

# La Crosse Regional

## AIRPORT



### CONCESSION AGREEMENT

EXCLUSIVE RESTAURANT, NEWS AND GIFT CONCESSION,  
AND VENDING SERVICES

at

La Crosse Regional Airport  
La Crosse, Wisconsin

between

City of La Crosse

and

Oakwells Commuter Rail L.L.C.  
(Concessionaire)

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**CONCESSION AGREEMENT  
La Crosse Regional Airport  
La Crosse, Wisconsin**

THIS CONCESSION AGREEMENT ("Agreement"), is made and entered into effective this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by and between the City of La Crosse, (hereinafter referred to as "City"), a Wisconsin municipal corporation with offices located at 400 La Crosse St., La Crosse, Wisconsin 54601, and "Oakwells Commuter Rail L.L.C.", (hereinafter referred to as "Company"), a \_\_\_\_\_ corporation with offices located at 4041 Corrine Drive, Orlando, Florida 32814, and a mailing address of P. O. Box 532034, Orlando, Florida 32853.

**RECITALS**

WHEREAS, City controls, owns, operates, and maintains an airport in the City of La Crosse, County of La Crosse, State of Wisconsin, known as La Crosse Regional Airport (hereinafter referred to as "Airport"), and has the power to grant certain rights and privileges with respect thereto, and

WHEREAS, City and Company desire to enter into this Agreement for Company to operate and maintain a restaurant, news and gift concession, and vending at the Airport pursuant and subject to the terms and conditions contained in this Agreement.

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the mutual and dependent promises set forth herein, the parties hereby agree as follows:

**TERMS OF AGREEMENT**

**SECTION 1 – INCORPORATION BACKGROUND RECITALS**

The background Recitals set forth above are true and correct statements of fact, and are hereby incorporated into this Agreement by reference.

**SECTION 2 – DEFINITIONS**

As used in this Agreement, the following defined terms shall have the meaning specified below:

1. "Airport Manager" shall mean the Airport Manager of the City's Airport, or his or her designee.
2. "Airside Area" shall mean that area beyond the security checkpoint which requires either a badge or airline ticket.
3. "Aviation Board" shall mean the Board responsible for overseeing Airport operations.
4. "City" shall mean the public body corporation existing under the laws of the State of Wisconsin which controls, operates, and maintains the La Crosse Regional Airport. The Aviation Board is authorized as agent for City within this Agreement.
5. "DBE" shall mean disadvantaged business enterprise as that term is defined by 49 CFR Part 23.
6. "Expendables" shall mean those items utilized by the Company in the conduct of their business, including but not limited to, napkins, condiments, and serving wear.
7. "Gross Receipts." Refer to Subsection 5.2.
8. "Landside Area" shall mean the public area prior to the security checkpoint which does not require a badge or airline ticket to be present.

9. "Leasehold Improvements" shall mean all improvements and equipment which are affixed to the Permitted Premises and which cannot be removed without material damage to the Premises.
10. "Minimum Annual Privilege Fee." Refer to Subsection 5.1 a. (1).
11. "Non-secure Area" shall mean the Landside Area for which security protocols are not required.
12. "Percentage Privilege Fee." Refer to Subsection 5.1 a. (2).
13. "Personal Property" shall mean all movable property of the Company not directly related to the retail operations of the privileges granted hereunder, including, office furniture, office equipment, and office supplies.
14. "Privilege Fee." Refer to Subsection 5.1.
15. "Refurbish" or "Refurbishment" shall mean the routine repainting or redecoration of public areas within the Permitted Premises, as necessary, including the replacement or repair of worn carpet, tile, furniture, or furnishings.
16. "Secure Area" shall mean the Airside Area for which Transportation Security Administration and Airport security protocols are in effect.
17. "Sterile Area" shall mean that area of the Secure Area in which prohibited items are forbidden or must be controlled per the Transportations Security Administration.
18. "Terminal Building" shall mean the terminal building at the Airport.
19. "Terminal Rehabilitation Project" shall mean a complete rehabilitation of the Terminal Building which will provide for the Concession space defined herein.
20. "Trade Fixtures" shall mean all non-affixed items, except expendables and Personal Property, which can be removed without damage to the Permitted Premises, including cash registers, safes, patron tables and chairs, display fixtures, and the like.

### **SECTION 3 – PURPOSE AND DESCRIPTION OF PREMISES**

*Subsection 3.1 Purpose.* City will provide to Company certain space, (hereinafter collectively referred to as "Permitted Premises"), for Company to operate and maintain: 1) a full-service restaurant, 2) a news and gift concession; and 3) vending services, all located within the Airport Terminal of the Airport as designated on Exhibit A, which is attached hereto and incorporated herein by this reference. At the termination of this Agreement said space shall be returned to the same condition as existed prior to entering into this Agreement, ordinary wear and tear excepted.

*Subsection 3.2 Description of Premises.* As designated on Exhibit A, the Permitted Premises contain the following square footage of space:

- a. Within the secure area of the Airport terminal building, the Permitted Premises shall consist of approximately nine hundred sixty eight (968) square feet of concession space.
- b. Within the non-secure area of the Airport terminal building, the Permitted Premises shall consist of approximately on hundred ninety four (194) square feet of concession space.

### **SECTION 2 - TERM**



**Subsection 2.1 Term.** The term of this Agreement is for a ten (10) year period commencing upon the completion and occupation date of the Permitted Premises of the Airport and terminating on the last day of the month ten (10) years later. A notice of completion and occupation date will be provided to Company by City at least thirty (30) days prior to said date.

### **SECTION 3 – USES, PRIVILEGES, AND OBLIGATIONS**

**Subsection 3.1 Uses, Privileges, and Obligations.** Company shall have the following uses, privileges, and obligations in connection with its use of the Permitted Premises as and for 1) a full-service restaurant, 2) a news and gift concession; and 3) vending services.

- a) **Merchandise.** The right, privilege, and obligation to sell food, beverages, news, gifts and general merchandise in accordance with the terms and conditions contained in this Agreement and within Exhibit B.
- b) **Additional Items.** The right to provide for the sale of any merchandise item related to Company's privileges herein that the Airport from time to time determines necessary.
- c) **Signs.** The right to install and maintain appropriate signs in or upon the Permitted Premises and the terminal building, provided that the design, installation, and maintenance of any and all signs shall be subject to the provisions of Section 13 of this Agreement and shall require the prior written approval of the Airport Manager.
- d) **Ingress and Egress.** The rights of ingress to and egress from the Permitted Premises over Airport roadways, including the private drives surrounding the Airport Terminal, subject to such rules and regulations now in existence or as may reasonably be established from time to time by Airport Manager respecting such use, and subject to applicable law.
- e) **Employee Parking.** The right for Company's employees, in common with other employees of tenants of the Terminal Building, to use vehicular parking spaces provided by City, subject to the payment of reasonable charges for such parking spaces, as set by the Aviation Board.
- f) **Office and Storage Space.** Office and storage space may be utilized in the Permitted Premises. Company shall keep office space to an absolute minimum.
- g) **Disadvantaged Business Enterprise Program**
  1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. Company agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.
  2. Company agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.
  3. As requested by the City, Company shall provide annual DBE information.
  4. Company shall utilize Airport Certified Disadvantaged Business (ACDBE) suppliers to the

extent they are available in the State of Wisconsin. If certified ACDBE's are unavailable, Company shall work with City, in a good faith effort, to identify possible supplies which may be interested in becoming a certified ACDBE. Should a utilized certified ACDBE become unable to perform, Company shall attempt to replace said certified ACDBE in a timely manner. Company shall document all ACDBE participation in a manner acceptable to City, in accordance with the City's ACDBE program, including dollar value of supplies purchased (gross receipts) and type of business operation.

#### **SECTION 4 - RESTRICTIONS ON USES AND PRIVILEGES**

*Subsection 4.1 Use of Premises.* The Permitted Premises shall be used only for the purposes specified in this Agreement. Company shall not at any time during the term of this Agreement leave the Permitted Premises vacant without the prior written consent of the Airport Manager.

*Subsection 4.2 Conflicts with Other Concessions.* Notwithstanding the provisions of Section 3(a), Company specifically understands and agrees that, in the event of a conflict between Company and any other lessee or concessionaire in the Terminal Building as to specific items to be sold or services to be provided by respective concessionaires or lessees, Aviation Board shall have the final decision as to which product or service may be sold or provided by each concessionaire or lessee and Company agrees to be bound by such decision; provided, however, that the Aviation Board's decision shall be consistent with the intent of Section 3 and Subsection 4.2 herein.

