



## **SPOKANE INTERNATIONAL AIRPORT**

BUSINESS PARK AND FELTS FIELD

9000 W AIRPORT DRIVE, SUITE 204  
SPOKANE, WA 99224

# **REQUEST FOR PROPOSALS #23-49-9999-018 for Food Service and Retail Concessions**

## **Addendum No. 3**

**DATE OF ADDENDUM: September 21, 2023**

The following changes, additions, and/or deletions are considered as Addendum No. 3, and are hereby made a part of the Request for Proposals (RFP) documents. All Proposers are required to base their Proposals upon the information furnished in this Addendum No. 3; and as required in the RFP and Concession Lease documents. Proposers are required to acknowledge Addendum No. 3 in their Proposals. Failure to acknowledge addenda on the Addenda Acknowledgment Form included as Appendix E of the RFP may result in a Proposal being declared non-responsive.

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1. The proposal submission due date scheduled for **Tuesday, October 24, 2023 at 2:00 PM Pacific Time**, as amended, has not changed.
2. An additional question period has been added for questions related to the Draft Concession Lease, which has been added to the RFP by this Addendum 3. The deadline for questions regarding the Draft Concession Lease is September 27, 2023 at 2:00 PM Pacific Time. All questions must be submitted in writing via email to:

Ms. Amy L. Anderson  
Manager, Properties and Contracts  
Spokane International Airport

Email: [aanderson@spokaneairports.net](mailto:aanderson@spokaneairports.net)

3. Section 10.A, Cover Letter, Covenant to Execute Lease, and Proposal Checklist, shall be revised as follows:

The following statement shall be deleted:

- Statement that the Proposer shall execute a Concession Lease which may include the financial offer, capital investment, and specific concepts and brands.

And replace with the following:

- Statement that the Proposer shall execute a Concession Lease in substantially the same format as the draft Concession Lease and Operating Agreement attached as Appendix G, which will include the financial offer, capital investment, and specific concepts and brands.

4. Appendix G, Draft Concession Lease and Operating Agreement, is hereby added to the RFP (see Attachment 1 of this Addendum 3).
5. Section C.2, Package 2 Opportunities: Unit CC-02-1130, Bar with Food, on Concourse C in Package 2 shall be considered an optional unit. Should the successful Proposer for Package 2 choose to exclude this unit, the Board may lease this unit to a different concession operator under a separate lease in the future.
6. Section 10.G, Transition Plan and Schedule: The first section of the new Concourse C to be constructed, including Gate 33 through Gate 35, is scheduled to be operational in July 2024.

Proposers for Package 1 shall include the following in their draft transition plan:

- Plan and schedule for operating a temporary concession in front of Unit CC-02-1405a, Quick Service Restaurant-Deli and Salads, while this unit is under construction. Plan shall include the menu to be offered, space to be occupied, utilities required, and sample format of the proposed temporary unit (photograph or rendering).
- Plan and schedule for operating a temporary concession in front of Unit CC-02-1410, Newsstand, while this unit is under construction. Plan shall include the product lines to be offered, space to be occupied, utilities required, and sample format of the proposed temporary unit (photograph or rendering).

7. Section 7.0, C.1 Package 1 Opportunity, shall be changed as follows:

The Target Occupancy Dates listed in the Package 1 table as 2/1/2024 shall be amended to 4/1/2024.

The following rows shall be deleted from the Interim and Temporary Locations table:

C-271	958	<b>Interim Newsstand.</b> Products should include travel essentials, including sundries; health and beauty aids; travel and business accessories; magazines, books, and newspapers; single-serving packaged snacks and candy; and cold bottled water, juice, and soft drinks.	2/1/2024
C-275 and C-290	1,690	<b>Interim Bar with Food.</b> Menu should include breakfast, lunch, and dinner items, including but not limited to hot and cold sandwiches, salads, appetizers, entrees, and desserts. The unit should have a full-service bar with beer, cocktails, and a selection of wines. Seating space must be accommodated within the lease line.	2/1/2024
C-288	562	<b>Interim Gourmet Coffee.</b> Gourmet coffee concept with offerings that include freshly brewed hot and cold coffee and tea drinks and cold bottled beverages. A selection of pre-packaged snacks, yogurts, fruit, bagels, and baked goods should be available for carry-out in convenient packaging. Breakfast options such as hot breakfast sandwiches and oatmeal should be provided.	2/1/2024

C-308	328	<b>Interim Newsstand.</b> Products should include travel essentials, including sundries; health and beauty aids; newspapers and magazines; single-serving packaged snacks and candy; and cold bottled water, juice, and soft drinks.	2/1/2024
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The following row in the Interim and Temporary Locations table shall be amended as follows:

C-306 (Future CC-02- 1210)	2,200	<b>Interim Coffee and Bar with Food.</b> Menu should include breakfast, lunch, and dinner items, including but not limited to hot breakfast entrees and breakfast sandwiches, fruit, yogurt, cereals, hot and cold sandwiches, salads, appetizers, entrees, and desserts. The unit should serve freshly brewed hot and cold coffee and tea drinks, cold bottled water, juice, and soft drinks; expedited coffee and tea service must be provided throughout the morning. Full bar service must be provided, including beer, cocktails, and a selection of wines. Seating space must be accommodated within the lease line.	4/1/2024
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The following rows shall be added to the Interim and Temporary Locations table:

C-25-I	776	<b>Interim Convenience Retail.</b> Products should include travel essentials, including sundries; health and beauty aids; newspapers and magazines; single-serving packaged snacks and candy; cold bottled water, juice, and soft drinks and freshly-prepared, grab-and-go food service items.	4/1/2024
CC-02- 1520	Up to 895 (see LOD in Attachment 2)	<b>Temporary Newsstand.</b> Products should include travel essentials, including sundries; health and beauty aids; newspapers and magazines; single-serving packaged snacks and candy; and cold bottled water, juice, and soft drinks. This location is an open space. The temporary unit will need to be self-contained.	4/1/2024

The Target Interim Operating Dates Table shall be amended as follows:

<b>Start</b>	<b>End</b>	<b>Units</b>	<b>Target Occupancy Date</b>
April 2024	Opening of CC-02-1410	CC-02-1520	4/1/2024
April 2024	November 2024	R-217-I, R-217S-I	4/1/2024
April 2024	Opening of CC-02-1400	C-306, C-25-I	4/1/2024
May 2024	December 2024	R-219-I	4/1/2024

The following row shall be added to the Support Space table:

<b>Unit No.</b>	<b>Approximate Sq. Ft.</b>
TBD	360.5

8. Section 7.0, C.2 Package 2 Opportunities, shall be changed as follows:

The Target Occupancy Dates listed in the Package 2 and Interim Locations tables as 2/1/2024 shall be amended to 4/1/2024.

**End of Addendum No. 3**

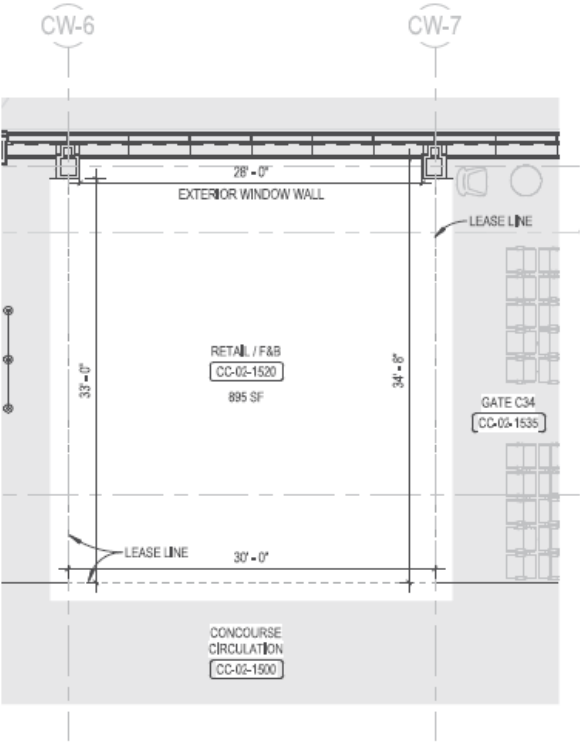
## **ATTACHMENT 1**

### **APPENDIX G**

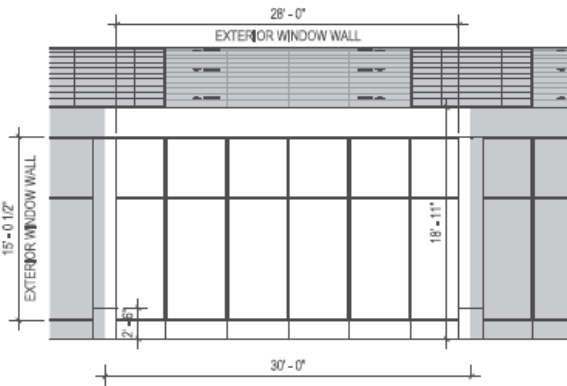
#### **CONCESSION LEASE AND OPERATING AGREEMENT**

ATTACHMENT 2

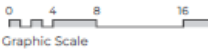
LOD for CC-02-1520, Temporary Newsstand, Package 1



Unit CC-02-1520 Lease Outline Drawing



Unit CC-02-1520 Elevation



**CONCESSION LEASE AND OPERATING AGREEMENT**

**FOOD SERVICE AND RETAIL CONCESSIONS**

**SPOKANE INTERNATIONAL AIRPORT**

**Spokane, Washington**



**Landlord: Spokane Airport Board**

**Concessionaire: INSERT NAME**

**KEY LEASE TERMS**

Agreement Date	
Concessionaire:	Concessionaire Name Address Address Attn: Contact (Name, Email, and Cell Phone)
Premises (§SECTION 2):	Approximately ____ square feet of space commonly known as Units [List units], as identified on Exhibit A.
Occupancy Date(s) (§1.40):	
Expiration Date (§1.20):	

Rent Commencement Date (§SECTION 6):	The earlier of: (i) the first Build-Out Deadline or (ii) the date on which Concessionaire first opens for business from any portion of the Premises	
Initial Minimum Annual Guarantee Amount (§6.1.4):	\$_____	
Minimum Annual Guarantee Due Date (§6.1):	In advance, on the first (1 <sup>st</sup> ) day of the month	
Percentage Rent (§6.1.2):	Concession Type	Proposed Percentage Fee in Number Format
	<b>Food Service Locations</b>	
	Food and Non-Alcoholic Beverages	_____ %
	Alcoholic Beverages	_____ %
	<b>Retail Locations</b>	
	All products sold	_____ %
	<b>Interim Operations</b>	
	All products sold	_____ %
Monthly Report and Percentage Rent Due Date (§0):	In arrears, on the twelfth (12 <sup>th</sup> ) day of the month	
Additional Charges and Fees (§6.1.12):	Late Fees (§6.4.2 ), Utilities (§10.4), Taxes (§SECTION 21) and Marketing Program (§4.7). Others may be provided for in the Lease.	



Remittance Address:	Spokane International Airport [insert address for rent payments and reports; and/or electronic payment instructions]
Late Charges (§6.4.2):	Five hundred dollars (\$500) per occurrence plus interest; sanctions associated with a failure to report may also apply
Default Rate (§1.15):	Eighteen Percent (18%)
Annual Certified Statement Due Date (§0):	March 31, except for the Last Partial Year, for which it is ninety (90) days following the end of the Last Partial Year
Performance Guarantee (§6.3):	\$650,000
Use of Premises (§4.2):	
Initial Minimum Investment Amount (§7.2.1):	\$_____ per square foot or such larger amount as generally committed in Concessionaire's Proposal
Build-Out Deadline (§1.6):	For each permanent food service location, 120 days from the Occupancy Date and for each permanent retail location, 90 days from the Occupancy Date, or as otherwise provided pursuant to a transition plan approved by the CEO
Construction Delay Damages (§7.2.1):	\$1,000 per day
Midterm Refurbishment Amount (§7.2.2):	Fifteen percent (15%) of the actual amount spent on Initial Improvements, which shall not be less than [15% of \$ amount committed in Concessionaire's Proposal for Initial Improvements]
Midterm Deadline (§7.2.2):	
Exhibits to Lease:	A – Lease Outline Drawings B – Menu and Product Pricing List C – Concession Sustainability Requirements D – ACDBE Participation Plan

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Exhibit A: Leased Premises

Exhibit B: Concession Menus, Products and Pricing

Exhibit C: Concession Sustainability Requirements

Exhibit D: ACDBE Participation Plan

## **CONCESSION LEASE AND OPERATING AGREEMENT**

This CONCESSION LEASE AND OPERATING AGREEMENT ("Lease") is entered into and made effective on this \_\_\_\_\_ day of \_\_\_\_\_ ("Effective Date," as further defined in SECTION X herein), between the Spokane Airport Board (the "Board"), an agency of the City and County of Spokane, municipal corporations of the State of Washington, created pursuant to the provisions of Section 14.08.200 of the Revised Code of Washington, and **INSERT NAME** ("Concessionaire") who agree as follows:

### **WITNESSETH:**

WHEREAS, the Board is the operator of the Spokane International Airport ("Airport") located in the City and County of Spokane, State of Washington, and operates the same for the promotion, accommodation, and development of air commerce and transportation; and

WHEREAS, the Board solicited proposals for the development, operation, and management of food service and retail concessions in the Airport; and

WHEREAS, the parties hereto desire to enter into a Concession Lease, granting the Concessionaire the use, together with others, of a portion of the Airport and its appurtenances and the lease of certain Leased Premises hereinafter demised; and

NOW, THEREFORE, in consideration of the Concession Lease rights granted herein, the right and privileges and the mutual covenants and conditions hereinafter contained and other valuable considerations, the parties hereto agree, for themselves, their successors, and assigns, as follows:

\_\_\_\_\_

## **SECTION 1 DEFINITIONS.**

- 1.1 Addendum. “Addendum” shall mean the written or graphic instrument that clarifies, corrects, or changes the Concession Lease documents.
- 1.2 Affected Concourse. “Affected Concourse” shall mean a Concourse in which Concessionaire operates one or more Concession locations under this Lease.
- 1.3 Airport. “Airport” shall mean the Spokane International Airport.
- 1.4 ACDBE. “Airport Concessions Disadvantage Business Enterprise” and “ACDBE” shall mean a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as an ACDBE by the State of Washington, of which at least fifty-one percent (51.0%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations declared pursuant hereto at 49 CFR Part 23.
- 1.5 Applicable Laws. “Applicable Law(s)” shall mean all federal, state or local statutes, laws, ordinances, codes, rules, regulations, policies, standards, executive orders, consent orders, orders and guidance from regulatory agencies, judicial decrees, decisions and judgements, permits, licenses, reporting or other governmental requirements or policies of any kind by which a Party may be bound, then in effect or which come into effect during the time the Services are being performed, and any present or future amendments to those Applicable Laws, including those which specifically relate to: (a) the business of the City and/or County; (b) business of Concessionaire of Concessionaire’s sub-concessionaire(s); (c) the Lease and the Lease documents; or (d) the performance of the Services under this Lease.
- 1.6 Build-Out Deadline. “Build-Out Deadline” shall mean the date set forth in the Key Lease Terms. In the event that the Build-Out Deadline is subject to extension as provided in Section 7.2.1, the Board shall confirm the extended Build-Out Deadline in the manner provided for notice in SECTION 28 of this Agreement. There may be more than one Build-Out Deadline if portions of the Premises have different Occupancy Dates.
- 1.7 Chief Executive Officer. “Chief Executive Officer” or “CEO” shall mean the individual designated by the Board to act as coordinator and manager of this Lease, and the Board’s delegee on matters related thereto unless otherwise expressly stated herein. The Chief Executive Officer may from time to time designate a representative to fulfill certain tasks stated in this lease as the responsibility of the Chief Executive Officer.
- 1.8 City. “City” shall mean the City of Spokane, Washington.
- 1.9 Commencement Date. “Commencement Date” shall mean the first day that Concessionaire opens for business in any Interim Concession location.

- 1.10 Concession Lease. “Concession Lease” shall mean the written Lease between the Board and the Selected Proposer covering the leasing of premises located in the Terminal at Spokane International Airport for concession operations. Also, the “Lease.”
- 1.11 Concessionaire. “Concessionaire” shall mean and refer to the party executing this Lease, as identified in the preamble of this Lease.
- 1.12 County. “County” shall mean the County of Spokane, Washington.
- 1.13 Date of Beneficial Occupancy. “Date of Beneficial Occupancy” or “DBO” shall mean the date Concessionaire commences full concession operations at all locations in the Premises.
- 1.14 Day. “Day” shall mean a calendar day of 24 hours measured from midnight to the next midnight.
- 1.15 Default Rate. “Default Rate” shall mean the rate set forth in the Key Lease Terms or the maximum rate provided by law for a transaction of this nature, whichever is less.
- 1.16 Eligible Improvements. “Eligible Improvements” shall have the meaning set forth in Section 17.6 of this Lease.
- 1.17 Enplanement. “Enplanement” shall mean a passenger boarding a flight at the Airport for a scheduled or charter flight, whether domestic or international, including non-revenue passengers (but excluding airline crew), and including those passengers connecting from arriving flights of the same or another airline. Enplanements shall generally be measured for the entire Airport and Concourses A/B and C separately.
- 1.18 Enplanement Stabilization for Two Consecutive Months. “Enplanement Stabilization for Two Consecutive Months” means that actual Enplanements departing an Affected Concourse for a particular month equal or exceed eighty-five percent (85%) of the actual Enplanements for the same reference month in the immediately prior year, and such threshold is achieved for two consecutive months.
- 1.19 Excluded Costs. “Excluded Costs” shall have the meaning set for in Section 17.7 of this Lease.
- 1.20 Expiration Date. “Expiration Date” shall have the meaning set forth in Section 3.2 of this Lease, which date shall be the date on which this Lease, unless earlier terminated, will expire. Without regard to the number of Occupancy Dates and/or Build-Out Deadlines for different portions of the Premises, there shall be only one Expiration Date. In the event that the Expiration Date is tied to a specific Occupancy Date or Build-Out Deadline and the Build-Out Deadline (or Build-Out Deadline associated with such Occupancy Date) is extended under Section 7.2.1 due to non-concurrent delays directly caused by the Board (but not Force Majeure

events), the Expiration Date will likewise be extended for the same period of time the Build-Out Deadline is extended.

- 1.21 First Calendar Year. “First Calendar Year” shall have the meaning set forth in Section 6.1.1 of this Lease.
- 1.22 First Partial Year. “First Partial Year” shall have the meaning set forth in Section 6.1.1 of this Lease
- 1.23 Franchisor. “Franchisor” shall have the meaning set forth in Section 4.3 of this Lease.
- 1.24 Gross Receipts. “Gross Receipts” shall mean the total dollar amount derived from the sale or delivery of any food, beverages, or merchandise or the performance of any services from, in, upon or arising out of the Premises, whether by Concessionaire, and sub-concessionaire(s), licensee or concessionaire of Concessionaire, or any other person on Concessionaire’s behalf, whether at wholesale or retail, and whether for cash, check, credit (including charge accounts), exchange or in kind (specifically including the amount of credit allowed for any trade-ins). No deduction shall be permitted for credit card fees (e.g., interchange or processing fees) or thefts, and for uncollected or uncollectible credit or charge accounts. No deduction shall be permitted for sales discounts (such as prompt-payment discounts) that are not specifically reflected on the original invoice/receipt at the time of the sale. No deduction shall be permitted for the payment of franchise taxes, taxes levied on concession activities, display or promotional rebates or discounts, facilities, equipment, or real or personal property of Concessionaire.

