

AGREEMENT

FOR

CAR RENTAL CONCESSION

Between

MILWAUKEE COUNTY

And

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MILWAUKEE COUNTY DEPARTMENT  
OF  
TRANSPORTATION

AIRPORT DIVISION

General Mitchell International Airport  
Milwaukee, Wisconsin

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THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between MILWAUKEE COUNTY, a municipal corporation in the State of Wisconsin (hereinafter referred to as "County"), and \_\_\_\_\_, a \_\_\_\_\_, whose principal office is at \_\_\_\_\_ (hereinafter referred to as "Concessionaire").

W I T N E S S E T H:

THAT, for and in consideration of the rentals and fees to be paid by Concessionaire to County as hereinafter provided and the respective covenants of the parties hereto, it is mutually agreed and understood by and between County and Concessionaire as follows:

1. DEFINITIONS

- A. "Airport" shall mean General Mitchell International Airport owned and operated by Milwaukee County.
- B. "Airport Customer" shall mean any user of the Airport who proposes to enter into an automobile rental agreement at any location on Airport premises; or who is transported to Concessionaire's on or off-airport business location within a five (5) mile radius for the Airport for the purpose of entering into an automobile rental agreement, and shall include all airlines, cruise lines, or any other person, firm or entity that may enter into arrangements ("discount arrangement") whereby concessionaire provides discounts on rentals. At Concessionaire's off-airport locations, only, customers with Milwaukee County zip codes will be excluded from the definition of Airport Customer.

- C. "Airport Director" shall mean the Airport Director of General Mitchell International Airport and Lawrence J. Timmerman Airport, or his/her designee.
- D. "Car Rental Contract" shall mean the invoice between a Concessionaire, which has a contract with the County to conduct car rental operations on Airport property, and an Airport Customer, recording the charges for rental of a car to the customer.
- E. "Concessionaire" shall mean an entity which has a contract with the County to conduct car rental operations on Airport property.
- F. "Contract Year" shall mean the twelve-month period commencing on July 1, 2013 and each anniversary thereof.
- G. "Customer Facility Charge" (CFC) shall mean any amount required to be charged and collected by Concessionaire from its rental car customers for each rental car agreement written pursuant to Paragraph 9.C.
- H. "Exhibits A through B" as referenced in this Agreement are defined and described as follows:
- (1) Exhibit A contains drawings of the counter area in the Rental Car Center (RCC).
  - (2) Exhibit B contains drawings of the "ready/return" areas in the Rental Car Center.
- I. "Leased Premises" shall mean the areas of the Airport leased by County to Concessionaire and described in Paragraph 2 and depicted on Exhibit A and Exhibit B, which may include a Rental Car Center counter and office space, and parking garage "ready/return" areas.
- J. "Market Share" shall mean the percentage carried out to three (3) decimal places that Concessionaire's Gross

Revenues bears to the total Gross Revenues for all Car Rental Concessionaires for the period at issue. For reallocation purposes, Market Share shall be based on Gross Revenues from the previous contract year after all such numbers are received by the Airport from all car rental concessionaires.

- K. "Parking Garage" shall mean the multi-level parking garage immediately west of the Airport Terminal Building. A portion of first and second levels of the Parking Garage is used for car rentals; other areas in the parking garage are used for public, valet, and limousine parking.
- L. "Rental Car Center" shall mean the facility in the parking garage in which the car rental counters and offices are located.
- M. "Ready/Return Area" shall mean the area in the Airport parking garage having the sole purpose for the parking of vehicles owned by Concessionaire and offered for hire at the Airport.
- N. "Terminal Building" shall mean the Airport building in which passengers enplane, deplane and collect baggage.

2. DESCRIPTION OF LEASED PREMISES

County hereby leases, demises, and lets unto Concessionaire for its exclusive use, and Concessionaire hereby hires and takes from County the following premises all located in the parking garage at General Mitchell International Airport, City of Milwaukee, County of Milwaukee, Wisconsin, for the uses and purposes set forth herein and as shown on Exhibit A and Exhibit B attached hereto and made a part hereof:

A. Counter and Office Area

Service counter (Area 1) in the Rental Car Center containing approximately 310 square feet of floor space.

B. Parking Garage

"Ready/return" area (Area A) in the Rental Car Center containing approximately 12,700 square feet of floor space.

3. TERM OF AGREEMENT

A. Subject to earlier termination as herein provided, this Agreement shall commence \_\_\_\_\_ 1, 2015, and shall terminate June 30, 2019.

B. This Agreement may continue on a month-to-month basis after the expiration of the renewal term, if any, subject to the terms and conditions hereof, with the mutual consent of both parties.

4. USES, RIGHTS, PRIVILEGES, RESTRICTIONS

Subject to the terms and conditions contained in this Agreement, Concessionaire is granted the following rights and privileges during the term of this Agreement:

A. The right, but not exclusively, to engage in and conduct a car rental concession operation at and on the premises of the terminal building at General Mitchell International Airport for the convenience of persons traveling by air and using the Airport, patrons and tenants of the Airport, and the general public making application for said services at the Airport. It is expressly understood and agreed between the parties that County reserves the right to enter into similar agreements with up to six (6) other on airport



concessionaires and an unlimited number of other off-airport companies engaged in the car rental business and said additional on airport concessionaires will be selected on the basis of a bid submitted to County.

- B. The specific right to operate and maintain a service counter on the premises described in Paragraph 2 hereof for the servicing of its patrons and other functions solely related to its operation of a car rental business at the Airport, and for no other purpose. Violation of this right by Concessionaire, its officers, employees, or agents, or any other person or persons under its jurisdiction or control shall be cause for termination of this Agreement.
- C. The right to lease parking spaces/area in the parking garage solely for the parking of "ready/return cars" owned by Concessionaire and offered for hire at the Airport, provided that the rights and privileges herein granted shall not be construed as authorizing the conduct of a separate business by Concessionaire either individually or collectively. Any unauthorized use of the Leased Premises shall be cause for the termination of this Agreement.
- D. The right of use in common with others of Airport roads and drives necessary for the conduct, operation, and maintenance of said car rental concession, subject, however, to applicable County ordinances and Airport rules and regulations as may now be in force and effect or as may hereafter be promulgated, amended, or otherwise modified; and subject, further, at all times to the Airport Director's approval and control. Concessionaire is prohibited from parking, stopping, or standing its cars for hire on roadways and entrance drives at any time and for

any reason, including loading and unloading patrons and patrons' possessions. Parking, stopping, or standing any vehicle on the roadway in front of the Rental Car Center causes a hazard and creates an obstruction to vehicular or other traffic, which is in violation of Milwaukee County General Ordinances 4.04 (3)(i)1. Said parking violations are subject to the issuance of citations by Milwaukee County Sheriff Deputies and the imposing of fines by said Sheriff Deputies. In addition, the Airport Director, or his designee may impose liquidated damages in accordance with Paragraph 11. C., Violation B. of this Agreement. Any rental cars returned by Concessionaire's patrons and left by said patrons on roadways and entrance drives shall be removed forthwith from those areas by Concessionaire without delay.

- E. The right to install, operate, and maintain signs on the Airport premises for the purposes of identifying the Concessionaire and its car rental services at the Airport, provided that the number, size, location, content, general type and design, and method of installation of all such signs shall be subject to the prior written approval of County's Airport Director. This limitation shall apply to and include, without restriction because of enumeration, all signs, placards, posters, or other forms of identification installed, placed upon, or affixed to Concessionaire's counter or within the area leased exclusively to Concessionaire hereunder or installed, placed upon, or affixed to space assigned to or reserved, rented or leased by Concessionaire in the public parking garage at the Airport, or in or upon Concessionaire's cars

for hire in said public parking garage or otherwise parked or operated anywhere within the confines of the Airport. Concessionaire may not display signs, posters, brochures, or offers of goods or services, vehicle advertising, or membership applications on behalf of any individual, company, or organization without the prior written approval of County's Airport Director. Concessionaire is prohibited from erecting or causing to be erected anywhere on the Airport any antennae, poles, or overhead wires without the prior written consent of said Airport Director.

- F. The right of ingress to and egress from the Leased Premises to Concessionaire, as described in Paragraph 2 hereof, or upon which Concessionaire has been granted the use in common with others for Concessionaire, its officers, employees, agents, servants, patrons, and invitees and its suppliers of commodities and furnishers of services, all subject, however, to the terms and conditions of this Agreement, applicable County ordinances, and Airport rules and regulations as may now be in force and effect or as may hereafter be promulgated, amended, or otherwise modified.
- G. The right to install customer kiosks and or booths in the ready/return area of the Leased Premises subject to the prior written approval of the Airport Director.
- H. Throughout the term of this Agreement and any and Agreement hold over period beyond the termination date of this Agreement, Concessionaire operation will is limited to the following brands: Advantage Rent-A-Car.

5. PARKING GARAGE READY/RETURN AREA

A. Ready/Return Area Allocation

- (1) The Concessionaire who submitted the highest minimum guarantee bid shall have the first choice in selecting the ready/return area in the parking garage. The remaining bidders, in descending order of their minimum annual guarantee bids, shall choose one of the remaining ready/return areas.
- (2) The location of ready/return areas shall be determined by allowing the Concessionaire who submitted the highest minimum guarantee bid to select an area first, and the Concessionaire who submitted the second highest minimum guarantee bid to select second, and so forth. The Airport Director has the right to reassign ready/return areas if the areas selected by Concessionaire are disproportional to Concessionaire's market share.
- (3) Within ninety (90) days of the end of each contract year, the Airport Director shall review the Concessionaires' market share rankings for the previous twelve (12) months. If any one Concessionaire's share of the cumulative market has grown by at least five percent (5%) since the inception of this Agreement, the Airport Director may, but is not required to, reallocate the ready/return areas to reflect the change in market share.

B. Ready/Return Area Use

Concessionaire may use its allocated ready/return area only for:

- (1) a booth or kiosk for express customer service;
- (2) parking cars which are ready to be picked up by Concessionaire's customers; and
- (3) for the return and parking of cars to Concessionaire by its customers.

Concessionaire, at its sole cost and expense, shall be responsible for any and all improvements within the parking garage ready spaces, e.g., booths, kiosks, stall signage, striping, security requirements and any other special needs as permitted by the Airport Director. Detailed plans must be submitted in writing for the approval of the Airport Director prior to commencement of construction or installation of any structure, equipment, or utility.

C. Ready/Return Area Adjustments

County, after attempting to obtain mutual agreement from all car rental concessionaires, may unilaterally change the number, location, and operation of the ready/return areas identified in this Agreement from time to time, as deemed necessary by County to further the efficient use and operation of the Airport's facilities, including but not limited to accommodation of Airport construction activities and operations, provided that County shall give Concessionaire reasonable advance notice of each substantial change ("reasonable" means 90 days unless otherwise required by construction or other schedules), and further provided that County shall make a reasonable effort to minimize changes and to structure such changes to minimize adverse impacts on Concessionaire's business, and not cause competitive disadvantages to any concessionaire, to the extent that said effort is operationally and

financially reasonable under the circumstances. If the change is substantial, rent shall be adjusted proportionally as determined by County.

6. RIGHTS AND PRIVILEGES RESERVED BY COUNTY

It is understood and agreed by the parties hereto that County, in addition to any other rights herein retained by it, reserves the following privileges, to wit:

- A. The right to further develop the Airport or any portion thereof as County sees fit, regardless of the desires or views of Concessionaire and without interference or hindrance by Concessionaire. If feasible, such development shall be accomplished in a manner as to cause minimum inconvenience to Concessionaire.
- B. The right, at any and all reasonable times, to enter upon the Leased Premises for the reason and to the extent necessary to protect County's rights and interests, to provide for periodic inspections of the Leased Premises from the standpoint of safety and fire hazards, and to check and investigate Concessionaire's compliance with the terms of this Agreement.

