the owner and operator of Presque Isle Park at 1 Peter White Drive, Marquette, Michigan.
- B. Lessee desires to lease and Lessor is willing to lease to Lessee the area and building as outlined in red on Exhibit “A” in the area known as the Shiras Pool (“Premises”) at Presque Isle Park (“Park”) in accordance with the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the mutual promises of the parties and other good and valuable consideration, the receipt of which is hereby acknowledged, it is agreed as follows:

1. Leased Premises

- 1.1 Lessor leases to Lessee the space shown in Exhibit “A”, known as the “Shiras Pool” and located within Presque Isle Park. Lessee shall the space in which the cooler/freezer are located with the owner and/or operator of Ice Cream Store lease.
- 1.2 In the event Lessor desires to lease the remaining portions of “Shiras Pool” that are not included in the Premises as shown on Exhibit “A”, Lessee shall be given the first option to lease said portions under the same terms and conditions as set forth in this Lease Agreement.
- 1.3 Lessee agrees to develop architectural and engineering plans for renovations to the Premises required to meet the specific needs of Lessee for Lessee’s intended uses. Lessee shall be responsible for constructing all renovations as developed by Lessee, and Lessee shall obtain Lessor’s written approval of all such plans and specifications prior to beginning any construction activity.

2. Term of Lease

- 2.1 The term of this lease is ten (10) years from the date of the lease.
- 2.2 Lessee may request the term of this lease be extended for an additional ten (10) year period, upon providing a written request to Lessor no later than 12 months prior to the termination of the original lease term. Lessor has sole discretion to approve or deny such request, and if approved, all terms and conditions shall be agreed upon by the parties in writing.

3. Rent

3.1 Lessee shall pay rent in the amount of \$1.00 per year to Lessor, due by the 1st day of each calendar year. Rent shall not be prorated for partial years.

In lieu of additional monetary rent, Lessee shall provide the following services:

- a. Perform a Deer Census at Presque Isle Park during the term of the lease.
- b. Provide the City with a quarterly report of hours of operation, staff & board directory, schedule & details of programming, and other pertinent information to operations and partnering with the City.
- c. Assist park visitors with information and assist in monitoring violations of ordinances including feeding of wildlife, dogs in the park, or other violations as noted.
- d. Grant support as needed.

3.2 The following utilities shall be paid by the following parties:

City of Marquette: Storm water fees.
First \$50.00 billed each month in electricity expenses.
Water during the months of May, June, July, and August.

Moosewood: Telephone (directly billed to Moosewood).
Internet (directly billed to Moosewood).
Propane (directly billed to Moosewood).
Garbage—Moosewood to pay the residential/small commercial rate.
Water during the months September through April.
All electricity after the first \$75.00 billed each month.

No City of Marquette water source shall be used for irrigation for any portion of the Premises.

Lessee shall be entitled to the use of all common washrooms.

Lessee shall be responsible for telephone service.

4. Use of Leasehold Premises

4.1 Lessee shall use the Premises only as a Nature Center, and not for any purpose that would:

- a) be deemed hazardous to the public or adjoining premises, including but not necessarily limited to fire, and environmental type hazards;
- b) constitute a violation of any public law or requirement;

- b) constitute a violation of any public law or requirement;
- c) cause damage or injury to the Premises or any part of it (ordinary wear and tear excepted);
- d) interfere with normal operations of the Premises' heating, air conditioning, ventilating, plumbing, or other mechanical or electrical systems;
- e) constitute a public or private nuisance;
- f) interfere with other Park uses;
- g) alter the appearance of the Premises, except as provided herein, without prior written approval of the Lessor;
- h) permit noise or odors to be unreasonably dispelled from the Premises;
- i) place merchandise, materials, supplies, signs, or other thing of any kind on the sidewalks or other common areas without written approval;
- j) permit refuse to accumulate in or around Premises; or
- k) obstruct entryways.

5. Use of Common Areas by Lessee

- 5.1 Lessee and its invitees shall have the right in common with Lessor, its invitees, and others to use the public restrooms, public parking, sidewalks, and surrounding area, subject, however, to all rules and regulations regarding the use of those areas.

6. Maintenance and Repair

- 6.1 Lessee shall be responsible for all cleaning of the Premises and all repairs of any nature, including but not limited to heating and cooling, roof and structural systems, of the Premises. All major repairs must be pre-approved by Lessor's facilities director.
- 6.2 Lessee shall be solely responsible for the maintenance and repair of all of Lessee's fixtures, furniture and equipment and keep them in a safe condition and good repair.
- 6.3 Lessee must obtain written consent of Lessor for all signage used by Lessee in the Premises and adjoining premises. All signage approved by Lessor shall be maintained in good condition and repair.
- 6.4 Lessor reserves the right to make any repairs or alterations that it deems necessary and desirable to the common areas.
- 6.5 All storage spaces, including shared spaces, must remain clear and free of hazards at all times. A 6 foot clear space shall be maintained around the freezer at all times.

