

**BILLBOARD LEASE**  
(604 Second Street South)

This Billboard Lease ("Lease") is entered into on the 9<sup>th</sup> day of March, 2017 by and between Fairway Outdoor Advertising, LLC, a foreign limited liability company whose main office is located at 500 Colonial Center Parkway, Suite 120, Roswell, Georgia 30076 ("Fairway"), and the City of La Crosse, Wisconsin, a Wisconsin municipal corporation whose main office is located at 400 La Crosse Street, La Crosse, Wisconsin 54601, (the "City"). Fairway and the City are each individually a "Party" and are sometimes collectively referred to herein as the "Parties."

**RECITALS:**

**WHEREAS**, the City is the owner of real estate located at 604 Second Street South, La Crosse, Wisconsin 54601 also referred to as tax parcel no. 17-30103-30, (hereafter referred to as the "Property") and more particularly described as

**See Exhibit A**

**WHEREAS**, Fairway is the holdover tenant of an expired lease between it and the City at the Property;

**WHEREAS**, Fairway has requested to enter into a new lease with the City at this location; and

**WHEREAS**, the Parties desire to enter into this Lease in order to set forth the terms and conditions of the Parties' agreement as to Fairway's use of the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**AGREEMENT:**

1. **Recitals.** The introductory provisions first set forth above are incorporated herein as if set forth at length.
2. **Lease.** The City does hereby lease to Fairway, and Fairway does hereby accept the lease from the City, the ability to maintain, repair and operate the currently existing outdoor advertising structure on the Property within the Leased Premises. The currently existing outdoor advertising structure is more particularly described in **Exhibit B**. The Leased Premises is more particularly described in **Exhibit C**.
3. **Term.** The original term of this Lease shall be for ten (10) years and shall commence on July 1, 2016.
4. **Rent.** Rent for the Lease shall be paid in advance on a yearly basis in the amount of two thousand dollars (\$2,000.00).

5. **Late Payment Penalty and Interest.** Fairway acknowledges that late payment of rent involves additional costs to City for collection and bookkeeping, and accordingly, Fairway agrees that, if rent due hereunder is not paid within five (5) days of the original due date, then Fairway shall pay upon demand, as additional rent, a late charge equal to five hundred dollars (\$500). In addition, any and all amounts required to be paid to the City, if not paid when due shall accrue interest at a rate of eighteen percent (18%) per annum from and after their due date until paid. The foregoing provision for payment of a late charge shall not be construed to extend the date for payment of any sums required to be paid by Fairway or to relieve Fairway of its obligation to pay all such sums at the time stipulated herein, and neither the demand for, nor collection by, City of such late charge shall be construed as a cure of Fairway's default in the payment of rent.

6. **Utilities.** Fairway shall, in its own name, pay when due all utility charges serving its use of the Leased Premises. Under no circumstances shall the City be responsible for any interruption of any utility service.

7. **Intentionally omitted.**

8. **Condition of Leased Premises.** Fairway acknowledges that City has made no warranties or representations regarding the Leased Premises. Fairway agrees to accept the Leased Premises in its "AS IS" condition.

9. **Use.** The Lease Premises shall be used only for the purpose set forth in Section 2 above and for no other purpose. Fairway expressly acknowledges that it shall be the sole responsibility of Fairway to secure all necessary and appropriate permits, licenses and approvals from all governmental authorities having jurisdiction for the use of the Lease Premises. Fairway shall not do or permit anything to be done in or about the Leased Premises which in any way will obstruct or interfere with the rights of any other occupants of the Property, or use or allow the Leased Premises to be used for any improper, immoral, unlawful or objectionable purpose or which could injure the reputation of the City or otherwise violate any recorded covenant or restriction affecting the Property. Fairway shall not cause or maintain or permit any nuisance or commit or suffer the commission of any waste in, or about the Leased Premises.

10. **Structures.** All structures erected and/or maintained by or for Fairway or its predecessors-in-interest on the Leased Premises shall at all times be and remain the property of Fairway and may be removed by Fairway before or within a reasonable time of termination or expiration of this Lease. Fairway shall repair the Leased Premises and leave it in the same condition prior to its disturbance from the erection of a billboard structure, reasonable wear and tear excepted.