Gross Receipts shall, without limiting the generality of the foregoing, also include:

- 1.24.1 Orders that originate or are accepted at the Premises, even if delivery or performance is made from or at any other place. All sales made and orders received at the Premises shall be deemed as made and completed therein, even though payment of account may be transferred to another office/location for collection;
- 1.24.2 Orders that result from solicitation off the Premises, but which are delivered or performed from the Premises or by personnel either operating from the Premises or reporting to or under the control or supervision of any employee employed at the Premises;
- 1.24.3 Mail, catalog, computer, internet, telephone, cell phone, or other similar order received at, ordered from, or billed from the Premises;
- 1.24.4 Sales originating from whatever source, and which Concessionaire (or Concessionaire's sub-concessionaires, licensees or concessionaires) in the normal and customary course of Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) operations would credit or attribute to Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) business conducted in the Premises;
- 1.24.5 Display Allowances, whether received by Concessionaire or its sub-concessionaire, licensee or concessionaire; and
- 1.24.6 All monies or other things of value received by Concessionaire (or Concessionaire's sub-concessionaire, licensee or concessionaire) from Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) operations at, upon or from the Premises which are neither included in nor excluded from Gross Receipts by the other provisions of this definition, including without limitation, finance charges, late fees, and all deposits not refunded to customers.

Gross Receipts shall not include, and may be adjusted to exclude, the following when properly recorded and accounted for:

- 1.24.7 Tips and gratuities paid directly to employees;
- 1.24.8 The exchange of merchandise between stores of Concessionaire (or Concessionaire's sub-concessionaire, licensee's or concessionaire's) where such exchanges are made solely for the convenient operation of Concessionaire's (or Concessionaire's sub-concessionaire's, licensee's or concessionaire's) business and not for the purpose of consummating a sale which has been made at, upon or from the Premises;
- 1.24.9 Returns to shippers or manufacturers with no mark-up;



- 1.24.10 Allowances or refunds allowed by Concessionaire to customers because of unacceptable or unsatisfactory goods or services to the extent such allowance or refund was actually granted and adjustment actually made;
- 1.24.11 Complimentary meals, the amount of any employee discount on meals, and any meals provided by Concessionaire to its employees without cost as a benefit;
- 1.24.12 The amount of any sales tax or other excise tax imposed upon the customer and collected by Concessionaire as agent for the taxing body imposing the tax and billed to the customer as a separate item;
- 1.24.13 Revenue from the sale of uniforms or clothing to Concessionaire's employees where it is required that such uniforms or clothing be worn by said employees;
- 1.24.14 Any sums that represent discounts so long as the amount of the discount is shown on the face of the receipt issued to the customer; and
- 1.24.15 Any item, such as the cost of third-party shipping or product handling, for which the Concessionaire is reimbursed at actual cost therefor; provided, however, in the event that Concessionaire charges a customer, sub-concessionaire, licensee, or concessionaire more than the actual cost of such item (specifically including through the inclusion of a "handling," "management," or similar charge by Concessionaire), the entire amount shall be includable with Gross Receipts and shall not be subject to exclusion.
- 1.25 Initial Improvements. "Initial Improvements" shall have the meaning set forth in Section 7.2.1 of this Lease.
- 1.26 Initial Investment Amount. "Initial Investment Amount" shall be the minimum amount to be invested by the Concessionaire in initial Leasehold Improvements, which shall not be less than \$X per square foot for retail or passenger service concessions, \$X for food service concessions, \$X per square foot for food service seating (common seating outside of a restaurant leased space only) and \$X for vending areas and equal or exceed [ENTER TOTAL MINIMUM CAPITAL INVESTMENT AMOUNT FROM CONCESSIONAIRE'S PROPOSAL] as committed in Concessionaire's Proposal.\_
- 1.27 Last Calendar Year. "Last Calendar Year" shall have the meaning set forth in Section 6.1.1 of this Lease.
- 1.28 Last Partial Year. "Last Partial Year" shall have the meaning set forth in Section 6.1.1 of this Lease.
- 1.29 Lease Documents. "Lease Documents" shall mean this Lease and the Exhibits, Addenda, Appendices and other documents attached hereto or referenced herein as well as any authorized changes or addenda hereto.

- 1.30 Leased Premises. “Leased Premises” or “Premises” shall mean the premises listed in SECTION 2 for use by Concessionaire in performing the services outlined in this Lease.
- 1.31 Leasehold Improvements. “Leasehold Improvements” shall mean the Initial Improvements, Midterm Refurbishment, and any Alterations made by the Concessionaire, including equipment owned, installed, and affixed to the Premises by the Concessionaire. Leasehold Improvements may include, but are not limited to, all mechanical, electrical, and plumbing work; floors, ceilings, demising walls, store fronts, and signage; and décor items, lighting fixtures, and built-in shelving. Leasehold Improvements do not include personal property or improvements made to support space.
- 1.32 Local Brand. “Local Brand” shall mean a branded concept that has a presence in (currently operates one or more locations), but little to no presence outside of, the Spokane-Spokane Valley-Coeur d’Alene Metropolitan Statistical Area.
- 1.33 Midterm Refurbishment Deadline. “Midterm Refurbishment Deadline” shall mean the end of the seventh (7th) anniversary of the Commencement Date or such later deadline as may be approved by the Board.
- 1.34 Midterm Refurbishments. “Midterm Refurbishments” shall have the meaning set forth in Section **Error! Reference source not found.** of this Lease.
- 1.35 Minimum Annual Guarantee. “Minimum Annual Guarantee” or (“MAG”) shall have the meaning set forth in SECTION 6 of this Lease.
- 1.36 Minimum Reinvestment. “Minimum Reinvestment” shall have the meaning set forth in Section **Error! Reference source not found.** of this Lease.
- 1.37 Modifications. “Modifications” shall have the meaning set forth in Section 7.1 of this Lease.
- 1.38 National Brand. “National Brand” shall mean a branded concept that operates in multiple street-side units in a significant portion of the United States.
- 1.39 Net Book Value of Leasehold Improvements. “Net Book Value of Leasehold Improvements” shall have the meaning set forth in Section 0 of this Lease.
- 1.40 Occupancy Date. “Occupancy Date” shall mean a date set by the Board for the turnover to the Concessionaire of the Premises or a portion thereof for Concessionaire to commence improvements to the Premises. Different portions of the Premises may have different Occupancy Dates as set forth in the Key Lease Terms.
- 1.41 Percentage Rent. “Percentage Rent” shall have the meaning set forth in SECTION 6 of this Lease.

- 1.42 Performance Guarantee. "Performance Guarantee" shall have the meaning set forth in Section 6.3 of this Lease.
- 1.43 Proposal. "Proposal" shall mean the document, including attachments and exhibits, submitted by Concessionaire on or about October 24, 2023 in response to a Request for Proposals (RFP) issued by the Board, which Proposal identified specific concepts for the Premises, outlines Concessionaire's plan for the operation of concessions, made certain promises regarding minimum capital investments in improvements for the Premises, and made certain commitments to the Board regarding ACDBE participation, management, staffing, and other operational and management functions serving as the basis for the award of this Concession Lease.
- 1.44 Public Areas. "Public Areas" shall mean the areas in and around the Terminal designated by the Board for non-exclusive public use, including, but not limited to, walkways, roadways, waiting rooms, hallways, restrooms and other passenger conveniences.
- 1.45 Removable Fixtures. "Removable Fixtures" shall have the meaning set forth in Section 7.2.5 of the Lease.
- 1.46 Rent. "Rent" shall mean and refer collectively to the sums denominated as either Minimum Annual Guarantee, Percentage Rent, Additional Rent or any other sums or charges otherwise payable by Concessionaire under the terms of this Lease. Failure by Concessionaire to pay any sum denominated as Rent shall entitle the Board to pursue any or all remedies specified in this Agreement or otherwise allowed by law.
- 1.47 Rent Commencement Date. "Rent Commencement Date" shall mean the earlier of: 1) the earliest date on which Concessionaire begins Interim Concession Operations; or 2) the earliest date on which Concessionaire opens a permanent concession location for business to the public or the earliest Build-Out Deadline set by the Board in the manner provided for notice in SECTION 28 of this Lease, which shall generally be ninety (90) days after the Occupancy Date for retail and vending locations and one hundred and twenty (120) days after the Occupancy Date for food service locations unless temporary operations or an extended build-out timeframe have been established by the Board in advance in writing. Without regard to the number of Occupancy Dates and/or Build-Out Deadlines for different portions of the Premises, there shall be only one Rent Commencement Date, which shall be determined from the earliest Build-Out Deadline or earliest opening date.
- 1.48 Severe Decline in Enplanements for Three Consecutive Months. "Severe Decline in Enplanements for Three Consecutive Months" means that the actual Enplanements departing an Affected Concourse during a one-month period are less than eighty-five percent (85%) of the actual Enplanements during the same month in the immediately prior Calendar Year, and such shortfall continues for three (3) consecutive months.

- 1.49 Services. "Services shall have the meaning set forth in Section 4.1 of this Lease.

- 1.50 Spokane-Spokane Valley-Coeur d'Alene Metropolitan Statistical Area. "Spokane-Spokane Valley-Coeur d'Alene Metropolitan Statistical Area" shall mean the area in and around the Airport as defined by the United States Census Bureau, including Spokane and Stevens counties.
- 1.51 Street Pricing Plus Policy. "Street Pricing Plus Policy" shall mean the pricing policy under this Lease specifying that the prices of all food, beverage, and retail products sold at the Airport may exceed the prices charged in comparable restaurants and shops within the Spokane-Spokane Valley-Coeur d'Alene Metropolitan Statistical Area for like size and quality products, by up to ten percent (10%).
- 1.52 Tenant Design Guidelines. "Tenant Design Guidelines" shall mean the set of design standards and guidelines found on the Airport's website that outlines the design requirements to which all Concessionaires must comply.
- 1.53 Terminal. "Terminal" shall mean the passenger terminal building located at the Airport, including Concourses A, B, and C and all related pre- and post-security locations.
- 1.54 Trade Fixtures. "Trade Fixtures" shall mean all non-affixed items, except expendables and personal property, that can be removed without damage to the Premises, including cash registers, safes, display fixtures, and the like.

## **SECTION 2 LEASED PREMISES.**

- 2.1 Premises. Effective on the Occupancy Date, the Board hereby leases to Concessionaire and Concessionaire hereby leases from the Board, the Premises. In the event that there are different Occupancy Dates for different portions of the Premises, the lease for each portion of the Premises shall commence on its respective Occupancy Date or turnover date in the case of interim concession locations.
- 2.2 Acceptance of Premises. Concessionaire shall promptly examine the Premises following the Occupancy Date. Concessionaire shall accept the Premises in their present, as-is condition and agrees to make any changes necessary to conform to federal, state, and local law applicable to Concessionaire's use of the Premises, and obtain necessary permits therefor, unless Concessionaire provides the Board with written notice of any defect or problem with the Premises within ten (10) business days of the Occupancy Date.
- 2.3 No Warranty. The Board makes no warranty, promises, or representations regarding the economic viability of any concession location included in the Premises. Passenger counts, passenger flows, and other customer activity at the Airport are generally the result of airline schedules, gate utilization, and seasonal activity. Further Federal rules and regulations governing security and emergency situations may restrict access to the Airport or portions thereof. Except as specifically set forth in this Lease, Concessionaire shall not be entitled to any relief in the event passenger counts, passenger flows, other customer activity, or Gross Receipts are other than Concessionaire predicted or projected.
- 2.4 No Easement. No easement for light, air, or view pertaining to Premises is granted, given, or implied in this Lease.
- 2.5 Support Space and Access. Concessionaire shall not allocate more than ten percent (10%) of the square footage in the concession locations for storage, support, and/or office space use unless agreed to in writing by the Board. Support space that is available to Concessionaire for office, storage, or other support uses are included in Section 2.1 of this Lease. Such space may be unfinished and Concessionaire may be required to develop and improve the space at its sole cost and without rental credit according to the terms and conditions contained in this Lease. Additional support space may be available for lease to the Concessionaire under a separate agreement.

## **SECTION 3 TERM.**

- 3.1 Commencement Date. The Commencement Date for this Lease coincides with the first date on which Interim Concession Operations space is made available by the Board to the Concessionaire. The Board shall have no liability to Concessionaire if the Commencement Date is delayed due to construction or for other reasons beyond the Board's control.

- 3.2 Term. The Term of this Lease shall begin on the Commencement Date and continue for a period of ten (10) [or eleven (11)] years, unless terminated earlier, after the Date of Beneficial Occupancy or the Build-Out Deadline for the final location of the Premises to be constructed, whichever occurs earlier (the "Expiration Date"). All rights and obligations of the parties under this Lease, including payment of Rent for Interim Concession Operations, shall commence on the Commencement Date of the Lease, except for, to the extent that Board is unable to turn over possession of any part of the Premises to Concessionaire on the Commencement Date: (1.) the Board's obligation to deliver such portion of the Premises to Concessionaire; and (2.) Concessionaire's obligation to improve such portion of the Premises. These two (2) specific obligations shall commence on the Occupancy Date for such portion(s) of the Premises. Additionally, (1.) Concessionaire's obligation to pay rent for such portion of the Premises; and (2.) Concessionaire's obligation to operate such portion of the Premises shall commence on the Build-Out Deadline for such portion(s) of the Premises. Permanent concession locations within the Premises may have different Occupancy Dates.

#### **SECTION 4 USE OF PREMISES.**

- 4.1 Non-Exclusive Rights. Concessionaire will have the non-exclusive right to provide food service and retail concessions on the Premises as described herein (the "Services") and nothing herein shall preclude the Board from entering into an agreement with any other parties during the Term of this Lease for the sale in any part of the Airport of the same or similar food, beverages, merchandise, or service that Concessionaire is permitted to sell or offer hereunder, whether such agreement is awarded competitively or through negotiations and regardless of whether the terms of such an agreement are more or less favorable than the terms of this Lease.
- 4.2 Use of Premises. Concessionaire, including Concessionaire's sub-concessionaires, franchisors, and licensors, shall use the Premises to provide the concepts and brands in accordance with its Proposal as set forth in the Key Lease Terms and shall not use them for any other purpose or in any other manner without the written consent of the Board. Concessionaire recognizes that the specific use of the brand or brands and product mix agreed to by Board is a substantial and material condition precedent to entering this Lease because of the space constraints at the Airport, requirements to provide adequate service to the public, and financial requirements, and shall not be changed, except as specifically agreed to in writing by Board. The Board shall have the right, at any time, to require or authorize Concessionaire to revise or replace the concept at any location within the Premises and may prohibit the sale of any particular products or services or categories of products or services or any particular use of the Premises.

- 4.2.1 Menu and Products. Concessionaire shall sell food, beverages, and retail products to passengers, employees, and the general public in accordance with the terms and conditions contained herein. With respect to each concession location hereunder, Concessionaire shall offer the menu and products listed in Exhibit B, which menu and products shall be available at the specified location at all times unless a change is approved in advance in writing by the CEO. The menus and list of food, beverage, and retail items approved for sale, the specific locations at which those menus and retail products will be offered, and minimum requirements as set forth in Exhibit B may from time to time be amended by the CEO. All pre-packaged offerings shall be dated with the date on which they were prepared. Concessionaire is granted the right to provide catering services to Airport tenants and users on a non-exclusive basis. In-flight catering to airlines serving the Airport may be provided upon receipt of prior written approval of the CEO and if it does not interfere with the timeliness and service of food service to passengers, visitors, and airport employees. The gross receipts from all catering performed using the Premises shall be included in the calculation of Gross Receipts herein.
- 4.2.2 Signs. Concessionaire shall install and maintain appropriate signs in or upon the Premises, provided that the location, design, installation, and maintenance of all signs shall be subject to the provisions of Section 7.2.5 of this Agreement and the prior written approval of the Board.
- 4.3 Franchise. If any portion of the Premises are operated under a franchise, Concessionaire represents and warrants to the Board that Concessionaire has been granted the right to use any trade name that may be used at the Premises for the entire Term of this Lease, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name owner (a "Franchisor") and all franchise and/or license standards shall be met or exceeded. At the Board's request, Concessionaire agrees to provide the Board with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Copies of franchise and/or license standards and performance audit forms shall be provided to the Board prior to the opening date for locations operated under a Franchise Agreement. Copies of inspections conducted by the franchise and/or licensing entity, or anonymous shopper service hired by the franchise or licensing entity, shall be submitted to the Board within ten (10) days of receipt by Concessionaire or any of its franchisees, sub-concessionaires, or licensees. Concessionaire agrees that the termination of Concessionaire's right to use Concessionaire's trade name at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor under Concessionaire's trade name, shall constitute a material breach of Concessionaire's obligations under this Lease. Concessionaire agrees that if such Franchise Agreement is terminated, the Board shall have the right to terminate this Lease pursuant to SECTION 17 of this Agreement with regard to the affected portions of the Premises.

- 4.4 Continuous Operation of Premises. Concessionaire must operate the Premises without interruption, throughout the Term, and provide all required Services to the extent permitted by law and provided that Concessionaire is lawfully entitled to possession of the Premises.
- 4.5 Customer Service. The Board shall have the right to make reasonable objections to the quality of products sold, the character of the service rendered to the public, the prices charged, and the appearance and condition of the Premises and employees. Concessionaire agrees to promptly discontinue or remedy any objectionable practice.
- 4.5.1 A high quality and stable workforce is key to providing outstanding customer service. Concessionaire is expected to maintain a positive work environment that encourages the development and growth of all employees. Concessionaire shall comply with all applicable federal, state, and local laws and ordinances related to wages and benefits as well as Concessionaire's specific commitments regarding wages and benefits made as part of its Proposal. Concessionaire is expected to maintain favorable turnover rates compared to like businesses in the industry. Failure to do so may result or termination of this Lease.
- 4.5.2 Concessionaire's staff must be aware of the time sensitive nature of Airport patrons. Concessionaire's employees shall be courteous and helpful to the public.
- 4.5.3 Concessionaire shall conduct its operations in a first-rate and business-like manner, which for the purpose of this Lease shall mean the standard of products, cleanliness, and customer service that would reasonably be expected in upscale shopping malls and other similar high-quality airport and non-airport retail and dining locations. Concessionaire must carry a sufficient quantity of inventory to ensure that the Premises will be fully stocked and available to passengers at all times. All inventories must be top quality and displayed in an "opening day fresh" manner. In addition, a dress code should be strictly adhered to for all operating staff.
- 4.5.4 Concessionaire agrees to offer handled bags and/or "take-out" packaging to enable customers to more easily transport items through the Airport. All handled bags must be recyclable paper bags or one-hundred percent (100%) compostable bags as certified by the Biodegradable Products Institute (BPI) or equivalent certification program. All "take-out" packaging must be one-hundred percent (100%) compostable as certified by BPI or equivalent certification program.
- 4.6 Employee Parking. Parking for Concessionaire's employees shall be provided by the Board on a space-available basis in the employee parking area in common with employees of other operators and tenants at the Airport. The Board shall charge Company a parking fee for the use by its employees of the employee surface



parking area. The current employee parking rate is Thirty Dollars (\$30.00) per space per month. The Board may change the parking fee, from time to time during the term of this Lease. Parking fees shall be assessed on a monthly basis and shall be payable by Concessionaire by the tenth (10<sup>th</sup>) day of the following month.

- 4.7 Marketing Program. The Board may establish a marketing program ("Marketing Program") to promote the concessions at the Airport. The Marketing Program may include advertising, media placements, special events, promotional events, social media, brochures, videos, food recovery, and other promotions and monitoring to support the concession program at the Airport. Once established, the Board will hold annual meetings with interested Airport concessionaires, to obtain input on the Marketing Program's annual business plan, objectives, evaluation methodology, and budget for the upcoming calendar year.

