
**DRAFT – TO BE FINALIZED UPON
COMPLETION OF RFP PROCESS**

MASTER RETAIL DEVELOPMENT,
MANAGEMENT
AND LEASING AGREEMENT

by and between

AMERICAN AIRLINES, INC.

and

Dated as of _____

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MASTER RETAIL DEVELOPMENT,
MANAGEMENT
AND LEASING AGREEMENT

THIS MASTER RETAIL DEVELOPMENT, MANAGEMENT AND LEASING AGREEMENT (together with all exhibits and attachments, this “Agreement”) is entered into this [●], 2022 but is effective as of the [●], 2022 (the “Effective Date”) by and between AMERICAN AIRLINES, INC., a Delaware corporation (“American”), and [●], a [●] (“Retail Manager”).

BACKGROUND

WHEREAS, by that certain Amended and Restated Lease No. AYB-085R, dated as of December 22, 2000 (the “Original Lease”), as amended by (i) that certain First Supplemental Agreement, dated as of July 31, 2002 (“Supplement No. 1”), (ii) that certain Second Supplemental Agreement, dated as of November 8, 2005 (“Supplement No. 2”), (iii) that certain Third Supplemental Agreement, dated as of December 1, 2005 (“Supplement No. 3”), (iv) that certain Fourth Supplemental Agreement, dated as of June 16, 2016 (“Supplement No. 4”), and (v) that certain Fifth Supplemental Agreement, dated as of June 1, 2020 (“Supplement No. 5,” and together with the Original Lease, Supplement No. 1, Supplement No. 2, Supplement No. 3, Supplement No. 4, and any previous or future amendments or modifications thereto, the “Lease”), American leased from The Port Authority of New York and New Jersey (the “Port Authority”) certain premises and facilities, which premises are shown on Exhibit A to this Agreement (the “Premises”), at John F. Kennedy International Airport, Jamaica, New York 11436 (the “Airport”) known as Terminal 8 (the “Terminal”);

WHEREAS, American is currently operating the Premises in accordance with the Lease, and this Agreement is subject to and subordinate to the Lease in all respects;

WHEREAS, American desires, subject to the prior written approval of the Port Authority in accordance with Section 2.4.3 below, to allow Retail Manager to develop, lease, manage, and market a portion of the Premises for concession purposes;

WHEREAS, the portion of the Premises which is identified on Exhibit B-1 to this Agreement including the specified Subtenant Premises and designated common areas shown thereon is the existing concession area (the “Existing Concession Area”) and the portion of the Premises which is identified on Exhibit B-2 to this Agreement including the specified Subtenant Premises and designated common areas shown thereon is the proposed concession area (as the same may be expanded, contracted or relocated in accordance with the provisions of this Agreement, the “Proposed Concession Area”), in accordance with the terms and conditions set forth in this Agreement and the Lease;

[WHEREAS, as an essential additional inducement for American to enter into this Agreement, Retail Manager’s parent corporation, [●], is willing to enter into a Guaranty Agreement substantially in the form of Exhibit H attached to this Agreement guaranteeing Retail Manager’s performance of this Agreement;] and

WHEREAS, Retail Manager desires to develop, lease, manage and market the Concession Area at the Premises in accordance with the terms and conditions set forth in this Agreement and the Lease;

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NOW, THEREFORE, for and in consideration of these premises and the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE 1

DEFINITIONS

Section 1.1 Definitions. As used in this Agreement, the following terms have the meanings set forth below:

“AA Security Deposit” means the amount required to be constituted and maintained by Retail Manager to secure all payments and reimbursements to and indemnification of American for which Retail Manager is responsible under this Agreement. The initial amount of the AA Security Deposit as of the Effective Date shall be [●]. The AA Security Deposit may be adjusted for any subsequent calendar year during the Term as further detailed in Section 4.10. The form of the AA Security Deposit shall be, at Retail Manager’s option, either (i) cash paid to American, which American will deposit in a separate interest-bearing bank account for this purpose, with the interest being credited to Retail Manager for subsequent increases in the AA Security Deposit or paid out to Retail Manager if the AA Security Deposit is reduced or does not vary in accordance with Section 4.10, or (ii) a standby, irrevocable letter of credit issued to American on behalf of Retail Manager by a financial institution reasonably acceptable to American with offices in New York City which may be drawn down for direct payment by simple written notice from American, indicating the amount of the defaulted payment, and otherwise in form and substance reasonably acceptable to American. The costs of a letter of credit will be for the sole account of Retail Manager.

“Additional Payment Obligations” has the meaning given in Section 4.11.

“Additional Port Authority Requirements” means, collectively, any permits, documents and requirements (other than the Lease and the Operator Permit) as have been or may hereafter be required by the Port Authority in connection with the development, construction, leasing, management, marketing and operation of the Concession Area.

“Affiliate” means, with respect to any Person, any other Person, directly or indirectly, through one or more intermediaries, who or which Controls, is Controlled By or is Under Common Control With such Person.

“Agreement” has the meaning given in the Preamble.

“Airport” has the meaning given in the Recitals.

“Airport Concession Disadvantaged Business Enterprise” or “ACDBE” has the meaning given in Section 11.5.1(A)(i).

“Airport Rules & Regulations” means [●].

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“Alteration Application” means the Tenant Alteration Application (PA 531), as the same may be amended, modified, supplemented or substituted, from time to time, by the Port Authority.¹

“American” has the meaning given in the Preamble.

“American’s Allocated Share” has the meaning given in Section 4.6.

“American Reserved Uses” means, collectively, the following uses, operations or installations reserved by American:

- (A) automated teller machines, automated banking and similar financial services;
- (B) insurance and travel services;
- (C) display racks for copies of publications by American or any of its Affiliates;
- (D) (i) private lounges or clubs intended for the use of passengers and (ii) a potential cafeteria, vending machines or other food service area intended for the exclusive use of American’s work force;
- (E) terminal wayfinding and informational signage in and on any food courts and/or food halls or other areas that are open to the public and are deemed to be “common areas” by American; and
- (F) any other uses of the Concession Area by American (other than those explicitly set forth in the Concession Program, e.g., food and beverage, specialty retail stores, news/convenience, duty free, foreign currency exchange, etc.), in areas that are (i) open to the public and not leased exclusively by either American or Retail Manager to any third party, (ii) deemed “common areas” by American, and (iii) that are not comprised of any portion of any Subtenant Premises.

“Applicable Law” or “Applicable Laws” shall mean any statute, law, code, regulation, ordinance, rule, common law, judgment, judicial or administrative order, decree, directive or other requirement having the force of law or other governmental restriction (including those resulting from the initiative or referendum process) or any similar form of decision of or determination by any Governmental Authority (including any applicable regulation, order or statement of policy of the Administrator of the FAA or any other governmental officer or body having jurisdiction over the enforcement of the obligations of the Port Authority under federal law), including any Environmental Requirements, whether taking effect before or after the Effective Date, in each case, as amended, revised,

¹ The form of the Alteration Application is currently located at <https://www.panynj.gov/content/dam/port-authority/pdfs/tenant-construction-and-alteration-process/PA%20531.pdf>

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supplemented or otherwise modified from time to time. For the avoidance of doubt, the term “Applicable Laws” includes FAA Grant Assurances, TSA-issued requirements, Passenger Facility Charge (PFC) Program assurances and decisions and the Airport’s operating certificate, but excludes the Applicable Standards.

“Applicable Standards” shall mean (i) the Rules and Regulations, (ii) Good Order Requirements, (iii) that certain Airport Security Guidelines Manual for Port Authority of New York and New Jersey Airports promulgated by the Port Authority, (iv) that certain Port Authority Tenant Construction and Alteration Process (TCAP) Manual, and (v) all applicable codes, standards, regulations, manuals, references, guidelines, policies, specifications, handbooks and advisory circulars, including such codes, standards, regulations, manuals, references, guidelines, policies, specifications, handbooks, advisory circulars and similar documents referenced within this Agreement issued or published by the Port Authority or a Governmental Authority and any similar applicable documents referenced in the Lease, as amended, revised, supplemented or otherwise modified from time to time.

“Assignment and Assumption Agreement” has the meaning given in Section 3.3.

“Assistant Concession Manager” has the meaning given in Section 7.2.4.

“Base Building” means the subflooring, ceiling structure, demising walls, utilities (including all conduits, lines, pipes, etc.), infrastructure and other base building improvements, structures and fixtures located in the Concession Area, including floor, heating ventilating and air conditioning systems (“HVAC”), fire alarm system, fire sprinkler system, water, waste water and sewer, etc. and any other utility services for the intended general concessions uses of the Subtenant Premises.

“Bond Financing” means (i) the issuance of the New York Transportation Development Corporation Special Facility Revenue Refunding Bonds, Series 2016 (American Airlines, Inc. John F. Kennedy International Airport Project), the New York Transportation Development Corporation Special Facility Revenue Refunding Bonds, Series 2020 (American Airlines, Inc. John F. Kennedy International Airport Project) and the New York Transportation Development Corporation Special Facility Revenue Bonds, Series 2021 (American Airlines, Inc. John F. Kennedy International Airport Project), including the financing and security documents executed and delivered in connection therewith (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Bond Documents”), (ii) the issuance of any additional bonds pursuant to the Bond Documents, including the financing and security documents executed and delivered in connection therewith, and (iii) the issuance of any other bonds or other indebtedness to refinance any of the bonds referenced in clause (i) or (ii), above, including the financing and security documents executed and delivered in connection therewith, and in each case which may be secured by a mortgage of American’s leasehold interest in the Terminal, including without limitation the Concession Area.

“Business Day” means any day other than a Saturday, Sunday or a day on which banking institutions in New York, New York are authorized or obligated by law or executive order to be closed.

“Business Statistics Report” has the meaning given in Section 12.4.

“Claims” has the meaning given in Section 15.1.1.

“Common Area Maintenance Fee” means an amount to be invoiced as a separate line item and collected from Subtenants by Retail Manager for the purpose of reimbursing, without profit, all of Retail Manager’s actual and commercially reasonable out-of-pocket expenses incurred in order to maintain and

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service the food court public and/or food hall seating areas and other designated common areas of the Concession Area. These expenses include, without limitation: floor cleaning (sweeping and mopping) and storefront cleaning services and cleaning of food court amenities, furnishings and equipment; management of the truck docks for Subtenant deliveries and distribution and delivery vehicle escort services; trash removal; and food court chairs and tables. Retail Manager will implement an equitable and reasonable formula to calculate and allocate this fee among relevant Subtenants (e.g., per square feet, by concession type).

“Commencement Date” has the meaning given in Section 3.1.

“Conceptual Plans” has the meaning given in Section 5.2.1.

“Concession Area” means (i) until any portion of the Existing Concession Area, which is not also a part of the Proposed Concession Area, is vacated by any Subtenant and until any Concession Area Work required in such portion of the Existing Concession Area pursuant to the Development Plan or Transition Plan or otherwise to restore such area to a condition matching the surrounding areas of the Terminal has been completed, the Existing Concession Area together with the Proposed Concession Area and (ii) thereafter, the Proposed Concession Area.

“Concession Area Base Work” means all Concession Area Work which is not Subtenant Premises Work, which shall include alterations and improvements made to the Base Building and common areas within the Concession Area, including, without limitation, installation of lighting and flooring, removal of moving walkways in the concourses, preparation work to the Base Building located within the Concession Area for the Subtenant Premises Work, common area seating in the Food Court and other common areas within the Concession Area and any other items required pursuant to, or necessary to implement, the Development Plan and the Transition Plan.

“Concession Area Work” has the meaning given in the definition of “Work” in this Section 1.1.

“Concession Manager” means an employee of Retail Manager charged with the responsibility to manage and oversee the day-to-day operations and management of the Concession Area and the Concession Program, as further explained in Section 7.2.3.

“Concession Program” has the meaning given in Section 7.3.

“Concession Program Standards” has the meaning given in Section 7.1.

“Concession Solicitations Process” means the detailed competitive solicitation process to procure qualified Subtenants for the Concession Area as described in clause (x) of Section 7.3 as approved by the Port Authority and American.

“Concession Standards Checklist” has the meaning given in Section 7.3.

“Construction Cost” has the meaning given in Section 5.2.3.

“Construction Permit” means a construction permit, or other Port Authority authorizing document, issued by the Port Authority, permitting certain work to be performed at the Concession Area in accordance with the terms thereof.

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“Contract” means any agreement, and any supplement or amendment thereto, between Retail Manager and a Contractor, and any Contractor and any other Person at all tiers, to perform any part of the Concession Area Work or the operations of the terminal or provide any materials, equipment or supplies for any part thereof.

“Contractor” means any Person with whom Retail Manager has entered into any Contract, and any other Person with whom any Contractor has further subcontracted any part of the Work or the operations and maintenance of the Concession Area, at all tiers.

“Control” means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise (including any entity in which a Person (including any general or limited partner, managing and non-managing member or shareholder of such Person) has an ownership interest); and the terms “Controls”, “Controlled By” and “Under Common Control With” shall have the meanings correlative to the foregoing.

“CPI-U” means the Consumer Price Index for all Urban Consumers, New York-Northern New Jersey-Long Island, NY-NJ-CT (All Items, unadjusted 1982-84 = 100) published by the Bureau of Labor Statistics of the United States Department of Labor.

“Customer Service Standards Manual” means [●].

“Depreciation Schedule” means a schedule reflecting the monthly amortization of the Eligible Costs for Fixed Improvements installed or Refurbishments made by Retail Manager (for its office) and/or by a Subtenant in the Concession Area, which schedule must be approved by American and shall reflect amortization on a straight-line basis during the lesser period of either (i) the useful life of such Fixed Improvement or Refurbishment, calculated in accordance with GAAP or (ii) the length of time remaining in this Agreement or the respective Sublease from the date such Fixed Improvement or Refurbishment is completed and begins to be depreciated. Any schedule submitted by Retail Manager or Subtenants for this purpose shall not be deemed a “Depreciation Schedule” until such schedule is approved by American, which approval shall not be unreasonably withheld, delayed or conditioned. If American does not respond at all within thirty (30) days of the submission of a Depreciation Schedule, the schedule shall be deemed accepted and approved by American. Whenever a Depreciation Schedule is accepted by American for Refurbishments, any un-amortized investment in or Depreciation Schedule for replaced or affected prior Fixed Improvements (or prior Refurbishments, as the case may be) shall be deemed eliminated for the purposes of this Agreement.

“Design Guidelines” has the meaning given in Section 7.4.1.

“Development Plan” has the meaning given in Section 6.1.9.2.

“DOT” means the United States Department of Transportation, and any successor agency, office or department thereto.

“Early Termination” has the meaning given in Section 3.2.

“Effective Date” has the meaning given in the Preamble.

“Eligible Costs” means, with respect to any investment in Fixed Improvements or Refurbishments, the following: (i) directly contracted construction costs, (ii) architectural and

engineering fees, construction management fees and the cost to obtain the applicable permits, which amounts under this clause (ii) shall not exceed twelve percent (12%) of the contracted construction costs, unless otherwise approved by American in writing, (iii) permanent fixtures, including any furniture and equipment and custom-built “trade fixtures” which constitute fixtures under applicable law, installed for direct use in the Concession Area, and (iv) amounts for tenant improvements which Retail Manager is otherwise obligated to reimburse a Subtenant under an approved Sublease and Depreciation Schedule as the result of the termination of such Sublease without cause by American or the Port Authority, or Retail Manager at either of American’s or the Port Authority’s request. Notwithstanding the foregoing, the definition of Eligible Costs may not include: (a) costs in excess of one hundred ten percent (110%) of the estimated costs for Fixed Improvements provided by Retail Manager to American as part of the preliminary deal approval to be sought in respect of any individual prospective Subtenant under Section 6.1.3, unless otherwise specifically approved by American in writing, (b) any overhead, financing costs (e.g., loan origination fees or interest, legal fees or any non-construction-related cost), or (c) amounts paid to any Affiliate of Retail Manager or Subtenant. In addition, to qualify as Eligible Costs, disbursements must be supported by the certificate referenced in Section 5.2.4 and the documentary evidence of payment as described in Section 5.2.5. For the purposes of early termination of this Agreement, Retail Manager’s Eligible Costs shall include Retail Manager’s actual and reasonable costs for the items described in sub-clauses (i)-(iii) above, approved in advance in writing by American, for Fixed Improvements to office space in the Concession Area allocated to Retail Manager under this Agreement, which may not exceed One Hundred and Twenty Five Dollars (\$125.00) per square foot (unless otherwise specifically approved by American in writing), and which must otherwise be in compliance with the procedures applicable to Subtenant Fixed Improvements in this Agreement.

“Enplaned Passenger” means any passenger determined by American to have boarded an aircraft at the Terminal, including passengers who may disembark and re-board the same aircraft as part of the same flight itinerary, but excluding passengers, such as international in-transit passengers, from international flights who are restricted from exposure to the Concession Area.

“Environmental Requirements” means all common law and all past, present and future laws, statutes, enactments, resolutions, regulations, rules, directives, ordinances, codes, licenses, permits, orders, memoranda of understanding and memoranda of agreement, guidances, approvals, plans, authorizations, concessions, franchises, requirements and similar items of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, all pollution prevention programs, “best management practices plans,” and other programs adopted and agreements made by the Port Authority (whether adopted or made with or without consideration or with or without compulsion), with any government agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof, and all judicial, administrative, voluntary and regulatory decrees, judgments, orders and agreements relating to the protection of human health or the environment, the foregoing to include without limitation:

- i. all requirements pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Substances into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Substances, or the transfer of property on which Hazardous Substances exist;
- ii. all requirements pertaining to the protection from Hazardous Substances of the health and safety of employees or the public; and

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- iii. the Atomic Energy Act of 1954 , 42 U.S.C. Section 2011 et seq.; the Clean Water Act also known as the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.; the Clean Air Act, 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq.; the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), Section 2701 et seq.; Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001 et seq.; the Occupational Safety and Health Act, 29 U.S.C. Section 651 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; the Safe Drinking Water Act of 1974, 42 U.S.C. Sections 300f-300h-ll et seq.; the Oil Pollution Act, 33 U.S.C. Section 2701 et seq.; the National Environmental Policy Act, 42 USC Section 4321 et seq.; the State Environmental Quality Review Act (SEQRA), NY ECL Section 8-0101 et seq.; the New York State Environmental Conservation Law; the New York State Navigation Law; together, in each case, with any amendment thereto, and the regulations adopted, guidances, memoranda and publications promulgated thereunder and all substitutions thereof and any other analogous current or future federal, state municipal, city or local laws;

and in the event that there shall be more than one compliance standard, the standard for any of the foregoing shall be that which requires the lowest level of a Hazardous Substance.

“EPA” means the United States Environmental Protection Agency, and any successor agency, office or department thereto.

“Excluded Area” has the meaning given in Section 2.1.

“Existing Concession Area” has the meaning given in the Recitals.

“Existing Tenant(s)” means the existing subtenants that are the subject of the leases described on Exhibit D.

“Expiration Date” has the meaning given in Section 3.1.

“FAA” means the United States Federal Aviation Administration, and any successor agency, office or department thereto.

“Final Drawings” has the meaning given in Section 5.2.1.

“Fixed Improvements” means the permanent improvements, structures and fixtures installed by Retail Manager and/or by Subtenants in the Concession Area, including, without limitation, to any portions of the Base Building located in the Concession Area, in Retail Manager’s office, to prepare a locale for issuance of an occupancy permit and otherwise finish it out for the operations of a given Subtenant, and any Refurbishments which may be made subsequently in accordance with Section 8.5. Fixed Improvements may include, but are not limited to, finish-out work on floors, ceilings, demising walls and store facades, storefront signage, the panel box and hook-ups to utilities wires and conduits infrastructure, decorations, shelves, counters, lighting and interior design and construction work necessary in general to accommodate the operation of a specific Subtenant, or by Retail Manager in

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office space in the Concession Area allocated to Retail Manager, all as approved in accordance with Section 5.2.

“Food Court” means, any “food court,” “food hall” or any other designated common areas within the Concession Area out of which Restaurant Operators operate and which includes all associated seating areas and support areas.

“Force Majeure” means, strictly in relation to the conditions that may cause a party to be temporarily, partially or wholly prevented from performing its obligations to the other party under this Agreement, and not for any other purpose or for any benefit of a third party: (i) strikes, boycotts, lockouts, labor disputes, labor disruptions, work stoppages or slowdowns, unless involving employees of American or Retail Manager; (ii) embargoes, shortages of material, acts of God, acts of the public enemy, acts of a governmental authority (including, without limitation, the FAA, the DOT, the TSA and the EPA or defense authorities), extreme weather conditions, riots, rebellion, or sabotage, war (declared or undeclared), invasion, insurrection, or terrorism; (iii) failure by the Port Authority to perform its obligations under the Lease or the Operator Permit or other acts or omissions of the Port Authority, except as otherwise provided in Section 5.2.2; or (iv) any other circumstances for which an affected party is not responsible and which are not within its ability to control in the exercise of commercially reasonable efforts; provided in no event shall an event of Force Majeure excuse timely payment of amounts due under this Agreement.

“Four-Party Subtenant Consent Agreement” means a four-way permit, a consent agreement or such other document(s) as may be prescribed by the Port Authority, by and among the Port Authority, American, the applicable Subtenant, and Retail Manager.

“GAAP” means generally accepted accounting principles in the United States of America, as set forth in the opinions and pronouncements of the American Institute of Certified Public Accountants’ Accounting Principles Board and Financial Accounting Standards Board or in such other statements by such other entity as may be in general use by significant segments of the accounting profession, to the extent such principles are applicable to the facts and circumstances on the date of determination.

“General Manager’s Bulletins” means [●].

“Good Order Requirements” means actions instituted by the Port Authority to preserve, maintain, improve or restore good order at the Airport, which result in, or alleviate circumstances which derogate from, the Port Authority’s ability to (i) provide predictable, consistent or non-discriminatory service to Airport users or (ii) mitigate the risks that chaotic or uncontrolled situations arise on Airport premises which may, in the Port Authority’s sole discretion, lead to unsafe or insecure conditions. A change which provides only an economic advantage to the Port Authority and serves no public purpose, and does not enhance the operations or efficiency of operating the Airport, whatsoever, will not be considered to require “good order” actions.

“Governmental Authority” means any federal, state, municipal and other governmental authority of any state, nation or government, except that they shall not be construed to include the Port Authority.

“Gross Receipts” means and includes all monies paid or payable to each and every Subtenant (which term includes, for the purposes of this definition, any permitted assignees of Subleases or sublicenses/invitees of Subtenants, and any other concessionaires or occupants who may be permitted to conduct concession operations within the Concession Area) whether for cash, credit or otherwise, for sales made or services rendered at or from the Terminal or Airport regardless of when or where the order

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therefor is received and outside the Terminal or Airport if the order is received at the Terminal or Airport, retail display allowances or other promotional incentives (the gross amounts thereof, not net of expenses) received from vendors, suppliers or manufacturers and other revenues of any type arising out of or in connection with any Subtenant's operations at the Terminal or Airport, including, without limitation: proceeds from the sale of gift and merchandise certificates (but only when such certificates are treated as a sale from Subtenant Premises pursuant to a Subtenant's record keeping system), mail, catalogue (as further explained below), closed circuit television, computer, other electronic or telephone orders received or filled; deposits not refunded to purchasers, orders taken at the Concession Area (although such orders may be filled elsewhere); sales through vending machines or other devices; the spread earned on any exchange or foreign currency transactions whether as a currency exchange service or in connection with the sale of merchandise or services; and all insurance proceeds received due to loss of gross earnings under any Subtenant's business interruption insurance coverage. Catalogue sales generated from catalogues distributed from Subtenant Premises will be included in Subtenant's calculation of Gross Receipts. For this purpose, catalogues displayed in Subtenant Premises will include a tracking number unique to the Subtenant Premises that allows for an auditable method for tracking such sales. A "sale" shall be treated as consummated for the purposes of this definition, and the entire amount of the sales price shall be included in Gross Receipts and deemed received at the time of determination of the amount due for each transaction, whether for cash, credit or otherwise, and not at the time of billing or payment. No deduction shall be allowed for uncollected or uncollectible credit accounts or "bad" checks. Gross Receipts shall not include: (a) Any sums collected for any federal, state, county and municipal sales taxes, so-called luxury taxes, use taxes, consumer excise taxes, gross receipts taxes and other similar taxes now or hereafter imposed by law upon the sale of merchandise or services but only if separately stated from the sales price and only to the extent paid by Subtenants to any duly constituted governmental/taxing authority; (b) The exchange of merchandise between the stores or warehouses owned by or affiliated with any Subtenant, if any, where such exchanges of goods or merchandise are made solely for the convenient operation of the business of such Subtenant and not for the purpose of consummating a sale which has theretofore been made at, in, from or upon the Concession Area or for the purpose of depriving American or the Port Authority of the benefit of the sale which otherwise would be made at, in, from or upon the Concession Area; (c) The amount of any cash or credit refund made upon any sale where the merchandise sold, or some part thereof, is thereafter returned by a purchaser and accepted by the Subtenant to which it is returned; (d) The proceeds of sale of fixtures, equipment or other items of property which are not stock in trade and not in the ordinary course of any Subtenant's business; (e) Any receipts of a Subtenant which arise from its operations under any other agreement with American or the Port Authority at the Airport and are subject to a percentage fee or percentage rent under that agreement, (f) Shipping, delivery, alteration workroom and gift wrapping charges if there is no profit to a Subtenant and such charges are merely an accommodation to customers; (g) Receipts in the form of refunds from or the value of merchandise, services, supplies or equipment returned to vendors, shippers, suppliers or manufacturers including volume discounts received from a Subtenant's vendors, suppliers or manufacturers; (h) income actually received by a Subtenant from manufacturers of goods displayed for sale at the Subtenant's Premises (e.g., cosmetics, perfume) if the following conditions are fully and strictly satisfied with respect to such income: (i) the manufacturer specifically identifies the time period to which the income relates, reimbursement from the manufacturer to the Subtenant in connection with employees (1) who are on the Subtenant's payroll for the operations permitted under the respective Four-Party Subtenant Consent Agreement and (2) who are on such payroll during the time period to which the reimbursement relates, (iv) the manufacturer and the Subtenant have previously entered into a written agreement which sets forth the material terms of their arrangement with regard to the reimbursement arrangement which is the subject of this clause (h), and (v) the Subtenant provides to the Port Authority written documents and records substantiating the matters listed in sub-clauses (i) through (iv). Without limiting the generality of the foregoing, any and all income which would otherwise qualify as being excludable from Gross Receipts for purposes of this Agreement shall be

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includable in gross receipts if and to the extent that the income from the manufacturer which is associated with an identified employee during a calendar year exceeds such identified employee's base salary for the same calendar year. Such determination shall be made separately with respect to each employee of the Subtenant and with respect to each calendar year; (i) Customary discounts given by a Subtenant on sales of merchandise or services to its own employees, if separately stated, and limited in amount to not more than one percent (1%) of Gross Receipts per month; (j) Mandatory discounts, if separately stated, of ten percent (10%) given by Subtenants on sales of merchandise or services to employees of Retail Manager, American, the Port Authority, other airline lessees in the Terminal, and other persons employed at the Terminal; (k) Gratuities for services performed by employees of a Subtenant which are paid by a Subtenant or its customers to such employees, except to the extent Subtenant may be entitled to receive a portion of such gratuities; (l) The sale or transfer in bulk of the inventory of a Subtenant to a purchaser of all or substantially all of the assets of such Subtenant in a transaction not in the ordinary course of such Subtenant's business; and/or (m) Except with respect to insurance proceeds received due to loss of gross earnings under any Subtenant's business interruption insurance coverage as provided above and/or insurance proceeds that may be payable to American or the Port Authority under such coverage, receipts from all other insurance proceeds received by a Subtenant as a result of a loss or casualty.

"Hazardous Substances" means any pollutant, contaminant, toxic or hazardous waste, dangerous substance, noxious substance, toxic substance, flammable, explosive radioactive material, urea formaldehyde foam insulation, asbestos, polychlorinated biphenyls ("PCBs"), radon, chemicals known to cause cancer, endocrine disruption or reproductive toxicity, petroleum and petroleum products, fractions, derivatives and constituents thereof, of any kind and in any form, including without limitation oil, petroleum, fuel, fuel oil, sludge, crude oil, gasoline, kerosene, and mixtures of, or waste materials containing any of the foregoing, and other gases, chemicals, materials and substances which have been or in the future shall be declared to be hazardous or toxic, or the removal, containment or restriction of which have been or in the future shall be required, or the manufacture, preparation, production, generation, use, maintenance, treatment, storage, transfer, handling or ownership of which have or in the future shall be restricted, prohibited, regulated or penalized by any federal, state, county, or municipal or other local statute or law now or at any time hereafter in effect as amended or supplemented and by the regulations adopted and publications promulgated pursuant thereto.

"Joint Marketing Fund" has the meaning given in Section 7.5

"Joint Marketing Fund Fee" has the meaning given in Section 7.5.1.

"Late Interest" means the lower annual interest rate, compounded monthly, of (i) the Prime Rate plus five percent (5%), or (ii) the highest rate allowed under applicable law.

"Lease" has the meaning given in the Recitals.

"Local Business Enterprise" or "LBE" has the meaning set forth in Exhibit K.

"Management Fee" has the meaning given in Section 4.12.

"Metro Area" means the Greater New York City-Northern New Jersey Metropolitan Area.

"Minimum Guaranteed Rental" means [●].

"Minimum Guaranteed Rental Shortfall" means [●].

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“Minimum Guaranteed Rental Effective Date” has the meaning given in Section 4.5.

“Minimum Standards” has the meaning given in Section 7.2.

“Minimum Wage Policy” has the meaning given in Section 7.8.1.

“Minority” has the meaning given in Exhibit J.

“Minority Business Enterprise” or “MBE” means any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business at least fifty-one percent of the stock of which is owned, by citizens or permanent resident aliens who are minorities and such ownership is real, substantial and continuing.

“Monthly Rental Statement” has the meaning given in Section 12.1.3(A).

“Operating Expenses” has the meaning given in Section 8.1.

“Operator Permit” means an agreement executed by and between Retail Manager, the Port Authority and, if required by the Port Authority, consented to by American, containing, among other things, the Port Authority’s consent to the transactions contemplated by this Agreement and its approval of Retail Manager.

“OSHA” means the United States Occupational Safety and Health Administration, and any successor agency, office or department thereto.

“Person” means and includes an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department, authority or agency thereof.

“Plans” means the completed set of architectural working plans, drawings and specifications and engineering drawings and specifications prepared by the architect/engineer of record for the construction of approved Final Drawings in respect of Fixed Improvements or Refurbishments, which shall include the specific phases of construction.

“Point-of-Sale Data” has the meaning given in Section 12.3.

“Point-of-Sale Systems” has the meaning given in Section 12.3.

“Point-of-Sale Terminal” has the meaning given in Section 12.2.

“Port Authority” has the meaning given in the Recitals.

“Port Authority Design Guidelines” means the Port Authority Design Guidelines promulgated by the Port Authority and which are currently set forth at <https://www.panynj.gov/port-authority/en/business-opportunities/engineering-available-documents.html>, as the same may be amended, modified or supplemented from time to time.

[“Port Authority Reserved Uses” means, collectively, the following uses, operations or installations reserved by the Port Authority:

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- (A) advertising (including, without limitation, static display, broadcast and other), other than American's right to retain control of the placement of the particular advertising within the Concession Area and the right to reject any proposed advertising at the Concession Area;
- (B) pay telephones, pre-paid phone cards, facsimile transmission machines and other public communications services, provided that American shall have the right to control the placement of telephones, phone banks, phone kiosks, facsimile transmission machines and other public communications services (e.g., internet kiosks) within the Concession Area, and the right to deny upon reasonable grounds the placement of any particular pay phone facility, facsimile transmission machine or public communications service;
- (C) ground transportation (including vehicle rentals) reservations; and
- (D) provision of on-airport baggage carts (other than shopping carts made available free of charge to shoppers within the Concession Area) or other on-airport baggage-moving devices, provided that American shall retain the right to control the placement of baggage cart stations within the Concession Area and the right to reject any on-airport baggage carts at the Concession Area.]

"Port Authority's Allocated Share" has the meaning given in Section 4.6.

"Port of New York District" has the meaning given in Article II of the Compact under which the Port Authority was established.

"Predecessor Concession" has the meaning given in Section 6.1.1(Z).

"Premier World-Class Retail Program" means a program that consistently scores within the top ten percent (10%) of industry-recognized surveys, including, without limitation, the International Airline Transport Association (IATA) Airport Monitor and any Port Authority-sponsored surveys, which contain evaluations or ratings of passenger terminal retail programs, or specific components thereof, of the same type or class as the Concession Area.

"Premises" has the meaning given in the Recitals.

"Prime Rate" means the average interest rate per annum published in the national edition of the *Wall Street Journal* "Money Rates" section as of a relevant date of determination under this Agreement. If the *Wall Street Journal* ceases to publish such an average prime rate, the rate shall be such prime rate established by the commercial bank having an office in the City of New York with the highest net worth, and which is a member of the New York Clearing House Association, then establishing and publishing a prime rate, and if no such commercial bank shall establish a prime rate, the rate to be used for the purposes of this definition shall be a comparable rate for the purposes of establishing the cost of money as reasonably determined by American.

"Proposed Concession Area" has the meaning given in the Recitals.

"Refurbishments" shall mean the repair, replacement or upgrade of Fixed Improvements as required and approved under Section 8.5.

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“Rental” has the meaning given in Section 4.1.

“Reserved Uses” means, collectively, the American Reserved Uses and the Port Authority Reserved Uses.

“Retail Manager’s Allocated Tax Share” means the proportion which the total number of square footage in the Concession Area, excluding any square footage devoted to Reserved Uses, bears to the total number of square footage at the Premises from time to time, which proportion shall be expressed as a fraction, the numerator of which is the total net number of square footage at the Concession Area, as adjusted for any space dedicated to Reserved Uses, and the denominator of which is the total number of square footage at the Premises.

“Retail Manager” has the meaning given in the Preamble.

“Retail Manager Counterparty” has the meaning given in Section 7.8.2.

“Rules and Regulations” means all rules and regulations governing the conduct and operation of American as may be promulgated from time to time from, among other governmental authorities, the FAA, the DOT, the TSA and the EPA, and any rules promulgated from time to time by American specifically for or otherwise affecting operations in the Terminal and Concession Area, provided that American’s rules do not have an unreasonable and material adverse discriminatory impact on concession operations within the Concession Area.

“Specialty Food Operator” has the meaning given in Section 4.6.

“Street Prices” means, with respect to each Subtenant, (i) if such Subtenant conducts a similar business in off-airport location(s) in the Metro Area, one hundred ten percent (110%) of the price regularly charged by such Subtenant for the same or similar item in those off-airport locations; (ii) if such Subtenant does not conduct a similar business in off-airport location(s) in the Metro Area, one hundred ten percent (110%) of the average price regularly charged in the Metro Area by similar retailers, as determined by American, for the same or similar items; (iii) if neither such Subtenant nor any other similar retailers sell a particular item in the Metro Area, one hundred ten percent (110%) of the price regularly charged by such Subtenant or similar retailers, as determined by American, for the same or similar item in any other geographic area with a reasonable adjustment for any cost-of-living variance between such area and the Metro Area; and (iv) if such Subtenant is in the business of selling duty-free goods, one hundred ten percent (110%) of the price regularly charged by such Subtenant or other similar retailer, as determined by American, for the same or similar duty-free item at other major airports serving large urban areas in the Northeast region of the United States, including, without limitation, the Airport. All of American’s determinations described above are nevertheless subject to compliance with Port Authority street pricing policies in accordance with the Lease.

“Sublease” means a sublease, license, permit or concession agreement, or any other form of written agreement, however denominated, including any renewal or modification thereof, creating the right to use or occupy portions of the Concession Area which complies with, and was entered into in accordance with, Article 6 below.

“Sublease Required Opening Dates” means the dates to be set forth in each approved Sublease as the “Latest Rental Commencement Date.” [The targeted Sublease Required Opening Dates are identified on Exhibit [●] for specific portions of the Concession Area.]

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“Subtenant” and “Subtenants” means any Person having the right to occupy a portion of the Concession Area under a Sublease.

“Subtenant Design Handbook” means Retail Manager’s supplemental design criteria for Subtenant Premises attached as Exhibit E-1, having been approved as part of the Concession Program.

“Subtenant Premises” means the portion of the Concession Area demised to a given Subtenant pursuant to the terms and conditions of its Sublease, or yet to be demised to a Subtenant under a Sublease after the related Based Building Work has been completed. Intended Subtenant Premises locations are identified on Exhibit B-2.

“Subtenant Premises Work” means the design and construction work with respect to any Subtenant Premises required pursuant to the terms and conditions of any applicable Sublease, which design, and construction work shall be in accordance with the terms and conditions of the Development Plan and Transition Plan.

“Subtenant Rental” has the meaning described in Exhibit C.

“Target Entity” has the meaning given in Section 7.8.1.

“Taxes” means, collectively, any tax, fee, excise, levy, lien, duty, impost or similar charge assessed or imposed, including, without limitation, payments under any Taxing Agreement, and any interest penalties and additions to tax, by a governmental authority on, against or in connection with the lease, use, possession, equipping, operation or maintenance of the Concession Area, and any amounts paid or deemed paid in connection with the purchase, lease or use of goods and services at or for the Concession Area, including amounts paid or attributable to utilities generated, provided or consumed by or through Subtenants, Retail Manager, American or the Port Authority for the benefit of the Concession Area. Taxes exclude payments in lieu of taxes and federal or state taxes based on or determined by net income, net worth or American’s ongoing qualification to do business in general as a corporation (e.g., state franchise taxes).

“Taxing Agreement” means any agreement, which may be entered into after the date of this Agreement between the Port Authority and/or American and the City of New York providing for taxes to be paid to the City of New York.

“Tenant Construction Manual” means the Tenant Construction and Alteration Process Manual which is currently set forth at <https://www.panynj.gov/port-authority/en/business-opportunities/tenant-construction-and-alteration-process.html> and such other construction manuals promulgated by the Port Authority, as may be amended, modified or substituted from time to time.

