

AGENDA
BOARD OF PARK COMMISSIONERS
Monday, January 10, 2011
Kenosha Municipal Building Room 202
5:00 pm

Chairman: Michael J. Orth
Vice Chair: Rocco J. LaMacchia, Sr.
Commissioners: Jesse L. Downing
Anthony Kennedy
Lawrence Green

Call to Order
Roll Call

A. APPROVAL OF MINUTES

A-1. Approval of minutes of regular meeting held on December 13, 2010.

C. REFERRED TO COMMISSION

C-1. Approval of Lease By and Between the City of Kenosha, Wisconsin (A Municipal Corporation) and Carthage College (An Illinois Corporation). **(District 1)**

INFORMATIONAL ITEMS:

1. Schreiber Anderson Presentation

DIRECTOR AND/OR SUPERINTENDENT COMMENTS
CITIZEN COMMENTS/COMMISSIONER COMMENTS

OTHER BUSINESS AUTHORIZED BY LAW

IF YOU ARE DISABLED AND NEED ASSISTANCE PLEASE CALL 653-4052 BEFORE THIS MEETING

NOTICE IS HEREBY GIVEN THAT A MAJORITY OF THE MEMBERS OF THE COMMON COUNCIL MAY BE PRESENT AT THE MEETING, AND
ALTHOUGH THIS MAY CONSTITUTE A QUORUM OF THE COMMON COUNCIL, THE COUNCIL WILL NOT TAKE ANY ACTION AT THIS
MEETING.

CITY OF KENOSHA – BOARD OF PARK COMMISSIONERS
Meeting Minutes – December 13, 2010

A meeting of the Board of Park Commissioners was held on Monday, December 13, 2010, at the Kenosha Municipal Building in Room 202. The meeting was called to order at 5:03 pm. The following members were present: Chairman Orth, Commissioners LaMacchia, Downing, and Green. Alderman Kennedy arrived after the approval of the minutes. Staff members in attendance were Shelly Billingsley and Jeff Warnock.

It was moved by Commissioner Green, seconded by Commissioner LaMacchia, to approve the minutes from the meeting held on Monday, November 29, 2010. Motion passed 4-0.

INFORMATIONAL ITEMS:

1. Petzke Park Concept Plans – Shelley asked that she have recommendations by December 21st.
2. CORP Master Plan Schedule – Shelley informed the commission that in early January a draft schedule will be done for two public information meetings the weeks of January 17th and 24th.
3. Petzke Park Grant Reallocation – Shelley explained that this grant was for the former Frost Company and due to the suspension of this plan the city is asking to have the funding be reallocated to the Petzke Park Expansion.

DIRECTOR/SUPERINTENDENT COMMENTS: Jeff informed the commission that with the Tool Cats the snow removal on the sidewalks in the parks will be done more efficiently.

CITIZEN/COMMISSIONERS COMMENTS: Chairman Orth said that the parks had a good year and have a full plate going forward.

There being no further business to come before the Board of Park Commissioners it was moved, seconded and unanimously carried to adjourn at 5:15 pm.

LEASE

By And Between

**THE CITY OF KENOSHA, WISCONSIN,
A Municipal Corporation,**

And

**CARTHAGE COLLEGE,
An Illinois Corporation,
2001 Alford Park Drive,
Kenosha, Wisconsin**

THIS LEASE is made and entered into by and between the **CITY OF KENOSHA, WISCONSIN**, a municipal corporation, duly organized and existing under the laws of the State of Wisconsin, hereinafter referred to as **CITY**, and **CARTHAGE COLLEGE**, a corporation duly organized and existing under the laws of the State of Illinois, having its principal office, at the time of Lease execution, at 2001 Alford Park Drive, Kenosha, Wisconsin 53140-1994, hereinafter referred to as **LESSEE**.

WITNESSETH:

WHEREAS, the **LESSEE** desires to lease certain land from the **CITY** to construct certain parking, green space and perennial garden improvements; and,

WHEREAS, it is to the mutual advantage of the parties to enter into this Lease.

NOW, THEREFORE, in consideration of the mutual undertakings, understandings and agreements hereinafter set forth, the **CITY** and the **LESSEE** agree as follows:

ARTICLE 1 - PREMISES

1.1 LAND. The **CITY** leases to the **LESSEE** Lot 2 of Certified Survey Map No. 2660, recorded November 12, 2009, with the Kenosha County Register of Deeds as Document No. 1604311, excepting therefrom that portion of Lot 2 reserved by the **CITY** for use as a detention pond, hereafter referred to as the **PREMISES**. The legal description of the **PREMISES** is attached as Exhibit "A" and incorporated herein by reference. The leased **PREMISES** includes all easements, improvements,

rights and privileges and are subject to any restrictions, easements, encroachments, and any zoning and governmental regulations now or hereafter in effect, relating to, or affecting the leased **PREMISES**. The **CITY** grants the **LESSEE** the privilege of constructing a parking lot with a capacity of five hundred (500) vehicles including constructing fencing, lighting, paving, structures for security guards, structures for persons waiting for shuttle buses or vans, landscape islands, secured emergency access entrances, and any other improvements necessary or appropriate for the **LESSEE's** use of the **PREMISES** for providing parking for the **LESSEE's** employees, students and invitees, and related purposes. The **CITY** also grants to the **LESSEE** the privilege of constructing green space and a perennial garden on the **PREMISES**. All improvements constructed on the **PREMISES** by the **LESSEE**, or which are used by the **LESSEE** under the terms of this Lease shall be referred to as the **IMPROVEMENTS**.

1.2 CITY WARRANTIES AND REPRESENTATIONS. The **CITY** warrants and represents that it is the lawful owner of the **PREMISES** and has full authority to grant this Lease.

1.3 ZONING. The **LESSEE** acknowledges and understands that the **PREMISES** are currently zoned M-2 Heavy Manufacturing and that a parking facility is a permitted use in the M-2 zoning district. The **LESSEE** further acknowledges that the **PREMISES** may be subject to rezoning as part of the **CITY's** adoption of a master plan for Petzke Park. The **CITY** agrees not to initiate any zoning change which would adversely impact the installation of the **IMPROVEMENTS** by the **LESSEE** contemplated by this Lease.

1.4 ENVIRONMENTAL. On September 30, 2004, the **CITY** and Amsted Industries Incorporated entered into a Demolition and Remediation Agreement with ELM Investments, LLC, to perform certain Remediation of Pre-existing Pollution Conditions under Environmental Law on the MacWhyte Redevelopment Site of which the **PREMISES** is a part. The **LESSEE** acknowledges that the **LESSEE** has been provided a copy of the Demolition and Remediation Agreement. The **LESSEE** acknowledges that the **PREMISES** and the construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease are subject to the terms and conditions of the Demolition and Remediation Agreement.