11. **Sign Removal.** As a material part of the consideration to the City, Fairway agrees to remove the signs and structures: (a) the outdoor advertising sign at 100 Second Street South; and (b) the outdoor sign at Sixth Street and Main Street. In accordance with the City's amortization ordinance under Chapter 111 of the La Crosse Municipal Code, the Parties acknowledge and agree that the just compensation for the removal of these signs shall be nine hundred dollars (\$900.00) for each location. Payment and removal of the signs shall occur within ninety (90) days of the Parties' execution of this Lease.

12. **Indemnity.** Fairway, as a material part of the consideration to City, hereby assumes all risk of damage to property (including, without limitation, any damage to business, any loss of income or other

consequential damages, or damage to the inventory, fixtures, furnishing, improvements or other property of City) or injury to person (including, without limitation, any injury to any other person), in, upon or about the Leased Premises, arising from any cause whatsoever from its use of the Leased Premises or from this Lease, and Fairway hereby agrees that City shall not be liable for any such damage or injury and waives all claims in respect thereof against City; provided, however, that nothing in the foregoing shall excuse City from liability for City's or its agents' or employees' sole negligence or willful misconduct. This indemnity provision shall survive the termination or expiration of this Lease.

- a. Fairway shall reimburse the City, for any and all legal expenses and costs incurred by the City in connection therewith or in enforcing the indemnity herein provided. Fairway's obligation to indemnify shall not be restricted to insurance proceeds, if any received by the City.
- b. Nothing in this Lease is intended or shall be construed to be a waiver or estoppel of the City or its insurer (or otherwise affect or alter their ability) to rely upon the limitations, defenses and immunities contained within Wis. Stat. §§ 345.05 and 893.80 or other applicable law. To the extent the City or its insurer is found responsible or liable for a violation of this Lease or other conduct related to the Lease or Leased Premises, their damages shall not be greater than the limits of liability of municipal claims established by applicable Wisconsin for federal law. To the extent allowed by law, the City's liability under this Lease to Fairway shall not exceed the maximum amount of rent paid to the City by Fairway during the Lease tenancy during which the breach of contract occurred.

13. *Insurance.* Unless otherwise specified in this Lease, Fairway shall, at its sole expense, maintain in effect at all times during the usage of the Leased Premises, insurance coverage with limits not less than those set forth below with insurers and under forms of policies set forth below.

- a. *Worker's Compensation and Employers Liability Insurance.* Fairway shall cover or insure under the applicable labor laws relating to worker's compensation insurance, all of its Wisconsin employees in accordance with the laws of the State of Wisconsin. Fairway shall provide statutory coverage for work related injuries and employer's liability insurance with limits of at least for employers liability of one hundred thousand dollars (\$100,000.00) each accident, one hundred thousand dollars (\$100,000.00) each employee and five hundred thousand dollars (\$500,000.00) total policy limit.
- b. *Commercial General Liability and Automobile Liability Insurance.* Fairway shall provide and maintain the following commercial general liability and automobile liability insurance:
  - i. *Coverage.* Coverage for commercial general liability and automobile liability insurance shall be at least as broad as the following:
    1. Insurance Services Office (ISO) Commercial General Liability Coverage (Occurrence Form CG 0001)

2. Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle)

ii. Limits. Fairway shall maintain limits no less than the following:

1. General Liability. Two million dollars (\$2,000,000.00) per occurrence (\$2,000,000.00 general aggregate if applicable) for bodily injury, personal injury and property damage.
2. Automobile Liability. Two million dollars (\$2,000,000.00) for bodily injury and property damage per occurrence limit covering all vehicles to be used in relationship to the Agreement.