“Term” has the meaning given in Section 3.1.

“Terminal” has the meaning given in the Recitals.

“Toxic or Hazardous Materials” means hazardous or toxic chemicals or any materials containing hazardous or toxic chemicals or substance at levels or content which cause such materials to be classified as hazardous or toxic as then prescribed by the highest industry standards or by the then current levels or content as set from time to time by EPA or OSHA or as defined under 29 CFR 1910 or 29 CFR 1925 or other applicable governmental laws, rules or regulations.

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“Trademark(s)” means the trademarks, trade names, logos, service marks, trade styles, trade dress and other proprietary identifying marks of American and its Affiliates, including American Eagle, Inc.

“Transition Plan” has the meaning given in Section 6.1.9.3.

“TSA” means the United States Transportation Security Administration, and any successor agency, office or department thereto.

“T8 Commencement Date” shall mean the first date of the calendar month after British Airways operationally vacates Terminal 7 at the Airport (even if certain of its assets and minor operations remain in Terminal 7) and begins operations in the Terminal Facilities.

“United States Bankruptcy Code” means Title 11 of the United States Code, 11 U.S.C. § 101, et seq., as the same may be amended from time to time, and any successor statute or statutes and all rules and regulations from time to time promulgated thereunder, and any comparable foreign laws relating to bankruptcy, insolvency or creditors’ rights or any other federal or state bankruptcy or insolvency law.

“Women-Owned Business Enterprise” or “WBE” means any business enterprise which is at least fifty-one percent owned by, or in the case of a publicly owned business at least fifty-one percent (51%) of the stock of which is owned, by women and such ownership is real, substantial and continuing.

“Work” means the operations and maintenance of the Concession Area and all other work and services provided to, or contracted for by, Retail Manager to be performed at or with respect to the Concession Area, including, but not limited to, (1) design and construction work within the Concession Area required pursuant to, or to implement, the Development Plan and the Transition Plan, including any Concession Area Base Work and any Subtenant Premises Work (the “Concession Area Work”), (2) every award, contract, subcontract, purchase or other agreement relating to the provision of goods and/or services in connection with the Concession Area Work, the operations and maintenance of the Concession Area or any other services or work to be performed at, or provided with respect to, the Concession Area, (3) professional services (including, without limitation, architectural and engineering) relating to the Concession Area Work or the operations and maintenance of the Concession Area, and (4) every award, contract, subcontract, purchase or other agreement relating to the construction and/or development of the Concession Area, and any and all goods and services furnished in connection with the foregoing.

ARTICLE 2

SUBLEASED PREMISES

Section 2.1 Sublease. American hereby subleases to Retail Manager the Concession Area upon the terms and conditions, and for the purposes, herein provided. Not included in the Concession Area is the following (collectively, the “Excluded Area”):

2.1.1 the roof, the concrete slab floor and all perimeter walls of the Concession Area, except the inner surfaces thereof and the perimeter doors and windows. American has the right to place in the Concession Area (but in such manner as to not unreasonably interfere with Retail Manager’s or the Subtenants’ use of the Concession Area, unless required to comply with American’s obligations under the Lease) utility lines, telecommunication lines, cable and satellite television lines, shafts, pipes and the like, for the use and benefit of American and other tenants in the Terminal, and to replace,

relocate, maintain and repair such lines, shafts, pipes and the like, in, over and upon the Concession Area. To the extent it is within American's control, American will use commercially reasonable efforts to cause the lines, shafts, pipes and the like to be located underneath the concrete floor slab, above the finished ceiling, within finished columns or otherwise out of public view. Such lines, shafts, pipes and the like shall not be deemed to be part of the Concession Area;

2.1.2 the portion of the Concession Area the Port Authority reserved exclusively to itself and its designees to implement, conduct, control and receive any rents, fees or profits with respect to any of the Port Authority Reserved Uses, as further described in Article 10; and

2.1.3 the portion of the Concession Area American reserved exclusively to itself and its designees to implement, conduct, control and receive any rents, fees or profits with respect to any of the American Reserved Uses, as further described in Article 10.

Section 2.2 Appurtenant Rights. Retail Manager, and Subtenants through Retail Manager, shall have, as appurtenant to the Concession Area, the rights of ingress and egress in common with others to all common areas and facilities of the Premises, and such other rights of access to the Terminal as are reasonably necessary during usual business hours. Such appurtenant rights shall be subject to such reasonable rules, regulations, including security directives, from time to time, as are established by American or the Port Authority, consistent with the Lease, by notice to Retail Manager, or by authorized regulatory agencies, and to the right of the Port Authority and American to designate and change, from time to time, areas and facilities so to be used.

Section 2.3 Contraction, Expansion, and Relocation.

2.3.1 Contraction. American may require that Retail Manager reduce the size of the Concession Area. If American shall exercise such right, (i) the portion of the Concession Area to be reduced shall cease to be leased to Retail Manager and shall no longer be subject to the terms of this Agreement and (ii) American shall use commercially reasonable efforts to identify, in its discretion, an alternative location which could replace the reduced portion of the Concession Area. If the net contraction of the Concession Area under this Section 2.3 exceeds fifteen percent (15%) of the total square footage available for Subtenant Premises as identified on Exhibit B-2 at any time during the Term, and Retail Manager demonstrates that such contraction is having a materially adverse impact on Subtenants' Gross Receipts to Retail Manager that is distinct from other conditions that may be adversely affecting the concession operations, then, at Retail Manager's request, American will engage in good faith negotiations with Retail Manager for up to ninety (90) days regarding a possible equitable reduction of the Minimum Guaranteed Rental and/or an adjustment of the Management Fee.

2.3.2 Expansion. If additional concession space becomes available in the Terminal (other than space used for Reserved Uses) then American shall determine in its sole discretion if such additional space may be included in the Concession Area, and if so, notify Retail Manager in writing specifying what type or types of concessions American believes are most suited for such space. Upon receiving such notice, Retail Manager may elect to include such space in the Concession Area. The foregoing election of Retail Manager must be exercised by written notice delivered to American no later than sixty (60) days after Retail Manager is notified by American in writing that additional space has become available. Any work to the Base Building required in such additional space to make it suitable for concession operations is the responsibility of Retail Manager, at its expense, and must be completed in accordance with any Plans and subject to the approval of American and the Port Authority, in their sole respective discretions. If there is a net expansion of the Concession Area under this Section 2.3 equal to fifteen percent (15%) or more of the total square footage available for Subtenant Premises as

identified on Exhibit B-2 at any time during the Term, and American demonstrates that such expansion is having a materially positive impact on Subtenants' Gross Receipts to Retail Manager that is distinct from other conditions that may be causing any such material increase in Gross Receipts from concession operations, then, at American's request, Retail Manager will engage in good faith negotiations with American for up to ninety (90) days regarding a possible equitable increase of the Minimum Guaranteed Rental and/or an adjustment of the Management Fee.

2.3.3 Relocation. American may require that Retail Manager relocate all or part of the Concession Area to other space within the Terminal if the new space is reasonably comparable to the previous space in terms of the passenger traffic, size, and potential for generation of Gross Receipts. Any work required to be done to the Base Building required in such new space to make it suitable for concession operations is the responsibility of American, at its expense.

2.3.4 Exercise of Rights. American may exercise its contraction and relocation rights under this Section 2.3 by giving not less than one hundred twenty (120) days' prior written notice to Retail Manager, or at least as much notice as reasonably possible for contractions or relocations, the reasons for and timing of which are not within the control of American (e.g., because of a direct or indirect requirement by the Port Authority or other competent authority). In the event American exercises its right to cause a contraction or relocation of all or a portion of the Concession Area (not including carts, kiosks, and other portable or temporary facilities) from one location to another after the Concession Area has been opened to the public for business, American shall provide the following:

- (A) In the case of a relocation, reimburse Retail Manager (or, if applicable in lieu of Retail Manager, the applicable Subtenant(s)) within sixty (60) days for reasonable and actual moving costs, and for reasonable and actual costs incurred to construct Fixed Improvements in the new space according to Plans approved by American; and
- (B) If the Subtenant does not relocate to other space located within the Concession Area, and does not have any outstanding uncured material defaults under its Sublease beyond applicable notice and cure periods, American shall reimburse Retail Manager (or, if applicable in lieu of Retail Manager, the applicable Subtenant(s)) within sixty (60) days after the effective date of such contraction, an amount equal to the then un-amortized portion of Retail Manager's and the applicable Subtenant's Eligible Costs (based upon the Depreciation Schedule previously submitted to American, in accordance with Section 5.2.5, detailing such investment in the Fixed Improvements or Refurbishments, if applicable), in the portion of the Concession Area covered by such contraction. Within fifteen (15) days after request by American, and in any event not later than the effective date of such contraction, Retail Manager shall provide American with its calculations in reasonable detail, together with appropriate back-up or confirmatory data, of the amount which Retail Manager claims to be due pursuant to this Section 2.3.3(B) based upon the Depreciation Schedule previously delivered to American. It is hereby acknowledged by Retail Manager that the Port Authority shall have no obligation or liability to Retail Manager or any Subtenant with respect to such termination, including without limitation any reimbursements, credits, offsets or otherwise for investments in Fixed Improvements or Refurbishments.

2.3.5 American shall have the right at any time and from time to time prior to and during the Term, in the interest of the efficient operation of the Terminal, to close, move or alter any common corridor, passageway, walkway or common area, including, without limitation, entrances, exits, passages, halls, corridors, aisles, stairways, elevators or escalators, within or around the Concession Area or to restrict or change the traffic on or through any such common corridor, passageway, walkway or common area, with due regard to not unreasonably restricting the use and occupancy of the Concession Area by the Subtenants. Neither Retail Manager nor Subtenants shall have any claim against American or the Port Authority for such action, nor shall such action by American release either Retail Manager or Subtenants from any of their obligations under this Agreement, the Operator Permit or any other agreement entered into with the Port Authority.

Section 2.4 Lease Between American and the Port Authority.

2.4.1 This Agreement is subject and subordinate to the Lease, the Operator Permit and the Additional Port Authority Requirements.

2.4.2 Retail Manager acknowledges that certain rights and duties of American regarding the operation of the Concession Area are defined and contained in the Lease.

2.4.3 The terms and conditions and the effectiveness of this Agreement are subject to (i) prior written approval of the Port Authority pursuant to the Lease and (ii) the establishment of a bank account in trust in accordance with Section 4.7 below. If, notwithstanding the good faith cooperative efforts of both parties to satisfy the foregoing conditions as soon as possible, the Port Authority does not (a) notify American that the arrangement set forth in this Agreement is acceptable to them and (b) execute and deliver the fully executed Operator Permit within forty-five (45) days from the date hereof, or the trust account is not established before any approved Sublease is to be executed, then, at American's election, this Agreement shall terminate and be of no further force and effect without any liability of either party to the other, except that American will return the proposal deposit of [One Hundred Thousand Dollars (\$100,000.00)] previously provided by Retail Manager within thirty (30) days after the effective date of such termination.

2.4.4 Any amendment, supplement or extension of this Agreement that does not have the express written approval of the Port Authority shall be void *ab initio* and of no effect whatsoever. If the Lease is terminated on any account prior to the expiration of this Agreement, then this Agreement shall terminate simultaneously with such termination of the Lease unless the Port Authority shall notify Retail Manager and American in writing at or prior to such effective date of termination of the Lease that the Port Authority assumes all of the rights and obligations of American hereunder from and after such effective date of termination, it being understood that the Port Authority shall have the right, but not the obligation, to be assigned and to assume all of American's rights and obligations under this Agreement, and further, it being acknowledged that the Port Authority shall have no obligation to enter into any form of non-disturbance or recognition agreement with any Retail Manager or any Subtenant. In the event of any such assignment and assumption, Retail Manager shall be deemed to have (i) attorned to the Port Authority, (ii) recognized the Port Authority as its lessor for the Concession Area, and (iii) released and waived any ongoing liability or obligation of American under this Agreement simultaneously with the Port Authority's assumption of all of American's ongoing rights and obligations (i.e., excepting such rights to payment/claims and debts/liabilities of American that shall have accrued before the effective date of such assumption), and Retail Manager shall be deemed to have acknowledged and agreed that wherever in this Agreement American has agreed to act reasonably, to not unreasonably withhold, delay or condition its approval or consent, or words of similar import, the same shall not bind

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or be enforceable against the Port Authority, as lessor, inasmuch as the Port Authority shall be understood and deemed only to have agreed not to be arbitrary and capricious in the exercise of its discretion.

2.4.5 In the event of any inconsistency between this Agreement and the Lease, or between any Sublease and the Lease, or between this Agreement and the Operator Permit, or between a Sublease and the Operator Permit, then in each and every such instance the Lease or the Operator Permit, as the case may be, shall supersede and control.

2.4.6 American does not assume any obligation to perform any of the terms, covenants or conditions contained in the Lease or the Operator Permit to be performed by the Port Authority, and in the event that the Port Authority should fail to so perform, American shall be under no obligation or liability whatsoever to Retail Manager other than to use commercially reasonable efforts to cooperate in good faith with Retail Manager toward securing performance by the Port Authority. In any event, Retail Manager has the right, to request in its own name in writing to the Port Authority, performance of obligations required of the Port Authority under the Lease or the Operator Permit directly from the Port Authority, provided Retail Manager shall first provide to American not less than five (5) Business Days' prior written notice of its intention to make such request. A copy of any correspondence delivered to the Port Authority by Retail Manager or delivered to Retail Manager by the Port Authority shall be delivered to American promptly, but in no event later than five (5) Business Days, from the date such correspondence is received by or sent by Retail Manager. In no event shall Retail Manager be entitled to exercise, or be subrogated to, any of American's rights under the Lease. In any event, Retail Manager shall not be allowed any abatement or diminution of Rental under this Agreement because of the Port Authority's failure to perform any of its obligations under the Lease or the Operator Permit or because of any variation in Enplaned Passengers or sales in the Concession Area, except as otherwise specifically established in this Agreement.

2.4.7 In the event the Operator Permit is revoked or terminated by the Port Authority prior to the expiration of this Agreement, this Agreement shall automatically terminate simultaneously therewith and American shall have no liability or obligation as a result of such termination other than as expressly provided in Article 3 below.

ARTICLE 3

TERM

Section 3.1 Term. The term of this Agreement (the "Term") shall commence on the date the conditions set forth in Section 2.4.3 are satisfied (the "Commencement Date"), and, unless sooner terminated, shall expire at 11:59 o'clock P.M. New York time on December 31, 2036 (the "Expiration Date"). In no event shall this Agreement afford Retail Manager or any other party any right to use or occupy the Concession Area (or any part thereof) or to operate any concession or other business within the Terminal after the expiration, cancellation or termination of the Operator Permit or this Agreement.

Section 3.2 Early Termination. In addition to any other termination rights provided in this Agreement, this Agreement shall be terminated prior to the end of the Term upon: (i) the mutual written agreement of American and Retail Manager; (ii) thirty (30) days' prior notice from the Port Authority that it has revoked its consent to the Operator Permit and/or this Agreement in its sole discretion, without cause (which revocation shall not require the concurrence of American); (iii) seven (7) days' prior notice from the Port Authority that it has revoked the Operator Permit for cause (which revocation shall not require the concurrence of American); (iv) one hundred eighty (180) days' prior

written notice from American to Retail Manager; (v) one hundred eighty (180) days' prior written notice from Retail Manager to American, which notice may only be given only after the Minimum Guaranteed Rental Effective Date has occurred, and which notice (and period for Retail Manager's performance) may be extended for an additional ninety (90) days if American waives the obligation of Retail Manager to pay to American any Minimum Guaranteed Rental Shortfall that might correspond to such ninety (90) day period (the Port Authority's Allocated Share under Section 4.6 being unaffected); or (vi) the early termination or cancellation of the Lease and/or any rejection of this Agreement or the Lease by American or any successor to American or trustee/receiver acting on American's behalf as either an executory contract or an unexpired real property lease under the applicable provisions of the United States Bankruptcy Code, as amended.

Any of the foregoing events is referred to as an "Early Termination". If, and only if, an Early Termination occurs due to the events described in clauses (ii), (iv) or (vi) above or due to a default of American as may be provided elsewhere in this Agreement, in full and complete satisfaction of any claims of Retail Manager relating to such termination, American shall (x) return or release the AA Security Deposit in accordance with Section 4.10, subject to setoff for any accrued but unpaid debts of Retail Manager to American arising out of this Agreement or any damages for a failure to perform or other breach of this Agreement by Retail Manager which may remain uncured or uncompensated as of the effective date of such termination, (y) use commercially reasonable efforts to cooperate in good faith with Retail Manager toward securing the return of Retail Manager's separate security deposit from the Port Authority, and (z) in the event American does not assume any Sublease(s) in accordance with Section 3.3 of this Agreement, reimburse Retail Manager (within sixty (60) days after the date of such termination) an amount equal to the then un-amortized portion of Retail Manager's Eligible Costs set forth in clause (iv) of the definition of "Eligible Costs" for those particular Subleases only, based on an approved Sublease and a Depreciation Schedule under Section 5.2.5, if any, which Retail Manager pays by virtue of a Port Authority termination under clause (ii), or by virtue of an American termination under clauses (iv) or (vi) extending to Subleases)), subject to setoff for any accrued but unpaid debts of Retail Manager to American arising out of this Agreement or any damages for a failure to perform or other breach of this Agreement by Retail Manager which may remain uncured or uncompensated as of the effective date of such termination. If an Early Termination occurs due to the events described in clauses (ii), (iv) or (vi) above, Retail Manager shall, on not less than twenty (20) days' notice and in any event not later than the effective date of such Early Termination, provide American with its calculations in reasonable detail, together with appropriate back-up or confirmatory data, of the amount which Retail Manager claims to be due pursuant to this Section 3.2 based upon the Depreciation Schedule previously delivered to, and approved by, American. Retail Manager acknowledges that the Port Authority shall have no obligation or liability to Retail Manager or any Subtenant with respect to Early Termination under clauses (i), (ii), (iii), (iv), (v) or (vi) above, including any reimbursement for Eligible Costs.

Section 3.3 Assumption of Subleases. In the event of Early Termination of this Agreement, American shall have the following rights and obligations regarding the Subleases then in effect: (a) in case of termination without cause by American (including by virtue of revocation and/or termination of the Operator Permit by the Port Authority without cause or the rejection of this Agreement or the Lease as either an executory contract or an unexpired real property lease in a bankruptcy proceeding of American as described above) or if Retail Manager terminates for cause, American shall assume all of Retail Manager's Subleases and American and Retail Manager shall execute an Assignment and Assumption Agreement as described below; and (b) in cases of termination with cause by American (including by virtue of revocation and/or termination of the Operator Permit by the Port Authority for cause), or if Retail Manager terminates without cause as provided in Section 3.2 (which would include a rejection of this Agreement as either an executory contract or an unexpired real property lease in a bankruptcy proceeding of Retail Manager), American shall execute Assignment and Assumption

Agreements and assume those Subleases that satisfy the following criteria: (i) the Subtenant is not currently in non-monetary default, beyond all applicable notice and cure periods; (ii) the Subtenant has no outstanding uncured material defaults; (iii) the Subtenant has not had any material default during the previous 365 days of its Sublease or a history of three (3) or more accumulated material defaults during the term of its Sublease, provided that for the purpose of this sub-clause (iii) payment defaults are not considered to be material defaults if they had been cured by payment in full from or on behalf of the Subtenant, including all contractually required interest and penalties; (iv) the Subtenant is current regarding all payments of any kind for which it is responsible under its Sublease; and (v) Subtenant has no outstanding claims of default against Retail Manager in its capacity as landlord under the respective Sublease or has waived any such claims. In addition to the foregoing, American has no obligation to assume any Sublease (i) which does not conform to the requirements of this Agreement, including, without limitation, Article 6, unless each non-conforming provision was explained to American and specifically approved by American and the Port Authority before final approval and execution of the Sublease or, if not approved, the non-conforming provisions are not adverse to American's interests, as determined in the sole but good faith judgment of American, and (ii) for which Retail Manager does not execute an assignment and assumption agreement in form and substance satisfactory to American (an "Assignment and Assumption Agreement") under which (a) Retail Manager or, in American's sole discretion, another Person determined by American to be creditworthy remains liable for, and indemnifies and holds American harmless for any claims or liabilities (including obligations to reimburse any Subtenant's construction or installation costs for Fixed Improvements or Refurbishments, or other finish-out or repair costs) arising out of the performance of the Sublease up to the effective date of such Assignment and Assumption Agreement, and (b) American assumes liability for, and indemnifies and holds Retail Manager harmless in respect of the performance of the Sublease from and after the effective date of such Assignment and Assumption Agreement other than liability arising from Retail Manager's negligence or willful misconduct.

ARTICLE 4

RENTAL; OTHER PAYMENT OBLIGATIONS

Section 4.1 Rental [●]

Section 4.2 Reserved [●]

Section 4.3 Schedule for Rental Payments. Retail Manager shall pay Rental to American and the Port Authority, allocated in accordance with Section 4.6 below, as follows: on or before the last day of each calendar month during the Term, Retail Manager shall pay all Subtenant Rental (e.g., Subtenant minimum annual guaranteed rent for the current month and Subtenant percentage rent for the previous month) actually collected by Retail Manager from Subtenants during such month. In addition to the foregoing, Retail Manager shall remit payment of the Additional Payment Obligations on or before the last day of the calendar month in which such Additional Payment Obligations have been actually collected by Retail Manager from the Subtenants during such calendar month. If, as a result of the six (6) month reconciliation provided for in Section 4.4 below, should there be a Minimum Guaranteed Rental Shortfall, Retail Manager must then include the amount of the shortfall with the next installment of Rental due.

Section 4.4 Reports and Minimum Guaranteed Rental Reconciliation. Retail Manager shall timely deliver to American the Monthly Rental Statements required under Section 12.1.3(A) below and American shall timely deliver to Retail Manager reports on [●].

Section 4.5 Minimum Guaranteed Rental Effective Date. [●]

Section 4.6 Allocation of Rental. In respect of the various specific concession types listed therein, Retail Manager shall calculate and pay the Rental owed to American and the Port Authority as follows: (i) Rental corresponding to Subtenant Rental payable for food and beverage concessions shall be paid eighty percent (80%) to American and twenty percent (20%) to the Port Authority excluding Specialty Food Operators (as herein defined), until the T8 Commencement Date, after which the percentages payable for food and beverage concessions shall be fifty percent (50%) to American and fifty percent (50%) to the Port Authority; (ii) Rental corresponding to Subtenant Rental payable for all concession types other than food and beverage but including Specialty Food Operators shall be paid fifty percent (50%) to American and fifty percent (50%) to the Port Authority (American's percentage shares under (i) and (ii) above being referred to as "American's Allocated Share" and the Port Authority's percentage shares being the "Port Authority's Allocated Share"). "Specialty Food Operator" shall mean any Subtenant which, in the reasonable judgment of the Port Authority, maintains a food and/or beverage inventory which is substantially limited to one or several special type(s) of product(s). The Port Authority's past practice at its facilities in treating concession operators as a Specialty Food Operator (e.g. sharing equally in fees from such operator with an airline lessee) shall be deemed to be conclusive evidence of the Port Authority's reasonableness. If Minimum Guaranteed Rental Shortfall is payable by Retail Manager for any six-month period during the Term, it shall be allocated to American and Port by determining the ratio of the food and beverage Subtenant Rental collected to the total Subtenant Rental collected during such period, applying the ratio to the amount of Minimum Guaranteed Rental Shortfall to be paid in order to extrapolate the amounts corresponding to food and beverage versus other concession types, and then applying American's Allocated Share and the Port Authority's Allocated Share to allocate the payment of such Minimum Guaranteed Rental Shortfall amounts among the Port Authority and American.

4.6.1 Notwithstanding any other provision of this Agreement, American and Retail Manager acknowledge that no rent abatements granted by Retail Manager to a Subtenant or by American to Retail Manager may diminish or otherwise adversely affect the Port Authority's Allocated Share of Rental payable by Retail Manager to the Port Authority hereunder, other than (x) any abatements applicable to the Concession Area which American may exercise at American's option in the event that the Port Authority, for safety or other reasons, prohibits the use of the Public Landing Area at the Airport or of any substantial part thereof for foreign or domestic scheduled air transport operations for a period covering more than sixty (60) consecutive days and American is prevented from conducting certain of its operations at the Airport, and (y) those which are (i) expressly set forth in this Agreement or contained in an approved Sublease, and (ii) consistent with the Port Authority's generally applicable policies for abatements at the John F. Kennedy International Airport as then in effect (and to the degree they are permitted by such policies) and specifically consented to by the Port Authority in writing before being applied.

4.6.2 Retail Manager's payments to American and the Port Authority of Rental and Additional Payment Obligations under this Agreement, and the accompanying statements and reports shall be sent to the addresses set forth in Section 15.8 of this Agreement or to such other address as may be directed by such parties from time to time or shall be paid by wire transfer pursuant to written instructions received in advance from American or the Port Authority. Rental payments may only be made in lawful money of the United States. Retail Manager's obligation to pay Rental and Additional Payment Obligations under the terms of this Agreement shall not be deemed satisfied until such Rental and Additional Payment Obligations have been actually received by American and the Port Authority.

Section 4.7 Reserved.

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Section 4.8 Late Payment Charges. In the event any payment required to be made to American hereunder is not made when due, Retail Manager shall pay Late Interest for the period from the date such payment was due until the date that it is paid in full by Retail Manager to American. Late charges due and payable to the Port Authority shall be calculated pursuant to the provisions of the Operator Permit.

Section 4.9 Reserved.

Section 4.10 Security Deposit. On or before the Effective Date, Retail Manager shall pay to American the AA Security Deposit. [No later than sixty (60) days before January 1st of the first year after the year in which the Commencement Date occurs, and each succeeding January 1st thereafter during the Term, Retail Manager shall calculate and submit to American the average monthly projected Rental for that year. If American agrees with the projected monthly average, then Retail Manager will increase or decrease the amount of the AA Security Deposit by an amount equal to [●], as directed by American on or before that date. If American does not agree with the projected average monthly Rental submitted by Retail Manager, American shall so notify Retail Manager within ten (10) days of receiving the projection (failing which the projection submitted by Retail Manager will be deemed accepted by American), explaining its objection to the projected Rental and, at its option, offering an adjusted projection. Within ten (10) days of receiving American's objections, if any, Retail Manager will re-calculate and re-propose the projected Rental or accept American's adjusted projection by notice to American. If American still does not agree with Retail Manager's projection, based on reasonable analysis, American will determine the amount of the AA Security Deposit based on its own reasoned projection of the average monthly Rental in the next calendar year and so notify Retail Manager no later than December 10th of the preceding year.] American shall have the right from time to time, to apply, draw upon or claim against the AA Security Deposit or any portion thereof, as the case may be (the "Application"), to compensate American's damages arising from any non-payment or other default on the part of Retail Manager to American, and such Application shall not preclude American from recovering greater damages to which American may be entitled or otherwise prejudice any other remedy American may otherwise have on account of such default or damages in accordance with this Agreement. Within no more than five (5) Business Days after such Application, Retail Manager shall restore the amount so applied, so that the AA Security Deposit is at all times equal to the amount required above. Provided that Retail Manager is not in default under this Agreement, American shall release or return the AA Security Deposit or so much thereof as shall not have been applied in accordance with this Section 4.10, within sixty (60) days of the later to occur of (a) the expiration or Early Termination of this Agreement, or (b) the surrender of possession of the Concession Area by Retail Manager. For the avoidance of doubt, Retail Manager acknowledges that the Port Authority will require a separate and independent security deposit in the initial amount of [●], for amounts owed to the Port Authority under this Agreement and/or the Operator Permit, in the form of cash, certain bonds or a letter of credit as will be determined in the Operator Permit, it being understood that a surety bond will not be acceptable to the Port Authority for this purpose. American acknowledges that it may not place a charge against or collect upon the Port Authority's independent security deposit under this Article 4 or for any other purpose. If at any time the Port Authority increases such separate and independent security deposit amount above \$[●], [TBD Mechanism for Port Authority to increase Port Authority security deposit] then the AA Security Deposit shall be increased, to an amount equal to such independent security deposit in favor of the Port Authority.

Section 4.11 Tax Indemnity; Additional Payment Obligations. In addition to the Rental payable hereunder, Retail Manager agrees to pay, the following additional amounts to American: (i) any Taxes which may be assessed directly, or are passed-through by the City of New York or the Port Authority, to American and/or Retail Manager during the Term, (ii) any Taxes that may be payable

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by Retail Manager, as determined pursuant to Section 4.11.1, (iii) electricity consumption charges for food and beverage concession Subtenants as provided in Section 8.4.1, and (iv) all other amounts which may become payable pursuant to this Agreement, including Late Interest, other than Rental (the foregoing amounts being collectively referred to as “Additional Payment Obligations”).

4.11.1 The amount of Taxes payable by Retail Manager shall be determined as follows:

- (A) If the Concession Area is the subject of a separate tax lot or lots created by the City of New York, Retail Manager shall pay Taxes that may become due and payable with respect to the Concession Area during the Term directly to the City of New York or the Port Authority, as directed by American. Retail Manager shall deliver to American, not later than ten (10) days before the date any such Taxes become delinquent, official receipts of the appropriate taxing authority or other evidence satisfactory to American evidencing payment thereof; or
- (B) If the Concession Area is not the subject of a separate tax lot or lots, Retail Manager shall pay to the Port Authority (unless otherwise directed by American and the Port Authority), in monthly installments in advance commencing on the Commencement Date and thereafter on the first date of each calendar month throughout the Term, an amount equal to Retail Manager’s Allocated Tax Share of the Taxes that may become payable by American to the City of New York with respect to the Premises during the Term. American shall use its reasonable efforts to cause the Port Authority or the City of New York, as applicable, to compute the annual rate of Taxes payable for the Premises and will promptly notify Retail Manager of such amount thereof. If such amounts are not determined by the Port Authority or the City of New York, as applicable, prior to the date the payment of Taxes by Retail Manager are due, Retail Manager shall nevertheless continue to pay the amounts thereof at the rates then in effect, subject to retroactive adjustment as such time as the annual rate of Taxes is imposed. Taxes payable by Retail Manager shall be prorated for the periods immediately preceding the Commencement Date and the Expiration Date.

4.11.2 If Retail Manager should fail to pay any Taxes required to be paid by Retail Manager hereunder, in addition to any other remedies provided herein, American may, if it so elects, pay such Taxes either with its own funds or by a draw-down of such amounts upon the AA Security Deposit. Any sums so paid by American shall be due and payable by Retail Manager on demand, together with Late Interest thereon from the date paid by American to the date of repayment by Retail Manager.

4.11.3 For the avoidance of misunderstanding, it is understood that if at any time during the Term, there shall be levied, assessed or imposed on American, a capital levy or other tax

(except for federal and state income taxes assessed on American and attributable to Rental received by American or the Port Authority under this Agreement) directly on the Rental or other amounts payable hereunder or a franchise tax assessment, levy or charge measured by or based, in whole or in part, upon such Rental from the Concession Area or any portion thereof or any other amounts payable hereunder, then all such taxes, assessments, levies or charges, or the part thereof so measured or based, shall be paid by Retail Manager and shall be deemed to be included within the term “Taxes” for the purposes hereof.

4.11.4 Provided Retail Manager is required to pay any Taxes pursuant to the terms of this Section 4.11, Retail Manager may, at its sole cost and expense and in its own name, dispute and contest any Taxes by appropriate proceedings diligently conducted in good faith, but only after Retail Manager has deposited with American the amount so contested and unpaid, which shall be held by American until the termination of the proceedings, at which time the amount deposited shall be applied by American toward the payments or the items held valid (plus any court costs, interest, penalties and other liabilities associated with the proceedings) and any excess shall be returned to Retail Manager with interest at the Prime Rate. Retail Manager further agrees to pay to American, upon demand, all court costs, interest, penalties, and other liabilities relating to such proceedings (to the extent the deposit required hereunder is insufficient to pay such costs) and, if such amounts are not paid by Retail Manager, American may draw down such amounts upon the AA Security Deposit or set them off against the Management Fee. Notwithstanding anything to the contrary stated above, Retail Manager has no greater right to contest Taxes than American has under the Lease.

4.11.5 Retail Manager hereby agrees to indemnify, defend and hold American harmless from any and all Taxes and costs, damages, expenses and liabilities (including, without limitation, reasonable attorneys’ fees) in connection with any such proceedings described in this Section 4.11. Retail Manager or Subtenants shall be liable for all Taxes levied or assessed directly against them, including Taxes assessed on or in respect of Fixed Improvements, Refurbishments, or other fixtures, inventory or personal property of Retail Manager and/or Subtenants in the Concession Area. If any such Taxes are levied or assessed against American or American’s property and (i) American pays the same or (ii) the assessed value of American’s property is increased by inclusion of such personal property and fixtures, then, at American’s discretion, Retail Manager shall advance the corresponding Taxes to American, or reimburse them upon demand if paid by American.

4.11.6 American represents and warrants to Retail Manager that as of the date of execution of this Agreement, there are no Taxes assessed to American for which American would require Retail Manager to have responsibility under this Section 4.11. For the avoidance of doubt, neither party has any responsibility to the other for federal or state taxes based on or determined by the other party’s net income, net worth, or ongoing qualification to do business as a corporation (e.g., state franchise taxes), nor does either party have any responsibility to Subtenants for such federal or state taxes applicable to Subtenants.

ARTICLE 5

CONSTRUCTION OF THE PREMISES

Section 5.1 Redevelopment of the Premises. American previously redeveloped the Terminal so that it consists of Concourse B, Concourse C and the Main Hall. The Existing Concession Area consists of approximately 68,000 square feet of revenue-generating concessions space, comprised of approximately 60 concession facility locations including specialty retail, duty free, news/convenience, food and beverage, foreign currency exchange, business services center and other consumer services, Food Court, public seating areas and other designated common areas. A total of

approximately 85,100 square feet of potential revenue-generating concessions space will be available for the Proposed Concession Area. Retail Manager shall re-develop and re-concept the Concession Area and perform, or cause the Subtenants to perform, the Concession Area Base Work and the Subtenant Premises Work.

Section 5.2 Permanent Facilities. Retail Manager shall, and shall cause each of the Subtenants to, install the Fixed Improvements in the Concession Area and within each Subtenant Premises, on or before the applicable Sublease Required Opening Dates and/or in accordance with the phasing schedule set forth in the Development Plan., all in accordance with the applicable approved Final Drawings and otherwise in compliance with the Alteration Application, the Tenant Construction Manual, any Additional Port Authority Requirements, the Design Guidelines and any other reasonable requirements of American.

5.2.1 Retail Manager shall, and shall cause Subtenants to, furnish conceptual drawings and plans (“Conceptual Plans”) and final drawings and specifications (“Final Drawings”) for each Subtenant Premises and for the Concession Area Base Work.

5.2.1.1 Retail Manager shall submit Conceptual Plans for the Concession Area Base Work to American for its prior written approval no later than [●] days after the Effective Date. American shall promptly review such Conceptual Plans and American shall provide written comments or approvals to Retail Manager within [●] days following receipt of such Conceptual Plans. Following approval of such Conceptual Plans, Retail Manager shall submit Final Drawings for the Concession Area Base Work no later than [●] days (or such shorter period of time in order to complete installation of the Fixed Improvements in accordance with any milestones set forth in the Development Plan) to American for its written approval. American shall promptly review such Final Drawings and American shall provide written comments or approvals to Retail Manager within [●] days following receipt of Retail Manager’s Final Drawings for the Concession Area Base Work. In the event of disapproval, Retail Manager shall immediately revise the Final Drawings and promptly resubmit them for approval of American until such approval is obtained. Following approval of the Final Drawings, Retail Manager shall file an Alteration Application as soon as possible thereafter (and in no event more than five (5) days thereafter) with the Port Authority. American will sign the Alteration Application, if required, prior to submittal to the Port Authority. The Port Authority is expected to provide its approval no later than thirty (30) days after submission of the Alteration Application and to immediately issue all required construction permits in order to allow Retail Manager to commence its work to install all Fixed Improvements which are part of the Concession Area Base Work in a timely manner. For the avoidance of doubt, American and Retail Manager acknowledge that the Port Authority does not acquire any contractual obligations or rights in respect of the timing for the completion of construction by Retail Manager of the Concession Area Base Work by virtue of the Port Authority’s consenting to this Agreement. Without prejudice to other provisions of this Agreement that may suspend or extend the time for Retail Manager to complete the installation of Fixed Improvements that constitute the Concession Area Base Work, the failure of American to provide comments and/or approvals within the time periods set forth herein for Conceptual Plans and Final Drawings shall extend any milestones set forth in the Development Plan on a day-for-day basis for each day so delayed. Retail Manager shall coordinate all of the Concession Area Base Work with American’s Corporate Real Estate Department and the Port Authority, pursuant to and in accordance with the Lease.

5.2.1.2 Retail Manager shall, or shall cause, each Subtenant to submit Conceptual Plans for the applicable Sublease Premises Work to both Retail Manager and American for their prior written approval no later than twenty (20) days after execution of their respective Sublease. Retail Manager and American shall each promptly review such Conceptual Plans and American shall provide written comments or approvals to Retail Manager within ten (10) days following receipt of such Conceptual Plans. Following approval of the Conceptual Plans, Retail Manager shall cause all Subtenants to submit Final Drawings no later than twenty (20) days (or such shorter period of time in order for the applicable Subtenants to complete installation of the Fixed Improvements in accordance with their respective Sublease Required Opening Dates) to both Retail Manager and American for their prior written approval. Retail Manager and American shall each promptly review such Final Drawings and American shall provide written comments or approvals to Retail Manager within ten (10) days following receipt of a Subtenant's Final Drawings. In the event of disapproval, Retail Manager shall cause Subtenants to immediately revise the Final Drawings and to promptly resubmit them for approval of Retail Manager and American until such approval is obtained. Following approval of the Final Drawings, Retail Manager shall cause each Subtenant to file an Alteration Application as soon as possible thereafter (and in no event more than five (5) days thereafter) with the Port Authority. American will sign the Alteration Application, if required, prior to submittal to the Port Authority. The Port Authority is expected to provide its approval no later than thirty (30) days after submission of the Alteration Application and to immediately issue all required construction permits in order to allow each Subtenant to commence its work to enable Subtenants to install all Fixed Improvements in a timely manner. For the avoidance of doubt, American and Retail Manager acknowledge that the Port Authority does not acquire any contractual obligations or rights in respect of the timing for the completion of construction by Subtenants by virtue of the Port Authority's consenting to this Agreement. Without prejudice to other provisions of this Agreement that may suspend or extend the time for Subtenants to complete the installation of Fixed Improvements, the failure of American to provide comments and/or approvals within the time periods set forth herein for Conceptual Plans and Final Drawings shall extend the Sublease Required Opening Date on a day-for-day basis for each day so delayed. Retail Manager shall act as the tenant construction coordinator for each Subtenant's design and construction requirements, which shall be coordinated with American's Corporate Real Estate Department and the Port Authority, pursuant to and in accordance with the Lease.