*Subsection 4.3 Coin-Operated Amusement or Vending Machines.*

a) The installation or use of coin-operated or similar amusement machines or vending machines by Company in or upon the Permitted Premises is subject to the written approval of the Airport Manager, which shall not be unreasonably withheld or delayed.

b) Company is responsible for installing, operating, maintaining, repairing, and stocking all Vending Machines. Company must install credit card processing on bottled beverage and snack vending machines at its sole expense. Credit card processing must include acceptance of VISA and MasterCard credit cards. Product prices for credit card transactions must be the same as product prices for cash transactions. Company shall be responsible for all communication wire runs and associated line charges. Company shall be solely responsible for all associated fees, and such fees may not be deducted from the gross revenue subject to commission.

c) All Vending Machines, except Coin Operated Amusement Machines, must be newer models not more than eighteen (18) months old at the commencement of this Agreement and at no time more than five (5) years old at any point within the term of this Agreement. The style, technology, vending capacity, and layout of these devices will be subject to advanced written approval from Airport Manager prior to installation of the machines. Once initially installed, any changes, alterations, additions, or modifications to Company's Vending Machines on the Permitted Premises shall require advanced written approval from the Airport Manager. Any and all costs associated with the Vending Machines, including but not limited to, the physical structure, installation, placement, advertising, maintenance,

repair, removal, and restocking shall be the sole cost of Company.

d) Company agrees to charge prices that are reasonable and comparable to prices charged for similar items in similar facilities in the La Crosse area. Company will ensure that all merchandise available for sale will be sold to the traveling public and other consumers at reasonable and competitive prices and in no event greater than twenty-five percent (25%) above similar facilities. Airport Manager reserves the right to determine similar facilities.

*Subsection 4.4 Prohibited Items.* The merchandise listed on **Exhibit B** as Category III - Prohibited Items may not be sold.

## **SECTION 5 - PRIVILEGE FEES AND ACCOUNTING RECORDS**

### *Subsection 5.1 - Privilege Fee.*

a. **Privilege Fee.** As consideration for the privilege of operating the concession hereunder, Company shall pay to City each contract year, for the full term of this Agreement, a Privilege Fee. Said Privilege Fee shall be the greater of either the guaranteed Minimum Annual Privilege Fee or the Percentage Fee applicable to Gross Receipts, hereinafter defined, as follows:

(1) *Minimum Annual Privilege Fee.*

- a. The Minimum Annual Privilege Fee for the first (1st) contract year shall be the sum of Twenty Five Thousand Dollars (\$25,000.00)
- b. The Minimum Annual Privilege Fee for subsequent years shall be calculated as 8% of the prior year's total gross receipts or Twenty Five Thousand Dollars (\$25,000.00), whichever is greater.
- c. Said Minimum Annual Privilege Fee shall be payable in twelve (12) equal monthly installments, due in advance and without demand by the twentieth (20<sup>th</sup>) day of each calendar month, throughout the term of this Agreement. For any period of less than one calendar month that this Agreement shall be in effect, said Minimum Privilege Fee shall be calculated on a pro rata basis.

(2) *Percentage Fees.*

- a. *Prepared food and non-alcoholic beverages.* The Percentage Fees to be applied to the Gross Receipts, as hereinafter defined, of Company and including each subcontractor separately, shall be as follows: ten percent (10%).
- b. *Alcoholic beverages.* The Percentage Fees to be applied to the Gross Receipts, as hereinafter defined, of Company and including each subcontractor separately, shall be as follows: fifteen percent (15%).
- c. *Merchandise and pre-packaged food and beverages.* The Percentage Fees to be applied to the Gross Receipts, as hereinafter defined, of Company and including each subcontractor separately, shall be as follows: seven percent (7%).
- d. *Coin-Operated Amusement or Vending Machines.* The Percentage Fees to be applied to

the Gross Receipts, as hereinafter defined, of Company and including each DBE subcontractor separately, shall be as follows: seven percent (7%) of its vending machine "Gross Receipts" and forty percent (40%) of its Coin Operated Amusement Machines "Gross Receipts"

- e. Said Percentage Fees shall be payable without demand by the twentieth (20<sup>th</sup>) day of each calendar month, throughout the term of this Agreement. Company shall pay to City, without demand, a sum of money that represents the amount by which the Percentage Fees exceed the Minimum Privilege Fee for the previous month.

*Subsection 5.2 Definition of Gross Receipts.* As used herein, the term "Gross Receipts" shall include all revenues derived from the sale of merchandise, services, or goods from the Permitted Premises, whether delivered on or off the Airport, and whether paid for in cash, credit or other tender, and regardless of when or whether paid for or not, except only as explicitly excluded hereunder. The following items may be excluded from Gross Receipts but shall be reported in both monthly and annual reports:

- a. Federal, state, county, and municipal sales taxes or other taxes separately stated and collected from customers;
- b. Receipts from the sale of or the trade-in value of any Trade Fixtures;
- c. Receipts from, or the sale of, any supplies or equipment to another operation or affiliate of Company, whether or not located at the Airport, provided such sale is incidental to and not made for the purpose of circumventing the fee provisions of this Agreement;
- d. Receipts in the form of refunds from or the value of merchandise, supplies, or equipment returned to shippers, suppliers or manufacturers;
- e. Receipts from the sale of uniforms or clothing to Company's employees where such uniforms or clothing are required to be worn by said employees;

Except as set forth above, if any charge for any of the merchandise, services, or goods provided hereunder is not assessed, charged, or collected, irrespective of the reason therefore, other than in the event of stolen goods, the proper amount of such charge shall, nevertheless, be included in the term "Gross Receipts" as the same is used in this section. Further, no deduction shall be made from Gross Receipts by reason of any credit loss, charge, or deduction that may be incurred by reason of the acceptance or use of credit cards or other credit or charge arrangements.

*Subsection 5.3 Payment of Percentage Fee and Annual Adjustment.* In the event that the Percentage Fee set forth in Subsection 5.1 a.(2) shall not exceed the Minimum Annual Privilege Fee set forth in Subsection 5.1 a.(1) in any contract year during the term hereof, then no Percentage Fee shall be due and payable. The statement of Gross Receipts set forth in Subsection 5.4(a) covering the final (12th) month of each contract year shall include a review of the prior year and a credit shall be taken for amounts paid. Within twenty (20) days of receipt of the statement required in Subsection 5.4 b., Company shall prepare and submit to City a statement showing the total Percentage Fee for the

applicable period by category. If the sums paid by Company during said period exceed the Minimum Annual Privilege Fee or the Percentage Fee payments, whichever is greater, such overpayment shall be credited to the fees next thereafter due from Company. In the event Company is not a selected concessionaire after the expiration of this Agreement, a cash payment will be made to Company for any excess balance.

*Subsection 5.4 Statements, Books, and Records; Delinquent Rentals.*

- a. **Monthly Statements, Books and Records.** Within twenty (20) days after the close of each calendar month of the term of this Agreement, Company shall submit to City, in such detail and form as may reasonably be specified by City, certain information, including but not limited to, a statement of its Gross Receipts during the preceding month upon which the percentage fee payments to City set forth in Subsection 5.1 a.(2) are to be computed, with said statement to be signed by a responsible accounting officer of Company. Said statement shall include, at a minimum, a breakdown of Company's Gross Receipts and anything excluded from Gross Receipts. City reserves the right to change the form of the monthly statement and to require the submission by Company of other information pertaining to the Gross Receipts, and Company agrees to change the form of its statements to that requested by City and to provide any such additional information as City may reasonably request. Company shall keep full and accurate books and records showing all of its Gross Receipts, and City shall have the right, through its representatives and at reasonable times at the Airport or City facilities, at its own expense, to inspect, examine, copy and audit such books and records, including State of Wisconsin sales tax return records. Company hereby agrees that all such books and records will be made available to City for at least seven (7) years following the period covered by such books and records.
- b. **Annual Certified Statements.** Each year during the term of this Agreement, Company shall provide to City a written statement certified by a senior financial officer of Company to City stating that in his or her opinion the Percentage Fees paid by Company to City during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. Said statement shall be submitted by Company, to be received by City within ninety (90) days of the end of each contract year. Such statement shall also contain a list of the Gross Receipts, by month, as shown on the books and records of Company and which were used to compute the Percentage Fee payments made to City during the period covered by said statement.
- c. **Delinquent Rentals and Fees.** Without waiving any other right or action available to City in the event of default in the payment of charges or fees payable to City, pursuant to this Agreement, Company shall pay to City a late payment fee of Fifty Dollars (\$50.00) per occurrence plus interest thereon at the rate of one and one-half percent (1.5%) per month from the date such payment was due and payable until paid.

*Subsection 5.5 Audit.* City reserves the right to audit Company's books and records pertaining to the Permitted Premises, at its own expense except as otherwise provided in this Agreement, at any time and made available at the Airport or City facilities for the purpose of verifying the Gross Receipts and Privilege Fee calculation for any period three (3) years prior to such audit. If, however, as a result of such audit, it is established that Company has understated the Gross Receipts received from all operations at the Permitted Premises by three percent (3%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Company. Any additional Privilege Fee due shall forthwith be paid by Company to City with interest thereon at one and one-half percent (1.5%) per month from the date such additional Privilege Fee became due.

## **SECTION 6 - INITIAL MINIMUM INVESTMENT**

*Subsection 6.1 Tenant Build Out.* The City will provide the Company a completed Concession space as a portion of the Terminal Rehabilitation Project. This space will consist of a complete restaurant, bar area, ceilings, walls, floors, HVAC, fixed cooking equipment, fixed refrigeration equipment, plumbing fixtures, telecommunication terminations, customer tables and chairs, television monitors, and utility connections, as selected by the City, and as outlined in Exhibit D. In the event that Company requests upgraded or additional equipment beyond that provided by City, Company shall bear any such additional costs. Company shall provide an initial minimum investment and capitalized minimum investment as a portion of City's build-out costs. Company shall be responsible for providing at its sole expense all expendables (towels, cleaning supplies, etc.), moveable furniture, serving ware, point-of-sale devices, and other Trade Fixtures necessary for operating the Concession which are not included in Exhibit D. Company shall not sell, destroy, replace, or otherwise dispose of any City provided items under this section without the written permission of the Airport Manager.