1.5 TITLE. The **LESSEE** at its expense may obtain a title search and policy prior to entering into this Lease. Among the recorded easements affecting the **PREMISES**, the **LESSEE** acknowledges that the **PREMISES** are subject to a recorded Environmental Remediation Access Easement between the **CITY** and ELM Investments, LLC recorded with the Kenosha County Register of Deeds on September 30, 2004 as Document No. 1406381. The **LESSEE** acknowledges that the **LESSEE** has been provided a copy of the Environmental Remediation Access Easement. The **LESSEE** agrees that it must and hereby does, assume the obligations of the **CITY** thereunder as to the **PREMISES** and the LaCrosse practice field.

1.6 SURVEY. The **LESSEE** at its expense may obtain an ALTA survey or similar survey prior to entering into this Lease.

1.7 ACCEPTANCE. Upon execution of this Lease, the **LESSEE** shall be deemed to have accepted the **PREMISES** "as is" and suitable for the **LESSEE's** intended purposes, subject to the use limitations and obligations imposed on the **LESSEE** by this Lease.

1.8 MEMORANDUM OF LEASE. At the request of either party, each party shall sign a Memorandum of Lease, in recordable form, evidencing the execution and term of this Lease.

ARTICLE 2 - TERM

2.1 TERM. The initial **TERM** of this Lease shall be for a period of twenty-five (25) years, commencing on February 1, 2011 and ending on January 31, 2036. The **LESSEE** shall have the option to renew and extend the initial **TERM** as provided in Article 2.2 unless otherwise modified by the written agreement of the parties.

2.2 OPTION TO RENEW AND EXTEND. The **LESSEE** shall have the option to renew and extend this Lease upon the terms and conditions stated in this Lease for three (3) additional and consecutive twenty-five (25) year terms. The **LESSEE** shall be deemed to have exercised the option to renew and extend this Lease unless the **LESSEE** delivers to the **CITY** a notice of non-renewal, stating that the **LESSEE** has elected not to renew and extend this Lease, at least six (6) months prior to the expiration of the initial **TERM** and at least six (6) months prior to the expiration of any renewal or

extended term of this Lease. Unless the **CITY** has received written notice of the **LESSEE's** election not to renew and extend this Lease as provided in this Article 2.2, this Lease shall be deemed to be renewed or extended and the term thereof renewed or extended for a period of twenty-five (25) years from the date of expiration of the initial **TERM** or from the date of expiration of the renewal or extended term without the execution of any further lease or instrument.

ARTICLE 3 - CONSIDERATION

3.1 CONSIDERATION. The **LESSEE** agrees to pay to the **CITY** for the use and occupancy of the **PREMISES** the sum of Three Hundred Thousand Dollars (\$300,000.00) payable as follows: One Hundred Fifty Thousand Dollars (\$150,000.00) shall be paid within thirty (30) days from the date of Common Council approval of this Lease and an additional One Hundred Fifty Thousand Dollars (\$150,000.00) shall be paid within one hundred eighty (180) days from the date of Common Council approval of this Lease.

3.2 ANNUAL SCHOLARSHIP DISTRIBUTION. As further consideration, the **LESSEE** shall distribute on or before September 1 of each year during the initial **TERM** of this Lease or any renewal or extension thereof, two (2) adult four (4) year tuition undergraduate scholarships and one (1) student four (4) year tuition undergraduate scholarship, all of which are subject to satisfactory degree progress and compliance with the Carthage Community Code. Room and board, books, and fees are not included in the tuition scholarships. The scholarships can be used only for credits to obtain an undergraduate degree from the **LESSEE** and cannot be used to obtain credits for any graduate or other degree. Each scholarship awarded pursuant to this Article 3.2 shall be awarded to City of Kenosha residents who meet the enrollment standards of the **LESSEE**, who meet the standards of the Federal Government for need-based scholarships, and who meet reasonable criteria established by the **CITY** from time to time for such scholarships. A schedule of the cumulative value of the scholarships, without an adjustment for inflation, is attached as Exhibit "B" and incorporated herein by reference. The **LESSEE** shall file an annual report with the Mayor of the **CITY** documenting compliance with the foregoing. The **LESSEE** agrees to meet upon request of the **CITY** to discuss in good faith how recipients for the

scholarships are chosen. In the event the parties are not satisfied with the standards and process in awarding scholarships, the President of the **LESSEE** will meet with the Mayor to discuss and establish a process for appointing an advisory committee to recommend standards for nominating the scholarship recipients described in this Article 3.2 in accordance with Federal and State standards.

3.3 LACROSSE FIELD.

3.3.1 As further consideration, during the **TERM** of this Lease and any renewal or extension thereof, the **LESSEE** shall construct and maintain at **LESSEE's** expense a regulation sized LaCrosse practice field without lighting at the location designated by the **CITY** as part of the **CITY's** adoption of a master plan for Petzke Park.

3.3.2 No work shall commence on the LaCrosse practice field until all necessary approvals have been received and all required permits from the **CITY** have been obtained. Construction of the LaCrosse practice field shall comply with Article 4.3 of this Lease, the City Zoning Ordinance, Code of General Ordinances and all applicable state and federal laws, rules and regulations.

3.3.3. In the event the **LESSEE** has not obtained all permits and approvals for the LaCrosse practice field and completed construction of the LaCrosse practice field within one (1) year from the date of Common Council approval of the master plan for Petzke Park, the **CITY** may complete construction and the **LESSEE** shall pay the **CITY**, upon written demand, all sums incurred by the **CITY** to complete construction of the LaCrosse practice field together with interest at the rate of eighteen percent (18%) per year from the date of the **CITY's** written demand until paid. Notwithstanding the foregoing, the **LESSEE** shall be entitled to an additional period of time, not to exceed eighteen (18) months from the date of Common Council approval of the master plan for Petzke Park in order to complete construction of the LaCrosse practice field if the **LESSEE** is delayed in completing construction due to strikes, unavailability of materials, weather conditions, terrorism, or any other condition beyond the control of the **LESSEE**.

3.3.4. The **LESSEE's** failure to pay the **CITY**, upon written demand, all sums incurred by the **CITY** to complete construction of the LaCrosse practice field together with interest at the rate of

eighteen percent (18%) per year as provided for in Article 3.3.3 shall be considered a material breach of this Lease thereby entitling the **CITY** to terminate this Lease pursuant to Article 20.

3.3.5 The **LESSEE** shall have the non-exclusive but primary use of the LaCrosse practice field. The **CITY** shall also have the non-exclusive use of the LaCrosse practice field for sports and recreational activities when the practice field is not in use by the **LESSEE**. In order to coordinate the use of the LaCrosse practice field by the **LESSEE** and the **CITY**, the **LESSEE** shall provide the **CITY** with a schedule indicating when the LaCrosse practice field will be in use by the **LESSEE**. The **LESSEE** agrees to provide the schedule to the **CITY** sufficiently in advance of the **LESSEE's** use of the field so as to avoid any conflicting use of the field by the **LESSEE** or the **CITY**.

ARTICLE 4 - IMPROVEMENTS

4.1 DEFINITION. IMPROVEMENTS shall include but shall not be limited to construction, reconstruction, alteration, modification, addition, expansion and replacement of structures, roads, utilities, landscaping, fencing, lighting, paving, parking areas, sidewalks, perennial gardens, green space areas, and site modifications on the **PREMISES**.