The Marketing Program will be funded by contributions from the Concessionaire and other concessionaires at the Airport. Upon establishment of the Marketing Program, Concessionaire will contribute an amount up to one half of one percent (0.5%) of its monthly Gross Receipts per calendar year (pro-rated based on the number of months in the term for any partial year), to fund the Marketing Program. All contributions to the Marketing Program will only be expended for the promotion and support of the concessions at the Airport and marketing-related staff activities at the Airport and for no other purposes. Concessionaire shall make its contributions to the Marketing Program monthly in arrears concurrently with its payment of Percentage Rent under this Lease.

- 4.8 Prohibition of Solicitation. Concessionaire is strictly prohibited from engaging in any activities outside the Premises within the Airport for the recruitment or solicitation of business. Concessionaire may not place or install any carts, kiosks, inline store, racks, or stands, or display merchandise or trade fixtures outside the boundaries of the Premises without the express written consent of the Board. Subject to SECTION 13 of this Lease, Concessionaire may purchase advertising space within the Airport from the Board's chosen advertising concessionaire.
- 4.9 Construction. Concessionaire shall construct improvements on the Premises for use in its operations in accordance with the investment requirements outlined in Section 7.2 and the plans and construction schedule approved, in writing, by the Board. All construction must comply with the Tenant Design Guidelines.
- 4.10 Public Areas. Subject to all applicable airport, federal, state, and local laws, rules, regulations, and policies, Concessionaire shall have the right to use the Public Areas for the uses for which those Public Areas are designed. Concessionaire rights under this Section shall include the right of ingress and egress to and from the Premises. The Board reserves the right to modify or relocate the Public Areas at any time and in any way it deems appropriate, including, but not limited to, reconfiguration of the Public Areas, expansion or contraction of the Public Areas, or changing access points to and from the Public Areas.

- 4.11 Covenants, Conditions, and Restrictions. This Lease is subject to any and all covenants, conditions, restrictions, easements, mortgages, deeds of trust, ground leases, rights of way, FAA or any successor federal agency's restrictions, or regulations, and any other matters of record pertaining to the Airport or Terminal.
- 4.12 Compliance with Laws. Concessionaire shall abide by all Applicable Laws, including Airport Rules and Regulations and operating guidelines for the Concessionaire.
- 4.13 Business Licenses. Concessionaire shall maintain, in current status, all federal, state, and local licenses and permits necessary or required by law for Concessionaire's operations under this Lease.

## **SECTION 5 RESTRICTIONS ON USES AND PRIVILEGES.**

- 5.1 Use of Leased Premises. The Leased Premises shall be used only for the purposes expressly specified in this Lease. Concessionaire shall not at any time during the term hereof vacate the Premises without the prior written consent of the Board.
- 5.2 Concession Sustainability Requirements and Voluntary Practices. Concessionaire shall comply with the sustainability requirements listed on Exhibit C and as they may be updated from time to time by the Board.
- 5.3 Other Concessionaire's Rights. The Board shall retain the right to grant privileges under separate agreements for food service and retail concessions at the Airport. Food service and retail concessionaires at the Airport shall have the right to sell food and beverage and retail products in their leased units in accordance with their individual leases. Tenant airlines and the Board retain the right to operate private clubs or lounges at the Airport, including the provision of food and beverage services.
- 5.4 Conflicts with Other Concessions. Notwithstanding the provisions of Section 5.3, Concessionaire specifically understands and agrees that, in the event of a conflict between Concessionaire and any other lessee or concessionaire in the Terminal as to specific items to be sold or services to be provided, the Board shall make the final determination as to which product or service may be sold or provided by each concessionaire or lessee.
- 5.5 ACDBE Participation. Concessionaire shall provide the maximum opportunity for direct participation by ACDBEs in the management and operation of the Premises in accordance with the ACDBE Participation Plan submitted in Concessionaire's Proposal and approved by the Board, which is incorporated herein by reference and made a part hereof in Exhibit D. Concessionaire understands and agrees that it shall implement and maintain said ACDBE Participation Plan throughout the term of this Lease and that failure to do so may, at the sole and absolute discretion of the Board, be cause for immediate termination of this Lease. Concessionaire further understands and agrees that, should any ACDBE hereunder cease operation,

Concessionaire shall assume the operation immediately and, without any cessation of said operation, shall, within one hundred twenty (120) days, obtain another qualified ACDBE certified by and acceptable to the Board, to resume the duties of the ACDBE. In the event the federal government shall enact any law or impose regulations in conflict with this provision or Concessionaire's ACDBE Participation Plan, this Lease, including said Plan, shall be deemed amended to conform to said laws or regulations, as interpreted by the Board.

## **SECTION 6 RENT.**

6.1 Rental Payments. As consideration for the right to occupy the Premises, Concessionaire shall make monthly rental payments (Monthly Rent) to the Board for the full term of this Lease.

6.1.1 Calendar Year Accounting. For the convenience of the Board, this Lease will generally be administered financially on a calendar year basis. Consequently, in the event that the Rent Commencement Date falls on any date other than January 1 or the Expiration Date falls on any date other than December 31, the Lease term will include partial calendar years at the beginning and end of the Lease term. As used in this Lease: (i) the term "First Calendar Year" will refer to the first, full calendar year of the Lease term, (ii) the term "First Partial Year" will refer to that portion of the calendar year commencing on the Rent Commencement Date and ending on December 31 of the year in which the Rent Commencement Date falls; (iii) the term "Last Calendar Year" will refer to the last, full calendar year of the Lease term; and (iv) the term "Last Partial Year" will refer to that portion of the calendar year commencing on January 1 following the Last Calendar Year and ending on the Expiration Date (or earlier termination date); provided, however, (a) in the event that the Rent Commencement Date falls on January 1, there shall be no First Partial Year, and (b) in the event that the Expiration Date falls on December 31, there shall be no Last Partial Year.

6.1.2 Interim Concession Operations. The rental payment for the Interim Concession Operations shall be Percentage Rent calculated as a percentage of Gross Receipts based on the percentage fees proposed as shown in Table 6.1 ("Percentage Rent"). Upon the earlier of the completion of the Leasehold Improvements or Build-out Deadline for each location, Concessionaire shall pay the Minimum Annual Guarantee or Percentage Rent as detailed in Sections 6.1.2 through Section 6.1.14.

- 6.1.3 First Partial Year and First Calendar Year. The rental payment for the First Partial Year and First Calendar Year of the Lease shall be Percentage Rent calculated as a percentage of Gross Receipts based on the percentage fees proposed as shown in Table 6.1 (“Percentage Rent”):

Table 6.1. Percentage Fees by Concession Category

Concession Category	Percentage Fee in Number Format	Percentage Fee in Words
Food Service Concessions	%	
Food and Non-Alcoholic Beverages	%	
Alcoholic Beverages	%	
Food Service-Related Retail	%	
Retail Concessions	%	

- 6.1.4 Second Calendar Year. In the Second Calendar Year, the Concessionaire shall pay the higher of (1) eighty-five percent (85%) of the total rent owed during the First Calendar Year or the Minimum Annual Guarantee set by the Board for the Premises included in this Lease equal to **[ENTER PACKAGE MAG IN WORDS IN \$'S]**, whichever is higher (Second Calendar Year MAG), or (2) Percentage Rent based on the percentage fees listed in Table 6.1.
- 6.1.5 Third Calendar Year through Last Calendar Year. For the Third Calendar Year and each subsequent year during the Term of the Lease, the Minimum Annual Guarantee for the applicable year will be equal to the higher of (1) the previous Calendar Year's Minimum Annual Guarantee; or (2) Eighty-five percent (85%) of the total rent owed by the Concessionaire during the previous Calendar Year, which amount shall never be lower than the Minimum Annual Guarantee during the Second Calendar Year. In each subsequent year during the Term of this Lease the rental payment shall be the greater of Concessionaire's Minimum Annual Guarantee (“MAG”) or Percentage Rent based on the percentage fees listed in Table 6.1.
- 6.1.6 Last Partial Year. For the Last Partial Year, the Minimum Annual Guarantee shall be calculated as provided in Section 6.1.5 using the total amount paid by Concessionaire during the Last Calendar Year, but the resultant amount shall be prorated based on the number of days in the Last Partial Year. For example, if the Expiration Date falls on January 31, the Minimum Annual Guarantee for the Last Partial Year shall be equal to 8.5% (i.e., 31 days / 365 days x 100%) of the Minimum Annual Guarantee calculated as provided in Section 6.1.5.

- 6.1.7 Monthly Rent. Rent to be paid each month under this Agreement will be Percentage Rent during the Interim Concession Operations and in the First Partial Year and First Calendar Year, and the higher of one twelfth (1/12<sup>th</sup>) of the Minimum Annual Guarantee or Percentage Rent (Percentage Fee of Gross Receipts) as stated above in all subsequent years.
- 6.1.8 Premises Locations with Different Occupancy Dates. In the event that the Premises in this Lease include multiple locations, and the Occupancy Dates for such locations vary, the Minimum Annual Guarantee for the Second Calendar Year of this Agreement will be prorated among the respective locations based on the projected annual sales for each location included in the Concessionaire's Proposal as a percentage of the total annual sales for the first full year during which all locations are expected to be in operation (regardless of whether or not it is the Second Calendar Year). The Minimum Annual Guarantee for those locations with the earliest Occupancy Date shall be payable on the first day of the month following the Rent Commencement Date as provided in Section 1.47. For any location with a later Occupancy Date, the Minimum Annual Guarantee for such location shall be payable on the first day of the first full month on or after the earlier of (i) the Build-Out Deadline for the location or (ii) the date on which the Concessionaire first opens for business from that location.
- 6.1.9 Gross Receipts. The term "Gross Receipts" shall be as defined in Section 1.23 of this Lease.
- 6.1.9.1 As used herein, the term "Gross Receipts" shall include all revenues derived from the sale of food, beverages, merchandise, services, advertising, and promotions on or from the Premises, whether delivered on or off the Airport, and whether paid for in cash or credit, and regardless of when paid for or not, except only as explicitly excluded, as more fully defined in Section 1.23 of this Lease.
- 6.1.10 Commencing on the Rent Commencement Date, Concessionaire shall pay the Board Percentage Rent according to the percentage fee schedule set forth in Table 6.1. Beginning with the Second Calendar Year, Concessionaire will pay one-twelfth (1/12<sup>th</sup>) of the MAG by the first day of each month without notice from the Board and without abatement, setoff, or deduction. On or before the twelfth (12<sup>th</sup>) day of each month, Concessionaire shall submit to the Board a correct accounting statement in the form prescribed by the Board and signed by the Concessionaire or Concessionaire's responsible agent under penalty or perjury. Each such statement shall state:

- i. One twelfth of the Minimum Annual Guarantee effective during the preceding calendar month;
- ii. The amount of Gross Receipts for the previous calendar month attributable to each concession location, itemized by product category as established herein;
- iii. The Percentage Rent due for the previous calendar month for each unit by product category and the sum thereof;
- iv. The total rent previously paid by Concessionaire for the Calendar Year within which the preceding calendar month falls; and
- v. The Monthly Rent due for the preceding calendar month.
- vi. If the Percentage Rent is greater than the previously paid Minimum Annual Guarantee for the month, Concessionaire shall submit payment to the Board representing the additional rent owed to the Board as a result of such Percentage Rent calculation.

6.1.10.1 Concurrently with the rendering of each monthly statement, Concessionaire shall pay to the Board the greater of the following two amounts:

- i. The total Percentage Rent computed for that portion of the Calendar Year ending with and including the last day of the preceding month [Item iii above] less total rents previously paid for the Calendar Year [Item iv above], or
- ii. One twelfth of the Minimum Annual Guarantee rent, multiplied by the number of months from the beginning of the Calendar Year to and including the preceding month, less total rents previously paid for the Calendar Year [Item iv above].

6.1.10.2 Annual Rent. Annual Rent for each Calendar Year will be reconciled in the first quarter of the following Calendar Year in conjunction with the annual report due from Concessionaire to Board under Section 0 of this Lease. Any overpayments made to the Board will be reimbursed during the then current Calendar Year through rent credits.

6.1.11 Rental Payments for Support Space. In addition to Monthly Rent, Concessionaire shall on a monthly basis pay a per square foot per annum rental rate for the use of office and storage space leased at the Airport not listed in SECTION 2 2, Leased Premises. The rental rates are currently \$63.02 per square foot per annum for Class I space and \$47.27 per square foot per annum for Class II space. The rental rate for office/storage space is subject to annual adjustment by the Board, effective as of January of each

year. Concessionaire shall be notified in writing by the Board of such adjustment and shall pay the adjusted rental rate.

6.1.12 Additional Charges and Fees. In addition to Monthly Rent, Concessionaire shall also pay to the Board, within thirty (30) days of invoice, any late fees required by Section 6.4.2, any maintenance and repair charges required by SECTION 9.0, any utility charges required by Section 10.4, and such other amounts as may be owing by Concessionaire to the Board pursuant to the terms of this Lease.

6.1.13 Place of Payment and Filing. Payments and statements required by this section and any other sections in this Concession Lease pertaining to payments hereunder shall be delivered to:

Spokane Airport Board  
ATTN: Accounting Department  
9000 West Airport Drive, Suite 204  
Spokane, WA 99224

The designated place of payment and filing may be changed at any time by the Board upon ten (10) days' written notice to Concessionaire. Payments may be made by check payable to Spokane International Airport. Concessionaire assumes all risk of loss if payments are made by mail.

6.1.14 Form of Payment. All rent due under this Lease shall be paid in lawful money of the United States of America, without offset or deduction or prior notice or demand. No payment by Concessionaire or receipt by the Board of a lesser amount than the payment due shall be deemed to be other than on account of the payment due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment be deemed to establish an accord and satisfaction, and the Board may accept such check or payment without prejudice to the Board's right to recover the balance of said amount due or pursue any other remedy in this Lease.

6.2 Books and Records. The Board reserves the right to change the form of the monthly statement and to require the submission by Concessionaire of other information pertaining to the Gross Receipts hereunder, and Concessionaire agrees to change the form of its statements to that requested by the Board and to provide any such additional information the Board may request. Concessionaire shall keep full and accurate books and records showing all of its Gross Receipts hereunder, and the Board shall have the right, through its representatives and at reasonable times, to inspect, examine, copy and audit such books and records, including State of Washington sales tax return records. Concessionaire hereby agrees that all such books and records will be made available to the Board at the Premises (during the Term of the Lease) or a location to be designated by the Board (after the expiration or termination of this Lease) for at least three (3) years following the

period covered by such books and records.

- 6.3 Performance Guarantee. Concessionaire shall deposit with the Board, and continuously maintain throughout the Term of this Lease, a Performance Guarantee. The Performance Guarantee shall be delivered to the Board with a copy of the signed Lease. Through the second Calendar Year, the Performance Guarantee shall be in the amount of Six hundred, fifty thousand dollars (\$650,000) (the "Performance Guarantee"). For the third Calendar Year through the last Calendar Year or Last Partial Year, the Performance Guarantee shall be in the amount of Five hundred thousand (\$500,000). The Performance Guarantee shall be in the form of a surety bond or a cashier's or certified check, money order, or an irrevocable letter of credit (by a bank rated "B" or better by A. M. Best Rating Services, Fitch Ratings, Moody's Investors Service, or S&P Global Ratings) made payable to Spokane Airport Board. If the Performance Guarantee is in the form of a surety bond, the bond shall be issued by a surety company authorized to do business in the State of Washington and rated as at least an A or A+. Monetary Performance Guarantees shall be deposited into a bank account held by the Spokane Airport Board and any interest earned thereon shall accrue to the Board. The Performance Guarantee shall secure Concessionaire's full and faithful performance and observance of all of Concessionaire's obligations under this Lease and under any other written agreement between Concessionaire and the Board specifically referring to this Performance Guarantee. The Performance Guarantee shall not be considered to be held in trust by the Board for the benefit of Concessionaire and shall not be considered an advance payment of rent or a measure of the Board's damages in the case of an event of default by Concessionaire. The Board may, but shall not be obligated to, draw upon and apply the Performance Guarantee to: (a) pay any rent not paid on or before the date it is due and the Board shall not be required to give notice or opportunity to cure before drawing on the Performance Guarantee; and/or (b) remedy any other violation of this Lease, after Concessionaire has received notice and opportunity to cure. Further the Board may draw down the entire Performance Guarantee immediately, without notice to Concessionaire, upon receipt of a notice of non-renewal of the form of the Performance Guarantee. If the Board applies any of the Performance Guarantee to any of the above, Concessionaire shall, immediately upon demand, replenish the Performance Guarantee to its full amount. If Concessionaire fully performs all of its obligations under this Lease, the Performance Guarantee, or any balance remaining, will be released within thirty (30) days from the Expiration Date or termination of this Lease and delivery of the Premises to the Board. However, if any question exists concerning Concessionaire's full compliance with the Lease or if there is any obligation under this Lease to be performed after the Expiration Date or earlier termination of this Lease, the Board shall be entitled to require that the Performance Guarantee remain in place until the Board is fully satisfied that there has been no violation of the Lease and all obligations due under this Lease have been fully performed, even if it takes the Board longer than thirty (30) days to make such a determination to the Board's satisfaction.



#### 6.4 Annual Certified Statement and Delinquent Rentals.

- 6.4.1 Annual Certified Statement. No later than January 31 of each year during the term of this Lease, Concessionaire shall provide to the Board a written annual certified statement certified by a senior financial officer of Concessionaire stating that in his or her opinion the Monthly Rent payments made by Concessionaire to the Board during the preceding year pursuant to this Lease were made in accordance with the terms of this Lease. Such statement shall also contain a list of the Gross Receipts, by month, location, and product category, as shown on the books and records of Concessionaire, and which were used to compute the Monthly Rent payments made to the Board during the period covered by said statement. Concessionaire shall have until March 31<sup>st</sup> to propose, in writing, any adjustments to the annual certified statement. No adjustments shall be made until Concessionaire has received approval from the Board or its designated representative.

Any year-end credit due the Concessionaire, after approval of the annual certified statement, shall be taken by June 30<sup>th</sup> of the year during which the annual certified statement was submitted. If credit is not taken by said date, credit shall be deemed as forfeited by Concessionaire with no further obligation by the Board.

- 6.4.2 Delinquent Rent and Fees. Without waiving any other right or action available to the Board, in the event any payment due to the Board pursuant to this Lease is not received by the Board by the due date, Concessionaire shall pay to the Board a late payment fee of Five Hundred Dollars (\$500.00) per occurrence plus interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, from the date such payment was due and payable until paid. Concessionaire and the Board hereby agree that such late fees represent a fair and reasonable estimate of the costs that the Board will incur by reason of Concessionaire's late payment. Acceptance of such late fees (or any portion of the overdue payment) by the Board shall in no event constitute a waiver of Concessionaire's default with respect to such overdue payment or prevent the Board from exercising any of the other rights and remedies granted hereunder.

- 6.4.3 Audit. Concessionaire shall maintain an internal control structure designed to provide reasonable assurance that assets are safeguarded from loss or unauthorized use, that transactions are executed in accordance with management's authority, and that the financial records are reliable for the purposes of preparing financial statements. Concessionaire shall prepare financial statements in conformity with generally accepted accounting principles, applying certain estimates and informed judgments, as required. The internal control structure shall be supported by the selection, training, and development of qualified personnel, by an appropriate segregation of duties, and by the dissemination of written policies and procedures. The

Board reserves the right to audit Concessionaire's books and records at any time for the purpose of verifying the Gross Receipts and Percentage Rent calculation hereunder for any period within four (4) years prior to such audit. If, as a result of such audit, it is established that Concessionaire has understated the Gross Receipts received from all operations at the Premises by three percent (3%) or more (after the deductions and exclusions herein), the entire expense of said audit shall be borne by Concessionaire. Any additional Percentage Rent due shall forthwith be paid by Concessionaire to the Board with interest thereon at one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, from the date such additional Percentage Rent became due.

