

RESOLUTION NO.: 112—2023-24

TO THE HONORABLE, THE OUTAGAMIE COUNTY BOARD OF SUPERVISORS

LADIES AND GENTLEMEN:

MAJORITY

1 The Appleton International Airport has chosen a new concessionaire for food/beverage and
2 retail through an RFP process. The Airport has negotiated a lease and concession agreement
3 with SSP America ATW, LLC for a concessionaire lease to operate a food and beverage
4 business. The lease term is eleven (11) years beginning May 1, 2024 and terminating on April
5 30, 2035. The lease rate will be the greater of the Minimum Annual Guarantee (ranging from
6 \$300,000 to \$481,038 annually) or a percentage of gross receipts based on amount of revenue
7 generated. The lease revenue has already been included in the 2024 budget, therefore, no budget
8 adjustment is required.
9

10 NOW THEREFORE, the undersigned members of the Property, Airport, Recreation and Economic
11 Development Committee recommend adoption of the following resolution.

12 BE IT RESOLVED, that the Outagamie County Board of Supervisors does authorize and approve
13 the Appleton International Airport entering into a lease and concession agreement to operate a food and
14 beverage business with SSP America ATW, LLC, with no budget adjustment needed as the lease revenue
15 has been included in the 2024 budget as detailed in the attached Lease and Concession Agreement and
16 fiscal note, which by reference are made a part hereof, and

17 BE IT FINALLY RESOLVED, that the Outagamie County Clerk be directed to forward a copy of
18 this resolution to the Outagamie County Finance Director and the Appleton International Airport Director.
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Dated this ____ day of March 2024

Respectfully submitted,

PROPERTY, AIRPORT, RECREATION &
ECONOMIC DEVELOPMENT COMMITTEE

Dean Culbertson

Lee W. Hammen

Ronald Klemp

Yvonne Monfils

Jayson Winterfeldt

Duly and officially adopted by the County Board on: _____

Signed: _____
Board Chairperson

County Clerk

Approved: _____

Vetoed: _____

Signed: _____
County Executive

LEASE AND CONCESSION AGREEMENT

By and Between

THE OUTAGAMIE COUNTY

By and Through

THE APPLETON INTERNATIONAL AIRPORT

And

SUCCESSFUL PROPOSER

CONCESSIONS PACKAGE

DATE:

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THIS LEASE AND CONCESSION AGREEMENT (the "Agreement") is made and entered into by and between the OUTAGAMIE COUNTY ("COUNTY"), represented by _____, by and through the Appleton International Airport ("Airport"), represented by Abe Weber, its Airport Director (the County and Airport collectively referred to as "Lessor"); and SSP America ATW, LLC, represented by _____, it' _____ ("Concessionaire"). The Lease is effective _____ (the "Effective Date").

1. WITNESSETH

WHEREAS the County owns certain immovable property located in Outagamie County and more particularly described as the Appleton International Airport and certain immovable property surrounding the Appleton International Airport (the "Airport Property");

WHEREAS the Lessor is charged with the administration and operation of the Appleton Airport (the "Airport") and all property owned in connection therewith;

WHEREAS the County has commenced the construction of terminal and baggage claim expansions;

WHEREAS in anticipation of the construction and opening of the terminal expansion, the County issued Request for Proposals No. ATW FBR24, soliciting proposals from qualified providers capable of providing food and beverage, news, gift, and specialty retail services (collectively and individually, Concessions) at the Airport;

WHEREAS the Concessionaire submitted a written proposal dated December 14, 2023, which is attached hereto as Exhibit H, and the Lessor has selected the Concessionaire to design, construct and operate the Concessions Package as described in the RFP;

WHEREAS, Concessionaire desires and is fully qualified to design, construct and operate the Concessions Package at the Airport, together with certain privileges, rights, uses, and interests therein as hereinafter set forth; and

WHEREAS, on the 1/29/2024, the Airport approved SSP America ATW, LLC as the successful proposer for this Lease, subject to County Board approval.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained in this Lease, and other valuable considerations, Lessor and Concessionaire agree as follows:

2. DEFINED TERMS

- 2.1. **Additional Storage** means space used as an office and administrative space for preparing and storing products. The monthly rental obligation for additional storage is charged at the square foot annual fair market value rate.
- 2.2. **Agreement** means this Lease and Concessions Agreement.
- 2.3. **Agreement Year** means a period of twelve (12) consecutive months commencing upon the Rental Commencement Date.
- 2.4. **Airport** means the land, with all improvements thereon and to be erected thereon, owned or operated by the Airport, designated as Appleton International Airport, and the locations may be added occasionally.
- 2.5. **Annual Report** means the annual report required to be provided by the Concessionaire to the Authorized Representative pursuant to Section 22.4 of this Agreement.
- 2.6. **Authorized Representative** means the Airport Director during the performance of this Agreement. In his sole discretion, the Director may delegate certain functions under this Agreement to one or more persons to serve as the Authorized Representative for this Agreement.
- 2.7. **Aviation Airport, Airport, and ATW** mean the Appleton International Airport, an unattached Airport within the executive branch of the County of Outagamie.
- 2.8. **County** means the County of Outagamie and all departments and agencies thereof.
- 2.9. **Concessionaire** means SSP America ATW, LLC.
- 2.10. **Concessions Location** means any concessions location operated by the Concessionaire at the Airport and pursuant to the terms and conditions of this Agreement.
- 2.11. **Date of Beneficial Occupancy** means the first day on which 1) the concessionaire generates revenue from operations at the Airport, and 2) the concessionaire takes over operations of the existing concession program. The Date of Beneficial Occupancy is expected to be no later than May 1st, 2024.
- 2.12. **Development Period** means the period from the Execution Date to the Date of Beneficial Occupancy; however, the Development Period shall not extend past December 31, 2025.
- 2.13. **Development Schedule** means the Concessionaire's Development Scheduled, which shall be provided to the Airport prior to commencing construction, attached hereto as Exhibit B.
- 2.14. **Airport Director or Director** means the Authorized Representative of the Airport as appointed by the County.
- 2.15. **Execution Date** is the day the County approves and executes this Agreement.
- 2.16. **Enplanement or Enplaned Passenger** means any passenger who boards an aircraft from the Airport's terminal building.
- 2.17. **First-Class Operation** shall refer to an operation that, in the County's sole judgment, consistently maintains hours of operations that meet the needs of all passengers, provides quality products and services, is sufficiently staffed by an attentive and knowledgeable workforce, operates smoothly and efficiently, has processes and procedures in place to ensure

that customers are served in a timely and efficient manner, maintains a clean and inviting atmosphere, and is compliant with all rules and regulations as stated herein.

2.18. **Force Majeure** means that neither the Airport nor the Concessionaire shall be deemed in violation of this Agreement if it is prevented from performing any of the obligations hereunder by reason of strikes, boycotts, labor disputes, embargoes, shortage of material, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, epidemic, or any other circumstances for which it is not responsible or which is not within its control.

2.19. **Gross Revenues** have the meaning outlined in Section 9 of this Agreement, subject to the limitations in Section 9.9 of this Agreement.

2.20. **Leasehold Improvements** means those improvements constructed or implemented by the Concessionaire, or on its behalf, on the Leased Premises for the operation of Concessions.

2.21. **Lessor** shall collectively refer to the Airport and the County.

2.22. **Mid-Term Refurbishment** means those mid-term refurbishments to be provided by Concessionaire pursuant to Section 15.2 of this Agreement.

2.23. **Minimum Annual Guarantee or MAG** means the Concessionaire's annual minimum rental obligation. During the first year of the Term Concessionaire will pay no MAG. For the remainder of the Term the MAG shall be calculated as eighty-five percent (85%) of all Rent paid during the preceding Agreement Year or three hundred thousand dollars (\$300,000.00), whichever is greater.

2.24. **Minimum Initial Capital Investment** means the Concessionaire's minimum capital investment towards the initial design, construction, and equipping of the Leased Premises, which shall be \$2,268,963.

2.25. **Monthly Report** means the monthly report required to be provided by the Concessionaire to the Authorized Representative pursuant to Section 22.2 of this Agreement.

2.26. **Price Benchmark Establishment** means any business approved in writing by the Director or Authorized Representative to be used as the basis for price comparisons during the remainder of the term pursuant to Section 8.15.7 of this Agreement.

2.27. **Rental Commencement Date** means the date Concessionaire is obligated to commence payment of Rental Obligations under this Agreement and will be on the first day of the month following the Date of Beneficial Occupancy.

2.28. **Rental Obligation** means the monthly rental obligation listed in Section 9.1 of this Agreement, which shall be the MAG payment or the Monthly Rent Obligation payment, whichever is greater.

2.29. **Rental Obligation – Additional Storage** means the monthly rental obligation listed in Section 9.5. The Concessionaire's monthly rental obligation for Additional Storage shall be the fair market value as determined by the Airport on an annual square foot basis.

2.30. **Turn-Over of Leased Premises** means the physical turn-over of the Leased Premises to the Concessionaire for construction and operation pursuant to the terms and conditions of this Agreement.

3. TERM

3.1. **Original Term of this Agreement.** The term of the Concession Agreement shall be for eleven (11) years, commencing on the 1st of May, 2024 through the 30th of April, 2035 unless sooner terminated or canceled as herein provided.

3.2. **Holding Over.** Should the Concessionaire hold over the Leased Premises after this Concession Lease has been terminated in any manner, Concessionaire shall continue such holding over only at sufferance to the County. In the event of such holding over, the County shall be entitled to collect from Concessionaire double the amount of the monthly prorate share of the Minimum Annual Guarantee each month or portion thereof during the holdover period. All other terms and conditions in such holdover shall be the same as herein provided.

4. LEASED PREMISES

4.1. **Leased Premises.** As further indicated in Exhibit A1-A7, the Leased Premises shall consist of approximately 8,217 square feet for the placement of Food and Beverage, and Retail concepts inside the Airport. In addition, Leased Premises include a vertical garden and concessionaire operated vending machines.

4.2. **Additional Storage.** Additional Storage may be added as an office and administrative space and for the preparation and storage of products necessary. The County shall have the right to charge the then-market rate for additional storage space leased by the Concessionaire.

4.3. **Amendment of Leased Premises.** The Airport and Concessionaire may, during the Term and by mutual agreement, add additional certain revenue-generating space(s) or non-revenue generating space(s) or delete any space(s) from the Leased Premises. All non-revenue generating space(s) added to the Leased Premises pursuant to this Section shall be subject to all the terms, conditions, and other provisions of this Agreement, and Concessionaire shall pay the Airport all rents, fees, and charges applicable to the additional space(s) by this Agreement. In deleting space(s) from the Leased Premises, rents, fees, and charges paid to the Airport by the Concessionaire shall be appropriately adjusted.

4.4. **No Liability.** Concessionaire shall not be compensated, and the Airport shall not be liable for any inconvenience to Concessionaire, for any interruption of Concessionaire's business, or any other damages as a result of moving to replacement Leased Premises; provided, however, Concessionaire shall receive a day for day abatement for all rent, fees, and charges for each day that Concessionaire is not able to open for business to the public due to such reclaiming or relocation of the Leased Premises.

4.5. **Leased Premises Acceptance As-Is.** Concessionaire accepts the Leased Premises in their current condition, as-is and with all faults, as of the date of the Turn-Over of Leased Premises. The Airport shall not be obligated to construct additional improvements or to modify existing conditions, nor to provide services of any type, character, or nature (including any utilities or

telephone/data service) on or to the Leased Premises during the Term other than as explicitly stated in this Lease.

4.6. **No Warranty of Economic Viability.** The Airport makes no warranty, promises, or representations regarding the economic viability of the Leased Premises, the Concessionaire's business concept(s), or any other matter pertinent to the potential or likelihood for success or failure of the Concessionaire's business operations. Concessionaire acknowledges that airline gate usage and other aspects of Airport operations are subject to change during the Term without notice and that the Airport makes no warranty regarding the location of the airline gate or terminal usage. Except as is expressly set forth herein, the Airport shall not, by virtue of the existence of this Lease, be constrained in connection with its operation of the Airport. Opening a business anywhere involves an amount of risk. By signing this Agreement, Concessionaire affirmatively states that they have investigated the Concessions' potential for success and failure and willingly accept said risk.

5. CONSTRUCTION AND CAPITAL INVESTMENT

5.1. **Construction by Concessionaire.** The Concessionaire shall be obliged to design, completely finance, and construct certain Leasehold Improvements to the Leased Premises at the areas designated on Exhibits A1-A7. Construction must be coordinated with the County and performed in phases to limit negative impacts on passenger experience. All constructions performed by Concessionaire shall be conducted pursuant to the terms and conditions of this Agreement.

5.2. **Minimum Initial Capital Investment.** The Concessionaire's minimum capital investment towards the initial design, construction, and equipping of the Leased Premises shall be \$2,268,963. The Concessionaire shall be responsible for all costs associated with the initial improvements of the Leased Premises, even if the cost is greater than the proposed amount.

5.2.1. If the actual initial capital investment, as certified by the Concessionaire, is less than the proposed Minimum Capital Investment, then Concessionaire agrees to pay to the Airport within thirty (30) days of such determination, the difference between the actual initial capital investment and the Minimum Initial Capital Investment. Any amounts paid to the Airport as a result of this provision shall not be deemed a capital investment for any purpose under this Agreement, nor shall it be deemed payment of any rent or other fees due under this Agreement.

5.3. **"Eligible Costs"** means, for any expenditures made by Concessionaire for Leasehold Improvements, including those made as Minimal Initial Capital Investments, the following:

5.3.1. Construction Costs, and

5.3.2. Architectural and engineering fees, construction management fees, and the cost to obtain the applicable permits, which amounts under this clause shall not exceed fifteen percent

(15%) of the contracted Construction Costs unless otherwise approved by the Airport in writing, and

5.3.3. Capital Improvements (including any equipment and custom-built “trade fixtures”), which constitute fixtures installed for use in the Premises, and

5.4. Non-Eligible Cost. Notwithstanding the foregoing, the definition of Eligible Costs shall exclude:

5.4.1. Costs for construction incurred by the Airport, and

5.4.2. Costs in excess of one hundred twenty-five percent (125%) of the estimated costs of Capital Improvements provided by the Concessionaire to, and approved in writing by, the Airport at the time preliminary approval is sought unless otherwise specifically approved by City in writing, and

5.4.3. Any overhead, financing costs (e.g., loan origination fees or interest, points, legal fees, or any non-construction-related cost) in connection with said construction.

5.5. In order for expenditures to qualify as Eligible Costs, documentary evidence of payments for expenditures on improvements to the Leasehold Improvements must be provided to the Airport.

5.6. **Submittal Plans and Specifications.** Concessionaire shall submit preliminary plans and specifications for proposed Improvements to the Premises to the Director within 30 days after the Agreement is executed.

5.7. **Approval of Plans and Specifications.** The Airport will review and respond to submittals of plans and specifications within twenty-one (21) days or provide notice to Concessionaire that the review time has been extended. In the event of disapproval by the Airport of any portion of any submittal of plans and specifications, Concessionaire shall promptly make modifications and revisions and re-submit for approval by the Airport.

5.8. **Approval of Projects.** Concessionaire may submit and the Airport may approve construction plans and specifications on an individual project basis. For purposes of this Agreement, an “Approved Project” shall mean any project that has been approved by the Airport.

5.8.1. **Disclaimer of Compliance with Laws or Codes.** The approval by the Airport of any plans and specifications refers to the conformity of such plans and specifications to the Concession Design Criteria Manual and other Airport standards that may be provided. Approval of any plans and specifications by the Airport does not constitute its representation or warranty as to their conformity with applicable laws, statutes, codes, or permits, and responsibility for conformity, therefore, at all times, remains with Concessionaire.

5.9. **Approvals Extend to Architectural and Aesthetic Matters.** Required approval of the Airport will extend to and include architectural and aesthetic matters. The Airport reserves the right to reject any designs submitted by Concessionaire and to require Concessionaire, at

Concessionaire's expense, to make modifications and revisions and to resubmit designs until designs are deemed acceptable and subsequently approved in writing by the Airport.

5.10. **Design and Permitting.** Concessionaire shall be responsible, at its sole cost and expense, for the costs of design and permitting of all improvements within the Leased Premises and shall not commence any work with respect to an Approved Project until all governmental permits and approvals for the Approved Project have been obtained. At no cost or liability to the Airport, the Airport shall cooperate in all reasonable respects with the Concessionaire's efforts to obtain such permits and approvals, which cooperation shall include, without limitation, the execution of such instruments as may be required by governmental authorities for Concessionaire to apply for and obtain such permits and approvals.

5.11. **Performance and Payment Bonds.** During the lease term, if Concessionaire constructs or renovates Leasehold Improvements that require construction or engineering permits, they must provide Payment and Performance Bonds in an amount equal to the construction cost. The bonds must be provided by a company authorized to write such bonds in Wisconsin, with an "A" or better rating in the most current edition of the A.M. Best Insurance Report, and must be countersigned by a Wisconsin licensed agent. The bonds must remain in force until Concessionaire submits lien waivers from all contractors and subcontractors. The Airport and County will retain the bonds for the duration of the construction.

5.12. **Ownership of Improvements.** All improvements, additions, or alterations, including trade fixtures, equipment, furniture, Improvements, additions, and alterations made to the Premises by the Concessionaire shall become the property of the County free and clear of any demand, lien, claim or other encumbrance of the Concessionaire, upon the expiration or earlier termination of this Agreement. However, if requested in writing by the County, the Concessionaire will remove any such Improvement, addition, or alteration at the Concessionaire's sole expense and will repair all damages caused by such removal.

5.13. **Commencement of Construction.** Concessionaire shall, at its own cost and expense, commence construction of an Approved Project within ten (10) days of the Turnover of Leased Premises date stated in the notice to proceed for such Approved Project; all necessary building, demolition, or other permits and approval must be obtained by this date, and Concessionaire agrees that all construction work to be performed, including all workmanship and materials, shall be of first-class quality and in accordance with the Development Schedule. All construction shall be performed in accordance with the requirements of this Agreement and applicable laws, regulations, ordinances, codes, and permits. The Airport shall have the right to inspect each Approved Project from time to time.