7. Insurance and Indemnity

- 7.1 Lessee shall not permit any activity on the Premises which would invalidate or be in conflict with Lessor's fire, boiler, sprinkler, water damage, and extended coverage insurance policies covering the Premises and contents therein. Lessor will provide Lessee with a copy of any and all relevant insurance policies.
- 7.2 Lessee shall not permit any activity on the Premises which would cause Lessor's rate for the insurance described herein to be increased. Lessor will provide Lessee with a list of any such activities.
- 7.3 Lessee at its sole expense shall be responsible for insuring its own tangible personal property, equipment, and fixtures from loss from fire and other casualty and shall at all times provide Lessor with a certificate evidencing such coverage.
- 7.4 Lessee at its sole expense shall maintain liability insurance protecting and insuring Lessee and Lessor from all claims for injury or damage to persons or property arising out of the use of the Premises and any common area by Lessee, its employees, agents invitees, and licensees. The amount of the insurance shall be not less than One Million Dollars (\$1,000,000.00) per occurrence for accident, bodily injury, or death and not less than Five Hundred Thousand Dollars (\$500,000.00) for property damage. Lessee shall provide Lessor with a copy of said policies with proof of payment of premium thereon. The insurance policies shall bear endorsements to the effect that the insurer agrees to notify Lessor not less than thirty (30) days in advance of any modification or cancellation thereof. Lessor shall be named as an additional insured on all insurance policies required by this lease.
- 7.5 Lessee will indemnify and hold Lessor harmless from and against all loss, cost, expense and liability whatsoever (including Lessor's cost of defending against the foregoing; such cost to include attorneys' fees) resulting or occurring by reason of Lessee's construction on, use of, or occupancy of the Premises.

8. Damage by Fire or Other Causes

- 8.1 If the Premises is partially damaged by fire or other peril without the fault or neglect of Lessee or of its servants, employees, agents, visitors, invitees or licenses, the damage shall be repaired by Lessor at Lessor's expense. If the Premises is substantially damaged (herein defined as fifty percent (50%) or more of the cost of replacement), Lessor may elect either to repair or rebuild the leasehold or the pool building, as the case may be, or to terminate this lease upon giving notice of such election in writing to Lessee within ninety (90) days after the event causing the damage. If Lessor elects to rebuild instead of terminating the lease, Lessor will rebuild something substantially similar to the current Premises, and Lessee shall in a timely manner repair or replace its fixtures, furniture, equipment and improvements to at least the condition of same prior to the damage.

9. Assignment/Subletting

- 9.1 Lessee shall not assign or sublet the Premises or any part thereof without the express prior written consent of the Lessor.
- 9.2 In no event shall a sublease be allowed that would jeopardize the tax-exempt status of the City.
- 9.3 Lessor may freely assign its rights and obligations under this Lease Agreement to any third party pursuant to a Purchase and Sale Agreement, Land Contract or similar instrument.

10. Use of Premises by Lessor

- 10.1 Lessor reserves for itself and its contractors and agents the right to enter the Premises at reasonable times for the purpose of inspecting, maintaining, installation, operation and repair services.

11. Covenant of Quiet Enjoyment

- 11.1 Lessor warrants and represents that it has full authority to execute this lease for the above term. Lessor covenants that upon Lessee paying the rents and performing its covenants and duties prescribed herein, Lessee may, except as otherwise described herein, have the exclusive and reasonable right to have, hold and enjoy the leasehold.

12. Lessor's Right to Perform Lessee's Obligation

- 12.1 If Lessee defaults in any term of this lease, Lessor may, without thereby waiving the default, remedy the default at Lessee's expense. If, in connection therewith, Lessor makes any expenditure or incurs any obligation for the payment of money or in instituting, prosecuting, or defending any action or proceeding commenced before or during the term of this lease, or after the expiration or termination of this lease including, but not necessarily limited to, legal expenses and attorneys' fees, Lessee shall pay to Lessor on demand the sums paid or obligations incurred together with legal fees and costs.

13. Default by Lessee

- 13.1 If the Lessee fails to pay rent when due; if the Lessee fails to perform any other obligations under this agreement within 30 days after receiving written notice of the default from the Lessor; if the Lessee makes any assignment for the benefit of creditors or a receiver is appointed for the Lessee or its property; or if any proceedings are instituted by or against the Lessee for bankruptcy (including reorganization) or under any insolvency laws, the Lessor may terminate this lease, reenter the Premises, and seek to relet the Premises on whatever terms the Lessor thinks advisable. Notwithstanding reentry by the Lessor, the Lessee shall continue to be liable to the Lessor for rent owed under this lease and for any rent deficiency that results from reletting the premises during the term of this lease. Notwithstanding any reletting without termination, the Lessor may at any time elect to terminate this lease for any default by the Lessee by giving the Lessee written notice of the termination.