5.2.2 Retail Manager expressly acknowledges that it is familiar with the Tenant Construction Manual, Alteration Application and Port Authority Design Guidelines and will provide guidance and assistance to Subtenants in that regard. Delays in obtaining Port Authority approvals in regard to these processes shall not be considered an excusable delay or Force Majeure, except, and only to the extent that the Port Authority fails to respond at all to a conforming Alteration Application for more than thirty (30) days after delivery of the application. In the latter case, the Sublease Required Opening Date or the milestones set forth in the Development Plan will be extended one day for each day beyond the thirtieth (30th) day that the Port Authority has failed to respond to an Alteration Application. No work may commence until an Alteration Application has been approved by the Port Authority, pre-construction meetings, as scheduled and directed by the Port Authority, are concluded and the Port Authority has issued a Construction Permit, if applicable. Within one hundred and twenty (120) days of the completion of construction (or sooner, if so required by the Port Authority), Retail Manager shall, and shall cause each Subtenant to, submit "AS-BUILT" drawings and specifications (or other similar material satisfactory to the Port Authority) of the construction work and installation of equipment and

trade fixtures and Retail Manager shall, and shall cause each Subtenant to, keep such drawings current showing therein any changes or modifications made during the Term.

5.2.3 Retail Manager will (or will cause Subtenants to) spend and invest, in a manner previously approved by American and subject to requirements in Exhibit J attached hereto, (A) an amount not less than Six Hundred and Fifty Dollars (\$650.00) per square foot of the floor area in each retail Subtenant Premises and an amount not less than Eight Hundred Dollars (\$800.00) per square foot of the floor area in each food and beverage Subtenant Premises (and as a capital expenditure and investment) for the construction and installation of Fixed Improvements in their respective Subtenant Premises during the first three (3) years of the Term and (B) an amount not less than Ten Million and No/100 Dollars (\$10,000,000.00) in Concession Area Base Work (collectively, the “Construction Cost”), each of which sum shall be comprised of the types of any investments that qualify as Eligible Costs. Retail Manager shall require additional capital expenditure and investment from the Subtenants, during the Term, as required in Section 8.5 and required to keep the Concession Area in a first-class, like-new, good condition in accordance with this Agreement. For the purposes of this Section 5.2.3, the square footage of the Concession Area shall be determined by American based on actual field conditions and notified to Retail Manager promptly after execution of this Agreement, American’s determination of which shall be conclusive and binding in the absence of manifest error or gross negligence.

5.2.4 Within ninety (90) days of completion of any portion of the Fixed Improvements or Refurbishments at the Concession Area, Retail Manager shall cause the Subtenant’s construction manager and/or architect to duly execute and deliver to American, as evidence of the completion of such work, a certificate to the effect that:

- (A) the design, construction, and equipping of the respective Fixed Improvements have been substantially completed in accordance with the Final Drawings approved by American and the Port Authority;
- (B) all costs and expenses for labor, services, materials, and supplies used in designing, constructing, and equipping the respective Fixed Improvements or Refurbishments for which payment is due have been paid in full (specifying, in reasonable detail, the Construction Cost expended in the completion of Fixed Improvements which are to be applied toward the minimum investment requirement established in Section 5.2.3); and
- (C) a certificate of occupancy, a consent to occupy or a permit to use or occupy, as applicable, and all other necessary licenses, permits and other required documents for operation of the Subtenant Premises affected by the Fixed Improvements or Refurbishments have been issued by the appropriate governmental agency.

Retail Manager shall ensure that Subtenants do not begin sales to the public until the requirements regarding inspection and certification by American and the Port Authority have been fulfilled. American will respond to a request for such inspection and certification within seven (7) days.

5.2.5 Within one hundred and twenty (120) days of completion of Fixed Improvements at the Concession Area (or any Refurbishments or future modifications to the Concession Area) by a Subtenant, Retail Manager shall cause the Subtenant to duly execute and deliver to American, as evidence of the cost of such work, a certificate issued by the chief executive officer, chief financial officer or equivalent representative of Subtenant, detailing the Eligible Costs actually incurred in connection with the installation of such Fixed Improvements or Refurbishment, together with a Depreciation Schedule for each such Fixed Improvements or Refurbishment. Retail Manager shall cause Subtenants to provide to American copies of invoices and canceled checks or other reasonable evidence for expenditures for labor and materials covering all such costs and American shall have the right to audit such records. If there is a discrepancy of five percent (5%) or more, Retail Manager shall cause the Subtenant to pay the cost of the audit, upon request of American.

5.2.6 In the event that a Subtenant desires to make any future modifications to the Concession Area or the Fixed Improvements during the Term, including Refurbishments, Retail Manager will not permit the Subtenant to make such modifications without first obtaining the prior written consent of American, and otherwise complying with the terms and conditions outlined in this Section 5.2 for the initial Fixed Improvements.

5.2.7 Subject in all events to the Lease and the Port Authority's lease with the City of New York, all alterations, additions, improvements and fixtures (including, without limitation, all floor, wall and/or ceiling coverings and any Subtenant-installed heating and air conditioning equipment, but excluding Retail Manager's or the Subtenants' readily movable decorations, trade fixtures, furniture and office equipment) which may be made or installed by any party in the Concession Area shall remain upon and be surrendered with the Concession Area and become the property of American, if permitted under the Lease, or the City of New York as the same or any part thereof is erected, constructed or installed, and shall be or become a part of the Concession Area.

5.2.8 All contracts for the construction or installation of Fixed Improvements or Refurbishments shall be subject to the provisions in Exhibit J and shall require:

- (A) That all contractors and subcontractors provide labor that can work in cooperation with other elements of labor employed or to be employed at the Airport;
- (B) Insurance coverage and suretyship reasonably satisfactory to the Port Authority and American for the protection of the Port Authority's and American's property, employees, laborers, suppliers, contractors, subcontractors, agents, invitees and the public;
- (C) That all contractors and subcontractors comply with all provisions of this Agreement, including, without limitation, the provisions of Article II, applicable to them; and
- (D) Performance bonds and payment bonds from Subtenants or Subtenants' general contractor, in form and substance satisfactory to the Port Authority and American, each of which shall name the Port Authority and American, as

additional obligees and which shall be in a sum equal to the amount of the applicable construction contracts.

Section 5.3 Financing Fixed Improvements/Refurbishments; No Liens.

5.3.1 If Retail Manager decides to finance a Subtenant's construction costs for the Fixed Improvements, Refurbishments or other finish-out or repair costs, Retail Manager shall not be entitled to reimbursement or other repayment for any costs or expenses it incurs in connection with any such financing or undertakings from any Rental, Additional Payment Obligations or payments owed otherwise to American or the Port Authority (e.g., through charge-backs or otherwise). Nor may Retail Manager offer or agree to tie-in or otherwise condition such Subtenant construction financing on any other rights, privileges, allowances, or business terms and conditions granted to a Subtenant.

5.3.2 Retail Manager and the Subtenants have no authority, express or implied, to, and they shall not, create, place or permit the placement of any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of American, the Port Authority or Retail Manager in the Concession Area, the Terminal or the Airport, or to assign or encumber either the Rentals, Additional Payment Obligations, or any other amounts payable hereunder or the Subtenant Rental and other amounts payable by Subtenants to Retail Manager, for any claim in favor of any Person dealing with Retail Manager, including, without limitation, those who may furnish materials or perform labor for any construction or repairs. Retail Manager covenants and agrees that it will pay or cause to be paid all sums legally due and payable by Retail Manager on account of any labor performed or materials furnished in connection with any work performed in, under, on and upon the Concession Area, by or on behalf of Retail Manager, and that Retail Manager will indemnify and hold American and the Port Authority, and the Port Authority's commissioners, employees, officers, agents and representatives, harmless from any and all losses, costs and expenses of any asserted claims or liens against the leasehold estate or against other respective rights, title or interests of American in the Premises or the Terminal and the Port Authority in the Airport or under the terms of this Agreement based on or arising out of a breach of the covenants of this Section 5.3.2. Retail Manager agrees to give American immediate written notice of the placing of any lien or encumbrance against the Concession Area or the Terminal.

5.3.3 Retail Manager accepts that this Agreement is subject and subordinate to any mortgages or deeds of trust now or at any time hereafter constituting a lien or charge upon the Concession Area or the Terminal or other improvements that constitute a part of the Concession Area, including, without limitation, the Bond Financing. Retail Manager, as soon as practical and within no more than fifteen (15) days after written request in any event, shall execute any instruments, releases or other documents that may be required by any mortgagee, trustee or holder for the purpose of subjecting and subordinating this Agreement to the lien of any such mortgage or deed of trust.

Section 5.4 Liquidated Damages. Retail Manager's failure to cause the Subtenants to complete the Fixed Improvements in a timely manner will result in damages that are difficult to ascertain in light of operations, scheduling and public service factors. Therefore, if Fixed Improvements are not completed by the Sublease Required Opening Date required in the respective Sublease, Retail Manager shall cause Subtenants to pay to American as liquidated damages the sum of Five Hundred Dollars (\$500.00) for each calendar day that the Fixed Improvements are not completed beyond such Sublease Required Opening Date.

Section 5.5 Office Facilities. A portion of the Concession Area as reasonably determined by American in consultation with Retail Manager shall be set aside for Retail Manager to use as office facilities for its Concession Manager and staff referenced in Section 7.2.3. The rental for such space

is deemed subsumed within Rental payable by Retail Manager to American, and there will be no separate rental assessed to Retail Manager. However, Fixed Improvements or Refurbishments to such office space are Retail Manager's sole responsibility in accordance with this Agreement, as well as any utilities not provided by American to all other non-food and beverage Subtenants at American's cost, and maintenance, services, insurance and similar costs as in a "net lease."

ARTICLE 6

CONCESSION AGREEMENTS

Section 6.1 Subleases. Retail Manager shall use its diligent, good faith efforts during the Term to identify various qualified enterprises to be Subtenants, to enter into Subleases for all portions of the Concession Area for the types of concession operations contemplated under this Agreement with reference to the subtenant criteria and leasing procedures further described in this Section 6.1, and to cause all such Subtenants to complete Fixed Improvements and open for business within a reasonable time period. Each such Subtenant and Sublease are subject to the prior written approval of American and the Port Authority, which approval by the Port Authority shall be evidenced by a Four-Party Subtenant Consent Agreement, and, in the case of American, will not be unreasonably withheld, conditioned or delayed. However, in evaluating potential Subtenants, American may take into account a variety of general factors beyond the Subtenant's product offerings, experience, solvency and potential contribution to concessions sales, such as, merely by way of example, safety/security issues, reputation, and marketing or equity affiliations with competitors of American. American will use diligent, commercially reasonable efforts to assist Retail Manager in securing the Port Authority's timely consents under this section. Retail Manager agrees to comply with the Concession Solicitations Process approved by American and the Port Authority.

6.1.1 Retail Manager agrees to use the form of sublease attached hereto as Exhibit F for all Subtenants in the Concession Area, which form of sublease has been approved by American and the Port Authority; provided that Retail Manager hereby acknowledges that American, in its reasonable discretion, and the Port Authority may require changes to such form of sublease from time to time. Each Sublease must include (or address, as applicable to specific types of concessions) at least the following provisions:

- (A) The Sublease is subject and subordinate to the Lease and this Agreement and Subtenant shall comply with all provisions of this Agreement, the Four-Party Subtenant Consent Agreement and the Additional Port Authority Requirements;
- (B) The Sublease shall immediately terminate upon termination of this Agreement for any reason, without direct recourse of any kind against American (without prejudice to Retail Manager's separate rights under this Agreement to claim for reimbursement or request direct payment by American of Subtenant unamortized Eligible Costs based on termination by the Port Authority or American of a Sublease without cause) or, at American's option, such Sublease shall be assumed by American (as provided in Section 3.3) upon such termination and, in the event of such an assumption, Subtenant shall attorn to

American or its designee and recognize American or its designee as lessor for all purposes thereunder;

- (C) Retail Manager shall be permitted to assign the Sublease to American or its designee and, in the event of such an assignment, Subtenant shall attorn to American or American's designee and recognize American or its designee as lessor for all purposes thereunder;
- (D) American shall be a third party beneficiary of the Sublease;
- (E) Subtenant shall acknowledge that its Sublease may be terminated, without cause, by the Port Authority upon thirty (30) days' prior written notice by means of revocation of the Four-Party Subtenant Consent Agreement, or by American upon one hundred eighty (180) days' prior written notice, and in either event American shall be responsible solely for the un-amortized portion, if any, of Subtenant's investment in, at or to the Subtenant's Premises, and neither the Port Authority nor American shall be responsible, directly or indirectly, for any other portion of Subtenant's investment (amortized or un-amortized) in, at or to the Subtenant's Premises;
- (F) Except to the extent modified by and in accordance with an approved Concession Program, each Sublease must include (or address, as applicable to specific types of concessions) at least the following provisions with respect to hours and days of operation:
 - (i) At least one newsstand concession and food and beverage concession in each concourse and at least one area accessible to "meeters and greeters" shall be open twenty-four (24) hours a day, and with respect to the remaining types of Subtenant Premises, minimum hours of operation will be as follows:
 - (ii) For newsstand concessions, a minimum of sixteen (16) hours per day, each day of the year, with the opening for business each day at least ninety (90) minutes prior to the first scheduled departing flight from the Terminal and continuing until the later of (x) completion of boarding for the last actual departure from the Terminal on the respective day or (y) one hour after the last actual arrival at the Terminal of a flight scheduled for arrival thereat on the same day, whichever constitutes the earlier opening and later closing;

- (iii) For all food and beverage concessions, at a minimum, opening at 5:30 a.m. and closing at 10:00 p.m., each day of the year, provided that concessions are open at least ninety (90) minutes prior to the first scheduled departing flight from the Terminal and continuing until the later of (x) completion of boarding for the last actual departure from the Terminal on the respective day or (y) one hour after the last actual arrival at the Terminal of a flight scheduled for arrival thereat on the same day, whichever constitutes the earlier opening and later closing;
- (iv) For duty-free and foreign currency exchange concessions, at a minimum, one such concession shall be open in the foreign inspection services area and a second shall be open in a central location in the terminal with the following hours: 7:00 a.m. to 10:00 p.m., each day of the year, or at least ninety (90) minutes prior to the first scheduled departing flight from the Terminal and continuing until the later of (x) completion of boarding for the last actual departure from the Terminal on the respective day or (y) one hour after the last actual arrival at the Terminal of a flight scheduled for arrival thereat on the same day, whichever constitutes the earlier opening and later closing; and
- (v) For all other concessions, 7:00 a.m. to 10:00 p.m.

The foregoing hours may be adjusted from time to time based on flight schedules as mutually agreed between American and Retail Manager subject to the provisions of the Lease.

In any instance in which no minimum hours have been set forth above, such Subtenant shall be required to be open for business and operate its respective business as provided in the Concession Program.

- (G) Subtenants shall operate their respective business so as to maximize their revenues in accordance with best industry practices and standards observed generally by first-class business enterprises of local, regional or national scope which operate at other major airports in the continental United States;
- (H) Subtenants shall not charge prices to its customers in excess of Street Prices and shall adhere to the Street Price

program in accordance with the Airport Rules & Regulations, General Manager's Bulletins, and the Customer Service Standards Manual and shall conspicuously display notices, in form and substance reasonably satisfactory to the Port Authority and reasonably satisfactory to American, in the Subtenant's Premises, to the effect that the Subtenant adheres to the foregoing Street Prices policy;

- (I) Subtenants shall not begin sales to the public at the Subtenant Premises until the requirements regarding inspection and certification by American and the Port Authority have been fulfilled in accordance with Section 5.2;
- (J) Subtenants shall use its best efforts in every proper manner to develop and increase the business they conducted in the Concession Area;
- (K) Subtenants shall not divert, or cause or allow to be diverted, any business from the Concession Area, the Terminal or the Premises, and shall represent and warrant that they are not and will not be party to another agreement with the Port Authority under which receipts from its operations in its Subtenant Premises would be excluded from the definition of Gross Receipts under this Agreement and subject to a separate percentage fee or percentage rent under that agreement;
- (L) Subtenants shall maintain (and shall cause any of their affiliates which performs services similar to those performed by the applicable Subtenant to maintain), in English and in accordance with accepted accounting practices consistently applied, during the term of the subletting under their respective Sublease and for one (1) year after the expiration or earlier termination or surrender thereof, and for a further period extending until receipt of written permission from the Port Authority to do otherwise, full and complete records and books of account recording all of their transactions at, through, or in any way connected with their operations at the Concession Area or elsewhere at the Airport, and outside the Airport if the order therefor is received at the Airport, which records and books of account shall be kept at all times within the Port of New York District. Subtenants shall permit and/or cause to be permitted in ordinary business hours during the term of the subletting under the applicable Sublease and for one (1) year thereafter, and during such further period as is mentioned in the preceding sentence, the examination and audit by the officers, employees and representatives of both

the Port Authority and those of American of such records and books of account and also any records and books of account of any affiliate if said affiliate performs services similar to those performed by the sublessee anywhere in the Port of New York District (including without limitation all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant for the identification, determination or calculation of all fees, rentals and other amounts paid or payable to the Port Authority, all agreements, and all source documents), within ten (10) days following any request by the Port Authority from time to time and at any time to examine and audit said books and records. If any such books and records have been maintained outside of the Port District, but within the continental United States then the Port Authority in its sole discretion may (A) require such books and records to be produced within the Port District or (B) examine such books and records at the location at which they have been maintained and in such event the Subtenant shall pay to the Port Authority when billed all travel costs and related expenses, as determined by the Port Authority for Port Authority auditors and other representatives, employees and officers in connection with such examination and audit, or, if any such books and records have been maintained outside the continental United States then, in addition to the costs already specified in this sentence, the concessionaire shall pay to the Port Authority when billed all other costs of the examination and audit of such books and records including without limitation salaries, benefits, travel costs and related expenses, overhead costs and fees and charges of third party auditors retained by the Port Authority for the purpose of conducting such audit and examination;

- (M) Subtenants shall permit and/or cause to be permitted in ordinary business hours during the term of the subletting under their respective Subleases and for one (1) year thereafter, and during such further period as is mentioned in the clause (L) above, the examination and audit by the officers, employees and representatives of both the Port Authority and American of such records and books of account and also any records and books of account of any Affiliate if said Affiliate performs services similar to those performed by Subtenant anywhere in the Port of New York District (including, without limitation, all corporate records and books of account which the Port Authority in its sole discretion believes may be relevant for the identification, determination or calculation of all fees, rentals and other amounts paid or payable to the Port Authority and American, all agreements, and all source documents),

within ten (10) days following any written request by the Port Authority or American from time to time and at any time to examine and audit said books and records;

- (N) Subtenants shall install and use the latest technology for point of sales equipment and any other equipment and devices, including without limitation computerized record-keeping systems, for recording orders taken, or services rendered, as may be appropriate to Subtenant's business and necessary or desirable to keep accurate books and records as aforesaid, and without limiting the generality of the foregoing, for any activity involving cash sales, install and use cash registers or other electronic cash control equipment that provides for non-resettable totals, each in accordance with Section 12.2. Subtenants shall register in such point of sales equipment and cash registers every transaction made in, on, about or from the Subtenant's Premises, including every type of Gross Receipts. Records of receipts for all such transactions shall be accessible to, and subject to inspection by, American and the Port Authority in a digital format. Subtenants shall install cash registers and/or other devices that accept all major credit cards and mobile payment systems (including, Apple Pay and Google Wallet) and, wherever commercially reasonable, Subtenants shall provide a swipe and go, chip and mobile payment credit card services to its customers and, upon the request of American, otherwise comply with the requirements of Section 12.3;
- (O) As soon as practicable after the end of each calendar month, but no event later than the fifteenth (15th) day of the following calendar month, Subtenants shall deliver to Retail Manager, American and the Port Authority a Monthly Rental Statement for the Subtenant Premises showing the Gross Receipts for the preceding calendar month, together with supporting documentation therefor as required by Retail Manager, American or the Port Authority, including, without limitation, a statement, certified by an authorized officer or equivalent representative of the Subtenant, of Gross Receipts arising out of operations of the Subtenant for the preceding month;
- (P) American shall have the right, at any time and from time to time prior to and during the Term, in the interest of the efficient operation of the Terminal, to close, move or alter any common corridor, passageway, walkway or common area, including, without limitation, entrances, exits, passages, halls, corridors, aisles, stairways, elevators or escalators, or to restrict or change the traffic on or through any such common corridor, passageway, walkway or

common area, with due regard to not unreasonably restricting the use and occupancy of the Concession Area by the Subtenants. Subtenants shall not have any claim against American for such action, nor shall such action by American release Subtenants from any of its obligations under their respective Sublease;

- (Q) The Sublease shall address the substance of, or incorporate by reference Section 2.3 of this Agreement, so as to permit the Subleases to be terminated in connection with the elimination and/or reduction of the size of the Concession Area or to be relocated, in each case, without the consent or approval of the Subtenants and without any liability for American or Retail Manager beyond what is specifically contemplated in Section 2.3;
- (R) The Sublease shall reproduce and adapt or incorporate by reference Sections 5.3.2, 7.2(R), 7.7, 8.6, 14.1.2.11 (vis-à-vis Subtenant property), 14.3, 15.1.3 (as per 15.1.6) and 15.1.5 of this Agreement;
- (S) Subtenant shall defend, indemnify and hold harmless American, the Port Authority and its commissioners, and all of the officers, directors, employees and agents of each of them, on at least the same basis and to the same extent as required of Retail Manager under Section 15.1.1;
- (T) Subtenant shall permit the inspection during ordinary business hours by the officers, employees and representatives of the Port Authority and American of any equipment used by it, including, without limitation, any of the equipment described in clause (N) above;
- (U) Subtenant, for itself, its successors in interest, and assigns, as a part of the consideration for the Sublease, shall covenant and agree as a covenant running with the land that: (i) no person on the ground of race, creed or religion, color, sex, national origin, handicap or disability, or age shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Subtenant Premises; (ii) in the construction of any improvements on, over, or under the Subtenant Premises and furnishing of services thereon by it, no person on the ground of race, creed or religion, color, sex or national origin, handicap or disability, or age shall be excluded from participation in such activities, denied the benefits thereof, or otherwise be subject to discrimination; and (iii) Subtenant shall use the Subtenant Premises in compliance

with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended, and any other Applicable Laws or Applicable Standards, which from time to time may be applicable to Subtenant's operations at the Subtenant Premises, whether by reason of agreement between American, the Port Authority and the United States Government or otherwise;

- (V) Subtenant shall furnish good, prompt and efficient service, adequate to meet all demands therefor at the Concession Area, furnish said service on a fair, equal and nondiscriminatory basis to all users thereof, and charge fair, reasonable and non-discriminatory prices for each unit of sale or service, provided, however, that Subtenant may make reasonable and non-discriminatory discounts, rebates or other similar types of price reductions to volume purchasers;
- (W) With respect to any Subtenant which employs ten (10) or more persons in the Concession Area, in connection with its operations in the Concession Area under the Sublease, the Subtenant shall serve the public interest by promoting labor harmony, it being acknowledged that strikes, picketing, or boycotts may disrupt the efficient operation of the Terminal. The Subtenant recognizes the essential benefit to have continued and full operation of the Airport as a whole and the Terminal as a transportation center. The Subtenant shall give notice to American and the Port Authority (to be followed by written notice and reports) of any and all impending or existing labor-related disruptions and the progress thereof as soon as practicable (but in no event later than five (5) days after the Subtenant becomes aware of such impending or existing labor-related disruptions). If any type of strike, boycott, picketing or other labor activity is directed against the Subtenant at the Airport or against any operations pursuant to the Sublease, which, in the opinion of American or the Port Authority, adversely affects or is likely to adversely affect the operation of the Airport, any portion of the Terminal or the Concession Area, or the operations of other permittees, lessees or licensees thereat, or presents a danger to the health and safety of users of the Airport or the Terminal under this Agreement, including persons employed thereat or members of the public, whether or not the same is due to the fault of the Subtenant, and whether caused by the employees of the Subtenant or by others, American and/or

the Port Authority shall have the right, at any time during the continuance thereof to take all legal remedies available to it to end or arrange for the cessation of any such strike, boycott, picketing or other labor activity. With respect to any Subtenant which employs ten (10) or more persons in the Concession Area, the Subtenant represents that, prior to or upon entering into the Sublease, it has delivered to American and the Port Authority evidence of a signed labor peace agreement or a written notification from an officer of the Subtenant on the Subtenant's letterhead in form and substance satisfactory to American and the Port Authority that no labor organization (as defined by 29 U.S.C. Section 152(3)) has sought to represent the employees of the Subtenant at the Airport as of the date of such notification;

- (X) Subtenants shall honor, for reimbursement by American, food and beverage vouchers issued by American from time to time to passengers bearing a boarding pass or other verifying documentation deemed sufficient by American; and
- (Y) With respect to any Subtenant which employs ten (10) or more persons in the Concession Area, if the Subtenant's concession at the relevant concession space is of the same type (i.e., food, retail, news/gifts or duty-free concession) as that of the immediately preceding concession operator at the relevant concession space (the "Predecessor Concession"), the Subtenant agrees to offer continued employment for a minimum period of ninety (90) days, unless there is just cause to terminate employment sooner, to employees of the Predecessor Concession who have been or will be displaced by cessation of the operations of the Predecessor Concession and who wish to work for the Subtenant at the relevant concession space. The foregoing requirement shall be subject to the Subtenant's commercially reasonable determination that fewer employees are required at the relevant concession space than were required by the Predecessor Concession; provided, however, that the Subtenant shall retain such staff as is deemed commercially reasonable on the basis of seniority with the Predecessor Concession at the subleased premises. American and/or the Port Authority shall have the right to demand from the Subtenant, upon reasonable notice, documentation of the name, date of hire, and employment occupation classification of all employees covered by this provision. In the event the Subtenant fails to comply with this provision, American and/or the Port Authority shall have the right at any time during the continuance thereof to take such actions as American or the

Port Authority, as applicable, may deem appropriate, including, without limitation, the Port Authority's revocation of its consent to the Sublease and, accordingly, revocation of the Sublease.

6.1.2 Retail Manager shall use the Sublease form to be attached as Exhibit F as the basis for negotiating agreements with Subtenants. Retail Manager may modify portions of the standard Sublease form during negotiations with each Subtenant as necessary, provided, however, that the business terms, including but not limited to the rental arrangement and any modified portions of the Sublease are subject to the prior approval of the Port Authority and American, and Retail Manager shall not modify the substance of the provisions set forth in Section 6.1.1 without the specific prior written approval of American and the Port Authority. The effectiveness of any Sublease is subject to the delivery to the Subtenant of a fully executed Four-Party Subtenant Consent Agreement.

6.1.3 Retail Manager shall, prior to entering into an extensive negotiation with a prospective Subtenant, request a preliminary deal approval of such Subtenant and the proposed rental arrangement by American and the Port Authority, it being acknowledged by Retail Manager that the Port Authority has no obligation to deliver such preliminary approval. Retail Manager shall deliver a written request for a preliminary approval setting forth, in reasonable detail, the proposed Subtenant's financial abilities, business and plans for its proposed Subtenant Premises, the rental arrangement and all other information reasonably necessary for American and the Port Authority to provide preliminary deal approval. Within ten (10) days of American's and the Port Authority's receipt of such written notice, together with all necessary supporting documentation, American and the Port Authority (if it so elects) shall deliver a notice to Retail Manager that the proposed Subtenant and the Subtenant Rental arrangement have been preliminarily approved, or a notice setting forth in reasonable detail why American and/or the Port Authority have determined that such proposed Subtenant and/or the Subtenant Rental arrangement are not acceptable or that either such party reasonably requires additional documentation to make such preliminary deal approval. The granting of any preliminary deal approval shall not relieve Retail Manager of the obligation to obtain the approval of American and the Port Authority to the final negotiated Sublease.

6.1.4 Each finalized Sublease shall be executed by Retail Manager, not American, as sublessor thereunder, and Retail Manager shall arrange for the execution of Subleases and all amendments and modifications thereto by all parties thereto, and distribute copies thereof to American and the Port Authority in accordance with this Agreement. Retail Manager shall cause its counsel (whether in-house or outside) to use reasonable efforts to limit any changes to the standard Sublease form concerning any Sublease negotiations with Subtenants and otherwise negotiate with Subtenants prior to presentation to American and the Port Authority and continue in such negotiations with Subtenants until completed. Any amendment, modification, supplement, renewal or extension to any Sublease shall not be effective without the prior written approval of American and the Port Authority.

6.1.5 In connection with Retail Manager's obligations to sublease the Subtenant Premises, Retail Manager shall also: (i) locate and endeavor to secure, in accordance with the Concession Program, suitable Subtenants (including temporary Subtenants) for all Subtenant Premises that may be vacant from time to time or are to become vacant in the near future and are reasonably available for occupancy or use; (ii) review the general suitability of prospective Subtenants and, to the extent Retail Manager may deem it reasonably necessary or appropriate, seek references from prospective Subtenants and conduct such other investigations as will establish whether or not the prospective Subtenants are capable of performing all obligations which the prospective Subtenants would be required to perform under their respective Sublease; (iii) coordinate the activities of management, leasing, design and

engineering personnel and/or consultants to implement the leasing program for the Concession Area; and (iv) perform such other leasing activities as may be required by and consistent with the prevailing national standard for properties of a similar type and quality as the Concession Area.

6.1.6 Retail Manager shall, and shall cause the Subtenants to, conduct a business-like operation in the Concession Area and the Subtenants shall carry sufficient merchandise to stock fully the Subtenant Premise operated by the Subtenant. All merchandise must be of first-class quality, and must be approved as provided in Section 7.1; and Retail Manager shall monitor sales activity, pricing, customer service, hours of operation, merchandise, sales reporting and payment of rent.

6.1.7 Reserved.

6.1.8 Reserved.

6.1.9 Evaluation of Subtenants during Transition Period.

6.1.9.1 Following the Commencement Date, Retail Manager shall employ, upon prior approval thereof by American, a leasing strategy utilizing a combination of leasing methods to deliver the preferred concepts, types of concepts, categories, and operators, based on the Development Plan (as hereinafter defined). Once such leasing strategy has been approved by American, Retail Manager shall utilize a competitive evaluation process to deliver recommended Subtenant deals to American for review and approval. Retail Manager shall propose leasing methods with respect to such Subtenants on a space-by-space or package-by-package basis, as applicable, for American's approval, not to be unreasonably withheld or conditioned. Without limiting the requirements of Section 6.1 and Section 6.1.1, no Sublease term shall exceed ten (10) years, except as otherwise approved by American.

6.1.9.2 Prior to the Effective Date, Retail Manager prepared a Development Plan and a Transition Plan (both as defined below) for the Concession Area. The "Development Plan" shall mean that certain proposal dated [●], 20[21], as amended from time to time and approved by American (the Development Plan in effect as of the Effective Date is attached hereto as Exhibit G-2), which Development Plan contains concepts and operators for the Concession Area. American shall provide any substantive changes to the Development Plan to Retail Manager and Retail Manager shall incorporate such requested changes into the Development Plan. The Development Plan shall contain, at a minimum, the following: (i) a variety of local and national brands, (ii) inclusion of popular national and local concepts not found in other similarly situated airport concession programs, (iii) collaboration with Port Authority on its sustainability initiatives (e.g. recycling and waste reduction), (iv) no space in the Concession Area for concepts that are trending downward in popularity or sales in a similarly situated consumer market (as determined by American), (v) a construction phasing plan to ensure that all initial improvements are completed within three years of the Effective Date, and (vi) a plan to address future enhancements to the Program, including the possible addition of space to address future passenger growth, mid-term refurbishments, re-development of individual spaces and concession areas as Sublease terms expire during the term of this Agreement.

6.1.9.3 The "Transition Plan" shall mean that certain proposal dated [●], 20[22], as amended from time to time and approved by American (the Transition Plan

in effect as of the Effective Date is attached hereto as Exhibit G-3), which Transition Plan, subject to input, review and approval from American, shall at a minimum, include, but not be limited to, (i) administration of the Existing Tenant Subleases, (ii) Existing Tenant performance monitoring and compliance (with the terms of the Lease, this Agreement, the applicable Existing Tenant Sublease, any and all applicable laws, rules and statutes, and other regulations), (iii) financial reporting, rent collection and remittance to American and the Port Authority (as applicable), and (iv) concessions program marketing. American shall provide any changes to the Transition Plan to Retail Manager and Retail Manager shall incorporate such requested changes into the Transition Plan.

6.1.10 Four-Party Subtenant Consent Agreements for Temporary Deals. Notwithstanding anything to the contrary contained in this Agreement, unless otherwise required by the Port Authority, no Four-Party Subtenant Consent Agreement shall be required for any Sublease, including for “pop-up” or seasonal vendors, that has a term of one (1) year or less.

Section 6.2 Use and Prohibited Uses. Retail Manager agrees to use or permit use of the Concession Area for the operation of the concession privileges described in Article 7 hereof. Retail Manager shall not conduct or permit operations in the Concession Area that in the reasonable judgment of American or the judgment of the Port Authority:

- (A) Interfere or might interfere with the reasonable use by others of common facilities at the Premises;
- (B) Hinders or might hinder police, firefighters or other emergency personnel in the discharge of their duties;
- (C) Would or would be likely to constitute a hazardous condition at the Premises;
- (D) Would increase the premium for insurance policies maintained by American or the Port Authority, unless such operations are not otherwise prohibited hereunder and Retail Manager pays the increase in insurance premiums occasioned by such operations, or obtains a commitment satisfactory to American from the involved prospective Subtenant to pay such increase;
- (E) Would involve any illegal purposes; or
- (F) Are not in accordance with the commitment of Retail Manager to procure and manage first-class concession services at the Concession Area.

Section 6.3 Ingress and Egress. Retail Manager and Subtenants (via approved Subleases), and their respective officers, employees, customers, patrons, invitees, contractors, subcontractors, suppliers of materials and furnishers of services shall have the right of ingress to and egress from the Concession Area, as reasonably required to carry on permitted activities as described herein, subject to Port Authority, American, governmental and regulatory (e.g., security) approval, and subject to conditions and restrictions pursuant to the Lease. The manner and means of receipt of shipments of

inventory and supplies shall also be subject to the approvals, conditions and restrictions described herein.

6.3.1 To the extent any of Retail Manager’s personnel listed above require identification badges or security clearance for access at the Terminal, Retail Manager is responsible at its expense for securing such badges or clearance. Retail Manager will cause Subtenants to be similarly responsible for their personnel under the Subleases, and will monitor compliance by Subtenants with required badging and security clearances and the screening of Subtenant goods, products, equipment, materials and supplies. Retail Manager will apply default remedies under Subleases as required to remedy violations or other deficiencies by Subtenants, but shall not have any other responsibility or liability with respect to security issues relating to such Subtenant employee badging and security clearance requirements and the screening of any such Subtenant goods, products, equipment materials and supplies. Notwithstanding anything to the contrary in this Agreement or the Lease, American acknowledges that Retail Manager has no obligation to conduct screening or inspection of goods, products, equipment, materials or supplies brought to the Terminal, Premises or Airport by or on behalf of Subtenants or American.

ARTICLE 7

RETAIL MANAGER’S DUTIES

Section 7.1 General Operations Standards. Retail Manager shall use its best efforts to develop and operate the Concession Area as a Premier World-Class Retail Program that will support and advance the role of the Terminal in providing a convenient and comfortable arrival to and departure from the Airport, consistent with the image and status of New York City as a foremost domestic gateway and America’s foremost international gateway (the “Concession Program Standards”).

7.1.1 The Concession Program Standards shall embody Retail Manager’s full commitment to quality, value and customer service, evidence operations in accordance with the best industry practices and otherwise in a manner comparable to first-class specialty retail and food and beverage products in major United States airport concession programs, evidence compliance with the Port Authority’s maximum standards with regard to service, health, sanitation and safety, be customer satisfaction oriented through providing a broad variety of quality products and services to travelers and other users of the Terminal with innovative concepts that impart broad customer appeal and evidence Retail Manager’s full commitment to the maximum financial return to Retail Manager, American and the Port Authority. To meet these goals and objectives, the Concession Program shall: (i) include thoughtfully chosen restaurants and shops that appeal to JFK’s specific customer mix, including a variety of local, national and international brands, with a special focus on local businesses known for exceed customer expectations by delivery exceptional customer service, product quality and value, (ii) extend the award-winning image of American through passenger comfort, convenience, and ease of travel, (iii) provide value to the customer by adhering to the Street Prices policy and (iv) present visually captivating and welcoming concessions that evoke a local NYC “sense of place” without interfering with passenger-to-gate flow or operation of the Terminal for air travel. In the event Retail Manager plans to self-operate any spaces at the Terminal, (I) such self-operated spaces shall meet substantially the same standards of quality, customer service and compliance with airport rules and regulations as well as the provisions of the Lease (including the obligation to satisfy the Concession Program Standards as a Premier World-Class Retail Program) as all other spaces operated in the Concession Area and (II) Retail Manager shall not reserve the most desirable concession locations within the Concession Area (by way

of example, but not by limitation, the concession locations receiving more foot traffic than other locations by way of being closer to TSA security checkpoints) for such self-operations.

7.1.2 Retail Manager shall correct any specific deficiencies in the Concession Program Standards identified by American in a reasonably prompt manner.