7. SERVICES TO BE PERFORMED BY COUNTY

Unless otherwise limited by federal or state statutes, executive orders, rules, or regulations, County shall, at its cost, furnish ordinary heat at and around Concessionaire's counter in the Rental Car Center twenty-four (24) hours a day to the minimum temperature required by laws or ordinances applicable to public buildings in the municipality wherein the Airport

buildings are located. In addition, County shall provide ordinary air conditioning in the Leased Premises in the Rental Car Center. Installation of equipment to provide extraordinary heat or extraordinary air conditioning shall be the responsibility of Concessionaire.

- A. County shall, at its cost, furnish electric current to the power panel locations in the Rental Car Center. Extraordinary electrical requirements will be the responsibility of Concessionaire.
- B. County shall provide, at its expense, for common area directional signage between the Terminal Building and the parking garage.

8. OBLIGATIONS OF CONCESSIONAIRE

A. Service Counter

- (1) The Concessionaire who submitted the highest minimum guarantee bid shall have first choice in selecting any of the counters in the Rental Car Center. The other successful bidders, in descending order of their minimum guarantee bids, shall choose one of the remaining counters. Counters will not be reallocated during the Term of this Agreement.
- (2) Concessionaire shall equip and operate a service counter in the Rental Car Center space leased exclusively to it hereunder for such purpose. Said counter shall be maintained at all times in a safe and attractive condition, in harmony with the decor of the Rental Car Center in conformity with other counters installed by other concessionaires in the Rental Car Center. Any alterations to said counter affecting its

external appearance, size, shape, or location shall be subject to the prior written approval of the County's Airport Director.

B. Alterations

Concessionaire shall not make any structural alterations to the Leased Premises without the prior written consent of County's Airport Director. If any such alterations are permitted, Concessionaire shall pay all costs in connection therewith, including the restoration of the Leased Premises to the condition which existed prior to the making of such alterations by Concessionaire, provided such restoration is demanded by County.

C. Hours of Operation

The aforesaid service counter shall remain open for service to the public at all times air flights operate at the Airport, but shall open no later than 6:00 a.m., and close no earlier than 10:30 p.m., seven days a week, including holidays. Any change in the hours of operation of said counter is prohibited without the prior written approval of the Airport Director.

D. Conduct of Business

Concessionaire shall conduct its business at the Airport on a fair, reasonable, and nondiscriminatory basis to all applicants for its services and facilities. Concessionaire shall furnish good, prompt, courteous, and efficient service adequate to meet all the demands for its services and facilities at the Airport. Concessionaire shall maintain and operate said concession in a first-class manner, comparable in degree and quality with like services furnished at other major airports.



E. Personnel

- (1) Concessionaire shall maintain at all times a responsible person in charge to supervise its concession operations at the Airport and authorized to represent and act for and on behalf of Concessionaire.
- (2) Concessionaire shall furnish, at its cost, all personnel required for the efficient and proper operation of the Airport concession. Concessionaire's employees shall be clean, courteous, efficient, and neat and attractive in appearance, and such employees shall be trained to perform any and all of the customer services contemplated under this Agreement. Concessionaire shall not employ any person or persons in or about the Airport who shall use improper language or act in a loud, boisterous, or otherwise improper manner. Upon written notification by County's Airport Director to Concessionaire of a violation of this paragraph, Concessionaire shall have the responsibility to take appropriate action to prevent such violation from reoccurring.

F. Solicitation

The solicitation of car rental business at the Airport shall be confined to authorized signs and displays in locations authorized by the Airport Director and to answering inquiries regarding Concessionaire's services and facilities, which activity shall be restricted to Concessionaire's Leased Premises. Concessionaire shall prohibit and restrain its employees and agents or other representatives from any form of verbal solicitation of the services offered by it on or about the Airport premises.

County shall be the sole judge on the question of whether the conduct of Concessionaire's representatives in the solicitation of business constitutes a violation of this Paragraph 8.F. Insofar as the law permits, County agrees to take such steps as it may deem necessary to prevent the solicitation of car rental business at the Airport by any person, firm, or corporation that has not been awarded a rental car concession by County at the Airport.

G. Competitive Relationships

Concessionaire, its employees and agents, shall so conduct and carry on the car rental business on the Airport as to maintain a friendly and cooperative, though competitive relationship with its competitors engaged in like business on the Airport and shall not engage in open, notorious, and public disputes, disagreements, or conflicts tending to affect the quality of the car rental service of either Concessionaire or its competitors, or be incompatible with the best interests of the public at the Airport. The Airport Director shall have the right to resolve all such disputes, disagreements, or conflicts, and the Airport Director's decision and the manner in which Concessionaire shall thereafter operate shall be final and binding upon Concessionaire. County reserves the right to sell in-terminal advertising to, and allow in-terminal courtesy telephones for off-airport car rental companies.

H. Vehicle Requirements

Concessionaire shall at all times maintain on the Airport an adequate number of passenger cars for hire and readied to meet the public demand therefore. Such cars shall at all times be maintained by Concessionaire, at its expense, in

good operating order and free from known mechanical defects and shall be kept in a clean, neat and attractive condition, inside and out. Concessionaire agrees that it will at no time use cars whose year model is more than two (2) years older than the current year model, provided however that this requirement may be waived by County when the latest model cars are not available to Concessionaire for reasons beyond Concessionaire's control. Concessionaire shall make available federally approved infant and children's car safety seats, including appropriate installation hardware. Failure to comply with any of the terms of this Paragraph may, in the discretion of the County, be determined to be a default under this Agreement.

I. Compliance with Laws, Regulations, Ordinances, Rules

Concessionaire shall comply at all times with the codes, laws, orders, and regulations of the United States of America and the State of Wisconsin and agencies thereof, all applicable codes, regulations, and ordinances of the County of Milwaukee and the City of Milwaukee, and the rules and regulations governing the operation of the Airport.

J. Licenses, Permits, Franchises, Taxes

- (1) Concessionaire shall bear all costs of operating said car rental concession and shall procure and pay for all licenses, permits, franchises, and other authorizations required by authority of federal, state, or local governments or any agencies thereof and which may be necessary for the proper operation of said concession at the Airport.

(2) Concessionaire shall bear, at its cost, all taxes assessed against its furnishings, fixtures, equipment, cars, and other personal property used, placed, or installed by it on the premises of the Airport in connection with or incidental to its car rental business.

K. Custodial Services

(1) Concessionaire shall, at its cost, provide for the proper care of the area occupied by and inside its counter, including sweeping, mopping, waxing, dusting, and other similar custodial work, and shall not permit the unattractive and unsanitary accumulation of trash, debris, or litter, regardless of its source, within said leased counter area or within those areas assigned to Concessionaire for the parking of its cars for hire in the public parking garage at the Airport, as shown on Exhibit A. Concessionaire, at its cost, shall be responsible for the maintenance and repair of all lighting fixtures within its leased counter area, including the replacement of incandescent and fluorescent lamps, starters, ballasts and other similar appurtenances. Concessionaire, at its expense, shall provide a complete and proper arrangement for the adequate, safe, and sanitary handling and disposal to the County-owned compactor on the Airport, of all trash, garbage, and other refuse caused by or related to the operation of its business. Piling or accumulation of boxes, cartons, drums, cans, or trash so as to be unsightly or unsafe on or about the Leased Premises is prohibited.

(2) Concessionaire shall assume full responsibility for the maintenance and safety, at its cost, of the Leased Premises in the parking garage and shall be responsible for the daily housekeeping and maintenance of the Leased Premises in the parking garage.

L. Utility Services

Concessionaire shall pay monthly to the telephone utility company all charges for private and direct lines and any intercommunication telephone services contracted for by Concessionaire and serving Concessionaire's facilities. All such telephone services shall be used by Concessionaire and its officers and employees in connection with the operation of the car rental concession only, and not for the conduct of any other business activity.

M. Right of Entry

Concessionaire shall assume full responsibility for the maintenance, at its cost, of the Leased Premises hereunder, provided however, that County shall be responsible only for major maintenance and repairs to the Terminal Building and Parking Garage. Concessionaire has examined the Leased Premises prior to and as a condition precedent to the execution of this Agreement and is satisfied with the physical condition of the Leased Premises and Concessionaire's taking possession of any of the premises leased hereunder is agreed between the parties hereto to be conclusive evidence of Concessionaire's receipt of the Leased Premises in good order and repair. Concessionaire agrees to faithfully and fully maintain the Leased Premises in good condition and state of repair, to the reasonable satisfaction of the Airport Director, during the entire

term of this Agreement or any extension hereof. Upon termination of this Agreement, Concessionaire agrees to restore the Leased Premises to the same condition as when received, reasonable and ordinary wear and tear excepted. If the Leased Premises shall not be so kept by Concessionaire, County may enter the Leased Premises (without such entering causing or constituting a termination of this Agreement or an interference with the possession of the Leased Premises by Concessionaire) and do all things necessary to restore the Leased Premises to the condition required by this Agreement, charging the cost and expense thereof to Concessionaire, and Concessionaire agrees to pay to County all such costs and expenses in addition to the rentals herein provided.

N. Radius Provision/Other Business Activities

Concessionaire agrees that should it operate a car rental facility within five (5) miles of the terminal building, any person who appears at Concessionaire's on or off-airport business locations within a five (5) mile radius of the Airport and enter(s) into an automobile rental agreement, which shall include all airlines, cruise lines, or any other person, firm or entity that may enter into arrangements ("discount arrangement") whereby Concessionaire provides discounts on rentals, shall be deemed to be an Airport Customer except that at Concessionaire's off-airport locations only, customers with driving licenses that contain Milwaukee County zip codes will be excluded from the definition of Airport Customer. Concessionaire agrees that it will not conduct any other business or engage in any other activities on the Airport

premises other than those specifically authorized herein without the prior consent of the County.

O. Activities Prohibited

Concessionaire shall not:

- (1) Commit any nuisance on the Leased Premises or the Airport or knowingly do or permit to be done anything which may result in the creation or commission of a nuisance on the Leased Premises or on the Airport.
- (2) Cause or produce or permit to be caused or produced on the Leased Premises or on the Airport, or to emanate therefrom, any unusual, noxious, or objectionable smokes, gases, vapors, fumes, or odors.
- (3) Use the Leased Premises or any part thereof for lodgings or sleeping purposes.
- (4) Do or permit to be done anything which may interfere with the effectiveness or accessibility of utility, heating, ventilating, or air conditioning systems or portions thereof on the Leased Premises or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage on the Leased Premises or the public areas adjacent thereto, or on the streets or sidewalks adjoining the Leased Premises, or hinder police, firefighting, or other emergency personnel in the discharge of their duties.
- (5) Do or permit to be done anything which may interfere with the effectiveness or accessibility of fire exits, elevators, or escalators on or adjacent to the Leased Premises, including lines, pipes, wires, conduits, and equipment connected with or appurtenant thereto.