4.2 OBLIGATION TO CONSTRUCT IMPROVEMENTS. Within one (1) year from the date of Common Council approval of this Lease, the **LESSEE**, at its expense, shall design and construct a parking lot with a capacity of five hundred (500) vehicles including fencing, lighting, paving, gated entrances, structures for security guards, structures for persons waiting for shuttle buses or vans, landscape islands, secured emergency access entrances and any other **IMPROVEMENTS** necessary or appropriate for the **LESSEE's** use of the **PREMISES** contemplated by this Lease together with green space areas and perennial garden. Notwithstanding the foregoing, the **LESSEE** shall be entitled to an additional period of time, not to exceed eighteen (18) months from the date of Common Council approval of this Lease, in order to complete construction of the **IMPROVEMENTS** if the **LESSEE** is delayed in completing construction of the **IMPROVEMENTS** due to strikes, unavailability of material, weather conditions, terrorism, or any other condition beyond the control of the **LESSEE**.

4.3 ENVIRONMENTAL CONDITIONS AFFECTING PREMISES.

4.3.1 On September 30, 2004, the **CITY** and Amsted Industries Incorporated entered into a Demolition and Remediation Agreement with ELM Investments, LLC, to perform certain Remediation of Pre-existing Pollution Conditions under Environmental Law on the MacWhyte Redevelopment Site of which the **PREMISES** and the proposed LaCrosse practice field are a part. The **LESSEE** acknowledges that the **LESSEE** has been provided a copy of the Demolition and Remediation Agreement.

4.3.2 The **LESSEE** acknowledges that the term Baseline Remediation as defined in Paragraph 1 (c) of the Demolition and Remediation Agreement “shall not include the addition or construction of any structures or improvements to or on the Site nor shall it include any activities necessary for any uses not specifically set forth in Exhibit B.” To the extent that any of the **IMPROVEMENTS** and/or the LaCrosse practice field contemplated by this Lease constitute a use other than that which is embedded in the definition of Baseline Remediation i.e. an Alternative Site Use as defined in Paragraphs 1 (b) and 6 (b) of the Demolition and Remediation Agreement, the **LESSEE** shall pursuant to paragraph 6 (b) of the Demolition and Remediation Agreement:

- i.** obtain all necessary approvals from the Wisconsin Department of Natural Resources (“WDNR”) prior to construction;
- ii.** pay for any increased or additional costs associated with any Site Work, Demolition Work, or other activities associated with an Alternative Site Use and with any additional Remediation beyond Baseline Remediation; and
- iii.** adhere to any and all requirements regarding Site preparation, remediation, monitoring, and other restrictions, institutional or engineering controls, or prohibitions imposed by the WDNR in connection with such Alternate Site Use.

4.3.3 The **LESSEE** acknowledges that the WDNR has approved a Remediation Action Plan (“RAP”) for the MacWhyte Redevelopment Site of which the **PREMISES** and the proposed LaCrosse practice field are a part. The **LESSEE** acknowledges that the **LESSEE** has been provided a copy of the RAP. The **LESSEE** acknowledges that the RAP contains soil management requirements. The **LESSEE** agrees to strictly and diligently comply with the RAP. In the event the **LESSEE** violates

the RAP, the **LESSEE** shall, in writing, promptly notify the WDNR, the **CITY** and ELM Investments, LLC. The **LESSEE** shall be responsible at **LESSEE's** sole cost and expense for promptly performing any and all actions necessary to correct the violation and the effects thereof including but not limited to any response actions required by the WDNR.

4.3.4 Prior to the commencement of construction of any phase of the **IMPROVEMENTS** or the LaCrosse practice field contemplated by this Lease, the **LESSEE** shall provide to the **CITY** and ELM Investments, LLC, written notice and the plans and specifications detailing all land disturbing activities to be performed in connection with the construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease together with the name, address, phone number, email address and contact person of any consultant, contractor or subcontractor performing such work. No work shall commence until written approval of the plans and specifications from ELM Investments, LLC and the **CITY** is received. The **LESSEE** shall coordinate construction of the **IMPROVEMENTS** and the LaCrosse practice field with ELM Investments, LLC. The **LESSEE** at **LESSEE's** sole cost and expense shall comply with all requirements of ELM Investments, LLC, the WDNR and the **CITY** in connection with the construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease. The **LESSEE** shall pay the **CITY** for all costs and expenses incurred by the **CITY** for the services of ELM Investments, LLC and the WDNR rendered in connection with the **LESSEE's** construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease.

4.3.5 The **LESSEE** acknowledges that the disturbance of soil and/or subsurface areas of the **PREMISES** and the proposed LaCrosse practice field in connection with construction related activities such as excavation, installation of footings, utility lines, conduits or piping, final grading and landscaping (“Construction Activities”) will occur. The **LESSEE** acknowledges that in the course of performing the Construction Activities, Pollutants may be encountered in the soil or groundwater. The **LESSEE** at **LESSEE's** sole cost and expense shall be responsible for the handling, testing, removal, transport, treatment or disposal of any soil or groundwater which is excavated or removed during the

performance of the Construction Activities (“Holding Activities”) without regard to whether such soils or groundwater contains Pollutants as defined in the Demolition and Remediation Agreement.

4.3.6 The **LESSEE** shall be responsible for any and all costs for Remediation of the Pre-existing Pollution Conditions in excess of the cost of the Baseline Remediation of Pre-existing Pollution Conditions to the extent that any of the **IMPROVEMENTS** and/or the LaCrosse practice field contemplated by this Lease constitute an Alternative Site Use and have an impact on the cost of, or need for, Remediation of the Pre-existing Pollution Conditions as described in Paragraphs 7 (b) and 7 (c) of the Demolition and Remediation Agreement.

4.3.7 The **LESSEE** shall be responsible for any and all costs or expenses not to exceed Fifty Thousand Dollars (\$50,000.00) associated with New Pollution Conditions as described in Paragraphs 1 (o) and 8 of the Demolition and Remediation Agreement which are not caused by the **LESSEE**, its agents, contractors or subcontractors and which are discovered in connection with the **LESSEE's** construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease. The **LESSEE** acknowledges and agrees that the foregoing Fifty Thousand Dollars (\$50,000.00) limitation on New Pollution Conditions shall not apply to New Pollution Conditions caused by the **LESSEE** its agents, contractors or subcontractors in which case the **LESSEE** shall be responsible for any and all costs or expenses associated with New Pollution Conditions caused by the **LESSEE**, its agents, contractors or subcontractors.