7.1.3 Retail Manager shall develop, or shall cause to be developed by a third party approved by American, a program which monitors concession reviews on Yelp, Twitter, Instagram and other social media sites (including reviews of Subtenants and the Concessions Program and Concession Area). Such program, which may be funded through the Joint Marketing Fund, shall be subject to prior written approval by American and shall, at a minimum, (i) develop a response procedure for the Subtenants with respect to any reasonable deficiencies identified in such reviews. Retail Manager shall prepare and document, in good faith, and deliver to American a monthly report regarding such reviews, which report shall, at a minimum, include summaries (categorized by Subtenant) of reviews of such Subtenant, responses by such Subtenant to such reviews and actions taken by such Subtenant to address deficiencies, which monthly reports shall be delivered by Retail Manager to American no later than the 10th day following each calendar month.

If Retail Manager fails to demonstrate (to American's satisfaction in its reasonable discretion) that Retail Manager has caused a Subtenant to adequately address deficiencies or negative reviews of Subtenants, the Concessions Program or Concession Area obtained through the program referenced above, then Retail Manager shall meet and confer with American within thirty (30) days of such failure to discuss such failure in good faith and implement a corrective action plan (which plan shall include appropriate solutions and the timing of its implementation) mutually agreed upon by American and Retail Manager with respect thereto. If Retail Manager subsequently fails to meet the terms of such corrective action plan in the time period described therein or subsequently fails to address deficiencies or negative reviews and cannot demonstrate commercially reasonable efforts to cause a Subtenant to adequately meet the terms of any corrective action plan or to address deficiencies or negative reviews, then such failure may (at American's election) be deemed a breach of a covenant set forth in this Agreement pursuant to Section 14.1.1(L) hereof and American shall have all rights and remedies as provided in Section 14.1.2 as a result thereof.

Section 7.2 Concession Management. Retail Manager represents and warrants that it is solvent and has the financial resources, skills and experience necessary to perform its obligations in accordance with the terms of this Agreement and the Lease. Without limiting the other terms and conditions set forth herein, Retail Manager shall perform the following duties, subject to the terms, conditions and limitations imposed by the Concession Program, the Lease and all other provisions of this Agreement (collectively, together with the duties set forth in Section 7.1, the "Minimum Standards"):

- (A) The billing and collection of all amounts payable by Subtenants under the Subleases and other amounts referred to in Section 6.1.7 above;
- (B) The payment of all Operating Expenses (including the Common Area Maintenance Fee and the Joint Marketing Fund Fee, even if not fully collected from Subtenants) required under this Agreement;

- (C) The selection, engagement, employment, payment, supervision, direction and discharge of all employees or independent contractors reasonably necessary or appropriate for the proper and safe operation and maintenance of the Concession Area, in number and at wages in accordance with the Concession Program, the carrying of Worker's Compensation Insurance (and, when required by law, compulsory Non-Occupational Disability Insurance) covering Retail Manager's employees or independent contractors, and the use of reasonable care in the selection, supervision and discharge of such employees or independent contractors. Retail Manager shall use its diligent, best efforts to comply with all laws and regulations and collective bargaining agreements, if any, affecting such employment. All Persons employed in connection with the operation and maintenance of the Concession Area shall be employees of Retail Manager or its Affiliates or employees of independent third-party contractors (approved by American in accordance with Section 15.16) providing contract services to the Concession Area;
- (D) In the event any Subtenant: (i) shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement or reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other law or statute of the United States or of any state thereof, consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property or assets; (ii) by order or decree of a court, shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or by any of the stockholders of such Subtenant seeking its reorganization or the readjustment of its indebtedness under the Federal bankruptcy laws or under any law or statute of the United States of America or of any state thereof unless such order or decree is stayed or vacated; or (iii) shall otherwise default in its obligations under its Sublease resulting in a termination of its Sublease, Retail Manager shall use its commercially reasonable efforts (subject to the provisions of the defaulted Sublease, and applicable provisions of the United States Bankruptcy Code, as amended) to market and lease such space to a new Subtenant, including temporary Subtenants;
- (E) The cleaning, maintenance, servicing and repair of the Food Court, other public seating areas and other designated

common areas of the Concession Area (whether by employees of Retail Manager or through supervision of independent contractors) in a first-class manner, including all machinery, equipment and other items whether leased or provided by Retail Manager in accordance with this Agreement, provided that American is responsible for the costs of repair and maintenance items affecting the Base Building to the extent such Base Building items were not installed by or on behalf of Retail Manager;

- (F) Subject to Sections 6.3.1 as it relates to Retail Manager's responsibilities and liabilities, compliance with the provisions of any and all present and future governmental laws, rules, regulations, requirements, orders and directions which may pertain and apply to its operations for the use and occupancy of the Concession Area by it, including, without limitation, all health, security and safety requirements and all FAA and airport safety and security regulations (including, without limitation, American's FAA-approved "Safety Program" as it is in effect from time to time), and monitoring and enforcement of compliance with such laws, rules, regulations, requirements, orders and directions by Subtenants by means of appropriate obligations and remedies under the Subleases;
- (G) The management and administration of the Joint Marketing Fund and the advertising, merchandising and promotion of the Concession Area and the Subtenants' respective businesses in accordance with the Concession Program and this Agreement or as otherwise approved in writing by American;
- (H) The development and implementation of Design Guidelines satisfactory to American and the Port Authority;
- (I) Retail Manager shall cause Subtenants to take all commercially reasonable measures to maintain, develop and increase the business conducted at the Concession Area. All occupied Subtenant Premises shall be operated: (i) seven days a week, 365 days a year (unless otherwise agreed by American or prevented by Force Majeure); (ii) except to the extent modified by and in accordance with an approved Concession Program or a Sublease; and (iii) in a manner otherwise consistent with the requirements prescribed by American in its sole but reasonable discretion in accordance with American's own determination of its operational needs at the Terminal. Retail Manager shall establish reasonable procedures, in order to meet high

quality customer service standards, for adjusting Subtenant opening and closing times based on daily flight schedules, as well as for receiving from American and disseminating schedule changes, weather or maintenance delays or other flight information which will require adjustments in some Subtenants operations in order to meet high quality customer service standards;

- (J) The management, administration and coordination of all design and construction associated with the maintenance, repair and/or leasing of the Concession Area including, without limitation, all Subtenant Fixed Improvements and/or Refurbishments to be constructed in the Concession Area, whether initial construction and alterations associated with any expansion, redevelopment or refurbishment of the Concession Area or future construction and alterations. Retail Manager shall be responsible for the supervision and coordination, subject to the prior written approval of American and the Port Authority, of the design of any Subtenant Premises to the extent contemplated in such Subtenant's Sublease, including, without limitation, the design of such Subtenant's store front and the specifications of such Subtenant's equipment;
- (K) Retail Manager shall cause each Sublease to include provisions requiring the Subtenants to maintain an adequate sales and work force at all times, including, without limitation, sales, cashiers, management and supervisory personnel on-site to fully meet customer needs at all times and use skill and diligence in the conduct of business. Retail Manager and the Subtenants shall cause their respective employees to be courteous and helpful to the public at all times;
- (L) Retail Manager shall cause Subtenants to not divert any business from the Airport or Terminal;
- (M) Monitor the Concession Area market through periodic (not less than annual) consumer surveys, the content of which shall be approved by American in advance, and regularly study new industry trends;
- (N) Upon request from American, Retail Manager shall participate, from time to time, in airline-related promotions and services that (i) are related to benefiting the Concession Program, and (ii) can be funded through the Joint Marketing Fund to the extent they require any cash disbursements by Retail Manager;

- (O) Retail Manager shall cause the Subtenants to: (i) cooperate in the testing of pressure, water-flow, and other appropriate tests of the fire-extinguishing system and apparatus located within the Subtenant Premises (and elsewhere in the Concession Area to the extent Subtenant's cooperation is required for such testing) from time to time and as often as reasonably required by American or the Port Authority, and if requested by American or the Port Authority, furnish the Port Authority and American with copies of written reports of such tests; (ii) keep in proper functioning order all firefighting equipment in each Subtenant Premises and at all times maintain in each Subtenant Premises adequate stocks of fresh, suitable chemicals for use in such system and apparatus; (iii) notify the Port Authority and American prior to conducting such tests; and, (iv) generally monitor and enforce compliance by Subtenants with all fire-fighting and other health and safety equipment and systems, and any related licenses, certificates and inspections;
- (P) Exercise the highest degree of safety and care, not creating any hazardous conditions on or about the Concession Area, Terminal or Airport, and conduct all its operations under this Agreement and operate, use and maintain the Concession Area in accordance with high standards and in such manner as to minimize emissions of all types, noises or noxious odors from the Concession Area;
- (Q) Comply at all times with the Port Authority's guidelines imposed on American pursuant to the Lease or on Retail Manager pursuant to the Operator Permit or any Additional Port Authority Requirement in the management and development of the Concession Program;
- (R) Neither Retail Manager nor any Subtenants shall ever incorporate into, or dispose of, at, on or under the Terminal or elsewhere at the Premises or at the Airport, or any portion thereof, any Toxic or Hazardous Materials. Retail Manager further agrees not to (and shall require the Subtenants not to) use at, place on, or store at the Concession Area or at the Airport any Toxic or Hazardous Materials, except for those Toxic or Hazardous Materials that are either (i) office supplies or (ii) cleaning materials that are generally considered to be a household cleaner and are purchased in a container not larger than one (1) gallon, and then only if (a) all such Toxic or Hazardous Materials, supplies and materials, or wastes arising therefrom, are properly labeled and contained, (b) all such Toxic or Hazardous Materials, or wastes arising therefrom, are stored, handled, transported and disposed of in accordance with highest accepted industry standards and all Applicable

Laws and (c) if a material safety data sheet or other reporting or registration document is required under Applicable Laws to accompany the Toxic or Hazardous Materials, supplies or materials or be filed with any federal, state or local authority, a copy of such current material safety data sheet or other reporting or registration document is provided to American. In the event there is a spill or other discharge of a Toxic or Hazardous Materials in a Subtenant Premises, which spill or discharge is required to be reported to any federal, state or local authority by Applicable Laws, Retail Manager shall require that the relevant Subtenant notify American of the method, time and procedure for any clean-up and removal of such Toxic or Hazardous Materials; and American shall have the right to require reasonable changes in such method, time or procedure (provided that such changes may not contradict applicable law). Retail Manager and the relevant Subtenant shall further notify American if any such spill or other discharge, whether reportable or otherwise, would in any way endanger or pose a threat to Retail Manager's or any Subtenant's employees, Terminal maintenance or custodial personnel or the general public. In the event there is a spill or other discharge of a Toxic or Hazardous Materials in a part of the Concession Area outside the Subtenants' Premises, which spill or discharge is required to be reported to any federal, state or local authority by Applicable Laws, Retail Manager shall promptly notify American by telephone and email to American's JFK Control Center Manager, and otherwise as required in this Agreement, and upon being so notified American shall undertake to clean-up, remove and abate the condition at its cost initially, reserving the right to seek indemnification of its costs for failures of Retail Manager or Subtenants to abide by the requirements of this section. In the event Retail Manager or a Subtenant fails to comply with this section in respect of any contamination within Retail Manager's own office space or the Subtenant's Premises, or in the event of a contamination of any part of the Concession Area other than Retail Manager's own office space or the Subtenant Premises caused by Retail Manager or any Subtenant, in addition to any other consequences thereof, Retail Manager or the relevant Subtenant(s) shall pay or reimburse to American all American's costs for the removal or abatement or clean-up of the involved Toxic or Hazardous Materials. Similarly, if a contamination was caused by American in a Subtenant Premises, American will reimburse all costs incurred by Retail Manager or a Subtenant for the removal or abatement or clean-up of the involved Toxic or Hazardous Materials. This Section 7.2(R) shall survive the expiration or termination of this

Agreement. Retail Manager and the relevant Subtenant shall be jointly and severally liable vis-à-vis American and the Port Authority under this section;

- (S) Subject to the limitations of Section 6.3.1, direct, coordinate and monitor procedures and practices for deliveries of goods, products, equipment, materials and supplies to and from Subtenants, including from any designated on or off-Airport storage areas, as well as the collection and disposal of all waste and refuse related to the Concession Area;
- (T) Remove signage and install temporary barricades in accordance with the Rules and Regulations in the event a Subtenant Premises is vacated or closes for any reason. American acknowledges that Retail Manager may recover its costs for the foregoing activities from the vacating and/or succeeding Subtenant; and
- (U) Ensure that each Subtenant which is a food and beverage operator shall comply with the Port Authority's "Value for Money Options Program" as further defined in the Airport Rules & Regulations, General Manager's Bulletins, and the Customer Service Standards Manual.

7.2.2 The operations of Retail Manager and the Subtenants, including without limitation their respective employees, agents, invitees (which excludes, for the avoidance of doubt, passengers and any other general public who enter the Terminal not solicited or requested specifically by Retail Manager or a Subtenant), suppliers and subcontractors, shall be conducted in an orderly and proper manner and so as not to annoy, disturb or be offensive to others at the Airport. Retail Manager and the Subtenants shall provide, and their respective employees shall wear or carry badges or other suitable means of identification and such employees shall wear appropriate attire. The badges and means of identification shall be subject to the prior written approval of American and the Port Authority, if customarily required. American shall have the right to object to Retail Manager regarding the demeanor, conduct and appearance of employees, agents, invitees, suppliers and subcontractors of Retail Manager or the Subtenants, whereupon Retail Manager and the Subtenants will take all steps reasonably necessary to remedy promptly such objections. If the objections are not remedied to the reasonable satisfaction of American, Retail Manager and/or Subtenant(s) shall take all necessary action to remove and/or restrict the access of the employees, agents, invitees, suppliers and the subcontractors from the Terminal to the extent permitted by law.

7.2.3 Retail Manager and the Subtenants shall at all times comply with any and all Rules and Regulations (including any security requirements, but subject to the limitations of Section 6.3.1) in effect at the Airport or the Terminal. Retail Manager shall not use or permit the use of the Concession Area or any part thereof or do or permit its officers or employees or any other Persons over whom it has control to do any act or thing either in the Concession Area or elsewhere in the Terminal in violation of any present or future laws, ordinances, rules or regulations of American or any other public or governmental authority with jurisdiction at the Terminal. Retail Manager shall at all times maintain the Food Court, other public seating areas and other designated common areas of the Concession Area in compliance with any and all present and future laws, ordinances and general rules

or regulations of any public or governmental authority now or at any time during the Term relating to sanitation or public health, safety or welfare and cause the Subtenants to do the same in respect of their respective Subtenant Premises.

7.2.4 Retail Manager shall employ, at no cost to American, at least one (1) full-time, dedicated, on-site Concession Manager, and one or more assistant concession managers (each an “Assistant Concession Manager”). The individual Retail Manager proposes to employ as Concession Manager is subject to the prior approval of American. The Concession Manager and Assistant Concession Manager(s) shall serve as a liaison with American, the Port Authority and the Subtenants, with sufficient authority and support staff and appropriate equipment, supplies and means to manage and perform the development, management, maintenance, repair and other functions and obligations of Retail Manager with respect to the Concession Area, including, without limitation, the obligation to administer the Subleases and other agreements to which Retail Manager is party, to monitor and enforce compliance by the Subtenants with their Subleases and this Agreement, each with authority to resolve operational issues short of executing an actual amendment to this Agreement. The Concession Manager shall monitor the Concession Area to evaluate and enforce the Subtenants’ compliance with their respective Subleases, including but not limited to compliance with the Minimum Standards, and shall report in writing any noncompliance to Retail Manager and to American. The Concession Manager shall use commercially reasonable efforts to remedy any problem or issue raised by Terminal patrons with respect to the operation of the Concession Area, and shall answer, or cause Subtenants to answer, all written customer complaints within ten (10) days after receipt of such complaints. The Concession Manager shall provide, or cause Subtenants to provide, copies of the complaints and answers to American and the Port Authority not less than one (1) time during each calendar month. The Concession Manager or an Assistant Concession Manager shall be available twenty-four (24) hours per day to resolve any issues pertaining to the Concession Program, and upon Commencement Date one or the other being present in the Concession Area a minimum of sixteen (16) hours per Business Day and available to meet with American or the Port Authority at the Terminal, or available at other times by telephone, being able to arrive by car at the Airport within two (2) hours of being called in an emergency situation. Retail Manager shall have no authority or right to renew, extend, amend or otherwise modify the terms of a Sublease in connection with any legal proceeding, arbitration, settlement negotiations or the like, without the prior written consent of American and the Port Authority, American’s consent not to be unreasonably withheld.

7.2.5 American reserves the right to require Retail Manager to remove and replace any Concession Manager or Assistant Concession Manager who, in American’s reasonable judgment, does not perform up to the standards consistent with the fulfillment of Retail Manager’s obligations under this Agreement.

7.2.6 In the event any question or dispute arises as to the sale of any specific item or category of items in the Concession Area and whether such sale violates the Street Prices policy or does not comply with the Concession Program or the Airport Rules & Regulations, General Manager’s Bulletins, or the Customer Service Standards Manual, Retail Manager may submit a request in writing to American and the Port Authority asking that the matter be reviewed. American shall render a decision in writing, after consultation with the Port Authority, within fifteen (15) Business Days after such submission and such determination shall be considered final. Retail Manager shall, as of the date of the decision, cause Subtenants to immediately abide by and conform to the decision of American. Retail Manager is not required to incur material out-of-pocket expense to remedy Street Prices violations of Subtenants. However, any such violation, which results in American being in default of the Lease in the Port Authority’s judgment, will automatically constitute a default of Retail Manager, subject to applicable notice and cure periods, under this Agreement.

7.2.7 Upon the expiration or Early Termination of this Agreement, Retail Manager will cooperate fully with American and any other successor in interest to Retail Manager, without having to incur any material out-of-pocket expense not otherwise required in this Agreement, to ensure an effective and efficient transition of Retail Manager’s duties to the successor.

Section 7.3 Concession Program. Upon execution of this Agreement, Retail Manager shall have developed and submitted to the Port Authority and American for their approval a comprehensive plan (the “Concession Program”) for consumer services, a copy of which is attached as Exhibit G-1, setting forth, *inter alia*: (i) the types of concessions to be placed there and the number of each type and size, designated location, and configuration of each concession, as well as the overall plan of the Concession Area; (ii) the minimum rentals required for each type of concession; (iii) the structure and level of any Common Area Maintenance Fees, Joint Marketing Fund Fees, and permitted utility recoveries to be charged to the Subtenant; (iv) Retail Manager’s plans to conduct outreach and provide retail opportunities for Minority Business Enterprises and Women-Owned Business Enterprises, Local Business Enterprises, and Airport Concession Disadvantaged Business Enterprises; (v) Retail Manager’s quality and service standards and required hours of operation; (vi) Retail Manager’s specific plans to monitor and enforce Street Prices, quality and service standards and required hours of operation; (vii) any other basic business terms including, without limitation, any mandatory investment and refurbishing requirements; (viii) a list of suggested Subtenants for each concession type, (ix) a checklist to score each Subtenant on 45 specific areas of operations, including, cleanliness, condition, service and convenience and visual presentation (the “Concession Standards Checklist”), (x) a detailed competitive solicitation process to procure qualified Subtenants for the Concession Area; and (xi) such other information as the Port Authority or American may deem appropriate to its review and determination if it will approve the proposed plan.

7.3.1 Retail Manager shall submit to each of American and the Port Authority for its written approval at annual intervals, at least sixty (60) days prior to the end of each calendar year during the Term (and at such other times if requested by American or the Port Authority or at one more time during such calendar year if desired by Retail Manager) a supplemental or revised Concession Program, which shall contain the items of information enumerated above in Section 7.3, together with the following: (i) a review of prior year’s performance, including, without limitation, achievement of sales projections, financial results and other goals and objectives; (ii) the establishment of new operational goals and objectives for the forthcoming year of the Concession Program, including identification of sales opportunities; (iii) identification of employee and labor initiatives (including, without limitation, training, customer service and employee retention programs, and job fairs) to ensure compliance with the obligations set forth herein (including, without limitation, the obligations set forth in Sections 11.4 and 11.5); (iv) projections of sales by category and location/concept within each category, sales per Enplaned Passenger and payments to American due under Article 4 of this Agreement for the forthcoming year; (v) any planned expenditures, investments or improvements in the Concession Area; (vi) any changes or improvements in operations anticipated, in the following year, such as marketing efforts, training or services at the Concession Area by Subtenants; (vii) marketing and promotion plan and budget for the Concession Area, including the annual marketing plan referenced in Section 7.5.2 for use of the Joint Marketing Fund Fee; (viii) copies of any consumer surveys and other industry trend studies, to the extent they are prepared by Retail Manager; and (ix) any other information reasonably requested by American or the Port Authority.

7.3.2 American shall use commercially reasonable efforts to cause the Port Authority, after receipt of the initial and each subsequent proposed revision of the Concession Program, to advise Retail Manager in writing of its approval, conditional approval or disapproval of such proposal. If American disapproves or conditionally approves, American shall provide a written explanation. Retail

Manager may thereafter submit for American and Port Authority approval an appropriately modified proposal for a revised Concession Program. Unless and until American and the Port Authority approve a revised Concession Program unconditionally in the foregoing manner, the Concession Program previously approved shall continue in effect. Retail Manager shall, at all times during the Term, keep said Concession Program updated. Updated Concession Programs shall be submitted to and be subject to the continuing approval of American and the Port Authority.

7.3.3 The types of concessions to be placed in the Concession Areas shall include (i) restaurants and bars, (ii) vending machines, (iii) newsstands, (iv) duty-free shops, (v) qualified foreign currency exchange operators, (vi) qualified retail banking operators and (viii) any other concessions not prohibited pursuant to the terms of the Lease.

7.3.4 Retail Manager shall meet and consult with American and the Port Authority, and provide representatives to meet and consult with American and the Port Authority and representatives of other airlines operating at the Terminal, when requested to do so on reasonable prior notice in order to discuss Retail Manager's performance in meeting the standards required by the Lease and this Agreement and its implementation of American and the Port Authority guidelines on matters affecting consumer services in the Concession Area. Subject to the provisions of Section 15.14.3 with respect to approvals or consents, Retail Manager hereby designates [●] as its representative designated to oversee the Concession Program and to work together with American and the Port Authority in order to ensure that the Concession Program aligns with the goals, priorities and initiatives of American and the Port Authority as set forth in this Agreement and the Lease. Subject to the provisions of Section 15.14.3 with respect to approvals or consents, American hereby designates [●] as its representative designated to oversee the Concession Program and to work together with Retail Manager and the Port Authority in order to ensure that the Concession Program aligns with the goals, priorities and initiatives of the Port Authority as set forth in this Agreement and the Lease.

Section 7.4 Signs and Advertising. Except with the prior written approval of American (and the Port Authority, as required in the Lease), Retail Manager and the Subtenants shall not erect, maintain or display any signs or any advertising at or on the exterior parts of the Concession Area or in the interior of the Concession Area outside of Subtenant Premises. American may require the removal of any signs or advertising in the interior of the Premises (whether or not in the interior of the space occupied by a Subtenant or visible from any other portion of the Airport) which, in American's reasonable judgment, is considered unacceptable or improper. American acknowledges that Subtenants' customary interior signs, placards and decorations that are professionally prepared and in good taste, and are utilized in a manner substantially similar to the manner in which a Subtenant commonly employs them in their first-class stores located in large, urban airports and regional shopping centers in the United States, are highly unlikely to be unacceptable or improper.

7.4.1 No later than [●], 20[●], Retail Manager shall have developed and submitted to the Port Authority and American for their approval the Subtenant Design Handbook (the "Design Guidelines") which shall include, without limitation, descriptions of storefront, Retail Merchandising Unit (RMU), kiosk and signage standards, such Design Guidelines to be aligned with the "One JFK" initiative, information on which is attached hereto as Exhibit E-2. No later than sixty (60) days before the [●]th ([●]th) and [●]th ([●]th) anniversaries of the Commencement Date, Retail Manager shall develop and submit to the Port Authority and American for their approval, its recommendations, if any, for revised and updated Design Guidelines. American's and Port Authority's approval shall be obtained by Retail Manager with respect to the implementation of the Design Guidelines, including, without limitation, signage at each Subtenant Premises. Each Subtenant at the Terminal shall be subject to, and be required to comply with, the Design Guidelines.

7.4.2 Retail Manager shall design, fabricate, locate, install, operate and maintain necessary and appropriate identification and directory signs in the Concession Area and in the Terminal in coordination with American’s signage consultant, and subject to prior written approval of American, and of the Port Authority under the Lease. The identification and directory signage shall, among other things, indicate the locations of all concessions and services as well as other related information as American may direct and shall be promptly updated from time to time as necessary to reflect any changes with respect to concessions and services in the Concession Area. The locations of such signage shall be proposed by Retail Manager and subject to approval by American and shall include at least two locations in each concourse, unless directed otherwise by American. Retail Manager shall also provide a directory in digital form that can be accessed via a website or mobile application. The costs and expenses of installing and maintaining signage under this Section 7.4.2, including updates to such signage from time to time, shall be the sole responsibility of Retail Manager.

7.4.3 Upon the expiration or termination of this Agreement, Retail Manager shall remove, obliterate or paint out, as American may direct and to American’s reasonable satisfaction, any and all signs and advertising in the Concession Area or elsewhere at the Terminal installed by or on behalf of Retail Manager. Retail Manager shall restore the portion of the Concession Area and the Terminal affected by such signs or advertising to the same condition as existing prior to the installation of such signs and advertising. American agrees that Retail Manager’s actual and reasonable costs in complying with this section may be paid for from the Joint Marketing Fund. In the event of a failure on the part of Retail Manager to remove, obliterate or paint out each and every such sign or advertising and so to restore the Concession Area and the Terminal, American may perform the necessary work and Retail Manager shall pay the actual and reasonable cost thereof to American on demand.

7.4.4 Retail Manager and the Subtenants shall not display any advertising, promotional, or informational pamphlets, circulars, brochures or similar materials outside of their respective Subtenant Premises without the prior written consent of American. The preceding does not mean or imply that Retail Manager has any authority or control over the advertising within the Terminal as a Port Authority Reserved Use, nor does Retail Manager have any right to revenue derived therefrom.

Section 7.5 Marketing and Promotion. Retail Manager shall require each Subtenant to contribute to a joint marketing fund (the “Joint Marketing Fund”). Contributions to said fund shall be generally spent by Retail Manager on the marketing and promotion of the overall concession operations at the Terminal or on any item that may enhance the overall passenger experience at the Terminal, all in accordance with the approved Concession Program and its annual marketing plan component as further described in Section 7.5.2 below. The types of expenses that may be paid out of the Joint Marketing Fund or submitted for reimbursement shall include, without limitation, direct costs associated with marketing and promotion activities (i.e., costs incurred for the purchase of marketing program creative materials and paid media), costs associated with marketing program development and day-to-day coordination and costs incurred for customer service training for Subtenant employees, live entertainment and in-Terminal events, community and public relations events, Street Prices surveys and comparisons, sales/service incentive rewards for Subtenant employees, secret or “mystery” shopping and other inspection programs (including, but not limited to, customer exit surveys), social media and other technology-driven programs (including, but not limited to, digital initiatives, mobile applications and the like) as well as any other expenses associated with Retail Manager’s programs relating to customer service and satisfaction, whether carried out by Retail Manager employees or subcontracted consultants. Marketing programs may include directories, graphics (including Subtenant Premises barricade graphics) and pamphlets. Any intentional or grossly negligent misuse of the Joint Marketing Fund or intentional or grossly negligent

failure of Retail Manager to maintain accurate and accessible records as to its proper use will be a material breach under this Agreement.

7.5.1 Subtenant contributions to the Joint Marketing Fund shall be payable monthly in arrears, together with such Subtenant's percentage rent payments, in an amount not to exceed one-half of one percent (0.5%) of all Gross Receipts of each Subtenant (such percentage payment being referred to as the "Joint Marketing Fund Fee") and shall be maintained by Retail Manager in a separate account to be established for this purpose, and not commingled with any other funds. If actual Gross Receipts are not known at the time the Joint Marketing Fund Fee is due, Subtenants shall pay it based upon an estimate of its monthly Gross Receipts, and the Subleases shall include a provision adjusting the amount paid within thirty (30) days after the end of each six (6) month period during the calendar year so that the Subtenant's payment of the Joint Marketing Fund Fee is based on its actual Gross Receipts for that six (6) month period.

7.5.2 As part of the Concession Program and its annual updates under Section 7.3.2, Retail Manager shall present an annual marketing plan for the Terminal to American and the Port Authority which shall propose a detailed budget for how monies contributed to the Joint Marketing Fund may be used. The annual marketing plan will also address barricade graphic signage for unoccupied Subtenant Premises or incomplete construction, repair or refurbishment of Subtenant Premises in the Concession Area, in a manner complimentary to the interior design and furnish of the Terminal. The annual marketing plan and any proposed changes shall be subject to the approval of American and the Port Authority.

7.5.3 Retail Manager will provide American and the Port Authority with an accounting of the use of the Joint Marketing Fund compared with budgeted expenditures no later than sixty (60) days after the end of each calendar year during the Term. Unused funds remaining in the Joint Marketing Fund at the end of any calendar year which constitute ten percent (10%) or less of the expenditures budgeted under and annual marketing plan approved under Section 7.5.2 above will remain in the bank account established for this purpose and be applied to the succeeding year's budget. If there are unused funds constituting more than ten percent (10%) of the budgeted annual expenditures, American may, in its sole discretion, require Retail Manager to (i) retain the funds in the bank account established for this purpose and apply them to the succeeding year's budget, (ii) refund such surplus to Subtenants pro rata in accordance with their Joint Marketing Fund Fee contributions, and/or (iii) reduce, in the same proportion such surplus bears to the total budgeted amount, the Joint Marketing Fund Fee to be assessed by Retail Manager to Subtenants in the succeeding calendar year. Upon the termination or expiration of this Agreement for any reason, Retail Manager shall, without requirement of notice or demand, promptly remit any unused monies remaining in the Joint Marketing Fund in equal shares to American and the Port Authority.

Section 7.6 American's Rules and Regulations. American shall have the right to adopt and enforce reasonable and lawful Rules and Regulations and operating performance standards with respect to the use of the Concession Area, and related facilities, in addition to the Minimum Standards, which Retail Manager agrees to observe and obey and cause Subtenants to observe and obey. Such Rules and Regulations and operating performance standards may be amended from time to time by American upon reasonable prior written notice, including, without limitation, any "Retail Manager Rules and Regulations" that may be promulgated from time to time.

Section 7.7 Subtenant Operational Reviews. Retail Manager acknowledges the desire of American, as part of its obligation to ensure the highest level of public service, to provide the public and air traveler with the level and quality of service as described herein. American may monitor, test,

audit or inspect Retail Manager's services and the requirements imposed on Subtenants for applicable business operation standards at any time (including, but not limited to, inspection and audits of program described in Section 7.1.3) and consult with Retail Manager to correct any deficiencies in the general standards which Retail Manager requires of the Subtenants.

7.7.1 Retail Manager shall cause all Subtenants to keep and maintain their Subtenant Premises in a first-class appearance, equal to or better than that which existed on the opening of the Subtenant Premises. Subtenants shall be required by Retail Manager to maintain the Subtenant Premises in a clean, neat, sanitary and safe condition in accordance with the Minimum Standards and all applicable health, fire and building inspector requirements. Retail Manager, through periodic daily walk-through inspections and meetings with Subtenants, shall work with the Subtenants to achieve and maintain compliance with such requirements. Retail Manager shall conduct formal store operational audits on a quarterly basis to ensure that all of the requirements are consistent and that patrons of the Terminal receive the quality of public service as desired by American and Retail Manager. Such store operations audits are conducted by Retail Manager's on-site staff or through the use of consultants and the results are shared with local Subtenant management and corporate offices. By tracking all outstanding items listed on Retail Manager's "Concessions Standards Checklist" and identifying new areas for improvement, Retail Manager will take all commercially reasonable steps to cause Subtenants to conduct their operations on the most efficient basis. Retail Manager shall cause Subtenants to correct any deficient items noted on the Concessions Standards Checklist within thirty (30) days of the quarterly inspection.

7.7.2 For those Subtenants which fail to correct the deficiencies noted on the Concessions Standards Checklist within such thirty (30) day time period, Retail Manager shall notify American and impose liquidated damages to be collected from the involved Subtenant(s), as specified on Exhibit I, which shall continue to accrue on a daily basis until the deficiencies are corrected.

7.7.3 If American reasonably determines that a Subtenant has not properly corrected the deficiencies noted on the Concessions Standards Checklist as provided above, American shall notify Retail Manager in writing as to the steps to be taken by the involved Subtenant and Retail Manager shall thereafter pursue any and all other appropriate remedies as provided in the Sublease, including a self-help remedy.

7.7.4 The liquidated damages contemplated under Section 7.7.2 above are not in lieu of, nor do they exclude, any other rights or remedies which American or the Port Authority may have in the event of a breach or failure to perform under this Agreement, the Operator Permit, a Four-Party Subtenant Consent Agreement or a Sublease, as applicable.

Section 7.8 Minimum Wage Policy.

7.8.1 Retail Manager acknowledges that the Port Authority has adopted a minimum wage policy ("Minimum Wage Policy") for workers performing under non-trade labor service contracts at all Port Authority facilities. It has also adopted a rule for implementing the Minimum Wage Policy. Retail Manager has reviewed the Minimum Wage Policy and the implementing rule and agrees to comply with the Minimum Wage Policy and implementing rule, as the same may be amended. Retail Manager further acknowledges that the Port Authority reserves the right to amend the aforesaid policy and rules from time to time. A failure to comply with this obligation shall constitute a breach of this Agreement and, accordingly, American and the Port Authority shall be entitled to all rights and remedies available to it under law, equity or otherwise in the event of such breach; provided, that a failure of Retail Manager or any Retail Manager Counterparty to comply with the Minimum Wage Policy (or any future

amendments or modifications to the Minimum Wage Policy), or any enforcement thereof with respect to a particular type of employment matter, shall not constitute a breach of this Agreement to the extent that the Port Authority has imposed the Minimum Wage Policy (or such amendment or modification) on, or enforced the Minimum Wage Policy (or such amendment or modification) against, Retail Manager or such Retail Manager Counterparty, as the case may be (the “Target Entity”), in a manner that is inconsistent with the manner in which the Minimum Wage Policy (or such amendment or modification) is imposed on, or enforced against, other entities in the same category of business as the Target Entity, with respect to the same type of employment matter, at the Airport and the other airports for which the Port Authority is the airport operator. Further, Retail Manager acknowledges that American and the Port Authority each has audit rights with respect to Retail Manager’s operations at the Airport and that such audit rights extend to Retail Manager’s compliance with its obligations hereunder concerning the Minimum Wage Policy and the implementing rules related thereto. Notwithstanding such audit rights, Retail Manager acknowledges its obligation to provide to American and the Port Authority an annual statement, signed by a responsible officer or authorized representative of Retail Manager, certifying as to its own compliance with the Minimum Wage Policy and the implementing rules.

7.8.2 Retail Manager further agrees that it shall include in any agreements entered into by Retail Manager or any of Retail Manager’s sub-contractors, related to Covered Services (as defined in the Minimum Wage Policy), including, without limitation, subcontracts and subleases (but excluding agreements with Governmental Authorities) a clause which states that the party providing such services (the “Retail Manager Counterparty”) to Retail Manager (i) has reviewed the Minimum Wage Policy and the implementing rules thereof, (ii) agrees to comply with them, as the same may be amended from time to time, (iii) agrees to provide the American and the Port Authority an annual statement, signed by a responsible officer of Retail Manager Counterparty, certifying as to its own compliance with the obligations described in this Section 7.8, and (iv) acknowledges and agrees that American and the Port Authority shall be a third party beneficiary of such clause entitled to all rights and remedies available to it under law, equity or otherwise in the event of a breach of such clause by Retail Manager Counterparty.

7.8.3 At the request of American or the Port Authority, Retail Manager further agrees that it shall terminate any agreements entered into by Retail Manager related to Covered Services (as defined in the Minimum Wage Policy), including, without limitation, subcontracts and subleases (but excluding agreements with Governmental Authorities), with any Retail Manager Counterparty which fails to comply with its contractual obligations related to the Minimum Wage Policy, as set forth in the foregoing Section 7.8.2.

7.8.4 Each subcontract or sublease shall also provide, analogous provisions to those set forth in Sections 7.8.1 through 7.8.3 above obligating each sub-contractor or sublessee, as applicable, to comply with the Minimum Wage Policy, in each case, in form and substance satisfactory to American and the Port Authority.

Section 7.9 Americans with Disabilities Act . Retail Manager further agrees that it shall make, and shall cause each of its Subtenants to make, the Concession Area available to the traveling public on a nondiscriminatory basis, including access by disabled persons, Title 42 U.S.C. § 12101.

ARTICLE 8

CONCESSION AREA MAINTENANCE; RESERVATION OF RIGHTS

Section 8.1 General Concession Area Maintenance, Operating Expenses. Except for American’s responsibilities as set forth in Section 8.2, Retail Manager shall have primary

responsibility for all maintenance, cleaning and routine upkeep of the Food Court, other public seating areas and other designated common areas of the Concession Area at its sole cost and expense (without prejudice to the right of Retail Manager to charge the Subtenants the Common Area Maintenance Fee, or to seek indemnification under Section 15.2 for maintenance and repair costs caused by American), and shall keep such common areas in like-new condition at all times, subject to ordinary wear and tear. Retail Manager shall cause Subtenants to be responsible for the cleaning, maintenance, repair and replacement of their respective Subtenant Premises and all Fixed Improvements installed by or on behalf of the Subtenants and to keep their respective Subtenant Premises, including all Fixed Improvements, in like-new condition at all times, subject to normal wear and tear. The following list is illustrative of the types of maintenance and routine upkeep for which Retail Manager is responsible pursuant to this Section 8.1 and the related costs (the “Operating Expenses”) for which Retail Manager is responsible, but is not intended to be all inclusive:

- (A) All wages, salaries and fees of all personnel or entities engaged in the operation, repair, maintenance, access to or control of the Concession Area including also taxes, insurance and benefits relating thereto;
- (B) The costs of all supplies and materials used in connection with the operation, maintenance, repair and security (not including badging and screening functions, as described in Section 6.3.1) of the Concession Area;
- (C) With respect to the Food Court, other public seating areas and other designated common areas of the Concession Area, the costs of all maintenance, janitorial, access control and service agreements for the Concession Area and for the equipment installed by Retail Manager; and
- (D) Legal, architectural, engineering, accounting, appraisal and auditing fees paid to third parties relating to the operation, repair and maintenance of the Concession Area.

