SECOND AMENDMENT TO CONCESSION AGREEMENT

THIS SECOND AMENDMENT TO THE NON-EXCLUSIVE FOOD, BEVERAGE, VENDING, AND RETAIL CONCESSION AGREEMENT is made and entered into effective as of _____ day of April, 2021 (the “Second Amendment Effective Date”), by and between The City of Minot, ND, a municipal corporation (the “City”) and Oakwells Commuter Rail LLC, (each a “Party” and collectively “the Parties”).

Whereas, the City and Developer entered into the Non-Exclusive Food, Beverage, Vending, and Retail Concession Agreement (the “Agreement”) on February 29, 2016;

Whereas that Agreement was extended by one year effective March 1, 2021 through the exercise of the first one year Option Term per the terms of the City Council action dated December 7, 2020;

Whereas, Section 26 of the Agreement allows the Parties to change the terms of the Agreement upon their mutual consent, executed in writing, dated, and executed with the same formalities of the Agreement;

Whereas, the Parties desire to now amend Section 8 of the Agreement, by amending Paragraph A in Section 8 with regard to the Minimum Annual Guarantee;

Whereas, the City recognizes the extraordinary circumstances that Oakwells is facing due to the declared emergencies relating to the COVID-19 pandemic;

Whereas, Oakwells recognizes the City’s responsibility to operate the Airport within the approved budget;

Whereas, the City’s Mayor, by his authorities granted pursuant to section 2-38 of the City’s Code of Ordinances, hereby approves this Second Amendment of the Concession Agreement in the manner reflected herein,

Whereas, Oakwells also approve the Second Amendment of the Concession Agreement that providing for the one time waiver of the scheduled MAG fee increase in Agreement Year March 1, 2021 through February 28, 2022,

Now, therefore, in consideration of the mutual covenants and conditions set forth herein, the Parties, intending to be legally bound, hereby agree as follows, effective as of the Second Amendment Effective Date first written above:

1. The following language is hereby amended in Section 8 (Concession Payments and Statements) paragraph A (Concession Fees and Minimum Annual Guarantee(MAG)),

   The Minimum Annual Guarantee (MAG) for the period from March 1, 2021 through February 28, 2022 shall remain at the same amount as the previous Agreement Year and no escalation factor shall be applied. The Minimum Annual Guarantee due during this period will be one hundred thirty five thousand eight hundred six dollars and nine cents ($135,806.09) or eleven thousand three hundred seventeen and seventeen cents ($11,317.17) per month.
2. **Counterparts.** This Amendment may be executed in one or more facsimile, electronic or original counterparts, each of which shall be deemed an original and both of which together shall constitute the same instrument.

3. **Authority to Bind.** The individuals signing this Amendment on behalf of the Parties represent and warrant that they are empowered and duly authorized to bind the Parties to its terms.

4. **Ratification.** All terms and provisions of the Agreement not amended hereby, either expressly or by necessary implication, shall remain in full force and effect. From and after the date of this Amendment, all references to the term “Agreement” in this Amendment or the original Agreement shall include the terms contained in this Amendment.

   IN WITNESS WHEREOF, the Parties hereto have executed this First Amendment to the Agreement effective as of the Amendment Effective Date.
OAKWELLS COMMUTER RAIL LLC

STATE OF NORTH DAKOTA

COUNTY OF _____________

On this ____ day of April 2021, before me personally appeared ____________________, known to me to be the person who is described in, and who executed the within and foregoing instrument and who acknowledged to me that he executed the same.

(seal)

_______________________________
Notary Public, _____________ County, North Dakota.
My Commission Expires: __________

CITY OF MINOT

_______________________________
Notary Public, _____________ County, North Dakota.
My Commission Expires: __________

STATE OF NORTH DAKOTA

COUNTY OF _____________

On this ____ day of April 2021, before me personally appeared ____________________, known to me to be the person who is described in, and who executed the within and foregoing instrument and who acknowledged to me that he executed the same.

(seal)

_______________________________
Notary Public, _____________ County, North Dakota.
My Commission Expires: __________