5.13.1. **Cooperation during Development Period.** During all phases of the Development Period, Concessionaire shall cooperate and provide such other documentation or information reasonably requested by the Airport, Authorized Representative, or Program Manager to

ensure the proper and timely coordination of the development tasks or activities necessary for the project's timely completion.

5.13.2. **Completion of Construction.** The Concessionaire must complete all Approved Projects and open for business by the required completion date set forth in the notice to proceed with the Approved Project, which is anticipated to be sometime in July 2025. Failure to complete the approved projects and open for business by the required completion date may result in Liquidated Damages.

5.14. **Project Closeout.** For each Approved Project, Concessionaire shall conform to project closeout and operational readiness activities and further agrees that it shall deliver to the Airport within sixty (60) days of the construction completion date the following evidence of completion:

5.14.1. "As built" record documents of the construction, additions, and other modifications constructed by the Concessionaire on the Leased Premises. During the Term, the Concessionaire shall keep said documents current, with all changes or modifications made by Concessionaire in or to the Leased Premises or additions thereto.

5.14.2. A statement certified by Concessionaire's chief financial officer specifying the final capital investment related to each of the Approved Projects with the level of detail as requested by the Airport.

5.14.3. A certification that construction has been completed in accordance with the approved plans and specifications and in compliance with all laws and other governmental rules, regulations, and orders.

5.14.4. Certified proof demonstrating that no liens exist on the Leased Premises, including but not limited to, a waiver of lien from all construction contractors and signed releases from all subcontractors that indicate receipt of payment in full for all work performed or trade fixtures delivered.

5.15. **Additional Improvements and Alterations.** Concessionaire shall make no alterations or improvements, to the Leased Premises following the Date of Beneficial Occupancy of each concept without the prior written approval of the Airport, which shall set forth the procedures applicable to the alteration. To obtain the Airport's written authorization, Concessionaire agrees to submit written specifications of the modifications requested to the Authorized Representative. The Airport's approval shall not waive any local, State, or federal requirements governing such alterations and improvements. All alterations and improvements made to the Leased Premises will be at the sole cost and expense of Concessionaire.

5.16. **Removal of Unapproved Improvements.** Improvements made on the Leased Premises without the approval of final plans for said improvements as outlined herein are hereby determined to be unapproved improvements constructed or installed in violation of the conditions, restrictions, and requirements of this Agreement. Unapproved improvements shall

be immediately removed at Concessionaire's sole expense unless otherwise approved in writing by the Airport. Portions of improvements that are not constructed as indicated and specified on approved plans are also hereby determined to be unapproved improvements and shall be immediately removed or corrected at Concessionaire's sole expense.

5.17. Delayed Commencement Fee for Failure to Complete Construction of an Approved Project. Concessionaire acknowledges that if it fails to open for business by the required completion date, the delay may cause the Airport to suffer substantial damages; therefore, if Concessionaire fails to either complete the construction of one or more Approved Projects or open the concession location for business by the required completion date, the following will apply:

5.17.1. If Concessionaire is unable to open any unit by the commencement date, a delayed commencement fee shall be due to the Airport in the amount of one and a half (1.5x) time the projected rent for said unit(s), until the date that said unit is open for business; and

5.17.2. If the Concession Location is not open for business within thirty (30) days after the required completion date, the failure is an event of default. The Airport has the right to exercise any and all remedies herein, at law or in equity, including but not limited to the option to terminate this Agreement or to remove the applicable concession location from the Leased Premises.

5.18. Delay Due to Force Majeure. Notwithstanding the foregoing, the parties agree that any delay in the construction of any improvements due to Force Majeure or acts of the Airport or the Airport's contractors shall extend the required completion date for an Approved Project day for day. Any extension provided per the terms of this Section shall be limited to the actual delays caused by any such Force Majeure event or act of the Airport. However, the Airport shall have no liability to Concessionaire for compensation or damages for any such delay.

6. LIENS

6.1. Waiver. The County and the Airport and the interest of the County and the Airport in the Leased Premises shall not be liable for or subject to any mechanic's, laborer's or materialmen's liens for materials furnished, improvements, labor, or work made by or for Concessionaire to the Leased Premises. Concessionaire shall not pledge, lien, or otherwise encumber any assets located at the Airport or any interest in this Agreement without prior written approval by the Airport. Concessionaire shall not allow any mechanic's, materialmen's, or laborers' liens to attach to the Leased Premises. Concessionaire shall require every sub-concessionaire, sub-tenant, contractor, or sub-contractor with whom its contracts to execute a waiver of the right to file any liens against the Airport or the Leased Premises, which waiver shall be effective against claims by any such entities and all material, vendors, laborers, and workers arising from any work, services, or goods furnished at the Airport.

6.2. **Discharge.** In the event any construction, mechanic's, laborer's, materialmen's or other lien or notice of lien is filed against any portion of the Leased Premises for any work, labor, or materials furnished to the Leased Premises, whether or not the same is made or done in accordance with an agreement between the Airport and Concessionaire, Concessionaire will cause any such lien to be discharged of record within thirty (30) days after notice of filing thereof by payment bond or otherwise or by posting with a reputable title company or another escrow agent acceptable to the Airport, security reasonably satisfactory to the Airport to secure payment of such lien if requested by the Airport, while Concessionaire contests to the conclusion the claim giving rise to such lien.

6.3. **Lien and Privilege.** To the extent permitted by law, the Airport shall have a lien upon all Trade Fixtures and Personal Property of the Concessionaire placed in or on the Leased Premises for the purpose of securing the payment of all sums of money that may be due to the Airport from Concessionaire under this Agreement. This lien shall supersede any other lien, including any lien created in connection with Concessionaire's financing. Concessionaire is prohibited from pledging any Trade Fixtures and/or Personal Property without prior written permission from the Airport.

7. USE OF LEASE PREMISES

7.1. **Permitted Uses.** Pursuant to the terms and conditions of this Agreement, the Leased Premises shall be used by Concessionaire or its sub-concessionaires and/or sub-tenants only for the provision of food and beverage service, news, gift, and retail services, use as an office and administrative space, and for the preparation and storage of products necessary for the provision of Concession services. The Airport may, in its sole discretion, expand the permitted uses of the Leased Premises.

7.2. **Innovative Growth and Customers First Uses.** Concessionaire shall partner with the County to explore, implement, and maintain innovative growth and customer-first initiatives, such as autonomous markets, food lockers, etc., within the Leased Premises and throughout the Airport.

7.3. **Vending Machines.** Concessionaire shall install and operate vending machines and micro markets (herein "Vending Machines") on the Leased Premises. With written approval from the County, the Concessionaire may add, delete, or replace Vending Machines. The Airport reserves the right to install and maintain, through contractors of its choosing, vending machines at the Airport, including in Support Spaces.

7.4. **Restricted Uses.** Nothing contained in this Article should be construed as authorizing Concessionaire to conduct any business not specifically permitted by this Agreement or in areas at the Airport other than the Leased Premises. Any rights not specifically granted to Concessionaire are hereby reserved by the Airport.

7.4.1. **Interference with Airport Operations.** The Concessionaire shall not use the Leased Premises or allow the Leased Premises to be used in any manner that interferes with or adversely affects the operation or maintenance of the Airport.

7.4.2. **Obstruction.** Unless approved in writing in advance by the Airport, which approval is in the Airport's sole discretion, Concessionaire will not obstruct any part of the Airport terminals outside of the Leased Premises and shall not otherwise interfere or permit interference with the Airport's use, operation, or maintenance. Concessionaire shall keep all service corridors, hallways, stairways, doorways, and loading docks free and clear of all obstructions.

7.4.3. **Entertainment.** Concessionaire and/or its sub-concessionaires and sub-tenants may not transmit any unlicensed or non-copyrighted music, radio broadcasts, recorded music, television, or movie broadcasts, in the Leased Premises in compliance with Federal Copyright Law found in Title 17 of the United States Code, or as amended. Concessionaire and/or its sub-concessionaires and sub-tenants must obtain any required permits, licenses, or copyrights.

7.4.4. **Cable Television.** The Airport reserves the right to require the Concessionaire to use one (1) cable television provider as selected by the Airport.

7.4.5. **Wireless Internet.** Concessionaire and/or its sub-concessionaires and sub-tenants are not permitted to install its own high-speed wireless local area network ("WLAN") without the express written consent of the Airport.

7.5. **Compliance with Applicable Laws, Ordinances, Permits, and Licenses.** Concessionaire and its sub-tenants shall comply with all provisions of this Agreement and applicable state, federal, and local laws, and ordinances, as well as all permits and licenses necessary for the operation of the services provided on the Leased Premises. The Airport may assess liquidated damages set forth in Section 6.24 until such prohibited act is ended. Moreover, if the prohibited act is not corrected as directed by the Airport, the Airport or its representative shall have the right to enter upon the Leased Premises and take corrective action. Concessionaire agrees to promptly reimburse the Airport for any related costs, plus an administrative fee of fifteen percent (15%) of the corrective action costs.

8. OPERATIONS AND PERFORMANCE STANDARDS

8.1. **The Airport's Requirements.** The occupancy and use by the Concessionaire of the Leased Premises and the rights herein conferred upon the Concessionaire shall be subject to the Airport's rules and regulations and operating directives as are now or may hereafter be prescribed by the Airport through the lawful exercise of its powers.

8.1.1. **Additional Compliance.** Concessionaire shall comply with all applicable laws, ordinances, regulations, codes, licenses, and permits in the conduct of its operations under this Agreement, including, but not limited to, TSA regulations regarding products or procedures.

8.2. **Performance Standards.** The concessionaire shall conduct its business in a manner to meet the needs of Airport patrons and employees and in a manner that will reflect positively upon the Concessionaire, the Airport, and the County. The Concessionaire shall equip, organize, and efficiently manage the Leased Premises to provide First-Class Operation.

8.2.1. **Health and Safety Standards.** Concessionaire shall comply with all health and sanitary regulations adopted by the Airport, Outagamie County, the State of Wisconsin, and any other governmental authority with jurisdiction over the Airport. Concessionaire shall give access for inspection purposes to any duly authorized representatives of all such governing bodies. Concessionaire shall provide the Authorized Representative with copies of all inspection reports by other health and sanitary governing bodies within forty-eight (48) hours of receipt. This paragraph does not require Concessionaire to waive any applicable attorney-client or attorney work product privileges.

8.3. **Quality.** All products and merchandise sold or kept for sale shall be of high quality and wholesome and must fully conform with all applicable food and drug laws, ordinances, and regulations, as well as the Airport's rules and regulations and operating procedures.

8.3.1. **Quality of Products and Services.** Concessionaire shall ensure that all customers are provided First-Class merchandise and services, and Concessionaire shall keep in stock and have ready for sale at all times of operation a sufficient supply and variety of the most popular products and goods offered for sale at each location, consistent with the product price list, to meet the demand of customers at the Airport.

8.3.1.1. **Quality Deficiencies.** If the Airport identifies any issues, such as inadequate quality, variety, or quantity of goods or services offered, the Airport can send a written notice of the issues to the Concessionaire. The Concessionaire must address and fix the issue(s) within three business days.

8.4. **Visible Pricing.** Prices for all merchandise must be displayed and available to all customers.

The Airport may require the Concessionaire to display local pricing comparisons to promote consumer confidence in price-sensitive items, like bottled water.

8.5. **Product Displays.** The Airport reserves the right to approve all product displays. Concessionaire hereby affirms that the Airport, in its sole discretion, has the absolute right to require that the Concessionaire discontinue the sale of any product the Airport deems unsatisfactory, distasteful, or inappropriate for any reason and to require the Concessionaire to modify product displays for any reason. If Concessionaire fails to comply with any such request by the Airport within one (1) day after written notice from the Airport, the Airport may assess liquidated damages as described in Section 8.38.

8.6. **Personnel and Training.** Concessionaire shall hire, train, supervise, and deploy enough, properly trained representatives, agents, and employees (collectively hereinafter referred to as Personnel) to service customers in a timely and efficient manner and to properly meet Concessionaire's obligations herein.

8.7. **Supervision of Employees.** Concessionaire shall closely monitor Personnel to ensure First-Class service to customers in compliance with this Agreement. The satisfactory performance of the obligation hereunder shall be determined at the sole discretion of the Airport. Concessionaire shall take all proper steps to discipline Personnel who participate in acts of misconduct on or about the Leased Premises.

8.8. **General Manager.** The Concessionaire shall appoint an active, qualified, competent, and experienced General Manager to oversee and manage Concessionaire's performance and represent and act on behalf of the Concessionaire. The General Manager shall have full authority to make day-to-day business decisions on behalf of the Concessionaire with respect to the operation of the concession program including, but not limited to, authority to control the conduct and demeanor of the Concessionaire's Personnel. The General Manager shall represent the Concessionaire in dealings with the Airport and shall coordinate all concession activities with the Airport. The General Manager shall be assigned to an office at the Airport and shall be at the Airport during the Airport's regular business hours. The Airport may require the General Manager to be at the Airport during peak travel periods and or outside of the Airport's regular business hours. The General Manager shall designate a qualified, competent, and experienced subordinate to be in charge and available during the General Manager's absence during Concessionaire's regular operating hours.

8.9. **Concessionaire Provided Customer Service Training.** Concessionaire shall implement a customer service training program and require that all employees employed by Concessionaire at the Leased Premises shall complete Concessionaire's training program within one month (1) of their employment commencement date and receive additional customer service training each Agreement Year. The Airport may require Concessionaire to provide additional customer service training to employees who receive an unsatisfactory mystery shopper score or customer review.

8.10. **Additional Personnel Requirements.** In addition to the Personnel requirements set forth herein, Concessionaire shall ensure that all Personnel engaged in the performance of the Concession shall conform to the Airport's rules, regulations, and operating procedures.

8.11. **The Airport's Right to Object.** The Airport shall have the right to object to the demeanor, conduct, and appearance of any personnel of Concessionaire or any of its invitees or those doing business with it. Immediately upon notice of objection by the Airport, Concessionaire shall take all steps necessary to remedy the cause of the objection. If requested by the Concessionaire, the Airport shall present its objections in writing and provide Concessionaire the opportunity to reply to the objections and such reply will be given consideration by the Airport.

8.12. **Cost of Delivery and Distribution.** Concessionaire is responsible for the cost of delivery and distribution of goods, including but not limited to any transportation cost, security screening services, and repair of any damaged Airport facilities.

8.13. **Delivery and Distribution Scheduling.** Concessionaires must establish dependable and flexible delivery and distribution schedules that enhance security, do not disrupt airline service, and ensure that the Concessionaire always has products and goods available for purchase. In addition, Delivery and Distribution routes must also limit passage through public areas traversed by the passengers.

8.14. **Equipment.** Any equipment used to bring goods in or waste out shall have rubber wheels to protect the terminal flooring. Equipment shall be identified by professional, waterproof labels or placards. Equipment must be kept clean and in proper working order. Equipment used to bring in goods may not be used to bring waste out. Waste-out equipment must be leakproof and be able to enclose its contents. The Airport reserves the right to require Concessionaire to replace any equipment.

8.15. **Pricing.** Concessionaires shall provide quality food and beverage, news, gift, and specialty retail at prices that do not exceed ten percent (10%) above the average price charged for similar or identical products that are equal in size, at identical or similar concepts in the Greater Fox Cities Area for Airport approval.

8.15.1. For merchandise with a pre-printed price affixed by the manufacturer or distributor, the selling price at the Airport shall not exceed the pre-printed price.

8.15.2. Nationally and locally branded concepts shall be compared to three (3) locations of the same brand located in the Greater Fox Cities area.

8.15.3. If three (3) locations of the same brand located in the Greater Fox Cities area do not exist, Concessionaire must benchmark against as many of the same brand locations as possible and shall follow the policy found in Section 8.15.4 for the remaining comparisons.

8.15.4. For all non-branded, proprietary, or branded concession locations not represented off-Airport in the Fox Cities Area, the price for merchandise at the Airport shall not exceed the

average price by more than ten percent (10%) for the same or similar merchandise (of like size and quality). Three Price Benchmark Establishments must be selected by Concessionaire. Three (3) additional Price Benchmark Establishments may be selected by the Airport if the Airport believes that the concessionaire has left out comparable locations in favor of locations that maintain a pricing structure that does not provide value to the customer. In such a case, the price can be, at most, the average price of the six (6) locations plus ten percent (10%).

8.15.5. Excluded Locations. Hotels, stadiums, arenas, movie theaters, amusement parks, and similar point-of-Interest locations shall not be used as a Price Benchmark Establishment.

8.15.6. News and Gift (Convenience) locations are comparable to neighborhood convenience stores such as Walgreens and CVS and national gas stations like Shell and Exxon. At least one (1) neighborhood convenience store or national gas station must be used in Price Benchmark Establishments in reports for News and Gift (Convenience locations).

8.15.7. Amendments to Benchmarks. Once approved by the Airport, the businesses (hereinafter referred to as the Price Benchmark Establishments) will be used as the basis for price comparisons during the remainder of the Term. In the event any of the Price Benchmark Establishments ceases operations or, at the sole discretion of the Airport, alters its concept, branding, service style, merchandise selection, or menu to no longer be a valid comparison, Concessionaire must propose a substitute Price Benchmark Establishment for approval by the Airport.

8.16. Price Surveys. No later than forty-five (45) days prior to the Rental Commencement Date and prior to the beginning of each year of the Term, Concessionaire shall, at its own expense, prepare a product and price survey of the Price Benchmark Establishments that demonstrates, to the satisfaction of the Airport, Concessionaire's compliance with the pricing standards herein. Concessionaire shall also provide to the Airport, a price list of the top 15 items, by volume and gross revenue, to be sold at a concessions location which shall be subject to the approval of the Airport. Further, at any time during the Term, Concessionaire shall provide a current product price list to the Authorized Representative within ten (10) days of a written request by the Director.

8.17. Price Changes. Throughout the Term, Concessionaire may request changes to pricing at most once every four (4) months. Requested price changes must be submitted in writing and include such information and data as reasonably requested by the Authorized Representative, including, but not limited to, the results of price surveys or other economic justification supporting the requested price changes(s). In its sole discretion, the Airport shall determine which price changes are consistent with the Pricing Standard and notify Concessionaire in writing of its approval or rejection of each requested price change. If the Concessionaire submits a price request that is found to be non-compliant with Pricing policy (e.g., greater than 10% of the market basket), the Airport may reject any further request until the following four

(4) month period. No later than ten (10) days after any adjustment to prices, the parties agree to modify the product price list to incorporate said price adjustments.