*Subsection 6.2 Initial Minimum Investment.* As valuable consideration for this Agreement, Company shall pay to City a lump sum payment of Forty Thousand Dollars (\$40,000.00) due upon the City's completion of construction of the Permitted Premises,

*Subsection 6.3 Capitalized Minimum Investment.* In addition to the payment set forth in Subsection 6.2, Company shall pay City a sum of Sixty Thousand Dollars (\$60,000.00) over a Ten (10) year period in equal annual installments of Six Thousand Dollars (\$6,000.00). Payments shall be made within Twenty (20) days of the start of each contract year. In the event that Company and City elect not to commence the extended term, Company's obligations to pay monthly capitalized minimum investment payments shall cease at the end of the primary term, in full satisfaction of Company's obligation to City.

## **SECTION 7 - INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING**

## **OF PREMISES**

### *Subsection 7.1 - Building Services*

- a. **City Improvements and Services.** City shall initially insure and provide occupancy of the Permitted Premises to Company with said Permitted Premises meeting all federal, state and local code requirements for the operation of a restaurant, news and gift concession, and vending services. City shall provide and maintain the following: water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal Building. If Company requires additional lighting, electrical power, water, telephone service, communication system, or adjustments to the heating and air-conditioning system, such additional improvements or services shall be subject to the prior written approval of Airport Manager, and any such approved improvements or services shall be made at Company's expense.

### *Subsection 7.2 - Approval of Plans and Specifications; Provision of Drawings.*

- a. **General.** Any improvements to be made to or upon the Permitted Premises by Company, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of Airport Manager, which shall not be unreasonably withheld or delayed. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of Airport Manager before any work or construction is commenced, which shall not be unreasonably withheld or delayed. First-class standards of design and construction shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform to the general architectural requirements of Airport Manager as established for each improvement program. Two (2) copies of plans for all improvements or subsequent changes therein or alterations thereof shall be given to Airport Manager for review prior to commencement of construction; after final approval by Airport Manager, Airport Manager shall return to Company one (1) approved copy for Company's records and shall retain one (1) approved copy as an official record thereof.
- b. **Improvements Compliance With Law.** All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Company, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, rules and regulations, and public bidding laws. Any approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Company.
- c. **Approvals Extend to Architectural and Aesthetic Matters.** Approval of City shall extend to and include architectural and aesthetic matters and City reserves the right to reasonably reject any layout or design proposals submitted and to require Company to resubmit any such layout or design proposals until they meet Airport Manager approval.

- d. **Disapprovals.** In the event of disapproval by City of any portion of any plans or specifications, Company shall promptly submit necessary modifications and revisions thereof for approval by Airport Manager. City agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations shall be made in said plans or specifications after initial approval by City, and no alterations or improvements shall be made to or upon the Permitted Premises without the prior written approval of Airport Manager.
- e. **Provision of As-Built Drawings.** Upon completion of any construction project, Company shall provide City two (2) completed sets of as-built drawings in reproducible form as specified by City. Company agrees that, upon the request of City, Company will inspect the Permitted Premises jointly with City to verify the as-built drawings.

*Subsection 7.3 - Video and Audio System.* Company may install video equipment in its Permitted Premises in accordance with plans and specifications to be submitted to the City, but shall not install any paging or audio system within the Permitted Premises without the prior written consent of Airport Manager, which consent shall not be unreasonably withheld or delayed. Company may utilize the airport digital monitor system or televisions system at pre-determined rates upon approval of the Airport Manager. In the event the Airport lacks capacity for accommodating Company in its digital monitor system, Company shall contract for video services through a third party at its sole expense. In no circumstances shall Company's use of a digital monitoring system, video services, or paging or audio system interfere or conflict with Airport operations.

## **SECTION 8 - TITLE TO IMPROVEMENTS, STRUCTURAL ALTERATIONS, ETC.**

*Subsection 8.1 Title.* All improvements made to the Permitted Premises by Company, and any additions and alterations thereto made by Company, shall be and remain the property of Company until the termination of this Agreement (whether by expiration of the term, cancellation, forfeiture or otherwise), at which time said improvements including Furniture and Equipment (such as cooking equipment and cooking fixtures), except for other Trade Fixtures, personal property, and expendables/consumables, shall become the property of City, at no cost to City.

*Subsection 8.2 Structural Alterations.* Company shall make no structural alterations to the Permitted Premises without the prior written consent of Airport Manager.

*Subsection 8.3 Alterations and Improvements to Airport.* Company acknowledges that from time to time City may undertake construction, repair, or other activities related to the operation, maintenance and repair of the Terminal Building which may temporarily affect Company's operations. Company agrees to accommodate City in such matters, even though Company's own activities may be inconvenienced, and Company agrees that no liability shall attach to City, its members, employees, or



agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of City substantially impair the operations of Company under this Agreement, the Minimum Privilege Fee shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being reasonably determined by Airport Manager after consultation with Company. Company agrees that if relocation is required that Company shall move its operations as reasonably directed by Airport Manager and said move is at City's sole reasonable cost and expense.

*Subsection 8.4 Removal and Demolition.* Company shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Permitted Premises without the prior written consent of Aviation Board which may, at its sole discretion, condition such consent upon the obligation of Company, at Company's cost, to replace the same by an Improvement specified in such consent.

## **SECTION 9 - MAINTENANCE OF PREMISES**

### *Subsection 9.1 Airport Maintenance Obligations.*

- a. **General Maintenance and Operation.** City agrees that it will with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal Building and all appurtenances, facilities, and services now or hereafter connected therewith.
- b. **Structural Maintenance.** City shall provide, or cause to be provided, structural maintenance of the Terminal Building and shall provide, or cause to be provided, the washing of all windows (on the outside of the Terminal Building only) in the Permitted Premises at periodic intervals.
- c. **Maintain Access.** City shall, throughout the term of this Agreement, maintain all Airport-owned roads on the Airport giving access to the Terminal Building in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal Building over said road at all times. City reserves the right to reasonably restrict access to the Terminal Building for deliveries during peak activity periods by giving thirty (30) days notice of such restrictions.

### *Subsection 9.2 Company's Maintenance Obligations.*

- a. **Company's General Obligations.** Except for maintenance of the Terminal Building, as provided in Subsection 9.1, Company shall be obligated, without cost to City, to maintain the Permitted Premises and every part thereof in good appearance, repair, and safe condition. Company shall maintain and repair all Leasehold Improvements on the Permitted Premises and all furnishings, fixtures, and equipment therein, whether installed by Company or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. All such maintenance and repairs shall be at least of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of Airport Manager.

- b. **Preventive and Routine Maintenance Programs.** Upon the execution of this Agreement, Company shall establish a reasonable preventive and routine maintenance program, the provisions of which shall be subject to the approval of and periodic review by the Airport Manager. Company shall from time to time, upon request, provide the Airport Manager a written schedule of Company's cleaning and maintenance program.
- c. **City Sole Judge of Maintenance.** City shall be the sole judge of the quality of maintenance. City or its authorized agents may, during Company's working hours and without notice, enter upon the Permitted Premises to determine if maintenance satisfactory to City is being performed. If it is reasonably determined that said maintenance is not satisfactory, City shall so notify Company in writing. If said maintenance is not performed to City standards by Company within fifteen (15) days after receipt of written notice, City or its agents thereafter shall have the right to enter upon the Permitted Premises and perform the maintenance therefore and Company agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) for administrative overhead.
- d. **Routine Refurbishment.** On or about the commencement of each contract year, representatives of City and Company shall tour the Permitted Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Permitted Premises in first-class condition, and Company shall promptly undertake such refurbishment at its sole cost and expense. For purposes of this paragraph, "refurbishment" shall mean the routine repainting or redecoration of public areas within the Permitted Premises, including the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.
- e. **Hazardous Conditions.** Upon discovery, Company shall immediately give oral notice to City of any hazardous or potentially hazardous conditions in the Permitted Premises or in the Terminal Building. Any hazardous or potentially hazardous condition in the Permitted Premises shall be corrected immediately upon receipt of oral notice from the Airport Manager. At the direction of said Manager, Company shall close the Permitted Premises until such hazardous or potentially hazardous condition is removed.
- f. **Maintenance Personnel and Program.** Company agrees to employ sufficient personnel, and provide necessary equipment, to keep the Permitted Premises and all furniture, furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition.
- g. **Health and Sanitary Regulations.** Company shall comply with all health and sanitary regulations adopted by all applicable governing bodies and all rules and regulations promulgated by the City. Company shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to the Airport Manager. Company shall provide City with copies of all inspection reports, within 48 hours of receipt.
- h. **Trash and Refuse.** City shall provide, at no cost to Company, a container for the adequate sanitary handling of all trash and other refuse caused as a result of the operation of the Permitted Premises. Piling of boxes, cartons, barrels, or other similar items in view of a

public area is prohibited. Company shall keep any areas used for trash and garbage storage prior to removal from Airport in a reasonably clean and orderly condition so as not to unduly attract rodents, pests, or birds, or create an offensive odor. Company shall provide a grease container for its operations. Grease containers will be positioned within the Airport provided refuse storage area.