## **SECTION 7 IMPROVEMENTS.**

7.1 Improvements by Board. The Board's sole responsibility with regard to improvements within the Premises shall be to deliver the Premises to Concessionaire in an as-is condition as noted In Exhibit A. The Board shall have no obligation to make any improvements to the Premises. The Board may from time to time elect to alter, improve, or remodel portions of the Airport, and Concessionaire agrees that the portion of the Premises, if any, which is visible to the general public may be altered, remodeled, or improved at the Board's expense in connection with any such work. The Board shall have the right, at its sole discretion, to make minor modifications to the Premises to accommodate Airport operations, renovations, maintenance, or other work to be completed in or about the Airport (hereafter, "Modifications"), which Modifications will not generally involve the recapture or disruption of more than fifty (50) square feet of the Premises. In the event of any such Modifications, the Board shall adjust the Premises through a written notice to Concessionaire rather than a formal amendment to the Lease. Concessionaire agrees that any inconvenience resulting from any work or Modifications by the Board or its contractors and agents shall not be grounds for reduction of Rent or fees if the same shall not unreasonably interfere with Concessionaire's use of the Premises.

### 7.2 Improvements by Concessionaire

7.2.1 Initial Improvements. Concessionaire shall make an Initial Minimum Investment in Leasehold Improvements for the Premises, including architectural and engineering fees; construction costs; mechanical, electrical and plumbing; signs; storefronts; furniture, fixtures and equipment; demolition necessary to accommodate the improvements; and other expenditures (the "Initial Improvements") in an amount not less than the Initial Minimum Investment amount stated in the Key Lease Terms, which shall include a minimum of \$X per square foot for food service units, \$X per square foot for retail units, \$X per square foot for food service seating, \$X per square foot for vending areas, and \$X per square foot for support spaces. Concessionaire shall complete the Initial Improvements within the Premises defined by the demising partitions and/or other boundaries described in the Lease according

to the procedures and standards specified in the Tenant Design Guidelines and commence operations not later than the Build-Out Deadline; provided however, the Build-Out Deadline may be extended to the extent of such other delays directly caused by the Board and/or force majeure events beyond the control of Concessionaire as set forth in Section 23.22. In the event that Concessionaire has not completed the Initial Improvements and commenced operations prior to the Build-Out Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Board may have (whether under this Lease or in law or in equity), pay the Board the sanction amounts for Construction Delay Damages until Concessionaire has completed the Initial Improvements and commenced operations.

7.2.2 Midterm Refurbishments. On or before the Midterm Deadline, Concessionaire shall completely upgrade and refurbish the Premises (the "Midterm Refurbishments") in a manner acceptable to the Board to maintain an attractive and inviting appearance to customers. In order to permit the timely completion of the Midterm Refurbishments, not later than one hundred twenty (120) days before the Midterm Deadline, Concessionaire shall submit to the Board Concessionaire's proposed schedule and plan of refurbishment, specifically identifying those repairs and Alterations, including but not limited to painting, re-carpeting, re-finishing, re-decorating, and replacing furniture, trade fixtures and equipment, that it intends to undertake. The Midterm Refurbishments shall be of quality equal to or better than the Initial Improvements, and all work (including, but not limited to, any Alterations) shall be subject to the prior written approval of the Board. Unless otherwise expressly approved by the Board, Concessionaire's investment in the Midterm Refurbishments shall be not less than fifteen percent (15%) of the amount spent by Concessionaire on the Initial Improvements (the "Minimum Reinvestment"). In the event that Concessionaire has not completed the Midterm Refurbishments by the Midterm Deadline, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Board may have (whether under this Lease or in law or in equity), pay the Board an amount equal to one-half (50%) of the Construction Delay Damages sanctions until Concessionaire has completed the Midterm Refurbishments.

All midterm refurbishments shall comply with the Tenant Design Guidelines issued by the Board. Concessionaire shall proceed with the implementation schedule as approved by the Board and construct the Midterm Refurbishments. Design, engineering, and construction management costs shall not exceed twelve percent (12%) of the total cost of the improvements. Should Concessionaire fail to spend the Minimum Reinvestment required for Midterm Refurbishments, the Board, in its sole and absolute discretion shall request payment of the unspent amount as additional rent.

7.2.3 Other Alterations. Concessionaire, after completion of the Initial Improvements, may from time to time during the term make such non-structural changes, alterations, additions, substitutions or improvements (collectively referred to as “Alterations”) to the Premises, as Concessionaire may reasonably consider necessary and desirable to adapt or equip the Premises for Concessionaire’s use and occupancy. Concessionaire shall, however, make no Alterations (including as part of the Midterm Refurbishment) that will (a) cost in excess of Fifteen Thousand Dollars (\$15,000), (b) involve structural work or changes, or (c) involve work or changes to the electrical, plumbing, heating, ventilation and air conditioning systems of the Premises without the Board’s prior written consent.

7.2.4 Standards for Alterations and Improvements.

7.2.4.1 Requirements. The Initial Improvements, Midterm Refurbishment, and all other Alterations shall be done at Concessionaire’s sole cost and expense and at such times and in such manner as the Board may from time to time designate. Initial Improvements, Midterm Refurbishment, and all Alterations shall: (i) be of high quality, (ii) conform to the design criteria approved by the Board, (iii) be of fireproof construction according to the standards of the local rating organization, (iv) be constructed in good and workmanlike manner, (v) be in full and complete accordance with all Legal Requirements and Board standards, and (vi) be performed in a manner that will not unreasonably interfere with or disturb Airport operations or other tenants.

The failure to complete the Initial Improvements, Midterm Refurbishment, and any Alterations shall subject Concessionaire to such fines and penalties identified in this Lease.

7.2.4.2 Permits. Before commencing the Initial Improvements, Midterm Refurbishment, or any Alterations for which the Board’s consent is required, Concessionaire shall prepare plans and specifications and otherwise comply with the Airport standards and Tenant Design Guidelines. Except as otherwise specifically provided in this Lease, Concessionaire shall obtain all necessary permits, including any discretionary permits. In the event the Board is required or has obtained any of the necessary permits, Concessionaire will reimburse the Board for any permit fees and associated costs in obtaining said permits.

7.2.4.3 Coordination. Concessionaire understands that the Airport is undergoing extensive redevelopment. At all times during construction and installation of the Initial Improvements, the Midterm Refurbishment, any Alterations and any furniture, trade fixtures and/or equipment by Concessionaire, Concessionaire, its

agents, employees and independent contractors shall cooperate with and coordinate activities and work with the Board's construction managers and other concessionaires at or near the Premises.

7.2.5 Ownership of Alterations and Improvement. Other than those Leasehold Improvements which are installed and become such a part of the Premises that they cannot be removed without substantial injury to the Premises, which improvements shall immediately become the property of the Board following installation, Concessionaire shall retain ownership of all furniture, Trade Fixtures and equipment from time to time installed in the Premises by Concessionaire at its expense (the "Removable Fixtures"). Concessionaire may remove any of the Removable Fixtures at any time during the Term and shall remove all thereof prior to the expiration of the term. Any Removable Fixtures or other property of Concessionaire not removed at the expiration of the term shall, at the election of the Board, become the property of the Board without payment to Concessionaire, or be deemed abandoned and removed by the Board, at Concessionaire's expense. Upon any removal of such property, Concessionaire shall promptly repair any and all damage to the Premises caused thereby and reimburse the Board for its costs and expenses in removing any such property not removed by Concessionaire and repairing any such damage not repaired by Concessionaire; this covenant shall survive the termination of this Lease.

7.3 Construction of Premises. Within one hundred twenty (120) days after the Date of Beneficial Occupancy, Concessionaire shall provide the Board with a certified statement setting out the total cost of installing the Leasehold Improvements, including the associated architectural, engineering, and interior design fees of independent consultants. If said costs are less than the Initial Minimum Investment required in the Key Lease Terms, the difference shall be payable to the Board within thirty (30) days. The Initial Minimum Investment required shall not include financing costs, interest, inventory, pre-opening expenses, or intracompany charges related to design or construction. Professional fees related to the design, engineering, and construction management of the facilities shall not exceed twelve percent (12%) of the total certified cost of the improvements. This certification reporting and fee restrictions shall also apply to any Midterm Refurbishments. In addition to the certified statement, Concessionaire shall submit a depreciation schedule for all Leasehold Improvements calculated in accordance with SECTION 17 of this Lease. Such depreciation schedule shall be updated upon the installation and cost certification of all Midterm Refurbishments. Failure by Concessionaire to provide such reports and schedules on time shall result in a Two Hundred Fifty Dollars (\$250.00) per day penalty, payable to the Board.

## **SECTION 8 INSTALLATION OF IMPROVEMENTS AND DESIGN, FURNISHING, AND EQUIPPING LEASED PREMISES.**

- 8.1 Airport Improvements and Services. The Board shall provide and maintain water, sewer, general lighting, electrical power, and heating and air-conditioning for the Terminal. Heating, air conditioning, electrical service, and gas service (to select locations) are provided to the perimeter of the Premises only, with build-out within the space the responsibility of the Concessionaire. If Concessionaire requires additional capacity for lighting, electrical power, water, gas, telephone outlets, or adjustments to the heating and air-conditioning system, beyond the capacities provided by the Board, such additional improvements or services shall be subject to the prior written approval of the Board, and any such approved improvements or services shall be made at Concessionaire's expense.
- 8.2 Concessionaire's Right to Additional Services. Concessionaire may, at its own expense, request and receive telephone services or communication systems and shall obtain written approval from the Board before installation. Concessionaire shall be required to have one Airport, in-house telephone line. The current cost for such an in-house line is Nine Dollars (\$9.00) per month plus tax, which shall be subject to adjustment by the Board. Concessionaire shall be notified in writing by the Board of such adjustment and shall pay the adjusted cost. Wi-Fi services desired by Concessionaire shall be provided through the Board's Wi-Fi provider.
- 8.3 Approval of Plans and Specifications and Provision of Drawings.
- 8.3.1 General. Any improvements to be made to or upon the Premises by Concessionaire, and any subsequent alterations or additions to such improvements, shall be subject to the prior written approval of the Board. Full and complete plans and specifications for all work, facilities, improvements, and finishes, and the time required to complete same, shall be submitted to and receive the written approval of the Board before any work or construction is commenced. First-class standards of design and construction, as determined by the Board, shall be complied with in connection with all such work, facilities, and improvements; and all construction shall conform with the Board's Tenant Design Guidelines. Sets of plans and materials boards for all improvements or subsequent changes therein or alterations thereof shall be given to the Board for review prior to commencement of construction in accordance with the requirements listed in the Tenant Design Guidelines; after final approval by the Board, the Board shall return to Concessionaire one (1) approved copy for Concessionaire's records and shall retain one (1) approved copy as an official record thereof.
- 8.3.2 Improvements Conform to Statutes and Ordinances. All improvements, furniture, fixtures, equipment, and finishes, including the plans and specifications therefore, constructed or installed by Concessionaire, its agents, or contractors, shall conform in all respects to applicable statutes, ordinances, building codes, and rules and regulations, including the ADA Act

of 1990, as outlined in the Tenant Design Guidelines. Any approval given by the Board shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Concessionaire.

- 8.3.3 Approvals Extend to Architecture and Aesthetic Matters. Approval of the Board shall extend to and include architectural and aesthetic matters and the Board reserves the right at its sole and absolute discretion to reject any layout or design proposals submitted and to require Concessionaire to resubmit any such layout or design proposals until they meet the Board's approval.
- 8.3.4 Disapprovals. In the event of disapproval by the Board of any portion of any plans or specifications, Concessionaire shall promptly submit necessary revisions thereof for approval by the Board. The Board agrees to act promptly upon such plans and specifications and upon requests for approval of changes or alterations in said plans or specifications. No substantial changes or alterations, as determined by the Board, shall be made in said plans or specifications after initial approval by the Board, and no alterations or improvements shall be made to or upon the Premises without the prior written approval of the Board.
- 8.3.5 Reports and As-Built Drawings. Within ninety (90) days of the completion of the Initial Improvements, Midterm Refurbishments, and all Alterations for which the Board's consent is required, Concessionaire shall provide the Board with: (a) a certified statement (subject to verification, audit and approval by the Board) specifying the total construction cost (including architectural, engineering and permitting costs) in such detail as reasonably necessary to ascertain the costs of all Leasehold Improvements, furniture, fixtures and equipment constructed or installed by Concessionaire in the Premises; (b) a certification that the improvements have been constructed in accordance with the approved drawings and specifications and in strict compliance with all Legal Requirements and the Tenant Design Guidelines; (c) a certified proof in writing demonstrating that no liens exist on any or all of the construction; and (d) a reproducible final copy of the plans as-built for all improvements along with computer discs as electronic files in a format compatible with the Board's CAD Standards Manual, and a pdf format file to enable the Board to upgrade its existing files to reflect the as-constructed changes made by Concessionaire and which will be incorporated by reference to the Lease as a supplement to Exhibit A, without the need for the parties to formally amend this Lease. The failure to timely provide the reports, statements and certifications required by this Section shall be grounds for the imposition of sanctions as provided in SECTION 26.

Concessionaire agrees that, upon the request of the Board, Concessionaire will inspect the Premises jointly with the Board to verify the as-built drawings.

- 8.3.6 Video and Audio System. Concessionaire may install video equipment in its Premises in accordance with plans and specifications to be submitted to the Board but shall not install any paging or audio system within the Leased Premises without the prior written consent of the Board.

8.4 Airport Alterations, Demolition, and Liens.

- 8.4.1 Alterations and Improvements to Airport. Concessionaire acknowledges that from time to time the Board may undertake construction, repair, or other activities related to the operation, maintenance, and repair of the Terminal that may temporarily affect Concessionaire's operations hereunder. Concessionaire agrees to accommodate the Board in such matters, even though Concessionaire's own activities may be inconvenienced, and Concessionaire agrees that no liability shall attach to the Board, its members, employees, or agents by reason of such inconvenience or impairment. It is agreed that in the event such activities of the Board substantially impair the operations of Concessionaire under this Lease, the Minimum Annual Guarantee pertaining to the affected location(s) shall be waived during such period of substantial impairment, with what constitutes "substantial impairment" being determined at the sole discretion of the Board after consultation with Concessionaire.
- 8.4.2 Removal and Demolition. Concessionaire shall not remove or demolish, in whole or in part, any Leasehold Improvements upon the Premises without the prior written consent of the Board, which may, at its sole discretion, condition such consent upon the obligation of Concessionaire, at Concessionaire's cost, to replace the same by an improvement specified in such consent.
- 8.4.3 No Liens. In the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall immediately discharge as of record, by bond or as otherwise allowed by law, any such Lien(s). Concessionaire shall also defend (with counsel approved by the Board), fully indemnify, and hold entirely free and harmless the Board from any action, suit or proceeding brought on or for the enforcement of such lien(s). As used in this Section, "Lien" shall mean and refer to any mortgage, lien, security interest, encumbrance, charge on, pledge of, conditional sale or other encumbrance on the Premises, any Alteration, fixture, improvement or appurtenance thereto, or any larger building and/or property of which the Premises may be a part.

Concessionaire shall not directly or indirectly create or permit or suffer to be created and/or to remain, any mechanics' or materialman's lien upon the Premises or any Airport property, including any Initial Improvements, Midterm Refurbishment, Alterations, fixtures, improvements or appurtenances thereto, except those Liens expressly permitted by in writing by the Board, by reason of construction, labor, services, or materials performed or furnished at request of Concessionaire or any contractor or supplier employed by Concessionaire.



Concessionaire may contest the same in any claim filed or noticed in good faith. Notwithstanding such contest, in the event any such Lien(s) have been created by or permitted by Concessionaire in violation of this provision, Concessionaire shall within fifteen (15) days after the filing thereof, cause such lien to be released of record, by payment, bond or as otherwise allowed by law, any such Lien(s). Concessionaire shall also defend (with counsel approved by the Board), fully indemnify, and hold entirely free and harmless the Board from any action, suit or proceeding brought on or for the enforcement of such lien(s). In the event of Concessionaire's failure to clear the record of any such lien within such time period, the Board may (but is not required to) remove said lien by paying the full amount thereof or by bonding or in any other manner the Board deems appropriate, without investigating the validity thereof, and irrespective of the fact that Concessionaire may contest the propriety or the amount thereof, and Concessionaire, upon demand, shall pay the Board the amount so paid out by the Board in connection with the discharge of said lien, together with interest thereon at the rate of one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, and reasonable expenses incurred in connection therewith, including reasonable attorneys' fees, which amounts are due and payable to the Board as Additional Rent on the first day of the next following month. Nothing contained in this Lease shall be construed as a consent on the part of the Board to subject the Board's estate in the Premises to any lien or liability under the laws of the State of Washington. Concessionaire's obligation to observe and perform any of the provisions of this Section 8.4.3 shall survive the expiration of the Term or the earlier termination of the Lease.

## **SECTION 9 MAINTENANCE OF LEASED PREMISES.**

### **9.1 Airport Maintenance Obligations.**

- 9.1.1 General Maintenance and Operation. The Board agrees that it will with reasonable diligence, maintain, operate, and keep in good repair the Airport, including the Terminal and all appurtenances, facilities, and services now or hereafter connected therewith.
  - 9.1.2 Structural Maintenance. The Board shall provide, or cause to be provided, structural maintenance of the Terminal and shall provide, or cause to be provided, the washing of the exterior of all windows, if any, in the Premises at periodic intervals set by the Board.
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- 9.1.3 Maintain Access. The Board shall, throughout the term of this Lease, maintain all airport-owned roads on the Airport giving access to the Terminal in good and adequate condition for use by cars and trucks and shall maintain free and uninterrupted access to the Terminal over said roads at all times (unless security, weather, or construction conditions dictate otherwise). The Board reserves the right to restrict access to the Terminal for deliveries during peak activity periods by giving ten (10) days' notice of such restrictions.

9.2 Concessionaire's Maintenance Obligations.

- 9.2.1 Concessionaire's General Obligations. Except for maintenance of the Terminal's Public Areas, as provided in Section 9.1, Concessionaire shall be obligated, without cost to the Board, to maintain the Premises and every part thereof in good appearance, repair, and safe condition. Concessionaire shall maintain and repair all Leasehold Improvements on the Premises and all furnishings, fixtures, and equipment therein, whether installed by Concessionaire or by others, including repainting or redecorating as necessary, and replacing or repairing worn carpet, tile, fixtures, or furnishings. Concessionaire's responsibilities include the maintenance, repair, and replacement of all utility lines and connections, wiring, communication cables, fire alarm systems and protection devices, panels, and associated parts and equipment located within or exclusively serving the Premises. All such maintenance and repairs shall be of quality equal to the original in materials and workmanship, and all work, including paint colors, shall be subject to the prior written approval of the Board.
- 9.2.2 Preventive and Routine Maintenance Programs. Upon the execution of this Lease, Concessionaire shall establish a preventive and routine maintenance program to maintain the Premises in like-new condition, the provisions of which shall be subject to the approval of and periodic review by the CEO or his or her designated representative. Concessionaire shall in January of each lease year, provide the CEO a written schedule of Concessionaire's cleaning and maintenance program. Such schedule shall include that all grease traps and grease waste containment systems are checked and cleaned, as necessary, at least monthly. Any damage caused by malfunctioning or under-maintained grease traps, grease waste containment systems, or other equipment for which the Concessionaire is responsible for maintaining shall be the sole responsibility of the Concessionaire. Maintenance schedules shall also provide for the monthly cleaning and maintenance of all hood and ventilation systems, including all ductwork from inside the unit through to the rooftop fan.