8.18. **Airport Employee Discount.** Concessionaire shall offer a ten percent (10%) discount on all merchandise purchased by Airport employees and employees of airlines operating at the Airport who have been issued (and show at the time the discount is requested) appropriate identification badges. The discount shall be based on Concessionaire's normal non-sale or non-promotional prices.

8.19. **Price Conformance.** At any time during the Term, the Airport may survey or cause to be surveyed prices being charged for goods or services offered by Concessionaire. The Airport shall have the right to monitor and test all the Concessionaire's merchandise prices by a shopping service or the Airport personnel. If the Airport concludes, based on the results of the survey, that any prices being charged by Concessionaire do not comply with the Pricing Standard, the Airport will require Concessionaire to adjust prices to the amounts permitted herein.

8.20. **Price Adjustments.** The Concessionaire shall, within three (3) days of receiving written notice from the Airport, adjust any prices that the Airport determines, in its sole discretion, to be inconsistent with the pricing standard. Failure to rectify any pricing discrepancies within the three (3) business days constitutes a material breach by the Concessionaire of this Agreement and, in addition to the assessment of liquidated damages as set forth herein and all other remedies available to the Airport, the Airport may, in its sole, terminate this Agreement.

8.21. **Deficiency Penalty-Pricing Policy.** In addition to performance standards liquidated damages which may be assessed upon initial notice of noncompliance, Concessionaire is subject to deficiency penalties for failing to rectify any pricing discrepancies within three (3) business days. The deficiency penalty for failure to comply with the pricing policy shall be \$100 per item per day.

8.22. **Hours of Operation.** Unless otherwise agreed to in writing by the Airport, which shall be in the Airport's sole discretion, Concessionaire shall ensure that, throughout the Term, each concession location is open daily for business without interruption during the hours of operation, which shall be (i) the time that the TSA checkpoint opens, until 30 minutes prior to the last actual aircraft departure from the area or (ii) 5 am till 9 pm, whichever provides the highest level of service as determined by the Airport.

8.22.1. **Changes to Store Hours.** The Airport may, at its sole discretion, change store hours during the Term. Concessionaire hereby acknowledges and agrees to operate the concession locations as required, which, if requested by the Airport, may be 24 hours per day, seven (7) days per week, including all holidays. Concessionaire may request changes to store hours. The Airport may, in its sole discretion, approve such requested changes.

8.22.2. **Irregular Operations or Emergency Hours of Operation.** In the event of irregular operations or emergency, as determined by the Airport, Concessionaire shall remain

continuously open and provide all goods and services as required by the Agreement for the concession locations beyond the then-current store hours as instructed by the Director or designee. The Airport will provide Concessionaire with as much warning of this necessity as possible under the circumstances. However, Concessionaire acknowledges that sometimes the amount of warning for the need to continue operating past normal closing hours may be minimal, and Concessionaire commits to operating during any hours directed by the Airport. Concessionaire will have a plan to ensure continued operations, subject to review by the Airport.

8.22.2.1. Should the Airport authorize the Concessionaire to distribute merchandise or provide services during an emergency free of charge or for discounted prices, Concessionaire shall track all goods and services provided and shall submit to the Airport for reimbursement. If approved by the Airport, reimbursement will be provided in the form of Rent credit.

8.22.3. **Failure to Maintain Hours of Operation.** Failing to maintain posted hours of operation shall constitute a violation of this Section, for which the Airport may assess liquidated damages as further described in Section 8.38. Repeated failure to maintain posted hours of operation may constitute an Incidence of default under this Agreement.

8.23. **Badging and Security Requirements.** All of the Concessionaire's personnel who work at the Airport must apply for and be issued a proper security identification badge prior to beginning work at the Airport. Concessionaire shall be responsible for ensuring Personnel, vendor, and contractor compliance with all security rules, regulations, and procedures, including, but not limited to, those issued by the FAA, TSA, and the Airport. The rules, regulations, and procedures of the FAA, TSA, and the Airport regarding security matters may be modified during the Term and Concessionaire shall be required to comply with all modifications. Concessionaire shall pay all costs associated with obtaining the required security identification badge and security clearances for its Personnel, including, but not limited to, the costs of training and badging as established by the Airport.

8.24. **Badge-Related Liquidated Damages.** Concessionaire will comply with rules, practices, security restrictions, and regulations set forth by the County or any agency with jurisdiction at the Airport. Any liquidated damages assessed against the County because of the Concessionaire's failure to comply with the provisions of this paragraph or other intentional or negligent acts or omissions of the Concessionaire, its employees, or agents will be paid promptly, upon demand, to the County by the Concessionaire.

8.25. **Employee Clearance.** The Airport Director shall have complete control over granting, denying, withholding, or terminating security clearance for said employees. Clearance is required for all employees working in restricted/sterile areas upon being hired or assigned to the Airport. The Concessionaire shall not permit any employee to begin work in the restricted/sterile areas until the Airport Administration clears the employee through the

mandated 10-year fingerprint-based Criminal History background check, as well as all other background checks, and issues the necessary documents and ID/access badge.

8.26. **Use of SIDA Badge.** Concessionaire's Personnel who are issued security identification badges shall only utilize such badges and access rights in connection with the operation of the Concessionaire's business as outlined herein. Concessionaire's Personnel shall be informed by Concessionaire, in writing, of this requirement, and a violation of such shall be a basis for the termination of a Person's employment if that person violates such restrictions.

8.27. **Surveillance and Security Systems.** Concessionaire is responsible for securing their premises. With Airport approval, tenants may install their own surveillance and security systems for security, loss prevention, and quality assurance purposes. If such surveillance systems are installed, the Airport shall be given access to remotely monitor the system and the ability to download footage.

8.28. **Employee Parking.** Nothing in this Agreement shall be deemed to require the Airport to provide parking to Concessionaire's Personnel. The Airport may provide parking accommodations to Concessionaire's Personnel in common with employees of other concessionaires and users of the Airport subject to the payment of reasonable charges therefor as may be established from time to time by the Airport. In such an event, Concessionaire's Personnel must park within the designated areas.

8.29. **Employee Uniforms and Appearance.** The Airport is extremely interested in the appearance of Concessionaire employees. Concessionaire uniforms can create a sense of place, improve customer service, create a safer workspace, and mitigate security risks. A professional appearance may comfort passengers and lead to a professional attitude of the employee and increased sales. All uniforms must be approved in writing by the Airport.

8.29.1. Employees who traverse the AOA for the purpose of distributing goods must wear reflective safety vests on the outermost garment that clearly identifies the Concessionaire.

8.30. **Point of Sale Terminals.** Concessionaire must install electronic point-of-sale terminal(s) (POS Terminals) to accurately record all transactions occurring in each concession location for accounting, reporting, and auditing purposes.

8.30.1. All POS Terminals used at the Airport must have the ability to be tied into systems allowing the Airport to remotely monitor transaction data, periodic reports for each location, and all locations included under this agreement. Alternatively, should remote monitoring not be feasible, Concessionaire shall provide the same data reports daily with a monthly summary, in a format that is acceptable to the Airport.

8.30.2. The Airport reserves the right to implement a universal point-of-sale system or other technology to work in tandem with Concessionaire's POS Terminals. Concessionaire agrees to cooperate in the implementation fully. If the Airport instructs Concessionaire to install any

technology, the Airport shall not be obligated to furnish Concessionaire with the technology, equipment, software, or systems necessary to do so.

8.31. **Complaints.** All customer complaints referred to Concessionaire by the Airport must be responded to by Concessionaire within one business day of receipt. A written copy of the Concessionaire's response shall be delivered to the Airport within said twenty-four-hour (24) period.

8.32. **Concessionaire Performance Audit.** The concessionaire shall regularly conduct self-performance audits and document their efforts and all findings. Performance audits shall include minimum objective standards in any or all the areas of (i) product quality; (ii) customer service; and (iii) cleanliness and maintenance. Upon request from the Airport, Concessionaire shall conduct additional audits within the prescribed timeframe. If not requested by the Airport, Concessionaire Performance Audits shall be provided to the Airport no later than first business day of the month, following the audit.

8.33. **Performance Audit.** The Airport reserves the right to conduct regular performance audits of the Leased Premises to assure that all the operational, safety, and compliance standards of this Agreement are consistently performed by the Concessionaire. Concessionaire acknowledges that performance audits will be conducted by the Airport, or its representative, and hereby agrees to cooperate with all performance audits. Additionally, the concessionaire shall conduct self performance audits as described herein or as requested by the Airport.

8.33.1. Performance audits may include minimum objective standards in any or all the areas of (i) product quality; (ii) customer service; and (iii) cleanliness and maintenance. If Concessionaire fails to meet minimum standards in any of these areas, the Airport may, at its discretion, assess liquidated damages as set forth in 8.38.

8.33.2. To ensure consistent adherence to performance standards throughout the Term, the Airport will use a rolling twelve-month (12) cycle to record incidents of failure to meet standards. The Airport reserves the right to assess liquidated damages for violations of performance standards as set forth in Section 8.38.

8.33.3. Repeated violations and deficiencies in performance by Concessionaire may result, at the Airport's sole discretion in the termination of this Agreement.

8.34. **Annual Review.** No later than ninety (90) days after the end of each year of the Term of the Agreement, Concessionaire will schedule a meeting with the Airport to review and evaluate the financial, customer service, and operational performance of each concession location. During the review, the Airport may determine, in its sole discretion, that the performance of one or more of the concession locations is unsatisfactory if one or more of the following occurred during the prior year:

8.34.1. Sales per enplaned passenger were less than ten percent (10%) of the projected sales per enplaned passenger for the concession location;

8.34.2. Sales per enplaned passenger were less than fifteen percent (15%) of sales per enplaned passenger for the same concession location during each of the two (2) preceding Agreement Years;

8.34.3. Scores on any secret shopper survey(s) conducted by the Airport or its representative were less than twenty five percent (25%) of the maximum achievable scores for the survey(s) ALTERNATIVE: "...were over ten percent (10%) less than the average (mean) of all stores shopped; or

8.34.4. Scores on any operational survey(s) conducted by the Airport or its representative scored less than eighty percent (80%) of the maximum achievable scores for the survey(s).

8.35. Deficient Performance by Concessionaire. The Airport, in its sole discretion, shall have the right to raise reasonable objections to the condition of the Leased Premises, the quality and quantity of products, merchandise and food and beverage, the character of the service, the hours of operation, and/or the appearance and performance of service personnel, and to require any such conditions or practices objectionable to the Airport be promptly remedied by Concessionaire. Such objections raised by the Airport shall be delivered to Concessionaire in writing, and Concessionaire shall correct, or cause to be corrected, such problem or deficiencies within seven (7) days of receipt of any such objections. If Concessionaire fails to correct within seven (7) days after written notice is given by the Airport, the Airport may assess penalties as described in Section 8.38.

8.36. Remediation Plan. If the Airport determines, based on the performance criteria specified in this Section 6, that a concession location performed unsatisfactorily during the prior Agreement Year, the Airport will provide written notice to Concessionaire. Within thirty (30) days of receipt of such written notice, Concessionaire shall prepare and submit to the Authorized Representative, for its approval, a Remediation Plan, as described below, to improve the performance of the Concession Location.

8.36.1. The Remediation Plan shall include, but not be limited to, proposed remedial activities such as employee training, staffing changes, merchandise and service modifications, facility refurbishment and repair, and/or replacement of concept or brand. Upon approval by the Airport, Concessionaire agrees to implement the approved Remediation Plan diligently and further agrees to submit to the Authorized Representative monthly reports on the progress of such implementation. If the approved Remediation Plan includes the replacement of a concept or brand, then the Airport and Concessionaire will enter good faith negotiations concerning a concept or replacement brand. In the event the Airport determines, after six (6) months of implementation of a Remediation Plan, the subject concession location is still performing in an unsatisfactory manner, the Airport reserves the right to require Concessionaire to replace the underperforming concept or brand if not already replaced by the Remediation Plan. Within ninety (90) days of receipt of written notice from the Airport requiring a replacement,

Concessionaire shall submit a proposal for a brand or concept replacement plan to the Authorized Representative. Such a replacement plan shall include, but not be limited to, a detailed description of the brand or concept, the capital expense required to re-brand, sales projections, and the specific timetable to replace the brand or concept. In its sole discretion, the Airport reserves the right to approve or deny the replacement plan and require Concessionaire to submit another replacement plan.

8.37. Failure to Comply with Performance Standards. Concessionaire acknowledges the Airport's objective to provide the public and air travelers with the level and quality of service as described herein. Accordingly, the Airport has established a series of penalties, as set forth in the table below, that it may assess, in its sole discretion, as liquidated damages for various violations of the provisions of this Agreement. Concessionaire and the Airport agree that the penalties set forth herein are reasonable, and Concessionaire further agrees to pay to the Airport such liquidated damages in accordance with the rates or in the amounts specified herein upon each occurrence of the specified violation and upon written demand by the Airport. The Airport will, in its sole discretion, determine the classification of each fine as per day or per occurrence. Concessionaire further acknowledges that the liquidated damages are not exclusive remedies, and the Airport may pursue other remedies as allowed for in this Agreement and, at law, in the Airport's sole discretion. The Airport's waiver of any fine provided for in this Section shall not be construed as a waiver of the violation or the Concessionaire's obligation to remedy the violation.

8.38. Performance Standard Liquidated Damages. Concessionaire's failure to adhere to the operating requirements set forth in this Agreement is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall commercial business of the Airport, and reduce the amount of rent to be paid to County. Additionally, County resources will be expended in dealing with violations of this Agreement by Concessionaire. The parties hereby agree that total damages sustained by to County for violations of the provisions of this Agreement addressing this subject matter could be significant but would be difficult to determine and to track. Therefore, the parties hereto agree that the liquidated damages amounts set forth below for violation of Agreement terms addressing the referenced subject matter are reasonable estimates of the loss anticipated to be suffered or incurred by County. Concessionaire, therefore, hereby agrees that imposition of the liquidated damages set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by to County the following amounts as liquidated damages upon the occurrence of breaches, in any Contract Year, related to operation violations:

8.38.1. \$100 per occurrence-first occurrence

8.38.2. \$200 per occurrence-second occurrence

8.38.3. \$300 per occurrence-third occurrence

8.38.4. \$1,000 per occurrence-fourth occurrence

8.38.5. For hours of operations violations, liquidated damages shall be as follows;

8.38.6. \$100 per hour or portion thereof, during which location is not open-first occurrence

8.38.7. \$200 per hour or portion thereof, during which location is not open-second occurrence

8.38.8. \$300 per hour or portion thereof, during which location is not open-third occurrence

8.38.9. \$1,000 per hour or portion thereof, during which location is not open-fourth occurrence

8.38.10. County's failure to impose liquidated damages for any violation of the requirements set forth above shall not waive any right or prohibit County from doing so for subsequent violations.

8.38.11. Except for violations regarding the minimum hours of operation, the liquidated damages for which shall be incurred immediately and without notice upon violation, other liquidated damage amounts shall not be imposed unless the violation continues for more than three (3) calendar days after County has given Concessionaire written notice (and this written notice may be in the form of an email) of the violation; provided, however, after County has given Concessionaire notice of the same violation more than twice during any calendar year, the liquidated damage amount shall be immediately imposed with no opportunity to cure in order to avoid the sanction. Additionally, after two (2) violations of the same type in the same calendar year, County reserves the right, at its sole option, not to impose the liquidated damage and instead seek any other remedies available to it for an event of Default, including termination of this Agreement.

9. RENT

9.1. **Rental Obligation.** As consideration for the right to occupy the Leased Premises, Concessionaire shall make monthly rent payments (Rent) to the County for the full Term of the Concession lease. In all cases, the Rent due will be the greater of Percentage Rent versus the Minimum Annual Guarantee, which will be as calculated based on methodology found in either Section 9.4.

9.2. **Percentage Rent.** Concessionaire's Percentage Rent shall be the percent (%) of its Gross Revenue as described in Table 1 herein.

Table 1-Concessions Percentage Rent

Concession	Rental Percentage
Food And Beverage	
a) Food and non-alcohol beverages	12%
b) Alcohol beverages	16%
Retail	12%
Vending	14%

9.3.

9.4. **Minimum Annual Guarantee ("MAG").** During the first year of the Term Concessionaire will pay no MAG, but rather will pay only the percentage rent, as specified in Section 9.3. For the remainder of the Term, the MAG shall be calculated as eighty-five percent (85%) of all Rent paid during the preceding Agreement Year or three hundred thousand dollars (\$300,000.00), whichever is greater. Each month, one-twelfth of the MAG will be compared to the percentage rent and the greater of those two numbers will be the monthly rent payment due.

9.5. **Additional Storage Rent.** The County shall have the right to charge the Concessionaire then-market rate for any additional storage or office space leased at the Airport by the Concessionaire.

9.6. **Monthly Rental Payments.** On or before the twentieth (20th) day of each month, Concessionaire shall deliver to the Airport a correct accounting statement in the form prescribed by the County and signed by Concessionaire or the Concessionaire's responsible agent under penalty of perjury. Each statement shall state; I) Minimum Annual Guarantee effective during the preceding calendar month; II) The amount of receipts subject to the percentage rent, broken down into categories of rent applicable; III) The Percentage Rent due for the previous calendar month for each unit of the Leased Premises and the sum thereof; IV) The total rent previously paid by Concessionaire for the Lease Year within which the preceding Calendar month falls; V) The Monthly Rent due for the preceding calendar month; and VI) Any Additional Rent due for the preceding calendar month.

9.7. **Form of Payment.** All payments due under this Agreement shall be accomplished in a form acceptable to the Airport.

9.8. **Pro-Rata Application of Rent.** For any period of less than one month during the Term, the Leased Premises Rent will be calculated on a pro rata basis in the same proportion that the number of days in the payment period bears to the total number of days in the month for which the Leased Premises rent is payable.