- (6) Overload any floor on the Leased Premises.
- (7) Do or permit to be done any act or thing on the Leased Premises which will invalidate any insurance policies required under this Agreement, or carried by County, covering the Leased Premises or the building in which same is located or which, that in the opinion of the Airport Director, may constitute an extra-hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Agreement. Concessionaire shall promptly observe, comply with, and execute the provisions of any and all present and future rules and regulations, requirements, orders, and directions of the appropriate fire department which may pertain or apply to the operations in the Leased Premises. Concessionaire shall make any and all nonstructural improvements or repairs to the Leased Premises required by any such present or future rule, regulation, requirement, order, or direction; and if by reason of any failure on the part of Concessionaire after due notice in writing to comply with the provisions of this subparagraph (7) any insurance rate on the Leased Premises, or any part thereof, or on the buildings in which same are located, shall at any time be higher than it would be otherwise, then Concessionaire shall pay County, on demand, that part of all insurance premiums paid by County which have been charged because of such violation or failure of Concessionaire.



- (8) Cause any car rental business to be diverted from the Airport, but shall take all reasonable measures, in every proper manner, to maintain, develop, and increase the business conducted by it under this Agreement.
- (9) Use, operate, or permit to be installed coin-operated vending machines of any type or for any purpose within the Leased Premises.
- (10) Engage in the sale of or offer for sale, vehicles from its fleet of rental cars at the Airport.

9. RENTALS, FEES, CHARGES, ACCOUNTING REPORTS AND RECORDS

A. Rentals

- (1) Rental for the 310 square feet of counter space leased in the Rental Car Center shall be at the rate of Thirty-five and No/100 Dollars (\$35.00) per square foot per annum, which is due and payable in equal monthly installments of Nine Hundred Four and 17/100 Dollars (\$904.17), on or before the first day of each month. Said rental shall not be deemed a part of the minimum annual guarantee, as provided in Paragraph 9.B. hereof.
- (2) Counter space rental charges of \$35.00 per square foot per annum (psfpa) will remain in effect throughout the term of the Agreement.
- (3) Rental of 12,700 square feet of space in the Rental Car Center shall commence at a rental rate of Six and 73/100 Dollars (\$6.73) per square foot per annum, which is due and payable in equal monthly installments

of Seven Thousand One Hundred Twenty-two and 58/100 Dollars (\$7,122.58). Said rental shall not be deemed a part of the minimum annual guarantee, as provided in Paragraph 9.B.(1) hereof.

- (4) Rentals contained in Paragraph 9.A.(3) are subject to an annual adjustment of Two Percent (2%) each July 1, beginning July 1, 2015.
- (5) Concessionaire's proportional share of the costs for maintaining and cleaning the common use space on the first and second levels of the rental car portion of the garage, including the customer service area, the queuing space in front of Concessionaire counters and the restrooms, allocated annually to concessionaires by the amount of square footage under lease to Concessionaire. The rate for 2013 shall be Fifteen Cents (\$0.15) per square foot per year. Concessionaire shall be pay one-twelfth (1/12<sup>th</sup>) of the costs by the first day of each month. The rate for succeeding contract yearly periods shall be in accordance with the Maintenance & Operating portion of terminal building square footage rates as determined by the County.

B. Fees and Charges

- (1) In addition to the rentals referred to in Paragraph 9.A., beginning with the Commencement Date and continuing throughout the Term of this Agreement, Concessionaire shall pay to the County on a Contract Year basis, either a Minimum Annual Guarantee or Percentage Fee, whichever is computed to be the greater, in the amount and manner as set forth herein.

(a) Minimum Annual Guarantee Fee:

For each month of the term of this Agreement, a sum equal to one-twelfth (1/12<sup>th</sup>) of the then applicable minimum annual guarantee fee as follows:

- (i) for the first Contract Year of this Agreement shall equal \_\_\_\_\_ Thousand and \_\_/100 Dollars (\$\_\_\_\_\_).
- (ii) for each subsequent Contract Year of the Agreement, the Minimum Annual Guarantee shall be adjusted to a sum of money equal to eighty-five percent (85%) of the total percentage fees payable for the previous Contract Year; provided, however, that in no event shall the Minimum Annual Guarantee for any Contract Year be less than the amount paid during the first Contract Year.
- (iii) Said applicable minimum fee payment shall be made in advance and without demand, on the twentieth day of each calendar month after the commencement date of this Agreement. For any period of less than one calendar month during the term of this Agreement, said minimum fee shall be calculated on a pro rata basis. All payments herein are to be in lawful money of the United States of America.

(b) Percentage Fee:

For each month of the term of this Agreement, a

sum equal to ten percent (10%) of the total annual gross revenues as gross revenues are hereinafter defined in Paragraph 9.F. Twenty (20) days after the beginning of each calendar month during the term hereof, Concessionaire shall pay to County a sum of money which represents the excess of the difference between the Percentage Fee and the Minimum Fee for the previous month. In the event the Percentage Fee shall not exceed the Minimum Fee during any month in the term hereof, then no percentage fee shall be due and payable for such month.

C. Customer Facility Charge

- (1) In addition to the Rentals referred to in Paragraph 9.A., and the Fees and Charges referred to in Paragraph 9.B., Concessionaire shall collect a Customer Facility Charge (CFC) of One and No/100 Dollars (\$1.00) per Car Rental Contract written from its customers and remit the money to County. The Customer Facility Charges are County's property and Concessionaire acknowledges that it shall have only a possessory interest not an equitable interest in such Customer Facility Charges. The Customer Facility Charge is payment for the cost of planning, designing, constructing, and financing the Rental Car Center 2012-2013 parking garage modifications in order to increase the available ready/return space and to create additional efficiencies in the ready/return areas of the parking garage. The estimated cost of these improvements to be repaid by Concessionaires is

\$825,000. Upon completion of payment for the Rental Car Center, the \$1.00 per contract will terminate.

- (2) The CFC shall be identified on a separate line of the rental car customer rental agreement and described as "Facility Fee."
- (3) Twenty (20) days after the beginning of each calendar month Concessionaire shall remit to County a separate payment of the total CFCs collected in the prior month and a report of the total number of car rental contracts written in the prior month.
- (4) The CFC collected by Concessionaire shall be deemed to be the property of the County and shall be held in trust by Concessionaire for the benefit of the County. Concessionaire agrees that the CFC is not income, revenue or any other asset to Concessionaire; that Concessionaire has no ownership or property interest in such CFC's; and that Concessionaire hereby waives any claim to a possessory or ownership interest in the CFC's. Concessionaire agrees that it holds such CFC's in trust for the benefit of the County, and that the County (or a trustee on its behalf) has complete possessory and ownership rights to such CFC's. Concessionaire shall segregate, separately account for and disclose all CFC's as trust funds in their financial statements, and shall maintain adequate records that account for all CFC's charged and collected. Failure to segregate the CFC's shall not alter or eliminate their trust fund nature. Concessionaire shall remit all CFC's that were collected or should have been collected from its

Airport Customers on a monthly basis to the County together with a monthly statement of transactions which shall include transaction days. The CFC's shall be remitted and received by the County no later than the last day of the month following the month in which the CFC's were collected. Failure to strictly comply with this shall be considered a material breach of the Concessionaire's authorization to do business at the Airport. County shall have the right to audit the CFC records upon reasonable notice to Concessionaire.

- (5) For the purposes of computing Gross Revenues, as herein defined, it is understood that the CFC is not included in the definition of Gross Revenues.

D. Payment

All remittances for rentals, fees, and charges to be made by Concessionaire to County under this Agreement shall be made payable to the Milwaukee County Department of Public Works, Airport Division, and mailed to the County of Milwaukee, General Mitchell International Airport, Box 78979, Milwaukee, Wisconsin 53278-0979.

E. Pass Through of Concession Recovery Fee

Concessionaire acknowledges that the payments by Concessionaire to County under this Agreement are for Concessionaire's use of the facilities and access to the Airport market, and that none of those payments reflects a fee that is imposed by County upon customers renting vehicles from Concessionaire. County does not require but will not prohibit the separate statement of the Concession Fee on customer invoices or car rental contracts ("invoices"), provided that Concessionaire meets all the

following conditions:

- (1) Such fee is titled "Concession Recovery Fee;"
- (2) Such fee shall appear immediately below all concessionable items and not immediately adjacent to taxes on customer invoices;
- (3) If Concessionaire elects to designate a Concession Recovery Fee on customer invoices, Concessionaire complies with all applicable laws including Federal Trade Commission requirements;
- (4) The amount of the Concession Recovery Fee stated on the invoice and charged to the customer shall not exceed 11.11% for the applicable time period;
- (5) Concessionaire shall not identify, treat or refer to the Concession Recovery Fee as a tax; and
- (6) Concessionaire shall not pass through, unbundle or list any fees (other than a Concession Recovery Fee and Customer Facility Charge) payable to County as a separate item on its customer invoices, except with County's prior written approval.

F. Definition of Gross Revenues

(1) General Definition

The term "gross revenues" as used herein shall be construed to mean the total amount charged by Concessionaire, whether by cash, credit or otherwise including any separately stated fees and charges, related to Concessionaire's operation of its car rental concession at the Airport as authorized by this Agreement, any activities related directly to that operation, and any other business of Concessionaire elsewhere at the Airport, including but not limited to

fixed base operators, private and corporate hangars and charter operator facilities. Gross Revenues applies to all cars supplied by Concessionaire to its customers at the Airport or revenues generated at any other car rental facility within five (5) miles of the Airport terminal building as defined in Paragraph 8.N., without regard to the manner in which or place at which the car rental contract is entered into and without regard to whether the car is owned, leased or otherwise held by Concessionaire. Gross Revenues includes all charges for the month in which the service is rendered, regardless of when payment therefore is received by Concessionaire. All revenue is included in Gross Revenues unless specifically excluded by this Agreement.

(2) Examples of Gross Revenues

Gross Revenues include, but is not limited to:

- (a) Time and Mileage. The time and mileage charges paid or payable to Concessionaire whether by cash, credit or otherwise.
- (b) Insurance. All monies paid or payable from the sale of personal accident insurance, or any insurance of a similar nature, as part of an authorized vehicle rental agreement.
- (c) Waiver. Fees received by concessionaire to waive deductibility in insurance.
- (d) Fuel. All monies collected from or charges to customers as reimbursement for refueling a car returned pursuant to a rental agreement under which the customer is obligated to return the car



with a full tank of gas or all monies collected from or charged to customers in advance for gas, pursuant to a rental agreement.

- (e) Intercity Fees. All Intercity Fees received by Concessionaire.
- (f) Vehicle Exchange. Monies paid to Concessionaire for car rental contracts entered into at the Airport although the car initially rented is exchanged elsewhere and a new contract is submitted therefore.
- (g) Other money Collected. All other monies collected from customers (including, but not limited to, monies from additional or underage drivers, rental of portable telephones, child restraint seats, ski racks, satellite navigation systems or other technology and other items of personal property) except those specifically excluded by this Agreement.
- (h) Concession Recovery Fee. Any amount that Concessionaire separately states and charges to customer to recover amount of concession fee or any other fees paid to County not specifically excluded by this Agreement.

(3) Exclusions

Unless revenues from Concessionaire's car rental concession are expressly and particularly excluded from Gross Revenues under this Agreement, such revenues shall be included in Gross Revenues. Revenues that may be derived from sources similar but not identical to those described herein shall be

included in Gross Revenues unless expressly excluded by this Agreement. Gross Revenues specifically excludes:

- (a) Recovery of Damages. Charges to Concessionaire's customers for repairs to cars damaged by such customers.
- (b) Taxes. Monies collected from Concessionaire's customers for federal, state, county, municipal, or district, authority sales taxes specifically identified as such now in effect or hereinafter levied. No deduction from Gross Revenues shall be allowed for such items including franchise taxes, payroll taxes, or taxes levied on Concessionaire's activities, facilities, equipment, operations, real or personal property.
- (c) Theft. Uncollected charges arising upon theft or conversion of Concessionaire's car, unless and until such charges are collected, provided that this provision shall not apply to uncollected bad debts where Concessionaire has not actively pursued criminal prosecution.
- (d) Customer Facility Charge. The Customer Facility Charge collected from customers by Concessionaire.