- 9.2.3 Board Sole Judge of Maintenance. The Board or its authorized agents shall be the sole judge of the quality of maintenance. The Board or its authorized agents may, during Concessionaire's working hours and without notice, enter upon the Premises to determine if maintenance satisfactory to the Board is being performed. If it is determined that such maintenance is not satisfactory, the Board shall notify Concessionaire in writing. If such maintenance is not performed to Board standards by Concessionaire within seven (7) days after receipt of written notice, the Board or its agents thereafter shall have the right to enter the Premises and perform the required maintenance and Concessionaire agrees to promptly reimburse the Board for the cost thereof, plus twenty percent (20%) for administrative overhead.
- 9.2.4 Routine Refurbishment. On or about the commencement of each Calendar Year, representatives of the Board and Concessionaire shall tour the Premises and jointly agree upon what, if any routine refurbishment is required to maintain the Premises in first-class condition, and Concessionaire shall promptly undertake such refurbishment at its sole cost and expense. If Concessionaire and the Board cannot jointly agree upon the type and extent of refurbishment, the Board may in its sole discretion determine the refurbishment required. For purposes of this paragraph, "refurbishment" shall mean the routine repainting or redecoration of concession space within the Premises, including the replacement or repair of worn carpet, tile, furnishings, fixtures, finishes, or equipment.
- 9.2.5 Hazardous Conditions. Upon discovery, Concessionaire shall immediately give oral notice to the CEO or his or her designated representative of any hazardous or potentially hazardous conditions in the Premises or in the Terminal. Any hazardous or potentially hazardous condition in the Premises shall be corrected immediately upon receipt of oral notice from the CEO. At the direction of the CEO or his or her designated representative, Concessionaire shall close the Premises until such hazardous or potentially hazardous condition is removed.
- 9.2.6 Maintenance Personnel and Program. Concessionaire agrees to employ and/or contract with sufficient personnel, and provide the necessary equipment, to keep the Premises and all furnishings, fixtures, and equipment clean, neat, safe, sanitary, and in good working order and condition at all times.
- 9.2.7 Food Handling, Health, and Sanitary Regulations. Concessionaire shall comply with all food safety, health, and sanitary regulations adopted by all applicable governing bodies and all rules and regulations promulgated by the Board. Concessionaire shall give access for inspection purposes to any duly authorized representatives of such governing bodies and to the CEO or his or her designated representative. Concessionaire shall provide the Board with copies of all inspection reports within 48 hours of receipt, and in the event of an infraction with the regulations, provide the Board with a written incident

report and action plan to address the particular finding/determination to avoid future incidents. Without limiting any other requirements of this Lease, and in addition to complying with all governing body standards, Concessionaire shall ensure compliance with all HACCP standards regarding the proper and safe receiving, storage, preparation, and serving of all food and beverages.

9.2.8 Trash and Refuse. Concessionaire shall provide a complete and proper arrangement for the adequate sanitary handling of all trash, recycling, and other refuse generated as a result of the operations in the Premises and shall provide for its timely removal and disposal in the locations and receptacles designated by the Board. Piling of boxes, cartons, barrels, or other similar items in view of a Public Area is prohibited. Concessionaire shall keep any areas used for trash and garbage storage prior to removal from Airport in a clean and orderly condition so as not to attract rodents, pests, or birds, or create an offensive odor.

9.2.8.1 Transporting Trash and Refuse. In transporting trash and refuse from the Premises, Concessionaire shall use only carts, vehicles, or conveyances that are covered, leak proof, and equipped with wheels suitable for operating on carpets and tile without damage thereto. Such disposal shall take place during hours as may be approved by the Board. Trash or debris shall not be allowed to accumulate or be stored on any portion of the Premises.

9.2.9 Cleaning and Janitorial Services. Concessionaire shall at all times maintain the Premises, including all customer seating areas, and all equipment and materials used by Concessionaire in a clean and sanitary condition, including, but not limited to, keeping them free of rubbish, dirt, insects, rodents and vermin in accordance with the policies set by the Board as well as all laws, statutes, ordinances, and regulations set by the local and regional governmental agencies. All cooking equipment, refrigeration, freezer, storage units, and piping shall be constructed to facilitate the necessary cleaning and sterilization. Concessionaire shall provide and maintain trash and recycling receptacles, as required, in all customer seating areas.

9.2.10 Damage Caused to Airport Property. Any damage caused to the Airport or any Airport property or operations or the property of any other tenant, person, or entity caused by Concessionaire, or as a result of the operations of Concessionaire, shall be the responsibility of Concessionaire and Concessionaire shall reimburse the Board for any such damage paid for by the Board within thirty (30) days of billing by the Board. Any sums so paid by the Board shall bear interest at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, whichever is greater, from the date paid by the Board until the Board has been fully repaid. If the same type of damage is caused by Concessionaire more than once, such as a water leak or electrical service interruption, the Board shall review and approve Concessionaire's plan of repair or may require that Concessionaire allow the

Board to make the repair and then reimburse the Board for the cost of such repair.

- 9.2.11 Damage to Leased Premises. If the Premises, excluding Concessionaire's Leasehold Improvements or Trade Fixtures, are partially damaged by fire or other casualty, but not rendered untenable, the same shall be repaired with due diligence by the Board. The Premises shall be repaired or restored at Board's expense to essentially the same condition as that which existed prior to such damage. In the event such damage is caused by the negligence of the Concessionaire, its officials, agents or employees, it shall be the responsibility of the Concessionaire to pay all loss, damage and costs not covered by Concessionaire's insurance proceeds. Should a portion of the Premises be untenable, rent for the untenable portions of the Premises shall be abated for the period from the occurrence of the damage to the completion of the repairs. The amount of the rent abatement shall be calculated as the pro rata portion of the Minimum Annual Guarantee owed for the untenable portions of the Premises and such pro rata portion shall be calculated based on the square footage of the untenable Premises as a percentage of the total square footage for all Premises from which sales are generated.

If the Premises, excluding Concessionaire's Leasehold Improvements or Trade Fixtures, are completely destroyed by fire or other casualty or so damaged as to remain untenable for more than sixty (60) days, the Board shall be under no obligation to repair or reconstruct such Premises. The Rent for the affected portions of Concessionaire's Premises shall be abated for the period from the date of such occurrence until such space is temporarily replaced with other space(s) sufficient to allow the Concessionaire to operate. The amount of the rent abatement shall be calculated as the pro rata portion of the Minimum Annual Guarantee owed for the untenable portions of the Premises and such pro rata portion shall be calculated based on the square footage of the untenable Premises as a percentage of the total square footage for all Premises from which sales are generated.

The Board shall notify Concessionaire within sixty (60) days of the occurrence of such casualty whether it intends to repair or reconstruct the damaged Premises. If the Board elects to repair or reconstruct, it shall do so with due diligence and at its expense, unless such damage was caused by the negligence of the Concessionaire, its officials, employees, or agents, in which case it shall be the responsibility of the Concessionaire to pay all loss, damage, and costs not covered by the Concessionaire's insurance proceeds. Should the Board elect not to repair or reconstruct the Premises, this Lease shall terminate on the date of notification by Board as specified in this Paragraph for the untenable portions of the Premises. In such event, the Board agrees to use its best efforts to obtain adequate substitute space for

Concessionaire.

9.2.12 Reduction in Enplanements and Suspension of MAG.

9.2.12.1 MAG Suspension. If at any time during the Term there is a Severe Decline in Enplanements for Three (3) Consecutive Months, as documented by the Board in monthly reports received from Airlines departing flights from the affected concourse(s), then the Minimum Annual Guarantee rent payments due under this Lease for the portion of the Premises located in the Affected Concourse(s) will be suspended, per Board approval (the "MAG Suspension"), in the following manner: (1) The monthly installment of the Minimum Annual Guarantee due for the following month for the portion of the Premises located in the Affected Concourse(s) will be suspended, and (2) Concessionaire shall only be required to pay Percentage Rent unless and until Minimum Annual Guarantee Reinstatement occurs. The Minimum Annual Guarantee Suspension shall be effective on the first day of the month immediately following Board approval.

During such MAG Suspension period and provided the Concessionaire is and remains in compliance with all other terms and obligations of the Lease, including but not limited to SECTION 10 of this Lease, Concessionaire shall be required to pay only the Percentage Rent for the portion of the Premises located in the Affected Concourse(s), unless and until the Minimum Annual Guarantee is reinstated as provided below. On or before the fifteenth day of each month, Concessionaire will submit to the Board a sales report together with Percentage Rent in accordance with SECTION 6 of this Lease.

If the Lease provides that the Percentage Rent is based on a tiered Gross Receipts structure, for purposes of determining the Percentage Rent payable, the annual Gross Receipts shall continue to accumulate as provided herein.

9.2.12.2 MAG Reinstatement. Once there is Enplanement Stabilization for Two Consecutive Months, then the Minimum Annual Guarantee shall be reinstated for the portion of the Premises located in the Affected Concourse(s), and continue unless and until there is another Severe Decline in Enplanements, as follows:

- a. Such Minimum Annual Guarantee reinstatement will be effective on the first day of the month following an Enplanement Stabilization for Two Consecutive Months.

- b. In the event the Minimum Annual Guarantee is reinstated after the commencement of a Calendar Year, the Minimum Annual Guarantee will be pro-rated accordingly.
- c. Calculation Examples. For example, if the number of Enplanements in Concourse C for the month of July 2024 is seventy percent (70%) compared to July 2023, the number for August 2024 is seventy-five percent (75%) compared to August 2023, and the number for September 2024 is eighty-five percent (85%) compared to September 2023, then the Severe Decline in Enplanements for Three (3) Consecutive Months has not been met. However, if the number of Enplanements in Concourse C for the month of July 2024 is seventy percent (70%) compared to July 2023, the number for August 2024 is seventy-five percent (75%) compared to August 2023, and the number for September 2024 is seventy-five percent (75%) compared to September 2023, then the Severe Decline in Enplanements for Three (3) Consecutive Months has been met.
- d. The monthly Minimum Annual Guarantee payment shall be reduced during the MAG Suspension period to reflect a pro rata reduction for the portion of the Premises operated by Concessionaire located in Concourse C. The pro-rated Minimum Annual Guarantee reduction would be calculated based on the percent of Gross Receipts generated by the portion of the Premises located in Concourse C for the prior Calendar Year divided by the total Gross Receipts for all portions of the Premises operated by Concessionaire for the prior Calendar Year. For example, if the portion of the Premises located in Concourse C generated twenty percent (20%) of the Gross Receipts for all Premises operated by Concessionaire in 2023, the monthly Minimum Annual Guarantee payment for the MAG Suspension period would be reduced by twenty percent (20%). As stated above, Concessionaire would continue to pay Percentage Rent for all portions of the Premises located in Concourse C during the MAG Suspension period.

9.2.12.3 Claim for MAG Suspension Only Available if Concessionaire is Paying Minimum Annual Guarantee. A MAG Suspension is not available if Concessionaire is paying Percentage Rent. The Parties acknowledge that Enplanements for a particular month are not usually determined as of the first day of the following month. Accordingly, unless and until the MAG Suspension occurs as provided herein, Concessionaire shall continue to pay the Minimum Annual Guarantee as and when required hereunder.

Claims for a MAG Suspension may only be submitted quarterly by the Concessionaire and may only include entire monthly periods. A reduction in Enplanements for a partial monthly period will not qualify for a MAG Suspension. If, during any month in which Enplanements are reduced, Concessionaire is required to only pay Percentage Rent, a claim for a MAG Suspension will not be available.

- 9.2.12.4 Rent Credit for Approved Claim for MAG Suspension. When a MAG Suspension occurs, the Board shall issue a Rent credit to reflect any resulting overpayment in Rent. If and to the extent Concessionaire has any outstanding obligations to the Board hereunder, the Board may decline to issue such Rent credit or reduce the Rent credit by the amount outstanding. If and when the Minimum Annual Guarantee is reinstated, Concessionaire shall pay to the Board within five (5) days after the Board shall have given notice to Concessionaire of such reinstatement, the deficiency, if any, between the Percentage Rent paid by Concessionaire and the Minimum Annual Guarantee, for the month(s) following such reinstatement.
- 9.2.12.5 Enplanement Determinations. The CEO shall have the sole discretion as to the Enplanement calculations, and whether there exists a Severe Decline in Enplanements for Three (3) Consecutive Months.
- 9.2.12.6 Sub-Concessionaire Share of MAG Suspension. If Concessionaire subleases any portion of the Premises, Concessionaire shall offer to such sub-concessionaire(s) the same types of MAG Suspension as provided herein.
- 9.2.12.7 Certification of Claim for a Reduction. If Concessionaire desires to submit a claim for a MAG Suspension, it must submit its request to the CEO on forms provided by the Board.

## **SECTION 10 OPERATION OF LEASED PREMISES.**

- 10.1 Hours of Operation. Concessionaire shall actively operate its business in the Premises in a business-like manner. Concessionaire must operate concessions in the Premises in accordance with the flight schedules. Concessions must open to the public three hundred sixty-five (365) days a year at least sixty (60) minutes prior to the first departure time in the morning or when the security checkpoint opens, if earlier, and remain open at least until the last flight departs each day. These minimum hours of operation pertain to the flight schedules on each concourse. For the hours of operation in the A/B Rotunda, the earliest and latest flights on both Concourses A and B shall be considered. All locations shall remain open to accommodate flight delays that are expected to last more than one-half hour to serve the airport customers. The pre-security concession locations shall remain open until the last flight on their respective concourse(s) arrive. In no event shall



the hours of operation be curtailed to an extent that the service contemplated under this Lease shall be diminished. Except as otherwise stated herein, the hours of service shall be determined by the Board in light of changing public demands and airline operating schedules. No facilities shall be blocked off or closed at any time during the designated minimum hours of operation.

10.2 Delivery of Goods. Concessionaire shall arrange and be responsible for the timely delivery of all goods, stock, fixtures, and supplies to and from the Premises, at such times, at such on-airport locations(s), and by such on-airport routes as approved in writing by the Board.

10.3 Cash and Record Handling Requirements.

10.3.1 General. Concessionaire shall at all times observe cash and record handling procedures and maintain cash and record handling systems in accordance with written procedures submitted to and approved by the Board. The Board and Concessionaire agree that such written procedures may be revised from time to time, as mutually agreed upon by the Concessionaire and the Board, upon the advent of generally accepted technological changes. The agreed-upon cash, digital, and record handling procedures and required systems shall be incorporated in the written policy and rules and regulations of Concessionaire that cover the accounting and handling of all sales and services transactions related to this Lease.

10.3.2 Fidelity Bonds. Concessionaire shall maintain fidelity bonds in amounts standard within the airport concession industry on its employees engaged in activities under this Lease.

10.3.3 Shopping Service and Surveys. The Board shall have the right at its cost to monitor and test all of Concessionaire's services by a shopping service selected by the Board and enter the Premises to conduct surveys that may or may not pertain to Concessionaire's business.

10.3.4 Failure to Use Required Procedures and Systems. Where customer sales have not been recorded because of failure by Concessionaire to comply with Section 0, or for any other reason, Concessionaire shall pay to the Board the amount that would have been due the Board, plus one and one-half percent (1.5%) per month or the maximum legal rate, whichever is greater, for each month that sales were not recorded. The Board shall have the right to make a reasonable estimate of the losses.

10.4 Utilities. The Board shall provide the Premises with heat and air-conditioning to keep the Premises at reasonable temperatures for the conduct of Concessionaire's activities. Temperatures in the Premises shall be comparable to temperatures within the Terminal.

10.4.1 The Board shall provide utilities as outlined in the Tenant Design Guidelines to the perimeter of the Premises located in the new Concourse C locations

and Concessionaire shall make such connections as required and permitted by building code. Concessionaire shall be responsible for all demolition and reconstruction pertaining to utility connections in all existing concession locations that are redeveloped by Concessionaire. At no time shall Concessionaire's use of the utilities supplied exceed the capacity of the systems servicing the Premises.

10.4.2 Concessionaire agrees to pay for all utilities it uses, including deposits, installation costs, and service charges. No such payment of utilities shall constitute a payment of rent or credit against any other amount due under this Lease. Meters for the utilities shall be provided by the Concessionaire.

10.4.3 In the event meters are impractical, the Board shall prepare a monetary estimate of annual utility consumption, which shall be payable monthly and adjusted from time to time by the Board based on increases in utility rates.

10.5 Sustainability. Concessionaire agrees to fully comply with and participate in the sustainability policies and practices implemented by the Board from time to time.

## **SECTION 11 BOARD'S RIGHT TO USE THIRD-PARTY CONTRACTORS.**

11.1 Third-Party Contractor for Receiving and Delivery Services. The Board reserves the right to engage a third-party contractor to provide all receiving, handling, and transfer/delivery services for all or any portion of the concessionaires operating at the Airport in accordance with policies the Board determines to be in the best interests of Airport. In so doing, the Board may also develop and manage a Centralized Receiving and Distribution Center (CRDC) to be used by Concessionaire and other parties receiving deliveries for the Airport terminals, which CRDC may be located at a location off the Airport with regular deliveries to the Airport.

11.2 Required Use of Third-Party Services. If the Board engages a third-party and/or develops a CRDC, it may direct the Concessionaire to exclusively utilize some or all of the services of such third-party contractor and/or CRDC services for receiving, handling, and transfer/delivery services required by Concessionaire concerning the business it operates in the Premises. Concessionaire will be required to promptly pay all invoices provided to Concessionaire for its respective costs of the services by such third-party contractor for receiving, handling and transfer/delivery services as well as the potential operation of a CRDC. Upon implementation of a CRDC, the Board may discontinue all direct deliveries to the Terminal.

- 11.3 Charges for Third-Party Services. Charges paid by Concessionaire for these services may be developed by the Board or the selected contractor based upon actual costs and will be subject to annual audit by the CEO. It is anticipated that Concessionaire's charges will be developed and approved by the CEO for these services according to concession category, frequency of deliveries, volume of goods delivered, amount of Gross Receipts generated, etc.

## **SECTION 12 QUALITY AND CHARACTER OF SERVICE.**

- 12.1 Food Service Concepts and Menus. Concessionaire shall offer the menus and sell the food and beverage products in the designated locations and for the prices indicated in accordance with Exhibit B. Concessionaire shall upon written demand from the Board cease selling any item that the Board shall determine is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport. Concessionaire shall be capable of packaging any menu items ordered for carry-out service in good-quality, easy to carry one-hundred percent (100%) compostable packaging as certified by the Biodegradable Products Institute (BPI) or equivalent certification program. Upon prior written approval from the Board, Concessionaire may from time to time add or delete items from its menus.
- 12.2 Retail Concepts and Products. Concessionaire shall offer the products in the designated locations and for the prices indicated in accordance with Exhibit B. Concessionaire shall upon written demand from the Board cease selling any item that the Board shall determine is objectionable for sale or display at the Airport and immediately remove such item from its inventory and not thereafter offer such item for sale at the Airport. Concessionaire shall offer easy to carry recyclable paper bags or one-hundred percent (100%) compostable bags as certified by BPI or an equivalent certification program. Upon prior written approval from the Board, Concessionaire may from time to time add or delete items included in the retail product inventory.
- 12.3 Quality of Food, Beverages, and Retail Products. Concessionaire shall offer for sale only high-quality foods and beverages that are freshly, properly, and safely prepared, sanitary, accurately labeled (as appropriate), and as described on menus. The quality and quantity of the food and beverages offered shall be comparable to, or better than, that offered for sale in the comparable restaurants, cocktail bars, snack shops, quick service outlets, and coffee shops in the Spokane-Spokane Valley-Coeur d'Alene Metropolitan Statistical Area that are being used for pricing comparisons. Retail products sold shall be of the same quality or better as those products sold in popular stores in downtown and mall locations with a reputation for quality both locally and nationally. Upon written notice to Concessionaire by the Board of any violation of this provision, Concessionaire shall forthwith correct the condition objected to within three (3) days after receipt of such notice.