- i. **Transporting Trash and Refuse.** In transporting trash and refuse from the Permitted Premises, Company shall ensure that trash is not strewn around while taking refuse to the dump site. Such disposal shall take place during hours as may be approved by the City.
- j. **Grease Traps, Line Maintenance, and Exhaust Fan Maintenance.** Company shall follow industry accepted practices in the maintenance of grease traps and exhaust fans and shall keep both in a working and cleanly manner. Company shall prohibit the release of grease into the City's drain lines and shall be responsible for the cost of any fines or damages, mitigating any damages or cleaning charges resulting from Company's release of said grease. Company shall undergo routine maintenance and cleaning of ventilation systems to avoid long term buildup of grease.

## **SECTION 10 - LIENS, PAYMENT, AND PERFORMANCE BONDS**

*Subsection 10.1 Construction Surety Bond.* Company shall not allow any liens or encumbrances to be attached to the Permitted Premises. Prior to the commencement of any construction or alteration hereunder which exceeds \$10,000 in cost, Company or its contractor shall furnish to City, and without expense to City, a surety bond, issued by a surety company licensed to transact business in the State of Wisconsin and satisfactory to and approved by City with Company's contractor or contractors as principals, in a sum not less than one hundred percent (100%) of the total cost of the contract or contracts for the construction or alteration of the improvements and facilities mentioned herein. Said bond shall guarantee the prompt payment to all persons supplying labor, materials, provisions, supplies, and equipment used directly or indirectly by said contractor, subcontractor(s), and suppliers in the prosecution of the work provided for in said construction contract and shall protect City from any liability, losses, or damages arising there from.

*Subsection 10.2 Compliance with Federal Aviation Regulations and Security Requirements Parts 49 CFR Part 1452 and 14 CFR Part 139.* Company agrees to comply with Federal Aviation Regulations, and 1452 (Airport Security) and the City's policies as outlined in City's Federal Aviation Administration approved Operations Plan and Airport Security Plan. Company further agrees that any fines levied upon the City or Company through enforcement of these regulations because of acts by Company's employees, agents, or suppliers, shall be borne by Company to the extent said acts contributed to said fines. Company shall maintain a written training program for employees relative to security procedures.

## **SECTION 11 - OPERATION OF PERMITTED PREMISES: HOURS AND DELIVERIES**

*Subsection 11.1 Hours of Operation.* Company shall actively operate its location in the Permitted Premises and shall use a business-like operation therein. The Permitted Premises shall be open to serve the public seven (7) days per week and hours of operation shall be such that passengers of flights departing from the terminal will be accommodated and at a minimum must open at least one (1) hour prior to the first regularly scheduled daily departure and close no earlier than fifteen (15) minutes after the last regularly scheduled departure. In no event shall the hours of operation be curtailed to an extent that the service contemplated under this Agreement shall be diminished. Except as otherwise stated herein, the hours of service shall be determined in light of changing public demands and airline operating schedules. Company may advise the Airport Manager of Company's analysis of the optimum arrangements, but the final determination shall be made by the Airport Manager and Aviation Board based on their analysis of necessary service to the public. No facilities shall be blocked off or closed at any time during the approved hours of operation, except that the facilities may temporarily be closed for required employee breaks, including but not limited to lunch and dinner breaks.

*Subsection 11.2 Delivery of Goods.* Company shall arrange for the timely delivery of all goods, stock, and supplies, at such times, in such locations(s), and by such routes as reasonably determined by City. Company shall abide by all Transportation Security Administration (TSA) requirements for movement of goods between the Sterile Area of the terminal.

### *Subsection 11.3 Cash and Record Handling Requirements.*

- a. **General.** Company shall at all times observe cash and record handling procedures and maintain cash and record handling systems in accordance with written procedures submitted to and approved by the City. City and Company agree that such written procedures may be revised from time to time, as mutually agreed upon by Company and City, upon the advent of generally accepted technological changes. The agreed-upon cash and record handling procedures and required systems shall be incorporated in the written policy and rules and regulations of Company that cover the accounting and handling of all sales and services transactions related to this Agreement.
- b. **Shopping Service.** City shall have the right at its cost to monitor and test all of Company's services by a responsible shopping service.
- c. **Failure to Use Required Procedures and Systems.** Where customer sales have not been recorded because of failure by Company to comply with Subsection 11.3 a., Company shall pay to City the amount which would have been due City, plus one and one-half percent (1.5%) per month of any deficiency for each month that sales were not recorded. City shall have the right to make, through a qualified shopping service, a reasonable estimate of the

losses, where they can be reasonably and realistically estimated.

*Subsection 11.4 Utilities.*

- a. City shall provide the Permitted Premises with heat and air-conditioning to keep the Permitted Premises at reasonable temperatures for the conduct of Company's activities.
- b. City shall provide electricity to the Permitted Premises by means of wiring installations, and Company shall make such connections as required and permitted by building code. At no time shall Company's use of electric current exceed the capacity of the wiring installation in place.
- c. Company shall be provided separate gas service, with connections available for all equipment. Company shall be responsible to pay for the monthly expense of the gas service used at the Permitted Premises.

**SECTION 12 - QUALITY AND CHARACTER OF SERVICE**

*Subsection 12.1 Merchandising Plan.* The Company shall upon written demand from the City cease selling any item that the City shall determine is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport. The Company may from time to time add or delete items from its merchandise offerings provided that additions shall be consistent with those authorized in this Agreement (Exhibit B) and do not conflict with the rights of other concessionaires at the Airport or rights reserved by the City herein.

*Subsection 12.2 Quality of Merchandise.* Company shall offer for sale only high-quality products and those which are safe, free of adulteration, sanitary, properly labeled, and as advertised. Upon written notice to Company by the City of any violation of this provision, Company shall forthwith correct the condition objected to within three (3) days after receipt of such notice.

*Subsection 12.3 Pricing.* The Company has covenanted in its proposal to charge prices which are reasonable and comparable to prices charged for similar items in similar facilities in the La Crosse area. Accordingly, the Company agrees to implement a pricing policy which will ensure that all merchandise available for sale will be sold to the traveling public and other consumers at reasonable and comparable prices.

*Subsection 12.4 Adult Materials.* All adult materials, as defined by the City, shall be handled in a discreet manner so as not to offend the public. Adult magazines shall be wrapped or covered, except for the name, and their manner of display shall be subject at all times to the City's approval. Any other adult materials shall be handled as directed by the City. Company agrees that it will remove from the premises all adult materials which City directs it to so remove and will not attempt to display such type of material again after City orders its removal.

***Subsection 12.5 Airport Manager's Right to Object.*** The Airport Manager shall have the right to raise reasonable objections to the condition of the Permitted Premises, the quality and quantity of merchandise, merchandise pricing, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said Manager to be remedied by Company.

***Subsection 12.6 Type of Operation.*** Company shall maintain and operate the concession privileges granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of Airport Manager, does not unduly annoy, disturb, or offend others at the Airport.

***Subsection 12.7 Replacements and Refunds.*** Company shall, at all times during the term of this Agreement, and without any additional charge to customers, replace any merchandise determined by said customer to be unsatisfactory, flawed, or defective or shall provide said customer a full refund therefore.

***Subsection 12.8 Credit or Charge Cards.*** At all times during the term of this Agreement, and at such locations as designated by City, Company shall accept as payment for goods and services such nationally recognized credit or charge cards (e.g., American Express, Master Card, VISA) as designated by City. Such cards will be accepted as a service to the public and shall not be subject to a minimum charge. Company shall not charge public any additional fee for use of such cards.

***Subsection 12.9 Services to the General Public.*** Company understands and agrees that its operation at the Airport necessitates the rendering of public services such as making change (without charge), giving directions, and generally assisting the public.

***Subsection 12.11 Personnel.***

- a. **General.** Company shall maintain a sufficient number of properly trained personnel to ensure that all customers of Company receive prompt and courteous service. All such personnel, while on or about the Permitted Premises, shall be polite, clean, appropriately attired, and neat in appearance. Employees of Company shall wear appropriate name tags, subject to the approval of the Airport Manager, and employees will be appropriately dressed. Clothing will be neat and clean and present a professional appearance. Airport Manager shall have the right to object to the demeanor, conduct, and appearance of any employee of Company, or any of its invitees or those doing business with it, whereupon Company shall take all steps necessary to remedy the cause of the objection.
- b. **Manager.** The management, maintenance, and operation of the Permitted Premises and the

concession conducted thereon shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Company. Company shall cause such manager to be available during normal business hours, and Company will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties.

*Subsection 12.12 Advertising.* Intentionally Omitted.

*Subsection 12.13 Promotions.* Company shall participate jointly in promotions with the airport including discount offerings, package deals, and community events. Airport sponsored promotions shall be provided to City at cost plus a Five Percent (5%) administration fee, which shall not be subject to gross revenue calculations. Promotions offered to City without charge may be applied towards the obligations of Subsection 12.12.