(4) Prohibited Reductions

Concessionaire may not reduce Gross Revenues by any of the following:

- (a) Credits for Out-of-Pocket Purchases. Credits given to Concessionaire's customers for such things as out-of-pocket purchases of gas, oil or emergency services, regardless of where made may not be deducted from Gross Revenues.
- (b) No Diversion of Rental Car Revenue Diversion, through direct or indirect means, of rental car revenues from inclusion in Gross Revenues, as defined in this Agreement is prohibited.
- (c) Bad Debts. Concessionaire shall have the right to conduct all or a part of its business on a credit basis; provided, however, that the risk of such operation shall be borne by Concessionaire, and Concessionaire shall include as Gross Revenues any charge Concessionaire customarily makes for goods and services even though Concessionaire fails to actually collect such a charge (i.e., there shall be no charge backs of bad debt).

G. Delinquent Charges or Fees

(1) Interest

Unless specifically waived by legislative action of the Milwaukee County Board of Supervisors, Concessionaire shall be responsible for payment of interest on amounts not remitted in accordance with the terms of its agreement with Milwaukee County. The rate of interest shall be the statutory rate in effect for delinquent County property taxes (presently 1% per month or fraction of a month) as described in

Subsection 74.47(1), Wis. Stats. The obligation for payment and calculation thereof shall commence upon the day following the due dates established in this Agreement.

(2) Penalty

In addition to the interest described above, Concessionaire may be responsible for payment of penalty on amounts not remitted in accordance with the terms of the agreement with Milwaukee County, as may be determined by the administrator of this Agreement, or his designee. Said penalty shall be the statutory rate in effect for delinquent County Property taxes (presently .5% per month, or fraction of a month) as described in Milwaukee County Ordinance Subsection 6.06(1) and Subsection 74.47(2), Wis. Stats. The obligation for payment and calculation thereof shall commence upon the day following the due dates established herein.

(3) Audit Results

If as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the County, interest and penalty shall be calculated thereon in accordance with the above method. Concessionaire shall remit to County any additional amounts identified due and owing as a result of the audit including interest and penalty thereon within thirty (30) days following receipt of the audit report by County. The County's decision not to conduct an annual audit shall not constitute a

waiver of any right or privilege arising under or as a result of this Agreement.

(4) Nonexclusivity

This provision permitting collection of interest and penalty by the County on delinquent payments is not to be considered the County's exclusive remedy for Concessionaire's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the County of any other remedy permitted under this Agreement or the law, including but not limited to termination of this Agreement.

H. Statements, Books, and Records

- (1) Concessionaire agrees to keep accurate records and books of account in compliance with Generally Accepted Accounting Principles (GAAP), generally accepted auditing standards and the requirements of this Agreement, for: (a) all transactions relevant to this Agreement (collectively "Books and Records"); and (b) all exclusions from Gross Revenue claimed by Concessionaire. Concessionaire shall cause to be installed on Concessionaire's Leased Premises, and shall at all times use, such cash registers, invoicing machines, sales slips and other accounting equipment, devices and firms as are reasonably necessary to record properly, accurately and completely all sales at the Airport of Concessionaire's Gross Revenues. Concessionaire shall maintain an internal control structure designed to provide reasonable assurance that Concessionaire's assets are safeguarded from loss or unauthorized use, that transactions are executed in

accordance with management authority, and that the financial records are reliable for the purposes of preparing financial statements. Concessionaire shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments, as required. The internal control structure shall be supported by the selection, training and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. In addition, Concessionaire shall operate its business on the Airport so that a duplicate car rental contract serially pre-numbered shall be issued with each sale or transaction, whether for cash or credit. In the absence of sequentially numbered rental agreements, reports shall be available which provide a methodology of identifying rental agreements that are generated at the Airport, the number of rental agreements closed at said location, the date and term of each rental agreement, and the average fleet size of said location for the month. Separate reports shall be furnished for any location outside the main terminal building, such as fixed base operations or any similar installation on the Airport. These reports shall show a full and complete breakdown analysis of all items included in the calculation of total gross revenues reported and such statements shall be submitted to County together with Concessionaire's payment of monthly rentals as due hereunder. In those situations where Concessionaire's

records have been generated from computerized data (whether mainframe, minicomputer, or PC-based computer systems), Concessionaire agrees to upon request provide County with extracts of data files in a computer readable format on data disks, E-mail with attached files, or suitable alternative computer data exchange formats.

- (2) Books and records shall include detailed analysis listing all of Concessionaire's operations at the Airport and all off airport locations within a five mile radius in the form of printed, written or electronic media. The rental contract forms shall be sequentially numbered in a series designated for use only with this Concession Agreement.
- (3) Within twenty (20) days after the close of each calendar month, Concessionaire shall submit to County, in a form and with detail satisfactory to the Airport Director, a statement of its gross revenues during the preceding month from its operations at the Airport upon which the percentage payments and Customer Facility Charge payments to County set forth in Paragraph 9.B. and 9.C. are computed, and the total number of customer contracts written. These statements are to be signed by a responsible officer or manager of Concessionaire. Concessionaire shall keep full and accurate books and records showing all of its said gross revenues pertaining to operations at the Airport and all off-airport locations within a five mile radius in the form of printed, written or electronic media., and the County shall have the right, through

its representatives, and at all reasonable times, to inspect such books and records, including sales tax return records. Concessionaire hereby agrees that all such records and instruments will be made available to County for at least three (3) years after the termination of this Agreement, or in the event of a claim by County, until such claim of County has been fully ascertained, fixed, paid, and resolved. The records requirements of this section shall also extend to any of Concessionaire's subsidiaries, partners, joint venturers, and sub-Concessionaires or the like.

- (4) Concessionaire shall employ an independent certified public accountant who shall furnish, within ninety (90) days after the close of each contract year, or portion thereof, an audit report to County certifying that in their opinion the fees paid by Concessionaire to County during the preceding year pursuant to this Agreement were made in accordance with the terms of this Agreement. The audit report shall comply with GAAP auditing standards. Such audit report shall also contain a list of the Gross Revenues as shown on the books and records of Concessionaire, which were used to compute the fees paid to County during the period covered by the audit report.
- (5) Within thirty (30) days of receipt of the audit report required in Paragraph 9.H.(3), Concessionaire or County shall make any necessary payment, one to the other, to comply with the percentage due for each said year.



- (6) The County reserves the right to prescribe or change reporting forms, their method and time of submission, and the payment schedule. The County shall first submit to Concessionaire in writing specifically any desired changes.

I. Audit

- (1) County may audit Concessionaire's books and records to verify compliance with this Agreement. County may use its own staff to perform audits under this Paragraph, or may engage an independent certified public accountant to perform the audit. If an audit reveals that Concessionaire has understated the Gross Revenues, as defined herein, by three percent (3%) or more, the entire expense of the audit shall be borne by Concessionaire. In any case, Concessionaire shall pay any additional amounts that the audit determines are due to County within forty-five (45) calendar days from the date of County's invoice, with interest at County's then prevailing Delinquency Charge. Interest shall accrue from the date any Concession Fee, Premises Rent or Additional Rent was due under this Agreement. Charges referenced in the Paragraph are exclusive of all fees and penalties referenced in Paragraph 9.E.
- (2) Concessionaire shall have available, within twenty (20) business days after written request, at its Airport office for review and/or audit by County staff or its designee, full and accurate records, accounts, books, and data with respect to business done by it hereunder which shall show all of the Gross Revenues

of said business, as defined herein, in sufficient detail to readily permit verification, and to include accountability and control of all car rental contracts and equipment forms and records identifying Concessionaire owned or operated cars and equipment rented at the Airport. Should travel to the Concessionaire out of state offices be required in order for County to conduct such a review and/or audit, all reasonable costs incurred by the County including but not limited to airfare, meals, lodging and local transportation shall be paid by Concessionaire.

- (3) In the event the County, or County's authorized agent, requests inspection of records for the purposes of an audit and Concessionaire does not produce such records, which within the County's opinion meet the County's request, within twenty (20) Business Days or as otherwise agreed upon between the parties, Concessionaire shall be fined One Hundred and No/100 Dollars (\$100.00). In the event Concessionaire does not then produce such records within ten (10) Business Days from the County's request, and County then makes an additional request either in person, by telephone, fax, email, or in writing, Concessionaire shall be charged an additional One Hundred and No/100 Dollars (\$100.00) per day until such time as the requested records are produced. In addition, for each additional contact the County makes prior to the records being produced, Concessionaire shall be fined another Fifty and No/100 Dollars (\$50.00) for each

contact made. This amount is intended to compensate the County for additional staff time and resources needed to conduct the audit. In the event it is discovered through the Audit that Concessionaire has been not reporting a certain charge as Gross Revenues when it should have been, not only shall Concessionaire pay the County its percentage of that charge but the Concessionaire shall pay all of the County's costs associated with any audit conducted under this Paragraph. The County and Concessionaire have agreed that this is a fair and reasonable estimate of the County's costs incurred in processing, reviewing, and/or demanding the delinquent requested records necessary for the County to complete an Audit. Imposition of any Delinquency Charge shall not constitute a waiver of any other remedies available to the County due to Concessionaire's failure to timely pay the Audit fines.

J. Additional Fees and Charges

- (1) Concessionaire shall pay additional fees and charges under the following conditions:
  - (a) If the County has paid any sum or sums or has incurred any obligation or expense which Concessionaire agreed to pay or to reimburse County;
  - (b) If the County is required or elects to pay any sum or sums or incurs any obligations or expense because of the failure, neglect, or refusal of Concessionaire to perform or fulfill any of the conditions of this Agreement; or

- (c) If the County incurs any obligation or expense on behalf of Concessionaire in order to insure Concessionaire's continuing operation of a car rental concession at the Airport.
- (2) Concessionaire shall pay additional fees and charges related to employees including but not limited to employee parking and employee identification badges.

K. Abatement

Concessionaire's obligation to make the monthly payment of the minimum guarantee hereof shall abate for each month during the term of this Agreement in which either of the following circumstances exist:

- (1) The number of deplaning passengers on all scheduled airline flights (as defined below) at the Airport during one calendar month is less than eighty percent (80%) of the number of such deplaning passengers for the same calendar month of the previous calendar year; or
- (2) Concessionaire's vehicle rental business at the Airport, through no fault of its own, is affected by shortages or other disruptions in the supply of cars, gasoline, or other goods necessary for the operation of Concessionaire's business, and which results in a material diminution, as determined by the Airport Director, in Concessionaire's Gross Revenues for that calendar month.

10. COMPLIANCE WITH ENVIRONMENTAL LAWS

- A. Concessionaire shall keep and maintain and shall conduct its operations in full compliance with all federal, state, or

local environmental laws, rules, regulations or other legislation (hereinafter "laws"). Concessionaire will ensure that its employees, agents, contractors, subcontractors, and any other persons under Concessionaire's control are in full compliance with all laws.

Concessionaire shall be responsible for obtaining in its name all necessary government permits or other approvals required by any laws.