4.3.8 The **LESSEE** shall defend and indemnify the **CITY** for any and all claims, costs or expenses of whatever kind or nature arising out of or in any way related to:

- i.** increased or additional costs associated with the **LESSEE's** Site Work, Demolition Work or other activities associated with an Alternative Site Use and with any additional Remediation beyond Baseline Remediation as described in the Demolition and Remediation Agreement;
- ii.** violation of the RAP by the **LESSEE** or its consultants, contractors and/or subcontractors;
- iii.** requirements imposed by the WDNR in connection with the construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease;

- iv. the Handling Activities;
- v. New Pollution Conditions caused by the **LESSEE**, its agents, contractors, or subcontractors;
- vi. claims asserted by any person caused by that person's access to the **PREMISES** and the LaCrosse practice field in connection with the **LESSEE's** construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease; and,
- vii. any willful or negligent acts or omissions of the **LESSEE**, its officers, agents, employees, consultants, contractors, or subcontractors at the **PREMISES** and the LaCrosse practice field in connection with the construction of the **IMPROVEMENTS** and the LaCrosse practice field contemplated by this Lease.

4.4. PLANS AND SPECIFICATIONS. No work shall commence on the **IMPROVEMENTS** until all necessary approvals have been received and all required permits from the **CITY** have been obtained. All **IMPROVEMENTS** shall comply with Article 4.3 of this Lease, the City Zoning Ordinance, Code of General Ordinances and all applicable state and federal laws, rules and regulations.

4.5 CONSTRUCTION INSURANCE REQUIREMENTS. Prior to commencing the construction of any **IMPROVEMENTS** or the LaCrosse practice field, the **LESSEE** shall procure and submit proof of the following insurance coverages to the **CITY** Clerk/Treasurer:

a. Builder's All Risk Insurance, with the **CITY** named as an additional insured, in the amount of the full value of the **IMPROVEMENTS** and the LaCrosse practice field insuring against loss or damage during the course of construction, including material delivered, but not attached to the site; and,

b. Liability Insurance protecting the **LESSEE** and the **CITY** from claims for death, personal injury or property damage arising during the course of construction of the **IMPROVEMENTS** and the LaCrosse practice field in accordance with the coverage requirements specified in this Lease.

4.6 OWNERSHIP, TRANSFER, SURRENDER OR REMOVAL OF IMPROVEMENTS. The **LESSEE** shall own, have and retain title to all **IMPROVEMENTS** the **LESSEE** places upon the **PREMISES**. Upon expiration or termination of this Lease, all **IMPROVEMENTS** shall remain upon the **PREMISES** unless the **CITY** at the **CITY's** option requires the **LESSEE** at the **LESSEE's** expense, to remove those **IMPROVEMENTS** from the **PREMISES** designated by the **CITY** within sixty (60) days of expiration or termination of this Lease and to restore

the **PREMISES** to original landscaping.

4.7 CONSTRUCTION LIENS. The **LESSEE**, in making **IMPROVEMENTS** upon the **PREMISES**, shall not grant permission for or permit any liens for labor or materials to attach to the **PREMISES** without the prior, written consent of the **CITY**, nor allow any condition to exist or situation to develop whereby any party would be entitled, as a matter of law, to file or claim a lien against the **PREMISES**. In order to void such liens, the **LESSEE** shall promptly pay or cause to be paid all bills for labor and materials. In the event any involuntary lien attaches to the **PREMISES**, the **LESSEE** shall take such steps as shall cause the discharge of such lien within sixty (60) days after the filing thereof, or deposit a like amount in escrow with the City Clerk/Treasurer until the lien is discharged. Nothing contained herein shall prohibit the **LESSEE** from financing the **IMPROVEMENTS** subject to a security lien on the **IMPROVEMENTS**. However, the **LESSEE** shall not permit any security lien to attach to the real estate upon which the **IMPROVEMENTS** are situated. Nothing contained herein shall preclude the **LESSEE** or its contractor from, in good faith, defending against claims by labor or material suppliers which it believes are unwarranted. The provisions of this Article 4.7 shall also apply to the construction and maintenance of the LaCrosse practice field referred to in this Lease.

4.8 UNAUTHORIZED IMPROVEMENTS. Should the **LESSEE** make any **IMPROVEMENTS** without prior **CITY** approval, which are not satisfactory to the **CITY**, then, upon written notice to do so, the **LESSEE** shall remove the same, or if agreed upon by the **CITY**, cause the same to be changed, modified or reconstructed to the satisfaction of the **CITY**. Should the **LESSEE** fail to comply with such notice within sixty (60) days of receipt thereof, or should the **LESSEE** commence to comply therewith and fail to pursue such work diligently to completion, the **CITY** may effect the removal, change, modification or reconstruction thereof, and the **LESSEE** shall pay the cost thereof to the **CITY**, upon written demand together with interest at the highest rate permitted by law from the date of the **CITY's** written demand until paid. The provisions of this Article 4.8 shall also apply to the LaCrosse practice field referred to in this Lease.

4.9 RISK OF LOSS. The **LESSEE** assumes the risk of loss or damage to all of the

construction work and the risk of loss or damage to all property of the **CITY** arising out of or in connection with the performance of the construction work. In the event of such loss or damage, the **LESSEE** shall forthwith repair, replace, restore and/or reconstruct the construction work and the property of the **CITY** without cost or expense to the **CITY**.

4.10 INDEMNITY AND HOLD HARMLESS BY CONTRACTORS. The **LESSEE** shall require its contractors who construct the **IMPROVEMENTS** and the LaCrosse practice field to indemnify and hold harmless the **CITY**, and its officers and employees against any and all claims, liability, loss, charges, damages, costs, expenses or attorneys' fees, which any of them may hereafter sustain, incur or be required to pay as a result of any act or omission of the **LESSEE** involving the construction of the **IMPROVEMENTS** and the LaCrosse practice field by reason of which any person suffers personal injury, death or property loss or damage; provided, however, the provisions of this paragraph shall not apply to claims, liabilities, losses, charges, damages, costs, expenses or attorneys' fees caused or resulting from the acts or omissions of the **CITY**, or any of its officers or employees.

4.11 INSPECTION. The **CITY** shall have the right, through its duly designated representatives, to inspect the construction work, at any and all reasonable times during the progress thereof, and from time to time, in its discretion, to take samples and perform testing on any part of the construction work, provided the taking of samples and testing shall be conducted so as to minimize interference with the construction work, if such minimization of impact can be accomplished without diminishing the effectiveness or accuracy of the sampling and/or testing.

4.12 NO CONTRACTOR'S RIGHTS AGAINST CITY. Nothing contained herein shall grant or be deemed to grant to any contractor, architect, supplier, subcontractor or any other person engaged to perform, design or construct work any right of action or claims against the **CITY**, its officers and employees with respect to any labor or materials provided in connection with the construction work. Nothing contained herein shall create, or be deemed to create, any relationship between the **CITY** and any such contractor, architect, supplier, subcontractor or any other person engaged in any part of the construction work and the **CITY** shall not be responsible to any of the foregoing for any payments due or

alleged to be due thereto for any work performed or materials supplied in connection with the construction work.

ARTICLE 5 - USE OF PREMISES

5.1 USE OF PREMISES. Except as otherwise agreed, the **LESSEE** shall have the exclusive use of the parking lot between Labor Day and Memorial Day for **LESSEE's** employees, students and invitees, to park automobiles, motorcycles, motor trucks and bicycles as those terms are defined in Chapter 340, Wisconsin Statutes and related uses, provided, however, that said motor trucks are each of a gross weight less than 8,000 pounds. The **CITY** shall have the non-exclusive use of the parking lot other than between Labor Day and Memorial Day for special event parking at such times as may be agreed between the **CITY** and the **LESSEE** .