Section 8.2 Specific Maintenance and Repair Responsibilities. Except as otherwise expressly identified in the Development Plan, Retail Manager is responsible for structural maintenance, repair and/or replacement of any portion of the Base Building in the Concession Area to the extent such portion of the Base Building in the Concession Area is modified or altered by or on behalf of Retail Manager as part of the Concession Area Work, which such maintenance, repair and/or replacement work shall be subject to the approval of the Port Authority and American, which such approval may be conditioned or withheld in their respective sole discretion. The parties hereto acknowledge and agree that American shall have no obligation to commence or complete and shall have no responsibility for any structural maintenance, repair and/or replacement of any portion of the Base Building in the Concession Area except for such portion of the Base Building which is not modified or altered by or on behalf of Retail Manager as part of the Concession Area Work. Maintenance and repair of any of the Fixed Improvements and Refurbishments, and of any other equipment or property of Retail Manager or the Subtenants in the Concession Area, shall be the sole responsibility of Retail Manager and the Subtenants. It is understood that Retail Manager’s and the Subtenants’ responsibilities also include: (i) the repair and replacement of all lighting, heating, air conditioning, plumbing and other electrical, mechanical and electromotive installation, equipment and fixtures installed by or on behalf of such parties which are located within or exclusively serve

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Subtenant Premises; (ii) all utility repair in ducts, conduits, pipes and wiring, and any sewer stoppage located within, or which exclusively serve, the Subtenant Premises; and (iii) the repair and replacement of any part of the Excluded Area for any damage caused by Retail Manager or any Subtenant or their respective employees, agents, contractors or invitees, other than ordinary wear and tear. American has not made and hereby disclaims any representations to Retail Manager respecting the condition of the Concession Area or the Terminal other than as may be specifically set forth in this Agreement. Retail Manager and the Subtenants shall, throughout the Term, assume the entire responsibility for, and shall perform and shall relieve American and the Port Authority from all responsibility for, all repair, re-lamping, replacement, rebuilding, and maintenance of the Concession Area, whether such repair, re-lamping, replacement, rebuilding or maintenance be ordinary or extraordinary, partial or entire, foreseen or unforeseen, structural (as it applies to the work performed or furnishings installed by Retail Manager or the Subtenants) or otherwise. Without limiting the generality of the foregoing, Retail Manager and the Subtenants shall at their respective sole cost and expense (apportioned between them as they may agree in a Sublease approved in advance by American):

- (A) Keep at all times in a clean and orderly condition and appearance the Concession Area and all fixtures, equipment and personal property which are located in any part of the Concession Area, and keep the Concession Area free of insects, vermin, rodents and other pests;
- (B) Take good care of the Concession Area, Fixed Improvements and Refurbishments, and maintain the same at all times in good condition, except for reasonable wear and tear which does not adversely affect the efficient or the proper utilization thereof; including, without limitation, painting areas visible to the general public (to be painted only with high-quality paint and in colors which have been approved in advance and in writing by American and the Port Authority) and make all repairs and replacements, and do all rebuilding of the Fixed Improvements and Refurbishments, ordinary and extraordinary, partial and entire, foreseen and unforeseen, structural or otherwise, which repairs, replacements and rebuilding shall be in quality and class equal to or better than the original in materials and workmanship, and to pay promptly the cost and expense of all such repairs, replacements, rebuilding and maintenance;
- (C) Provide and maintain all fire protection and safety equipment and all other equipment of every kind and nature required by any applicable law, rule, ordinance, resolution or regulation, by the terms of this Agreement or by any insurance carrier providing insurance covering any portion of the Concession Area, the Fixed Improvements or the Refurbishments; and
- (D) Be responsible for the maintenance and repair of all utility service lines, meters and valves, including, without

limitation, service lines for the supply of electric power, telephone and data transmission conduits and lines, located upon or exclusively serving the Concession Area.

8.2.2 In the event Retail Manager or the Subtenants fail, subject to applicable notice and cure periods, to so maintain, clean, repair, replace, lamp, re-lamp, rebuild, paint, repaint or restore, then in addition to any other remedies provided herein, American may, at its sole election, and after giving Retail Manager at least one (1) day prior written notice thereof, or two (2) hours verbal or written notice to Retail Manager's Concession Manager or Assistant Concession Manager, of conditions which by their nature require immediate attention to maintain normal activity at the Terminal, maintain, clean, repair, replace, lamp, re-lamp, rebuild, paint, repaint or restore all or any affected part of the Concession Area, Fixed Improvements or Refurbishments, and the cost thereof shall be due and payable by Retail Manager, or Subtenants at Retail Manager's direction on demand along with an additional charge in an amount equal to fifteen percent (15%) of the cost thereof.

8.2.3 Subject to this Section 8.2.3 and Section 8.2.4 below, Retail Manager will, for itself, and will cause the Subtenants to, maintain and repair, at its/their own expense, any damages caused by their respective negligent or willful acts, omissions or operations, and to replace any property of American used by them that requires replacement by reason of its/their respective use thereof, reasonable wear and tear excepted, with property of equal or better quality. American may, in its sole discretion, perform said repairs on behalf of Retail Manager or the responsible Subtenant, or direct Retail Manager to perform said repairs on behalf of the responsible Subtenant, and the cost thereof shall be due and payable by Retail Manager or Retail Manager shall cause the responsible Subtenant to pay on demand along with an additional charge in an amount equal to fifteen percent (15%) of the cost thereof.

8.2.4 Retail Manager shall not, and shall not permit Subtenants to, install any fixture or make any alterations or improvements in or additions or repairs to any property of American or the Port Authority except with the prior written approval of American and the Port Authority.

8.2.5 American shall be the sole judge of the quality of cleaning, maintenance and repair of Subtenant Premises and the Food Court, other public seating areas and other designated common areas in the Concession Area. American, or its authorized agents, may at any time, without notice, enter upon the Concession Area to determine if the cleaning, maintenance and repair requirements of this Article 8 and otherwise under this Agreement are being fulfilled. If American determines that the cleaning maintenance or repair of the Concession Area does not meet these requirements, American shall so notify Retail Manager and/or Subtenant in writing. If the cleaning, maintenance or repair required to be performed as provided in American's notice to Retail Manager and/or Subtenant, as applicable, is not commenced within two (2) days after receipt of such written notice, or within two (2) hours after verbal notice to Retail Manager's Concession Manager of a condition which by its nature requires immediate attention to maintain normal activity in the Terminal, or in either case is not diligently prosecuted to completion thereafter within applicable cure periods, American, or its agents, shall have the right to enter upon the Concession Area and perform the subject cleaning, maintenance or repair and Retail Manager and/or Subtenants, as applicable, agree to promptly reimburse American for the cost thereof along with an additional charge in an amount equal to fifteen percent (15%) of the cost thereof.

Section 8.3 Access, Transport and Equipment Norms. Except as may be otherwise provided in the Rules and Regulations, or directed by American:

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8.3.1 Retail Manager and the Subtenants shall at all times use carts with pneumatic wheels and four-sided protective bumpers for transport of merchandise or supplies throughout the Terminal.

8.3.2 The truck dock, service corridor and service elevator shall be managed by Retail Manager in accordance with Sections 6.3.1 and 7.2(S) and shall be used by Retail Manager and Subtenants for all deliveries as well as disposal of garbage and trash. Retail Manager and the Subtenants shall be responsible to exercise care not to litter or damage the floors, furnishings or improvements. American may prescribe hours during which supplies may be delivered to the Concession Area and trash may be removed; provided, however, American shall consult with Retail Manager to ensure that such hours are sufficient so that the Subtenants will be able to conduct their business operations as required by this Agreement and the Lease. Retail Manager and its Subtenants must use the Concession Area service elevator for delivery of supplies and removal of trash from the Concession Area.

8.3.3 In transporting to and from the Concession Area merchandise, products, trash and refuse associated with operating the Concession Area, Retail Manager and Subtenants shall use only carts, vehicles, or conveyances that are sealed and leak proof and that are equipped with wheels suitable for operating on carpets or other flooring without damage thereto and which shall be approved by American, without unreasonable delay or condition. American shall have the right to require changes in Retail Manager's and/or Subtenants' transporting of merchandise, products, trash and refuse, including time of day transport can occur, and routes of transport; provided, however, American shall consult with Retail Manager to ensure that transportation procedures are sufficient so that Retail Manager and the Subtenants will be able to conduct their business operations as required by this Agreement and the Lease.

Section 8.4 Utility Services.

8.4.1 Except as provided in this Section 8.4, neither American nor the Port Authority shall be obligated to perform or furnish any services or utilities whatsoever in connection with this Agreement or the use and occupancy of the Concession Area hereunder.

8.4.1.1 Pursuant to the Lease, the Port Authority has agreed to sell, furnish and supply to American for use on the Premises and American has agree to take from the Port Authority and pay for electricity of the same voltage, phase and cycle as supplied to the Premises by the public utility in the vicinity, but limited however, to serve a maximum of the installed transformer capacity serving each portion of the Premises from time to time, at the same charge which would be made by such public utility for the same quantity under the same conditions and in the same service classification but in no event less than an amount that would reimburse the Port Authority for its cost of obtaining and supplying electricity to American thereunder. American hereby agrees to cause the Port Authority to sell, furnish and supply to Retail Manager for use in the Concession Area and Retail Manager hereby agrees to take from the Port Authority and pay for electricity of the same voltage, phase and cycle as supplied to the Premises by the Port Authority. Charges for electricity shall be payable by Retail Manager when billed by American or the Port Authority and the quantity of electricity consumed shall be measured by the meter or meters installed for the purpose by the Port Authority; provided, however, that if for any reason any meter or meters fail to record the consumption of electricity, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period either immediately before or after the interruption as elected by the Port Authority and/or American. In the event meters are not installed to measure the

consumption of electricity, the quantity of such electricity used by Retail Manager and its Subtenants in the Concession Area will be based upon equitable estimates of consumption made by the Port Authority or American, which estimates shall be deemed binding on Retail Manager. The Port Authority has agreed under the Lease that it shall not discontinue the supply of electricity except upon fifteen (15) days' notice to American (and American hereby agrees to promptly provide Retail Manager with any such notice) and unless a supply of electricity of the same voltage, phase and cycle (subject to the KVA limitation aforesaid) shall be available from another supplier. Upon any such discontinuance Retail Manager shall be at liberty to contract or otherwise arrange for the supply of such current after the expiration of the period specified in any notice provided by the Port Authority from any other Person, firm or corporation.

8.4.1.2 Pursuant to the Lease, the Port Authority has agreed to sell, furnish and supply to American for use on the Premises cold water (of the character furnished by the City of New York) in reasonable quantities through existing pipes, mains and fittings and American has agreed to take such water from the Port Authority and to pay the Port Authority therefor an amount equal to that which would be charged by the municipality or other supplier of the same (whether or not representing a charge for water or other services measured by water consumption) for the same quantity, used under the same conditions and in the same service classification plus the cost to the Port Authority of supplying such water which shall not be less than ten percent (10%) nor in excess of fifty percent (50%) of the amount charged. American hereby agrees to cause the Port Authority to sell, furnish and supply to Retail Manager for use in the Concession Area and Retail Manager hereby agrees to take from the Port Authority and pay for cold water supplied by the Port Authority to American pursuant to the Lease. The charge therefor shall be payable by Retail Manager when billed by American or the Port Authority and the quantity of water consumed shall be measured by the meter or meters installed for the purpose by the Port Authority; provided, however that if for any reason, any meter or meters fail to record the consumption of water, the consumption during the period such meter or meters are out of service will be considered to be the same as the consumption for a like period immediately before or after the interruption, as elected by the Port Authority or American. In the event meters are not installed to measure the consumption of water under high pressure, the quantity of such water used by Retail Manager and its Subtenants in the Concession Area will be based upon equitable estimates of consumption made by the Port Authority or American, which estimates shall be deemed binding on Retail Manager.

8.4.1.3 Retail Manager shall pay to the Port Authority (or reimburse to American) such of the existing and future charges for sewerage services furnished by the City of New York as are presently or may hereafter be imposed or assessed against the Port Authority (or American) in respect of the Concession Area for Retail Manager's (and Retail Manager's Subtenants') use and occupancy thereof. In the event that the City or the State of New York is now furnishing services with or without charge therefor, which are beneficial to Retail Manager and its Subtenants in their use and occupancy of the Premises, and shall hereafter impose charges or increase existing charges for such services, Retail Manager agrees to pay to the Port Authority (or reimburse to American) such of the charges or the increase in charges as may be imposed or assessed against the Port Authority (or American) in respect to the Concession Area or Retail Manager's and its Subtenants' use and occupancy thereof.

8.4.1.4 In the event the Port Authority shall provide extermination service for the enclosed areas of the Premises, Retail Manager agrees to utilize the same with respect to the Concession Area and to pay its pro rata share of the reasonable cost thereof upon demand. This paragraph does not impose any obligation on the Port Authority or American to furnish such service.

8.4.1.5 Neither American nor the Port Authority shall be obligated to perform or furnish any other services whatsoever in connection with the Premises or the Concession Area nor any services at any time while Retail Manager shall be in default under this Agreement after the period, if any, herein granted to cure such default shall have expired.

8.4.1.6 Neither American nor the Port Authority shall be under any obligation to supply services if and to the extent and during any period that the supplying of any such service or the use of any component necessary therefor shall be prohibited or rationed by any federal, state or municipal law, rule, regulation, requirement, order or direction and if American or the Port Authority deems it in the public interest to comply therewith, even though such law, rule, regulation, requirement, order or direction may not be mandatory on American or the Port Authority as a public agency.

8.4.1.7 No failure, delay or interruption in supplying agreed services (whether or not a separate charge is made therefor) shall be or be construed to be an eviction of Retail Manager or any Subtenant or grounds for any diminution or abatement of rental, or (unless resulting from the gross negligence or willful failure of the Port Authority or American) shall be grounds for any claim by Retail Manager for damages, consequential or otherwise.

8.4.2 With respect to providing electrical services and consistent with Section 80 of the Lease, Retail Manager, as a collection agent for American, shall collect from all Subtenants that utilize portions of the Concession Area for food or beverage concessions, in the aggregate, as additional rent or otherwise, an amount equal to the actual cost to American of purchasing such electrical power, without mark up, and shall promptly pay such amounts to American. Except as set forth in the preceding sentence, Retail Manager may not charge its Subtenants for the utility services provided to it by American as additional rent. Food and beverage Subtenants shall be required to install separate check meters, at the food and beverage Subtenant's sole cost and expense, to measure each food and beverage Subtenant's actual consumption of electrical power for purposes of paying the costs of purchasing such electrical power.

8.4.3 American shall not be liable for any interruption whatsoever in utility services not furnished by American, nor for interruptions in utility services furnished by American which are due to Force Majeure or which are necessary in connection with making any alterations, repairs or improvements. No such interruptions shall be construed as an eviction of Retail Manager or the Subtenants, nor entitle Retail Manager to any abatement of Rental, nor relieve Retail Manager or any Subtenant from fulfillment of any covenant or agreement set forth in this Agreement, except specifically provided below in this section or as may be provided in an approved Sublease. [●].

8.4.4 For the purposes of Retail Manager to invoice and collect such electricity costs incurred by American for food and beverage Subtenants, American shall use its reasonable efforts to determine the portion of those costs which should be allocated to each Subtenant via separate check meters to measure consumption (as described above), which allocation shall be conclusive and binding

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for purposes of this Agreement. American shall provide Retail Manager with monthly statements that Retail Manager shall provide to the respective Subtenants reflecting such electricity charges. Retail Manager shall cause Subtenant(s) to pay the amount of each such statement simultaneously with their next installment of Subtenant Rental. At the request of American made from time to time, Retail Manager shall provide to American evidence of the Subtenants' payment of all such electricity costs.

Section 8.5 Refurbishments. For Subtenants whose occupancy will exceed seven (7) years, whether under the original term of their Sublease or an extension, Retail Manager agrees that by no later than seven (7) years after the date of beneficial occupancy of a Subtenant of its Subtenant Premises, it will cause Subtenants to spend and invest as a mid-term reinvestment (in each case with the manner and source of such expenditure and investment being subject to the same procedures applicable to Fixed Improvements, including the prior approval of American) a minimum of \$[●] per square foot for each food and beverage concession and \$[●] per square foot of each other kind of locale demised under a Sublease on Refurbishments or other upgrade of the Fixed Improvements. Retail Manager shall obtain from Subtenants and provide to American such back-up data as American may reasonably request to confirm that such Refurbishment and upgrade has been made by the Subtenant(s).

Section 8.6 Reservation of Rights by American. American and the Port Authority shall have the right, without any obligation to do so, during the hours of operation of the Subtenants within the Concession Area and as often as either considers necessary or appropriate: (i) upon reasonable notice (provided no notice shall be required during any real or threatened emergency) to enter thereon to make repairs, alterations, or replacements to any property of American or the Port Authority, and (ii) in the event of an emergency, to take such action thereon as may be required for the protection of persons or property and, if Retail Manager or the Subtenants are otherwise obligated under this Agreement and/or Sublease to perform such work or take such action, the cost thereof shall be due and payable by Retail Manager or Retail Manager shall cause Subtenant to pay on demand along with an additional charge in an amount equal to fifteen percent (15%) of the cost thereof.

8.6.1 Retail Manager shall assure to American and the Port Authority emergency access to all enclosed areas of the Concession Area either by delivering keys to the Concession Area to American's JFK Control Center Manager or by providing emergency telephone numbers by which the Concession Manager, Assistant Concession Manager(s) and/or a Subtenant's store manager, as the case may be, can be reached on a 24-hour basis, seven (7) days a week.

8.6.2 Without limiting the generality of the foregoing, American and the Port Authority, and their respective directors, officers, employees, agents, representatives, contractors, and furnishers of utilities and other services, shall have the right from time to time, at their own cost and expense, for their own benefit, for the benefit of Retail Manager, its Subtenant(s) or for the benefit of others at the Terminal and/or Airport (other than Retail Manager) (i) to construct and maintain existing and future utility and other systems, (ii) to enter upon the Concession Area at all reasonable times and upon reasonable notice (provided no notice shall be required during any real or threatened emergency) to inspect any part of the Concession Area, and to make such repairs, replacements or alterations thereto as may, in the opinion of American or the Port Authority, be deemed necessary or advisable, (iii) to construct or install over, in or under parts of the Concession Area otherwise not conveniently accessible, and (iv) for the Port Authority or American, to install, operate, maintain, recover and repair the property used in connection with their respective Reserved Uses; provided, in each case in the exercise of such rights of access, maintenance, repair, replacement, alteration or new construction, American shall not unreasonably interfere with the use and occupancy of the Concession Area by Retail Manager or the Subtenants pursuant to the provisions of this Agreement.

8.6.3 In the event that any movable property of Retail Manager or the Subtenants shall obstruct the access of American or the Port Authority, its employees, agents or contractors to any of the existing or future utility, mechanical, electrical and other systems and thus shall interfere with the inspection, maintenance or repair of any such system, Retail Manager or the appropriate Subtenant shall move such property, as directed by American or the Port Authority, in order that access may be had to the system or part thereof for its inspection, maintenance or repair, and, if Retail Manager or the appropriate Subtenant shall fail to so move such property after direction from American or the Port Authority to do so, American or the Port Authority may move it and Retail Manager and the Subtenants shall pay the cost of such moving upon demand. In the case of Fixed Improvements or Refurbishments installed by or on behalf of Retail Manager or a Subtenant which were approved by American and the Port Authority, and thereafter are required to be moved for the reasons provided above, American, at its cost, may move the same and upon completion of the inspection, maintenance or repair, American will restore such permanent Fixed Improvements or Refurbishments and repair any damage caused by such removal and restoration to the same or better condition as existed immediately prior to such removal.

8.6.4 At any time and from time to time during ordinary hours of operation of the Concession Area upon reasonable notice, American and the Port Authority, for and by its agents and employees, whether or not accompanied by occupiers or users of the Concession Area, shall have the right to enter on the Concession Area for the purpose of viewing all parts of the same and exhibiting it to third parties.

8.6.5 No acceptance by American or the Port Authority of rentals, fees, charges or other payments in whole or in part for any period or periods after a default of any of the terms, covenants and conditions hereof to be performed, kept or observed by Retail Manager or the Subtenants shall be deemed a waiver of any right on the part of American to terminate this Agreement.

8.6.6 Nothing in this Article 8 or elsewhere in this Agreement may be construed to impose upon American or the Port Authority any obligations to construct or maintain or to make repairs, replacements, alterations or additions in or to the Concession Area, or to create any liability for any failure so to do, with the sole exception of American's obligations under Section 8.2. Retail Manager and the Subtenants are and shall be in exclusive control and possession of the Concession Area, and American and the Port Authority shall not be liable as result of the reservation of rights under this Section 8.6 or elsewhere in this Agreement or the exercise of any such reserved right for any injury or damage to any property or to any person happening on or about the Concession Area nor for any injury or damage to the Concession Area or any property of Retail Manager, the Subtenants or of any other invitee located in or thereon unless caused by the respective gross negligence or willful misconduct of American or the Port Authority (in which case American and the Port Authority shall be responsible only for the actual damages or injury caused by its own respective gross negligence or willful misconduct).

ARTICLE 9

SUSTAINABILITY EFFORTS

Section 9.1 Retail Manager Bound by American Sustainability Requirements . Retail Manager acknowledges that American is subject to extensive sustainability requirements under the Lease. Retail Manager and the Subtenants agree to comply at all times with and to be bound by such sustainability initiatives requirements, to the extent applicable to the Concession Area. Accordingly, Retail Manager shall use good faith efforts to achieve the goals for sustainability and implement and

manage the sustainability initiatives set forth in Exhibit N attached hereto. Prior to construction of any Fixed Improvements and Refurbishments, Retail Manager shall deliver to American and the Port Authority for their review and approval a plan for compliance by Subtenants with the terms of this Article 9 and Exhibit N and shall execute such plan and comply with Article 9 and Exhibit N during the Term. American's approval of such plan shall not be unreasonably withheld, conditioned or delayed.

Section 9.2 Sustainability Goals . Retail Manager specifically acknowledges and agrees that the initiatives set forth in Exhibit N may be revised or updated from time to time by the Port Authority and that, accordingly, American and/or the Port Authority may from time to time, by notice to Retail Manager, provide to Retail Manager a revised or updated form of such Exhibit N to replace the Exhibit N currently attached to and forming a part of this Agreement. Such replacement Exhibit N shall, from the effective date of such notice, be deemed to constitute an integral part of this Agreement. To the extent Retail Manager assumes any Existing Tenant Sublease which does not conform with the requirements of this Section 9, then any such Existing Tenant Sublease is hereby required to be modified to conform with such requirements and shall be required to be modified to conform to any future revision and/or update within sixty (60) days from the Commencement Date.

Section 9.3 Documentation . In meeting the sustainability initiatives described in this Section 9, Retail Manager shall submit to American and the Port Authority for its review and approval its said extensive sustainability plan, including the specific sustainability steps to be taken by Retail Manager to meet its aforesaid commitment, within sixty (60) days from the Commencement Date. Retail Manager shall incorporate in its said sustainability plan such revisions and changes which American or the Port Authority initially or from time to time may reasonably require. Throughout the Term, Retail Manager shall document its efforts in programs to ensure sustainability initiative compliance, shall keep American and the Port Authority fully advised of its progress in implementing such plan and shall supply to American and the Port Authority such information, data and documentation with respect thereto as either American or the Port Authority may from time to time and at any time request, including but not limited to annual reports.

Section 9.4 Non-Compliance . Retail Manager's noncompliance with the provisions of this Section 9 shall constitute a material breach of this Agreement. However, if Retail Manager's non-compliance is a consequence of one or more Subtenants' acts or omissions, Sections 14.1.1 (L), (M) and (N) will apply. In the event of the breach by Retail Manager of any of the above sustainability provisions, the Port Authority and American may take appropriate action to enforce compliance; or in the event such noncompliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate the Operator Permit and the letting hereunder with the same force and effect as a termination by the Port Authority pursuant to the terms hereof and the terms of the Lease, or may pursue such other remedies as may be provided by law; and as to any or all the foregoing, the Port Authority may take such action as the United States may direct.

ARTICLE 10

RESERVED USES

Section 10.1 Reservations by the Port Authority and American. Retail Manager acknowledges that under the Lease the Port Authority has reserved exclusively to itself and its designees, and American hereby reserves, exclusively to itself and its designees, the right in the

Concession Area, (except within any Subtenant Premises), to implement, conduct, control and receive any rents, fees or profits with respect to any of the Reserved Uses, as applicable.

Section 10.2 Reserved Uses Generally. Retail Manager shall permit the Port Authority and American (and any party specifically authorized by the Port Authority or American, as applicable) to engage in the Reserved Uses at the Concession Area outside of Subtenant Premises and to install, operate, maintain and repair the property used in connection therewith (with access rights as established in Section 8.6.2 for American, and as established in the Lease for the Port Authority), in such locations as Retail Manager and American may reasonably agree, for American Reserved Uses, and, for Port Authority Reserved Uses, where determined by the Port Authority, provided that to the extent American has advance knowledge of the Port Authority's Reserved Uses, American will consult with Retail Manager and cooperate in raising any issues or alternative recommendations of Retail Manager regarding such locations with the Port Authority. American, at its expense, shall provide the necessary wires and conduits for the supply of electricity and telephone and other communications interconnections for the American Reserved Uses. Retail Manager has no responsibilities, duties, obligations and/or liabilities other than as are specifically described in this Agreement (e.g., to permit repair access) with respect to the Reserved Uses.

Section 10.3 Reserved Uses Incidental to Concessions Operations. If Retail Manager identifies a prospective foreign currency exchange service Subtenant that also offers insurance and/or travel services (both being American Reserved Uses) incidental to such foreign currency exchange service, American will not unreasonably decline to waive its Reserved Uses for this purpose, provided that the Subtenant and American can agree to a reasonable compensation arrangement and that the American Reserved Uses the Subtenant offers can be separately accounted for so that American and the Port Authority retain their separate rights to this revenue.

ARTICLE 11

AFFIRMATIVE ACTION AND NONDISCRIMINATION

Section 11.1 Retail Manager Bound by American Requirements. Retail Manager acknowledges that American is subject to extensive affirmative action requirements of the Port Authority under the Lease. Retail Manager and the Subtenants agree to comply at all times with and to be bound by such affirmative action requirements of the Port Authority. Prior to construction of any Fixed Improvements and Refurbishments, Retail Manager shall deliver to American and the Port Authority for their review and approval a plan for compliance by Subtenants with the terms of this Article 11 and Exhibit J and shall execute such plan and comply with Article 11 and Exhibit J during the Term. American's approval of such plan shall not be unreasonably withheld, conditioned or delayed.

Section 11.2 Non-Discrimination.

11.2.1 Agreement Covenants:

11.2.1.1 Without limiting the generality of any of the provisions of this Agreement, Retail Manager, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that (i) no person on the grounds of race, creed or religion, color, sex or national origin, handicap or disability, or age shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the Concession

Area by it, or in the exercise of a privilege under the Operator Permit, (ii) in the construction by or on behalf of Retail Manager or any Subtenants of any improvements on, over, or under the Concession Area and furnishing of services thereon by Retail Manager or any Subtenant, no person on the ground of race, creed or religion, color, sex or national origin, handicap or disability, or age shall be excluded from participation, denied the benefits of, or otherwise be subject to discrimination, and (iii) Retail Manager and the Subtenants shall use the Concession Area in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended, and any other Applicable Laws or Applicable Standards, which from time to time may be applicable to Retail Manager's and/or Subtenant's operations at the Concession Area, whether by reason of agreement between the Port Authority and the United States Government or otherwise.

11.2.1.2 Without limiting the generality of any of the provisions of this Agreement, Retail Manager, for itself, its successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that Retail Manager and each Subtenant shall use the Concession Area in compliance with all other requirements imposed by or pursuant to all nondiscrimination requirements set forth in Title VI Pertinent Nondiscrimination Acts and Authorities, as further described in Exhibit M ("FAA Nondiscrimination Requirements").

11.2.2 Other Agreements:

11.2.2.1 Retail Manager shall include the substantive provisions of Section 11.2.1 in every Sublease, agreement or concession it may make pursuant to which any Person or Persons, other than Retail Manager, operates any facility at the Concession Area providing services to the public at the time such Sublease, agreement or concession is entered into or materially modified to the extent such Sublease, agreement or concession is subject to acts and regulations prohibiting nondiscrimination in federally-assisted programs of the United States Department of Transportation, and shall also include therein a provision granting the Port Authority a right to take such action as the United States may direct to enforce such covenant. Further, Retail Manager shall include the provisions of Exhibit M (FAA Nondiscrimination Requirements) in every Sublease, agreement or concession it may make pursuant to which any Person or Persons, other than Retail Manager, operates any facility at the Concession Area providing services to the public at the time such Sublease, agreement or concession is entered into or materially modified.

11.2.2.2 In addition to and without limiting any terms and provisions of this Agreement, Retail Manager shall include the following provisions in every Sublease, contract or purchase order with respect to the Concession Area (or any portion thereof), in such a manner that such provisions will be binding upon each Subtenant, contractor or vendor as to its work in connection with the applicable Sublease, contract or purchase order.

- (i) The Subtenant, contractor or vendor shall agree to comply with all applicable federal, state and local

laws, ordinances, rules, regulations, and orders that pertain to equal employment opportunity, affirmative action, and non-discrimination in employment.

- (ii) At the request of either the Port Authority or American, the Subtenant, contractor or vendor shall request such employment agency, labor union or authorized representative of workers with which it has a collective bargaining or other agreement or understanding and which is involved in the performance of the Sublease, contract or purchase order with Retail Manager to furnish a written statement that such employment agency, labor union or representative shall not discriminate because of race, color, national origin, creed/religion, sex, age or handicap/disability, and that such union or representative will cooperate in the implementation of the Subtenant's, contractor's or vendor's obligations hereunder; and
- (iii) The Subtenant, contractor or vendor will state, in all solicitations or advertisements for employees placed by or on behalf of the Subtenant, contractor or vendor in the performance of the Sublease, contract or purchase order, that all qualified applicants will be afforded equal employment opportunity without discrimination because of race, color, national origin, creed/religion, sex, age or handicap/disability.

11.2.3 Non-Compliance. Retail Manager's noncompliance with the provisions of this Section 11.2 shall constitute a material breach of this Agreement. However, if Retail Manager's non-compliance is a consequence of one or more Subtenants' acts or omissions, Sections 14.1.1 (L), (M) and (N) will apply. In the event of the breach by Retail Manager of any of the above nondiscrimination provisions the Port Authority and American may take appropriate action to enforce compliance; or in the event such noncompliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority the Port Authority shall have the right to terminate the Operator Permit and the letting hereunder with the same force and effect as a termination by the Port Authority pursuant to the terms hereof and the terms of the Lease, or may pursue such other remedies as may be provided by law; and as to any or all the foregoing, the Port Authority may take such action as the United States may direct.

11.2.4 Indemnification. Retail Manager shall indemnify and hold harmless the American Indemnitees and the Port Authority from any third-party Claims resulting from Retail Manager's or any Subtenant's, contractor's or vendor's non-compliance with any of the provisions of this Section 11.2 and Retail Manager shall pay or reimburse the American Indemnitees for any loss or expense incurred by reason of such non-compliance. The foregoing does not limit the obligation of Retail

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Manager to include clauses in the Subleases under which Subtenants fully indemnify the American Indemnities and the Port Authority directly for such liability.

11.2.5 Compliance with Laws. The Retail Manager specifically agrees, as part of its obligation to comply with all Applicable Laws and Applicable Standards during the Term, that it shall comply with 49 C.F.R. Part 26 and 49 C.F.R. Part 23, as the same may be amended from time to time. In addition, the Port Authority may from time to time, by written notice to American and Retail Manager, provide to American and Retail Manager specific provisions that the Port Authority determines may be required by 49 C.F.R. Part 26 and/or 49 C.F.R. Part 23, to be attached to and form a part of this Agreement. Such specific provisions, from the effective date of such notice, shall be deemed to constitute an integral part of this Agreement.

11.2.6 No Additional Rights. Nothing contained in this Section 11.2 shall grant or shall be deemed to grant to Retail Manager the right to transfer or assign this Agreement, to make any agreement or concession of the type mentioned in Section 11.2.2, or any right to perform any construction on the Premises.

Section 11.3 Affirmative Action.

11.3.1 Non-Discrimination. Retail Manager shall, with respect to its own activities, and shall cause Subtenants, for their respective operations to, not discriminate against employees or applicants for employment, including in recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training, because of race, creed or religion, color, sex, national origin, handicap or disability, or age.

11.3.2 Implementation. In addition to and without limiting any other term or provision of this Agreement, including, without limitation, Section 11.2.1.1, and Exhibits J, K and L, it is hereby agreed that Retail Manager shall, and shall cause each Subtenant, contractor or vendor to, in connection with the Concession Area (or any portion thereof), commit itself throughout the Term to and use good faith efforts to implement an extensive program of affirmative action, including specific affirmative action steps to be taken by Retail Manager, to ensure maximum opportunities for employment and contracting by minorities and women. Such good faith efforts may be evidenced by, among other efforts, the establishment of programs addressing recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, rates of pay or other forms of compensation, and selections for training or retraining, including apprenticeship and on-the-job training. In meeting such commitment, Retail Manager agrees to submit to American and the Port Authority for its review and approval Retail Manager's extensive affirmative action program. Retail Manager shall incorporate in its affirmative action program such revisions and changes which American and the Port Authority initially or from time to time may require. Throughout the Term, Retail Manager shall document its efforts in implementing such program, shall keep American and the Port Authority fully advised of Retail Manager's progress in implementing such affirmative action program and shall supply to American and the Port Authority such information, data and documentation with respect thereto as American and the Port Authority may from time to time and at any time request, including but not limited to annual reports.

11.3.3 Non-Compliance. Retail Manager's noncompliance with the provisions of this Section 11.3 shall constitute a material breach of this Agreement. However, if Retail Manager's non-compliance is a consequence of one or more Subtenants' acts or omissions, Sections 14.1.1 (L), (M) and (N) will apply. In the event of the breach by Retail Manager of any of the above nondiscrimination

provisions the Port Authority and/or American may take appropriate action to enforce compliance; or in the event such noncompliance shall continue for a period of twenty (20) days after receipt of written notice from the Port Authority, the Port Authority shall have the right to terminate the Operator Permit and the letting hereunder with the same force and effect as a termination by the Port Authority pursuant to the terms hereof and the terms of the Lease, or may pursue such other remedies as may be provided by law; and as to any or all the foregoing, the Port Authority may take such action as the United States may direct.

11.3.4 Other Governmental Requirements. In the implementation of this Section 11.3, American and the Port Authority may consider compliance by Retail Manager and any Subtenant with the provisions of any federal, state or local law concerning affirmative action equal employment opportunity which are at least equal to the requirements of this Section 11.3, as effectuating the provisions of this Section 11.3. If the Port Authority determines that by virtue of such compliance with the provisions of any such federal, state or local law that the provisions hereof duplicate or conflict with such law the Port Authority and American may waive the applicability of the provisions of this Section 11.3 to the extent that such duplication or conflict exists.

Section 11.4 Retail Manager's Ongoing Minority -Owned Business Enterprises Women-Owned Business Enterprises Commitment and Local Business Enterprises Commitment.

11.4.1 Minority Business Enterprises and Women-Owned Business Enterprises Commitment.

11.4.1.1 In addition to, and without limiting, any other term or provision of this Agreement, it is hereby agreed that Retail Manager, in connection with its continuing management, maintenance and repair of the Concession Area, or any portion thereof, in connection with the construction by or on behalf of Retail Manager or any Subtenants of any improvements on, over, or under the Concession Area and in connection with every award or agreement for concessions or consumer services at the Concession Area (including Subleases), shall throughout the Term commit itself to and use good faith efforts (as described in Exhibit J hereto) to implement an extensive program to ensure maximum opportunities for MBEs and WBEs in accordance with Exhibit J.

11.4.1.2 Retail Manager specifically acknowledges and agrees that the requirements set forth in Exhibit J may be revised or updated from time to time by the Port Authority and that, accordingly, American and/or the Port Authority may from time to time, by notice to Retail Manager, provide to Retail Manager a revised or updated form of such Exhibit J to replace the Exhibit J currently attached to and forming a part of this Agreement. Such replacement Exhibit J shall, from the effective date of such notice, be deemed to constitute an integral part of this Agreement. To the extent Retail Manager assumes any Existing Tenant Sublease which does not conform with the requirements of this Section 11.4.1, then any such Existing Tenant Sublease is hereby required to be modified to conform with such requirements and shall be required to be modified to conform to any future revision and/or update within sixty (60) days from the Commencement Date.

11.4.2 Local Business Enterprises Commitment.

11.4.2.1 In addition to, and without limiting any other term or provision of this Agreement, it is hereby agreed that Retail Manager, in connection with its continuing management, maintenance and repair of the Concession Area, or any portion thereof, and in connection with every award or agreement for concessions or consumer services at the Concession Area (including Subleases), shall throughout the Term commit itself to and use good faith efforts to develop concession space for LBEs and to otherwise use good faith efforts (as described in Exhibit K hereto) to implement an extensive program to ensure maximum opportunities for LBEs in accordance with Exhibit K.

11.4.2.2 Retail Manager specifically acknowledges and agrees that the requirements set forth in Exhibit K may be revised or updated from time to time by the Port Authority and that, accordingly, American and/or the Port Authority may from time to time, by notice to Retail Manager, provide to Retail Manager a revised or updated form of such Exhibit K to replace the Exhibit K currently attached to and forming a part of this Agreement. Such replacement Exhibit K shall, from the effective date of such notice, be deemed to constitute an integral part of this Agreement. To the extent Retail Manager assumes any Existing Tenant sublease which does not conform with the requirements of this Section 11.4.2, then any such Existing Tenant sublease is hereby required to be modified to conform with such requirements within sixty (60) days from the Commencement Date and shall be required to be modified to conform to any future revision and/or update.