- B. Concessionaire shall provide written notice to the Airport Director within three (3) days of the discovery of any matter that may give rise to an environmental liability, or if Concessionaire becomes aware of any release, threatened release, discharge, disposal or emission of any Hazardous Material in, on, under or around the Leased Premises caused by Concessionaire which is not in full and complete compliance with all laws. All fuel spills caused by Concessionaire must be reported to Airport Operations as soon as practicable but no later than within twenty-four (24) hours after the spill. Concessionaire is required to clean up all spills caused by Concessionaire at its expense as soon as practicable.

#### 11. LIQUIDATED DAMAGES

- A. The liquidated damages required by this Paragraph are solely for inconvenience to the public and adverse effects on Airport operations. Payment of liquidated damages shall not relieve Concessionaire of responsibility for physical damage, personal injury, or other harm caused by the tortious acts of Concessionaire, its employees, agents, or contractors.

- B. For non-monetary defaults under this Agreement, County in its sole discretion may determine if a violation of this Agreement has occurred and may impose the following penalties. The Airport Director shall provide written notice of each offense to Concessionaire. Failure to pay assessment or surrender space within thirty (30) days of such notice shall constitute a default under this Agreement. Offenses in this Paragraph are cumulative over the term of this Agreement and are in addition to any other remedies County may have under this Agreement or by law.
- C. With the exception of Violation E below, the first offense in any category will result in a warning letter. The second offense will require Concessionaire to pay to County liquidated damages in the amount listed below. For a third offense in the same category, Concessionaire shall pay to County damages in the amount listed below. For a fourth and each subsequent cumulative offense, Concessionaire shall pay to County the third violation amount plus an additional 100%. For Violation E below, no warning letter will be sent to Concessionaire, the second violation will occur on April 1st each year, the third violation will occur on April 2nd, the fourth violation will occur on April 3, etc. Concessionaire agrees that said amounts are fair compensation to County for said damage. County in no way waives its rights under this Agreement, such as default and termination, or other remedies as prescribed by law through the imposition of liquidated damages.

12. LIQUIDATED DAMAGES FOR VIOLATION OF OPERATING STANDARDS

	<u>VIOLATION</u>	<u>SECOND VIOLATION</u>	<u>THIRD VIOLATION</u>
A.	Separately stating or passing through charges in violation of Paragraph 9. E.	\$50.00 per customer invoice	\$75.00 per customer invoice
B.	Parking by Lessee in unauthorized areas	\$100.00	\$500.00
C.	Violating proscribed hours of operation	\$100.00	\$500.00
D.	Late monthly reporting of Gross Revenues in violation of Paragraph 9. H. (2)	\$25.00 per day	\$50.00 per day
E.	Late annual financial per reporting in violation of Paragraph 9. H. (3)	\$50.00 per day	\$100.00 per day
F.	Inadequate recordkeeping in violation of Paragraph 8. N.	\$25.00 per occurrence	\$50.00 per occurrence
G.	Parking, stopping, or standing, or active loading & unloading rental car customers & customer belongings on the baggage claim roadway	\$100.00 per occurrence	\$200.00 per occurrence

13. NONDISCRIMINATION

Concessionaire, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree, that (1) no person on the grounds of race, color, religion, sex, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) that in the construction of any improvements in its assigned area and the furnishing of services thereon, no

person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; (3) that Concessionaire shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. That in the event of breach of any of the above nondiscrimination covenants, County shall have the right to terminate this Agreement and to reenter and repossess the facilities thereon, and hold the same as if this Agreement had never been made or issued.

14. AFFIRMATIVE ACTION

Concessionaire assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Concessionaire assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. The Concessionaire assures that it will require that its covered suborganizations provide assurances to Concessionaire that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.



15. AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE

- A. This Agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23, Subpart A, Sec. 23.9. Concessionaire 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 of or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement covered by 49, CFR Part 23, Subpart A, Sec. 23.9.
- B. Concessionaire agrees to include the statements in Paragraph 15.A. 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.
- C. Concessionaire shall comply with County's approved Airport Concessions Disadvantaged Business Enterprise (ACDBE) program submitted in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Office of the Secretary, Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions, and as said Regulations may be amended.
- D. Concessionaire shall make a good faith effort to adhere to the ACDBE program submitted with Concessionaire's Proposal, which assures that the percentage of the Gross Revenues, as stated in said proposal, derived from the operation of its business at the Airport be attributed to DBEs and/or ACDBEs certified by the Wisconsin Unified Certification Program (UCP) throughout the concession term. Any change to the

ACDBE participation plan submitted with Concessionaire's Proposal is subject to County's written approval.

- E. If Concessionaire fails to achieve and maintain the level of participation by DBEs and/or ACDBEs stated in its proposal and subject to this Agreement, Concessionaire shall provide documentation to the Office of Community Business Development Partners (CBDP) demonstrating that it made good faith efforts in its attempt to meet the required level of participation. If Concessionaire fails to reflect a good faith effort to achieve and maintain the level of participation throughout the term of this Agreement, County may consider this as a material breach of the Agreement and may terminate the Agreement in accordance with Paragraph 22 of this Agreement.
- F. County shall notify Concessionaire in the event that new regulations are issued by the U.S. Department of Transportation (USDOT) implementing Section 511 (h) of the Airport and Airway Improvement Act (AAIA) of 1982, as amended. Following such notification, Concessionaire shall continue to meet the level of participation by DBEs and/or ACDBEs as stated in its proposal and subject to this Agreement, and initiate all necessary and reasonable steps to achieve and/or maintain the newly established level of participation throughout the remaining term of this Agreement. Participation may be in the form of any legal arrangement meeting the eligibility standards in 49 CFR Part 23, as currently stated or amended, and shall be counted toward the goal as set forth in those regulations.

G. Concessionaire shall be required to comply with other appropriate provisions of 49 CFR Part 23 implementing Section 511 (h) of the AAIA. Concessionaire shall submit such reports as may be required by County and CBDP in the form specified by County for the purpose of demonstrating compliance with this Paragraph. In the event Concessionaire seeks to terminate the participation of any DBE and/or ACDBE partner, Concessionaire is required to notify said partner of intent, allow 5 days for said partner to satisfy stated deficiencies, and obtain written approval from CBDP. Written approval from CBDP of termination will not be granted absent cause. Substitute participation is subject to CBDP's written approval.

16. NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS REQUIRED BY GENERAL ORDINANCES OF MILWAUKEE COUNTY

A. Section 56.17(1a)

In the performance of work or execution of this Agreement, the Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, national origin, age, sex, or handicap, which shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeships. The Concessionaire will post in conspicuous places, available for employment notices, to be provided by the County setting forth the provisions of the nondiscriminatory clause. A violation of this provision shall be sufficient cause for the County to terminate the

agreement without liability for the uncompleted portion or for any materials or services purchased or paid for by the Concessionaire for use in completing the Agreement.

B. Section 56.17(1d)

Concessionaire agrees that it will strive to implement the principles of equal employment opportunities through an effective affirmative action program, and will so certify prior to the award of the Agreement, which program shall have as its objective to increase the utilization of women, minorities and handicapped persons, and other protected groups, at all levels of employment in all divisions of Concessionaire's work force, where these groups may have been previously underutilized and under-represented. Concessionaire also agrees that in the event of any dispute as to compliance with the aforementioned requirements, it shall be its responsibility to show that it has met all such requirements.

17. INDEMNITY

To the fullest extent permitted by law, the Concessionaire agrees to indemnify, defend, and hold harmless the County and its agents, officers, and employees from and against all losses or expenses including costs and attorney's fees by reason of liability for damages including suits at law or in equity, caused by any wrongful, intentional, or negligent acts or omissions of the Concessionaire, or its (their) agents which may arise out of or are connected with the activities covered by this Agreement. Concessionaire shall indemnify and save County harmless from any award of damages and costs against County for any action based on Title VII of the Civil Rights Act of 1964 or

any other state or federal antidiscrimination law or regulation or for U.S. patent or copyright infringement regarding computer programs involved in the performance of the tasks and services covered by this Agreement.

18. INSURANCE

Concessionaire agrees to evidence and maintain proof of financial responsibility to cover costs as may arise from employees. Such evidence shall include insurance coverage for Workers Compensation claims as required by the State of Wisconsin, including Employers Liability, and Business Insurance covering general liability and automobile coverage in the following minimum amounts:

<u>Worker's Compensation (WI)</u>	<u>Statutory (Waiver of Subrogation)</u>
or Proof of All States coverage Employers Liability	\$100,000/500,000/100,000
<u>Comprehensive General Liability</u>	
Bodily Injury & Property Damage (Incl. Personal Injury, Fire	\$1,000,000 Per Occurrence
Legal & Contractual & Products/ Completed Operations)	\$1,000,000 General Aggregate
<u>Automobile Liability</u>	
All Autos and/or Non-Owned Bodily Injury & Property Damage	\$1,000,000 Per Accident

Evidence of self-insurance financing such as an Irrevocable Letter of Credit, noncancelable bond, or some other security deposit can be substituted for the Automobile Liability coverage stated above.

County shall be named as additional Insured, As Its Interests May Appear, and be afforded a thirty day (30) written notice of cancellation or non-renewal. A certificate indicating the above coverages shall be submitted for review and approval by County for the duration of this Agreement. Coverages shall be placed with an insurance company approved by the State of Wisconsin and rated "A" per Best's Key Rating Guide. Additional information as to policy form, retroactive date, discovery provisions and applicable retentions, shall be submitted to County, if requested, to obtain approval of insurance requirements. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the County for approval prior to the commencement of activities under this Agreement.

19. UNEMPLOYMENT INSURANCE

Concessionaire shall also furnish evidence satisfactory to said Airport Director that it carries unemployment insurance pursuant to the requirements of the Statutes of the State of Wisconsin.

20. PERFORMANCE BOND

A. Simultaneously upon signing of this Agreement, Concessionaire shall furnish to County a valid performance bond or letter of credit in the principal sum of \_\_\_\_\_ and \_\_\_/100 Dollars (\$ \_\_\_\_\_). The bond or letter of credit shall be issued by a surety company licensed to do such business in the State of Wisconsin. The bond or letter of credit is subject to the approval of County's Corporation Counsel,

and shall be maintained and kept by Concessionaire in full force and effect during the entire term of this Agreement and three (3) months past the termination date of this Agreement and any extensions thereof. Such surety bond or letter of credit shall be conditioned to insure the faithful and full performance by Concessionaire of all the covenants, terms, and conditions of this Agreement and to stand as security for the payment by Concessionaire of all valid claims by County against Concessionaire. If at any time this Agreement terminates or is terminated, there is due and owing to County any sum payable under the terms hereof; or, if County has any claim against Concessionaire arising out of this Agreement, then said \_\_\_\_\_ and \_\_\_/100 Dollars (\$\_\_\_\_\_) or any part thereof shall be applied in payment of the amount due or in settlement of the claim or claims of County against Concessionaire.

- B. It is understood that this remedy is nonexclusive and is in addition to and not in lieu of all other rights, remedies or causes of action available to the County under this Agreement, at law or in equity, which County specifically reserves to itself.

21. DAMAGES FOR UNAUTHORIZED HOLDING OVER; PERFORMANCE BOND AND LIABILITY INSURANCE

- A. After the termination of this Agreement or the expiration of its term, County may, upon 30 days notice to Quit And Surrender, collect from Concessionaire as liquidated damages for any holding over by Concessionaire double the amount of the monthly minimum guarantee or the amount of

rental paid to County immediately prior to the commencing of such holding over, whichever rental is the greater. County shall have a lien on the property of Concessionaire as security for the payment of such liquidated damages and shall be entitled to collect the same by foreclosure on such property.