*Subsection 12.14 Parking Validation.* Company shall be authorized to provide one (1) hour of free parking for any paying customer of the non-secure area of the restaurant. If Company desires to provide more than one (1) free hour of free parking than an agreement must be made with the Airport in writing. City shall provide Company with an automated validator at no charge.

## **SECTION 13 - SIGNS AND ADVERTISING**

*Subsection 13.1 Definition of Signs.* For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising or promotions, photographs, art displays, and the like.

*Subsection 13.2 Right to Install.* Company shall have the right to install and operate upon or in the Permitted Premises and the Terminal Building, and at Company's sole cost and expense, signs containing its name and representing its business. Company acknowledges City's desire to maintain a high level of aesthetic quality in the Terminal Building and in all concession facilities throughout the Terminal Building. Therefore, Company covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Permitted Premises and in the Terminal Building, it will submit to City the size, design, content, and intended location of each and every permanent sign it proposes to install on or within the Permitted Premises or the terminal building, and that no permanent signs of any type shall be installed on or within the Permitted Premises or the terminal building without the specific prior written approval of City as to the size, design, content, and location, which consent shall not be unreasonably withheld or delayed. Handwritten, or hand lettered signs are prohibited. Notwithstanding any prior written approval, upon written notice from the Airport Manager at any time during the term of this Agreement, Company shall install, remove, or modify any signs which the Airport

Manager reasonably deems necessary or unnecessary for identification or information to the public, passengers, or other Airport users. Failure to require removal of any sign placed on or about the Permitted Premises or the Terminal Building without written permission shall not limit the Airport Manager's authority to require removal of any unapproved sign.

*Subsection 13.3 Signs and Fixtures Outside Premises.* Company shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Permitted Premises without the express prior written approval of Airport Manager. City may provide Company, at no charge, select advertising throughout the terminal on City's digital sign system for the purpose of driving customers to the Company premises.

*Subsection 13.4 Removal of Signs.* Upon the expiration or sooner termination of this Agreement, Company shall, if requested by the Airport Manager, remove any and all identification signs and similar devices placed by Company on or in the Permitted Premises or the Terminal Building. In the event of the failure on the part of Company to so remove each and every sign as requested by the Airport Manager, the Airport Manager may perform such work and, upon demand, Company shall pay the cost thereof to City.

#### **SECTION 14 – NON-DISCRIMINATION**

This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, and pursuant to law, it is unlawful and Company agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Company shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

#### **SECTION 15 - IDEMNIFICATION AND INSURANCE**

*Subsection 15.1 Indemnification.* To the fullest extent allowable by law, Company hereby



indemnifies and shall defend and hold harmless, at Company's expense, City, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement and in any manner caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Company, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on City. Company's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the negligent or willful misconduct of City, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as City waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Company shall reimburse City, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Company's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by City, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

*Subsection 15.2 Company to Provide General Liability Insurance.* Company shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the minimum of the following insurance coverage or per the Airport Minimum Standards for insurance:

- 1) Commercial General Liability Insurance of not less than \$2,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
- 3) To the extent that Company employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

*Subsection 15.3 Company to Provide Property, Fire and Allied Insurance.* Company, at its own expense, shall insure all Leasehold Improvements and furnishings, fixtures and equipment for fire, extended coverage, vandalism, and malicious mischief. Such insurance shall be in an amount equal to the full insurable replacement value of such improvements. All property insurance policies shall contain loss payable endorsements in favor of the parties as their respective interests may appear hereunder and shall contain a waiver of subrogation provision in favor of the City. Company and City agree that any payments received by either from such insuring companies by reason of loss under such policy or policies

shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of Leasehold Improvements, furnishings, fixtures and equipment.

*Subsection 15.4 Both Company and City to Carry Fire Insurance.* It is understood that both Company and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the structural part of the Permitted Premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Company), and said Insurance Coverage authorizes a waiver of subrogation between City and Company, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Company, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Company collects under its Insurance Coverage, Company waives any and all claims against City, its agents, servants, and employees, for loss or damage to Company's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

*Subsection 15.5 Insurance Certificate.* A certificate evidencing insurance required by Subsection 15.2 and 15.3, and listing the City of La Crosse as additional insured, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Company upon the Permitted Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Company shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

*Subsection 15.6 Company Failure to Provide Certificates.* In the event that Company shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Company of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Company, and Company agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

## **SECTION 16 - DAMAGE OR DESTRUCTION OF PREMISES IN TERMINAL BUILDING**

*Subsection 16.1 Partial Damage.* If all or a portion of the Terminal Building Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered tenantable,

shall be applied toward repair and reconstruction of said Leasehold Improvements and repair or replacement of Leasehold Improvements, furnishings, fixtures and equipment.

*Subsection 15.4 Both Company and City to Carry Fire Insurance.* It is understood that both Company and City carry insurance in the form of fire, extended coverage, vandalism, and malicious mischief (hereinafter called "Insurance Coverage") on the structural part of the Permitted Premises, permanent improvements and loss of income, (in the case of City) and on Leasehold Improvements, furniture, furnishings, equipment, inventory and loss of income, (in the case of Company), and said Insurance Coverage authorizes a waiver of subrogation between City and Company, and the parties wish to enter into such waiver of subrogation to the extent of the said Insurance Coverage; therefore, to the extent that City collects under its Insurance Coverage, City waives any and all claims against Company, its agents, servants, and employees, for loss or damage to City's property resulting from risks included in said Insurance Coverage; and, to the extent that Company collects under its Insurance Coverage, Company waives any and all claims against City, its agents, servants, and employees, for loss or damage to Company's property resulting from risks included in said Insurance Coverage. If this waiver by the parties shall render fully any such insurance policy or shall result in the denial of coverage for a party under such policy, then the provision paragraph shall be deemed to be null and void.

*Subsection 15.5 Insurance Certificate.* A certificate evidencing insurance required by Subsection 15.2 and 15.3, and listing the City of La Crosse as additional insured, shall be filed with City prior to the commencement of construction, furnishing and equipping of Leasehold Improvements by Company upon the Permitted Premises, and such certificate shall provide that such Insurance Coverage will not be canceled or reduced without at least thirty (30) days prior written notice to City. At least ten (10) days prior to the expiration of any such policy, a certificate showing that such Insurance Coverage has been renewed shall be filed with City. If such Insurance Coverage is canceled or reduced, Company shall within fifteen (15) days after receipt of written notice from City of such cancellation or reduction in coverage, file with City a certificate showing that the required insurance has been reinstated or provided through another insurance company or companies.

*Subsection 15.6 Company Failure to Provide Certificates.* In the event that Company shall at any time fail to furnish City with the certificate or certificates required under this Section, City, upon written notice to Company of its intention so to do, shall have the right to obtain the required insurance, at the cost and expense of Company, and Company agrees to promptly reimburse City for the cost thereof, plus fifteen percent (15%) thereof for administrative overhead.

## **SECTION 16 - DAMAGE OR DESTRUCTION OF PREMISES IN TERMINAL BUILDING**

*Subsection 16.1 Partial Damage.* If all or a portion of the Terminal Building Premises is partially damaged by fire, explosion, the elements, public enemy, or other casualty, but not rendered tenantable,

the same will be repaired with due diligence by City subject to the limitations of Subsection 16.4; provided, however, to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent or willful act or omission of Company, its sublessees, agents, or employees.

*Subsection 16.2 Extensive Damage.* If the damages referred to in Subsection 16.1 shall be so extensive as to render the Terminal Building Premises untenable, but capable of being repaired in thirty (30) days, the same shall be repaired with due diligence by City subject to the limitations of Subsection 16.4; and, the charges payable herein for the Minimum Privilege Fee under Subsection 5.1 shall abate from the time of such damage or destruction until such time as the said Permitted Premises are fully restored and certified by City as ready for occupancy; provided, however, that said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the cost and expenses incurred in such repair to the extent that the damage is caused by the negligent or willful act or omission of Company, its sublessees, agents, or employees.

*Subsection 16.3 Complete Destruction.* In the event the Terminal Building Premises are completely destroyed by fire, explosion, the elements, the public enemy, or other casualty, or so damaged that they are untenable and cannot be replaced for more than thirty (30) days, City shall undertake the repair, replacement, and reconstruction of said Permitted Premises subject to governing body approval and appropriation; and charges payable herein for the Privilege Fee under Subsection 5.1, shall abate as of the time of such damage or destruction until such time as the said Premises are fully restored and certified by the City as ready for occupancy; provided, however, the said fees and charges will not abate and to the extent that such damage or destruction is not covered by insurance, Company shall be responsible for reimbursing City for the costs and expenses incurred in said repair to the extent that the damage is caused by the negligent or willful act or omission of Company, its sublessees, agents, or employees; provided further, however, if within six (6) months after the time of such damage or destruction said Permitted Premises shall not have been repaired or reconstructed, Company may cancel this Agreement in its entirety.

*Subsection 16.4 Limits of City's Obligations Defined.* It is understood that, in the application of the foregoing Subsections, City's obligations shall be limited to repair or reconstruction of the Terminal Building to the same extent and of equal quality as obtained at the commencement of operations hereunder, subject to funding and appropriation. Redecoration and replacement of furniture, fixtures, equipment, and supplies shall be the responsibility of Company and any such redecoration and refurbishing/re-equipping shall be of equivalent quality to that originally installed hereunder.