11.4.3 Documentation. In meeting Retail Manager's commitment to ensure maximum opportunities for MBE's and WBE's in accordance with the provisions of Section 11.4.1 and to ensure maximum opportunities for LBE's in accordance with the provision of Section 11.4.2, Retail Manager shall submit to American and the Port Authority for its review and approval its affirmative action program, including the specific affirmative action steps to be taken by Retail Manager to meet its aforesaid commitment[, within sixty (60) days from the Commencement Date]. Retail Manager shall incorporate in its said affirmative action program such revisions and changes which American and the Port Authority initially or from time to time may reasonably require. Throughout the Term, Retail Manager shall document its efforts in programs to ensure maximum opportunities for MBEs and WBEs and to maximize the use of LBEs in accordance with this Section 11.4, shall keep American and the Port Authority fully advised of its progress in implementing the such programs and shall supply to American and the Port Authority such information, data and documentation with respect thereto as either American or the Port Authority may from time to time and at any time request, including but not limited to annual reports.

11.4.4 Non-Compliance.

11.4.4.1 Retail Manager's non-compliance with the provisions of this Section 11.4 shall constitute a material breach of this Agreement. However, if Retail Manager's non-compliance is a consequence of one or more Subtenants' acts or omissions, Sections 14.1.1(L), (M) and (N) will apply. In the event of the breach by Retail Manager of any of the above provisions, American or the Port Authority may take any appropriate action to enforce compliance, and in the event such non-compliance shall continue for a period of twenty (20) days after receipt of written notice from American or the Port Authority, American or the Port Authority, as applicable, shall

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have the right to terminate this Agreement and/or Operator Permit with the same force and effect as a termination for default by Retail Manager in the performance or observance of any other term or provision of this Agreement and/or Operator Permit, or may pursue such other remedies as may be provided by law.

11.4.4.2 Without limiting the provisions of Section 11.4.3.1 above and in addition thereto, in the event of the breach by Retail Manager of any of the provisions of Section 11.4.1.1, the Port Authority may, in its discretion, take any of the actions identified in Part II of Exhibit J.

11.4.5 Compliance Standards. Nothing herein provided may be construed as a limitation upon the application of any laws, which establish different standards of compliance or upon the application of legal requirements for the hiring of local or other area residents.

11.4.6 Grants for Concessions. Nothing in this Section shall grant or be deemed to grant to Retail Manager the right to make any agreement or award for concessions or consumer services at the Airport.

Section 11.5 Airport Concession Disadvantaged Business Enterprise.

11.5.1 This Agreement shall be subject to the requirements of the United States Department of Transportation's regulations, 49 C.F.R. Part 23. Retail Manager agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or performance of any concession agreement or any management contract, or subcontract, purchase or lease agreement or other agreement covered by 49 C.F.R. Part 23. Retail Manager agrees to include the above statements in any concession agreement or contract covered by 49 C.F.R. Part 23 that it enters into (including any supplements, amendments or renewals to any Existing Subtenant agreement or contracts covered by 49 C.F.R. Part 23 that it enters) and cause those businesses to similarly include the statements in further agreements. Further, Retail Manager agrees to take all necessary and reasonable steps to comply with the terms and provisions of Exhibit L (Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation), attached hereto and hereto made a part hereof (the "ACDBE Program"). Without limiting the foregoing, Retail Manager shall not, without the prior written consent of American and the Port Authority:

(A) terminate a concession sublease with a Subtenant if such Subtenant is an Airport Concession Disadvantaged Business Enterprise, as defined in 49 C.F.R. Part 23 (an "ACDBE"), or terminate any contract or agreement for the sale of goods or services by an ACDBE to which the Subtenant is a party;

(B) refuse to extend or renew a sublease with an ACDBE Subtenant if such sublease contains an express right of extension or renewal and the conditions thereto have been satisfied by the ACDBE Subtenant; or

(C) enter into a sublease with a non-ACDBE Subtenant for service or space which had been performed or occupied by an ACDBE Subtenant;

provided, that American agrees that its consent to any of the foregoing shall not be withheld if the applicable action of Retail Manager is (1) based on a non-discriminatory determination by the Subtenant under the applicable facts, or (2) is otherwise consistent with the requirements of 49 C.F.R. Part 23.

11.5.2 As part of its compliance with the requirements of the ACDBE Program, Retail Manager shall commit itself to and use good faith efforts to include meaningful participation by ACDBE certified businesses. Specific examples of such efforts shall be integrated into all applicable activities undertaken by Retail Manager or any of its Subtenants and may include, but not be limited to, the following:

A. Subdividing work, services or Terminal space to be subcontracted into smaller portions where feasible to provide more opportunities for certified ACDBEs;

B. Encouraging the formation of joint ventures, partnerships or similar arrangements to increase the likelihood of achieving program participation goals;

C. Providing sufficient documents, drawings and specifications for prospective opportunities to ACDBEs in sufficient time for their review;

D. Regularly attending and participating in ACDBE workshops, educational programming and pre-bid meetings scheduled by the Port Authority;

E. Organizing ACDBE workshops, educational programs and pre-bid meetings to which the Port Authority is invited to attend;

F. Actively soliciting bids from ACDBEs, including circulation of solicitations to MBEs and WBEs;

G. Maintaining records detailing efforts to provide for meaningful participation in the Program, including names and addresses of all ACDBEs contacted, and if the ACDBE is not selected, the reason for that decision;

H. Advertising in general circulation media, trade association publications and minority-focused media for a reasonable period before commencement of a contract;

I. Utilizing the Port Authority's directory of certified ACDBEs (available online at <http://www.panynj.gov/supplierdiversity>) or proposing for certification other ACDBEs that meet the criteria for certification and are capable of providing the services required;

J. Soliciting proposals from and actively considering local ACDBEs who are qualified;

K. Soliciting specific recommendations on methods for enhancing ACDBE participation from Port Authority staff responsible for supplier diversity;

L. Attending participation goal progress meetings scheduled by the Port Authority to discuss good faith efforts to include meaningful participation by ACDBEs, as well as any issues regarding ACDBE providers;

M. Utilizing services of available minority and women's community organizations, contractors' groups, local, state and federal business assistance and development offices, and other organizations that assist ACDBEs;

N. Where appropriate, not requiring bonds from ACDBEs, or providing bonds and insurance for ACDBEs;

O. Nominating ACDBEs for participation in business assistance programs sponsored by the Port Authority or the Regional Alliance for Small Contractors; and

P. Developing and holding targeted outreach events to increase ACDBE participation for specific work or services.

11.5.3 Documentation. In meeting Retail Manager's commitment to comply with the ACDBE Program as set forth in Sections 11.5.1 and 11.5.2 above, Retail Manager shall submit to American and the Port Authority for its review and approval its ACDBE outreach efforts, including the specific affirmative action steps to be taken by Retail Manager to meet its aforesaid commitment and which outreach efforts shall, without limitation, include those outreach efforts described in Exhibit L [, within sixty (60) days from the Commencement Date]. Retail Manager shall incorporate in its said ACDBE Program such revisions and changes which American and the Port Authority initially or from time to time may reasonably require. Throughout the Term, Retail Manager shall document its efforts to ensure compliance with the ACDBE Program and the provision of Sections 11.5.1 and 11.5.2 above, shall keep American and the Port Authority fully advised of its progress in implementing such outreach efforts and shall supply to American and the Port Authority such information, data and documentation with respect thereto as either American or the Port Authority may from time to time and at any time request, including but not limited to annual reports.

ARTICLE 12

BOOKS, RECORDS AND REPORTING

Section 12.1 General Requirements. Retail Manager shall maintain, or cause to be maintained (including, without limitation, requiring each Subtenant to maintain), for a period of five (5) years from the date of each sale hereunder, or, in the event of a claim by American or the Port Authority, until such claim for payments hereunder shall have been fully resolved, fixed and paid, separate and accurate daily records of Gross Receipts as herein defined, and in accordance with GAAP, showing in detail all business done or transacted in, on, about or from or pertaining to the Concession Area, as well as activity concerning the funding and use of the Common Area Maintenance Fee and Joint Marketing Fund. Retail Manager shall also maintain, or cause to be maintained by Subtenants, separate and accurate records of construction on Fixed Improvements and Refurbishments in the Concession Area in accordance with GAAP. Retail Manager shall enter, or cause Subtenants to enter, all receipts arising from such business in regular books of account, and all entries in any such records or books shall be made at or about the time the transactions respectively

occur. In addition, Retail Manager shall prepare monthly, quarterly and annual reports of Gross Receipts derived from operations under this Agreement (on a Subtenant by Subtenant basis), using a form and method as directed by American and the Port Authority, which reports shall be simultaneously delivered to American and the Port Authority. Such forms and methods shall be employed by Retail Manager throughout the Term.

12.1.1 Upon American's or the Port Authority's written request, Retail Manager shall make available promptly to American and the Port Authority, any and all books, records and accounts pertaining to its business activities under this Agreement (which would not include records relating to the compensation and benefits of Retail Manager's personnel involved in the Concession Program, and related general corporate overhead of Retail Manager and "on-site" operating expenses not passed through to or collected from Subtenants) and conduct an audit of such books, records and accounts. Should such books and records not be made available in either the Port of New York District or the greater New York City metropolitan area within no more than fifteen (15) days of being requested, Retail Manager shall reimburse American and/or the Port Authority for reasonable travel (save when American's representatives can travel on American's flights), lodging and meal expenses to examine same at Retail Manager's office. The intent and purpose of the provisions of this Section 12.1 is that Retail Manager shall keep and maintain records, including consolidated Subtenants reports, that will enable American, or the Port Authority, to clearly and accurately ascertain, determine and audit, if so desired by American or the Port Authority, the amount of Gross Receipts attributable to the Concession Area by concession type, and by the allocation of Gross Receipts among the various products or services sold if relevant to the determination of Subtenant Rental. The form and method of Retail Manager's reporting of Gross Receipts shall be adequate to provide a control and test check of all revenues derived under this Agreement.

12.1.2 Should any examination, inspection, and audit of Retail Manager's books and records by American or the Port Authority disclose any underpayment by Retail Manager in excess of two percent (2%) of the total annual Rental due, Retail Manager shall pay American the amount of such underpayment plus Late Interest within no more than thirty (30) days after such disclosure with respect to American's Allocated Share. Any late payment interest payable on the Port Authority's Allocated Share would be determined in accordance with the Operator Permit. If the discrepancy is a result of Retail Manager's gross negligence, intentional acts, or fraud, Retail Manager shall also (i) reimburse American for all reasonable and actual costs incurred in the conduct of such examination, inspection, and audit (including without limitation, reasonable attorneys' fees and litigation expenses), and (ii) pay an additional charge equal to fifteen percent (15%) of the underpayment.

12.1.3 Retail Manager shall provide or cause to be provided the reports listed below to the Port Authority and American. Without prejudice to the remedy provided in Section 12.1.5 and Retail Manager's general obligations under this Agreement to monitor and audit the reporting of Subtenants and enforce the Subleases, American acknowledges that in obtaining or providing the reports described below Retail Manager is relying on accurate and complete reporting from Subtenants, and therefore makes no representation or warranty that end-product reports will be fully accurate and complete.

12.1.3.1 As soon as practicable after the end of each calendar month, but in no event later than the fifth (5th) day of the following calendar month, American shall notify Retail Manager as to the number of Enplaned Passengers at the Terminal during such month. As soon as practicable after the end of each calendar month, but in no event later than the tenth (10th) day of the following calendar month, Retail Manager shall deliver to American a separate statement (the "Monthly Rental Statement") for the

Concession Area setting forth (i) the Gross Receipts for each Subtenant and (ii) a comparison of Subtenant Rental actually due and payable versus Subtenant Rental actually collected by Retail Manager for the preceding calendar month from each Subtenant. Each Monthly Rental Statement shall be accompanied by a statement, certified by an authorized officer or equivalent representative of each Subtenant (commencing on the month subsequent to the commencement date under its Sublease), of Gross Receipts arising out of operations of the Subtenant for the preceding month, together with supporting documentation therefor as reasonably required by American or the Port Authority. If the Monthly Rental Statement shows that the Subtenant Rental collected by Retail Manager and paid to the Port Authority and American for such calendar month is less than the Rental actually payable to American and the Port Authority, then Retail Manager shall pay to American and the Port Authority, together with the delivery of such Monthly Rental Statement, the amount of such deficiency.

12.1.3.2 On or before January 15 of each year Retail Manager shall provide to American and the Port Authority a preliminary statement of Gross Receipts arising out of the operation of the Concession Program for the prior calendar year. The preliminary statement of Gross Receipts shall set forth, at a minimum, a month by month listing of (i) all the Gross Receipts of each Subtenant and any other concessionaires managed by Retail Manager, including a breakdown of food and beverage versus non-food and beverage concessions, (ii) the Port Authority's Allocated Share and American's Allocated Share of Subtenant Rental based on those Gross Receipts, and (iii) the Management Fee.

12.1.3.3 On or before April 15 of each year Retail Manager shall cause an annual statement of Gross Receipts arising out of the operations of each Subtenant for the preceding calendar year of its respective Sublease term to be prepared, and certified at the Subtenant's sole expense, by a certified public accountant. As soon as practicable after the end of each calendar year, but in no event later than April 30, Retail Manager shall provide a separate statement for the Concession Area showing, in reasonable detail, consolidated Gross Receipts for the preceding calendar year and the amount of Rental paid to the Port Authority and American (the "Annual Rental Statement").

12.1.4 Each Monthly Rental Statement and Annual Rental Statement shall be prepared on a cash accounting basis and certified by the chief financial officer or other principal accounting officer of Retail Manager as being true and correct in all material respects. Each Annual Rental Statement shall also be certified by a certified public accountant affiliated with an accounting firm selected by Retail Manager and approved by the Port Authority and American, with American's approval not to be unreasonably withheld, conditioned, or delayed.

12.1.5 If the certified Monthly Rental Statements or Annual Rental Statements provided under this Section 12.1 demonstrate a shortfall of more than two percent (2%) in comparison with the actual Rental paid under Article 4, Retail Manager shall pay (and may cause the relevant Subtenant(s) to pay to it under its/their Sublease) the amount of such shortfall with the next Rental payment due in accordance with Section 4.3, plus Late Interest calculated from the date full payment should have been received.

12.1.6 If Retail Manager is delinquent for fifteen (15) days or more in furnishing American with any Monthly Rental Statement or Annual Rental Statement required to be delivered under this Agreement, Retail Manager shall pay (and may cause the relevant Subtenant(s) to pay it under

its/their Sublease) American One Hundred Dollars (\$100.00) per day thereafter per delinquency as liquidated damages for American's additional costs incurred in reviewing and processing the delinquent statement.

12.1.7 Retail Manager shall furnish to American and the Port Authority such other financial or statistical reports as American or the Port Authority may reasonably require from time to time to verify compliance by Retail Manager with the terms of this Agreement.

Section 12.2 Concession Area Transactions. Without limiting the generality of the foregoing, Retail Manager shall cause the Subtenants to install in their respective Subtenant Premises non-resettable cash register or cash registers and other point of sale terminals (each, a "Point-of-Sale Terminal") for recording orders taken, or services rendered, as may be appropriate to the Subtenant's business and necessary or desirable to keep accurate records of Gross Receipts and shall cause the Subtenants to register therein every transaction made in, on, about or from their respective Subtenant Premises, including every type of Gross Receipts herein defined. Each such Point-of-Sale Terminal shall provide an historical record of all transactions, which occur at the Subtenant Premises for accounting, terminal-wide merchandising and auditing purposes. If requested by American from time to time, a copy of transaction reports or similar information shall be submitted to American and the Port Authority together with the delivery of the Monthly Rental Statement for the applicable month. American and the Port Authority shall have the right to inspect any Point-of-Sale Terminal or audit any Subtenant at any time.

12.2.1 In order to provide an accurate record of concessions transactions and to provide a high level of service to customers at the Concession Area, all Point-of-Sale Terminals or cash registers used therein shall have, as a minimum, the following features:

12.2.1.1 not less than sixty (60) segregated category addresses (if applicable for the types of products or services that maybe offered by the Subtenant);

12.2.1.2 the input devices may either be a key, scanner or both;

12.2.1.3 the patron fee display shall be of sufficient size and legibility to be readily observed by the patron during the processing of a transaction; and

12.2.1.4 the register of each Point-of-Sale Terminal shall: (i) record transactions by sequential control number to the audit tape or computer files; (ii) be capable of printing a transaction history to tape or file by hour (time of day), day, month and year; (iii) print a customer receipt showing the amount due, amount tendered, and the amount due to the customer together with the time and date of the transaction; and (iv) the register or data collection device shall have a secure transaction audit tape or an ASCII transaction file on an IBM compatible data disk.

12.2.2 If any Subtenant (at the time such Subtenant executes its Sublease) utilizes electric cash register terminals in other locations, it may submit the respective cash register terminal capabilities to American and the Port Authority for approval or waiver of any of the above capabilities. To be acceptable, however, the electric cash register terminal must have the capability of interfacing with or transmitting appropriate segments of the data it accumulates (on a read-only basis) in some acceptable form to a data base system or systems reasonably specified by American.

Section 12.3 Revenue Control. Upon the request of American, Retail Manager shall require Subtenants to make available to American weekly sales data for each Subtenant Premises (“Point of Sale Data”), reflecting the amount of each sales transaction, the number of transactions, items sold per transaction, time and date of the transaction, and specifying the sales category applicable to each item sold.

Section 12.4 Business Statistics Report. Retail Manager shall furnish to American and the Port Authority, within twenty (20) days of the close of each calendar quarter during the Term, the following report (the “Business Statistics Report”) containing trends for the operation of the Concession Area, other than direct revenue and cost figures as follows: (i) average weekly sales by Subtenant by category; (ii) rolling twelve (12) month sales by Subtenant, by category; (iii) sales per Enplaned Passenger by Subtenant, by category, on a monthly, quarterly and rolling twelve (12) month basis; (iv) Subtenants’ average sales per transaction at each Subtenant Premises on an annual basis; (v) sales per square foot by Subtenant Premises and by category on a rolling twelve (12) month basis; (vi) a Subtenant occupancy report, listing Subtenant Rental as a percentage of Gross Receipts for each Subtenant; (vii) associated graphs and trend charts; and (viii) where applicable, comparisons to historical data for the same time frames.

ARTICLE 13

REPRESENTATIONS AND WARRANTIES

Section 13.1 American’s Disclaimer. No representations have been made by American or the Port Authority as to the Concession Area or the Terminal (including, without limitation, the economic viability of any concession location or the amount of passengers to be enplaned at the Terminal), and no promises to alter, remodel or improve the Concession Area or the Terminal have been made by American except as expressly set forth in this Agreement. Passenger counts, passenger flows and other customer traffic are in the most part products of airline schedules and gate utilization and governmental rules and regulations governing security and emergency situations may restrict access to the Terminal. Retail Manager and Subtenants may not rely on any implied representations or warranties (the existence of which are hereby disclaimed), or the accuracy of projections or prospective information provided in connection with the execution of this Agreement and the Subleases, and Retail Manager and Subtenants shall have conducted an independent and expert investigation and evaluation of all information provided in connection with the execution of this Agreement.

Section 13.2 Retail Manager’s Representations and Warranties. Retail Manager represents and warrants that:

13.2.1 Retail Manager is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of [●] and is duly qualified to do business in the State of New York. Retail Manager has the power and authority to execute, enter into and perform this Agreement, and by proper corporate action has been duly authorized to execute and deliver this Agreement and each of the other documents required to be delivered by Retail Manager in connection with the transactions contemplated by this Agreement, and to perform its obligations under this Agreement and such other documents in accordance with their respective terms;

13.2.2 Retail Manager is duly authorized and has the power to own and operate its properties and assets and to conduct its business;

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13.2.3 This Agreement has been duly executed and delivered by a duly authorized officer of Retail Manager;

13.2.4 This Agreement constitutes the legal, valid and binding obligation of Retail Manager enforceable against Retail Manager in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors rights and remedies generally; and

13.2.5 There is no litigation now pending or, to the best of Retail Manager's knowledge, threatened, challenging the corporate existence or powers of Retail Manager in any way affecting this Agreement, or in any way having a material adverse effect on the operations, assets or finances of Retail Manager.

Section 13.3 American's Representations and Warranties. American represents and warrants that:

13.3.1 American is a corporation, duly organized, validly existing and in good standing under the laws of the State of Delaware and is qualified to do business in the State of New York. American has the power and authority to execute, enter into and perform this Agreement, and by proper corporate action has been duly authorized to execute and deliver this Agreement and each of the other documents required to be delivered by American in connection with the transactions contemplated by this Agreement, and to perform its obligations under this Agreement and such other documents in accordance with their respective terms;

13.3.2 American is duly authorized and has the power to own and operate its properties and assets and to conduct its business;

13.3.3 This Agreement has been duly executed and delivered by a duly authorized officer of American;

13.3.4 This Agreement constitutes the legal, valid and binding obligation of American enforceable against American in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors rights and remedies generally; and

ARTICLE 14

DEFAULT AND REMEDIES; TERMINATION

Section 14.1 Events of Default.

14.1.1 Retail Manager. The following events shall each be deemed an Event of Default of Retail Manager under this Agreement:

- (A) Retail Manager shall fail to pay Rental within forty-eight (48) hours after receipt of notice from American that a payment is late, together with all Late Interest accrued from the date due to American; or

- (B) Retail Manager shall fail to pay Additional Payment Obligations, and such failure shall continue for a period of five (5) days after such payment was due; or
- (C) Retail Manager shall become insolvent, or shall take the benefit of any present or future insolvency statute, or shall make a general assignment for the benefit of creditors, or file a voluntary petition in bankruptcy, or a petition or answer seeking an arrangement or reorganization, or the readjustment of its indebtedness under the federal bankruptcy laws, or under any other similar law or statute of the United States or of any state thereof, consent to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property or assets; or
- (D) By order or decree of a court, Retail Manager shall be adjudged bankrupt or an order shall be made approving a petition filed by any of the creditors or by any of the stockholders of Retail Manager seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any similar law or statute of the United States of America or of any state thereof; or
- (E) By or pursuant to, or under authority of, any legislative act, resolution or rule, or any order or decree of any court or governmental board agency or officer having jurisdiction, a receiver, trustee or liquidator shall take possession or control of all or substantially all of the property or assets of Retail Manager; or
- (F) Retail Manager shall voluntarily abandon, desert or vacate the Concession Area or any part thereof or discontinue its operations thereat for any period of time, provided that vacancies of Subtenant Premises that may occur from time to time during the Term shall not constitute or imply a default under this clause (F) by Retail Manager; or
- (G) After exhausting or abandoning any right of further appeal, Retail Manager shall be prevented for a period of fifteen (15) or more consecutive days by action of any governmental agency having jurisdiction thereof, other than the Port Authority, from conducting its activities at the Airport or the Terminal, unless such governmental action is not specific to Retail Manager (i.e., it is part of a regulatory taking of the Terminal or some other governmental initiative generally affecting activities at the Airport); or
- (H) Any lien shall be filed against the Concession Area or the Terminal because of any act or omission of Retail Manager,

and shall not be bonded against or discharged by Retail Manager by proper legal proceedings within thirty (30) days after such lien is filed; or

- (I) All or any portion of the interest of Retail Manager under this Agreement shall be directly or indirectly transferred without the prior written approval of American and the Port Authority, by reason of operation of law, assignment, sublease or otherwise, to any other Person; or
- (J) Any occurrence of material change, direct or indirect, in the ownership or control of Retail Manager following the date first above written. For purposes of the preceding sentence, a material change in the ownership or control of Retail Manager will be deemed to have occurred if (i) any party that does not own or control a twenty percent (20%) or greater ownership interest in Retail Manager as of the date first above written obtains, following such date, a twenty percent (20%) or greater ownership interest in Retail Manager or (ii) any party that does not have the ability to direct the policies or management of Retail Manager as of the date first written obtains, following such date, the ability to direct the policies or management of Retail Manager; or
- (K) Retail Manager shall, without the prior written approval of American, be merged into another corporation in a merger, become a constituent corporation in a consolidation, or become a corporation in dissolution, unless (i) the resulting merged corporation or constituent corporation becomes Retail Manager, (ii) the resulting merged corporation or constituent corporation has a financial standing as of the date of the merger or consolidation at least as good as that of Retail Manager (by which it is meant that its working capital, its current assets, its ratio of fixed assets to fixed liabilities, and its net worth shall each be at least as favorable as Retail Manager prior to the date of the merger or consolidation) and (iii) the business combination does not result in the Event of Default described in clause J. above; or
- (L) Retail Manager, or any Subtenant (subject to and to the extent provided in Sections 14.1.1(M) and (N)), shall breach, default or fail to keep, perform and observe any promise, covenant, obligation, duty or agreement set forth in this Agreement, the Lease, the Operator Permit, a Four-Party Subtenant Consent Agreement or any other applicable permit or license to be kept, performed or observed on its part within the time period expressly set forth in the applicable instrument or, if no such time period

is set forth, within thirty (30) days after delivery by American of a written notice of such breach or default, except where fulfillment of its obligation cannot be accomplished within such thirty (30) day period and Retail Manager has commenced in good faith to perform whatever may be required to cure such failure within thirty (30) days after receipt of such notice and thereafter diligently continues such performance to completion, in which case such failure must be cured within one hundred and twenty (120) days after the aforementioned delivery by American of written notice; or

- (M) Notwithstanding any other provision of this Agreement, including Section 14.1.1(N), and in accordance with the principle that this Agreement is fully subject to and subordinate to the Lease, if an action or omission of Retail Manager or any Subtenant causes American to be in default of any covenant, term or provision of the Lease, and American receives a written communication or other notification (including, without limitation, a formal written notice of default) from the Port Authority specifying such default, and Retail Manager or any Subtenant has not cured the matter described in said notification within a reasonable earlier period of time, if any, prescribed in the Port Authority communication or thirty (30) days after receipt of a copy thereof by Retail Manager; provided, however, that if the default cannot be cured within such thirty (30) day or shorter period specified by the Port Authority and Retail Manager or the affected Subtenant has commenced in good faith to undertake whatever may be required to cure such situation within ten (10) days after Retail Manager's receipt of a copy of such notice, and thereafter diligently continues to effect such cure to completion, and such cure is effected within sixty (60) days after Retail Manager receipt of such notice, then such action or failure to act shall not be deemed an Event of Default; or
- (N) With the exception of Retail Manager's obligations to pay Rental and the Additional Payment Obligations, in any circumstance where Retail Manager is to cause Subtenants to comply with obligations under this Agreement or their respective Subleases and Subtenants fail to so comply, or a violation of a Sublease or other act or omission of a Subtenant is directly responsible for causing Retail Manager to breach its direct duties and obligations under this Agreement, such Subtenant non-compliance will not be considered an Event of Default of Retail Manager unless any of the following conditions occur: (1) Section 14.1.1(M) (Lease default) applies; or (2) Retail Manager has no effective recourse under the applicable

Sublease(s), unless American had specifically approved the omission of such effective recourse in the relevant Sublease, to effect compliance or does not diligently prosecute all such recourse and remedies, up to and including the potential termination for default of the affected Sublease(s), eviction of the Subtenant(s) and reletting of the affected Subtenant Premises as soon as possible.

- (O) Retail Manager shall default in the performance of any term, condition, covenant or obligation under any contract, agreement, arrangement or other business relationship (including, without limitation, license agreements, financing or credit agreements, or supply agreements), or for any other reason such contract, agreement or other business relationship terminates prior to its original termination or maturity date, and such default or termination would, in the reasonable judgment of American, have a material adverse effect upon the performance by Retail Manager of its obligations hereunder, and such default is not cured by Retail Manager within thirty (30) days after receipt of notice thereof by Retail Manager or within ninety (90) days if cure has been commenced by Retail Manager within thirty (30) days and is being diligently pursued to completion; or
- (P) Retail Manager shall fail to meet the Minimum Standards or Concession Program Standards or fail to comply with the Rules and Regulations and shall not cure such failure within thirty (30) days; provided, however, that American may not declare or assert an Event of Default of Retail Manager based on the general Premier World-Class Retail Program standard referenced in Section 7.1, *unless* the Port Authority has sent a notice of default in this regard (as contemplated in Section 14.1.1(M)) and (i) Retail Manager fails to use commercially reasonable efforts, as required under this Agreement, to remedy any specific deficiencies reasonably claimed by the Port Authority in such default notice, or (ii) notwithstanding such efforts to cure specific deficiencies, the Port Authority persists in its claim of default and, if American elects to challenge the claim of default judicially, there is a judicial determination favoring the Port Authority's claim of default under the standard referenced in Section 7.1; or
- (Q) Any material misrepresentation made by Retail Manager to American in the inducement to enter into, or in the performance of this Agreement, which has a material adverse effect on this Agreement for the non-defaulting party; or

- (R) Any labor dispute involving Retail Manager that interferes with American's or the Port Authority's quiet enjoyment and operation of the Concession Area or the Terminal, unless resolved within fifteen (15) days.

14.1.2 Default Remedies. Upon each occurrence of an Event of Default, American shall have the option to pursue any one or more of the following remedies and any other remedies at law or equity which are available to American and not proscribed or limited in this Agreement:

14.1.2.1 Terminate this Agreement, in which event Retail Manager shall forfeit the liquidated damages described in Section 14.1.2.3 and immediately surrender the Concession Area to American. American will assume Retail Manager's rights and obligations under Subleases in accordance with Section 3.3, as of the effective date of termination and Retail Manager will have no further ongoing obligations hereunder, except for those that accrued before such termination and are not discharged or that survive termination by their nature (e.g., indemnification obligations). If Retail Manager fails to surrender the Concession Area, American may, without any further notice and without prejudice to any other remedy American may have for possession or arrearages in Rental or Additional Payment Obligations due under this Agreement, enter upon and take possession of the Concession Area and remove Retail Manager and/or Subtenants whose Subleases are not assumed under Section 3.3, or its or their effects without being liable for prosecution or any claim for damages therefor, and Retail Manager shall indemnify and hold harmless American and the Port Authority (and the Port Authority's commissioners, employees, officers, agents and representatives) for all claims, loss and damage asserted against American or the Port Authority by third parties by reason of such termination.

14.1.2.2 Upon American's termination of this Agreement for an Event of Default, American may draw down the full amount of the AA Security Deposit then in effect. It is acknowledged, intended and agreed that the amount which American is entitled to recover under this Section 14.1.2.3 does not constitute a penalty, but instead is the parties' best, good faith, and reasonable estimate of the minimum damages which would be suffered by American, for such concepts as the costs to recondition, market and re-let the Concession Area, to manage the Concession Program indefinitely and/or to identify, negotiate a contract with and compensate new third parties to manage the Concession Program and service the Concession Area on a temporary or permanent basis (including related attorney, broker and other consultant fees), to terminate and wind-down third party agreements (other than Subleases) of Retail Manager associated with the Concession Program, among others, and for potential loss of Rental revenue to American during such transition or for the remainder of the Term, the exact amount of such damages being difficult or impractical to calculate. The foregoing liquidated damages are cumulative with, and independent of, any other right or remedy established in this Agreement which may arise on termination, including, without limitation, other rights and remedies for payments under this Section 14.1.2, the obligations of Retail Manager to indemnify American against third party claims, and claims for any Rental or Additional Payment Obligations which may accrue through the effective date of termination. Otherwise, the liquidated damages are exclusive of any other right of American at law or equity to claim additional damages for any concept arising out of the termination of this Agreement. Accordingly, in recovering such liquidated damages, American will have irrevocably waived any other claim to damages, whether actual,

special, direct, indirect, consequential or punitive, arising out of the termination of this Agreement, including any claims pending at the time of termination based on Retail Manager's prior performance or non-performance of this Agreement, with the sole exception of Section 14.1.2.7 below.

14.1.2.3 If the Event of Default relates to the payment of Rental or Additional Payment Obligations, require Retail Manager to pay some or all of Rental in monthly installments in advance of each calendar month during the Term by certified or cashier's check.

14.1.2.4 Without notice, alter the locks and any other security device or devices which allow Retail Manager or Subtenants (the Subleases of which are not assumed by American under Section 3.3) access to the Concession Area or the Terminal, and American shall not be required to provide a new key or right of access to Retail Manager or such Subtenants, and restrict or terminate any right to use parking facilities associated with the Terminal as well as utility services to the Concession Area except for Subtenant Premises under Subleases assumed by American under Section 3.3.

14.1.2.5 If, at any time during the Term, the operations in and management of the Concession Area for which Retail Manager is responsible under this Agreement (either directly or indirectly through Subleases, subcontracts or otherwise) give rise to conditions in the Terminal that, in the reasonable judgment of American, would significantly adversely impact American's leasehold interest in the Terminal, including, without limitation, by causing a default of the Lease or harming the Base Building or other construction and property under American's responsibility, the integrity and efficiency of airline operation at the Terminal, or the safety and security of American's employees, passengers or other public in the Terminal, then, in lieu of declaring an Event of Default and/or terminating this Agreement as provided elsewhere in this Article 14, American may elect to notify Retail Manager of such condition. Retail Manager will then have five (5) calendar days to describe and provide a plan to American to remedy such condition and to begin to implement such plan. If American determines in its reasonable discretion that such plan is inadequate or would not remedy the condition identified as promptly as necessary, or American reasonably infers from Retail Manager's recent conduct that it does not intend to remedy the condition, or that the condition identified by its nature requires more urgent attention, then American shall have the right, but not the obligation, and without any liability for doing so, to enter on the Concession Area, or hire contractors to enter on the Concession Area, in order to directly remedy the condition. Retail Manager agrees for this purpose that American will be subrogated to any contractual rights or remedies of Retail Manager the exercise or enforcement of which American reasonably determines is necessary to remedy the condition without need for further action or formalities. Upon request by American, Retail Manager shall promptly reimburse American for its reasonable and actual costs in exercising this remedy along with an additional charge in an amount equal to fifteen percent (15%) of the cost thereof. For such time as American exercises the remedy of this section, Retail Manager will not be displaced from its offices in the Concession Area nor otherwise deprived of its rights or relieved of its obligations under this Agreement. This remedy is without prejudice to the rights of American to seek specific performance or exercise specific self-help remedies for Retail Manager's failure to perform established elsewhere in this Agreement (e.g., Sections 8.2.1 and 8.2.4).

14.1.2.6 Upon a termination for an Event of Default, in addition to any other sum provided to be paid herein, Retail Manager also shall be liable for and shall pay to American: (i) any costs of removing and storing Retail Manager's and any other evicted or terminated Subtenant's property; (ii) any reasonable costs required to repair, maintain or clean the Concession Area, as required in this Agreement through the effective date of this termination, into a condition reasonably acceptable to a new tenant or tenants; (iii) reasonable expenses incurred in marketing the Concession Area from the effective date of termination through the end of the calendar year then in effect, unless Retail Manager turns over to American the balance of the Joint Marketing Fund as of the date on which Retail Manager receives notice of an Event of Default that ultimately results in a termination, as well the Common Area Maintenance Fee funds collected through such date, (iv) reasonable legal fees and expenses incurred by American in evicting Subtenants (in accordance with Section 3.3) or otherwise enforcing or defending American's rights and remedies vis-à-vis third parties so as to permit a transfer of the Concession Area to a new manager; and (iv) any damages that arising out of fraud by Retail Manager related to this Agreement.

14.1.2.7 Exercise by American of any one or more remedies hereunder granted or otherwise available shall not necessarily be deemed to be an acceptance of surrender of the premises by American, whether by agreement or by operation of law, it being understood that such surrender by Retail Manager can be effected only by the written agreement of American and Retail Manager. American shall not be deemed to have terminated this Agreement in the absence of service of written notice to Retail Manager specifically stating that this Agreement is terminated. Retail Manager and American further agree that forbearance by American to enforce its rights pursuant to this Agreement at law or in equity, shall not be a waiver of American's right to enforce one or more of its rights in connection with that or any subsequent Event of Default nor shall any acceptance by American or the Port Authority of any Rental, Additional Payment Obligations or other amounts under this Agreement after occurrence of an Event of Default be deemed a waiver of any right or remedy of American or the Port Authority under this Agreement, the Lease or the Operator Permit.

14.1.2.8 If American repossesses the Concession Area pursuant to the authority herein granted, then American shall have the right to keep in place and use (or to remove and store) all of the furniture, fixtures and equipment at the Concession Area, including that which is owned by or leased to Retail Manager at all times prior to any foreclosure thereon by American or repossession thereof by any landlord thereof or third party having a lien thereon, all such removal and storage to be at the sole cost and expense of Retail Manager. American also shall have the right to relinquish possession of all or any portion of such furniture, fixtures, equipment and other property to any Person (each, a "Claimant") who presents to American a copy of any instrument represented by Claimant to have been executed by Retail Manager granting Claimant the right under various circumstances to take possession of such furniture, fixtures, equipment or other property, without the necessity on the part of American to inquire into the authenticity or legality of said instrument. Retail Manager stipulates and agrees that the rights of American in this section are commercially reasonable.

14.1.2.9 Except as may be otherwise specifically provided in this Agreement, Retail Manager and the Subtenants shall have no rights of attornment, nor other claim of any kind whatsoever against American or the Port Authority, or their

respective officers, directors (and commissioners in the case of the Port Authority), employees, representatives or agents by reason of any act or omission by American or the Port Authority in respect of this Section 14.1.2.

14.1.2.10 Retail Manager and the Subtenants hereby waive any and all rights to recover or regain possession of the Concession Area and all rights of redemption, granted by or under any present or future law in the event it is or they are evicted or dispossessed for any lawful cause, or in the event American obtains possession of the Concession Area in any lawful manner.

14.1.2.11 Efforts by American to mitigate the damages caused by an Event of Default of Retail Manager's shall not constitute a waiver of American's rights under this Section 14.1.2.