- B. The performance bond and liability insurance coverage that Concessionaire is required to furnish in connection with the operation of the Concession shall continue in effect during the term of this Agreement and any holding over of the Leased Premises by Concessionaire, whether such holding over be with or without the authority of the County.

22. SURRENDER OF POSSESSION - RESTORATION OF PREMISES

Upon the termination of this Agreement or any renewal hereof for any reason, Concessionaire shall forthwith remove from the Leased Premises all goods, chattels, furnishings, fixtures, and equipment owned by Concessionaire and restore the Leased Premises to the condition that existed on the date Concessionaire initially took occupancy thereof or, at County's option, the date immediately following completion of the last approved construction or alteration, with ordinary wear and tear and damage by fire or the elements excepted, provided, however, that Concessionaire shall have first paid all rentals due County and shall have settled all valid claims of County against Concessionaire. In the event of the failure by Concessionaire to remove from the Leased Premises all property required hereunder to be removed by it, including the restoration of the Leased Premises as herein provided within a period of ten (10) days after this Agreement is terminated, County shall have the



right to remove and store said property and restore the Leased Premises to the condition required herein, charging the cost and expense thereof to Concessionaire; Concessionaire agrees to pay County all costs, fees, or other charges incurred by County under this circumstance. Concessionaire shall be liable for the payment of rentals and fees for any period of occupancy of the Leased Premises beyond the date of the termination of this Agreement.

23. LIENS AND ENCUMBRANCES

Concessionaire shall not permit the Concession areas to become subject to any mechanic's, laborer's, or materialman's lien on account of labor or material furnished to Concessionaire or claimed to have been furnished to Concessionaire in connection with work of any character performed or claimed to have been performed on or in the concession areas by, or at the direction of Concessionaire.

24. EMINENT DOMAIN

In the event that the United States of America or the State of Wisconsin shall, by exercise of the right of eminent domain or any other power, acquire title in whole or in part to the Airport, including any portion leased to Concessionaire, Concessionaire shall have no right of recovery whatsoever against County but shall make its claim for compensation solely against the United States of America or the State of Wisconsin, as the case may be.

25. UNTENANTABLE PREMISES

- A. If the Leased Premises are partially damaged by fire or other casualty, but not rendered untenable, as determined by County, County shall repair same at its own cost and expense, provided, however, that if the damage is caused by the negligent act or omission of Concessionaire its agents, or employees, Concessionaire shall be responsible for reimbursing County for the cost and expenses incurred in such repair.
- B. If the damage is so extensive as to render the Leased Premises untenable, as determined by County, but capable of being repaired in sixty (60) days, the same shall be repaired by County at its own cost and expense, and rentals and privilege fees payable by Concessionaire for the damaged structure shall be proportionately adjusted until such time as the Leased Premises shall be fully restored; provided, however, that if said damage is caused by the negligent act or omission of Concessionaire, its agents or employees, the rental and privilege fees due will not abate and Concessionaire shall be responsible for reimbursing County for the costs and expense incurred in such repair.
- C. In the event the premises are completely destroyed by fire or other casualty or so damaged that they will remain untenable, as determined by County for more than sixty (60) days, Concessionaire shall have two options:
- (1) If the Leased Premises are repaired or reconstructed with due diligence by the County at its own cost and expense, the rental due hereunder for the damaged structures shall be proportionately adjusted until such time as the building shall be fully restored, and

- Concessionaire may continue this Agreement; or
- (2) If after twelve (12) months from the time of such damage or destruction said buildings shall not have been repaired or reconstructed for Concessionaire's use, or other reasonable facilities provided in lieu thereof, Concessionaire may give the County written notice of its intention to then cancel this Agreement in its entirety or to cancel as of the date of such damage or destruction. The term "Leased Premises" as used herein refers to the building structure only and neither bears nor implies any reference to the contents of the building.

26. LIABILITY OF COUNTY

Except as provided in Paragraph 17 hereof, it is specifically understood and agreed that County shall have no liability to Concessionaire, its employees, agents, servants, or patrons, for damage to or loss of property of Concessionaire from any cause whatsoever, unless such damage to or loss of property shall be caused by negligence on the part of County, its employees, agents, or servants.

27. ASSIGNMENT

Concessionaire shall not assign this Agreement, in whole or in part or sublease any portion of the Leased Premises without the prior written consent of County, evidenced by Resolution that has been fully adopted in all respects by its Board of Supervisors. No request for, or consent to, such assignment or sublease shall be considered unless Concessionaire shall have

paid all rentals, fees, and charges which have accrued in favor of County and Concessionaire shall have otherwise met all other legal obligations to be performed, kept, and observed by it under the terms and conditions of this Agreement or as this Agreement may be subsequently amended or modified.

28. . TERMINATION BY COUNTY

This Agreement shall be subject to termination by County in the event of the happening of any one or more of the following contingencies:

- A. If Concessionaire shall file a voluntary petition of bankruptcy; or if proceedings in bankruptcy shall be instituted against it and it is thereafter adjudicated a bankrupt pursuant to such proceedings; or if a court shall take jurisdiction of Concessionaire and its assets pursuant to proceedings brought under the provisions of any federal reorganization act; or if a receiver for Concessionaire's assets is appointed; or if Concessionaire shall be divested of its rights, powers, and privileges under this Agreement by other operation of law.
- B. If Concessionaire shall abandon and discontinue the conduct and operation of said car rental concession at the Airport for a period of sixty (60) days or more.
- C. If Concessionaire shall default in or fail to make any payments at the times and in the amounts as required of it under this Agreement.
- D. If Concessionaire shall fail to perform, keep, and observe all of the covenants and conditions contained in this Agreement to be performed, kept, and observed by it, including, but not limited to, the payment of fees and

other charges in the time, manner, and amount as provided in this Agreement and compliance with all applicable laws, ordinances, codes, rules, and other regulatory measures of the United States of America, the State of Wisconsin, County of Milwaukee, and City of Milwaukee, and the rules and regulations governing the use, operation, and control of the Airport.

- E. All rights, privileges, or interests acquired by Concessionaire under the terms of this Agreement may, at the option of County, following written notice of thirty (30) days, be suspended or finally terminated if such suspension or termination is found by County, acting in good faith, to be necessary to secure Federal financial aid for the development and improvement of the Airport.
- F. During the time of war or national emergency, County shall have the right to lease the Airport or any part thereof to the United States Government for military or naval use; and, if any such lease is executed, the provisions of Concessionaire's Agreement with County, insofar as they are inconsistent with the provisions of the lease to the Government, shall be suspended.
- G. Upon the happening of any of the contingencies recited in subsections (B), (C), and (D) of Paragraph 27 hereof, County shall give written notice to Concessionaire to correct or cure such default, failure to perform, or breach; and if, within thirty (30) days from the date of such notice, the default, failure to perform, or breach complained of shall not have been corrected in a manner satisfactory to County's Airport Director, then, in such event, County shall have the right, at once and without

further notice to Concessionaire, effectuated by resolution fully adopted by its Board of Supervisors, to declare this Agreement terminated and to enter upon and take full possession of the Leased Premises.

H. Upon the happening of any one of the contingencies enumerated in Paragraph 27. A. hereof, this Agreement shall be deemed to be breached by Concessionaire and without entry or any other action by County, this Agreement shall terminate, subject to be reinstated only if such involuntary bankruptcy or insolvent proceedings, petition for reorganization, trusteeship, receivership, or other legal act divesting Concessionaire of its right under this Agreement shall be denied, set aside, vacated, or terminated in Concessionaire's favor within sixty (60) days from the happening of the contingency. Upon the happening of said latter events, this Agreement shall be reinstated as if there had been no breach occasioned by the happening of said contingencies, provided that Concessionaire shall, within ten (10) days after the final denial, vacating, or setting aside of such petition on the vacating, terminating, or setting aside of such appointment, pay or discharge any or all sums of money which may have become due under this Agreement in the interim and shall then remain unpaid and shall likewise fully perform and discharge all other obligations which may have accrued and become payable in the interim. |

I. In the event that defaults, failure to perform, and breaches by Concessionaire of its obligations under this Agreement to be performed, kept, and observed by it shall recur from time to time to such extent that County's

Airport Director believes that Concessionaire is an unsatisfactory Concessionaire, then, upon written recommendation by the Airport Director to County's Board of Supervisors, County shall have the right, upon resolution fully adopted by said Board, to terminate this Agreement. Upon adoption of such resolution, County shall give written notice of such termination to said Concessionaire and this Agreement shall terminate within ten (10) days from the date of said notice.

- J. In the event there is a finding by an independent CPA firm or County's designated auditors which indicates a lack of proper internal control structure or fraudulent practices on the part of Concessionaire which results in an audit adjustment of the amount due to County of five percent (5%) or more; or Concessionaire diverts, through direct or indirect means, car rental revenues from inclusion in Gross Revenues as defined in this Agreement. Diversion shall include, but not be limited to, the following situations:
- (1) Shortage of rental cars at the Airport while having rental cars available elsewhere in the metropolitan area, renting such car to a potential customer that arrived at the Airport and not including the resulting rental car revenue in the Gross Revenues defined in this Agreement.
  - (2) The taking of a reservation, advertising or suggesting to a potential customer arriving at the Airport that the customer rent a car at a location in the metropolitan region other than the Airport regardless of the reason, and not including the car rental revenue resulting from such transaction in Gross Revenues.

29. WAIVERS

- A. The acceptance of charges and fees by County for any period or periods after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by Concessionaire shall not be deemed a waiver of any rights on the part of the County to cancel this Agreement for failure by Concessionaire to so perform, keep, or observe any of the terms, covenants, or conditions hereof to be performed, kept, and observed.
- B. No waiver by County of any of the terms of this Agreement to be kept, performed, or observed by Concessionaire shall be construed to be or act as a waiver by County of any subsequent default on the part of Concessionaire.
- C. No waiver of default by either party of any of the terms, covenants, or conditions of this Agreement to be performed, kept, and observed by either party, either prior to or after either party may have remedied the same, shall be construed to be or act as a waiver of any subsequent default of any of the terms, covenants, and conditions herein contained to be performed, kept, and observed by either party.
- D. County's decision not to conduct an annual audit shall not constitute a waiver of any right or privilege arising under or as a result of this Agreement.

30. TERMINATION BY CONCESSIONAIRE

Concessionaire may cancel this Agreement and terminate all or any of its obligations hereunder at any time or that



Concessionaire is not in default in its payments to County under the terms hereof by giving thirty (30) days' written notice upon or after the happening of any one of the following events:

- A. The permanent abandonment of General Mitchell International Airport as an airport.
- B. The issuance by any court of competent jurisdiction of an injunction substantially preventing or restraining the use of the Airport or of the Terminal Building and the remaining in force of such injunction for at least sixty (60) days.
- C. The breach by County of any of the terms, covenants, and conditions of this Agreement and the failure of County to remedy such breach for a period of sixty (60) days after the receipt of written notice from Concessionaire of the existence of such breach.
- D. The assumption by the United States Government or the State of Wisconsin, or any authorized agency of either, of the operation, control, or use of the Airport and its facilities in such manner as to substantially restrict Concessionaire from operating a car rental concession, if such restriction be continued for a period of three (3) months or more.

31. QUIET ENJOYMENT

County agrees that, on payment of the rentals and fees required by this Agreement and compliance with and performance of the covenants and agreements on the part of Concessionaire to be performed hereunder, Concessionaire shall peaceably have and enjoy the Leased Premises and the use of the Airport to the extent herein authorized.