- 13.2 In addition to the Lessor's other rights and remedies as stated in this lease, and without waiving any of those rights, if the Lessor deems necessary any repairs that the Lessee is required to make or if the Lessee defaults in the performance of any of its obligations under this lease, the Lessor may make repairs or cure defaults and shall not be responsible to the Lessee for any loss or damage that is caused by that action. The Lessee shall immediately pay to the Lessor, on demand, the Lessor's costs for curing any defaults, as additional rent under this lease.
- 13.3 The rights and remedies of Lessor shall be cumulative as more particularly provided at law or in equity pursuant to the laws of the State of Michigan.

14. Surrender of Leasehold Upon Termination of Lease

- 14.1 All renovations and improvements shall be at Lessee's expense and shall be considered fixtures and owned by Lessor upon termination of lease. Upon the expiration or termination of the lease, Lessee shall surrender the Premises in good order and condition, ordinary wear and tear excepted, and shall remove all of its property, fixtures, and equipment from the Premises. In removing its equipment, Lessee shall be solely liable for repairing any and all damages to the Premises. In the event that the Lessee fails to remove its equipment, and Lessor is required to do so, all costs and expenses incurred by Lessor in removing same and restoring the leasehold to useable condition shall be the financial responsibility of the Lessee.
- 14.2 If upon termination of the lease, Lessee has failed to remove its furniture, equipment, and fixtures, Lessor reserves the right to deem them abandoned and shall have the legal right to dispose of same, and costs incurred in disposing of same shall be the financial responsibility of Lessee.

15. Miscellaneous

- 15.1 This agreement shall be binding on the parties and inure to the benefit of the Lessor and Lessee and their respective successors and assigns.
- 15.2 This agreement shall be governed by and construed in accordance with the laws of the State of Michigan.
- 15.3 This agreement shall constitute the entire agreement between the parties. Any prior understanding or representation of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated herein.
- 15.4 Any modification of this agreement or additional obligations assumed by either party in connection with this agreement shall be binding only if evidenced in a writing signed by each party or an authorized representative of each party.
- 15.5 Waiver by Lessor of any breach of any covenant of duty of Lessee under this lease is not a waiver of a breach of any other covenant of duty of Lessee or any subsequent breach of the same covenant or duty.

- 15.6 The invalidity of any portion of this agreement will not and shall not be deemed to affect the validity of any other provision. In the event that any provision of this agreement is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.
- 15.7 All notices to be given under this lease shall be in writing and mailed, postage prepaid, or by certified or registered mail, return receipt requested, or delivered personally or by courier delivery, or sent by telecopy (immediately followed by one of the preceding methods) to Lessor's address and Lessee's address as above stated or any other place that Lessor or Lessee may designate in a written notice given to the other parties. Notices shall be deemed served on the earlier of receipt or three (3) working days after the date of mailing.

The parties have set their hands on the day and year first above written.

MOOSEWOOD NATURE CENTER

Scot Stewart 1.17.22
By: Scot Stewart
Its: Board Chair Moosewood NC

T. Rantanen Jan 17, 2022
By: T. Rantanen
Its: Secretary of Board Moosewood NC

CITY OF MARQUETTE,

Jennifer A. Smith, Mayor

Kyle Whitney, Clerk

APPROVED AS TO FORM

Karen M. Kovacs, City Manager

Suzanne C. Larsen, City Attorney



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/21/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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|-----------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|--------------------------------------|
| PRODUCER VAST 300 South Front Street Marquette MI 49855 | CONTACT NAME: IBU IBU PHONE (A/C, No, Ext): (906) 228-7500 E-MAIL ADDRESS: katrinam@vastsolution.com | FAX (A/C, No): (906) 228-5385 |
| | INSURER(S) AFFORDING COVERAGE | |
| INSURED Moosewood Nature Center, Inc. PO Box 773 Marquette MI 49855 | INSURER A: West Bend Mutual | |
| | INSURER B: | |
| | INSURER C: | |
| | INSURER D: | |
| | INSURER E: | |
| INSURER F: | | NAIC # 15350 |

COVERAGES

CERTIFICATE NUMBER: 21-22


REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR LTR | TYPE OF INSURANCE | ADDL INSD | SUBR WVD | POLICY NUMBER | POLICY EFF (MM/DD/YYYY) | POLICY EXP (MM/DD/YYYY) | LIMITS |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------|----------|---------------|-------------------------|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A | <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER | Y | | 0776780 | 10/23/2021 | 10/23/2022 | EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000 \$ |
| A | AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS NON-OWNED AUTOS ONLY <input checked="" type="checkbox"/> | | | 0776780 | 10/23/2021 | 10/23/2022 | COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ |
| | UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$ | | | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ |
| | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under DESCRIPTION OF OPERATIONS below | N/A | | | | | PER STATUTE OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$ |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

| | |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| CITY OF MARQUETTE 300 W BARAGA AVE MARQUETTE MI 49855 | SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE  |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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White Drive

**MOOSEWOOD NATURE
CENTER**



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