9.9. **Gross Revenues.** For purposes of calculating the monthly rental obligation, Gross Revenue includes:

9.9.1. All monies paid or payable to the Concessionaire for sales made, services rendered, and customer orders fulfilled at or from the Leased Premises, regardless of when or where the customer order is placed (including outside the Leased Premises).

9.9.2. Any receipts, credits, rebates, allowances, internet sales, or revenues of any type arising out of or in connection with the Concessionaire's or its sub-tenants' or agents' operations at the Leased Premises, including, but not limited to, branding fees, marketing fees, merchandising fees, promotional allowances, performance allowances, retail display allowances (RDA), and any other type of ancillary advertising or product placement fees, and other allowances and fees; and

9.9.3. Any income resulting from transactions originating in, facilitated by, at, or from the Leased Premises, and

9.9.4. Any deposits not refunded to customers.

9.10. **Not Included In Gross Revenue.** Gross revenue shall not include:

9.10.1. Any taxes imposed by law that are separately stated to and paid by a customer and directly payable to the taxing authority by Concessionaire.

9.10.2. Amounts and credits received from suppliers for products and merchandise returned by Concessionaire.

9.10.3. Cash and credit card refunds to customers for merchandise returned.

9.10.4. Amounts and credits received to settle claims for loss of, or damage to, merchandise.

9.10.5. Insurance proceeds received from the settlement of claims for the loss of or damages to Concessionaire's property at or on the Leased Premises other than the proceeds from business interruption insurance.

9.10.6. Intra-company store transfers.

9.10.7. Uniforms or clothing purchased by employees where such uniforms or clothing are required to be worn by employees.

9.10.8. Reimbursements from Concessionaire's sub-concessionaires for any taxes, fees, franchise or license fees, utilities, or other services paid or provided by Concessionaire for or on behalf of its sub-concessionaires; provided, however, that any reimbursement in excess of the actual cost of such taxes, fees, franchise or license fees, utilities or other services shall be included in Gross Receipts.

9.10.9. Rental, fees, and charges paid to Concessionaire by its sub-concessionaires pursuant to the provisions of this Agreement; provided, however, that any such payment in excess of the amounts required hereunder shall be included in Gross Receipts.

9.10.10. The redeemable value of gift cards sold at the Leased Premises. However, when a gift card is redeemed or accepted as payment for a purchase at the Leased Premises, the

transaction must be reported as part of Gross Receipts. Additionally, if there is any charge for the purchase of a Gift Card, that amount is immediately included in Gross Receipts.

9.10.11. Amounts for coupons and other forms of discounts (including but not limited to employee meals, complimentary customer meals, and the Airport employee discount described in 8.18 such that only the amounts received are ultimately included in Gross Receipts.

9.10.12. Gratuities for services performed by employees paid by Concessionaire or its customers except to the extent Concessionaire may be entitled to a portion of the gratuities.

9.11. **Annual Reconciliation.** At the end of each year during the Term, Concessionaire shall calculate payments due for the entire Agreement Year based on the greater of the MAG or rental payment as set forth herein. If Concessionaire has underpaid, Concessionaire shall pay the Airport the amount it has underpaid within ninety (90) days of the end of the Agreement Year. If Concessionaire has overpaid, the Airport will credit Concessionaire's future rent. Any overpayment made in the last year of the Agreement will be refunded to Concessionaire.

9.12. **Interest and Late Fees.** Any payment required by this Agreement that is not paid within seven (7) days of the date required herein, shall be considered delinquent. Concessionaire shall pay a penalty for late or delinquent payments during the Term of this Agreement and any extensions of fifteen percent (15%) per annum on the balance of the unpaid amount calculated from the date the amount is due until the close of the business day upon which the delinquent payment is received by the Airport.

9.13. **Concessionaire's Right of Abatement.** In the event that the following condition exists during the term of this Agreement, the minimum annual guarantee hereinabove provided for in Section 9.4 shall be abated for the period of time the condition exists:

9.13.1. **A major traffic reduction at the Airport.** A major traffic reduction shall be defined as a not less than twenty-five percent (25%) reduction in the number of passengers deplaning on scheduled airline flights at the Airport during any period of three (3) consecutive calendar months as compared to the number of such deplaning passengers in the same calendar months during the preceding calendar year.

9.13.2. The abatement amount for those months that are abated as defined in Section 9.13.1 will be the prorated reduction of that month's 1/12th payment of the minimum annual guarantee. For example, if May, June and July have a traffic reduction of 27%, 30% and 26% respectively, then the 1/12th minimum annual guarantee payment for May would be reduced by 27%, June would be reduced by 30%, and July would be reduced by 26%.

9.13.3. If the major traffic reduction continues for additional months, the proportional abatement will continue as well, until there is a month when traffic does not fall below the twenty-five percent (25%) threshold, at which time the full minimum annual guarantee payment shall be made for such month.

9.13.4. This major traffic reduction can only be identified after any three-month period ends; however, the major traffic reduction exists for any three-month period when all three months had a not less than twenty-five percent (25%) reduction in passenger deplanements. Overpayments of the MAG will be credited to the Concessionaire during the year-end reconciliation process described in 9.11.

9.14. **Disputed or Partial Payments.** In the event of a dispute as to the amount to be paid, the Airport shall accept the sum tendered without prejudice and, if a deficiency is determined to exist, interest shall apply only to the deficiency.

9.15. The right of the Airport to require payment of interest and the obligation of the Concessionaire to pay same shall be in addition to and not in lieu of the right of the Airport to enforce other provisions herein, including termination of this Agreement, and to pursue other remedies provided by law.

9.16. **The failure of the Airport to act** in the event of a delinquent payment or series of payments shall in no way waive the right of the Airport to take action at a subsequent time.

9.17. **Non-Abatement.** The rent and any other payment obligations shall be paid by the Concessionaire without set-off, notice, deduction demand, or abatement except as otherwise specifically provided herein.

9.18. **Remittance Of Payments.** All remittances shall be made payable to the Airport and forwarded, along with all monthly reports due.

Outagamie County Treasurer
410 S. Walnut St.
Appleton, WI 54911

with a copy of all reports to:

Airport Director
Appleton International Airport
W6390 Challenger Dr.
Appleton, WI 5914

9.19. **No Effect.** The MAG suspension shall have no effect on (i) any adjustments specified in this Lease to be made to the MAG, or (ii) the Deposit Amount.

9.20. **Effect of Default.** Notwithstanding anything to the contrary herein, in the event Tenant shall default under this Lease or any Other Agreement, the Director may immediately reinstate the MAG without giving to Tenant the benefit of any notice or right to cure as may otherwise be provided under this or Other Agreement.

9.21. **Subtenants.** Without limiting the provisions herein, Tenant subleases any portion of the Premises, Tenant shall offer to such subtenant(s) the same types of MAG suspension as are provided herein. Should Concessionaire fail to offer such MAG suspension to any subtenant, then Concessionaire will also not be eligible to receive a MAG reduction.

10. TAXES, UTILITIES, AND OTHER FEES

10.1. **Taxes and Permitting Fees.** Concessionaire or its sub-concessionaires or sub-tenants shall pay all taxes of whatever character, license fees, permit fees, and other charges or fees which may be levied or assessed against the Leased Premises, Leasehold Improvements, operations hereunder, and upon property or leasehold interests of Concessionaire and its sub-concessionaires or sub-tenants located thereon or used in connection therewith, or which may be levied or assessed on account of the transaction of Concessionaire or its sub-concessionaires or sub-tenants business in, on or about the Leased Premises. Taxes and other fees may be invoiced by a third-party provider and/or the Airport. Concessionaire or its sub-concessionaires or sub-tenants are responsible without deduction or set-off for obtaining and paying for all licenses and permits necessary or required by law for the construction of improvements, installation of equipment and furnishings, and any other licenses or permits necessary for the conduct of its operations hereunder.

10.2. **Utilities.** Concessionaire or its sub-concessionaires or sub-tenants shall pay all utility charges billed for its consumption of utilities at the Premises. Concessionaire or its sub-tenants shall be responsible for the installation and maintenance of utility metering equipment to be installed at each concession location located on the Leased Premises. If the Concessionaire fails to properly and accurately report and meter its utility consumption, then the Airport shall have the right to invoice Concessionaire an amount determined by the Airport, in its sole discretion, sufficient to pay Concessionaire's utility consumption.

10.3. **Shared Utility Maintenance Program.** The Airport shall maintain the sole discretion as to whether to implement a shared utility maintenance program. If such a program is implemented by the Airport, then the Concessionaire shall be required to participate.

10.4. **Other Costs and Fees.** Concessionaire and sub-tenants shall be responsible for any and all other costs, fees and expenses involved in the operation of business or arising from the occupancy or use of the Leased Premises by Concessionaire or its sub-concessionaires or sub-tenants, as well as repair and maintenance costs incident thereto.

11. SERVICES PROVIDED BY THE AIRPORT

11.1. **Maintenance of Terminal.** The Airport shall repair and maintain in good order the Airport, exclusive of the Leased Premises and any other areas of the Airport that are leased and the responsibility of any other parties. All maintenance and repair of the Leased Premises is the Concessionaire's responsibility.

11.2. **Utilities.** The Airport will provide utility mains and lines throughout the Airport. The Concessionaire, at its sole cost, shall tie into the utility mains and lines at the locations as specified by the Airport. Supplemental heated or cooled air, electrical or other utilities required by the Concessionaire in excess of what is customarily available in the Terminal Buildings will be, if approved by the Airport, at the expense of the Concessionaire.

11.3. **Maintenance of Utility Lines.** The Airport will maintain utility lines in the Airport. The Concessionaire shall maintain all utility tie-ins and utilities maintained on the Leased Premises. However, the Airport or its representative may, at the Airport's sole discretion, maintain the utilities within the Leased Premises and in doing so shall be permitted to enter upon the Leased Premises at all reasonable times to make any repairs, replacements, and alterations as may, in the opinion of the Airport, be deemed necessary. Furthermore, Concessionaire will permit the Airport or its representative access to construct or install over, on, in, or under the Leased Premises, new systems, pipes, lines, mains, wires, conduits, ducts, and equipment, provided; however, that the Airport shall exercise such right in a manner that minimizes interference with Concessionaire's operations.

11.4. **No Liability for Failure of Utilities.** The Concessionaire shall have no remedy against the Airport for interruption of any utilities.

11.5. **Reimbursement of Repair Costs.** Any damage to or failure of the utilities caused by the Concessionaire and repaired by the Airport shall be reimbursed by the Concessionaire for the cost thereof, plus an administrative fee of fifteen percent (15%) of any such costs.

12. OWNERSHIP OF IMPROVEMENTS; AND AMORTIZATION SCHEDULE;
BUYOUT

12.1. **Ownership of Leasehold Improvements.** Upon completion of the construction thereof, any furniture, fixture, structure, alteration, addition, or improvement to the Leased Premises undertaken pursuant to this Agreement, whether temporary or permanent in character, excluding personal property and trade fixtures which can be removed without damage to the Leased Premises, shall immediately become part of the Leased Premises for purposes of this Agreement and shall automatically become the property of the County as owner, without compensation to Concessionaire upon the termination of this Agreement (except may be provided otherwise herein), and shall remain in place upon termination of this Agreement,

unless the Airport requests their removal prior to the termination or expiration of this Agreement. The Concessionaire shall, to the extent requested by the Airport, execute all documents deemed necessary as evidence of the transfer of title to any such improvements.

12.2. Amortization Schedule. Within one hundred and twenty (120) days upon completion of any Approved Projects whose value is greater than five percent (5%) of the Initial Capital Investment the Concessionaires shall certify the total amount Invested by the Concessionaire into the Improvements of the Leased Premises. Such certifications must include copies of receipts for payment of design and construction firms, the purchase of any equipment, and any and all other expenses that the Concessionaire will include in its Amortization Schedule. Concessionaire should note that receipts for payments (canceled checks, invoices marked paid by the recipients, etc.) are required, not initial estimates or any other preliminary cost proposal. Any expense not so documented will not be included in the final Concessionaire Leasehold Improvement Amortization Schedule ("CLIAS"). The Airport may audit any of the Projects or certifications that have been provided by the Concessionaire and the parties shall agree upon a final CLIAS that shall be attached hereto as Exhibit C.

12.3. Leasehold Improvement Buy-Out. The CLIAS shall detail all Leasehold Improvements eligible for the buy-out provisions of this Section 10.3. Concessionaire shall also provide the Authorized Representative with an amended CLIAS within one hundred twenty (120) days after any subsequent Leasehold Improvements are completed from time to time during the Term. The Airport's obligation to reimburse the Concessionaire for the unamortized value of Leasehold Improvements shall be limited to those Leasehold Improvements included on the CLIAS, which were previously approved by the Airport. In the event that the Airport and Concessionaire disagree on the value of a project to be included in the CLIAS, the parties shall submit such disputes to an independent certified public accounting firm acceptable to both the Airport and Concessionaire, and the determination of such firm shall be binding on the Airport and Concessionaire. The costs associated with obtaining such independent determinations shall be split equally between the Airport and Concessionaire.

12.4. Construction Payment and Performance Bonds. Prior to any commencement of any construction, alteration, or repair hereunder by Concessionaire that exceeds ten thousand dollars (\$10,000) in cost, Concessionaire shall furnish to the County, at Concessionaire's sole cost, a performance bond and a payment bond issued by a surety Concessionaire licensed to transact business in the State of Wisconsin and approved by the County, in a form approved by the County. The penal amount of each bond shall be at least one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, or repair. If such contract(s) involve alteration or work on or to the County's facilities, the performance and payment bonds shall be posted regardless of the dollar value of the work. The payment bond required by this Section shall guarantee the prompt payment to all persons supplying labor,

materials, provisions, supplies, and equipment used directly or indirectly by any contractor, subcontractor(s), and suppliers doing work provided for in the above-mentioned construction contract, and the performance bond shall guarantee the full performance of the work.

13. AIRPORT CONCESSIONS/DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM

13.1. **DBE Policy.** Concessionaire agrees that this agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The 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 or performance of any concession agreement, management contract or subcontract, purchase, or lease agreement, or other agreement covered by 49 CFR part 23.

13.2. Concessionaire agrees to include the above statements in Section 13.1 in any subsequent concession agreement or contract covered by 49 CFR Part 23.

13.3. Concessionaire shall comply with Outagamie County's approved Airport Concession Disadvantaged Business Enterprise (ACDBE) program submitted in compliance with all requirements imposed by or pursuant to the U.S. Department of Transportation's ACDBE regulations as enacted in Title 49, Code of Federal Regulations, Part 23, and the U.S. Department of Transportation's regulations Title 49 Code of Federal Regulations, Part 21 Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

13.4. Concessionaire shall complete the ACDBE Utilization Form in Exhibit D and submit the form to the Airport Director by May 1st, 2024. Concessionaire agrees that it will expend one point ten percent (1.10%) of the annual gross receipts with certified ACDBEs.

13.5. Concessionaire shall make a good faith effort to adhere to the ACDBE Utilization Form, which assures that one point ten percent (1.10%) of the gross receipts derived from the operation of its business at the Airport be attributed to ACDBEs certified by the Wisconsin Unified Certification Program and recognized by Outagamie County, throughout the concession term. If Concessionaire is unable to meet the assigned ACDBE goal Concessionaire must complete and submit the Good Faith Efforts Waiver Request Form provided by the Airport. Any change to the ACDBE Utilization Form is subject to the Airport Director's approval. If Concessionaire desires to terminate the participation of the ACDBE firm for non-performance, Concessionaire shall get written approval from the Airport Director. Concessionaire shall be required to find a substitute ACDBE to replace the ACDBE firm's participation or shall be required to provide a Good Faith Efforts Waiver Request Form from if Concessionaire is unable to obtain such participation.

13.6. If Concessionaire fails to achieve and maintain the level of certified ACDBE participation stated in this Agreement and the Airport Director in their sole and absolute irrefutable judgment does not believe that Concessionaire has made good faith efforts in its attempt to continue meeting the required level of ACDBE participation throughout the term of this Agreement, Outagamie County may consider this as a material breach of the Agreement and may terminate the Agreement in accordance with Section 17 of this Agreement.

13.7. Airport shall notify Concessionaire if new regulations are issued by the U.S. Department of Transportation (DOT) implementing Section 511 (h) of the Airport and Airway Improvement Act (AAIA) of 1982, as amended. Following such notification, Concessionaire shall be required to continue to meet the ACDBE goal set for this Agreement or to initiate all necessary and reasonable steps to achieve and/or maintain the newly established ACDBE goal throughout the remaining term of this Agreement. ACDBE 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.

13.8. Concessionaire shall comply with appropriate provisions of 49 CFR Part 23 and shall submit a report bi-annually showing ACDBE participation. The report showing ACDBE participation for the first and second quarters of the year shall be due July 31, and the participation achieved in the third and fourth quarters shall be due on January 31. Such reports will be submitted for every full or partial year of the term of this Agreement.

14. MAINTENANCE OF LEASED PREMISES

14.1. **Cleaning and Routine Maintenance.** Concessionaire shall ensure that every concession location is maintained and operated in a First-Class manner and that the Leased Premises are kept in a safe, clean, orderly, and inviting condition at all times in a manner satisfactory to the Airport. To comply with these requirements, the Concessionaire must regularly review or cause to be reviewed the Leased Premises and their operations at the Airport.

14.2. **Pest Control.** Concessionaire, at its cost and expense, is responsible for pest control within the Leased Premises. Concessionaire shall contract with a professional pest control service to provide pest control services on a quarterly and as-needed basis. Concessionaire will coordinate its pest control service with third parties as directed by the Airport. Concessionaire must furnish the Airport with a copy of its pest control contract and monthly service reports. The Airport maintains the right to direct Concessionaire to have such additional pest control methods as it deems fit applied to the leasehold premises. Should Concessionaire fail to undertake such additional measures, the Airport maintains the right to implement such additional measures at the leasehold premises at the sole cost and expense of the Concessionaire.

14.3. **Preventive and Routine Cleaning and Maintenance Program.** Concessionaire shall establish a preventive and routine cleaning and maintenance program for the Leased Premises. A record of such preventative and routine cleaning efforts shall be maintained, including the name of the person/company which completed the effort, and the date it was done. The provisions of the program shall be subject to written approval. The Concessionaire shall provide the Airport with cleaning and maintenance program support once every month. The Airport may request additional reviews and revisions to the program.