32. INTERPRETATION OF AGREEMENT

It is understood and agreed that nothing contained in this Agreement is intended or should be construed as in any way creating or establishing the relationship of co-partners between the parties hereto or as constituting Concessionaire as the agent, representative, or employee of County for any purpose or in any manner whatsoever. Concessionaire is to be and shall remain an independent contractor with respect to all services performed by it under this Agreement and agrees to, and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Worker's Compensation Insurance, Unemployment Insurance, or Old Age Retirement Benefits, Pensions, or Annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remunerations paid to persons employed by Concessionaire for work performed with relation to the terms of this Agreement, and Concessionaire agrees to indemnify and save County harmless from any such contributions or taxes or liability therefore. In interpreting the provisions of this Agreement, the laws of the State of Wisconsin shall prevail.

33. INVALID PROVISIONS

In the event any covenant, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, condition, or provision shall in no way affect any other covenant, condition, or provision herein contained, provided that the invalidity of

such covenant, condition, or provision does not materially prejudice either County or Concessionaire in their respective rights and obligations contained in the valid covenants, conditions, or provisions of this Agreement.

34. NOTICES

Notices to County provided for in this Agreement shall be sufficient if sent by certified or registered mail or overnight delivery, postage prepaid, addressed to:

Airport Director  
General Mitchell International Airport  
5300 South Howell Avenue  
Milwaukee, Wisconsin 53207



and notices to Concessionaire shall be sufficient if sent by certified or registered mail, postage prepaid to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or to such other respective addresses as the parties may designate to each other in writing from time to time.

35. PARAGRAPH HEADINGS

The paragraph headings contained herein are for convenience in reference and are not intended to specifically define or limit the scope of any provision of this Agreement.

36. FAMILIARITY AND COMPLIANCE WITH TERMS

Concessionaire represents that it has carefully reviewed the terms and conditions of this Agreement and is familiar with the terms and conditions and agrees faithfully to comply with the same to the extent to which said terms and conditions apply to its activities as authorized and required by this Agreement.

37. SUCCESSORS AND ASSIGNS

All provisions of this Agreement shall extend to bind and inure to the benefit not only of County and of Concessionaire, but also their respective legal representatives, successors, and assigns.

38. GOVERNMENTAL FACILITIES

In the event that the Federal Government discontinues the provision and operation of air traffic controls, navigational aids, and other Airport facilities, which are now or may hereafter be furnished by it, County shall not be required or obligated to furnish such facilities and services after discontinuance thereof by the Federal Government.

39. AIRPORT SECURITY

Concessionaire covenants and agrees that it will at all times maintain the integrity of the Airport Security Plan and comply with all laws, statutes, rules, regulations and orders, including Federal Rules 49 CFR 1542, promulgated by any federal, state, or local agency, authority, or officer, including the Federal Aviation Administration, the Federal Transportation

Security Administration and the U.S. Department of Justice. Concessionaire, its employees agents or contractors are expressly required at all times to comply with all laws, statutes, rules, regulations and orders, including Federal Rules 49 CFR 1542, promulgated by any federal, state, or local agency, authority, or officer, including the Federal Aviation Administration, the Federal Transportation Security Administration and the U.S. Department of Justice. Should a penalty be imposed on County for an incident involving Concessionaire's breach of security, Concessionaire agrees to reimburse County for any and all such penalties including, but not limited to, civil fines which may be imposed upon the County by any state, local or federal agency, or officer, including the Transportation Security Administration.

40. GOVERNMENTAL RIGHTS

Nothing in this Agreement shall be construed or interpreted in any manner whatsoever as limiting, relinquishing, or waiving any of the rights or ownership enjoyed by County in the Airport or in any manner waiving or limiting its control over the development, improvement, operation, and maintenance of the Airport or in derogation of such governmental rights as County possesses, except as may be otherwise specifically provided herein.

41. AIRCRAFT NOISE AND OVERFLIGHT AND OPERATIONS

Concessionaire recognizes that the Leased Premises is located on an active airport and, as such, is subject to aircraft noise, vibration, exhaust, and overflight associated with the operation

of the Airport. Concessionaire acknowledges that it has familiarized itself with the overflight, noise, vibration, and exhaust characteristics of the Leased Premises and acknowledges that it realizes that such overflight, noise, vibration, and exhaust may change during the term of this Agreement. Concessionaire hereby releases the County, the State of Wisconsin, the FAA, the airlines operating at the Airport, and their respective directors, officers, employees, board members, and agents, from any and all claims, demands, suits, or causes of action for damages or injunctive relief arising out of, or in any way associated with, aircraft noise, vibration, and exhaust at, or aircraft overflight of the Leased Premises. It is understood between the parties that this release is a material inducement of County's decision to enter into this Agreement.

42. LESSOR'S RIGHT TO PERFORM LESSEE'S COVENANTS

If Lessee shall default in the performance of any covenant required to be performed by it by virtue of any provision in this Agreement, Lessor may, but shall not be obligated to, perform the same for the account and at the expense of Lessee after first having delivered to Lessee at least thirty (30) days written notice of intention to do so or such shorter written notice as may be appropriate under emergency conditions. If Lessor at any time is compelled to pay any sum of money or to do any act which will require the payment of any sum of money by reason of the failure of Lessee to comply with any provision of this Agreement, or if Lessor elects to make any such payment or to take any such action, which payment or action is reasonably necessary for the protection of Lessor's interest in the Leased Premises, or if Lessor is compelled to incur any expense,

including reasonable counsel fees, in instituting, prosecuting or defending any action or proceeding instituted by reason of any default of Lessee hereunder, the sum or sums so paid by Lessor, with interest at the rate of twelve percent (12%) per annum, penalties, costs and damages, shall be deemed to be additional rent and shall be paid by Lessee to Lessor on the next date following the incurring of such expenses upon which a regular monthly rental payment is due.

43. MISCELLANEOUS

This Agreement shall be interpreted and enforced under the laws and jurisdiction of the State of Wisconsin. This Agreement will not be construed more strongly against either party regardless of which party is more responsible for its preparation. This Agreement constitutes the entire understanding between the parties and is not subject to amendment unless agreed upon in writing by both parties hereto. Lessee acknowledges and agrees that it will perform its obligations hereunder in compliance with all applicable state, local, and federal laws, needs, regulations, and orders.

44. GENERAL PROVISIONS

A. Operations

Concessionaire acknowledges that there may be considerable changes at the Airport and disruptions due to construction during the term of this Agreement. County will endeavor to the extent practical to minimize the disruption, but County shall have no responsibility or liability for disruptions to Concessionaire's operations or temporary interruptions

of Concessionaire's use of any part of the Airport due to construction activities by County or County's contractors or representatives.

B. Attorney's Fees

In the event any action, suit, or proceeding is brought to collect the rent or fees due or to become due hereunder or any portion thereof or to take possession of any concession space or to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement, Concessionaire agrees to pay County such sum as the court may adjudge reasonable as attorney's fees to be allowed in the suit, action or proceeding.

C. Relationship of Parties

It is understood and agreed that nothing herein contained is intended or shall be construed as in anyway creating or establishing the relationship of co-partners between the parties hereto, or as constituting the Concessionaire as the agent, representative or employee of County for any purpose or in any manner whatsoever. The Concessionaire is to be and shall remain an independent contractor with respect to all services performed under this Agreement.

D. Severability

If any part of this Agreement shall be held invalid this does not affect the validity of the remaining parts of this Agreement, provided that such invalidity does not materially prejudice either County or Concessionaire under the remaining parts of this Agreement.

E. New Entrant Consideration

In the event that any contract granted by County to any other car rental concessionaire shall contain any



provisions more favorable to such concessionaire than the terms herein granted, then, at the option of Concessionaire, this Agreement shall be amended to include such more favorable terms and any off setting burdens that may be imposed on any such other concessionaire. The intent of this provision is to insure that Concessionaire is competing on as equal of terms as possible with any additional concessionaire and, as a result, no other concessionaire shall enjoy any rights, profits or other conditions more favorable to such concessionaire than those enjoyed by Concessionaire herein.

F. Independent Contractor

Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between County or its successors or assigns and Concessionaire or its successors or assigns. In entering into this Agreement, and in acting in compliance herewith, Concessionaire is at all times acting and performing as an independent contractor, duly authorized to perform the acts required of it hereunder.

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

APPROVED:

MILWAUKEE COUNTY  
a municipal corporation

\_\_\_\_\_  
Airport Director                      Date

By \_\_\_\_\_  
Brian Dranzik  
Director, Department of  
Transportation

\_\_\_\_\_  
Corporation Counsel                      Date

By \_\_\_\_\_  
Joseph J. Czarnezki  
County Clerk

\_\_\_\_\_  
Risk Management                      Date

\_\_\_\_\_  
Community Business                      Date  
Development Partners  
Director

COUNTY  
\_\_\_\_\_  
a \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

By \_\_\_\_\_

Title \_\_\_\_\_

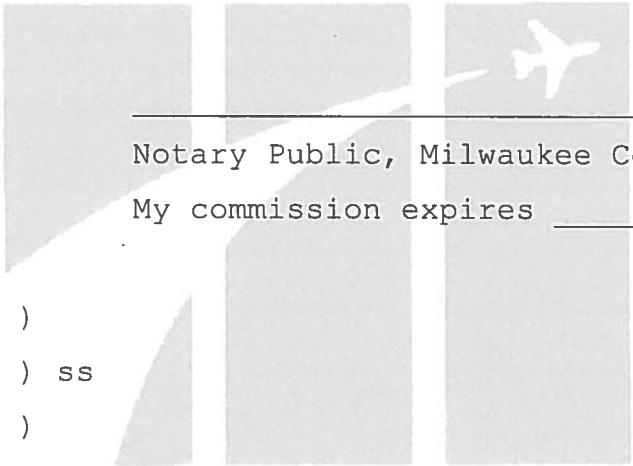
CONCESSIONAIRE

STATE OF WISCONSIN )

) ss

MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above named Brian Dranzik, Director, Department of Transportation of Milwaukee County, to me known to be the person who executed the foregoing instrument and to me known to be such Director, Department of Transportation, and acknowledged that he executed the foregoing instrument as such officer as the deed of said Milwaukee County, by its authority.



\_\_\_\_\_  
Notary Public, Milwaukee County, Wis.

My commission expires \_\_\_\_\_

STATE OF WISCONSIN )

) ss

MILWAUKEE COUNTY )

Personally came before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the above named Joseph J. Czarnezki, County Clerk of Milwaukee County, to me known to be the person who executed the foregoing instrument and to me known to be such County Clerk, and acknowledged that he executed the foregoing instrument as such officer as the deed of said Milwaukee County, by its authority.

\_\_\_\_\_  
Notary Public, Milwaukee County, Wis.

My commission expires \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss  
COUNTY OF \_\_\_\_\_ )

Personally came before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_,  
(Name) (Title)

and \_\_\_\_\_,  
(Name) (Title)

of \_\_\_\_\_, to me known to be the persons who executed the foregoing instrument and to me known to be such officers of said limited liability company, and acknowledged that they executed the foregoing instrument as such officers as the deed of said limited liability company, by its authority.