14.1.3 American's Default. If American fails to perform any of its obligations hereunder within thirty (30) days after written notice from Retail Manager specifying in detail such failure (or if the failure cannot be corrected, through the exercise of reasonable diligence, within such thirty (30) day period, if American does not commence to correct same within such thirty (30) day period and thereafter diligently prosecute same to completion), Retail Manager's sole and exclusive remedy shall be an action for actual and direct damages, in an amount not to exceed, in the aggregate during the Term of this Agreement, the amount of the AA Security Deposit. Unless and until American fails to cure any breach after such notice, Retail Manager shall not have any remedy or cause of action by reason thereof. As essential consideration and a material inducement for American to enter into this Agreement, Retail Manager hereby waives any rights to actual and direct damages in excess of the AA Security Deposit for any breach of contract by American, and any claim for indirect, special, consequential, punitive or other kinds of damages at law or equity, without prejudice to the right to receive reimbursement of Eligible Costs for certain Early Terminations of this Agreement. Retail Manager hereby further expressly waives, and will cause each Subtenant to waive any and all claims for damages arising or resulting from failure or interruptions of utility services furnished by American or the Port Authority hereunder, if any, including, without limitation, electricity, gas, water, plumbing, sewage, telephone communications, heating, ventilation, air conditioning, from the failure or interruption of any public or customer conveniences, in each case unless caused by American's gross negligence or willful misconduct, without prejudice to the rights Subtenants may have under an approved Sublease to seek a rent abatement if prevented from opening to the public for more than two (2) days by an interruption in utility services or the rights of Retail Manager under Section 8.4.2. All obligations of American hereunder will be construed as covenants and not conditions. The reference in this section to American's obligations shall not include any obligations of the Port Authority.

Section 14.2 Suspension and Abatement. If American's operations at the Terminal should be substantially restricted for more than five (5) days by action of any competent authority, including without limitation, the Port Authority, either party may elect, by giving notice to the other party within no more than thirty (30) days after it learns of such circumstance (i) to suspend this Agreement in as much as it is affected by such restriction, (ii) to have an abatement of a just proportion of the services and facilities to be afforded hereunder, and/or (iii) to have a complete abatement (if the entire Concession Program is affected) or an equitable abatement (to the extent the Concession Program is partially affected) of the Rental and Additional Payment Obligations to become due hereunder from the time of such event until such restriction shall have been removed.

Section 14.3 Surrender of Premises. Retail Manager shall quit and deliver peaceably to American possession of the Concession Area, and release and/or not attempt to retain any interest in

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the Fixed Improvements and Refurbishments on the date of the cessation of the letting of the Concession Area, whether such cessation be by termination, expiration, or otherwise. The Concession Area shall be in broom-clean and sightly condition and in good repair, except for reasonable wear and tear arising from use of the Concession Area to the extent permitted elsewhere in this Agreement.

14.3.1 Retail Manager and the Subtenants shall at their sole expense remove signs and trade fixtures (other than trade fixtures and other property which they are otherwise prohibited from removing under the Lease) from the Concession Area and shall surrender the Concession Area and appurtenances thereto in broom-clean and sightly condition and in good repair, except for reasonable wear and tear arising from use of the Concession Area to the extent permitted elsewhere in this Agreement. Retail Manager shall deliver to American all keys to all or any portion of the Premises in its possession and cause Subtenants to do the same.

14.3.2 Any personal property of Retail Manager and the Subtenants placed on or kept at the Concession Area as to which the letting has ceased shall be removed as soon as practical but in no event later than two (2) days after the expiration or termination of this Agreement or the respective Subleases. If Retail Manager shall fail to so remove its personal property at the end of the Term (including also any Early Termination of this Agreement), or fail to cause Subtenants to do so, American may at its option, as agent for Retail Manager and the respective Subtenants and at the risk and expense of Retail Manager and the respective Subtenants, remove such property to a public warehouse, or may retain the same in its own possession, and, in either event, after the expiration of thirty (30) days may sell the same at public auction; the proceeds of any such sale shall be applied first to the expenses of removal, sale and storage, second to any sums owed by Retail Manager or the Subtenants to American or the Port Authority; any balance remaining shall be paid to Retail Manager or the Subtenants as appropriate.

14.3.3 All of the requirements of this Article 14 affecting Subtenants shall be included in any and all Subleases.

Section 14.4 Attorney's Fees. If either party institutes any action or proceeding against the other party to enforce the interpretation of or compliance with a provision of this Agreement, the prevailing party shall be entitled to receive from the losing party all reasonable attorneys' fees and all court costs in connection with such proceeding.

ARTICLE 15

LIABILITY; INSURANCE; DESTRUCTION; MISCELLANEOUS

Section 15.1 Liability, Indemnity, Insurance and Bonds.

15.1.1 Retail Manager's Indemnification.

15.1.1.1 Retail Manager shall defend, indemnify and hold harmless American and its directors, officers, employees, agents, representatives and Affiliates (collectively, the "American Indemnitees"), from and against any and all claims, demands, actions, causes of action, suits, fines or judgments asserted, imposed or obtained by third Persons, and the costs (including reimbursement of American Indemnitees' reasonable costs and expenses of any related legal proceedings or attorneys' fees), expenses, losses, liabilities (including, without limitation, claims and demands for death or personal injuries, or for property damages) and damages of all

kinds related to such third Person claims,) arising out of the construction of Fixed Improvements or Refurbishments or the improper use or occupancy of the Concession Area by Retail Manager or by Subtenants, or out of any other acts or omissions of, or any breaches or defaults under the terms or conditions of this Agreement by, Retail Manager, the Subtenants or their respective directors, officers and employees, representatives contractors and guests and invitees (which excludes, for the avoidance of doubt, passengers and any other members of the general public who enter the Terminal not solicited or requested specifically by Retail Manager or a Subtenant) in the Concession Area or other areas in the Terminal or elsewhere at the Airport (including, without limitation, claims and demands of any of the Subtenants or of the City of New York, from which the Port Authority derives its rights in the Airport) (collectively, the “Claims”). The foregoing indemnification shall not apply to the extent that a Claim is caused or contributed to by the negligence or willful misconduct of any American Indemnitee. As a condition to the foregoing indemnification with respect to claims and demands for indemnification made by American: (w) American shall give Retail Manager prompt written notice specifying with reasonable particularity any Claim which American reasonably believes may become the basis for indemnification pursuant to this Section 15.1.1, (x) American and its directors, officers, employees and representatives shall cooperate fully in the defense of such Claim, (y) to the extent permitted under the Lease, Retail Manager shall have the right to contest, defend or litigate, and to retain counsel of its choice in connection with any proceeding or litigation which would give rise to a claim for indemnification under this Section 15.1.1 and (z) to the extent permitted under the Lease, Retail Manager shall have the sole and exclusive right to settle any proceeding or litigation which could give rise to a claim for indemnification under this Section 15.1.1 (provided such settlement would not result in any loss, cost, harm, expense, damage or liability to American or the Port Authority). A failure by an American Indemnitee to timely notify Retail Manager of any Claim shall excuse Retail Manager’s obligations hereunder only to the extent the defense of such Claim is prejudiced thereby. Retail Manager acknowledges the obligation to also defend, indemnify and hold harmless the Port Authority and its commissioners, directors, officers, employees, agents and representatives from and against all Claims in accordance with the provisions of the Operator Permit.

15.1.1.2 Retail Manager represents that it is the owner of or fully authorized to use or sell any and all intellectual property used or sold by it in its activities under or in any way connected with this Agreement. Without in any way limiting its obligations hereunder Retail Manager agrees to indemnify, defend and hold harmless the American Indemnitees and the Port Authority and its commissioners, directors, officers, employees, agents and representatives of and from any loss, liability, expense, suit or judgment in connection with any actual or alleged infringement of any patent, service mark, trademark, trade name or copyright, or arising from any alleged or actual unfair competition or other similar claim arising out of the activities of Retail Manager under or in any way connected with this Agreement. As to American, such indemnification, and all other indemnification contained in this Agreement, shall be subject to provisions (i) through (iv) of Section 15.1.1.1. With respect to claims or demands against American Indemnitees for actual or alleged infringement of any patent, service mark, trademark, trade name or copyright, or for actual or alleged unfair competition or other similar theories arising out of the operations of Subtenants, Retail Manager shall pay or reimburse American all actual and reasonable attorney’s fees and costs of defense that American may incur in defending any such intellectual property or

unfair competition claims or demands. Retail Manager is not required to pay, reimburse or indemnify American from any other loss or expense, including eventual fines or judgments not overturned on appeal, that American may incur by reason of such intellectual property or unfair competition claims. The foregoing does not limit the obligation of Retail Manager to include clauses in the Subleases under which Subtenants fully indemnify American and the Port Authority directly for such liability.

15.1.1.3 Retail Manager agrees to include in all Subleases, and obligate Subtenants, per their respective Sublease, to include in all franchise agreements and construction contracts and other agreements involving Subtenants, a provision by which such Subtenant, franchiser, or contractor agrees to defend, indemnify and hold harmless, Retail Manager, American, the Port Authority and its commissioners, and all of the officers, directors, employees and agents of each of them, on at least the same basis and to the same extent as required of Retail Manager under this Section 15.1.1.

15.1.2 Insurance. Retail Manager, in its own name as insured and for the benefit of American and the Port Authority as additional insureds (both of which shall be named in each policy as an additional insured, as its interest may appear), shall procure and maintain commercial general liability insurance, and automobile liability (covering owned, hired and non-owned vehicles). Commercial General Liability including, without limitation, premises operations, products-completed operations, explosion, collapse and underground property damages, personal injury and independent contractors, broad form property damage with a contractual liability endorsement covering the obligations assumed by Retail Manager, pursuant to Section 15.1.1 hereof, to the extent covered by general liability policies, which shall be in addition to all policies of insurance otherwise required by this Agreement, such insurance not to contain any care, custody or control exclusions, which would conflict with or in any way impair coverage under the contractual liability endorsement. Such policy or policies of insurance shall also provide or contain an endorsement providing that the protections afforded Retail Manager thereunder with respect to any claims or actions against Retail Manager by a third Person shall pertain and apply with like effect with respect to any claim or action against Retail Manager or any Subtenant by American or the Port Authority, and that such protections shall also pertain and apply with respect to any claim or action against American or the Port Authority, including by Retail Manager or any Subtenant, but such endorsement shall not limit, vary or affect the protections afforded American and the Port Authority thereunder as an additional insured. Such insurance shall be in not less than the following amounts:

<u>Type of Coverage</u>	<u>Limits of Liability One Occurrence</u>
Workers' Compensation Statutory for State of Operations and Employer's Liability	Statutory Limits in effect at the time the Agreement is executed and "part B" Employer's Liability One Million U.S. Dollars (\$1,000,000.00) each accident, One Million U.S. Dollars disease - each employee, One Million U.S. Dollars disease - policy limit.

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<u>Type of Coverage</u>	<u>Limits of Liability One Occurrence</u>
Commercial General Liability covering liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract	A total combined limit of primary and excess coverage any one occurrence Bodily Injury, Personal Injury and Property Damage Liability in the minimum amount of Five Million U.S. Dollars (\$5,000,000.00), each occurrence; Five Million U.S. Dollars (\$5,000,000.00) personal and advertising injury; Five Million U.S. Dollars (\$5,000,000.00) general aggregate; Five Million U.S. Dollars (\$5,000,000.00) products-completed operations aggregate.
Commercial Automobile Liability including owned, hired and non-owned vehicles	A total combined limit of primary and excess coverage any one occurrence Bodily Injury and Property Damage Liability in the minimum amount of combined single limit of Two Million U.S. Dollars (\$2,000,000.00), each accident.
Blanket Crime Bond Insurance, including fidelity coverage for loss, theft, fraud, embezzlement, transit, deposit, forgery, or similar acts on the part of Retail Manager or its employees in respect of Rental and Additional Payment Obligations under this Agreement and money and securities handled on or off premises	Five Million U.S. Dollars (\$5,000,000.00) any one occurrence and in the aggregate.

Notwithstanding the foregoing, it is specifically understood and agreed that American shall have the right, on its own initiative or as requested by the Port Authority, to require Retail Manager to make reasonable additions, deletions, amendments, or modifications to the above minimum insurance requirements or may require such other and additional insurance, in such reasonable amounts, against such other insurable hazards, as American may deem reasonably necessary or the Port Authority may deem necessary. Notwithstanding the foregoing, American will not increase the above-required coverage limits in excess of five percent (5%) in any calendar year during the Term, unless such increase is required for reasons beyond American's control.

In addition to all other policies or insurance required under this Agreement, Retail Manager also procure and maintain during the term of this Agreement, and shall cause Subtenants to procure and maintain during the term of their respective Subleases, business interruption insurance in amounts at least sufficient to cover, and applicable to, all rentals, fees charges and other payments that are payable by Retail Manager to American or the Port Authority under this Agreement, or by Subtenants to Retail Manager under the respective Sublease, for a period of not less than one (1) year for any business interruption losses in business revenue that occur when the Premises or any portion thereof is unusable

or is out of operations due to fire or any other risks or hazards that are normally covered under a standard form of “All Risk” policy.

Retail Manager shall, and shall cause Subtenants to, procure and maintain Builder’s Risk (All Risk) Insurance covering the construction of their respective Fixed Improvements required under Article 5 hereof or Refurbishments during the performance thereof, including without limitation material delivered to the site but not attached to the realty. Such insurance shall name American, the Port Authority, the City of New York, Retail Manager, Subtenants and their respective contractors and subcontractors as additional insureds and such policy shall provide that the loss shall be adjusted with and payable to Retail Manager or Subtenants, as the case may be. Such Proceeds must be used for the repair, restoration, and replacement or rebuilding of the Fixed Improvements and the Refurbishments, as necessary.

Retail Manager in its own name as insured and in the name of American and the Port Authority as additional loss payees to the extent of their interests shall procure and maintain All Risk Property insurance including fire, flood and earthquake (and without limitation a replacement cost endorsement) on all inventory, furniture, fixtures, equipment and other improvements installed or located in the Concession Area at not less than the full replacement value of such items. Such policies shall provide that any loss shall be adjusted with and payable to Retail Manager and to American. To the extent American receives insurance proceeds from such policies or otherwise participates in the adjustment of claims thereunder, American shall cooperate fully with Retail Manager and shall make all insurance proceeds available to Retail Manager to cover the cost of restoration of such inventory, furniture, fixtures, equipment and other improvements.

As to the insurance required by the provisions of this Section 15.1.2, Retail Manager shall deliver a certificate or certificates evidencing their existence and inclusion of the required coverage and provisions to American and the Port Authority on or before the Commencement Date. In addition, if requested by American, Retail Manager shall deliver a certified copy of each policy bearing the endorsement of or accompanied by evidence of payment of the premium thereof. Each such policy shall contain a valid provision or endorsement that the policy may not be cancelled, terminated, changed or modified without giving thirty (30) days’ written advance notice to American and the Port Authority. Each such policy shall contain an additional endorsement providing that the insurance carrier shall not, without obtaining prior written permission from the Port Authority, raise any defense involving in any way the jurisdiction of the tribunal, the immunity of the Port Authority, its commissioners, officers, agents or employees, the governmental nature of the Port Authority or the provisions of any statutes respecting suits against the Port Authority. A renewal policy shall be delivered to American and the Port Authority as soon as possible after the date of expiration of the policy renewed, but in no event more than ten (10) days after the date of expiration of each expiring policy obtained hereunder. The aforesaid insurance shall be written by a company or companies with a rating of A-7 or higher from the A.M. Best Company or an equivalent rating service. If at any time any of the insurance policies shall be or become unsatisfactory to American or the Port Authority, in their reasonable judgment, as to form or substance, or if any of the carriers issuing such policies shall not maintain the minimum rating required above, Retail Manager shall promptly obtain a new and satisfactory policy in replacement.

15.1.3 The commercial general liability insurance, commercial automobile liability insurance and Property insurance policies described above shall be endorsed to provide that such policies are primary insurance to any other insurance available to the additional insured, with respect to any claims arising out of this Agreement, and, with respect to the Commercial General Liability and Commercial Automobile Liability coverage, that such insurance applies separately to each insured against whom claim is made or suit is brought.

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15.1.4 The parties shall attempt to obtain, and if obtained to maintain so long as maintainable, provisions in their respective fire insurance policies relating to the Terminal and the Concession Area to the effect that any such policy shall not be invalidated should the insured waive in writing, prior to a loss, any or all right of recovery against any party for loss occurring to the insured property (“Invalidation Provision”). So long as such provisions are in their respective fire insurance policies, each party waives, only to the extent of the proceeds received under such policy, any right of recovery against the other party for any loss covered by the fire insurance policy containing such provision. In the event that at any time a fire insurance carrier shall not include such provisions in a policy then the party holding the policy shall have the other party named in said policy as an additional loss payee to the extent of its interest. Should any additional premium be imposed for the inclusion of any Invalidation Provision, the party for whose benefit the provision runs shall either (i) pay such additional premium within thirty (30) days after written demand, or (ii) waive such provision. Without limiting or modifying in any way the obligations, if any, to restore an insured loss as provided in this Article 15, in the event either party shall be named as an additional loss payee in accordance with the foregoing, the additional loss payee agrees to endorse promptly to the party obligated to restore pursuant to this Article 15, without recourse, any check, draft or order for the payment of money representing the proceeds of any such policies or representing any other payment growing out of or in connection with any such policy for payment of restoration of the Premises.

15.1.5 Insurance provisions substantively at least as protective as those of Section 15.1.3 shall be included in the Subleases.

15.1.6 The insurance required of Retail Manager under this Section 15.1 may be furnished under any blanket policy carried by it, with any amendments or endorsements that may be necessary to conform to the above requirements, or under a new and separate policy.

Section 15.2 American’s Indemnification and Insurance. American shall defend, indemnify and hold harmless Retail Manager and its directors, officers, employees, agents, representatives and Affiliates (collectively, the “RM Indemnitees”), from and against any and all claims, demands, actions, causes of action, suits, fines or judgments asserted, imposed or obtained by third Persons and the costs (including reimbursement of American Indemnitees’ reasonable costs and expenses of any related legal proceedings or attorneys’ fees), expenses, losses, liabilities (including, without limitation, claims and demands for death or personal injuries, or for property damages) and damages of all kinds arising out of the improper use or occupancy of the Premises by American, or out of any other acts or omissions of, or any breaches or defaults under the terms or conditions of this Agreement by American and its directors, officers and employees, representatives, contractors, guests, invitees and visitors (which excludes, for the avoidance of doubt, passengers and any other members of the general public who enter the Terminal not solicited or requested specifically by American) in the Terminal, or elsewhere at the Airport (including, without limitation, claims and demands of any of the Subtenants or of the City of New York, from which the Port Authority derives its rights in the Airport) (collectively, the “Claims”). The foregoing indemnification shall not apply to the extent that a Claim (a) is caused or contributed to by the negligence or willful misconduct of any RM Indemnitee, a Subtenant or Subtenant’s employees or contractors, or (b) that Retail Manager has an indemnity obligation under Section 15.1.1. As a condition to the foregoing indemnification with respect to claims and demands for indemnification made by Retail Manager: (w) Retail Manager shall give American prompt written notice specifying with reasonable particularity any Claim which Retail Manager reasonably believes may become the basis for indemnification pursuant to this Section 15.2, (x) Retail Manager and its directors, officers, employees and representatives shall cooperate fully in the defense of such Claim and shall cause Subtenants to similarly cooperate, (y) to the extent permitted under the Lease, American shall have the right to contest, defend or litigate, and to retain

counsel of its choice in connection with any proceeding or litigation which would give rise to a claim for indemnification under this Section 15.2 and (z) American shall have the sole and exclusive right to settle any proceeding or litigation which could give rise to a claim for indemnification (provided such settlement would not result in any loss, cost, harm, expense, damage or liability to Retail Manager). A failure by a RM Indemnitee to timely notify American of any Claim shall excuse American's obligations hereunder only to the extent the defense of such Claims is prejudiced thereby.

15.2.1 American shall maintain the types of insurance required under the Lease.

Section 15.3 No Agency Created; No Third Party Beneficiaries.

15.3.1 This Agreement does not create in Retail Manager or the Subtenants any rights of agency or other representation for American or the Port Authority for any purpose whatsoever, nor does it create any authority to bind American or the Port Authority. Similarly, the payment of Rental and Additional Payment Obligations and all other fees, payments or other amounts required under this Agreement, neither creates nor is intended to create any partnership relationship, joint venture or other business combination, or a fiduciary duty or other special duty or relationship between or among Retail Manager, American or the Port Authority, other than as is specifically established in Section 4.7 above. Retail Manager must not hold itself out as having any relationship to American or the Port Authority that is inconsistent with this Section 15.3.1.

15.3.2 This Agreement does not create in Subtenants or any other Person, other than the Port Authority, rights as a third party beneficiary of this Agreement. For the avoidance of misunderstanding, it is acknowledged that American has no duty to initiate any proceedings to enforce rights on behalf of the Port Authority as a third-party beneficiary under this Agreement.

Section 15.4 Damage or Destruction; Condemnation.

15.4.1 Partial Destruction of the Concession Area.

15.4.1.1 American shall not be required to make reparation for any injury or damage by fire or other cause, or to make any restoration or replacement of any Fixed Improvements, Refurbishments, or any other real or movable property located or installed in the Concession Area by or on behalf of Retail Manager or the Subtenants, except as otherwise provided herein.

15.4.1.2 In the event the Fixed Improvements or Refurbishments are damaged by any casualty covered under an insurance policy required to be maintained pursuant to this Agreement, then Retail Manager shall for its own Fixed Improvements, and Retail Manager shall cause Subtenants for their respective Fixed Improvements, repair such damage or cause the affected Subtenants to repair it as soon as reasonably possible and this Agreement shall continue in full force and effect. In the event the Fixed Improvements or Refurbishments are damaged by any casualty not covered under any insurance policy required to be maintained by Retail Manager or Subtenants pursuant to this Agreement, then American may, at American's option (i) repair such damage at American's expense and continue this Agreement in full force and effect, or (ii) give written notice to Retail Manager within ninety (90) days after the date of occurrence of such damage of American's intention to terminate this Agreement as to the affected portion of the Concession Area as of the date of the damage, provided, however, that if such damage is caused by an act or omission to act of Retail Manager or the Subtenants,

their agents, servants, subcontractors or employees, then Retail Manager shall, or shall cause the involved Subtenants to, repair such damage, promptly at its/their sole cost and expense. Any repair or restoration of the Concession Area by American after the termination of this Agreement shall not be deemed to reinstate this Agreement or give Retail Manager any right to have this Agreement reinstated in whole or with respect to a terminated portion of the Concession Area. In the event American elects to terminate this Agreement under this section, Retail Manager shall have the right, within thirty (30) days after receipt of the required notice from American, to notify American in writing of Retail Manager's intention to repair such damage at Retail Manager's expense and without reimbursement from American, in which event this Agreement shall continue in full force and effect and Retail Manager shall proceed to make such repairs as soon as reasonably possible. If Retail Manager does not give such notice within the above thirty (30) day period, this Agreement shall be terminated as of the date specified by American in its notice to Retail Manager.

15.4.2 Total Destruction of the Concession Area. If the Concession Area is totally destroyed during the Term by any cause whether or not covered by the insurance required herein (including without limitation any destruction required by any authorized public authority), and the Concession Area cannot be repaired or replaced within sixty (60) days of such total destruction, this Agreement shall terminate as of the date of such total destruction at the option of either party with a total abatement of Rental obligations as of such date, but without affecting any obligations which may have accrued or other rights or remedies of either party which may have arisen through such termination, including insurance claims based on the destruction.

15.4.3 Damage or Destruction of Terminal. If fifty percent (50%) or more of the Terminal shall be damaged or destroyed by an insured risk, or if twenty-five percent (25%) or more of the Terminal shall be damaged or destroyed by an uninsured risk, notwithstanding that the use and occupancy of the Concession Area is not materially affected thereby, and if as a result of such damage or destruction American's flight operations at the Terminal are suspended or more than fifty percent (50%) curtailed for a period of sixty (60) days or more, either American or Retail Manager may terminate this Agreement by notice given to the other within ninety (90) days from the date of occurrence of such damage or destruction, in which event the Term shall expire on the mutually agreed upon date (or, in the absence of a mutually agreed upon date, on the date reasonably specified by American, which shall be within one hundred eighty (180) days from the date of such damage or destruction) and Retail Manager shall upon such termination surrender the Concession Area to American. American shall not be required, pursuant to this Section 15.4.3 or otherwise, to repair any damage or destruction to the Terminal; provided, however, that Retail Manager shall not be obligated to repair any damage or destruction to its Fixed Improvements or Refurbishments, or to cause the Subtenants to repair Fixed Improvements or Refurbishments pursuant to Section 15.4.1 or 15.4.4 to the extent and for so long as any damage or destruction to the Terminal precludes such repairs to the Concession Area, Fixed Improvements or Refurbishments.

15.4.4 Damage Near End of the Term. If, during the last year of the Term, more than twenty-five percent (25%) of the Concession Area are partially destroyed or damaged, either party may at its option terminate this Agreement as of the date of occurrence of such destruction or damage by giving written notice to the other of its election to do so within twenty-five (25) days after the date of occurrence of such destruction or damage; provided, however, if American elects to terminate this Agreement pursuant hereto, Retail Manager shall have the right within thirty (30) days after receipt of the required notice to notify American in writing of Retail Manager's intention to repair such destruction or damage at Retail Manager's expense and without reimbursement from American, in which event this

Agreement shall continue in full force and effect and Retail Manager shall proceed to make such repairs as soon as reasonably possible.

15.4.5 Abatement of Rent; Retail Manager's Remedies. If twenty-five percent (25%) or more of the Concession Area is destroyed or damaged, and such destruction or damage materially and adversely impairs or interferes with Retail Manager's or Subtenants' collective use and occupancy of the Concession Area and will be repaired pursuant to this Agreement, then in addition to any other remedies which may apply under this Agreement, American and Retail Manager shall negotiate in good faith to reach a mutually satisfactory agreement on an equitable abatement, for the period during which such damage and repair continues, of the amounts which may be due and owing as Rental, which abatement shall be based on any projected resulting reduction in Gross Receipts. Except for abatement of rent (if any), Retail Manager shall have no claim against American for any damage suffered by reason of any such damage, destruction, repair or restoration unless said damage is caused by the negligence or willful misconduct of American, nor shall Retail Manager have any claim against the Port Authority for any such damage regardless of its cause.

Section 15.5 Condemnation.

- (A) If more than thirty percent (30%) of the floor area of the Concession Area should be taken or condemned for any public or quasi-public use under any governmental law, ordinance or regulation or by right of eminent domain or by private purchase in lieu thereof, this Agreement shall terminate as of the date of such taking or condemnation and Rental and any Additional Payment Obligations shall be abated during the unexpired portion of this Agreement, effective on the date physical possession is commenced by the taking or condemning authority.
- (B) If thirty percent (30%) or less of the floor area of the Concession Area should be taken or condemned as aforesaid, this Agreement shall not terminate; rather, the amounts which may be due and owing as Rental during the unexpired portion of the Term (or for such shorter period during which such taking or condemnation shall continue) shall be reduced proportionally based on the projected reduction, if any, in Gross Receipts, effective on the date physical possession is commenced by the taking or condemning authority, such reduction to end on the date (if such date falls during the Term) that the Concession Area is returned to Retail Manager and the Subtenants in a condition which reasonably allows for the commencement of business; provided, however, that in all events any reduction under this section in the Port Authority's Allocated Share of Rental shall require the prior written approval of the Port Authority. If the taking or condemning authority does not specify the actual portions of floor area of the Concession Area to be taken or condemned as aforesaid, then American and Retail Manager shall endeavor to agree on such actual portions (and, if they are

unable to so agree, American's reasonable decision with respect thereto shall be conclusive and binding).

- (C) All compensation awarded for any taking or condemnation (or, in either case, the proceeds of private sale in lieu thereof) of the Concession Area shall be the property of American and Retail Manager hereby assigns its interest in any such award to American; provided, however, that American shall have no interest in any award made to Retail Manager or the Subtenants for Retail Manager's or the Subtenants' moving and relocation expenses or for the loss of Retail Manager's or the Subtenants' trade fixtures, operating equipment, merchandise, supplies inventory or other tangible personal property if a separate award for such items is made to Retail Manager or the Subtenants, as long as such separate award does not reduce the amount of the award that would otherwise be awarded to American.

Section 15.6 Permits, Licenses and Approval; Rules and Regulations. Retail Manager shall, at its sole expense, obtain and (if required) conspicuously display any and all permits, licenses or approvals (including, without limitation, the Operator Permit) required for the operation of its business by any governmental or administrative authority having jurisdiction over such matters. Retail Manager shall observe and obey the existing reasonable Rules and Regulations of the Port Authority or of American in effect as of the execution of this Agreement and all future reasonable Rules and Regulations promulgated by the Port Authority or American which affect the Concession Area.

Section 15.7 Successors. This Agreement is binding upon the permitted heirs, executors, administrators, assigns and successors in interest of the parties.

Section 15.8 Notices. All notices issued pursuant to this Agreement must be in writing and given by (i) Certified Mail, Return Receipt Requested, (ii) nationally recognized courier service providing proof of delivery, or by facsimile transmission (with answer back confirmation and confirmation by method (i) or (ii)) to the party at its address set forth below or to such other address as such party may designate by properly given notice, or (iii) sending the same by electronic mail, followed by delivery of a hard copy of same in accordance with the provisions of clause (i) or (ii) above.

American: American Airlines, Inc.
1 Skyview Drive
MD 8E100
Fort Worth, Texas 76155
Attention: Managing Director, Airport Affairs & Properties

Retail Manager: _____.

Notices dispatched by certified mail shall be effective three (3) Business Days after being deposited in the U.S. mail, properly addressed, with appropriate postage prepaid. Notices dispatched by nationally recognized overnight courier service shall be effective one (1) Business Day after the day sent.

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Notices sent by e-mail in accordance with the above shall be effective on the day sent, if such day is a Business Day, and otherwise on the next Business Day. The foregoing formal notice requirements will not relieve a party of the obligation to act reasonably promptly as necessary on notices actually delivered and received by telephone or other means

Section 15.9 Force Majeure.

15.9.1 Neither American nor Retail Manager shall be deemed to be in breach of its obligations to the other party under this Agreement to the extent it is prevented from or delayed in performing by reason of Force Majeure, except as specified in Sections 5.2.2 and 14.1.1(R) and as may be specifically provided elsewhere in this Agreement. Except as is specifically provided elsewhere in this Agreement, no abatement, diminution or reduction of the Rentals or other fees or charges payable by Retail Manager, shall be claimed or allowed to Retail Manager for any inconvenience, interruption, or loss of business in the Concession Area or other loss caused, directly or indirectly, by any present or future laws, rules, requirements, orders, directions, ordinances or regulations of the United States of America, or of the state, county or city governments, or of any other municipal, governmental, or lawful authority whatsoever (including the Port Authority), or by priorities, rationing or curtailment of labor or materials, or by war or any matter or thing resulting therefrom or by any other cause or causes beyond the control of American, nor shall this Agreement be affected by any such causes, except as otherwise herein specifically provided. For the avoidance of doubt, no abatement of Rental under any section of this Agreement may diminish or otherwise adversely affect the Port Authority's Allocated Share without the prior written approval of the Port Authority.

Section 15.10 Governing Law; Jurisdiction. Except as hereinafter provided, this Agreement shall be governed by and construed in accordance with the laws of the State of New York without regard to its conflict of laws principles. Notwithstanding the foregoing, in the event that either party is sued, impleaded or joined or in any other way participates as a party in any other action or proceeding brought by the State of Texas, the United States of America (or any department or agency thereof), the City of New York, the State of New York, or the Port Authority, in which a principal issue is the construction or enforcement of this Agreement, both parties hereby consent and submit to the jurisdiction of the tribunal conducting such action or proceeding.

Section 15.11 Entire Agreement. The parties acknowledge and agree that upon satisfaction of the conditions set forth in Section 2.4.3 this Agreement, and all attachments and exhibits referenced herein, constitute the entire agreement between the parties with respect to the subject matter hereof.

Section 15.12 Amendments, Modifications, etc. No alterations, amendments, changes or modifications to this Agreement shall be valid unless executed by an instrument in writing by the parties. All such alterations, amendments, changes or modifications shall be void *ab initio* unless and until the Port Authority has specifically consented in writing to the same.

Section 15.13 Holding Over by Retail Manager. If, at the termination or expiration of this Agreement, Retail Manager has not delivered possession of the Concession Area to American as required in Section 14.3, and, for any reason, Retail Manager retains possession of the Concession Area or any part thereof, then American may, at its option, serve written notice upon Retail Manager that such holding over constitutes either (i) the creation of a month-to-month tenancy, or (ii) the creation of a tenancy at sufferance, in either case upon the terms and conditions set forth in this Agreement; provided, however, that the monthly rental shall, in addition to all other sums which are to be paid by Retail Manager hereunder, whether or not as additional rent, be equal to double the

highest monthly Rental (whether based on Minimum Guaranteed Rental Shortfall or Subtenant Rental) paid in the preceding twelve (12) month period (and prorated in the case of (ii) on the basis of a 365 day year for each day Retail Manager remains in possession), plus Additional Payment Obligations accruing during the period of Retail Manager's occupancy based on a termination for an Event of Default if such unlawful holding over exceeds ten (10) days after the natural expiration of the Term. If the holding over by Retail Manager under this section is solely due to the failure of one or more Subtenants to timely vacate their Subtenant Premises (e.g., for Subleases not assumed under Section 3.3), notwithstanding Retail Manager's exercise of all rights and remedies available to it to cause them to vacate, the amount of double Rental payable by Retail Manager above shall be reduced in the proportion that the area of such heldover Subtenant Premises bears to the entire Concession Area. The provisions of this Section 15.13 shall not constitute a waiver by American or the Port Authority of any right of re-entry as herein set forth; nor shall receipt of any hold-over rent or other amount under this Agreement or any other act in apparent affirmation of the tenancy operate as a waiver of the right to terminate this Agreement for a breach of any of the terms, covenants, or obligations to be performed by or on behalf of Retail Manager. No holding over by Retail Manager, whether with or without consent of American, shall operate to extend this Agreement except as otherwise expressly provided. The preceding provisions of this Section 15.13 shall not be construed as consent for Retail Manager to retain possession of the Concession Area in the absence of prior written consent thereto by American.

Section 15.14 Approvals.

15.14.1 American and Retail Manager shall each use diligent, good faith efforts to gain all Port Authority consents and approvals which may be required to effectuate this Agreement, to permit the development of the Concession Area, and to effect concessions operations by the Subtenants.

15.14.2 Each of American and Retail Manager shall designate in writing to each other one or more representatives who shall be authorized to act under this Agreement for and on behalf of such party. Any act, approval, consent or vote of any representative that is so designated shall be deemed to be the act, approval, consent or vote of American or Retail Manager, as applicable and American and Retail Manager shall not be required to inquire into the authority of such representative as to such act, approval, consent or vote on behalf of the party who has designated said representative. Any representative may be replaced by a successor representative by written notice to the other party and designation of a substitute for such representative.

15.14.3 American hereby designates the [●] as its representative under this Agreement. If any approval or consent is required of American under this Agreement, Retail Manager shall contact such designated person in writing in order to obtain said approval or consent, as the case may be. American may appoint any other person to this position upon prior written notice to Retail Manager. Retail Manager hereby designates its [●] as its representative under this Agreement. If any approval or consent is required of Retail Manager under this Agreement, American shall contact such designated person in writing in order to obtain said approval or consent, as the case may be. Retail Manager may appoint any other person to this position upon prior written notice to American.

Section 15.15 Labor Assurances. Retail Manager represents and covenants that, to the best of its knowledge and belief, the employment of labor by Retail Manager or any Subtenant in the operation of the Concession Area will not be in conflict with the interests of American or the Port Authority with respect to labor harmony or interference with the quiet enjoyment and operation of the Terminal or the Concession Area.

Section 15.16 No Assignment. Retail Manager covenants and agrees that it may not sell, convey, transfer, mortgage, pledge, encumber or assign this Agreement or delegate or subcontract its duties, in whole or in part, nor permit the transfer of its interests created hereby directly or indirectly, in whole or in part, by operation of law or otherwise, without the prior written consent of American and the Port Authority. American will not unreasonably withhold, delay or condition its consent to an assignment in connection with the reorganization merger, consolidation, or spin-off affecting the consolidated reporting group to which Retail Manager belongs where (i) Section 14.1.(K) does not apply, and (ii) the reorganized corporate group and the assignee of this Agreement have at least equal resources and capabilities to perform this Agreement. Neither American's nor the Port Authority's approval is required for Retail Manager to subcontract the performance of non-core, collateral services associated with its obligations hereunder, such as cleaning, maintenance, repair or auditing functions, although such subcontracts will not affect Retail Manager's primary obligation for the proper performance of such services.

15.16.1 If Retail Manager assigns, sells, conveys, transfers, mortgages, pledges or sublets without the required prior written consent in violation of this section, or if the Concession Area or Terminal is used or occupied by any Person other than an approved Subtenant, Retail Manager under this Agreement, or American under the Lease, Retail Manager acknowledges that the Port Authority or American may collect rent from any such assignee, sublessee or other Person who claims a right under this Agreement or who otherwise uses or occupies the Concession Area or Terminal, and the Port Authority and American shall apply the amount collected to the Rental herein payable; but no such collection shall be deemed a waiver by the Port Authority of the covenants contained in this section, or an ongoing acceptance by the Port Authority of any such assignee, sublessee, claimant, user or occupant as a successor to Retail Manager or as a Subtenant, nor a release of Retail Manager by the Port Authority from the further performance by Retail Manager of the covenants contained herein.

15.16.2 Retail Manager shall not sublet the Concession Area or any part thereof without the prior written consent of American and the Port Authority as contemplated hereunder. Any consent granted by the Port Authority to any assignment or subletting or to any Sublease pursuant to the provisions hereof shall not be construed or deemed to release, relieve or discharge any succeeding assignee, successor or transferee of Retail Manager or any other person claiming any right, title or interest in this Agreement from the requirement of obtaining the prior written consent of the Port Authority in the event it wishes to sell, convey, transfer, mortgage, pledge, sublet or assign this Agreement or any part hereof, or any rights, created thereby or the letting hereunder or any part thereof; and such assignee, successor or transferee or other person claiming any right, title or interest in this Agreement shall not sell, convey, transfer, mortgage, pledge, sublet or assign this Agreement or any part thereof, or any rights created thereby or the letting thereunder or any part thereof without such prior written consent of the Port Authority.