14.4. **The Airport Sole Judge of Cleaning and Routine Maintenance.** The Airport shall be the sole judge of the quality of the Concessionaire's maintenance of the Leased Premises. The Airport or its representative may at any time, without notice, enter the Leased Premises to determine if maintenance satisfactory to the Airport is being performed. Performance by the Concessionaire of maintenance pursuant to a written maintenance plan previously approved by the Airport shall be conclusive evidence of satisfactory maintenance unless the Airport determines that there is a present and substantial danger or safety hazard within the Leased Premises. If the Airport determines that maintenance is unsatisfactory, the Airport shall notify Concessionaire in writing. Concessionaire will perform the required maintenance, to the Airport's satisfaction, within three (3) calendar days after receipt of written notice or the Airport or its representative shall have the right to enter upon the Leased Premises and perform the maintenance at Concessionaire's sole expense.

14.5. **Trash, Waste, and Garbage.** Concessionaire shall, at its own cost and expense, provide complete and proper arrangements for adequate sanitary handling and prompt, reasonable disposal of all garbage caused as a result of the operation of business by the Concessionaire and its sub-tenants on the Leased Premises. Concessionaire is responsible for ensuring all trash is collected and delivered to those location(s) determined by the Airport. Concessionaire shall provide and use suitable covered receptacles for all trash, waste, and garbage on or in connection with the Leased Premises. Concessionaire shall keep all garbage in durable, fly, rodent, and odor-proof, fireproof containers that are easily maintained. The containers shall have tight-fitting lids, doors, or covers and shall be kept covered when not actively depositing or removing material. The Concessionaire shall clean the containers as necessary to prevent odors or filth accumulation. If waste containers are held within corrals, or other small structures meant to keep the trash out of sight, they shall be kept clean, free of the accumulation of dirt, grime, or spills, and should be clearly labeled. Concessionaire shall not permit the piling of boxes, pallets, cartons, barrels, or other similar returnable items, in an unsightly or unsafe manner, on or about the Leased Premises, on the Airport space, or within view of Public Areas. Concessionaire is responsible for ensuring that these items are removed from the Airport on a timely basis.

14.6. **Plumbing Facilities.** The plumbing facilities within the Leased Premises and elsewhere in the Airport shall not be used for any purpose other than for the purposes for which they were constructed, and no foreign substance of any kind shall be thrown therein. The expense to repair any breakage, stoppage, or damage resulting from a violation of this paragraph, wherever the breakage, stoppage, or damage occurs, shall be charged by the Airport to Concessionaire, regardless of the cause.

14.7. **Sustainability Initiatives.** If at any time during the Term, the Airport establishes a sustainability initiative or participates in sustainable Initiatives, including but not limited to the Airports 2012 sustainable master plan, or the FAA Airport Zero Emissions Vehicle and Infrastructure Pilot Program, Concessionaire agrees to participate in any such program at its own cost.

14.8. **Trash, Waste, and Garbage Collection and Disposal by the Airport.** The Airport reserves the right if deemed to be in its best interests, to provide trash, waste, and other similar services, including but not limited to grease waste removal, cardboard disposal, composting, and recycling services. In the event the Airport elects to provide these services on behalf of the Concessionaire, Concessionaire shall pay its fair share of the cost of such services in an amount determined by the Airport.

14.9. **Maintenance and Repairs.** Except as may be otherwise provided herein or otherwise agreed to, in writing, by the Parties, Concessionaire shall, at its own cost and expense, maintain the Leased Premises and every part thereof, including all furniture, fixtures, equipment, and utility systems located thereon, in good appearance and repair, and in a safe, First-Class condition. Concessionaire shall maintain, repair, replace, paint, or otherwise finish all Leasehold Improvements on the Leased Premises, including, without limitation, walls, partitions, floors, ceilings, windows, doors, glass, and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by the Airport. All of the maintenance, repairs, finishing, and replacements shall be of quality equal to or better than the original in materials and workmanship. All work, including finishing colors, shall be in conformity with the Design Specifications and shall be subject to the prior written approval of the Airport.

14.10. **Failure to Comply.** The Airport shall provide written notice to the Concessionaire of any deficient or required maintenance at the Leased Premises. If the maintenance noted in the written notice is not commenced by Concessionaire within three (3) calendar days after receipt of the notice, or if such maintenance is not completed in a reasonable time, as may be determined by the Airport, then the Airport or its representative shall have the right to enter upon the Leased Premises and perform the maintenance, and Concessionaire agrees to promptly reimburse the Airport for the cost thereof, plus an administrative fee equal to fifteen percent (15%) of the maintenance costs.

14.11. **Hazardous Conditions.** Any hazardous or potentially hazardous condition on the Leased Premises shall be corrected immediately upon receipt of a verbal or written notice from the Airport. At the sole discretion of the Airport, Concessionaire shall close the Leased Premises or affected portion thereof until the hazardous or potentially hazardous condition is corrected. If Concessionaire does not immediately commence an action to correct any such hazardous or potentially hazardous condition on the Leased Premises, or if such corrective measures are not completed within a reasonable time, as determined by the Airport, then the Airport or its representative shall have the right to enter upon the Leased Premises and perform such corrective measures.

14.12. **Inspection of Maintenance.** The Airport retains the right to inspect the Leased Premises to determine if Leased Premises are being adequately maintained. If the Airport determines that Concessionaire has not provided adequate maintenance, then the Airport shall provide notice of any such deficiencies to Concessionaire.

14.13. **Airport-Provided Maintenance.** Concessionaire agrees to comply with all present and future laws, orders, and regulations, including any rules, regulations, and procedures promulgated by the Airport regarding Airport provided maintenance within the Airport Terminal in which the Concession Location is located. If any system for Airport provided maintenance is put in place that can allocate to Concessionaire its proportional share of the cost, Concessionaire must pay its proportional share of the actual costs for the Airport provided maintenance.

15. REFURBISHMENT

15.1. **Routine Refurbishment.** On or about the commencement of each Agreement Year, representatives of the, Airport and Concessionaire shall tour the Leased Premises and jointly agree upon what, if any, routine refurbishment is required to maintain the Leased Premises in First-Class condition. Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and the Airport cannot jointly agree upon the type and extent of refurbishment, the Airport may determine, in its reasonable discretion, the refurbishment required. For purposes of this Section, refurbishment shall mean the routine repainting or redecoration of public areas within the Leased Premises, including, but not limited to, the replacement or repair of worn carpet, tile, furniture, furnishings, fixtures, or finishes.

15.2. **Mid-Term Refurbishments.** In addition to the ongoing, routine maintenance described in this Agreement, Concessionaire shall, at its sole cost and expense, refurbish the Leased Premises at or about the midpoint of the Term.

15.3. **Mid-Term Refurbishments Budget.** Concessionaire's budget for the Mid-Term Refurbishments shall be no less than one percent (1%) of the Gross Revenue for the first five years of this Agreement. There is no upside limit, however, to how much the Concessionaire

may expend. Any sums spent on required maintenance, repair, or minor improvements prior to Mid-Term Refurbishments shall not be counted towards the Mid-Term Refurbishment Budget.

15.4. **Scope of Refurbishments.** The Mid-Term Refurbishments shall include without limitation all refinishing, repair, replacement, redecorating, repainting, and re-flooring necessary to keep the Leased Premises in First-Class condition and shall comply with all other terms and conditions of this Agreement. The scope and extent of the Mid-Term Refurbishment for each concession location shall be jointly determined by the Airport and Concessionaire. If Concessionaire and the Airport cannot jointly agree upon the necessary scope and extent of the Mid-Term Refurbishment for any location, the Airport may, at its reasonable discretion, determine the refurbishment required, and Concessionaire agrees to be bound by the Airport's determination.

15.5. **Approval of Plans for Mid-Term Refurbishments.** Concessionaire's plans and specifications for refurbishment must be in accordance with the Design Standards. The Concessionaire shall submit its plan specifications for refurbishment to the Authorized Representative for review and approval no later than the mid-point of the fourth (4th) full Agreement Year following the Rental Commencement Date. The Mid-Term Refurbishment shall be completed within one year after its initiation. A failure to complete said Mid-Term Refurbishments prior to the midpoint of the fifth (5th) full Agreement Year shall constitute a material default of this Agreement, and the Airport shall have the right to terminate this Agreement, pursuant to Article 15 herein.

15.6. **Construction Bonds, etc.** Concessionaire shall provide all payment and performance bonds for construction while undertaking refurbishment efforts that necessitate such work to the premises.

16. INDEMNITY AND INSURANCE REQUIREMENTS

16.1. **Insurance requirements** set forth below do not in any way limit the amount or scope of liability of Concessionaire under this Concession Lease. The amounts listed indicate only the minimum amounts of insurance coverage that the County is willing to accept to help insure the full performance of all terms and conditions of this Concession Lease. All insurance required by Concessionaire under this Concession Lease shall meet the following minimum requirements.

16.2. **Certificates: 30 Day Cancellation.** On or before the execution of this Concession Lease, Concessionaire shall provide the County with certificates of insurance establishing the existence of all insurance policies required under this Section. Thereafter, the insurance policies shall not be subject to cancellation or change except after notice to the County by registered mail at least thirty (30) days prior to the expiration date, cancellation, or material change of any insurance policy. No insurance policy may be canceled without at least thirty (30) days' prior written notice being given to the County. Where any policy(ies) has (have) normal expirations

during the term of this Concession Lease, written evidence of renewal shall be furnished to the County at least thirty (30) days prior to such expiration. Upon written request by the County, the Concessionaire shall permit the County to inspect the originals of all applicable policies. Insurance must be maintained without any lapse in coverage during the entire Lease Term. Insurance canceled without the County's consent shall be deemed an immediate event of default under this Concession Lease. The County shall also be given certified copies of Concessionaire's policies of insurance, upon request. Failure of the County to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of the County to identify a deficiency from the evidence provided, shall not be construed as a waiver of Concessionaire's obligations to maintain the insurance required by this Concession Lease.

16.3. Additional Insured; Separation of Insureds. The County, their elected and appointed officials, agents, and employees shall be named as additional insured with respect to the Concessionaire's use of the Airport, Terminal, and the Leased Premises that are the subject of this Concession Lease in each general liability policy and as an additional insured and loss payee in each property insurance policy. Such insurance shall provide cross-liability coverage equivalent to the standard Separation of Insureds clause published by the Insurance Services Offices ("ISO") or a successor organization. Concessionaire shall supply the County with certification from the insurance carrier that the County, their elected and appointed officials, agents, and employees are so named.

16.4. Primary Coverage. The required policies shall provide that the coverage is primary and will not require any contribution from any insurance or self-insurance carried by the County.

16.5. Company Ratings. Policies of insurance must be placed with companies or underwriters authorized to issue insurance in the State of Wisconsin that carry an A.M. Best rating of "A-" or better or equivalent.

16.6. Deductibles and Retentions. Any deductible or self-insured retention exceeding fifteen percent (15%) of the per-occurrence or per-accident limit of a required policy is subject to approval by the County.

16.7. Required Insurance. At all times during this Concession Lease, Concessionaire shall provide and maintain in full force and effect the following types of coverage:

16.8. General Liability Insurance. The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage to cover all operations of the Concessionaire and shall include, but not by way of limitation, bodily injury, property damage, products liability, and other obligations contained in this agreement. Concessionaire shall maintain an operations, independent contractors, products-completed operations, bodily injury and advertising injury, and liability insured under an insured contract (including the tort liability of another assumed in a business contract) occurring on or in any way related to the Lease

Premises or occasioned by reason of the operations of Concessionaire. Such coverage shall be written on an occurrence form and with such insurers acceptable to the County in an amount of not less than One Million DOLLARS (\$1,000,000), combined single limit or split limits equal to and not less than One Million DOLLARS (\$1,000,000), for bodily injury and property damage with respect to each occurrence, such limits subject to adjustment by the County during the term of this Concession Lease.

16.9. Automobile Liability - Owned, Non-Owned, Hired

16.9.1. Bodily Injury and Property Damage Combined - One Million Dollars (\$1,000,000) for bodily injury and property damage per occurrence limit covering all vehicles to be used in connection with the performance of Contractor's/Vendor's obligations under this Concession Agreement.

16.9.2. Coverage for commercial automobile liability insurance shall be at least as broad as Insurance Services Office (ISO) Business Auto Coverage (Form CA 0001), covering Symbol 1 (any vehicle).

16.9.3. If Concessionaire or Concessionaire's Vendor's/ Subcontractor's employees use personal vehicles to perform any services or work to be performed by Vendor or Subcontractor under this Concession Agreement, the Vendor/Subcontractor must provide, to the County, a copy of the Certificate of insurance (and any other documentation requested by the County) for Personal Automobile Liability coverage for each employee of Contractor/Vendor/Subcontractor who will be using their personal vehicle to perform such services or work as evidence of satisfactory compliance.

16.10. **Liquor Liability Insurance.** Such coverage shall include all facilities serving alcohol beverages at the Airport in an amount of not less than One Million DOLLARS (\$1,000,000) per occurrence.

16.11. **Fire and Property Insurance.** Upon completion of construction, Concessionaire shall procure and maintain policies of insurance at its own expense, insuring the Leased Premises and improvements thereon against all perils of direct physical loss, excluding earthquake and flood. The insurance coverage shall be for at least one hundred percent (100%) of the full replacement value of said Leased Premises and improvements with an agreed amount clause and a reasonable and customary deductible on said Leased Premises and improvements. Such an amount is subject to final by the County. The Concessionaire shall furnish to the County evidence that such coverage has been procured and is being maintained in full force and effect. The County maintains property insurance that covers the Terminal but will not cover any improvements made by Concessionaire to the Leased Premises.

16.12. **Workers' Compensation Insurance.** Concessionaire shall maintain in force Workers' Compensation insurance for all of Concessionaire's employees in accordance with all requirements of the State of Wisconsin law. Concessionaire shall also maintain employers'

liability coverage in an amount not less than One Million DOLLARS (\$1,000,000) per accident. In lieu of such insurance, Concessionaire may maintain a self-insurance program meeting the requirements of the State of Wisconsin and a policy of excess workers' compensation and employer's liability insurance.

16.13. Builder's Risk Insurance. During any construction activity, Concessionaire shall obtain and maintain for the benefit of the parties to the Concession Lease, as their interest may appear, "special peril" Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (a) form work in place; (b) form lumber on site; (c) temporary structures; (d) equipment; and (e) supplies related to the work while at the site. In the event Concessionaire fails to maintain such insurance, the County may, at its option, arrange therefore, and any premium incurred shall be reimbursed by Concessionaire to the County upon demand.

16.14. Business Interruption. Concessionaire shall maintain gross earnings and extra expense insurance that shall include coverage for all rent due in accordance with the Agreement of this Concession Lease for a minimum of six (6) month period. The proceeds of such insurance shall be used first to continue rent payments to the County.

16.15. Concessionaire's Risk. Concessionaire shall be responsible for obtaining any insurance it deems necessary to cover its own risks. In no event shall the County be liable for any: (a) business interruption or other consequential loss sustained by Concessionaire; (b) damage to, or loss of Concessionaire's property of any kind; or (c) damage to, or loss of, an automobile, whether or not such loss is insured, even if such loss is caused by the negligence of the County.

16.16. Periodic Review. The County shall have the right to periodically review the types, limits, and terms of insurance coverage. In the event the County determines that such types, limits, and/or terms should be changed, the County will give Concessionaire a minimum of thirty (30) days' notice of such determination and Concessionaire shall modify its coverage to comply with the new insurance requirements of the County. Concessionaire shall also provide the County with proof of such compliance by giving the County an updated certificate of insurance within fifteen (15) days.

16.17. Concessionaire agrees at all times during the term of the agreement to indemnify, hold harmless and defend the County, its Boards, Committees, Officers, Employees, Authorized Representatives and Volunteers against any and all liabilities, losses, damages costs or expenses (including, without limitation, actual attorney's and consultant's fees) which the County, its Boards, Committees, Officers, Employees and Representatives may sustain, incur or be required to pay by reason of or in any way related to bodily injury, personal injury or property damage of whatsoever nature or in connection with or in any way related to the performance of the work by Concessionaire, its employees, agents and anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, provided, however, that the

provisions of this section shall not apply to liabilities, losses, charges, costs or expenses caused solely by or resulting from the gross negligent acts or omissions of the County, its Agencies, Boards, Committees, Officers, Employees, Authorized Representatives or Volunteers. It is agreed that Contractor/Vendor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. Contractor's/Vendor's indemnity obligations shall not be limited by any worker's compensation statute, disability benefit or other employee benefit or similar law or by any other insurance maintained by or required of Contractor/Vendor. Nothing contained in this agreement is intended to be a waiver or estoppels of the County to rely upon the limitations, defenses, and immunities contained within Wisconsin law, including, but not limited to, those contained within Wisconsin Statutes 893.80, 895.52 and 345.05. To the extent that indemnification is available and enforceable, neither the municipality nor its insurer shall not be liable in indemnity and contribution for an amount greater than the limits of liability for municipal claims established by Wisconsin law.

16.18. **Survival of Indemnities.** The indemnity agreements set forth in this Section shall survive the expiration or earlier termination of the Concession Lease and be fully enforceable thereafter.

17. TERMINATION AND DEFAULT

17.1. **Termination at the End of Term.** This Agreement shall terminate at the end of the Term and Concessionaire shall have no right or interest in the Premises except for the immediate removal of non-attached furnishings.

17.2. **Termination and Reletting.** Should there occur an early termination of this Agreement pursuant to this Section, the County shall have the right to reenter the Leased Premises, make repairs as necessary, and enter into another Lease for Leased Premises and privileges, or any part thereof, for the remainder of the term hereof.

17.3. **Termination by the Airport.** The County shall have the right to terminate the Agreement if the Concessionaire is deemed in Default. Should the Airport find the Concessionaire to have committed acts of default, upon the fifth (5th) act of default the Airport may immediately terminate the Agreement.

17.4. **Events of Default.** The occurrence of any of the following shall constitute an Event of Default.