\_\_\_\_\_  
Notary Public \_\_\_\_\_

My commission expires \_\_\_\_\_

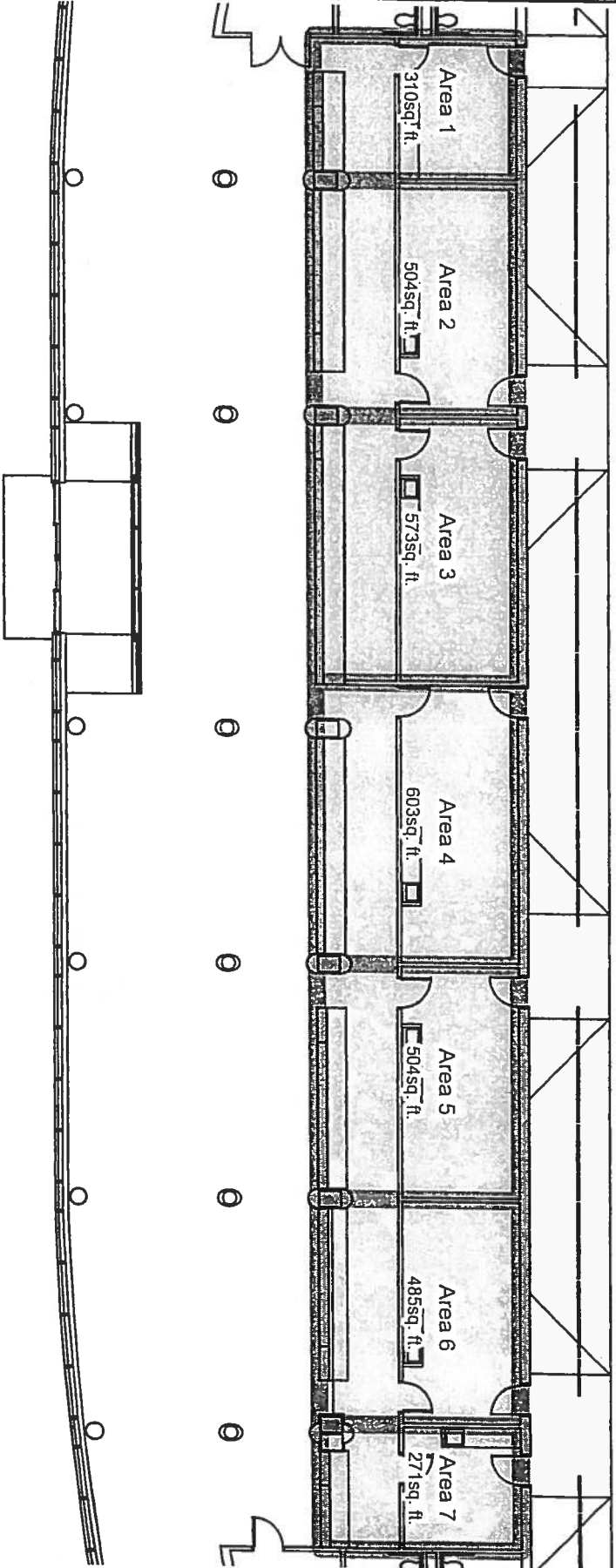
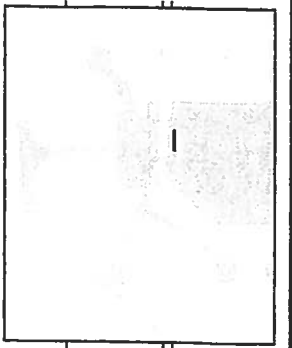
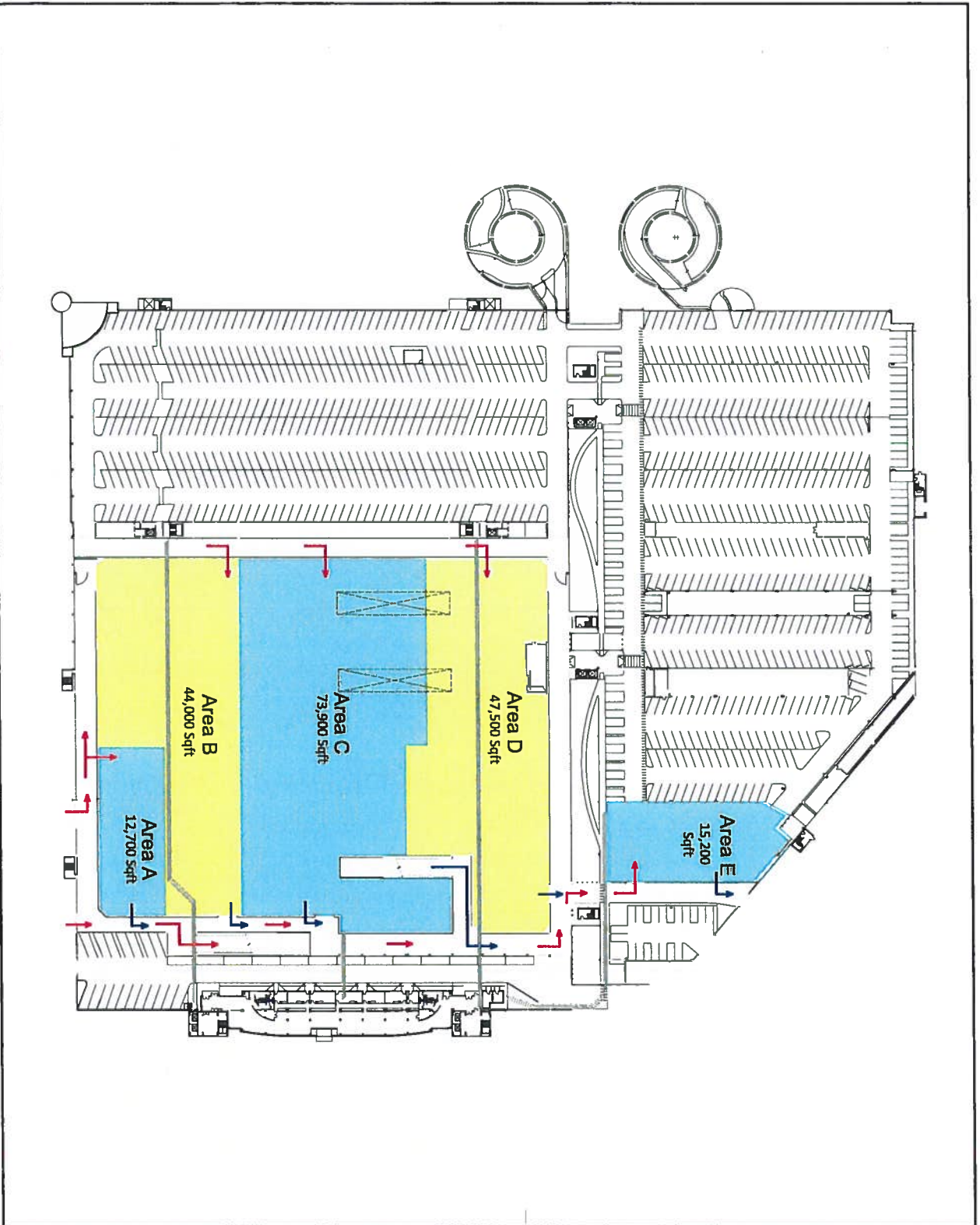


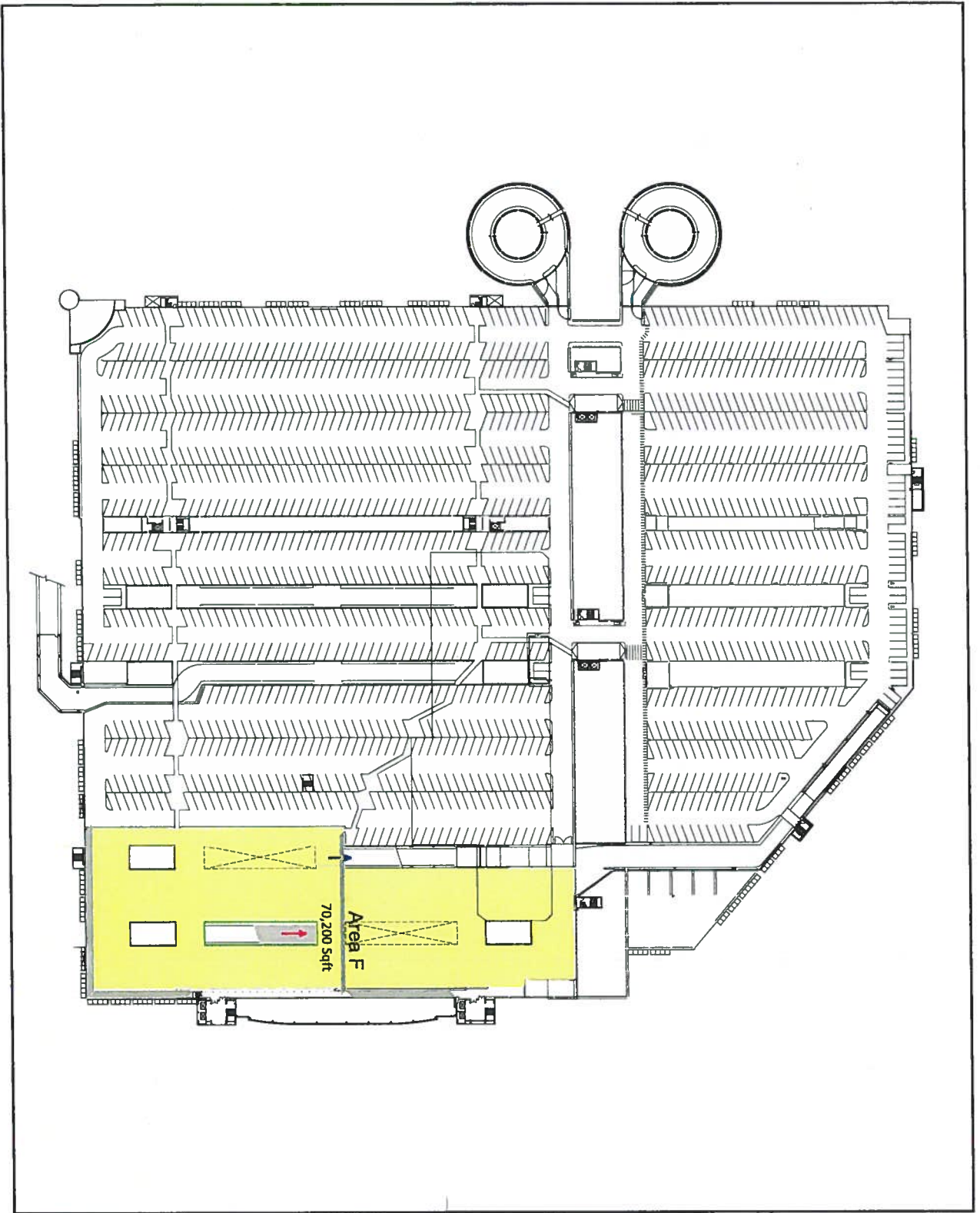
Exhibit "A"  
Rental Car Counter/Office Area









- LEGEND**
- Garage Circulation
  - Customer Entry Path
  - Customer Exit Path
  - Pedestrian Walkway

Exhibit "B"  
 RENTAL CAR READY RETURN  
 Page 1 of 2



- LEGEND**
-  Garage Circulation
  -  Customer Entry Path
  -  Customer Exit Path
  -  Pedestrian Walkway

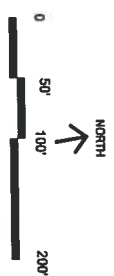


Exhibit "B"  
**RENTAL CAR READY RETURN**  
 Page 2 of 2