c. *Required Provisions.* The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- i. The City, its elected and appointed officials, officers, employees or authorized representatives or volunteers are to be given additional insured status (via ISO endorsement CG 2010, CG 2033, or insurer's equivalent for general liability coverage) as respects: liability arising out of activities performed by or on behalf of the Fairway; products and completed operations of Fairway; premises occupied or used by Fairway; and vehicles owned, leased, hired or borrowed by Fairway. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Except for the workers compensation policy, each insurance policy shall contain a waiver of subrogation endorsement in favor of the City.
- ii. For any claims related to this Lease, Fairway's insurance shall be primary insurance as respects the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Any insurance, self-insurance, or other coverage maintained by the City, its elected and appointed officers, officials, employees or authorized representatives or volunteers shall not contribute to the primary insurance.
- iii. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its elected and appointed officers, employees or authorized representatives or volunteers.
- iv. Fairway's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. Each insurance policy required by this Lease shall state, or be endorsed to the state, that coverage shall not be canceled by the insurance carrier or Fairway,

except after sixty (60) days (ten (10) days for non-payment of premium) prior written notice by U.S. mail has been given to the City.

- vi. Such liability insurance shall indemnify the City, its elected and appointed officials, officers, employees or authorized representatives or volunteers against loss from liability imposed by law upon, or assumed under contract by, Fairway for damages on account of such bodily injury, (including death), property damage personal injury, completed operations, and products liability.
  - vii. The general liability policy shall cover bodily injury and property damage liability, owned and non-owned equipment, blanket contractual liability, completed operations. The automobile liability policy shall cover all owned, non-owned, and hired vehicles.
  - viii. All of the insurance shall be provided on policy forms and through companies satisfactory to the City, and shall have a minimum AM Best's rating of A- VIII.
- d. *Deductibles and Self-Insured Retentions.* Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City, the insurer shall either reduce or eliminate such deductibles or self-insured retentions.
- e. *Evidences of Insurance.* Prior to execution of the Lease, Fairway shall file with the City a certificate of insurance (Accord Form 25-S or equivalent) signed by the insurer's representative evidencing the coverage required by this Lease. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Such evidence shall also include confirmation that coverage includes or has been modified to include all required provisions as detailed herein.
- f. *Sub-Leases.* Except for advertising contracts on the Leased Premises, in the event that Fairway employs other lessees (sub-lessees) as part of the Leased Premises usage covered by this Lease, it shall be Fairway's responsibility to require and confirm that each sub-lessee meets the minimum insurance requirements specified above.
- g. Fairway shall be solely responsible for carrying personal property insurance sufficient to cover loss or damage to its own property.
- h. City may, in the future amend its insurance requirements upon sixty (60) days advance written notice. Fairway may appeal any required change to insurance to the Common Council, who may, in its sole and absolute discretion, waive, modify or leave the insurance requirement unchanged.

14. *Default.* The following events shall be deemed to be an "Event of Default": (a) Fairway's failure to pay rent or any other amount due under this Lease continuing for more than five (5) days after written notice from the other party specifying the amount past due; (b) Fairway's failure to occupy and operate the Leased Premises for twenty (20) consecutive days may, at the option of City, be deemed and abandonment and vacation; (c) Fairway's failure to supply any documents or records required under the Lease; (d) Fairway's willful or malicious injury to the Leased Premises or commission of waste to the same;

(e) Fairway's making of an assignment for the benefit of creditors, (which is not approved in writing, in advance by the City), the filing of any tax liens or judgments against Fairway, which have not been timely appealed, or the failure to pay any amounts due the City for any purposes whatsoever; (f) either Party's failure to comply with any other provisions of this Lease continuing for more than thirty (30) days after receipt of written notice from the other Party specifying the failure. In an Event of Default, the non-defaulting party may elect to terminate this Lease by notice to the defaulting party. Furthermore, any amounts due the City under this Lease may be levied, at the City's option, as a special tax, special assessment or special charge as that term may be defined under Chapter 74 or Chapter 66 of the Wisconsin Statutes, or any other applicable chapter against the personal property located on the Leased Premises. The Parties shall also be entitled to exercise any other right or remedy available at law, or in equity, as a result of the Event of Default. All remedies shall be cumulative, and the exercise of any one remedy shall not preclude the exercise of any other remedy.

15. *Taxes.* The City acknowledges it has no interest in any of the personal property of Fairway, except in the Event of Default of this Lease or an abandonment of the personal property by Fairway. Fairway agrees to timely pay when due all taxes, whether assessed against Fairway or its landlord under this Lease, including, without limitation, any items of personal property owned or located at or about the Leased Premises.