5.2 SECURITY. The **LESSEE** at the **LESSEE's** expense shall provide electronic controlled access for parking, video surveillance and manned security at such times and for such hours as are determined appropriate by the **LESSEE** at all times during the **LESSEE's** use of the parking lot. Emergency access to the parking lot shall be available to the **CITY** at all times.

5.3 CHANGE OF USE. Any use of the **PREMISES**, the **IMPROVEMENTS**, or the LaCrosse practice field other than as provided in this Lease, is prohibited and, if not cured within sixty (60) days following receipt of written notice of the breach by the **LESSEE**, shall constitute a material breach of this Lease and subject this Lease to termination.

5.4 NON-USE. The parties acknowledge that the **LESSEE** may, at **LESSEE's** option, not use the parking lot from time to time between Memorial Day and Labor Day each year. During any such period of non-use, the **LESSEE** shall have the option of not providing electronic controlled access and manned security for the parking lot.

ARTICLE 6 CARE, MAINTENANCE AND REPAIR OF PREMISES, LAWN PARK AREAS AND LACROSSE PRACTICE FIELD

6.1 LESSEE's RESPONSIBILITIES. The **LESSEE**, at **LESSEE's** expense shall at all times be responsible for the care, maintenance and repair of the **PREMISES**, the lawn park areas east of

14th Avenue adjacent to the **PREMISES**, and the LaCrosse practice field, including all the **IMPROVEMENTS** thereon, whether preexisting or placed thereon by the **LESSEE**, whether such work be ordinary, extraordinary, structural, or otherwise, irrespective of cause and nature, all to be performed in a good and workmanlike manner, and in accordance with the provisions of this Lease. The **LESSEE** at **LESSEE's** expense, shall at all times:

a. Keep the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field and the personal property thereon, in a clean, neat and sanitary condition.

b. Maintain the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field and perform all repair work in accordance with relevant federal, state and local laws, rules and regulations, upon receipt of permits and governmental approvals, where required.

6.2 LESSEE's FAILURE TO MAINTAIN. In the event the **LESSEE** fails to care for, maintain and repair the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field within sixty (60) days following the receipt of written notice from the **CITY** describing the failure to care for, maintain and repair and any demand for curative action, or in the event the **LESSEE**, upon commencement of curative action, fails to diligently continue to complete the curative action required by the **CITY**, the **CITY** may, at its option, and in addition to any remedies otherwise available to it, enter the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field without such entering causing or constituting a cancellation of this Lease or an interference with the **LESSEE's** possession, and care for, maintain or repair all or any part of the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field which are in need of care, maintenance or repair, and do all things necessary to accomplish the work required. In such an event, the **LESSEE** shall pay the **CITY**, upon written demand, all sums incurred by the **CITY** to care for, maintain or repair the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field together with interest at the rate of eighteen percent (18%) per year from the date of the **CITY's** written demand for payment

until paid. The **LESSEE's** failure to pay the **CITY**, upon written demand, all sums incurred by the **CITY** plus interest pursuant to this Article 6.2 shall be considered a material breach of this Lease thereby subjecting this Lease to termination pursuant to Article 20 of this Lease. Furthermore, should the **CITY** undertake any work hereunder, the **LESSEE** waives any claims for damages, consequential or otherwise, against the **CITY** as a result therefrom, except claims for damages arising from the **CITY's** negligence. The foregoing shall in no way affect or alter the continuing obligations of the **LESSEE** as set forth in this Lease and shall not impose or be construed to impose upon the **CITY** any obligations to care for, maintain or repair the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field.

ARTICLE 7 - ACCESS

The **LESSEE** agrees to and shall permit the **CITY** to send their representatives and employees onto the **PREMISES**, the lawn park areas east of 14th Avenue adjacent to the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field, for the purpose of an inspection thereof. In nonemergency situations, the **LESSEE** shall be provided with reasonable, advance notice of an inspection if the **LESSEE** is available to receive such notice.

ARTICLE 8 - GOVERNMENTAL REQUIREMENTS

8.1 LAWS, RULES, REGULATIONS AND ORDERS. The **LESSEE** agrees to observe and obey any and all such minimum standards and all other applicable federal, state and local laws, rules and regulations, as they now exist and as they may be enacted or amended in the future, and with every lawful order given by any public officer pursuant thereto, and to require its officers, agents, employees, contractors, and suppliers to observe and obey the same.

8.2 LICENSES, CERTIFICATES AND PERMITS. The **LESSEE** at **LESSEE's** expense shall procure all licenses, certificates, permits and other authorizations required by any and all governmental authorities, including the **CITY**, having jurisdiction over the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field or over the **LESSEE'S** operations at the **PREMISES** or the LaCrosse practice field.

8.3 TAXES AND FEES. The **LESSEE** shall pay when due any and all lawful taxes, license, certification, permit, examination and use fees, and excise taxes, including real estate and personal property taxes, from which it is not exempt under State law or **CITY** ordinances, which may be assessed, levied, exacted or imposed on the **PREMISES** or the **LESSEE'S** operation hereunder, and shall make all applications, reports and returns required in connection therewith. The **LESSEE** shall pay when due all stormwater management fees imposed on the **PREMISES**.

ARTICLE 9 – UTILITIES

The **LESSEE** shall pay for all utilities furnished to the **PREMISES** and the LaCrosse practice field, including, but not limited to, the electric service for the parking lot and related **IMPROVEMENTS**. The **LESSEE** shall cause the installation of utility meters for utility services used by the **LESSEE**. Unless otherwise required by WE Energy, the **CITY** requires all utility pipes, wires and conduits to be underground. The **LESSEE** will obtain all necessary permits for any utility services, will pay any required connection fees, and will pay the cost and expense of bringing utility services to and within the **PREMISES** and the LaCrosse practice field.

ARTICLE 10 - SIGNS

The **LESSEE**, at no charge, shall permit the **CITY** to place such signs on the **PREMISES** as the **CITY** shall deem appropriate, at the **CITY 's** cost and expense, but under no conditions shall said signs be attached to any building or structure of the **LESSEE**, without the **LESSEE's** advance, written permission. The **LESSEE** shall not place or erect any signs on or about the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field without the prior written approval of the City Director of City Development in compliance with the City Zoning Ordinance and Code of General Ordinances.

ARTICLE 11 - SANITATION

The **LESSEE** will provide adequate and appropriate containers, which are not unsightly, for the temporary storage of trash, garbage and refuse, and provide, as necessary, for the regular pickup thereof, at its cost and expense. The **LESSEE** shall not permit any unattractive or unsanitary

accumulation of trash, garbage, refuse, debris or litter on the **PREMISES** or the LaCrosse practice field. The **LESSEE** is responsible, at its expense, for contracting for domestic garbage pickup and disposal services.