12.4 Pricing. Concessionaire shall comply with the following “Street Pricing Plus Policy” for the food service and retail concessions at the Airport:

The prices of all food and beverage and retail products sold at the Airport may not exceed the prices charged in comparable restaurants within the Spokane-Spokane Valley-Coeur d’Alene Metropolitan Statistical Area for like size and quality products, by more than ten percent (10%).

For each menu item sold, Concessionaire shall designate three (3) restaurants in the Spokane-Spokane Valley-Coeur d’Alene Metropolitan Statistical Area that sell the item and are comparable in concept, size, and quality to the concessions at the Airport. For each retail item, Concessionaire shall designate three retail locations in the Spokane-Spokane Valley-Coeur d’Alene Metropolitan Statistical Area that sell items comparable in size and quality to that sold at the Airport. The comparable outlets, designated by the Concessionaire and approved in writing by the Board, must be valid comparables to be used as the basis for price comparisons during the term of the Lease to determine compliance with the Street Pricing Plus Policy.

Prior to opening each location and thereafter on a semi-annual basis during the term of this Lease, Concessionaire shall provide documentation to the Board comparing the prices it charges at the Airport with the prices charged by the approved comparable outlets to establish Concessionaire’s compliance with the Street Pricing Plus Policy. This pricing comparison data shall be provided for each Concession location at the Airport using the format provided by the Board.

Additionally, no more than twice per year, the Board may require Concessionaire to perform a price comparison of up to fifty items per Concession location selected by the Board. In the event it is determined by the Board that Concessionaire is not in compliance with the Street Pricing Plus Policy, the Board shall give Concessionaire written notice thereof and proceed with the Sanctions outlined in SECTION 26 hereof.

All price changes must receive prior written approval from the Board before being implemented by Concessionaire.

12.5 CEO’s Right to Object. The CEO or his or her designated representative, shall have the right to raise reasonable objections to the appearance or condition of the Premises, the quality and quantity of food and beverage products, the quality and inventory of retail products, the character of the service, the hours of operation, the appearance and performance of service personnel, and to require any such conditions or practices objectionable to said CEO or his or her designated representative to be remedied by Concessionaire.

12.6 Nondiscriminatory Services Requirement. Concessionaire shall provide all services authorized hereunder to its customers and patrons upon a fair, equal, and nondiscriminatory basis and charge fair, reasonable, and nondiscriminatory prices; provided, however, that Concessionaire may make or give such reasonable and

nondiscriminatory discounts, rebates, or other similar price reductions as it may desire to its employees and other Airport employees.

- 12.7 Type of Operation. Concessionaire shall maintain and operate the Premises granted hereunder in an orderly, proper, and first-class manner, which, in the sole judgment of the Board, does not annoy, disturb, or offend others at the Airport.
- 12.8 Replacements and Refunds. Concessionaire shall without any additional charge to the purchaser, exchange any food, beverages, or retail products determined by said purchaser to be unsatisfactory or of poor quality or shall provide a full refund of the purchase price. Store personnel must have authorization to handle all product replacements and refunds immediately upon purchaser request without having to summon a manager or alternate employee to the location.
- 12.9 Point of Sale Services. At all times during the Term of this Lease, Concessionaire shall accept at least four (4) major credit cards (Visa, MasterCard, Discover, and American Express) as payment for any debit or credit transaction for food, beverages, and merchandise. Further, the Board requires the implementation of expedited and contactless payment options, which may include but are not limited to MasterCard PayPass®, Apple Pay, and Google Pay to ensure prompt and efficient customer service. Self-pay and kiosk technology may also be implemented as approved by the Board to enhance customer processing speed.
- 12.10 Services to the General Public. Concessionaire shall without charge provide services such as making change, giving directions, and providing general information to the public. Such services shall also include providing tap water at a food service location upon request at no charge, with any purchase. Concessionaire shall strive to ensure that all of its employees know the layout of the Terminal and have the ability to provide passengers and visitors with information regarding the locations of Airport services. Concessionaire is encouraged to implement mystery shopper services to ensure consistent performance.
- 12.11 Additional Compliance. Concessionaire shall comply with all applicable governmental laws, ordinances, and regulations in the conduct of its operations under this Lease.
- 12.12 Personnel.
- 12.12.1 General. Concessionaire shall maintain a sufficient number of properly trained personnel to ensure that all customers of Concessionaire receive prompt and courteous service at all times. All such personnel, while on or about the Premises, shall be polite, friendly, clean, appropriately attired, and neat in appearance. Employees of Concessionaire shall wear appropriate nametags and Airport security badges. The Board shall have the right to object to the demeanor, conduct, and appearance of any employee of Concessionaire, or any of its invitees or those doing business with it, whereupon Concessionaire shall take all steps necessary to remedy the

cause of the objection.

12.12.2 Manager. The management, maintenance, and operation of the Premises shall be at all times during the term hereof under the supervision and direction of an active, qualified, competent, and experienced manager, who shall at all times be authorized to represent and act for Concessionaire. Concessionaire shall cause such manager to be assigned a duty station or office in the Premises at which he or she shall be available during normal business hours, and Concessionaire will at all times during the absence of such manager assign, or cause to be assigned, a qualified subordinate to assume and be directly responsible for the carrying out of his or her duties. A local representative of the Concessionaire shall be available by telephone 24 hours per day, 7 days per week, 365 days per year in case of an emergency. The contact information for this representative shall be on record with the Airport at all times.

## **SECTION 13 SIGNS AND ADVERTISING.**

- 13.1 Definition of Signs. For purposes of this Section, signs shall include, but not necessarily be limited to, identification signs, company logos, advertising, promotions, stickers, photographs, art displays, and the like.
- 13.2 Right to Install. Concessionaire may install and operate upon or in the Premises, and at Concessionaire's sole cost and expense, signs containing its name and representing its business in accordance with the guidelines established in the Tenant Design Guidelines. Concessionaire acknowledges the Board's desire to maintain a high level of aesthetic quality in the Terminal and in all concession facilities throughout the Terminal. Therefore, Concessionaire covenants and agrees that, in the exercise of its privilege to install and maintain appropriate signs on the Premises, it will submit to the Board the size, design, content, and intended location of each and every sign it proposes to install on or within the Premises, and that no signs of any type shall be attached to or installed on or within the Premises without the specific prior written approval of the Board as to the size, design, content, and location. Handwritten or hand lettered signs are prohibited. Any permitted sign shall be professionally prepared. Notwithstanding any prior written approval, Concessionaire shall install, remove, or modify any signs as directed in writing by the CEO or his or her designated representative. The Board's failure to require removal of any sign placed on or about the Premises without written permission shall not be deemed a waiver of the CEO's authority to require removal of any unapproved sign. The Board may, without notice and without any liability therefore, enter the Premises and remove any items installed or maintained by Concessionaire in violation of the provisions of this SECTION 13.

- 13.3 Signs and Fixtures Outside Leased Premises. Concessionaire shall not place or install any racks, stands, trade fixtures, pedestal signs, or other displays of products outside the boundaries of the Premises without the express prior written approval of the Board.
- 13.4 If Concessionaire fails to comply with the requirements of this SECTION 13, the Board shall have the right to require Concessionaire to restore the Premises to the condition existing immediately prior to the unauthorized installation or modification of the sign. In the event that Concessionaire fails to restore the Premises within three (3) days following notice by the Board, Concessionaire shall, in addition to (and not in lieu of) any other rights or remedies the Board may have (whether under this Lease or in law or in equity), pay the Board the sanction amounts as provided in SECTION 26 until Concessionaire has restored the Premises. Concessionaire and the Board agree that the Board will incur damages as a result of the failure to restore the Premises, which damages are impractical or impossible to determine, and that this amount is a reasonable forecast of the damages to be suffered by the Board.
- 13.5 Removal of Signs. Upon the expiration or sooner termination of this Lease, Concessionaire shall, if requested by the CEO or his or her designated representative, remove any and all identification signs and similar devices placed by Concessionaire on or in the Premises at its own expense. In the event of the failure on the part of Concessionaire to so remove each and every sign as requested by the CEO or his or her designated representative, the CEO or his or her designated representative may perform such work and, upon demand, Concessionaire shall pay the cost thereof to the Board plus a twenty percent (20%) administrative fee.

## **SECTION 14 INDEMNITY AND INSURANCE REQUIREMENTS.**

- 14.1 General Indemnification.
- 14.2 General Indemnity. The Concessionaire shall indemnify, hold harmless and defend the Board, the City and County of Spokane, their elected and appointed officials, agents, employees and representatives from and against any and all claims and actions, demands, damages, civil penalties, charges, judgments, losses, liabilities of any character or kind and other legal actions and proceedings of whatever nature, including reasonable attorney's fees (including fees to establish the right to indemnification) resulting from, arising out of, related to, or caused by Concessionaire's or Sub-Concessionaire's conduct of business or from any activity or other things done, permitted, or suffered by Concessionaire in, or about the Premises and/or Airport or other act or failure to act, excluding only claims or actions arising out of the sole negligence of the Board, the City and County of Spokane, their elected and appointed officials, agents and employees, provided that the Board shall give the Concessionaire prompt and reasonable notice of any

such claim or actions made or filed against it.

- 14.2.1 Damages from Airport Operations. Concessionaire hereby agrees to release and hold harmless the Board, the City and County of Spokane, its elected and appointed officials, agents and employees, from any damages to the Concessionaire caused by noise, vibrations, fumes, dust, fuel particles and all other effects that may be caused by the operation of aircraft landing at or taking off from, or operating at or on the Airport; and the Concessionaire does hereby fully waive, remise and release any right or cause of action which it may now have or which it may have in the future against the Board, its successors and assigns, due to such noise, vibrations, fumes, dust, fuel particles, and all other effects that may be caused or may have been caused by the operation at or on the Airport. The above exception shall not limit a cause of action against other persons or entities, including licensees, concessionaires or aircraft operators.
- 14.2.2 Loss of Equipment. Concessionaire further agrees to hold the Board, the City and County of Spokane, their agents, officials, and employees free and harmless for any claims arising out of the damage, destruction, or loss of any or all of Concessionaire's equipment excluding any claims arising out of the sole negligence of the Board, the City and County of Spokane, their elected officials, agents, and employees.
- 14.3 Board's Right to Recover Damages. Subject to Section 15.1 Concessionaire agrees to reimburse the Board for any and all damages, expenses, costs, fees (including, but not limited to, attorney, accountant, paralegal, and expert fees), fines, Environmental Costs and/or penalties (collectively "Costs") that may be imposed upon, incurred or suffered by the Board and which, in whole or in part, arise from any of the following, except to the extent resulting from the sole negligent acts of the Board, the City and County of Spokane, their elected and appointed officials, agents, and employees: (a) any act or omission of Concessionaire; (b) any use, occupation, management or control of the Premises by Concessionaire, whether or not due to Concessionaire's own act or omission and whether or not occurring on the Premises; (c) any condition created in or about the Premises by any party (other than the Board, the City and County of Spokane, their elected and appointed officials, agents, and employees), including any accident, injury or damage occurring on or about the Premises after the date on which Concessionaire takes possession of the Premises for build-out; and (d) any breach, violation or nonperformance of any of Concessionaire's obligations under this Lease. For purposes of this Section, "Concessionaire" shall be deemed to include Concessionaire and Concessionaire's partners, officers, directors, employees, agents, Sub-concessionaire(s), and contractors.
- 14.4 Insurance Requirements. Insurance requirements set forth below do not in any way limit the amount or scope of liability of Concessionaire under this Lease. The amounts listed indicate only the minimum amounts of insurance coverage that the Board is willing to accept to help insure full performance of all terms and conditions



of this Lease. All insurance required by Concessionaire under this Lease shall meet the following minimum requirements:

- 14.5 Certificates; 30 Day Cancellation. On or before the execution of this Lease, Concessionaire shall provide the Board 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 Board 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 cancelled without at least thirty (30) days' prior written notice being given to the Board. Where any policy(ies) has (have) normal expirations during the Term of this Lease, written evidence or renewal shall be furnished to the Board at least thirty (30) days prior to such expiration. Upon written request by the Board, Concessionaire shall permit the Board to inspect the originals of all applicable policies. Insurance must be maintained without any lapse in coverage during the entire Term. Insurance canceled without Board consent shall be deemed an immediate event of Default under this Lease. The Board shall also be given certified copies of Concessionaire's policies of insurance, upon request. Failure of the Board to demand such certificate or other evidence of full compliance with these insurance requirements, or failure of the Board 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 Lease.
- 14.6 Additional Insured; Separation of Insureds. The Board, the City and County of Spokane, their elected and appointed officials, agents, and employees shall be named as an additional insured with respect to the Concessionaire's use of the Airport and the Premises that are the subject of this 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 Board with certification from the insurance carrier that the Board, the City and County of Spokane, their elected and appointed officials, agents, and employees are so named.
- 14.7 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 Board.
- 14.8 Company Ratings. Policies of insurance must be placed with companies or underwriters authorized to issue insurance in the State of Washington that carry an AM. Best rating of "A-" or better or equivalent.

- 14.8.1 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 Board.
- 14.9 Required Insurance. At all times during this Lease, Concessionaire shall provide and maintain in full force and effect the following types of coverage:
- 14.9.1 General Liability Insurance. The insurance policy(ies) shall be the standard comprehensive general liability insurance coverage, with aircraft exclusions deleted to cover all operations of the Concessionaire and shall include, but not by way of limitation, bodily injury, property damage, products liability, and contractual coverage, including the obligations pursuant to this SECTION 14, Indemnity and Insurance Requirements, herein. Concessionaire shall maintain an occurrence form commercial general liability policy or policies insuring against liability arising from the use of the Premises (including loss of use thereof), 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 Premises or occasioned by reason of the operations of Concessionaire. Such coverage shall be written on an ISO occurrence form CG 00 01 0196 (or a substitute form providing equivalent coverage) in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00), combined single limit or split limits equal to and not less than FIVE MILLION DOLLARS (\$5,000,000.00), for bodily injury and property damage with respect to each occurrence, such limits subject to adjustment by the Board during the Term of this Lease.
- 14.9.2 Commercial Automobile Liability Insurance. Concessionaire must procure and maintain automobile liability insurance covering owned, non-owned, leased and hired vehicles in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) for bodily injury and property damage combined single limit, such limits subject to adjustment by the Board during the Term of this Lease.
- 14.9.3 Fire and Property Insurance. Upon completion of construction, Concessionaire shall procure and maintain policies of insurance at its own expense, insuring the Premises and improvements thereon against all perils of direct physical loss, excluding earthquake and flood. The insurance coverage shall be for not less than one hundred percent (100%) full replacement value of said Premises and improvements with an agreed amount clause and a reasonable and customary deductible on said Premises and improvements. Such amount is subject to final approval by the Board. The Concessionaire shall furnish to the Board evidence that such coverage has been procured and is being maintained in full force and effect. The Board maintains property insurance that covers the Terminal, but will not

cover any improvements made by Concessionaire to the Premises.

- 14.9.4 Workers' Compensation Insurance. Concessionaire shall maintain in force Workers' Compensation insurance for all of Concessionaire's employees in accordance with all requirements of Washington law. Concessionaire shall also maintain employers' liability coverage in an amount not less than FIVE MILLION DOLLARS (\$5,000,000) per accident and FIVE MILLION DOLLARS (\$5,000,000) per employee for disease. In lieu of such insurance, Concessionaire may maintain a self-insurance program meeting the requirements of the State of Washington and a policy of excess workers' compensation and employer's liability insurance.
- 14.9.5 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 supplies related to the work while at the site. In the event Concessionaire fails to maintain such insurance, the Board may, at its option, arrange therefore, and any premium incurred shall be reimbursed by Concessionaire to the Board upon demand.
- 14.9.6 Business Interruption. Concessionaire shall maintain gross earnings and extra expense insurance that shall include coverage for all Rent due under this Lease for a minimum of a six (6) month period. The proceeds of such insurance shall be used first to continue Rent payments to the Board.
- 14.9.7 Construction Payment and Performance Bonds. Prior to any commencement of any construction, alteration, or repair hereunder by Concessionaire that exceeds Ten Thousand Dollars (\$10,000.00) in cost, Concessionaire shall furnish to the Board, at Concessionaire's sole cost, a performance bond and a payment bond issued by a surety company licensed to transact business in the State of Washington and approved by the Board, in a form approved by the Board. The penal amount of each bond shall not be less than one hundred percent (100%) of the total cost of the contract or contracts for the construction, alteration, or repair. In the event that such contract(s) involve alteration or work on or to the Board'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.
- 14.9.8 Liquor Law Liability Insurance. Concessionaire shall maintain, in full force and effect during the Term, liquor liability insurance in an amount not less than FIVE MILLION DOLLARS (\$5,000,000.00) per occurrence. Such

insurance shall protect against claims that may arise from the dispensing of beer, wine, and other alcoholic beverages from the Premises, provided however, that Board and Concessionaire acknowledge that commercially available liquor liability insurance coverage contains specific exclusions for which Concessionaire agrees to indemnify and hold Board harmless from and against any claims arising from such exclusions.

- 14.9.9 Foodborne Illness and Contamination Liability Insurance. Concessionaire shall maintain, in full force and effect during the Term, foodborne illness and contamination liability insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence. Such insurance shall protect against claims that may arise from the dispensing of food and beverages from the Premises, provided however, that Board and Concessionaire acknowledge that commercially available liability insurance coverage contains specific exclusions for which Concessionaire agrees to indemnify and hold Board harmless from and against any claims arising from such exclusions.
- 14.10 Waiver of Subrogation. Concessionaire and the Board waive any right of action that they and/or their insurance carriers might have against each other (including their respective employees, officers, commissioners, or agents) or against other tenants of the Airport for any loss, cost, damage, or expense ("Collectively Loss") to the extent that such loss or damage is covered by any property insurance policy or policies maintained or required to be maintained pursuant to this Lease and to the extent that such proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss. Concessionaire also waives any right of action it and/or its insurance carrier might have against the Board (including the City and County of Spokane, their elected and appointed officials, agents, and employees) for any loss to the extent such loss is a property loss covered under any applicable automobile liability policy or policies required by this Lease. If any of Concessionaire's property or automobile insurance policies do not allow the insured to waive the insurer's rights of subrogation prior to a loss, Concessionaire shall cause it to be endorsed with a waiver of subrogation that allows the waivers of subrogation required by this Section 14.10.
- 14.11 Concessionaire's Risk. Concessionaire shall be responsible for obtaining any insurance it deems necessary to cover its own risks. In no event shall the Board 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 Board.
- 14.12 Periodic Review. The Board shall have the right to periodically review the types, limits, and terms of insurance coverage. In the event the Board determines that such types, limits, and/or terms should be changed, the Board 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 Board. Concessionaire shall also provide the Board with proof of such compliance by giving the Board an updated certificate of insurance within fifteen (15) days.