16. *Compliance with Laws.* Fairway shall, at its own sole cost and expense, promptly comply with all laws, statutes, ordinances and governmental rules, regulations or requirements now or hereafter in force relating to or affecting the condition, use, or occupancy of the Leased Premises.

17. *Alterations.* Except for regular repairs and maintenance, Fairway shall not make any alterations, additions or improvements ("Alteration") in, on or to the Leased Premises or any part thereof without delivering to City the plans and specifications therefor and obtaining the prior written consent of City. The City's consent to an Alteration may be granted or withheld in its sole and absolute discretion or may be made contingent upon Fairway agreeing to such conditions as the City may impose. Any Alteration shall be made at Fairway's own cost and expense and in a good and workmanlike manner in accordance with the laws, ordinances and codes relating thereto and free from any claim for construction liens. Fairway shall indemnify and hold City harmless from and against any and all claims, liens, costs and expenses on account of such work.

18. *Liens.* Fairway shall not create or permit to any liens to be filed or recorded against the Leased Premises or against the interest of City or Fairway. If such lien is filed or recorded, Fairway shall immediately cause such lien to be discharged.

19. *Right of Entry.* City shall have the right to enter the Leased Premises from time to time, with or without advanced notice, for the purpose of verifying compliance with the terms and conditions of this Lease. City shall have the right to enter the Leased Premises without notice in the case of emergency.

20. *Holdover.* Should Fairway remain in possession of any part of the Leased Premises after the expiration or other termination of this Lease, without extending the term or executing a new lease, then such holding over shall be construed as a tenancy from month-to-month, subject to all of the conditions, provisions and obligations of this Lease insofar as the same are applicable to a month-to-month tenancy. Notwithstanding, rent for any holdover tenancy shall be calculated as three (3) times the rental value as

defined in Wis. Stat. § 704.27. Rental value shall be determined by the City Assessor, in his sole and absolute discretion.

21. *Assignment and Subletting.* Except for routine advertising contracts for use of the billboard structure at the Leased Premises, Fairway shall not assign this Lease or any interest therein, nor let or underlet the Leased Premises or any part thereof or any right or privilege appurtenant thereto, nor permit the occupancy or use of any part thereof by any other person without the advance written consent of the City. This consent may be withheld for any reason. All successors, subleases, assignees and sublessees are bound by the terms and conditions of this Lease, regardless of any statement to the contrary within any sublease or assignment document.

22. *Non-waiver of Default.* The subsequent acceptance of a payment of any sums under this Lease by the City shall not be deemed a waiver of any preceding breach of any obligation hereunder by Fairway other than the failure to pay the particular amount so accepted. The failure of the City to assert or notice a default under this Lease in a timely manner is not considered a waiver or acceptance of the default.

23. *Lease Termination.* For reasons other than default, the Lease may be immediately terminated for the following reasons notwithstanding any other provision of the Lease: (a) a petition by or against Fairway under the bankruptcy laws of the United States; (b) the assignment by Fairway of its assets for the benefit of creditors under any state insolvency laws; (c) conduct by Fairway of its business under any trustee or other person appointed pursuant to judicial proceedings; (d) the taking by a court of jurisdiction of Fairway and its assets pursuant to proceedings brought under the provisions of any federal or state reorganization act; (e) the appointment of a receiver of Fairway's assets; (f) a lapse in the insurance coverage Fairway is required to maintain pursuant to this Lease; or (g) one-year advanced written notice from either Party to terminate the Lease.

24. *Notices.* All notices to be given to the Parties shall be in writing, and either personally delivered or deposited in the United States mail, certified or registered, with postage prepaid and addressed as follows: City of La Crosse, Attn: City Clerk 400 La Crosse Street, La Crosse, WI 54601 with a copy to City of La Crosse, Attn: City Attorney, 400 La Crosse Street, La Crosse, WI 54601, Fairway Outdoor Advertising, LLC, 500 Colonial Center Parkway, Suite 120, Roswell, Georgia 30076. Change of address by either party must be by notice given to the other in the same manner as above specified.

25. *Relationship of Parties.* It is understood and agreed that the relationship of the parties hereto is strictly that of landlord and tenant. The City is the owner of the Leased Premises, but this Lease shall not be construed as a joint venture or partnership. Fairway is not and shall not be deemed to be an agent or representative of the City.