17.4.1. Concessionaire fails to pay rent or make any other payment required hereunder when due to the County.

17.4.2. Concessionaire uses the premises for uses other than those permitted.

17.4.3. Concessionaire fails to comply with Operations and Performance Standards stated in Section 8.

17.4.4. Concessionaire discontinues operation of any concession in full or in part or abandons, deserts, or vacates any part of the premises without prior written consent of the County.

17.4.5. Concessionaire fails to complete Mid-Term Refurbishments before the midpoint of the fifth (5th) Agreement Year.

17.4.6. Concessionaire neglects or fails to perform or observe any promise, covenant, or condition set forth in this Agreement.

17.5. **Remedies for Airport arising from an Event of Default.** In addition to all other remedies provided herein or at law, County will have the cumulative rights to terminate this Agreement, and, if Concessionaire is in possession of the premises, to accelerate the maturity of all Rent due and to become due during the remainder of the term, by giving at least twenty (20) days written notice to Concessionaire, if Concessionaire is in default of this Agreement as set forth herein, such default is not cured to the County's satisfaction:

17.5.1. Within twenty (20) days after the County gives Concessionaire notice of default

17.5.2. If any such default (other than payment of money) is not curable within twenty (20) days, Concessionaire fails to demonstrate to the County within said twenty (20) day period that it has commenced curing the default, or Concessionaire fails to diligently pursue the cure of such default to completion.

17.5.3. Repeated defaults of the same or similar nature are curable at the sole discretion of the Airport.

17.6. **Stipulated Damages for Failure to Operate Premises.** Concessionaire acknowledges that its obligation to conduct business continuously and actively in the Leased Premises in the manner prescribed in this Agreement is for the purpose of enhancing the business activity and public patronage of retail concessions in the Terminal Building to produce the maximum Gross Revenue and concessions revenue from its Concessions Locations on the Leased Premises. Concessionaire further acknowledges that failure on its part to comply with such provisions of this Agreement would cause the Airport substantial damages which might be difficult or impossible to prove or quantify. Accordingly, the parties have agreed that, subject to Force Majeure or other causes beyond Concessionaire's control, if Concessionaire fails to continuously and actively operate any portion of the Leased Premises as provided herein throughout the Term, without curing such failure to operate within three (3) days after notice from the Airport, then the Airport shall not be required to prove its actual damages for such breach, but in lieu thereof, Concessionaire shall pay the Airport the stipulated damages provided in this paragraph. Said stipulated damages for each portion or location of the Leased Premises that is not being used to continually and actively conduct business in a manner prescribed by this Agreement shall be an additional monthly rent equal to the greater of (1) \$10,000.00 per day, as escalated from time to time by increases in the Consumer Price Index or (2) the average monthly rental rate for the vacant or unused space generated by said space

during the 12-month period that immediately preceded said vacancy. Such stipulated damage payments shall continue from the date of a breach until such breach is cured or until the end of the Term, whichever is first. Said stipulated damages shall be paid monthly, concurrently with the monthly payments of the MAG reserved under this Agreement. Nothing in this Section shall be construed as a limitation upon the Airport's right to obtain specific performance of the Concessionaire's obligations to conduct business continuously in the manner herein specified or to recover any other provable monetary damages or to pursue any other remedies as provided in this Agreement. The Airport shall have the discretion to waive the enforcement of this Section against the Concessionaire.

17.7. **Non-Exclusive Remedies.** The remedies set forth in this Section shall be in addition to all other remedies which are or may be available to the Airport at law or in equity. No termination of this Agreement or the taking or recovering of the Leased Premises shall deprive the Airport of any of its remedies or actions against the Concessionaire for rentals due for damages or for the breach of any covenant herein contained, nor shall the bringing of any action for rentals due or breach of any covenant, or the resort to any other remedy herein provided for the recovery of rentals due be construed as a waiver of the right to obtain possession of the Leased Premises.

17.8. **Agreement to Pay Attorneys' Fees and Expenses.** In the event, Concessionaire defaults under this Agreement and the Airport employs attorneys or incurs other expenses for the collection of rentals or any other amounts due hereunder, or for the enforcement of performance or observance of any obligation or agreement on the part of Concessionaire herein contained, Concessionaire shall, on demand, pay to the Airport the reasonable fees and expenses of such attorneys and such other reasonable expenses so incurred by the Airport.

17.9. **Non-Waiver.** A failure by either party to take any action with respect to any default or violation of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of such party to act with respect to any subsequent violation or default or with respect to any continuation or repetition of the original violation or default. The acceptance by the Airport of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Agreement shall not constitute a waiver or diminution of, nor create any limitation upon any right of the Airport pursuant to this Agreement to terminate this Agreement for subsequent violation or default, or for continuation or repetition of the original violation or default.

17.10. **Condemnation.** If the Airport or any portion of the Leased Premises thereof shall be taken or condemned by any competent authority for any public or quasi-public use or purpose and such taking makes it necessary or desirable to remodel or reconstruct the Airport, the Airport shall have the right, exercisable at its reasonable discretion, to cancel this Agreement upon not less than ninety (90) days notice prior to the date of cancellation designated in the

notice, unless the Airport is given less than ninety (90) days notice of the taking. No money or other consideration shall be payable by the Airport to Concessionaire for the right of cancellation and Concessionaire shall have no right to share in the condemnation award or in any judgment for the damages caused by such taking or change in configuration, except that Concessionaire may assert a separate claim for the unamortized construction costs for any Infrastructure Improvements and Leasehold Improvements. If a condemnation adversely affects any portion of the Leased Premises, an equitable adjustment to the Rent and MAG will be negotiated.

17.11. **End of Term Transition.** During the final Agreement Year, the Airport plans to award and transition to a new contract for Concession services that may include rights to the Leased Premises or portions thereof. If Concessionaire is not selected for the new contract, the Airport will notify Concessionaire in writing of the exact dates of a transition period. Concessionaire shall cooperate fully with the Airport and Concessionaire's successor to ensure an effective and efficient transition of the Leased Premises and concession operations to the successor. Concessionaire acknowledges its responsibility to continuously perform the concession in a First-Class manner during the transition to the successor.

18. DAMAGE TO LEASED PREMISES

18.1. **Damages Caused by Concessionaire.** All damage to the Leased Premises and the Airport caused by Concessionaire or sub-concessionaires or sub-tenants, or their invitees (while in the Leased Premises), agents, or employees, resulting from any cause shall be repaired, restored, or replaced promptly by Concessionaire, at its cost and expense, within fifteen (15) days to the satisfaction of the Airport which shall be provided in writing and not unreasonably withheld or delayed. No rent shall abate if the damage resulted from any act of the Concessionaire or its invitees (while in the Leased Premises), agents, or employees. If such repairs are not made within fifteen (15) days of the notification of the damage, then the Airport shall have the right, but not the obligation, to make such repairs and Concessionaire shall be obligated to reimburse the Airport the cost of such repairs plus an administrative fee equal to fifteen percent (15%) of any such costs, plus additional interest at the rate of eighteen percent (18%) per year, accruing beginning on the date such expenses are incurred.

18.2. **Complete Destruction.** If the Leased Premises are completely destroyed due to the negligent or willful act or omission of Concessionaire, its sub-concessionaires or sub-tenants, or their invitees, agents, or employees, then the rent shall not abate and the Airport may, in its discretion, require Concessionaire to repair and reconstruct the Leased Premises within twelve (12) months of such destruction and pay the costs thereof; or, should Concessionaire refuse to reconstruct or make repairs, the Airport may repair and reconstruct the Leased Premises within twelve (12) months of such destruction and Concessionaire shall be responsible for reimbursing

the costs and expenses of the repair of the Leased Premises plus fifteen percent (15%) of the total costs and expenses, plus additional interest at the rate of eighteen percent (18%) per year, accruing beginning on the date such expenses are incurred.

18.3. **Damage Caused by the Airport.** If the Airport or its employees or agents damage the Leased Premises through gross negligence or intentional act, then Airport will be solely responsible for the repairs.

18.4. **Abatement of Rent.** If the Leased Premises, or a portion thereof, is damaged through no fault of Concessionaire, its sub-concessionaires or sub-tenants, or their invitees, agents, or employees which renders the Leased Premises, or a portion thereof, unusable, then rent and all other charges shall be abated on a per day pro-rated basis during the time the Leased Premises are unusable.

18.5. **Application of Insurance Proceeds.** Whenever the Airport repairs the damage, proceeds of the Concessionaire's and the Airport's property insurance on the Leased Premises and Improvements shall be applied to the cost of the repairs and replacement of the Leased Premises and Improvements. Concessionaire is responsible for payment of all repair and replacement costs and expenses exceeding insurance proceeds for all non-structural portions of the Leased Premises, and for all structural portions of the Leased Premises only in the event, the damage resulted from Concessionaire's negligent or intentional act or omission or such acts of Concessionaires employees, invitees, or agents. Nothing herein shall be considered a waiver of any claim or cause of action against the Concessionaire. If the Airport is not required to and elects not to repair the Leased Premises, the proceeds of all applicable insurance shall be paid to the Airport or Concessionaire as their interest appear. The Airport is entitled to all insurance proceeds attributable to structural portions of the Leased Premises and all Improvements funded by the Airport in any portion.

18.6. **No Liability.** The Airport shall not be liable or responsible to Concessionaire for any damage or destruction to Concessionaire's property from any cause whatsoever.

19. WARRANTY OR REPRESENTATION OF LEASED PREMISES

19.1. **No Warranty or Representations.** The Airport makes no warranties or representations, either expressed or implied, whatsoever regarding the Leased Premises. Without limiting the declaration contained in the immediately preceding sentence, the Airport makes no warranties or representations, either expressed or implied, as to the Leased Premises' fitness or suitability for a particular purpose, as to the environmental condition of the Leased Premises, as to redhibitory defects, or as to vices or defects of whatever kind or nature, and whether known, unknown, latent or hidden, as to the Leased Premises, and disclaims all responsibilities, liabilities, and obligations that are or may be imposed on the Airport or County by state law, inclusive, or otherwise. Concessionaire affirms that it has had full opportunity to examine and

to inspect the Leased Premises. Concessionaire accepts the Leased Premises in an “as is, where is” condition. On behalf of Concessionaire and its officers, managers, members, directors, stockholders, employees, successors, assigns, and representatives:

19.2. Concessionaire hereby waives, to the fullest extent allowed under state law, all of Concessionaire’s rights and remedies against the County and the Airport relating to the Leased Premises; and

19.3. Concessionaire hereby relieves and releases:

19.3.1. The Airport, County, and all prior owners of the Leased Premises;

19.3.2. All entities controlled in whole or in part by the Airport and the County; and

19.3.3. The Airport and the County, and said prior owners’ respective officials, officers, directors, commissioners, members, employees, contractors, subcontractors, representatives, attorneys, agents, affiliates, agencies, successors, and assigns; from any and all claims, losses, causes of action, rights of action, damages, expenses (including without limitation reasonable attorney’s fees) and costs (collectively “Claims”) for vices or defects (whether known, unknown, latent, or hidden) of, for peaceful possession of, or otherwise relating to, the Leased Premises, including without limitation any and all Claims based on environmental conditions; any and all Claims based on any one or more of state laws, inclusive; any and all Claims (if any) for redhibition pursuant to Wisconsin Civil Code Articles.; and any and all Claims based on Concessionaire’s inability to obtain any and all applicable permits, approvals or other authorizations from any governmental entities, units or agencies.

20. ENVIRONMENTAL

20.1. **Knowledge of Applicable Laws.** Concessionaire is knowledgeable of all applicable federal, state, and local environmental laws, ordinances, rules, regulations, and orders (“Environmental Laws”), which apply to the Concessionaire’s operations at the Leased Premises and acknowledges that such Environmental Laws change from time to time and Concessionaire agrees to keep informed of any such future changes.

20.2. **Compliance with Law.** Concessionaire shall, at all times, comply with all applicable Environmental Laws and obtain, and comply with, all necessary government permits, or other approvals required by Environmental Laws. Concessionaire shall also ensure that its agents, representatives, contractors, and sub-tenants comply with applicable Environmental Laws and permits.

20.3. For purposes of this Section, “Environmental Law” means any common law or duty, case law or ruling, statute, rule, regulation, law, ordinance, or code, whether local, state, or federal, that regulated, creates standards for, or imposes liability or standards of conduct concerning any element, compound, pollutant, contaminant, or toxic or hazardous substance material or

waste, or any mixture thereof or relates in a way to emissions or releases into the environment or ambient environmental conditions, or conduct affecting such matters.

20.4. **Hazardous Substances.** Concessionaire shall not use, store, or house any petroleum fuels, highly flammable or Hazardous Materials on the Leased Premises. For the purpose of this Section, the term “Hazardous Materials” means and includes the following: Any hazardous substance as defined in any Environmental Law, including any “Hazardous Waste” or “Hazardous Substance.”

20.5. **Environmentally Regulated Substances.** For purposes of this Section, “Environmentally Regulated Substances” means any element, compound, pollutant, contaminant, toxic, or other hazardous substance, material or was, or any mixture thereof, designated, referenced, regulated, or identified pursuant to any Environmental Law and shall specifically include grease.

20.6. **Indemnification for Environmental Liabilities.** Concessionaire shall fully defend, indemnify and hold harmless, the Airport and the County and their respective officers, employees or agents (collectively “Indemnities”) from and against any and all losses, liabilities, fines, charges, damages, injuries, penalties, response costs, or claims or any and every kind whatsoever paid, incurred or asserted against, or threatened to be asserted against, any Indemnitee, in any way relating to or regarding, directly or indirectly, Environmentally Regulated Substances or Environmental Laws, including all related claims or causes of action at common law or in equity which arise from or relate to the Leased Premises (hereinafter “Environmental Claims”) and which were not wholly caused by any Indemnitee; such matters will include without limitation: (i) all consequential damages; (ii) the costs of any investigation, study, removal, response or remedial action, as well as the preparation or implementation of any monitoring, closure or other required plan or response action; and (iii) all reasonable costs and expenses incurred by any Indemnitee in connection with such matters including, but not limited to, attorney’s fees and reasonable fees for professional services or firefighting or pollution control equipment related to spills. Such indemnification and Concessionaire’s obligations hereunder shall survive cancellation, termination, or expiration of the Term of this Agreement.

20.7. **Notification.** Concessionaire shall immediately notify the Authorized Representative in writing of any other matter that might give rise to an Environmental Claim, or if Concessionaire obtains knowledge of any release, threatened release, discharge, disposal or emission of any Environmentally Regulated Substance in, on, under or around the Leased Premises which are not in full and complete compliance with all Environmental Laws. Concessionaire shall promptly follow the notification procedures outlined in the Airport Integrated Spill Response and Coordination Plan (“Integrated Plan”) regarding any spills that occur at the Airport.

20.8. **Right to Take Action.** The Airport shall have the right, but not the obligation or duty, to join or participate in, including if it so elects as a formal party, any legal or administrative or

equitable proceedings or actions initiated by any person or entity in connection with any Environmentally Regulated Substance, Environmental Law, Environmental Claim pertaining to Concessionaire's operation at the Airport, or if Concessionaire is not fulfilling its obligations under Section above, and in such case to have its reasonable attorneys' fees and costs incurred in connection therewith paid by Concessionaire.

20.9. **Right to Investigate.** The Airport shall have the right, but not the obligation or duty, anytime from and after the date of this Agreement, to investigate, study, and test to determine whether Environmentally Regulated Substances are in, on, or under the Airport, or were emitted or released therefrom, which are not in compliance with Environmental Laws. Upon the reasonable request, Concessionaire shall provide to the Authorized Representative a list of all Environmentally Regulated Substances used in, on, or under the Airport, certified as true and correct, and specifying how such Environmentally Regulated Substances are used, stored, treated, or disposed of.

20.10. **Environmental Responsibility.** Spill Coordination and Responsibility. Concessionaire agrees to implement Integrated Plan. Concessionaire is obligated to ensure that it has adequate resources to respond to a discharge, including retaining a discharge recovery contractor and providing the necessary equipment to respond to a discharge, in accordance with the Integrated Plan.

20.11. If the Airport incurs costs related to a spill or other environmental expenses related to fuel or hazardous and/or non-hazardous substances because of actions related to Concessionaire's operations, or unless due to the gross negligence of the Airport, the Airport will bill Concessionaire for all the Airport's actual costs, plus a fifteen percent (15%) administrative fee. The Concessionaire shall pay the Airport within thirty (30) days of the Concessionaire's receipt of the invoice.

21. ASSIGNMENT AND SUBLETTING

21.1. **Mortgage.** Concessionaire shall not be allowed to mortgage, to grant a security interest in, to assign for security or collateral purposes, or otherwise to encumber its interest in and to the Leased Premises or this Agreement.

21.2. **Transfer/Sublet.** Concessionaire shall not transfer, assign, sublet, or otherwise alienate Concessionaire's interest in and to the Leased Premises without first obtaining the written consent of the Airport and the County, which consent shall not be unreasonably withheld, conditioned, or delayed. Concessionaire's rights and obligations under this Agreement can only be transferred, rebranded, assigned, or otherwise alienated to another concessionaire that can demonstrate the ability to meet all the obligations of this Agreement and can provide the same or better type and level of service and amenities as was required by the RFP and represented in Exhibit X. Any transfer, assignment, subletting, or alienation of this Agreement or of

Concessionaire's leasehold interest in the Leased Premises without the prior written consent of the Airport and the County shall be null and void. All sublease agreements between the Concessionaire and sub-lessees shall prohibit the sublessee from further subleasing or permitting the use of the Leased Premises to a third party.

21.3. **Permission to Sublease.** In the event Concessionaire requests permission to sublease, the request shall be submitted to the Airport Director and must be approved by the Airport prior to the effective date of the sublease requested and shall be accompanied by a copy of the proposed sublease agreements and all agreements collateral thereto. The area or space to be subleased, the rental to be charged, the type of business to be conducted, and the identity and financial history of the sub-tenant shall be specified. Each transfer, assignment, or subletting to which there has been consent shall be by instrument, in writing, and shall be executed by the transferee, assignee, or sub-lessee who shall agree in writing, for the benefit of the Airport and the County, to be bound by and to perform the terms, covenants, and conditions of this Agreement. Five (5) executed copies of such written instrument shall be delivered to the Authorized Representative. Failure to first obtain written consent from the Airport and the County, or failure to comply with the provisions herein contained, shall operate to prevent any such transfer, assignment, or subletting from becoming effective. At Concessionaire's option, Concessionaire shall record a memorandum of this Agreement with the recorder of mortgages for Outagamie County within fifteen (15) days of all parties signing this Agreement.