ARTICLE 12 - SNOW REMOVAL

The **LESSEE** at its expense shall be responsible for removal of snow from the **PREMISES** and the sidewalk on the east side of 14th Avenue from 31st Street to 24th Street as soon as practicable after a snow fall or after drifting snow. Snow removal shall be done in a good and workmanlike manner in order to make the **PREMISES** and the sidewalk as safe as the nature of the **PREMISES** would reasonably permit.

ARTICLE 13 - QUIET ENJOYMENT

The **CITY** covenants and agrees, so long as the **LESSEE** shall duly and punctually perform and observe all the terms and conditions of this Lease, that the **LESSEE** shall peaceably and quietly have, hold and enjoy the **PREMISES**, subject to the right of the **CITY** to use and inspect the **PREMISES**, and to exercise any other rights provided and reserved to the **CITY** pursuant to this Lease.

ARTICLE 14 - RIGHTS OF ENTRY RESERVED

The **CITY**, by its officers, employees, agents, contractors and furnishers of utilities and other services, shall have the right, at **LESSEE's** expense, to maintain existing and install future utility, mechanical, electrical and other systems, and the right to enter upon the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field, at all reasonable times to make such repairs, replacements or alterations thereto as may, in the opinion of the **CITY**, be necessary or advisable, provided, however, that in the exercise of such rights, the **CITY** shall not unreasonably interfere with the use and occupancy of the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field, by the **LESSEE**. It is specifically understood and agreed that the reservation of such rights by the **CITY** shall not impose or be construed to impose upon the **CITY** an obligation to construct, install, repair, replace or alter any utility service lines now or hereafter to be located thereon for the purpose of providing utility services to the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field.

ARTICLE 15 - INTERRUPTION IN USE OR ENJOYMENT

The **CITY** shall not be liable to the **LESSEE** for money damages arising out of any interruption in the **LESSEE's** use or enjoyment of the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field by reason of any damage thereto, unless such damage is the result of an action by a **CITY** employee or agent performing a duty or task for the **CITY**, and, in that event, the **CITY** shall be liable only for the costs of repair or reconstruction.

ARTICLE 16 - NATURAL DISASTER

The **LESSEE's** obligations during the term of the Lease shall neither abate nor be suspended by virtue of any damage to the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field resulting from any natural disaster.

ARTICLE 17 - INSURANCE

The **LESSEE** shall procure and maintain, during the **TERM** of this Lease and any renewals or extensions thereof, insurance policies, hereinafter specified. Said policies must be issued by an insurance company or companies licensed to do business in the State of Wisconsin. . The **LESSEE**, prior to executing this Lease, shall furnish a Certificate of Insurance indicating compliance with the foregoing, including the naming of the **CITY** as an "additional insured", and proof of payment of all premiums to the **CITY** for approval. At least thirty (30) days before the expiration date of any insurance policy required by this Article 17, the **LESSEE** shall deliver to the City Clerk/Treasurer a copy of the renewal policy. Within thirty (30) days after the premium on any insurance policy becomes due and payable the **LESSEE** shall provide satisfactory evidence of its payment to the City Clerk/Treasurer. The insurance policy or policies shall contain a clause that in the event that any policy issued is canceled for any reason, or any material changes are made therein, the City Clerk/Treasurer will be notified, in writing, by the insurer at least thirty (30) days before any cancellation or change takes effect. If for any reason, the insurance coverage required herein lapses, the **CITY** may declare this Lease null and void as of the date no valid insurance policy was in effect. Certificates of policy renewals shall be furnished to the City Clerk/Treasurer throughout the **TERM** of this Lease or any renewals or extensions thereof. The **CITY**

reserves the right to reasonably increase the minimum liability insurance requirements set forth herein upon furnishing sixty (60) days advance, written notice to the **LESSEE**, and the **LESSEE** shall comply with said request, upon being given such advance written notice thereof or be considered in material breach of this Lease. Should the **LESSEE** fail to furnish, deliver and maintain such insurance coverage as above provided, the **CITY** may obtain such insurance coverage and charge the **LESSEE** for the cost of such insurance coverage plus all appropriate administrative charges and incidental expenses associated with the transaction. The failure of the **LESSEE** to pay any such sums upon demand shall be considered a material breach of this Lease. The failure of the **LESSEE** to take out and/or maintain the required insurance shall not relieve the **LESSEE** from any liability under this Lease. The insurance requirements shall not be construed to conflict with the obligations of the **LESSEE** in Article 18.

The following minimum insurance coverages must be in effect and continue in effect during the **TERM** of this Lease or any renewal or extension thereof:

- A. Commercial General Liability
 - \$5,000,000.00 Each Occurrence
 - \$5,000,000.00 General Aggregate

- B. Automobile Liability (any auto)
 - \$1,000,000.00 Bodily Injury (per person)
 - \$3,000,000.00 Bodily Injury (per accident)
 - \$ 500,000.00 Property Damage (per accident)

OR

\$3,000,000.00 Combined Single Limit (each accident)

- C. Worker's Compensation: Statutory Limits
 - 1. Employer's Liability
 - \$100,000.00 Each Accident
 - \$100,000.00 Disease, Each Employee
 - \$500,000.00 Disease, Policy Limit

- D. Umbrella Liability
 - \$5,000,000.00 Each Occurrence
 - \$5,000,000.00 Aggregate

ARTICLE 18 - INDEMNITY AND HOLD HARMLESS

18.1 The **LESSEE** shall indemnify and hold harmless the **CITY** and its officers,

employees and agents from and against any and all claims, liability, losses, damages, costs, judgments, settlements, expenses and attorneys fees incurred or sustained by any of them as a result of: (1) any act, omission or negligence of the **LESSEE**, its officers, employees, contractors, subcontractors, agents, representatives, guests, invitees, students, and permitted users occurring on the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field; (2) any operations, works, acts or omissions on the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field by the **LESSEE**, its officers, employees, contractors, agents or representatives; (3) the **LESSEE's** failure to perform or observe any of the terms, covenants and conditions of this Lease; or (4) any conditions of the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field or any improvements thereon for which the **LESSEE** is responsible pursuant to the terms of this Lease by reason of which any person suffers personal injury, death, or property loss or damage.

18.2 Upon the filing with the **CITY** of a claim for damages arising out of any incident(s) which the **LESSEE** herein agrees to indemnify and hold the **CITY** and others harmless, the **CITY** shall notify the **LESSEE** of such claim, and in the event that the **LESSEE** does not settle or compromise such claim, then the **LESSEE** shall undertake the legal defense of such claim both on behalf of the **LESSEE** and the **CITY**. It is specifically agreed, however, that the **CITY**, at its own cost and expense, may participate in the legal defense of any such claim. Any judgment, final beyond all possibility of appeal, which may be rendered against the **CITY**, or its officers or employees for any cause for which the **LESSEE** is liable hereunder, shall be conclusive against the **LESSEE** as to liability and amount of damages. This provision shall survive the Lease expiration or termination to the extent necessary to effectuate its purpose.