26. *Third-party Benefits.* This Lease is entered into for the sole and exclusive benefit of the Parties to the Lease and their respective successors and assigns; no third-party is intended to receive or be entitled to any rights hereunder, except as set forth herein.

27. *Choice of Law.* This Lease shall be governed by the laws of the State of Wisconsin without regard to principles of conflicts of laws. Any action concerning the Lease shall be venued in the Courts of the State of Wisconsin and the Parties hereby submit to the personal jurisdiction of the Courts of Wisconsin, both Federal and State, in any action with respect to this Lease and agree that any State Court

action shall be venued in the Circuit Court of La Crosse County, Wisconsin. Any claims against the City are governed by the statutes, laws and rules for claims against municipalities.

28. *Jury Trial Waiver.* The Parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Lease. This waiver of right to trial by jury is given knowingly and voluntarily by the Parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each Party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other Party.

29. *Execution of Lease.* Fairway shall sign, execute and deliver this Lease to the City on or before forty-five (45) days of its approval by the La Crosse Common Council and Fairway's failure to do so shall render the approval of the Lease by the Common Council null and void, unless otherwise authorized.

30. *Construction.* The section captions in this Lease are for convenience only and shall not in any way limit, define, or construe the scope of any provision of this Lease, nor offset the provisions thereof. All terms and words used in this Lease, whether singular or plural and regardless of gender, shall be deemed to include any other number and any other gender as the context may require. This Lease shall be construed without regard to any presumption or rule requiring construction against the Party causing such instrument to be drafted. This Lease shall be deemed to have been drafted by Parties of equal bargaining strength.

31. *Merger.* Fairway affirms and agrees that the City and its agents have made no representations or promises with respect to the Leased Premises except as in the Lease expressly set forth and that no claim or liability shall be asserted by Fairway against the City or its agents for breach of any representations or promises not expressly stated herein. None of the covenants, provisions, terms or conditions of this Lease to be kept or performed by the Parties shall be in any manner modified, waived or abandoned, except by a written instrument duly signed by the Parties and delivered to the other Party. This Lease contains the whole agreement of the Parties.

32. *Severability.* If any provisions of this Lease or any specific application shall be invalid or unenforceable, the remainder of this Lease shall not be affected and each provision of this Lease shall be valid and enforceable to the full extent permitted by law.

33. *Authority.* The officers of Fairway who are executing and attesting to this Lease hereby represent and warrant that they have full power, authority and right to execute this Lease and said officers represent and warrant that the execution and delivery of this Lease has been duly authorized by the Board of Directors of Fairway's corporation, and the execution of this Lease by such officers is sufficient and legally binding on Fairway.

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In witness whereof, the Parties to this Lease cause this instrument to be executed by their authorized representative on the following day and year.