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

## **SECTION 15 CANCELLATION.**

- 15.1 Cancellation by Concessionaire. In addition to all other remedies available to the Concessionaire, this Lease shall be subject to cancellation by Concessionaire should any one or more of the following occur:
- a. The permanent abandonment of the Airport.
  - b. The issuance of any order, rule or regulation by the Federal Aviation Administration or its successor federal agency, or the issuance by any court of competent jurisdiction of an injunction, materially restricting for a period of at least ninety (90) days, the use of the Airport for scheduled air transportation.
  - c. The breach by the Board of any covenants, terms or conditions of this Lease to be kept, performed and observed by the Board and the failure to remedy such breach for a period of sixty (60) days after written notice from Concessionaire of the existence of such breach.
  - d. The assumption of the United States Government, or any authorized agent of the same, of the operation, control or use of the Airport and its facilities in such manner as to substantially restrict the Concessionaire from conducting its business, if such restriction be continued for a period of ninety (90) continuous days or more.
  - e. The occurrence of any event or events beyond the reasonable control of Concessionaire, including, but not limited to, any act of God or other supervening event which precludes the Concessionaire from the use of the property for the purposes enumerated herein, or from the use of airport facilities.
- 15.2 Cancellation by the Board. In addition to any conditions as specified herein and all other remedies available to the Board, this Lease shall be subject to cancellation by the Board should any one or more of the following occur:
- a. If the Concessionaire shall file a voluntary petition in bankruptcy, or proceeding in bankruptcy shall be instituted against the Concessionaire and the Concessionaire is thereafter adjudicated bankrupt pursuant to such proceedings, or if a court shall take jurisdiction of the Concessionaire and its assets pursuant to proceedings brought under the provisions of any Federal Reorganization or Bankruptcy Act, or if a receiver for the Concessionaire's assets is appointed, or if the Concessionaire shall be

divested of its rights, powers and privileges under this Lease by other operation of law.

- b. If the Concessionaire shall fail to perform, keep and observe any of the applicable covenants and conditions contained in this Lease, provided that upon the happening of any contingency recited in this Section, the Concessionaire shall be given written notice to correct or cure such default, failure to perform or breach. In the case of default, the Board shall notify any lenders holding an interest in the leasehold improvements in accordance with any consent form executed by the Board. If, within thirty (30) days from the date of such notice, the default, breach, or complaint shall not have been corrected in a manner satisfactory to the Board, then and in such event the Board shall have the right to declare this Lease terminated. The Board does, however, reserve the right to extend the time period to correct the default, if, in its opinion, due diligence is shown by the Concessionaire in curing the default.
- c. If under any of the foregoing provisions of this Section, the Board shall have the right to reenter and take possession of the Premises, the Board may enter and eject the Concessionaire and those claiming through or under it and remove its property and effects, (using reasonable force, if necessary) without being guilty of any manner of trespass; without any liability therefore, without prejudice to any remedies of the Board in the event of default by the Concessionaire, and without liability for any interruption of the conduct of the affairs of the Concessionaire or those claiming through or under it.

15.3 Cancellation by the Board for Convenience. Should the Board need to facilitate Terminal renovations, concession master planning, concession management, or other significant changes to be decided by the Board, the Board may, in its sole discretion, cancel this Lease upon six month's advance written notice to Concessionaire.

15.4 Termination and Reletting. Should there occur an early termination of this Lease pursuant to the terms of SECTION 17 hereof, the Board shall have the right to re-enter the Premises, make repairs as necessary, and enter into another agreement for the Premises and privileges, or any part thereof, for the remainder of the Term hereof.

15.5 Notice of Termination. If any of the events enumerated in Sections 15.1 and 15.2 shall occur and after due notice the defaulting party has failed to cure or correct same, the complaining party may, at any time thereafter during the continuance of said default, terminate this Lease by notice in writing, such cancellation and termination to be effective upon the date specified in such notice.

## **SECTION 16 PROPERTY RIGHTS UPON TERMINATION OR CANCELLATION.**

- 16.1 Rights Upon Termination or Cancellation. Upon termination or cancellation of this Lease for any reason, the Board shall have the right to require removal by Concessionaire of all Trade Fixtures, personal property, and expendables owned by Concessionaire; and Concessionaire shall immediately *remove* such Trade Fixtures, personal property, and expendables. Concessionaire shall reimburse the Board for the cost of any repairs required as a result of Concessionaire's removal of said Trade Fixtures, personal property, and expendables. At the request of the Board, the Board may, at its sole and absolute discretion, take title to any or all such Trade Fixtures, personal property, or expendables, in which event the Board shall pay to Concessionaire the fair market value of each such Trade Fixture, personal property, or expendable as of the date of such termination.
- 16.2 Rights Upon Termination Because of Default by the Board or for Convenience of the Board. In the event this Lease is canceled by Concessionaire or the Board for any of the reasons outlined in Sections 15.1 or 15.2, the exclusive remedy available to Concessionaire shall be to recover the Net Book Value of Leasehold Improvements as defined in Section 16.

Except as provided herein above, Concessionaire shall remove all personal property and Trade Fixtures, and shall reimburse the Board for the cost of any repairs required as a result of Concessionaire's removal of such property and fixtures.

## **SECTION 17 RELOCATION OR TERMINATION OTHER THAN FOR DEFAULT.**

- 17.1 Performance. In the event that Concessionaire either (a) experiences a decrease in its sales per Enplanement of more than twenty percent (20%) for the Premises, or any discrete portion thereof, for two (2) quarters in any twelve (12)-month period, (b) loses the Franchise Agreement rights under which the concession for the Premises, or any discrete portion thereof, was operated, or (c) experiences a decline in Gross Receipts for the Premises, or any discrete portion thereof, for two (2) consecutive years without a corresponding decrease in the number of Enplanements for the same two-year period, the Board may initiate a discussion with Concessionaire about termination of this Lease or the discrete portion of the Premises to which such issue pertains. If the parties mutually agree, then a termination agreement shall be executed under which the Board shall agree to remarket the space and the Concessionaire shall agree to terminate the Lease and vacate the space if and when a new tenant lease for the space is executed and the new tenant design for the space is approved by the Board.
- 17.2 Airport Operational Needs. Notwithstanding the provisions of Section 7.1, if at any time the Board determines that the Premises (or any portion thereof) are necessary for the operation, safety, security or convenience of the Airport, the Board may require Concessionaire to close, reduce or relocate (to a location designated by the Board) the Premises, or any discrete portion thereof. In such event, the Board shall

provide Concessionaire at least sixty (60) days advance written notice. Concessionaire shall have the right to accept or reject any proposed reduction or relocation of the Premises. If accepted, the Board and Concessionaire shall negotiate, in good faith, for the payment of any relocation costs associated with such change. If Concessionaire rejects the reduction/relocation, or if the parties are unable to reach agreement regarding the payment of costs associated with such change, the Board may, at the Board's election, terminate this Lease with respect to all or a portion of the Premises. If Concessionaire is not in default under any of the provisions of this Lease on the effective date of termination, the Board shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements applicable to the Premises (or portion thereof) to be relocated or reduced. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses or loss of business expenses.

- 17.3 Condemnation. In the event that any federal, state or local government or any agency or instrumentality thereof shall, by condemnation or otherwise, take title, possession or the right to possession of the Premises or any part thereof, the Board may, at its option, terminate this Lease as of the date of such taking, and if Concessionaire is not in default under any of the provisions of this Lease on the effective date of termination, the Board shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination. In addition, Concessionaire shall be entitled to participate in any compensation paid in the event of a taking, not to exceed the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses, except to the extent such relocation expenses may be awarded to Concessionaire as part of any condemnation proceeding.
- 17.4 Court Decree. In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Board of any of its obligations under this Lease, then either party hereto may terminate this Lease by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Concessionaire is not in default under any of the provisions of this Lease on the effective date of termination, the Board shall refund any Rent prepaid by Concessionaire, to the extent allocable to any period subsequent to the effective date of the termination, and reimburse Concessionaire the Net Book Value of Leasehold Improvements. Concessionaire shall not be entitled to any compensation at termination for the bargain value of the leasehold or any relocation expenses.



- 17.5 Net Book Value of Leasehold Improvements. As used in this Lease, “Net Book Value of Leasehold Improvements” shall mean and refer to the dollar amount generated through application of the following rules:
- 17.6 Eligible Improvements. “Eligible Improvements” shall mean and refer to any permanently affixed alterations or improvements made to the Premises and to cabinetry and display fixtures that were custom designed by Concessionaire for the Premises and have no practical use or value outside the Premises: (a) for which the Board’s approval has been sought and obtained in writing, (b) for which any and all information required by Section 8.3 or any Board approval has been timely submitted, and (c) consistently appearing on any Net Book Value of Leasehold Improvements report requested by the Board pursuant to Section **Error! Reference source not found.**, and (d) then currently in use and in such condition as would warrant its continued use. Eligible Improvements shall, however, specifically exclude the Removable Fixtures (other than custom designed cabinetry and display fixtures set forth above) and any inventory maintained by Concessionaire.
- 17.7 Cost of Eligible Improvements. The “Costs of Eligible Improvements” shall mean and refer to the direct costs expended by Concessionaire for any Eligible Improvements, specifically including the cost for the demolition of any existing improvements necessary for the installation of such Eligible Improvements. The Costs of Eligible Improvements shall not, however, include any of the Excluded Costs. The Costs of Eligible Improvements” shall be determined from the information timely submitted by Concessionaire pursuant to Section 7.3 or any Board consent, which information is subject to verification by the Board. “Excluded Costs” shall mean the (i) financing costs; (ii) interest; (iii) inventory; (iv) office equipment and furnishings; (v) pre-opening expenses; (vi) intra-Concessionaire charges related to construction; (vii) professional fees and costs related to design, engineering, and construction management of Eligible Improvements in excess of twelve percent (12%) of the initial minimum investment; and (viii) professional fees and costs related to the design, engineering, and construction management of Leasehold Improvements in excess of twelve percent (12%) of the minimum Midterm Refurbishments.
- 17.8 Calculation of Net Book Value of Leasehold Improvements. For each Eligible Improvement, the Cost of that Eligible Improvement shall be amortized over the useful economic life of such Eligible Improvement, where such useful economic life shall in no instance exceed the period of time commencing on the date such Eligible Improvement is installed and terminating on the expiration of this Lease, or any lesser period that may be specified in any consent, sublease or other writing, on a straight-line basis with no salvage value. The “Net Book Value of Leasehold Improvements” shall be the sum of the unamortized portion (as of the effective date of the applicable termination) of the Cost of Eligible Improvements for each Eligible Improvement directly affected by such deletion or termination. As used in this Section, “useful economic life” shall specifically be determined with respect to the initial investment in the Eligible Improvement, Concessionaire’s repair and maintenance of the Eligible Improvement, and Concessionaire’s custom and usage

for assets similar to the Eligible Improvements, both at the Airport and elsewhere.

**SECTION 18 NONWAIVER OF RIGHTS.** Continued performance by either party hereto pursuant to the terms of this Lease after a default of any of the terms, covenants, and conditions herein contained to be performed, kept, or observed by the other party hereto shall not be deemed a waiver of any right to cancel this Lease for any subsequent default; and no waiver of any such default shall be construed or act as a waiver of any subsequent default.

**SECTION 19 SURRENDER OF POSSESSION.** Concessionaire shall, upon termination of this Lease, quit and deliver up the Premises and privileges to the Board peaceably and quietly, with the Premises being in as good order and condition as the same now are or may be hereafter improved by Concessionaire or the Board, reasonable use and wear thereof excepted. In addition to any lien provided by Washington law, the Board shall have a specific lien on all property of Concessionaire, and related equipment on the Premises as security for nonpayment. Concessionaire shall have the right to remove all of its Trade Fixtures and personal property installed or placed by it at its own expense, in, on or about the Premises; subject however, to any valid lien that the Board may have thereon for unpaid charges or fees.

**SECTION 20 ASSIGNMENT, SUBLETTING, AND SURRENDER.** Except as otherwise provided herein, Concessionaire shall not at any time sublet any part of the Premises or assign or convey this Lease, or any part thereof, without the prior written consent of the Board, which consent shall be granted or denied in the sole and absolute discretion of the Board.

**SECTION 21 TAXES AND LICENSES.** Concessionaire shall pay all taxes of whatever character that may be levied or charged upon the Premises, Leasehold Improvements, or the activities or operations contemplated by this Agreement or that may be measured in by all or part of the consideration payable by Concessionaire under this Agreement ("Taxes"), including but not limited to the Washington leasehold excise tax ("LET"). The LET is currently imposed at a rate of 12.84% and is measured by taxable rent as defined in RCW 82.29A.020. Concessionaire shall pay any and all Taxes whether assessed against Concessionaire or the Board. Concessionaire shall obtain and pay for all licenses or permits necessary or required by law for the construction of improvements, the installation of equipment and furnishing, and any other licenses necessary for the conduct of its operations hereunder.

**SECTION 22 INSPECTION OF LEASED PREMISES.** The Board or its duly authorized representatives, or agents, and other persons for it, may enter upon said Premises at any and all reasonable times during the term of this Lease for the purpose and conditions hereof or for any other purpose incidental to rights of the Board.

**SECTION 23 HOLDING OVER.** Should Concessionaire remain in possession of the Premises after the expiration of the Term, or any renewals, or termination of this Lease without written permission from the Board, such holding over will not be deemed to operate as a renewal or extension of this Lease, nor will it create a tenancy at will. Such

holding over will create a month-to-month tenancy and Concessionaire shall, unless otherwise mutually agreed, pay to the Board twice the highest Rent that Concessionaire paid during any month of the Term of the Lease. During such month-to-month tenancy, all terms of this Agreement and any amendments hereto will continue to govern the relationship of the Parties.

**SECTION 24 QUIET ENJOYMENT.** The Board agrees that Concessionaire, upon payment of the fees and charges and all other payments to be paid by Concessionaire under the terms of this Lease, and upon observing and keeping the agreements and covenants of this Lease on the part of Concessionaire to be observed and kept, shall lawfully and quietly hold, occupy, and enjoy the Premises during the term of this Lease.

**SECTION 25 FEDERAL NONDISCRIMINATION.**

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

- a. Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- b. 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);
- c. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- d. Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- e. The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- f. Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- g. The Civil Rights Restoration Act of 1987 (PL 100-259) (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);
- h. Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (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) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- i. The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- j. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination 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);
- k. 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. 74087 (2005)];
- l. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq).

25.2. Compliance and Reporting. During the performance of this Lease, the Concessionaire, for itself, its assignees, and successors in interest, agrees as follows:

- a. Compliance with Regulations. The Concessionaire (hereinafter includes any sub-concessionaire or joint venture partner) 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 Lease.
- b. Nondiscrimination: The Concessionaire, with regard to the work performed by it during the Lease, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of sub-concessionaires or 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 Agreement covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
- c. Solicitations for Sub-concessionaires or Contractors, 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 sublease or contract, including procurements of materials, or leases of equipment, each potential sub-concessionaire or contractor or supplier will be notified by the Concessionaire of the sub-concessionaire's or contractor's obligations under this

Lease and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

- d. 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 Board 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 sub-concessionaire or contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Concessionaire will so certify to the Board or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
- e. Sanctions for Noncompliance: In the event of a Concessionaire's noncompliance with the non-discrimination provisions of this Lease, the Board will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
  - i. Withholding payments to the Concessionaire under the Lease until the Concessionaire complies; and/or
  - ii. Cancelling, terminating, or suspending the Lease, in whole or in part.
- f. Incorporation of Provisions: The Concessionaire will include the provisions of paragraphs in Section 25.2.a through Section 25.2.f in every sub-lease, joint venture agreement, and contract, 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 sub-lease, contract or procurement as the Board or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Concessionaire becomes involved in, or is threatened with litigation by a sub-concessionaire, contractor, or supplier because of such direction, the Concessionaire may request the Board to enter into any litigation to protect the interests of the Board. In addition, the Concessionaire may request the United States to enter into the litigation to protect the interests of the United States.

**SECTION 26 SANCTIONS FOR CERTAIN LEASE VIOLATIONS.** Concessionaire's failure to adhere to the operating requirements set forth in this Lease is reasonably anticipated to result in significant inconvenience to the public, adversely affect the overall concession business of the Board, and reduce the amount of rent to be paid to the Board. Additionally, Board resources will be expended in dealing with violations of this Lease by Concessionaire. The parties hereby agree that total damages sustained by the Board for violations of the provisions of this Lease addressing the subject matter listed below could be significant, but would be difficult to determine and to track. Therefore, the parties hereto agree that in lieu of, or in addition to, any other available remedy, the CEO may elect to impose the charges described below on a per diem basis per infraction, for violation of Lease terms addressing the referenced subject matter.

Concessionaire, therefore, hereby agrees that imposition of the sanctions set forth below is fair and reasonable and Concessionaire agrees to pay immediately upon demand by the Board the following sanction amounts upon the occurrence of breaches related to the following subject matter:

- a. Violation of use of Premises
- b. Failure to maintain required hours of operation
- c. Failure to submit required documents and reports
- d. Failure to remedy Customer Service, Cleanliness, Quality Assurance, Operations, and/or Facility standards
- e. Failure to comply with the pricing policy and/or label all products with prices in accordance with such policy
- f. Failure to comply with Premises boundaries and lease lines
- g. Failure to comply with receiving and delivery requirements set by the Board
- h. Failure to comply with waste disposal and recycling policies and standards set by the Board
- i. Failure to provide maintenance and pest control records on a monthly basis and/or display manifest reports on file in each store
- j. Unauthorized advertising or signage
- k. Destruction of Airport public facility deemed caused by associates or associate travel in unauthorized areas
- l. Failure to comply with any and all published Board standards and policies, basic terms of the Lease, federal, state, local policies, regulations, the Code, directives or standards

**Sanction Amount.** First offense of any infraction listed above may result in a charge of \$500, second offense may result in a charge of \$750, and third offense may result in charge of \$1,000. Repeated violation of the above-listed infractions may result in the Concessionaire being in default of the Lease.

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

**SECTION 27 WAIVERS.** Election by the Board not to enforce any of the terms, covenants, or conditions contained in the Lease shall in no event operate as a waiver or preclude the Board from thereafter enforcing such terms, covenants, or conditions.

**SECTION 28 NOTICES.** All notices provided for herein shall be in writing. Any notice permitted or required to be served upon Concessionaire under this Lease shall be served upon it at:

**Concessionaire Name**  
Address

Any notice permitted or required to be served upon the Board under this Lease shall be served in care of the CEO, Spokane International Airport at:

9000 West Airport Drive, Suite 204  
Spokane, Washington, 99224

Either party may change the address for service under this Lease by giving the other party written notice thereof. Any notice served by mail shall be by certified mail, return receipt requested, or by a recognized overnight courier service that requires receipt of signature upon delivery.

**SECTION 29 WAIVER OF CLAIMS.** Concessionaire hereby waives any claim against the Board, and its officers, agents, or employees, for loss of anticipated profits caused by any suit or proceedings directly or indirectly attacking the validity of this Lease or part thereof, or by any judgment or award in any suit or proceeding declaring this Lease null, void, or voidable, or delaying the same, or any part hereof, from being carried out.

**SECTION 30 GOVERNMENT RESERVATIONS AND RESTRICTIONS.** The Premises being leased and rights granted by this Lease shall be subject to all enforced reservations and restrictions, including but not limited to, the following:

- a. It is understood and agreed to by Concessionaire that nothing herein contained shall be construed to grant or authorize the granting of any exclusive right forbidden by the Airport Development Act, 49 U.S.C., 47101, et seq., and Section 308 of the Federal Aviation Act of 1958 and as amended.
- b. During the time of war or national emergency, Board shall have the right to lease the landing area or any part thereof to the United States Government for military or naval use and, if such lease is executed, the provisions of this Lease insofar as they are inconsistent with the provisions of the agreement or lease with the Government, shall be suspended.
- c. This Lease shall be subject to the terms of any sponsor's assurances and agreements now required or imposed in the future, between the Board and the Federal Aviation Administration or any successor Federal agency.
- d. This Lease shall be subordinate to the provisions of any existing or future agreement between the United States Government and the Board relative to the operation or maintenance of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of Federal funds for the

development of the Airport, by the provisions of the Airport Improvement Program, and as the program may be amended, or any other federal act, deed, grant agreement or program affecting the operation, maintenance of the Airport now or in the future; provided however, that the Board shall, to the extent permitted by law, use its best efforts to cause any such agreements to include provisions protecting and preserving the rights of Concessionaire in and to the Premises and improvements thereon.