18.3 The **CITY** shall indemnify and hold harmless the **LESSEE** and its officers, employees, and agents from and against any and all claims, liability, losses, damages, costs, judgments, settlements, expenses and attorneys fees incurred or sustained by any of them as a result of any act, omission or negligence of the **CITY**, its officers, employees, contractors, subcontractors, agents or representatives, or the **CITY's** failure to perform or observe any of the terms, covenants and conditions of

this Lease.

18.4 Absent written notification by the **CITY** to the **LESSEE** that upon inspection by the **CITY** the **LESSEE** has failed to perform or observe any of the terms, covenants and conditions of this Lease with respect to the LaCrosse practice field as provided in this Lease, the **CITY** shall indemnify and hold harmless the **LESSEE** and its officers, employees and agents from and against any and all claims, liability, losses, damages, costs, judgments, settlements, expenses and attorneys fees incurred or sustained by any of them as a result of any act, omission or negligence of any person authorized or permitted to use the LaCrosse practice field by the **CITY**, other than the **LESSEE** and persons authorized or permitted by the **LESSEE** to use the LaCrosse practice field, by reason of which any such person suffers personal injury, death or property loss or damage.

18.5 Absent written notification by the **CITY** to the **LESSEE** that upon inspection by the **CITY** the **LESSEE** has failed to perform or observe any of the terms, covenants and conditions of this Lease with respect to the parking lot as provided in this Lease, the **CITY** shall indemnify and hold harmless the **LESSEE** and its officers, employees and agents from and against any and all claims, liability, losses, damages, costs, judgments, settlements, expenses and attorneys fees incurred or sustained by any of them as a result of any act, omission or negligence of any person authorized or permitted to use the parking lot by the **CITY** for special event parking as agreed to by the **LESSEE** pursuant to this Lease, other than the **LESSEE** and persons authorized or permitted by the **LESSEE** to use the parking lot, by reason of which any such person suffers personal injury, death or property loss or damage.

ARTICLE 19 - ASSIGNMENT/SUBLEASE

With the prior, written approval of the **CITY** Common Council, following recommendation by the City Plan Commission and Board of Park Commissioners, the **LESSEE** may assign or sublease all or a portion of this Lease to a successor in title to Carthage College if such successor is an educational institution engaged in the use of the **PREMISES** as authorized by this Lease. No other assignment or sublease is permitted without the prior written consent of the **CITY**. An unauthorized assignment or sublease shall render this Lease null and void. Any assignment or sublease

shall be conditioned upon the assignee or sublessee entering into a written agreement through which it agrees to be bound by all of the terms, conditions and obligations of this Lease. No assignment or sublease shall relieve the **LESSEE** of any of its obligations hereunder in the event of default by the assignee or sublessee. No assignment or sublease shall be inconsistent with the terms of this Lease. The assignee or sublessee shall have all rights, privileges and benefits as granted the **LESSEE** under this Lease.

ARTICLE 20 - FAILURE TO OBSERVE TERMS OF LEASE

Failure on the part of the **LESSEE** to pay any of the sums due and owing under the terms and conditions of this Lease or to observe any of the other terms and conditions of this Lease shall be considered a material breach of this Lease thereby subjecting this Lease to termination. Prior to termination of this Lease as provided for under this Article 20, the **LESSEE** shall have twenty (20) days following its receipt of written notice from the **CITY** to pay any of the sums due and owing under the terms and conditions of this Lease. Prior to termination of this Lease as provided for under this Article 20, the **LESSEE** shall have sixty (60) days following its receipt of written notice from the **CITY** to cure any other breach of the terms and conditions of this Lease to the satisfaction of the **CITY**. In the event the **LESSEE's** breach is for other than the payment of any sums due and owing under the terms and conditions of this Lease and is of a type which cannot reasonably be cured within thirty (30) days following its receipt of the written notice from the **CITY** and the **LESSEE** acts within said thirty (30) days with due diligence to cure the breach, then the **LESSEE** shall not be deemed in default as long as the **LESSEE** is acting diligently to cure the breach. In the event the **LESSEE** fails to cure any breach within the time provided, the **CITY**, in addition to all other rights and remedies available to the **CITY** at law, in equity or by other provisions of this Lease, may terminate this Lease, enter the **PREMISES** and the LaCrosse practice field and remove all persons and property and the **CITY** shall not be liable for damages or otherwise by reason of such re-entry. Upon termination of this Lease for any reason, the **LESSEE** may remove its personal property upon the condition that the **LESSEE** shall be responsible for any damage to the **PREMISES** or the LaCrosse practice field occurring in the course of such removal. The **CITY** shall

be entitled to collect from the **LESSEE** all attorneys fees and expenses incurred by the **CITY** in enforcing any of the terms and conditions of this Lease or any other rights or remedies of the **CITY**.

ARTICLE 21 - REVERSION OF PREMISES AND IMPROVEMENTS TO CITY

Should the **LESSEE** cease to exist or terminate its operations, or discontinue use of the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field for one (1) year, excluding any period of construction, remodeling or reconstruction, this Lease shall be subject to termination by the **CITY**, absent a duly authorized and approved assignment or release of this provision by the **CITY**. Upon reversion of the **PREMISES**, the **IMPROVEMENTS** and LaCrosse practice field to the **CITY**, the **PREMISES**, the **IMPROVEMENTS** and Lacrosse practice field shall automatically become park land, under control of the **CITY** Board of Park Commissioners, without further action of the Common Council.

ARTICLE 22 - EFFECT OF BANKRUPTCY OR INSOLVENCY

22.1 PROHIBITION OF INVOLUNTARY ASSIGNMENT, TRANSFER OR SALE. Neither this Lease, nor any interest of the **LESSEE** hereunder shall be subject to involuntary assignment, transfer, or sale, or to assignment, transfer, or sale by operation of law in any manner whatsoever except through statutory merger or consolidation and any such attempt at involuntary assignment, transfer or sale shall be void and of no effect.

22.2 EFFECT OF BANKRUPTCY. Without limiting the generality of the provisions of the preceding Article 22.1, the **LESSEE** agrees that in the event any proceedings under the Bankruptcy Act or any amendment thereto be commenced by or against the **LESSEE** and if against the **LESSEE**, such proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement, or plan or reorganization, or in the event the **LESSEE** is adjudged insolvent or makes an assignment for the benefit of its creditors, or if a receiver is appointed in any proceedings or action to which the **LESSEE** is a party, with authority to take possession or control of the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field of the business conducted thereon by the **LESSEE**, and such receiver is not discharged within a period of one hundred twenty (120) days after appointment, any such event or any involuntary assignment prohibited by the provisions of the preceding

Article 22.1 shall be deemed to constitute a breach of this Lease by the **LESSEE** and shall, at the election of the **CITY**, but not otherwise, without notice or entry or other action of the **CITY** terminate this Lease and also all rights of the **LESSEE** under this Lease in and to the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field and also all rights of any and all persons and parties claiming under the **LESSEE**.

ARTICLE 23 - NONWAIVER OF RIGHTS

The failure of either party to insist upon strict performance of any of the terms, covenants or conditions herein contained shall not be deemed a waiver of any subsequent breach or default.