Dated this 9<sup>th</sup> day of March, 2017

Dated this 9<sup>th</sup> day of March, 2017

Fairway Outdoor Advertising, LLC

City of La Crosse

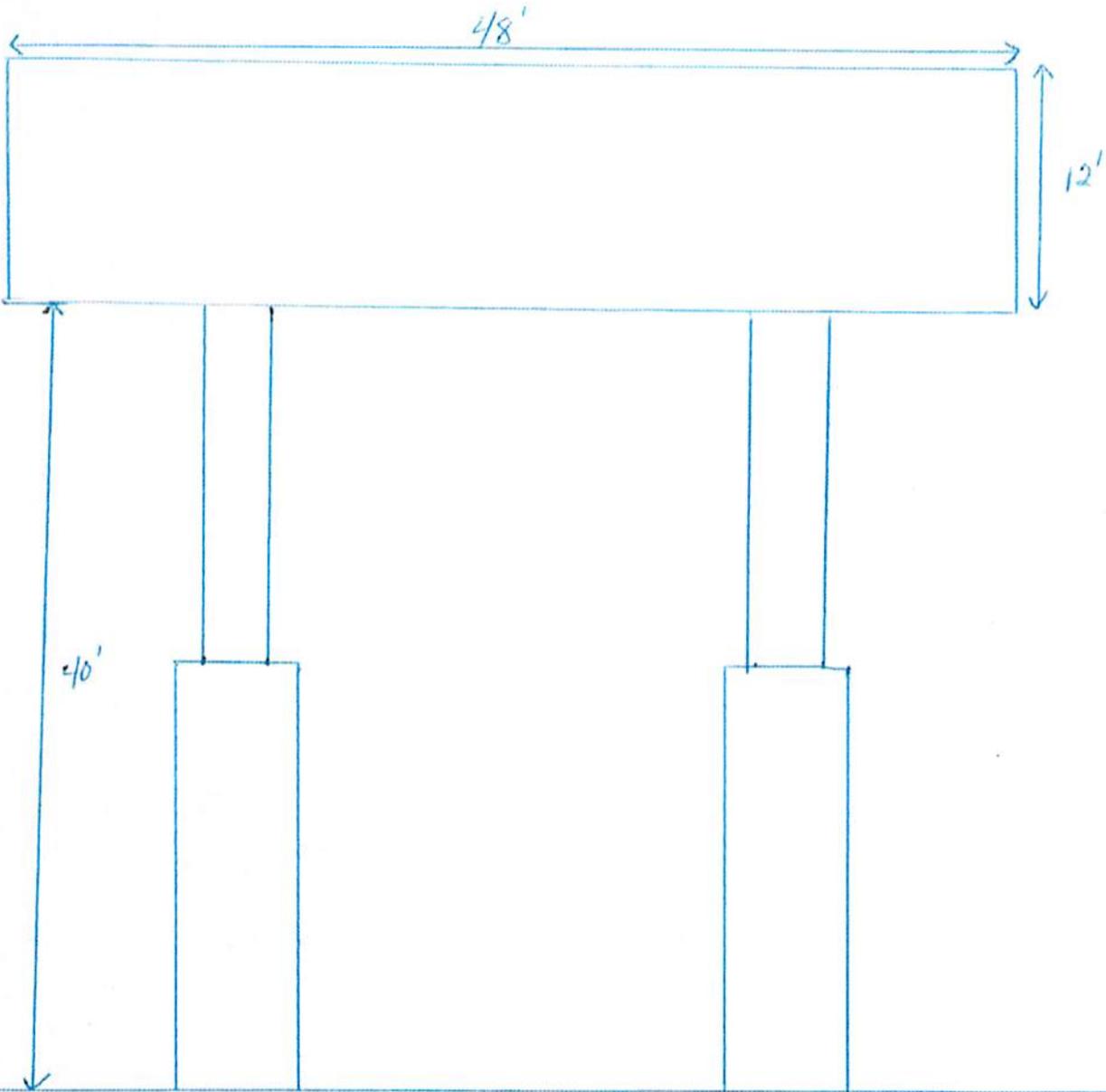
  
Richard Zecchino  
Vice President and General Counsel

  
Timothy Kabat, Mayor

  
Teri Lehrke, City Clerk

# Exhibit B

Better known as outdoor Advertising structure at  
604 Second Street South La Crosse, WI



\* Not to scale

That part of Lots 1 and 2 in Block 23 of P. Cameron's Addition to La Crosse described as follows: Beginning at the Northeast corner of Lot 1; thence South along the West line of Second Street 92.5 feet; thence West and parallel to the South line of Cass Street 64.3 feet; thence South along a line parallel to the West line of Second Street 21.6 feet; thence West along a line parallel to the South line of Cass Street 177.7 feet to the East line of Cross Street; thence Northerly along the West line of said Lots 1 and 2 to the Northwest corner of said Lot 1; thence Easterly along the North line of Lot 1 to the place of beginning.

Known as 604 South Second Street, La Crosse, Wisconsin.

# Exhibit C

Red Arrow indicates **Exhibit B**. Better know as outdoor advertising structure at 604 2nd St. South La Crosse, WI  
Inside the Red Lines indicates **Exhibit C**. Better known as the Leased Premises for the Outdoor Advertising Sign and also including temporary Work Space for the outdoor advertising structure at 604 2nd St. South La Crosse, WI  
When the temporary workspace is not being used, the City may use it for available parking.