## **SECTION 17 - TERMINATION**

*Subsection 17.1 Termination by Company.* Company may cancel this Agreement and terminate all its obligations hereunder upon or after the happening of one or more of the following events and provided that Company is not in default in the payment of any fees or charges to City:

- a. The abandonment of the Airport as an airline terminal or the removal of all certificated passenger airline service from the Airport for a period of no less than thirty (30) consecutive days.
- b. The inability of Company to use the Airport for a period of longer than ninety (90) days, because of the issuance of any order, rule, or regulation by any competent governmental authority or court having jurisdiction over Company or City, preventing Company from operating its business; provided, however, that such inability or such order, rule, or regulation is not primarily due to any fault of Company.
- c. The material breach by City in the performance of any covenant or agreement herein required to be performed by City and the failure of City to remedy such breach for a period of sixty (60) days after receipt from Company of written notice to remedy the same.

*Subsection 17.2 Termination by City.* City may cancel this Agreement and terminate all of its obligations hereunder at any time that City is not in default, upon or after the happening of any of the following events:

- a. City fails to commence the Terminal Rehabilitation Project which includes construction of the Permitted Premises. Company must not yet have occupied Permitted Premises.
- b. Company shall file a voluntary petition in bankruptcy; or
- c. Proceedings in bankruptcy shall be instituted against Company and Company is thereafter adjudicated bankrupt pursuant to such proceedings; or
- d. A court shall take jurisdiction of Company and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or
- e. A receiver of Company's assets shall be appointed; or
- f. Company voluntarily abandons its conduct of its business at the Airport for a period of thirty (30) days, except if such is due to a labor strike or labor dispute in which Company is involved; or
- g. Any assignment is made by Company for the benefit of its creditors; or
- h. The material breach by Company of any of the covenants or agreements herein contained and the failure of Company to remedy such breach for a period of thirty (30) days after receipt from City of written notice to remedy the same as hereinafter provided. In this regard it is understood that nonpayment of fees or charges hereunder is a material breach. In the event of such material breach, City shall give to Company notice in writing to correct such breach and if such breach shall continue for thirty (30) days after the receipt of such notice by Company, City may, after the lapse of said thirty (30) day period, cancel this Agreement,

without forfeiture, waiver, or release of City's rights to any sum of money due or to become due under the provisions of this Agreement.

- i. The lawful assumption by the United States Government, or any authorized agency thereof, of the operation, control or use of the Airport and facilities, or any substantial part or parts thereof, in such manner as to substantially restrict Company, for a period of at least thirty (30) days, from its Airport operation.

j.

*Subsection 17.3 Termination and Reletting.* Should an early termination of this Agreement occur pursuant to the terms of Subsection 17.2 hereof, City shall have the right to re-enter the Permitted Premises, make repairs as necessary, and enter into another agreement for the Permitted Premises and privileges, or any part thereof, for the remainder of the term hereof.

*Subsection 17.4 Notice of Termination.* If any of the events enumerated in Subsections 17.1 and 17.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Agreement by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

## **SECTION 18 - PROPERTY RIGHTS UPON TERMINATION OR CANCELLATION**

*Subsection 18.1 Rights Upon Termination or Cancellation.* Upon proper termination or cancellation of this Agreement for any reason except those outlined in Subsections 17.1 and 17.2, City shall have the right to require removal by Company of all Trade Fixtures, personal property, and expendables owned by Company, and as determined by the Airport Manager; and Company shall immediately remove such Trade Fixtures, personal property, and expendables. Company shall reimburse City for the cost of any repairs required as a result of Company's removal of said Trade Fixtures, personal property, and expendables. At the request of Company, City may, at its discretion, take title to any or all such Trade Fixtures, personal property, or expendables, in which event City shall pay to Company the fair market value of each such fixtures, property, or expendables as of the date of such termination. Should City terminate Agreement prior to Company occupying Permitted Premises per Subsection 17.2(a), Company shall be entitled to a refund of all funds paid to City per Section 6 of this Agreement.

*Subsection 18.2 Rights Upon Termination Because of Default by City.* In the event this Agreement is canceled by Company for any of the reasons outlined in Section 17.1, damages to the Company shall be limited as follows:

- a. **Leasehold or Fixed Improvements.** With respect to Leasehold Improvements paid for by Company from its own funds, said damages shall be Net Book Value of said improvements, determined on a straight-line basis over the term of the agreement. Upon payment by City to Company of said damages, all such Leasehold Improvements shall become the sole property

of City. Company may, at its option, remove such permanent improvements in lieu of accepting said Net Book Value.

- b. **Personal Property and Proprietary Trade Fixtures.** Except as provided herein above, Company shall remove all personal property and Trade Fixtures, and shall reimburse City for the cost of any repairs required as a result of Company's removal of such property and fixtures.

#### **SECTION 19 - NONWAIVER OF RIGHTS**

Continued performance by either party hereto pursuant to the terms of this Agreement after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Agreement for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

#### **SECTION 20 - SURRENDER OF POSSESSION**

Company shall, upon termination of this Agreement or cancellation, quit and deliver up the Permitted Premises and privileges to City peaceably and quietly, with the Permitted Premises being in as good order and condition as the same now are or may be hereafter improved by Company or City, reasonable use and wear excepted. In addition to any lien provided by Wisconsin law, City shall have a specific lien on all property of Company, and related equipment on the Permitted Premises as security for nonpayment. Company shall have the right to remove all of its trade fixtures and equipment installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien which City may have thereon for unpaid charges or fees.

#### **SECTION 21 - LICENSES AND PERMITS**

Company shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishings, and any other licenses necessary for the conduct of its operations hereunder. City shall assist Company where necessary in obtaining said permits.

#### **SECTION 22 - INSPECTION OF PREMISES**

City or its duly authorized representatives, or agents, and other persons for it, may enter upon said Permitted Premises at any and all reasonable times during the term of this Agreement for the purpose and conditions hereof or for any other purpose incidental to rights of City.

#### **SECTION 23 - HOLDING OVER**

Should Company holdover said Permitted Premises after this Agreement has terminated in any manner, Company shall continue such holding over only at sufferance to City. In the event of such holding over,

City shall be entitled to collect from Company, one hundred and twenty (120%) percent of the amount of the minimum annual guarantee. All other terms and conditions in such holdover shall be the same as herein provided.

**SECTION 24 - QUIET ENJOYMENT**

City agrees that Company, upon payment of the fees and charges and all other payments to be paid by Company under the terms of this Agreement, and upon observing and keeping the agreements and covenants of this Agreement on the part of Company to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Permitted Premises during the term of this Agreement.

**SECTION 25 - NO LIENS**

Company shall pay for all labor done or materials furnished in the repair, replacement, development, or improvement of the Premises by Company, and shall keep said Permitted Premises and Company's possessory interest therein free and clear of any lien or encumbrance of any kind whatsoever created by Company's acts or omissions.

**SECTION 26 - SECURITY AGREEMENTS**

City shall provide, or cause to be provided, during the term of this Agreement, all proper and appropriate public fire and police protection similar to that afforded to other Landside Area tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Company shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Company, shall not in any way be construed to limit or reduce the obligations of City hereunder.

**SECTION 27 - AGREEMENT SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES**

This Agreement is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the La Crosse Regional Airport. Should the effect of such Agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, City shall terminate this Agreement.

**SECTION 28 - RIGHTS AND PRIVILEGES OF CITY**

- a. City shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Company agrees to observe and obey, with respect to the use of the Airport, Airport Terminal Building and appurtenances, provided that such rules and regulations shall not be inconsistent with



safety, current rules and regulations of the FAA, and any future changes prescribed from time to time by the FAA.

- b. City's Airport Manager and/or the City Attorney are hereby designated as its official representative for the enforcement of all provisions in this Agreement with full power to represent City with dealings with Company in connection with the rights herein granted.
- c. All actions relating to policy determination, modification of this Agreement, termination of this contract, and any similar matters affecting the terms of this Agreement shall emanate from the Aviation Board and/or City Council, their successors or assigns.
- d. The Airport Manager or designee may enter upon the Permitted Premises, now or hereafter Permitted Premises to Company hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- e. City reserves the right to further develop or improve the landing and public areas, including Terminal and ramp space, of the Airport as it sees fit, regardless of the desires or views of Company, and without interference or hindrance.
- f. During the time of war or National Emergency, City shall have the right to lease the landing area of the Airport, or any part of La Crosse Regional Airport, thereof, to the United States Government for military or national use, and if any lease is executed, the provisions of this instrument insofar as they are inconsistent with the provision of the lease to the Government, shall be suspended. In such event, Company shall have the right to terminate this Agreement upon thirty (30) days written notice.
- g. City hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of La Crosse Regional Airport, and the right to pursue all operations of the La Crosse Regional Airport.
- h. City reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Company from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the City, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- i. City may from time to time increase the size or capacity of any such Public Aircraft Facilities or Passenger Terminal Building or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided thirty (30) days advance written notice is given to Company.
- j. This Agreement at any time may be reopened for renegotiation if Federal Aviation Administration (FAA) Airport Certification or Security Requirements, FAR Part 139 and CFR 1542 respectively, result in major expenditures to City due to Company's use of the Permitted Premises on the La Crosse Regional Airport. If said renegotiation is desired, written notice must be given to Company sixty (60) days prior to such renegotiations.