**SECTION 31 CONCESSION LEASE SUBORDINATE TO BOND ORDINANCE.** This Lease and all rights of the Concessionaire hereunder are expressly subordinated and subject to the lien and provisions of any pledge or assignment made by the Board, the City of Spokane or County of Spokane to secure any bonds authorized by law to be issued for the development or improvement of the Airport, and the Board and the Concessionaire agree that the holders of the said Bonds shall possess, enjoy and may exercise all rights of the Board hereunder to the extent such possession, enjoyment and exercise are necessary to ensure compliance by Concessionaire and the Board with the term and provisions of the bond covenants.

**SECTION 32 FORCE MAJEURE.** In the event that either party hereto shall be prevented from the performance of any act required hereunder by reason of strikes, lockouts, failure of power, governmental laws or orders, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party; and after the Rent Commencement Date, the provisions of this Section shall not operate to excuse Concessionaire from the prompt payment of Rent as required by this Lease and shall not extend the term of this Lease.

**SECTION 33 LEGAL CLAIMS AND ATTORNEY FEES.**

- a) Each party hereto shall promptly report to the other any claim or suit against it arising out of or in connection with the Concessionaire's operation at the Airport. The Board and Concessionaire shall each have the right to compromise and defend the same to the extent of its own interest; provided the defense of the same has not been tendered and accepted by the other party. The Concessionaire is an independent contractor in every respect, and not the agent of the Board.
- b) If any legal action is instituted by the parties hereto to enforce this Lease, or any part thereof, the prevailing party shall be entitled to recover reasonable attorney's fees and court costs. Any such legal action shall be commenced and maintained in Spokane County, Washington, regardless of Concessionaire's residence or place of business.



**SECTION 34 PUBLIC PROTECTION.** The Board shall provide, or cause to be provided, during the term of this Lease, all proper and appropriate public fire and police protection similar to that afforded to other Terminal tenants or licensees at the Airport, and it will issue and enforce rules and regulations with respect thereto for all portions of the Airport. Concessionaire shall comply with the Airport Security Plan and shall have the right, but shall not be obligated, to provide such additional or supplemental public protection as it may desire, but such right, whether or not exercised by Concessionaire, shall not in any way be construed to limit or reduce the obligations of the Board hereunder.

**SECTION 35 CONCESSION LEASE SUBORDINATE TO AGREEMENTS WITH THE UNITED STATES.** This Lease is subject and subordinate to the terms, reservations, restrictions, and conditions of any existing or future agreements between the Board and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the Board for Airport purposes, and the expenditure of federal funds for the extension, expansion, or development of the Spokane International Airport. Should the effect of such agreement with the United States government be to take any of the property under lease or substantially destroy the commercial value of such improvements, the Board shall terminate this Lease.

**SECTION 36 RIGHTS AND PRIVILEGES OF THE BOARD.** The Board shall have the right to enforce, and adopt from time to time, reasonable rules and regulations, which Concessionaire agrees to observe and obey, with respect to the use of the Airport, Terminal, and appurtenances, provided that such rules and regulations shall not be inconsistent with safety, current rules and regulations of the Federal Aviation Administration (FAA) and the Transportation Security Administration (TSA), and any future changes prescribed from time to time by the FAA, TSA, or any other successor Federal agency.

- a. The CEO is hereby designated as the official representative for the Airport for the enforcement of all provisions in this Lease with full power to represent the Board with dealings with Concessionaire in connection with the rights herein granted.
- b. All actions relating to policy determination, modification of this Lease, termination of this Lease, and any similar matters affecting the terms of this Lease shall emanate from the Spokane Airport Board.
- c. The CEO or his or her designated representative may enter upon the Premises, now or hereafter leased to Concessionaire hereunder, at any reasonable time, for any purpose necessary, incidental to, or connected with, the performance of its obligations hereunder, or in the exercise of its governmental functions.
- d. The Board reserves the right to further develop or improve the airfield and Public Areas, including Terminal and ramp space, of the Board as it sees fit, regardless of the desires or views of Concessionaire, and without interference or hindrance.
- e. The Board hereby reserves for the use and benefit of the public, the right of aircraft to fly in the airspace overlying the land herein leased, together with the right of said aircraft to cause such noise as may be inherent in the operation of aircraft landing at, taking off from, or operating on or in the vicinity of Spokane

International Airport, and the right to pursue all operations of the Spokane International Airport.

- f. The Board reserves the right to take any action it considers necessary to protect the aerial approaches of the Airport against obstruction, together with the right to prevent Concessionaire from erecting, or permitting to be erected, any building or other structure on the Airport, which, in the opinion of the Board, would limit the usefulness of the Airport, or constitute a hazard to aircraft.
- g. The Board may from time to time increase or decrease the size or capacity of any such Public Aircraft Facilities or Terminal or Common Use Portion of the Airport or make alterations thereto or reconstruct or relocate them or modify the design and type of construction thereof or close them or any portions of them, either temporarily or permanently, provided notice is given to Concessionaire.
- h. This Lease at any time may be reopened for renegotiation in good faith if Federal Aviation Administration (FAA) Airport Certification or Transportation Security Administration's Security Requirements, FAR Parts 139 and TSR 1542 respectively, result in major expenditures to the Board due to Concessionaire's tenancy on the Airport. If said renegotiation is desired, written notice must be given to Concessionaire sixty (60) days prior to such renegotiations.
- i. The Board reserves the right to relocate the Premises to similar spaces should that be necessary, for Terminal area remodeling or expansion. The Board will not be liable for the costs associated with the moving or reinstallation of Concessionaire's equipment.

## **SECTION 37 AIRPORT SECURITY.**

- 37.1 Security. Concessionaire shall comply with all current and future Board, local, state, and federal security rules, regulations, policies, and procedures in place for the Airport, including 49 CFR Part 1542 (Airport Security), as amended from time to time. Concessionaire agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. Concessionaire shall comply with Transportation Security Regulation Part 1542 (Airport Security) and Airport security policies as presently outlined in the Airport Security Plan, as such Plan may be amended from time to time. Concessionaire shall pay any forfeitures or fines levied upon it, the Board, or the Airport through enforcement of Transportation Security Regulation Part 1542, or any other applicable federal, state or local regulation, due to the acts or omissions of the Concessionaire, its employees, agents, suppliers, invitees or guests and for any attorney fees or related costs paid by the Board as a result of any such violation.
- 37.2 Security Identification. Concessionaire shall abide by rules and regulations adopted by the Board in carrying out the Board's obligations under Aviation Security Regulations and Directives for the proper identification of persons and vehicles entering the aircraft operations area and other security measures as the Board deems necessary from time to time. Concessionaire shall obtain Spokane Airport

identification badges for all personnel working in restricted areas, which will require each worker to complete the Airport ID Card Application Form, available from the Airport Police and submit his/her fingerprints for a criminal history check. The cost shall be the responsibility of the applicant or Concessionaire and such cost may be amended by the Board from time to time. Concessionaire shall deliver to the Airport Police Department in writing the names, mailing addresses and telephone numbers of all employees performing services under the Lease. Any change in personnel shall be reported to the Board and the Airport Police Department. Concessionaire shall be responsible for the prompt recovery of Airport keys and security identification badges.

Pursuant to applicable federal regulations, Concessionaire shall conduct an annual self-audit of Board access media, such as keys and access cards, used by Concessionaire, its employees, agents, suppliers, invitees, sublessees or guests. Concessionaire shall provide the Board with a written report of said audits and shall replace, reset or re-key, as appropriate, all affected Airport area access locks or devices whenever missing, lost, or stolen access media exceed five (5) percent of the access media issued for the affected lock or device.

- 37.3 Compliance and Responsibility for Fines and Forfeitures. Concessionaire recognizes its obligations for security on the Airport as prescribed by 49 CFR Part 1542 and agrees to employ such measures as are necessary to prevent or deter the unauthorized access of persons or vehicles into the secure area of the Airport. Concessionaire shall comply with Transportation Security Regulation Part 1542 (Airport Security) and Airport security policies as presently outlined in its Airport Security Plan, as such Plan may be amended from time to time. Concessionaire shall pay any forfeitures or fines levied upon it, the Board or the Airport through enforcement of Transportation Security Regulation Part 1542, or any other applicable federal, state or local regulation, due to the acts or omissions of Concessionaire, its employees, agents, suppliers, invitees or guests and for any attorney fees or related costs paid by the Board as a result of any such violation.
- 37.4 Tenant Security Program. Concessionaire shall create a Tenant Security Program (TSP) in coordination with the Spokane Airport Security Program (ASP) and the Airport Security Coordinator (ASC). The TSP shall be submitted to the Transportation Security Administration (TSA) and, upon approval, will make the Concessionaire a regulated party of the TSA, in accordance with 49 CFR 1542. Additionally, Concessionaire will comply with rules, practices, security restrictions and regulations as set forth by the Board or any agency having jurisdiction at the Airport. Any fines assessed against the Board as a result of the Concessionaire's failure to comply with the provisions of this paragraph or other intentional or negligent acts or omissions of Concessionaire, its employees or agents will be paid promptly, upon demand, to the Board by the Concessionaire.
- 37.5 Employee Clearance. All employees assigned by the Concessionaire shall be physically able to do their assigned work. The Board shall have complete control over granting, denying, withholding or terminating security clearance for said

employees. Clearance is required for all employees upon being hired or assigned to the Airport. Concessionaire shall not permit any employee to begin work until Airport Police grants clearance to each individual employee.

- 37.6 Unauthorized Personnel. Concessionaire employees shall identify, challenge, and report all unauthorized personnel (anyone without proper Airport-issued identification) to Airport Police Department in the Spokane Airport Terminal during all hours. NOTE: Airport Police are in the Terminal twenty-four (24) hours per day, seven (7) days per week.

## **SECTION 38 GENERAL PROVISIONS.**

- 38.1 Amendment. Any amendment, modification, or alteration of this Lease shall be effective only if mutually agreed upon, reduced to writing, and signed by the appropriate representatives or officers of both parties.
- 38.2 Sales and Dignified Use. No public or private auction, "fire," "going out of business," bankruptcy or similar types of sales shall be conducted in or from the Premises. The Premises shall not be used except in a dignified and ethical manner consistent with the general high standards of food service operations in the Airport.
- 38.3 Board Consent or Action. In the event this Lease is silent as to the standard for any consent, approval, determination, or similar discretionary action, the standard shall be at the sole and unfettered discretion of the Board, rather than any implied standard of good faith, fairness or reasonableness. Wherever this Lease requires the Board's consent or approval or permits the Board to act, such consent, approval or action may be given or performed by the CEO or his or her designated representative. If Concessionaire requests the Board's consent or approval pursuant to any provision of the Lease and the Board fails or refuses to give such consent, Concessionaire shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable.
- 38.4 Interpretation of Concession Lease. This Lease is the result of arm's length negotiations between the Board and Concessionaire and shall not be construed against the Board by reason of its preparation of this Lease.
- 38.5 Entire Agreement. It is understood and agreed that this Lease (including all Exhibits and other documents incorporated by reference) contains the entire agreement between the Board and Concessionaire as to this Lease. It is further understood and agreed by Concessionaire that the Board and the Board's agents and employees have made no representations or promises with respect to this Lease or the making or entry into this Lease, except as in this Lease expressly set forth, and that no claim or liability or cause for termination shall be asserted by Concessionaire against the Board for, and the Board shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Lease. Any other written or oral agreement with the Board is expressly waived by

Concessionaire.

- 38.6 Capacity to Execute. The Board and Concessionaire each warrant and represent to each other that this Lease constitutes their legal, valid and binding obligation. The individuals executing this Lease personally warrant that they have full authority to execute this Lease on behalf of the entity for whom they purport to be acting.

**SECTION 39 TERMS BINDING UPON SUCCESSORS.** All the terms, conditions, and covenants of this Lease shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. The provisions of this Section shall not be deemed as a waiver of any of the conditions against assignment herein before set forth.

**SECTION 40 TIME OF ESSENCE.** Time is expressed to be of the essence of this Lease.

**SECTION 41 AGREEMENT MADE IN WASHINGTON.** This Lease has been made in and shall be construed in accordance with the laws of the State of Washington, with venue of any judicial proceedings arising hereunder in Spokane County Superior Court. All duties, obligations, and liabilities of the Board and Concessionaire with respect to the Premises are expressly set forth herein and this Lease can be amended only in writing and agreed to by both parties.

**SECTION 42 HEADINGS.** The headings contained herein, including the Table of Contents, are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

**SECTION 43 CONTRACT DOCUMENTS.** The Request for Proposals published in connection herewith and the Concessionaire's Proposal shall all form a part of the Concession Lease between the parties hereto. In the event of a conflict between the terms and conditions of this Lease and any of said documents, the terms and conditions of this Lease shall take precedence.

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

ATTEST:

SPOKANE AIRPORT BOARD

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Chair

ATTEST:

CONCESSIONAIRE

\_\_\_\_\_  
Title:

\_\_\_\_\_  
Title:

RECOMMENDED APPROVAL, TERMS  
AND CONDITIONS BY:

APPROVED AS TO FORM AND LEGALITY  
BY:

\_\_\_\_\_  
Chief Executive Officer

\_\_\_\_\_  
Airport Board Counsel

DRAFT

## EXHIBIT A: LEASED PREMISES

DRAFT

## EXHIBIT B: CONCESSION CONCEPTS, MENUS, PRODUCTS AND PRICING

Unit	Concept	Brand	Menu or Product List and Pricing
[insert unit number]	[insert concept type, i.e., Casual Dining Restaurant, Gourmet Coffee Shop, Apparel Store, etc.]	[insert restaurant or store name from proposal]	[insert menus with pricing for restaurants and product lists with pricing for stores]



## **EXHIBIT C: CONCESSION SUSTAINABILITY REQUIREMENTS AND VOLUNTARY PRACTICES**

The City of Spokane is committed to achieving environmental- and climate-related requirements at both the local and state levels. In this effort, the following sustainability requirements and voluntary practices have been developed for the concession program at Spokane International Airport (the Airport). This Exhibit C may be revised by the Airport Board from time to time without a formal amendment to the Concession Lease.

### **A. Sustainability Requirements**

- a.** Use of compostable food serviceware and consumer-facing packaging, including but not limited to utensils, straws, to-go containers, and retail packaging/wrapping.
  - i.** Non-compostable, single-use serviceware and consumer-facing packaging are prohibited. This prohibition includes plastic bags, plastic straws, polypropylene (#5) plastics, and polystyrene (#6/Styrofoam) plastics. Pre-packaged branded products, such as bottled soda and bags of chips are excluded from this prohibition.
  - ii.** Compostable is defined by the Board as products that are approved as being compostable by the following third parties:
    - 1.** The Biodegradable Products Institute (BPI); or
    - 2.** Cedar Grove Composting
- b.** Concessionaires must abide by the Washington State Bag Requirements provided in Appendix A of this Exhibit. (*RCW 70A.530*)
- c.** Upon Request Giving, the practice of asking customers if and how much they need of disposable items, such as a bag, cutlery, napkins, and condiments. Concessionaires must not automatically include single-use items in an order without verbal confirmation from a customer. (*RCW 70A.245.080*)
- d.** Unbundled utensils (concessionaires may not provide packaged cutlery, instead utensils must be provided individually upon customer request).
- e.** Participation in the Airport's recycling program
- f.** Participation in the Airport's coffee grounds composting program, as implemented
- g.** Use of Green Seal Certified (or equivalent certification) cleaning supplies
- h.** Implementation of technology to offer non-printed/paperless receipts
- i.** Implementation and use of water and energy efficient appliances
- j.** Confirmation that all employees are trained in the sustainability requirements of concession operations at the Airport

- k. Comply with and, where possible, exceed all local, state, and federal sustainability, environmental, energy and water regulations, and other relevant requirements
- l. Participation in and support of all future required Airport sustainability programs and practices implemented during the term of the Concession Lease

## **B. Voluntary Sustainability Practices**

- a. Participation in a food recovery program and/or donation of unused and unsold retail products
- b. Bulk packaging of condiments instead of individual packets
- c. QR code menus (a small number of printed menus should be maintained for customers without access to QR codes)
- d. Food service locations may strive for certification through the Green Restaurant Association
- e. Adopt green procurement policies, including but not limited to the procurement of locally-sourced and/or organic food options where available and sustainable brands and retail products
  - i. Locally-sourced is defined as products grown, produced, or developed within the states of Washington and Idaho.

## Appendix A

# Washington State Bag Requirements

For Retailers, Grocers, Restaurants, and other Businesses



**NO**  
**Single-use Plastic**  
**Carryout Bags**



**8¢ charge**  
**Large Paper**  
**Carryout Bags**  
Made with 40% recycled content. Charges must be retained by the business



**8¢ charge**  
**Thick Reusable Plastic**  
**Carryout Bags**  
Made with 20% recycled content and a minimum of 2.25 mil thick film. Charges must be retained by the business



**Charge optional**  
**Compostable Carryout**  
**Bags Allowed but**  
**Not Recommended**  
Green or brown tinted film bags **must** be compostable.

### Other bags **ALLOWED**:



**Durable**  
**Reusable Bags**



**Small Paper Bags**



**Produce, Meat, Bulk Foods,**  
**Bakery Goods, etc.**



**Flowers, Drycleaning,**  
**Newspaper Bags, etc.**



bagban@ecy.wa.gov | (360) 407-6000  
Ecology.wa.gov/Bag-Ban



**Seattle**  
**Public**  
**Utilities**



SPU Green Business  
Program providing support  
to Seattle businesses.

GreenBusiness@Seattle.Gov | (206) 343-8505  
seattle.gov/utilities/GreenYourBusiness

# Details of the Washington State Bag Law

## Grocery and Retail Notes

- Stores may not provide customers with single-use plastic carryout bags.
- The bag ban applies to restaurants, grocery stores, retail stores, convenience stores, farmers markets, food trucks, temporary stores, and home delivery services. Food banks are exempt.
- If you have questions about whether your business must comply with this ban, please contact [bagban@ecy.wa.gov](mailto:bagban@ecy.wa.gov).
- Stores must charge a minimum charge of 8 cents for large paper bags. (1/8 barrel paper bags 882 cubic inches or larger) and reusable plastic bags (2.25 mil or thicker).
- The large paper bags for which customers are charged must contain at least 40% postconsumer recycled content with the bag's postconsumer recycled content printed on the outside of the bag.
- The reusable plastic film bags for which customers are charged must contain at least 20% postconsumer recycled content with the minimum percentage of postconsumer recycled content, the mil thickness, and the word "Reusable" printed on the outside of the bag.
- Stores may provide smaller paper bags. Charge is optional.
- The bag charge is a taxable retail sale and must be shown on a receipt provided to the customer. Stores must keep all revenue from bag charges.
- Stores may provide certified compostable carry-out bags. Charge is optional.
- Any green or brown tinted film bag must be compostable.
- Stores may not provide customers with bags with misleading labels such as "biodegradable," "degradable," "decomposable" or similar.
- Stores may provide customers with in-store plastic or compostable bags.
- Bags allowed for use by customers in stores include those used for bulk items, produce, meat, or other items such as: hardware, frozen foods, flowers and plants, unwrapped prepared foods, bakery goods, and prescription drugs.
- Individuals may report businesses that are not in compliance with the ban using an online form provided by Department of Ecology.
- Businesses may not charge the bag charge to customers using/showing a voucher or benefits card (SNAP, WIC, TANF, FAP).

## Questions?

[baginfo@ecy.wa.gov](mailto:baginfo@ecy.wa.gov) or (360) 407-6000

**Help your  
customers protect  
the environment  
and reduce  
plastic litter.**



Visit the WA Ecology website to view, customize, and print educational BYOB items today.

[ecology.wa.gov/bag-ban](http://ecology.wa.gov/bag-ban)

[Ecology.wa.gov/Bag-Ban](http://Ecology.wa.gov/Bag-Ban)