21.3.1. All concession subleases must comply with (1) all requirements listed in the RFP and its attachments and addenda; (2) all provisions, specifications, and standards set forth in Concessionaire's response to the RFP; and (3) all requirements of this Agreement.

21.4. **Lessor Consent.** Should the assignment of this Agreement be consented to by the Airport and the County and to the extent that such assignee assumes Concessionaire's obligations hereunder, Concessionaire shall not, by virtue of such assignment, be released from Concessionaire's obligations under the Agreement unless at the time of the giving of its written consent the Airport and the County expressly agrees in writing to the contrary.

21.4.1. Should the subletting of the Leased Premises be consented to by the Airport and the County, Concessionaire agrees and acknowledges that it shall remain fully and primarily liable under this Agreement, notwithstanding any such sublease and that any such sub-lessee shall be required to attorn to the Airport and the County under the terms of this Agreement.

21.4.2. The receipt by the Airport and the County of rent from any assignee, subtenant, or occupant of the Leased Premises shall not be deemed a waiver of the requirements in this Section 19 or an acceptance by the Airport or the County of the assignee, subtenant or occupant as a tenant or a release of the Concessionaire from further observance or performance by the Concessionaire of the covenants and obligations contained in this Agreement. None of the provisions of this Agreement shall be deemed to have been waived by

the Airport or the County unless such waiver is in writing, signed by the Director of Aviation. The Airport and the County reserve the right to transfer its interest in the Agreement.

22. RECORDS, BOOKS AND AUDIT

- 22.1. **Concessionaire's Records and Books.** Concessionaire shall prepare and maintain, in accordance with Generally Accepted Accounting Principles, complete and accurate books, and records that include all financial transactions related to the performance of this Agreement. The Concessionaire's system of accounts shall allow each Concession Location to be distinguished from all other Concession Locations. Concessionaire shall maintain source documents sufficient to support its books, records, and reports. All monies related to this Agreement shall be deposited to and paid from a business bank account(s), the records for which shall be subject to review and audit in accordance with the provisions hereof.
- 22.2. **Monthly Reports.** On the fifteenth (15th) day of each month following the Rental Commencement Date thereafter through and including the month following termination of this Agreement during the Term Concessionaire shall submit to the Authorized Representative, electronically at the Airport's option a statement ("Sales & Revenue Statement"), in a form satisfactory to the Airport, showing the Gross Revenue and other sales-related information for each and every Concessionaire-operated and any Subtenant-operated Concessions Location for the preceding calendar month and the cumulative Gross Revenue from all such Concessions Locations, from the date of commencement of the Agreement Year for which the report is made through the last day of the preceding month, accompanied by payment. The Airport reserves the right to prescribe and revise the format of the Sales Statements at any time and reserves the right to direct the Concessionaire to provide information on the sales of item classes (for example, "single-serve bottled water," or "16 or 20-ounce bottled soda," or ("potato chips, any flavor, less than 2oz. bag"), and Concessionaire hereby agrees to supply information on the quantity of these products sold, and the total retail value of said sales for all months following until the Airport notifies Concessionaire that the information is no longer needed. The Airport may also request up to twelve (12) months of historical information on said sales of product classes.
- 22.3. **Monthly General Ledger Transactions.** Concessionaire shall, on or before the fifteenth (15th) day of each and every calendar month during the Term, or as otherwise requested by the Airport or the Authorized Representative, submit an extract of the Concessionaire or Concessionaire's Subtenants detailed general ledger transactions listing each entry on the general ledger accounting system. Transaction listings should be specific to each Concessions Location and include all general ledger accounts and available data fields in each transaction for the preceding calendar month in a format acceptable to the Airport

for each of the Concessionaire's Airport locations, including subtenants. Files should be provided electronically to the Authorized Representative. Concessionaire shall also provide a complete and current detailed chart of accounts for all general ledger accounts upon request.

- 22.4. **Annual Reports.** No later than one hundred eighty (180) days after the end of each year during the Term, Concessionaire shall, at its sole cost and expense, provide an annual audit report by an independent Certified Public Accountant acceptable to the Authorized Representative, of the Concessionaire's monthly Gross Revenue and any amounts paid to the Airport per the terms of this Agreement, or part thereof. There may be no limitation on the scope of the engagement that would preclude the auditor from expressing an unqualified opinion as to the correctness and completeness of the reported Gross Revenue. The engagement will include a Schedule of Gross Revenue and all payments made to the Airport per this Agreement, prepared in accordance with the comprehensive basis of accounting defined herein and reported in a format acceptable to the Airport. The engagement will be conducted in accordance with Generally Accepted Auditing Standards and shall include an opinion on whether the Schedule of Gross Revenue and all payments to the Airport has been completely and accurately presented, calculated, and reported according to the terms of this Agreement.

22.4.1. The Airport reserves the right to challenge any findings or conclusions of the Annual Report if it believes an error may have occurred. In such an event, the Airport may conduct its own audit under the provisions in Section or may require production of the supporting documentation used to reach the finding or conclusion in question. The resolution by the Airport of any dispute will be final. Delivery of an Annual Report containing a qualified opinion, or an adverse opinion, or a disclaimer of opinion as defined in the Statements on Auditing Standards, as may from time to time be amended or superseded, issued by the Auditing Standards Airport of the American Institute of Certified Public Accountants, or any successor Airport or agency thereto, will be deemed a material breach of this Agreement.

- 22.5. **Audit and Inspection.** Concessionaire will submit to any audit requested by the County or the Airport, inspection, and review and, at the County's or Airport's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Concessionaire, its employees, agents, assigns, successors, and subcontractors, during normal business hours at Concessionaire's office or place of business in Wisconsin. If no such location is available, Concessionaire will make the documents available at a time and location that is convenient for the County or the Airport.

- 22.6. **Fees, Expenses, Interest and Default.** If an audit establishes that there has been an understatement of the Gross Revenue received from all operations at the Leased Premises by three percent (3%) or more (after the deductions and exclusions allowed in this Agreement) the entire reasonable expense of such audit and applicable attorney's fees shall be paid by Concessionaire. Any additional monies due as a result of the audit shall be paid by Concessionaire to the Airport with interest at eighteen percent (18%) per annum from the date such additional monies became due. If Concessionaire has overpaid rent, the Airport will credit the amount of the overpayment against future rent payments or, if the Term has expired, shall refund the overpayment to Concessionaire. If a second audit during the Term that shows an understatement of Gross Revenue by three percent (3%) or more will be considered an event of default, with the potential for termination by the Airport as defined in Section 17 of this Agreement. Concessionaire shall comply with all requirements under this Section or Concessionaire will incur liquidated damages as referenced in Section 8.38 of this Agreement.
- 22.7. **General Ledger Sales Transactions.** Concessionaire shall, within seven (7) days of a written request by the Airport, submit an extract of the Concessionaire and Concessionaire's Subtenants' detailed general ledger sales transactions listing each sales entry on the general ledger accounting system for the period specified by the Airport. Transaction listings must be specific to Concessionaire and Concessionaire's Subtenants units and include all general ledger accounts available data fields in each transaction in a format acceptable to the Airport for each of the Concessionaire's and Concessionaire's units. Concessionaire shall also provide to the Airport a current detailed chart of accounts for all general ledger accounts at the Airport's request.
- 22.8. **Continuous Transmission of Sales Data.** At the option of the Airport, the Concessionaire shall on a continuous, real-time basis, using their electronic Point of Sale ("POS") system, provide transactional data for all sales transactions. Transaction listings should be specific to Concessionaire and Concessionaire's Subtenants units and include all available data fields in each transaction, except customer credit or debit card information shall not be included in this continuous transmission. However, it shall be noted whether the purchase was for cash or credit/debit.

23. GENERAL PROVISIONS

- 23.1. **Amendment.** Any amendment to this Agreement shall be effective only if mutually agreed upon, reduced to writing, and signed by the appropriate officers of both parties.
- 23.2. **Choice of Laws.** This Agreement has been made in and shall be construed in accordance with the laws of the State of Wisconsin, with the venue of any judicial proceedings arising hereunder in the Court of Outagamie County. All duties, obligations, and liabilities of the County and Concessionaire with respect to the Leased Premises are expressly set forth herein and this Concession Lease can be amended only in writing and agreed to by both parties.
- 23.3. **Conflict of Interest.** In the interest of ensuring that the efforts of the Concessionaire do not conflict with the interests of the Airport, and in recognition of the Concessionaire's responsibility to the Airport, Concessionaire agrees to decline any offer of employment if its independent work on behalf of the Airport is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rest with Concessionaire. It is incumbent upon Concessionaire to notify the Authorized Representative and provide full disclosure of the possible effects of such employment on the Concessionaire's independent work on behalf of the Airport. A final decision on any disputed offers of other employment for the Concessionaire shall rest with the Airport.
- 23.4. **Construction of Agreement.** Neither party will be deemed to have drafted the Agreement. The Agreement has been reviewed by all parties and will be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of the Agreement will be construed or resolved in favor of or against the Airport or Concessionaire on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Agreement are provided for convenience only and are not intended to have an effect on the construction or interpretation of the Agreement.
- 23.5. **Contract Documents.** It is understood and agreed that this Concession Lease (including all Exhibits and other documents incorporated by reference) contains the entire agreement between the County and Concessionaire this Concession Lease. It is further understood and agreed by Concessionaire that the County and the County's agents and employees have made no representations or promises with respect to this Concession Lease or the making or entry into this Concession Lease, except as in this Concession Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against the County for, and the County shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Concession Lease. Any other written or oral agreement with the County is expressly waived by Concessionaire.

23.6. **Convicted Felon Statement.** No principal, member, or officer of Concessionaire has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

23.7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

23.8. **Electronic Signature and Delivery.** The parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

23.9. **Employee Verification.** Concessionaire swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Wisconsin are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the Term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Wisconsin; and (iii) it shall require all subcontractors to submit to Concessionaire a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination and may further result in Concessionaire being ineligible for any public contract for a period of three years from the date the violation is discovered. Concessionaire further acknowledges and agrees that it shall be liable for any additional costs incurred by the Airport occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Wisconsin resulting from a violation of this provision. Concessionaire will provide to the Airport with an affidavit attesting to the above provisions if requested by the Airport. The Airport may terminate this Agreement for cause if Concessionaire fails to provide the requested affidavit or violates any provision of this paragraph.

23.10. **Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

23.11. **Equal Opportunity Employment.** In all hiring or employment made possible by, or resulting from this agreement, Concessionaire agrees that there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed,

culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that Concessionaire's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, 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 apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

23.12. Exclusive Jurisdiction and Venue. For all claims arising out of or related to this Agreement, Concessionaire hereby consents and yields to the jurisdiction of the Circuit Court for Outagamie County, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

23.13. Incorporation into Subcontracts. Concessionaire will incorporate Agreement Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

23.14. Independent Contractor Status. Concessionaire is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the Airport or the County and will not hold itself or any of its employees, subcontractors, or agents to be an employee, partner, or agent of the Airport or the County.

23.15. Limitations of the County's Obligations. The Airport and the County have no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

23.16. No Third-Party Beneficiaries. The Agreement is entered into for the exclusive benefit of the Airport, County, and Concessionaire, and the Airport, County, and Concessionaire expressly disclaim any intent to benefit anyone not a party to this Agreement.

23.17. Non-Exclusive Rights. The rights granted to Concessionaire in this Agreement are non-exclusive. The Airport may, at any time, award a contract to other parties who may have rights or may sell Concession goods or provide similar or identical services at the Airport as those non-exclusively granted to Concessionaire herein. Further, the Airport may, in its sole discretion, grant exclusive rights to other concessionaires to sell goods or services that Concessionaire is not authorized to sell.

23.18. In the event of a dispute between Concessionaire and any other party operating at the Airport as to the rights of the parties under their respective contracts, the Airport shall

determine the rights of each party and Concessionaire agrees to be bound by the Airport's decision.

23.19. **Non-solicitation.** Concessionaire has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Agreement. Concessionaire has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Agreement.

23.20. **Non-waiver.** The failure of the Airport to insist upon strict compliance with any provision of the Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of Concessionaire at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of the Airport's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

23.21. Notices and Communications.

23.21.1. All notices provided to be given under this Agreement shall be in writing and shall be deemed properly served if such notice is given by certified mail, return receipt requested, or by expedited prepaid commercial delivery service (such as Fed Ex), with proof of delivery, addressed to the other party at the following address, or such other address as either party may, from time to time, designate in writing:

The Airport: Airport Director
Appleton International Airport
W6390 Challenger Dr.
Appleton, WI 5914

Concessionaire: SSP America ATW, LLC
20408 Bashan Drive, Suite 300
Ashburn, VA 20147

23.22. Notices mailed in accordance with the provisions hereof shall be deemed to have been given as of the date of receipt or the third business day following the date of such mailing, whichever is earlier.

23.23. Unless notified otherwise, all correspondence, documentation, and information, including but not limited to inquiries, review, questions, pay requests and other matters that require action on the part of the Airport shall be addressed to the Authorized Representative.

23.24. **Ownership interest disclosure.** Concessionaire will provide an affidavit listing all-natural or artificial persons with an ownership interest in Concessionaire and stating that no other person holds an ownership interest in Concessionaire via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a

publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If Concessionaire fails to submit the required affidavits, the Airport may, after thirty (30) days' written notice to Concessionaire, take such action as may be necessary to cause the required affidavits to be submitted.

23.25. **Ownership of records.** Upon final payment, all data collected and all products of work prepared, created or modified by Concessionaire in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding Concessionaire's personnel and administrative records and any tools, systems, and information used by Concessionaire to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of Airport and the Airport will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the Airport's name. No Work Product may be reproduced in any form with the Airport's express written consent. The Airport may use and distribute any Work Product for any purpose the Airport deems appropriate without Concessionaire's consent and for no additional consideration to Concessionaire.

23.26. **Prohibition against financial interest in agreement.** No elected official or employee of the Airport or the County shall have a financial interest, direct or indirect, in the Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of Concessionaire, will render this Agreement voidable by the Airport and the County and shall entitle the Airport or the County to recover, in addition to another rights and remedies available to the Airport or the County, all monies paid by the Airport to Concessionaire pursuant to this Agreement without regard to Concessionaire's satisfactory performance.

23.27. **Prohibition of political activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

23.28. **Remedies cumulative.** No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate, and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

23.29. **Severability.** If a court of competent jurisdiction finds any provision of the Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Agreement will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Agreement.

23.30. **Survival of certain provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, and choice of law shall survive the expiration, suspension, or termination of the Agreement and continue in full force and effect.

23.31. **Terms binding.** The terms and conditions of the Agreement are binding on any heirs, successors, transferees, and assigns.

23.32. **Waiver of benefits.** Concessionaire, as an independent contractor, will not receive from the Airport or the County any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the Airport or the County under this Agreement.

23.33. **Amendment Required by FAA/TSA.** This Lease may be amended without further consideration for the purpose of satisfying FAA or TSA requirements. In the event that the FAA requires, as a condition precedent to granting of funds for the improvement of the Airport, modifications or changes to this Lease, Concessionaire agrees to such modifications or changes as may be required to enable Lessor to obtain FAA funds.

23.34. **Accord and Satisfaction.** No payment by Concessionaire or receipt by the Airport of a lesser amount than the rent, fees, and/or charges due to be made by Concessionaire herein shall be deemed to be other than on account of the rent, fees, and/or charges due, and no endorsement or statement on any check or in any letter accompanying any check or payment as rent, fees, and/or charges shall be deemed an accord and satisfaction, and Airport may accept such check or payment without prejudice to Airport's right to recover the balance of such rent, fees, and/or charges or to pursue any other remedy provided in this Lease.

23.35. **Delinquent Taxes.** Concessionaire swears that it complies not delinquent in any taxes owed to the County.

23.36. **Amendment.** The Lease shall not be modified except by written amendment executed by duly authorized representatives of the parties.

24. REQUIRED FEDERAL PROVISIONS

24.1. Civil Rights – General

24.1.1. The Concessionaire and the Airport agree to comply with pertinent statutes, Executive Orders, and such rules as are promulgated to ensure that no person shall, on the grounds of

race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

24.1.2. This provision obligates the Concessionaire or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

24.1.3. In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

24.1.4. The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

24.1.5. The period during which the airport sponsor or any transferee retains ownership or possession of the property.

24.2. General Title VI - Compliance with Nondiscrimination Requirements

24.2.1. During the performance of this contract, the Concessionaire, for itself, its assignees, and successors in interest (hereinafter referred to as the "Concessionaire") agrees as follows:

24.2.1.1. Compliance with Regulations: The Concessionaire (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts And Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

24.2.1.2. Non-discrimination: The Concessionaire, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Concessionaire will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

24.2.1.3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding, or negotiation made by the Concessionaire for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Concessionaire of the Concessionaire's obligations under this contract and the Nondiscrimination Acts And Authorities on the grounds of race, color, or national origin.

24.2.1.4. Information and Reports: The Concessionaire will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where

any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

24.2.1.5. Sanctions for Noncompliance: In the event of Concessionaire's noncompliance with the Non-discrimination provisions of this contract, the Airport will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

24.2.1.5.1. Withholding payments to the contractor under the contract until the contractor complies; and/or

24.2.1.5.2. Cancelling, terminating, or suspending a contract, in whole or in part.

24.2.1.6. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The Concessionaire will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into litigation to protect the interests of the United States.

24.3. Title VI - Title VI Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility, or Program

24.3.1. The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Lessor pursuant to the provisions of the Airport Improvement Program grant assurances.

24.3.1.1. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that:

24.3.1.2. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Concessionaire will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from

participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

24.3.2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above covenants, Lessor will have the right to terminate the Lease and to enter, re- enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

24.4. Title VI - Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

24.4.1. The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Lessor pursuant to the provisions of the Airport Improvement Program grant assurances.