## **SECTION 29 - ACCESS CONTROL**

- a. Company shall upon termination of this Agreement return all issued keys and access cards to City. If all issued keys and access cards are not returned to City at the termination of this Agreement Company shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core.
- b. Company is responsible for all keys and access cards issued to employees of Company. If a key or access card is lost, Company shall immediately notify City and shall pay to City cost to re-core premises locks and cut new keys at the rate set at the time of such re-core.
- c. Company is ultimately responsible for all parking cards issued for employee parking including all fees levied for failure to return said cards.

## **SECTION 30 – NO PERSONAL LIABILITY**

Under no circumstances shall any trustee, officer, official, commissioner, Manager, member, partner or employee of City have any personal liability arising out of this Agreement, and Company shall not seek or claim any such personal liability.

## **SECTION 31 – GOVERNING LAW**

This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

## **SECTION 32 – 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 Agreement. 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.

## **SECTION 33 – NOTIFICATION**

Company shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify City in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Company with respect thereto.
- (2) Promptly notify City of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Company contained in this Agreement to be untrue.
- (3) Notify City, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory

body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Company or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Company or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Company or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

#### **SECTION 34 – SEVERABILITY**

The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

#### **SECTION 35 – ASSIGNMENT, SUBLET, AND TRANSFER**

Company shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of City, which shall not be unreasonably withheld or delayed. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Company shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

#### **SECTION 36 – NO WAIVER**

The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

#### **SECTION 37 – CONFLICTS OF INTEREST**

Company covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Company further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Company or its employee must be disclosed to City

#### **SECTION 38 – POLITICAL ACTIVITIES**

Company shall not engage in any political activities at the Permitted Premises while in performance of any and all services and work under this Agreement.

#### **SECTION 39 – ENTIRE AND SUPERSEDING AGREEMENT**

This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute

the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of City, granting approvals or conditions attendant with such approval, the specific action of City shall be deemed controlling.

**SECTION 40 – AMENDMENT**

This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

**SECTION 41 – TIME COMPUTATION**

Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

**SECTION 42 – NOTICES**

NOTICES. Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one (1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	La Crosse Regional Airport	Copy to: Attn. City Attorney
	Attn: Airport Manager	City of La Crosse
	2850 Airport Rd	400 La Crosse Street
	La Crosse, WI 54603	La Crosse, WI 54601

City's notice to Company shall be deemed effective three days after mailing first class United States Post Office mailing. Company shall identify in writing and provide to City the contact person and address for notices under this Agreement.

**SECTION 43 – PUBLIC RECORD LAW**

Company understands and acknowledges that City is subject to the Public Records Law of the State of Wisconsin. As such, Company agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Company agrees to assist City in complying with any public records request that City receives pertaining to this Agreement. Additionally, Company agrees to indemnify and hold harmless City, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Contracting Party's actions or omissions which contribute to City's inability to comply with the Public Records Law. In the event that Company decides not to retain its records for a period of seven (7) years, then it shall provide written notice to City whereupon La Crosse shall take custody of said records assuming such records are not already maintained by City. This provision shall survive the termination of this Agreement.

#### **SECTION 44 – CONSTRUCTION**

This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

#### **SECTION 45 – NO THIRD PARTY BENEFICIARY**

Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

#### **SECTION 46 – COMPLIANCE WITH LAW**

The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

#### **SECTION 47 – FORCE MAJEURE**

City shall not be responsible to Company and Company shall not be responsible to City for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by

the period of delay occasioned by any such cause.

#### **SECTION 48 – GOOD STANDING**

Company affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Company is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

#### **SECTION 49 - INDEPENDENT CONTRACTORS**

The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

#### **SECTION 50 - GOVERNMENTAL APPROVALS**

Company acknowledges that various of the specific undertakings of City described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Company further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. City's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. City cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

#### **SECTION 51 – AUTHORITY**

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

#### **SECTION 52 – COUNTERPARTS**

This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

#### **SECTION 53 – FEDERAL INCOME TAX MATTERS**

(A) Irrevocable Election to Waive Depreciation and Investment Tax Credit. Company (and any successor in interest) covenants that it shall properly elect at the time this Agreement is executed to irrevocably

waive depreciation and investment tax credit with respect to the Permitted Premises. Company agrees to retain a copy of such election in its records for the entire term of the Agreement. Company further covenants that any publicly recorded document which is recorded in lieu of the Agreement will also state that neither Company nor any successor in interest under the Agreement will claim depreciation or any investment credit with respect to the leased property. The term "leased property" for purposes of the foregoing election shall not include any property (including fixtures, etc.) which was not funded with the proceeds of any "tax-exempt bond", as such term is defined by Section 150(a)(6) of the Internal Revenue Code of 1986 (the "Code").

(B) **Restrictions on Lease Term (Including Renewal Options).** Notwithstanding any other provision of this Agreement, in compliance with Section 142(b)(1)(B)(ii) of the Code under no circumstances will the term of this Agreement, including all options to renew, and successive agreements, exceed twenty years.

(C) **Restrictions on Office Space.** Notwithstanding any other provisions of this Agreement, in compliance with Section 142(b)(2)(B) of the Code, Company covenants that no portion of the leased premises will be used for office space if more than a de minimis amount of the functions to be performed at such office is not directly related to the day-to-day operations of such Permitted Premises.

(D) **Restrictions on Size of Certain Retail Facilities.** Notwithstanding any other provisions of this Agreement, in compliance with Section 142(c)(2)(B) of the Code, Company covenants that under no circumstances will the leased property be used to provide any restaurant, food or beverage facility or retail facility which is of a size in excess of a size necessary to serve passengers, including persons meeting or accompanying persons arriving and departing on flights to and from the Airport, and employees at the Airport.

(E) **Prohibitions on Certain Uses of the Leased Property.** Notwithstanding any other provisions of this Agreement, in compliance with Section 147(e) of the Code, Company covenants that under no circumstances will the leased premises be used as part of a health club facility, facility primarily used for gambling, or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

(F) **General Tax Covenants of the Company.** Company hereby covenants to take any action, or refrain from any action, as may be necessary to comply with any of the foregoing provisions of this Section 53.

#### **SECTION 54 – SURVIVAL**

All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of the dates set forth below


ATTEST:

By:



COMPANY:

By:

  
Date: 10.22.14

ATTEST:

By:



CITY OF LA CROSSE

By:

  
Tim Kabat, Mayor

Date:

November 3, 2014

By:



By:

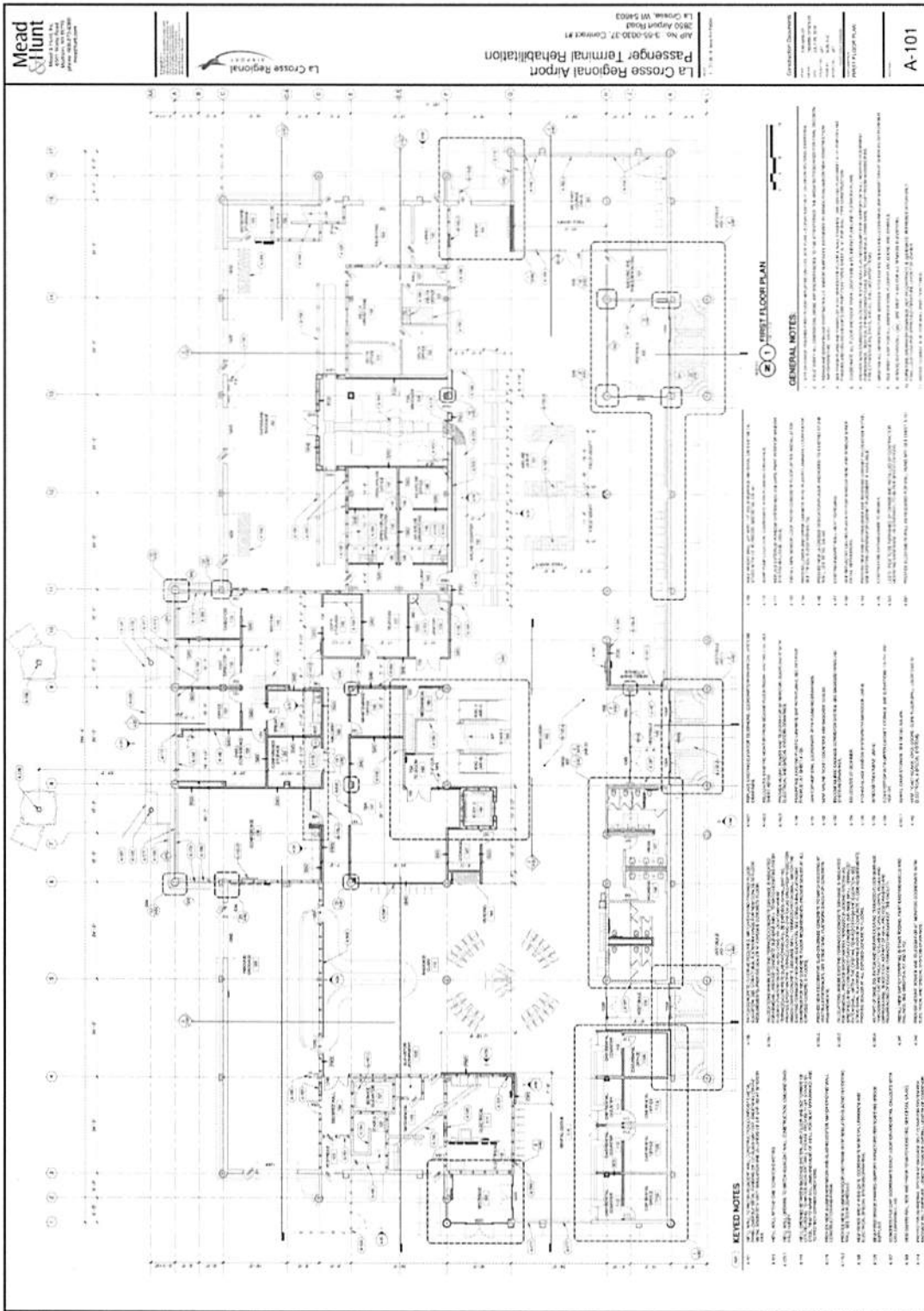
  
Teri Lehrke, City Clerk

Date:

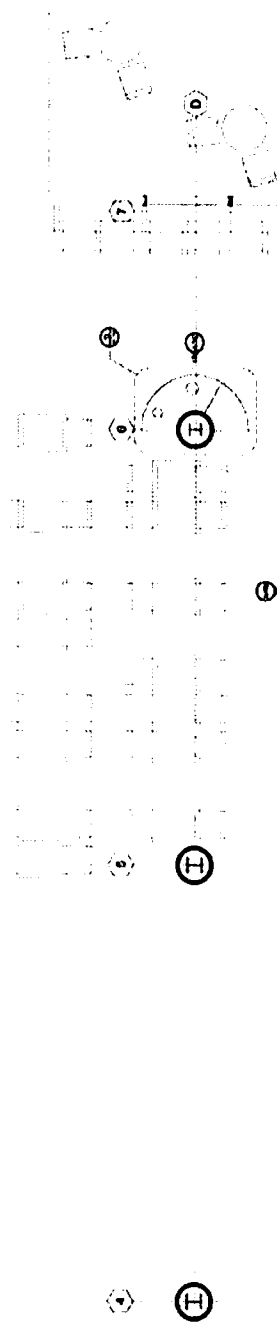
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EXHIBIT A







**RESTAURANT PLAN & EQUIPMENT SCHEDULE**

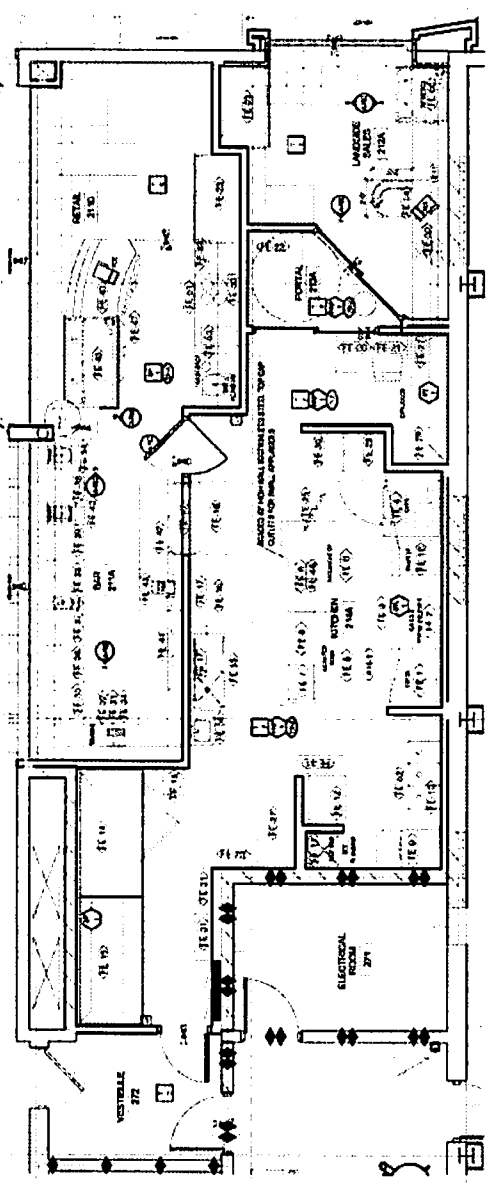
DATE: 10/15/11  
 DRAWN BY: [Name]  
 PROJECT: [Name]

**SYMBOL LEGEND**

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- GENERAL NOTES:**
1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE INTERNATIONAL BUILDING CODES (IBC).
  2. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL ELECTRICAL CODE (NEC).
  3. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) HAZARD IDENTIFICATION GUIDE.
  4. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL MECHANICAL CODES (NMC).
  5. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL PLUMBING CODES (NPC).
  6. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL SANITATION FOUNDATION (NSF) INTERNATIONAL STANDARDS.
  7. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL UNDERGROUND ELECTRIC CODE (NUEC).
  8. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL WIRE AND CABLE CODE (NWCC).
  9. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL FIRE ALARM AND SIGNALING CODE (NFAS).
  10. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE NATIONAL FIRE PROTECTION ASSOCIATION (NFPA) HAZARD IDENTIFICATION GUIDE.

**RESTAURANT PLAN & EQUIPMENT SCHEDULE**



## **EXHIBIT B**

### **Category I - Required Items - Traveler Necessities**

Company shall be required to offer for sale the items listed below:

- Newspapers, including all local daily newspapers that request distribution from Company and sufficient out-of-state and business newspapers to meet reasonable public demand, so long as the distributors will deliver the newspapers to the Permitted Premises on a daily basis.
- Magazines and periodicals
- Prepackaged candy: bars, sacked, small packages
- Bottled beverages
- Gourmet style coffee - airside
- Breath mints and hard candy
- Chewing gum, regular and sugar free
- Prepackaged nuts
- Batteries
- 3 oz zip lock bags
- 3 oz size containers
- Minor nonprescription drugs, which may include, aspirin (adult and children), Anacin (adult and children), Tylenol (adult and children), remedies, cold capsules, inhalers, chapsticks, sunburn lotions, etc., with at least one buffered aspirin and one nonbuffered-type medication and one travel sickness remedy being offered in single dosage packets, to the extent that such single dosage packets are readily available to Company.
- Traveler necessity items, which may include Band-Aids, pocket facial tissues, utility pens and pencils (inexpensive wood pencils and ballpoint pens), utility writing tablets, paper, diapers, and baby wipes.

### **Category II - Permitted Items**

Company may sell all other items of gifts and general merchandise, including but not limited to:

- Art objects, goods, and supplies
- Athletic and sports equipment and supplies
- Boxed candies and nuts

- Gourmet style coffee - landside
- Business accessories
- Cameras, photo supplies and photo developing services
- China, crystal, and pottery
- "Collectibles" (figurines, medals, stamps, commemorative plates, etc.)
- Flowers: Cut, arrangements (artificial and fresh), plants
- Gift wrapping and gift wrapping accessories
- Gourmet food products (prepackaged only)
- Hobby goods, toys and games
- Jewelry
- Leather goods, including briefcases, purses, billfolds, etc.
- Lottery Tickets
- Optical equipment, field glasses
- Perfume
- DVD's, CD's, BlueRay
- Popcorn (Microwavable)
- Portable electrical and electronic items and accessories
- Posters, pictures, prints, paintings
- Stationery
- Travel accessories, such as, travel items, hair dryers, converters, cosmetic cases, shoe bags, travel razors, etc.
- Watches, clocks and quality watchbands
- Writing instruments
- Cigars, pipe tobacco
- Eyeglass cleaners, dry or liquid clothes wash packets, contact lens cleaning solutions, toothbrushes, toothpaste, shampoo, deodorants
- Women's sanitary products, manicure aids, pocket combs and picks,
- Sunglasses, sewing kits, and other convenience accessories

- Disposable razors, etc., all in travel sizes. Cosmetics and toiletries
- Boxed or packaged stationery and cards (post or greeting)
- Disposable rain hats, raincoats, galoshes
- Prepackaged sandwiches, snack foods, ice cream, and other grab and go type foods.

**Category III - Prohibited Items**

- Candy not prepackaged (bulk)
- Items prohibited by law

The City may, from time to time and at its sole discretion, reasonably request the Company to offer for sale other items that the City determines necessary to serve the traveling public or to reasonably request the Company to expand items offered for sale.

## EXHIBIT C

**NONSTANDARD RENTAL PROVISIONS:** Company agrees that City has the express right to place a lien on Company's inventory and personal items located in the premises for non-payment of funds due City and that such lien shall have precedence over other liens or security interests that Company may enter into. Company agrees to waive the provisions of Wis. Stat. § 704.11. This exhibit specifically compiles with Wis. Admin. Code ATCP § 134.09 (4)(b).





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