ARTICLE 24 - NONDISCRIMINATION

The **LESSEE** agrees that no person shall be subjected to discrimination in the use of the **PREMISES**, the **IMPROVEMENTS** or the LaCrosse practice field contrary to federal, state or local law, rule or regulation.

ARTICLE 25 - CONTRACTORS

Contractors of the **LESSEE** shall comply with all applicable federal, state and local laws, rules and regulations applicable to the improvement, repair and maintenance of the **PREMISES**, the **IMPROVEMENTS** and the LaCrosse practice field.

ARTICLE 26 - BENEFITS

The terms and conditions of this Lease shall inure to the benefit of the parties and be binding upon their successors.

ARTICLE 27 - INTEGRATION

This Lease is fully integrated embodying the entire agreement between the parties and any written or oral understandings to the contrary shall be of no force or effect.

ARTICLE 28 - CONSTRUCTION

This Lease shall be construed under the laws of the State of Wisconsin. Any covenant, condition, or provision herein contained that is held to be invalid by a Court of competent jurisdiction shall be considered deleted from this Lease, but such deletion shall in no way affect any other covenant,

condition, or provision herein contained so long as such deletion does not materially prejudice the **CITY** or the **LESSEE** in its respective rights and obligations contained in the valid remaining covenants, conditions, or provisions of this Lease, and when such occurs, only such other covenants, conditions or provisions shall be deleted as are incapable of enforcement. The parties agree that each party has contributed substantially and materially to the preparation of this Lease and that as a result this Lease shall not be construed more strictly against one party or the other merely by virtue of the fact that it may have been prepared primarily by counsel for the **CITY**.

ARTICLE 29 - TIME OF THE ESSENCE

Time is of the essence with respect to each and every provision of this Lease.

ARTICLE 30 - NOTICE

Any notice required to be given in this Lease by any of the parties is to be by certified mail with return receipt or by personal service addressed to the **LESSEE** or the **CITY** as the case may be as set forth below. Either party may designate a different address by delivering, sending or serving written notice of such change of address upon the other party. Notice shall be effective as of the date of delivery, if by hand, or mailing, if by certified mail.

If to **LESSEE**:

F. Gregory Campbell
President
Carthage College
2001 Alford Drive
Kenosha, Wisconsin 53140-1994

and:

William R. Abt
Vice President for Administration and Business
Carthage College
2001 Alford Drive
Kenosha, Wisconsin 53140-1994

If to **CITY**:

City Clerk/Treasurer
City of Kenosha Municipal Building
625 52nd Street, Room 105
Kenosha, Wisconsin 53140

With copies to:

Office of the City Attorney
City of Kenosha Municipal Building
625 52nd Street, Room 201
Kenosha, Wisconsin 53140

Director of Public Works
City of Kenosha Municipal Building
625 52nd Street, Room 305
Kenosha, Wisconsin 53140

Superintendent of Parks
City of Kenosha Parks Division
3617 65th Street
Kenosha, WI 53142

ARTICLE 31 - AUTHORITY

The **CITY** enters into this Lease by authorization of action taken by the Common Council on the ___ day of _____, 2011.

The **LESSEE** enters into this Lease by authority of its Articles of Incorporation and ByLaws and represents to the **CITY** that all acts which are a condition precedent to its entering into this Lease have timely taken place.

SIGNATURE PAGES FOLLOW

Exhibit B

Carthage

Proposed—Kenosha Scholarship, Off-campus Parking

Tuition Pricing (year 2011) **\$31,300**

<u>Year</u>	<u>Number of Active Scholarships</u>	<u>Value of Active Scholarships Based on Current Tuition Rate</u>	<u>Cumulative Value of Scholarships</u>
2011	3	\$93,900	\$93,900
2012	6	\$187,800	\$281,700
2013	9	\$281,700	\$563,400
2014	12	\$375,600	\$939,000
2015	12	\$375,600	\$1,314,600
2016	12	\$375,600	\$1,690,200
2017	12	\$375,600	\$2,065,800
2018	12	\$375,600	\$2,441,400
2019	12	\$375,600	\$2,817,000
2020	12	\$375,600	\$3,192,600
2021	12	\$375,600	\$3,568,200
2022	12	\$375,600	\$3,943,800
2023	12	\$375,600	\$4,319,400
2024	12	\$375,600	\$4,695,000
2025	12	\$375,600	\$5,070,600
2026	12	\$375,600	\$5,446,200
2027	12	\$375,600	\$5,821,800
2028	12	\$375,600	\$6,197,400
2029	12	\$375,600	\$6,573,000
2030	12	\$375,600	\$6,948,600
2031	12	\$375,600	\$7,324,200
2032	12	\$375,600	\$7,699,800
2033	12	\$375,600	\$8,075,400
2034	12	\$375,600	\$8,451,000
2035	12	\$375,600	\$8,826,600



ENGINEERING DIVISION
MICHAEL M. LEMENS, P.E.
DIRECTOR/CITY ENGINEER

STREET DIVISION
JOHN H. PRIJIC
SUPERINTENDENT

FLEET MAINTENANCE
MAURO LENCI
SUPERINTENDENT

WASTE DIVISION
ROCKY BEDNAR
SUPERINTENDENT

PARK DIVISION
JEFF WARNOCK
SUPERINTENDENT

ADMINISTRATION SUPERVISOR
JANICE D. SCHROEDER

DEPARTMENT OF PUBLIC WORKS
RONALD L. BURSEK, P.E., DIRECTOR

MUNICIPAL BUILDING • 625 - 52ND ST. • RM. 305 • KENOSHA, WI 53140
TELEPHONE (262) 653-4050 • FAX (262) 653-4056

January 6, 2011

To: Michael Orth, Chairman
Park Commission

From: Ronald L. Bursek, P.E. 
Director of Public Works

CC: All Aldermen

Subject: ***INFORMATIONAL ITEM – Schreiber Anderson Associates – CORP and Master Plan Development***

BACKGROUND INFORMATION

Schreiber Anderson Associates will be giving a brief presentation on the work completed to date for the Comprehensive Outdoor Recreation Plans and the Master Plans for Strawberry Creek Park, Sunrise Park, Petzke Park and Simmon's Island. Their presentation will touch base on the following topics:

CORP

- Progress (schedule)
- Public Involvement (Public Information Meeting #1, Stakeholder Interviews, Online Survey)
- Individual Park Recommendations
- Next Steps

Master Plans

- Progress Status

Public Information Schedule

- Tuesday, January 18 – Subarea 1 and Simmon's Island Master Plan – Municipal Office Building, Room 202
- Tuesday, January 25 – Subarea 3 and Strawberry Creek – YMCA located at 7101 53rd Street
- Wednesday, January 26 – Subarea 4, Sunrise and Petzke Park – Northside Library located at 1500 27th Avenue
- Tuesday, February 1 – Subarea 2 – Southwest Library located at 7979 38th Avenue

RECOMMENDATION

Informational Only – No Action Required