24.4.1.1. The Concessionaire for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will 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 on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

24.4.1.2. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above nondiscrimination covenants, Lessor will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.

24.5. Title VI List of Pertinent Nondiscrimination Acts and Authorities

24.5.1. During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

24.5.1.1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);

24.5.1.2. 49 CFR part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);

24.5.1.3. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

24.5.1.4. Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;

24.5.1.5. The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);

24.5.1.6. Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

24.5.1.7. The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

24.5.1.8. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;

24.5.1.9. The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);

24.5.1.10. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

24.5.1.11. Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

24.5.1.12. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq)

24.5.1.13. Subtitle A of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. 12131), which prohibits discrimination on the basis of disability by public entities as implemented by the Department of Justice regulations at 28 CFR part 35;

24.5.2. Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. 12181), which prohibits discrimination on the basis of disability by public accommodations and requires places of public accommodation and commercial facilities to be designed, constructed, and altered in compliance with accessibility standards as implemented by the Department of Justice regulations at 28 CFR Part 36.

24.6. Fair Labor Standards Act

24.6.1. All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR Part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part time workers.

24.6.2. The Concessionaire has full responsibility to monitor compliance to the referenced statute or regulation. The proposer must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

24.7. Occupational Safety and Health Act of 1970

24.7.1. All contracts and subcontracts shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. Concessionaire must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. Concessionaire retains full responsibility to monitor its compliance and their subcontractor’s compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). Concessionaire must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration

Signature Page Follows

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ____ day of
, 2024.

OUTAGAMIE COUNTY

APPROVED AS TO FORM:

By: _____
Thomas Nelson
County Executive

By: *Electronically Signed: Kyle J. Sargent*
Kyle Sargent
Corporation Counsel

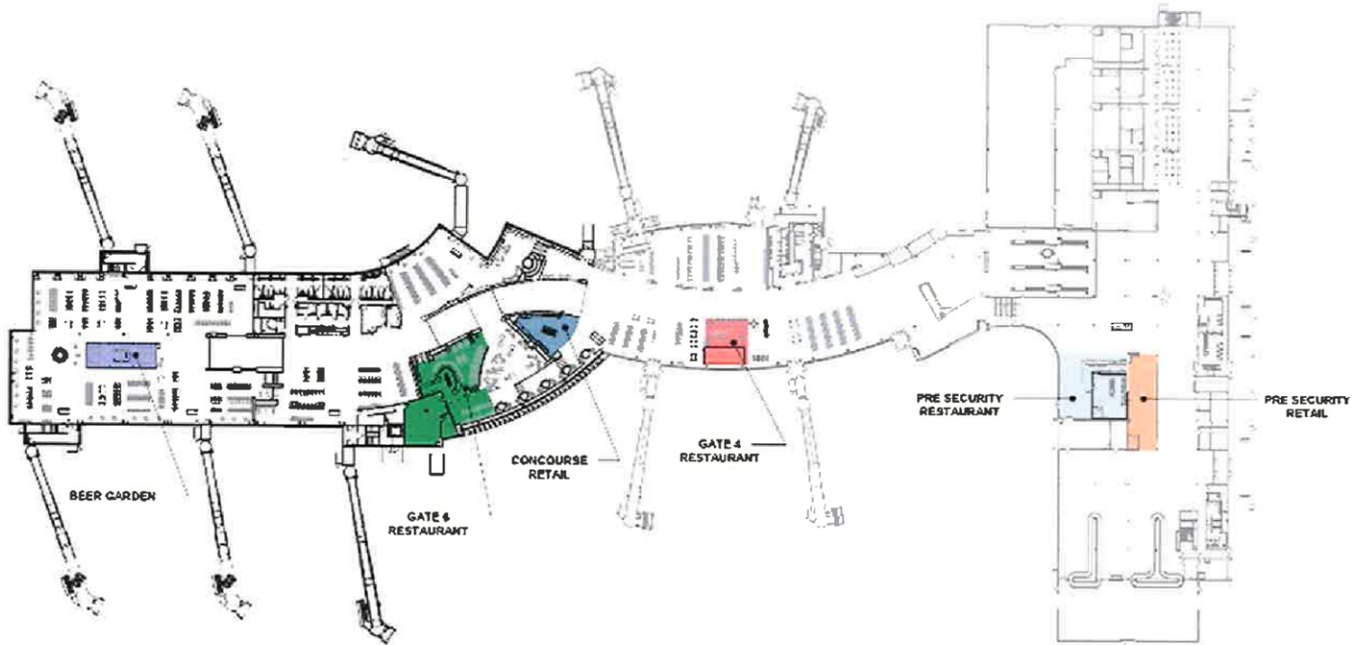
By: _____
Jeff Nooyen
Board Chairperson

By: _____
Jeffrey King
County Clerk

SSP America ATW, LLC

By: _____
Name: _____
Title: _____

Exhibit A1: Concourse and Terminal Expansion Presentation



ATW OUTAGAMIE COUNTY
ATW TERMINAL - CONCOURSE EXPANSION
OVERALL FIRST FLOOR PLAN
06/07/22

G-101 **Mead & Hunt**

Exhibit A2: Beer Garden Drawing

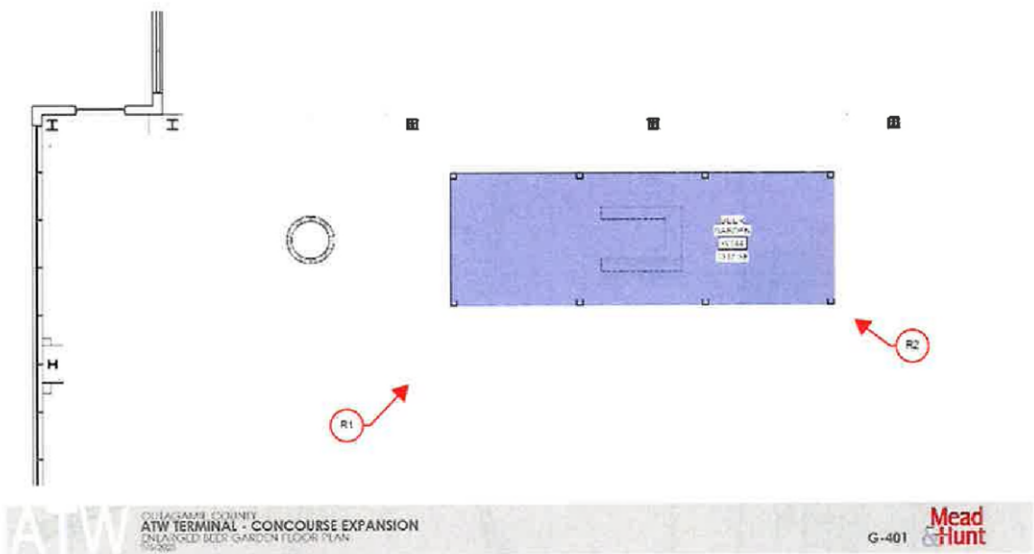
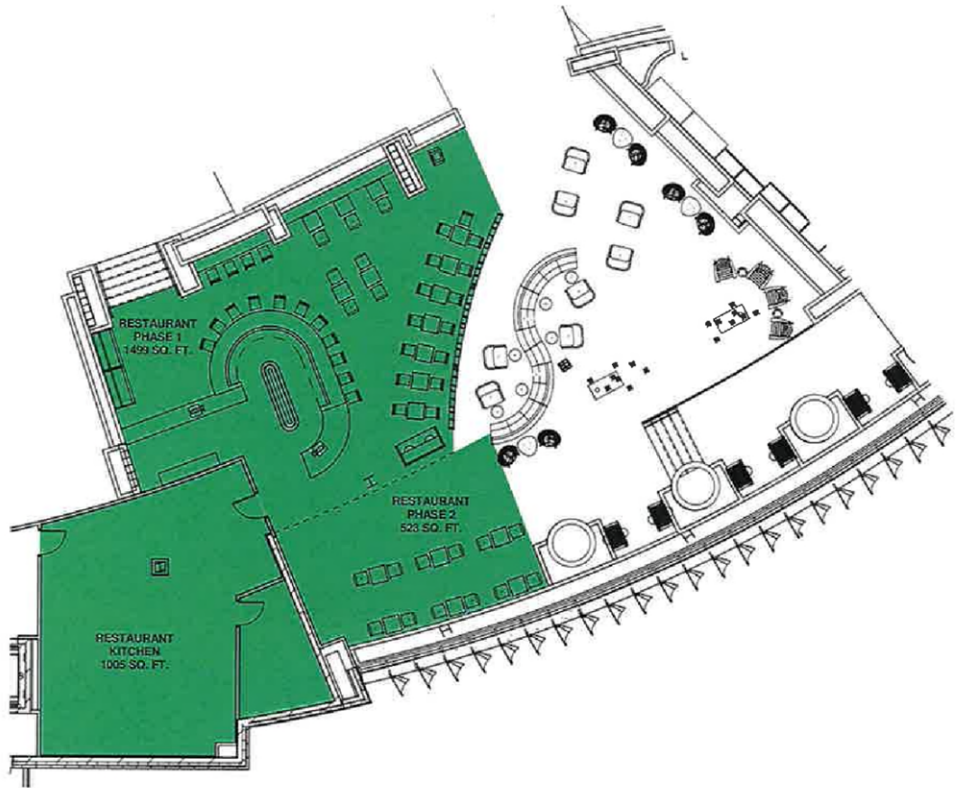


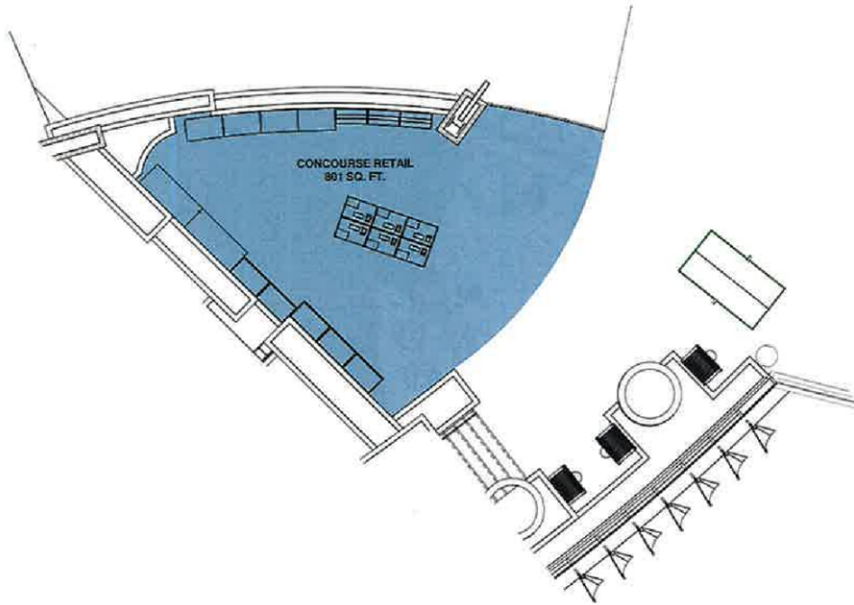
Exhibit A3: Gate Six Restaurant Drawing



ATW OUTAGAMIE COUNTY
ATW TERMINAL - CONCOURSE EXPANSION
ENLARGED GATE SIX RESTAURANT FLOOR PLAN
08/03/23

G-401 Mead & Hunt

Exhibit A3: Concourse Retail



ATW

OUTAGAMIE COUNTY
ATW TERMINAL - CONCOURSE EXPANSION
ENLARGED CONCOURSE RETAIL FLOOR PLAN
08/03/23

G-402



Exhibit A4: Gate Four Restaurant Drawing

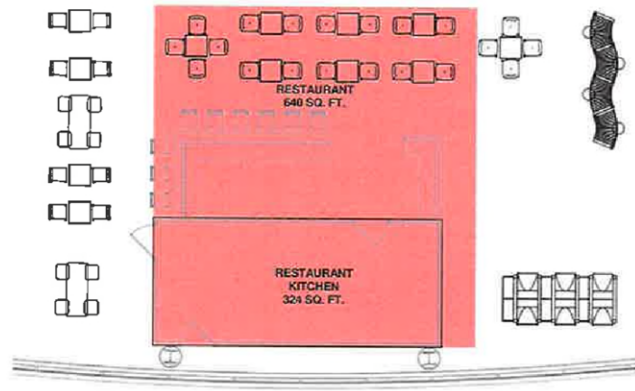
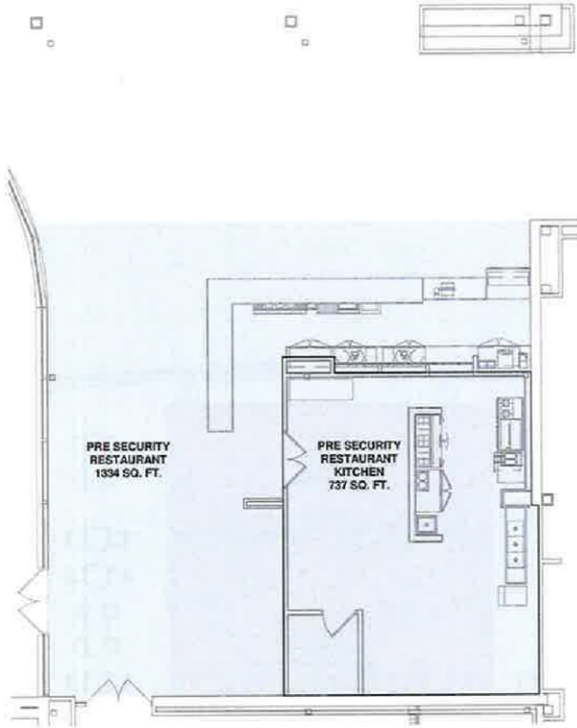


Exhibit A5: Pre-Security Restaurant Drawing

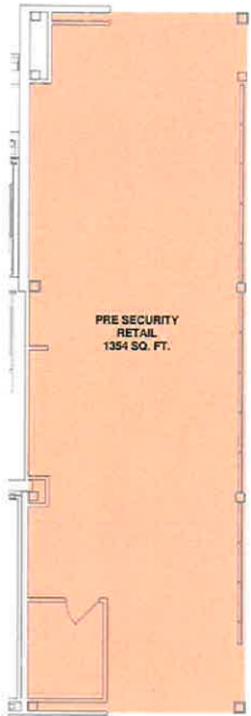


ATW

OUTAGAMIE COUNTY
ATW TERMINAL - CONCOURSE EXPANSION
ENLARGED PRE SECURITY RESTAURANT FLOOR PLAN
08/01/23

G-404 **Mead & Hunt**

Exhibit A6: Pre-Security Retail Drawing



ATW

OUTAGAMIE COUNTY
ATW TERMINAL - CONCOURSE EXPANSION
ENLARGED PRE SECURITY RETAIL FLOOR PLAN
08/03/23

G-405 **Mead & Hunt**

Exhibit B: Development Schedule

To Be Provided By Concessionaire

Exhibit C: Concessionaire Leasehold Improvement Amortization Schedule ("CLIAS")

To Be Provided By Concessionaire

Exhibit D: ACDBE Utilization Form

To Be Provided By Airport and Completed By Concessionaire

OUTAGAMIE COUNTY FISCAL NOTE

INTRODUCTION: This form must be attached to any resolution or ordinance which contains a spending or revenue proposal. The form should be completed by an individual within the department initiating the resolution or ordinance with assistance from the Financial Services Department. Contact the Finance Director (1674), Controller (1675) or Staff Accountant (1681) for assistance. Once completed, forward a copy of the form to the Financial Services Department for their review. Financial Services will forward a reviewed copy of the fiscal note to Legislative Services.

1. **Subject:** SSP America ATW, LLC Lease and Concession Agreement

2. **Description:** This section must be completed for all fiscal notes. Briefly and concisely describe the request. State assumptions used and discuss any current year and long-term fiscal impacts. (A separate attachment can be used)

Appleton International Airport has chosen a new concessionaire for food/beverage and retail through an RFP process. The Airport has negotiated a lease and concession agreement with SSP American ATW, LLC for a concessionaire lease to operate a food and beverage business. The lease term is eleven (11) years beginning May 1, 2024 and terminating on April 30, 2035. The lease rate will be the greater of the Minimum Annual Guarantee (ranging from \$300,000 to \$481,038 annually) or a percentage of gross receipts based on amount of revenue generated. This lease has already been included in the 2024 budget.

Current Year Budget Impact (Check one or more of the following boxes)

Revenues Expenses (Cost) None


- 3. Is the specific cost or revenue included in the current year's budget? yes (X) no () partially ()
- 4. If the proposal requests additional spending, can the additional cost be absorbed within the current year's line item? yes () no () n/a (X)
- 5. Is the proposal to accept additional revenues only? yes (X) no ()
- 6. Does this request modify/adjust the current year budget? yes () no (X)
If no, skip to question 8 below.
- 7. Detail current year budget changes. Please list cost center name, line item, account number and either the increase or decrease amount. (Please note that all budget adjustments must balance. For example, an increase in an expenditure account must be offset by a decrease in another expenditure account or the contingency fund or an increase in a revenue account or other funding sources such as fund balance applied.)

<u>COST CENTER NAME</u>	<u>LINE ITEM</u> <small>(i.e. Salaries, Supplies, Etc.)</small>	<u>ACCOUNT NUMBER INCLUDING COST CENTER</u> <small>(i.e. 1004100.5100, 1004100.5400, etc.)</small>	<u>INCREASE (DECREASE) AMOUNT</u>
Already included in 2024 budget			

Annual and Long-Term Impact

- 8. Is the above Increase/Decrease a nonrecurring one-time expense or revenue? yes () no (X) n/a ()
- 9. What is the anticipated annual and/or long-term cost or revenue impact? Annual Cost _____
Annual Revenue \$300,000 to \$481,038

Fiscal Note Prepared by: Abe Weber/Katie Horan

For Financial Services purposes only	
Reviewed By: 	If expenditures are recorded in the financial system at a level of detail lower than the level 6 as shown above, indicate the specific account numbers and amounts below: <u>Detail Expenditures Account Number</u> <u>Amount</u>
Date: 2/21/2024	_____
Comments:	