Section 15.17 American's Names and Marks. Retail Manager acknowledges that the Trademarks are and will remain at all times the exclusive property of American and its Affiliates. No interest in, license or other right to use the Trademarks is granted or may be deemed to granted to Retail Manager under this Agreement or otherwise. Retail Manager may not make any use of the Trademarks, or any colorable imitation or abbreviation thereof, including any reference by advertising or otherwise to the names "American Airlines", "American Airlines, Inc.", unless such use or reference has been specifically approved in writing by American in advance.

Section 15.18 Compliance. Retail Manager shall cause each Subtenant to comply with this Agreement and its respective Sublease, and will use commercially reasonable efforts to not permit

any Subtenant to take any action or fail to take any action which action or inaction would be inconsistent with Retail Manager's obligations under this Agreement.

Section 15.19 Realtors. Each party represents and warrants to the other party that no broker, agent or other Person brought about this transaction. Each party agrees to indemnify and hold the other party harmless from and against any broker, agent or other Person claiming a commission or other form of compensation by virtue of having dealt with the indemnifying party with regard to this transaction.

Section 15.20 Licenses and Permits. Retail Manager shall procure for itself, and shall cause the Subtenants to procure, at its and at their sole expense, any permits and licenses required for the transaction of business in the Concession Area and otherwise comply with all Applicable Laws. In addition, if the nature of Retail Manager's or the Subtenants' business makes it advisable for Retail Manager or the Subtenants to take any extra precautions (for example, in the case of business which is affected by so-called "dram shop" laws, their compliance with all "dram shop" educational programs and procedures), Retail Manager or the Subtenants (as applicable) shall take all such extra precautions. At American's request, Retail Manager and the Subtenants shall promptly deliver to American copies of all such permits and licenses and other evidence as may be reasonably obtainable as to compliance with specific laws, ordinances, governmental regulations and extra precautions.

Section 15.21 Estoppel Certificates. Retail Manager agrees, from time to time, within ten (10) days after request by American, to deliver to American or American's designee, a certificate of occupancy, financial statements and an estoppel certificate stating that, to the best of Retail Manager's knowledge, after due inquiry, that (i) this Agreement is in full force and effect, (ii) the date to which Rentals and all other amounts due under this Agreement are paid, (iii) there is no default on the part of American or Retail Manager under this Agreement, and (iv) Retail Manager does not have any right of offset, claims or defenses to the performance of its obligations under this Agreement, and addressing such other factual matters pertaining to this Agreement as may be reasonably requested by American. The certificate must also detail specific exceptions to the foregoing statements, if any. Retail Manager's failure to deliver an estoppel certificate as required above will constitute a material breach of this Agreement, subject to notice and Section 14.1(L), but with a cure period of twenty (20) days in addition to the ten (10) day period provided above.

Section 15.22 DISCLAIMER. NOTHING IN THIS AGREEMENT (EXCEPT AS EXPRESSLY SET FORTH HEREIN) SHALL OR SHALL BE CONSTRUED TO IMPOSE UPON AMERICAN OR THE PORT AUTHORITY ANY OBLIGATIONS TO CONSTRUCT OR MAINTAIN OR TO MAKE REPAIRS, REPLACEMENTS, ALTERATIONS OR ADDITIONS, OR SHALL CREATE ANY LIABILITY FOR ANY FAILURE SO TO DO. RETAIL MANAGER AND THE SUBTENANTS ARE AND SHALL BE IN EXCLUSIVE CONTROL AND POSSESSION OF THE CONCESSION AREA AND AMERICAN AND THE PORT AUTHORITY SHALL NOT BE LIABLE AS RESULT OF THE RESERVATION OF RIGHTS UNDER THIS AGREEMENT OR THE EXERCISE OF ANY RIGHT UNDER THIS AGREEMENT HAPPENING ON OR ABOUT THE CONCESSION AREA NOR FOR ANY INJURY OR DAMAGE TO THE CONCESSION AREA NOR TO ANY PROPERTY OF RETAIL MANAGER, THE SUBTENANTS OR OF ANY OTHER PERSON LOCATED IN OR THEREON UNLESS CAUSED BY THE RESPECTIVE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF AMERICAN OR THE PORT AUTHORITY (IN WHICH CASE AMERICAN AND THE PORT AUTHORITY SHALL BE RESPONSIBLE ONLY FOR THE DAMAGE OR INJURY CAUSED BY ITS OWN RESPECTIVE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT).

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Section 15.23 Survival of Obligations. All obligations of either party hereunder not fully performed or discharged as of the expiration or earlier termination of the Term shall survive the expiration or earlier termination of the Term, including without limitation, all payment obligations with respect to Taxes and all obligations concerning the condition and repair of the Concession Area.

Section 15.24 Invalid or Unenforceable Provisions. If any clause or provision of this Agreement is illegal, invalid or unenforceable under present or future laws effective during the Term, then and in that event, it is the intention of the parties that the remainder of this Agreement shall not be affected, and that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added, as a part of this Agreement, a clause or provision as similar in terms to such illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable while maintaining the essential distribution of the economic benefits risks of the parties.

Section 15.25 American's Lien. In addition to any statutory lien for rent in American's favor, American shall have (and Retail Manager grants and shall cause the Subtenants to grant to American) a continuing security interest, to secure payment of all Rental, Additional Payment Obligations and Subtenant Rental becoming due hereunder respectively from Retail Manager or the Subtenants, and for the performance of all other obligations hereunder, upon all goods, wares, equipment, fixtures, furniture, inventory, and other personal property of Retail Manager or the Subtenants now or hereafter situated at the Concession Area, and such property shall not be removed therefrom without the prior written consent of American until all arrearages in Rentals or Subtenant Rental as well as any and all other sums of money then due to American hereunder shall first have been paid and discharged and all other obligations of Retail Manager or the Subtenants have been fully performed and discharged. In the event any of the foregoing described property is removed from the Concession Area in violation of the covenant in the preceding sentence, the security interest shall continue in such property and all proceeds and products, regardless of location; provided, however, upon curing to American's satisfaction any breaches or defaults under this Agreement and any other related agreements between American and such party, Retail Manager or any Subtenant may remove or replace from the Concession Area (subject to such continuing security interest if applicable) any furniture or equipment which does not constitute a fixture to the Concession Area or to the Fixed Improvements. Unless otherwise expressly provided in this Agreement, all rights and remedies provided under this Agreement are cumulative and not exclusive of all other rights and remedies provided under this Agreement. Upon the occurrence of an Event of Default hereunder, or upon Retail Manager's or any Subtenant's breach or default, or threatened breach or default, of its obligations hereunder (including, without limitation, any vacation or threatened vacation or any abandonment or threatened abandonment of the Concession Area), in addition to all other rights and remedies, American shall have all rights and remedies under the Uniform Commercial Code or applicable law, including without limitation, the right to sell the property described in this Section 15.25 at public or private sale upon five (5) days' prior written notice by American. Retail Manager hereby agrees, and shall cause the Subtenants, to execute such other instruments, reasonably necessary or desirable under applicable law, to perfect the security interest hereby created. American and Retail Manager each agree, and Retail Manager shall cause the Subtenants to agree by means of an equivalent Sublease clause, that this Section 15.25 serves as a financing statement and that a photographic copy or other reproduction of this Agreement may be filed of record by American and have the same force and effect as the original.

[Signature pages follow.]

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IN WITNESS WHEREOF, American and Retail Manager have executed this Agreement as of the date first above written.

AMERICAN AIRLINES, INC.

By: _____

Name:

Title:

[RETAIL MANAGER]

By: _____

Name:

Title:

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EXHIBIT A

PREMISES

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EXHIBIT B-1

EXISTING CONCESSION AREA

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EXHIBIT B-2

PROPOSED CONCESSION AREA

EXHIBIT C

SUBTENANT RENTAL

- (A) General Subtenant Rental Structure and Payment
- (B) Subtenant Rental Collection Risk Protections and Procedures

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EXHIBIT D

EXISTING TENANTS

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EXHIBIT E-1

SUBTENANT DESIGN HANDBOOK

EXHIBIT E-2

ONE JFK INITIATIVES

One JFK, the key component of the Governor’s Vision Plan establishes the importance of a clear, comprehensible and singular world class airport experience, to apply to all terminals. Inspired by the spirit of New York, it encompasses world-class passenger amenities along the entire passenger journey, including state-of-the-art security, streamlined roadway access, centralized ground transportation, and improvements to technology, all in the effort to re-establish the Airport as a preeminent transportation hub and economic engine. Executing the principles of One JFK will allow the Airport to deliver a consistent passenger experience worthy of New York and prepare the Airport for continued growth.

Retail Manager is responsible for development and implementation of the detailed program of One JFK elements based on the documentation provided. The One JFK elements will be presented and refined through interaction with the EDRC and the DRWC and shall include but not be limited to all elements of the One JFK Requirements listed below.

1. Connections

- Interconnected Terminals with facilities and services for all passengers
 - Design Topic Leads: Primary Architecture / Interior Finishes / Signage & Wayfinding / Digital Experience / Art & Multimedia / Restrooms / Other amenities / Retail

2. Universal Design

- Inclusionary Design for every different need for all user types
 - Design Topic Leads: Primary Architecture / Interior Finishes / Signage & Wayfinding / Digital Experience / Art & Multimedia / Restrooms / Other amenities / Holdrooms / Retail

3. New York State Identity

- Use of icons and multimedia to enhance visual identity and sense of place
 - Design Topic Leads: Branding / Art & Multimedia / Primary Architecture / Digital Experience / Restrooms / Other amenities / Retail

4. Sustainability

- Implementation and communication of performance
 - Design Topic Leads: Branding / Art & Multimedia / Primary Architecture / Digital Experience / Landscape

5. Branding

- Implementation of Port Authority approved branding and co-branding standards
 - Design Topic Leads: Branding

6. Wayfinding

- Implementation of Port Authority approved wayfinding and signage standards
 - Design Topic Leads: Signage and wayfinding

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7. Advertising
 - Implementation of innovative and relevant advertising that does not compete with aesthetic ambience and JFK branding
 - Design Topic Leads: Signage & Wayfinding / Digital Experience / Art & Multimedia / Retail
8. Retail / Commercial
 - Development of retail and commercial areas with clear connection with the City of New York and the surrounding region
 - Design Topic Leads: Primary Architecture / Interior Finishes / Signage & Wayfinding / Digital Experience / Art & Multimedia / Other amenities / Retail
9. Processing Points
 - Provide passengers with a coherent and seamless airport experience through the succession of different terminal spaces and processes
 - Design Topic Leads: Primary Architecture / Interior Finishes / Signage & Wayfinding / Digital Experience
10. Employee Facilities
 - Promote community through meeting the needs of the airport employees
 - Design Topic Leads: Primary Architecture / Interior Finishes / Signage & Wayfinding / Digital Experience / Art & Multimedia / Restrooms / Other amenities / Holdrooms / Retail
11. Landscape and the curb side environment
 - Unified curb side design from landscape to lighting and canopies
 - Design Topic Leads: Primary Architecture / Signage & Wayfinding / Digital Experience / Landscape / Art & Multimedia
12. Community art
 - Inclusion of the local community within the design
 - Design Topic Leads: Art & Multimedia / Digital Experience
13. Cutting edge technology
 - Implementation of the latest in aviation technology for terminal design
 - Design Topic Leads: Digital Experience / Other amenities
14. Restrooms
 - Enhanced restroom design and capitalizing on brilliant basic amenities
 - Design Topic Leads: Restrooms
15. Interior Finishes and Materials
 - Cohesive palette of finishes and materials to deliver a consistent terminal brand experience of circulation spaces, seating zones, retail areas and amenities.
 - Design Topic Leads: Primary Architecture / Interior Finishes / Signage & Wayfinding / Digital Experience / Art & Multimedia / Restrooms / Other amenities / Retail
16. User Experience during Construction
 - Create an approach that minimizes disruption to airlines, general airport operations, and the overall passenger experience during construction.
 - Design Topic Leads: Primary Architecture / Signage & Wayfinding / Other amenities / Landscaping

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EXHIBIT F

FORM OF SUBLEASE

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EXHIBIT G-1

CONCESSION PROGRAM

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EXHIBIT G-2

DEVELOPMENT PLAN

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EXHIBIT G-3

TRANSITION PLAN

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EXHIBIT H

FORM OF GUARANTY AGREEMENT

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EXHIBIT I

LIQUIDATED DAMAGES

EXHIBIT J

AFFIRMATIVE ACTION; EQUAL-OPPORTUNITY; MINORITY BUSINESS ENTERPRISE, WOMEN-OWNED BUSINESS ENTERPRISE REQUIREMENTS

PART I. Employment - Affirmative Action Guidelines - Equal Employment Opportunity

As a matter of policy, the Port Authority hereby requires Retail Manager and Retail Manager shall require its Work Providers (as hereinafter defined) to comply with the provisions set forth hereinafter in Part I (*Employment – Affirmative Action – Equal Opportunity*) of this Schedule J (*Affirmative Action; Equal-Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements*) of this Agreement. The provisions set forth in this Part I are similar to the conditions for bidding on federal government contracts adopted by the Office of Federal Contract Compliance Programs.

As used herein, “**Work Provider**” shall mean (i) any bidder, Contractor, supplier or consultant of Retail Manager, (ii) any Person with whom any Contractor, supplier or consultant of Retail Manager has further subcontracted any part of the Work (at any tier) and (iii) any other Person (other than individual employees or other natural persons) utilized by or on behalf of Retail Manager or any Subtenant to perform the Work (at any tier).

Retail Manager, each Subtenant as well as each Work Provider of Retail Manager and each Subtenant must fully comply with the following conditions set forth herein as to each construction trade to be used in the performance of the Work or any portion thereof (said conditions being herein called the “**Conditions**”). Retail Manager hereby commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Conditions. Retail Manager shall likewise require each of its Subtenants and Work Providers to commit itself to the said goals for minority and female utilization set forth below and all other requirements, terms and conditions of the Conditions.

I. Retail Manager and each of its Subtenants and Work Providers shall each appoint an executive of its company to assume the responsibility for the implementation of the requirements, terms and conditions of the following Conditions. Until further notice, the designated appointee of Retail Manager shall be [●].

(a) The goals for minority and female participation expressed in percentage terms for each Work Provider’s aggregate workforce in each trade performing Work involving any construction trade are as follows:

- | | | |
|-----|---------------------------|------|
| (1) | Minority participation | |
| | Minority, except laborers | 30% |
| | Minority, laborers | 40% |
| (2) | Female participation | |
| | Female, except laborers | 7.0% |

Female, laborers

7.0%

These goals are applicable to all Work involving any construction trade performed by Retail Manager, its Subtenants and their respective Work Providers in and for the Concession Area.

The Work Provider's specific affirmative action obligations required herein of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each construction trade, and the Work Provider shall make good faith efforts to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Work Provider to Work Provider or from project to project for the sole purpose of meeting the applicable Work Provider's goals shall be a violation of the contract. Compliance with the goals will be measured against the total work hours performed.

(b) The Work Provider shall provide written notification to Retail Manager and Retail Manager shall provide written notification to the Port Authority's Aviation Department (Aviation) and Office of Diversity and Inclusion (D&I) through an electronic database maintained by the Port Authority (currently LCP Tracker), within ten (10) Business Days of award of any contract in excess of \$10,000 at any tier for Work involving any construction trade. The notification shall be for the Port Authority's information (and the Port Authority shall use reasonable efforts to maintain such information as confidential, unless it is otherwise available publicly or is required to be disclosed in accordance with Applicable Law) and shall list the name, address and telephone number of the Work Provider; employer identification number; estimated starting and completion dates of the contract; and the geographical area in which the contract is to be performed.

(c) As used in these specifications:

(1) "**employer identification number**" shall mean the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941; and

(2) "**minority**" includes:

- (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
- (ii) Hispanic (all persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Native American or Latin American origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

(d) Whenever the Work Provider subcontracts a portion of any Work involving any construction trade it shall physically include in each contract in excess of \$10,000 those provisions which include the applicable goals for minority and female participation.

(e) Retail Manager and each Subtenant shall require in its contracts with each Work Provider that such Work Provider shall implement the specific affirmative action standards provided in

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subparagraphs (1) through (16) of paragraph (h) hereof. The goals set forth above are expressed as percentages of the total hours of employment and training of minority and female utilization the Work Provider should reasonably be able to achieve in each construction trade in which it has employees on the Premises. The Work Provider is expected to make substantially uniform progress toward its goals in each construction trade during the period specified.

(f) Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Work Provider has a collective bargaining agreement, to refer either minorities or women shall excuse the Work Provider's obligations hereunder.

(g) In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Work Provider during the training period, and the Work Provider must have made a commitment to employ the apprentices and trainees at the completion of their training subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

(h) Retail Manager shall require in its contracts with each Work Provider that such Work Provider shall take specific affirmative actions to ensure equal employment opportunity ("EEO").

The evaluation of the Work Provider's compliance with these provisions shall be based upon its good faith efforts to achieve maximum results from its actions. The Work Provider shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

(1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Work Provider's employees are assigned to work. The Work Provider, where possible, will assign two or more women to each phase of the Work involving any construction trade. The Work Provider shall specifically ensure that all foremen, superintendents, and other supervisory personnel at the Concession Area, or working on any Work involving a construction trade within the Concession Area, are aware of and carry out the Work Provider's obligation to maintain such a working environment, with specific attention to minority or female individuals working at the Concession Area, or working on any Work involving a construction trade within the Concession Area.

(2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Work Provider or its unions have employment opportunities available, and maintain a record of the organizations' responses.

(3) To the fullest extent permitted by Applicable Law, maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant, and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Work Provider by the union or, if referred, not employed by the Work Provider, this shall be documented in the file with the reason therefor, along with whatever additional actions the Work Provider may have taken.

(4) Provide immediate written notification to Retail Manager when the union or unions with which the Work Provider has a collective bargaining agreement has not referred to the Work Provider a minority person or woman sent by the Work Provider, or when the Work Provider

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has other information that the union referral process has impeded the Work Provider's efforts to meet its obligations.

(5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and training programs relevant to the Work Provider's employment needs, especially those programs funded or approved by local, state or federal labor agencies. The Work Provider shall provide notice of these programs to the sources compiled under subparagraph (2) above.

(6) Disseminate the Work Provider's EEO policy by: (a) providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Work Provider in meeting its EEO obligations; (b) including it in any policy manual and collective bargaining agreement; (c) publicizing it in the Work Provider's newspaper, annual report, etc.; (d) specific review of the policy with all management personnel and with all minority and female employees at least once a year; and (e) posting the Work Provider's EEO policy on bulletin boards accessible to all employees at each location where the Work involving any construction trade is performed.

(7) Review at least annually (within 30 days of the anniversary of the initiation of the Work at the Concession Area) and more frequently in the event the goals hereunder are not being met, the Work Provider's EEO policy and affirmative action obligations hereunder with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decision including specific review of these items with on-terminal supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of the Work involving any construction trade at the Concession Area. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

(8) Disseminate the Work Provider's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Work Provider's EEO policy with other Work Providers and subcontractors with whom the Work Provider does or anticipates doing business. If Retail Manager, any Subtenant or any of their Work Providers is advertising any employment opportunities externally in the news media, Retail Manager, Subtenant or such Work Provider, as applicable, shall exercise good faith efforts to include advertisements in minority and female news media, including bilingual media.

9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations and to State-certified minority referral agencies serving the Work Provider's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Work Provider shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

(10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth in the Concession Area or in areas used by Work Provider's workforce.

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(11) Conduct tests and other selection requirements in a manner which is similar to the conditions and standards under 41 C.F.R Part 60.3 which would be required if the hiring were pursuant to federal government contracts.

(12) Conduct, at least annually (and more frequently in the event the goals hereunder are not being met), an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities for promotion.

(13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Work Provider's obligations hereunder are being carried out.

(14) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

(15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Work Providers, including circulation of solicitations to minority and female contractor associations and other business associations.

(16) Conduct a review, at least every six (6) months, of all supervisors' adherence to and performance under the Work Provider's EEO policies and affirmative action obligations.

(i) Work Providers are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (subparagraphs (1)-(16) of paragraph (h) above). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the Work Provider is a member and participant, may be asserted as fulfilling any one or more of its obligations under paragraph (h) above; provided that the Work Provider actively participates in the group, makes good faith efforts to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Work Provider's minority and female workforce participation, makes good faith efforts to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Work Provider. The obligation to comply, however, is the Work Provider's and failure of such a group to fulfill an obligation shall not be a defense for the Work Provider's non-compliance.

(j) Goals for minorities and for women have been established respectively. The Work Provider, however, is required to provide equal opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Work Provider may be in violation hereof if a particular group is employed in a substantially disparate manner (for example, even though the Work Provider has achieved its goals for women generally, the Work Provider may be in violation hereof if a specific minority group of women is underutilized).

(k) The Work Provider shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, creed or religion, color, sex, national origin, disability, or age.

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(l) The Work Provider shall not enter into any subcontract with any Person or firm debarred from government contracts pursuant to Executive Order 11246.

(m) The Work Provider shall carry out such sanctions and penalties for violation of this clause including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered by Retail Manager. Any Work Provider who fails to carry out such sanctions and penalties shall be in violation hereof.

(n) The Work Provider, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph (h) hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Work Provider fails to comply with the requirements of these provisions, Retail Manager shall proceed accordingly.

(o) The Work Provider shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required and to keep records. To the fullest extent permitted by Applicable Law, records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanical apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work is performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Work Providers shall not be required to maintain separate records.

(p) Nothing herein provided shall be construed as a limitation upon the application of any laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

(q) Without limiting any other obligation, term or provision under this Agreement, the Work Provider shall cooperate with all federal, state or local agencies established for the purpose of implementing affirmative action compliance programs and shall comply with all procedures and guidelines established or which may be established by the Port Authority.

(r) Prioritize use of Local Minorities and Local women for employment opportunities with greatest preference given to localities as defined as Local in Part II of Schedule K.

(s) Provide certified payroll information to the Port Authority via use of LCP Tracker software or other Port Authority identified system for monthly reporting of Minority, women, Local, Local Minority and Local women workforce inclusion efforts.

PART II. Minority Business Enterprises and Women-Owned Business Enterprises

I. MWBE Participation Goals

Retail Manager acknowledges that one of the top-priority initiatives of the Port Authority is to encourage meaningful opportunities for MBEs and WBEs across the full spectrum of

infrastructure projects and related activities in the region. As a matter of policy, the Port Authority requires Retail Manager to require that any Work Provider utilized by Retail Manager to perform Work use “good faith efforts”, as that term is described in this Part II of Schedule J (Affirmative Action; Equal-Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements), to provide for meaningful participation by MBEs and WBEs in any portion of the Work that is sub-contracted by them pursuant to the provisions of this Part II of Schedule J (Affirmative Action; Equal-Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements).

In recognition of these efforts in support of MBEs and WBEs, the Port Authority has set the following goals for Category I Work, Category II Work, Category III Work, and Category IV Work, (each, a "MWBE Participation Goal": 30% combined MBE and WBE participation in the total cost of each of the Category I Work, Category II Work, Category III Work, and Category IV Work (together, the "Categories of Work") applicable to this Agreement, with individual MWBE Participation Goals of 20% MBE and 10% WBE participation with respect to the total cost of each of the applicable Categories of Work.

“Category I Work” shall mean any and all Work relating to financings and refinancings, including, but not limited to, Work with respect to financial services, insurance, investment securities, investment banking and bonding and other professional services Work relating to project delivery, program and construction management, and administrative oversight, including, but not limited to, work with respect to quality assurance or quality control, compliance and monitoring, accounting, legal services, procurement, project controls, inspections, document control, human resources, and outreach and community engagement. For the avoidance of doubt, the Category I Work shall include services provided with respect to the conduct of any and all future equity or debt offerings by or on behalf of Retail Manager.

“Category II Work” shall mean any and all Work relating to design, redesign, engineering and/or architecture, including, but not limited to, Work with respect to civil, structural, electrical and mechanical engineering, landscape architecture, surveying, environmental matters (including Work with respect to asbestos and hazardous materials), structural design matters, design work relating to plumbing, fire protection, HVAC and electrical matters and design-related cost estimating. For the avoidance of doubt, the Category II Work shall include, but not be limited to, design work.

“Category III Work” shall mean any and all Work relating to actual construction and construction materials and supplies, including, but not limited to, Work with respect to building, constructing, making and/or forming of improvements, decommissioning, demolishing and/or removing of existing improvements, and manufacturing, furnishing, installing, supplying and delivering of construction materials and supplies. For the avoidance of doubt, the Category III Work shall include, but not be limited to, construction work.

“Category IV Work” shall mean any and all Work relating to the operation, management, administration and/or maintenance of the Concession Area and supplies needed in connection therewith, including, but not limited to, Work with respect to janitorial services, security, ground maintenance, property maintenance, snow removal (but excluding concessions). For the avoidance of doubt, the Category IV Work shall include, but not be limited to, the operations and maintenance of the Concession Area.

In addition, Retail Manager shall seek to ensure diversity within the pool of MBE/WBE Work Providers selected for contracting opportunities across all procurement categories and contracting tiers and Retail Manager shall include its goals in its MBE/WBE Participation Plan. The Port Authority will review MBE/WBE Participation Plans, taking into consideration the size and scope of all Work being performed, to ensure that utilization with each MBE racial/ethnic group and each WBE racial/ethnic group is spread across all categories of work and contracting tiers. (For purposes of illustration, but not limitation, examples of a lack of sufficient diversity, might include (i) all MBEs within a Category or across all Categories are only from 1 or 2 minority groups, or (ii) only 1 MBE firm and 1 WBE firm are used.) In the event an MBE/WBE Participation Plan is deemed to lack sufficient diversity Retail Manager, Subtenant or Contractor may be asked to use good faith efforts to include additional M/WBE firms.

With respect to all Categories of Work, as of the Effective Date, American, the Port Authority and Retail Manager shall have cooperated and coordinated with each other in good faith and agreed to a mutually satisfactory MBE/WBE Participation Plan (as modified by mutual agreement from time to time, the “**Initial MBE/WBE Participation Plan**”), which Initial MBE/WBE Participation Plan shall set forth Retail Manager’s implementation strategy to engage MBEs and WBEs consistent with the Participation Goal for each Category of Work, and shall include proposed amounts for the allocation of work to various M/WBEs by Category of Work and trade to meet the applicable Participation Goals for each Category of Work.

The Initial MBE/WBE Participation Plan shall be reviewed from time to time by the parties thereto and revised as appropriate as set forth herein. Recognizing that conditions may exist that make the Participation Goal applicable to certain categories of Work difficult to achieve, such revisions to the Initial MBE/WBE Participation Plan shall take into due consideration market capacity and feasibility, regional labor conditions, existing contractual obligations and other factors, as well as contract analysis that may be performed by American or the Port Authority.

The Initial MBE/WBE Participation Plan and any subsequent MBE/WBE Participation Plan may be modified only with the written approval of the Port Authority’s authorized representatives, not to be unreasonably withheld, conditioned, or delayed. The General Counsel, the Director of Aviation and the Chief Diversity and Inclusion Officer of the Port Authority are hereby designated as the initial authorized representatives of the Port Authority for purposes of this Exhibit J. The Managing Director, Airport Affairs and Properties and the Director, Government and Airport Affairs, are hereby designated as the initial authorized representatives of American] for purposes of this Exhibit J (*Affirmative Action; Equal-Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements*). Such designation may be changed by a subsequent writing delivered by the Port Authority or American to Retail Manager in accordance with Section 15.8 (*Notices*).

For the avoidance of doubt, a failure by Retail Manager to satisfy the Participation Goal with respect to any category of Work at any time shall not constitute a breach of this Agreement nor shall such failure, in and of itself, give rise to an Event of Default; the sole remedy of the Port Authority for any such failure is to impose MWBE Liquidated Damages in accordance with this Schedule J (*Affirmative Action; Equal-Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements*), provided, however, that the failure of Retail Manager to pay such MWBE Liquidated Damages when due and payable hereunder shall constitute a default subject to Section 14.1.1 of this Agreement.

Retail Manager shall use and monitor, document and maintain a record of every good faith effort to comply with the plans submitted by or on behalf of Retail Manager to comply with the Participation

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Goals set forth in this Part II (the “**MBE/WBE Participation Plan**”), and to permit its MBE/WBE Work Providers to perform. Participation percentages shall be monitored by American and the Port Authority (either directly or together with an independent MBE/WBE consulting firm engaged by American and/or the Port Authority) throughout the performance of this Agreement. In connection therewith, on a monthly basis on or before the tenth (10th) of the month for each calendar month in a manner and format reasonably approved by the Port Authority’s authorized representatives, Retail Manager must submit a report (“**Monthly M/WBE Report**”) to American and the Port Authority’s D&I (a) evidencing continuing compliance with the Participation Goals and the Participation Plans, which shall include information and data for the immediately preceding month, as well as cumulative information, through the Port Authority’s designated diversity management system; and (b) proposing any updates to the then current Participation Plans by submitting information on any updates for review and approval by D&I and Aviation. Such Monthly Reports shall include at minimum each M/WBE, and LBE company’s name and location, scope of work and the corresponding committed, awarded and change order amounts and associated dates, summarized by (i) ethnicity and gender (ii) location and (iii) Category of Work.

Good faith efforts to include meaningful participation by MBEs and WBEs may be evidenced by, among other efforts, the following:

(a) Regular attendance at and participation in MBE/WBE workshops and pre-bid meetings, if any, scheduled by the Port Authority;

(b) (x) Attendance at Participation Goal progress meetings, if any, scheduled by the Port Authority, and (y) holding bi-monthly or monthly Participation Goal progress meetings with Port Authority’s M/WBE Program and Compliance staff, in each case to discuss good faith efforts being implemented by Retail Manager and/or its Work Providers to include meaningful participation by MBEs and WBEs in the Work, as well as any issues regarding MBE/WBE Work Providers;

(c) (x) Relaying the terms of the MBE/WBE Participation **Plan** and the Participation Goals to the Work Providers and (y) having regular contact with the Work Providers to ensure that they are making good faith efforts to meet the Participation Goals passed to them are being met in all categories and phases of the Work;

(d) Utilizing the Port Authority’s Directory of certified MBE/WBEs available on-line at <https://panynj.diversitysoftware.com/diversity> and/or proposing for certification other uncertified firms which appear to meet the Port Authority’s criteria for MBE/WBE certification, and which are technically competent to perform the Work which the bidder plans to subcontract;

(e) Active and affirmative solicitation of bids for subcontracts from MBE/WBEs, including circulation of solicitations to minority and female contractor associations. Records shall be maintained detailing the efforts made to provide for meaningful MBE and WBE participation in the Work, including the names and addresses of all MBEs and WBEs contacted and, if any such MBE or WBE is not selected as a joint venturer or subcontractor, the reason for such decision;

(f) Advertisement in general circulation media, trade association publications and minority-focused media, including bilingual media, for a reasonable period before commencement of any Work;

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(g) Dividing the Work to be subcontracted into smaller packages designed based on capacity to the preponderance of MBE/WBEs and the local contractor community, or encouraging the formation of joint ventures, partnerships or similar arrangements among subcontractors in order to increase the likelihood of achieving the MBE/WBE goals, and active participation in Work project meetings relating to such division of the Work;

(h) Providing to MBE/WBEs a sufficient supply of drawings and specifications of, or other relevant documentation with respect to, prospective Work, and providing MBE/WBEs with sufficient time to review such materials;

(i) Utilizing the services of available minority and women's community organizations; contractors' groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;

(j) Ensuring that progress payments are made in a timely fashion in accordance with the requirements of the relevant contract, preferably bi-weekly, and that retainage is paid to MBE/WBEs when they have completed their work, as well as reporting payments and other information as required through the Authority's designated diversity management system;

(k) Where appropriate, not requiring bonds from and/or providing bonds and insurance for Work Providers;

(l) Requiring each Work Provider to submit to Retail Manager with each payment request evidence that all MBE/WBE Work Providers have been paid in accordance with their contract;

(m) Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Port Authority staff responsible for such participation;

(n) Nominating Work Providers for participation in business assistance programs sponsored by the Port Authority or the Regional Alliance for Small Contractors such as the Loaned Executive Assistance Program (L.E.A.P.);

(o) Participating in annual performance reviews and, if applicable, proposing and complying with appropriate remedial plans as approved by the Port Authority; and

(p) Retail Manager, each Subtenant, and each of their Work Providers shall solicit proposals from and actively consider local MWBE businesses who have the competencies and offer competitive pricing for the proposed work. Retail Manager, each Subtenant and each Work Provider shall solicit proposals from and actively consider local MWBE businesses who have the competencies and offer competitive pricing for the proposed work. No awards to businesses outside New York and New Jersey should be made without prior consultation with the D&I in conjunction with Aviation. Generally, contract preference should be given to M/WBEs in the following order of geographic priority: 1) MWBEs located in the following zip codes: 11405, 11411, 11412, 11413, 11414, 11416, 11417, 11418, 11419, 11420, 11421, 11422, 11423, 11428, 11429, 11430,

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11432, 11433, 11434, 11435, 11436, 11451, 11691, 11692, 11693, 11694, 11695, 11697, 11559, 11598, 11096, 11516, 11557, 11003, 11580, 11581, 11582; 2) MWBEs located within the Borough of Queens, New York; 3) MWBEs located within other Boroughs; 4) MWBEs located within the Port District²; and 5) MWBEs located elsewhere.

The MBE/WBE Participation Plan may be modified only with the written approval of the Port Authority's authorized representatives.

Certification of MBEs and WBEs hereunder shall be accepted if a firm is currently certified by the D&I or by the Empire State Development's Division of Minority and Women's Owned Business Development ("DMWBD"). If Retail Manager or the Work Provider wishes to utilize a firm not already certified by the OBDCR or the DMWBD, Retail Manager or the Work Provider, as applicable, shall direct the uncertified firm to submit a Certification Application (available at <https://panynj.diversitysoftware.com/>) to the D&I. Any Certifications by D&I shall be effective only if made in writing by the D&I Certification Manager.

Each of the Port Authority and Empire State Development have compiled and made available on-line a MBE/WBE Directory which sets forth the firms that the Port Authority and/or Empire State Development have determined to be (1) MBE/WBEs and (2) experienced in performing work in the trades and contract dollar ranges indicated in the Directories. The Directories can be accessed at <https://panynj.diversitysoftware.com/> and <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=4687>. The Port Authority makes no representation as to the financial responsibility of such firms or their ability to perform Work. or

Only OBDCR and/or DMWBD certified MBEs and WBEs will count toward the MBE and WBE goals.

II. Conditions of MBE/WBE Participation and Credit.

MBE/WBE participation will be counted toward meeting the MBE/WBE agreement goal, subject to all of the following conditions:

(a) Commercially Useful Function: An MBE/WBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Work Provider and the MBE/WBE represent standard industry practice, to the extent that the arrangement does not meet the commercially useful function requirement, the applicable portion of the Work shall not be included in determining whether the MBE/WBE goal is met and shall not be included in

² The Port Authority is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. The bi-state agency serves a Port District covering an area of about 1,500 square miles centering on New York harbor. As such, the Port Authority's workforce is primarily recruited from 9 counties in New York and 9 counties in New Jersey, as is confirmed by the distribution of employee residences. These counties in the State of New York are: Kings, Queens, Bronx, New York, Richmond, Westchester, Rockland, Nassau, and Suffolk; and in the State of New Jersey: Bergen, Passaic, Hudson, Essex, Morris, Union, Somerset, Middlesex, and Monmouth.

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MBE/WBE reports, and Retail Manager or Subtenant may be required to backfill the participation. An MBE/WBE does not perform a commercially useful function to the extent that its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of MBE/WBE participation. An MBE/WBE may rebut a determination by the Authority that the MBE/WBE is not performing a commercially useful function to the Authority.

(b) **Work Force:** The MBE/WBE must employ a work force (including administrative and clerical staff) separate and apart from that employed by the Work Provider, or other subcontractors on the Agreement, or their affiliates. This does not preclude the employment by the MBE/WBE of an individual that has been previously employed by another firm involved in the Agreement, provided that the individual was independently recruited by the MBE/WBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the MBE/WBE shall not be allowed.

(c) **Supervision:** All work performed by the MBE/WBE must be controlled and supervised by the MBE/WBE without duplication of supervisory personnel from other Work Providers on the Agreement, or their affiliates. This does not preclude routine communication between the supervisory personnel of the MBE/WBE and other supervisors necessary to coordinate the work.

(d) The value of the work performed by an MBE/WBE, with its own forces and under its own supervision (including the costs of equipment if the work is performed with its own equipment), will be counted toward the goal, provided the utilization is a commercially useful function. An MBE/WBE prime contractor/consultant shall still provide opportunities for participation by other MBE/WBEs. Work performed by MBE/WBEs will be counted as set forth below. If the Authority determines that some or all of the MBE/WBEs work does not constitute a commercially useful function, only the portion of the work that constitutes a commercially useful function will be credited toward the goal. Retail Manager may rebut a determination by the Authority that a firm is not performing a commercially useful function.

(e) **Subcontractors:** One hundred percent (100%) of the value of the work to be performed by an MBE/WBE subcontractor will be counted toward the MBE/WBE goal. The value of such work includes the cost of materials and supplies purchased by the MBE/WBE, except the cost of supplies or equipment leased from the Work Provider, other subcontractors or their affiliates will not be counted. When an MBE/WBE subcontracts part of the work of its contract to another firm, the value of the subcontractor work may be counted toward MBE/WBE goals only if the MBE/WBE subcontractor is itself an MBE/WBE. Work that an MBE/WBE sub consults to a non-MBE/WBE firm does not count toward Participation Goals.

(f) **Material Suppliers:** Sixty percent (60%) of the expenditure to an MBE/WBE material supplier will be counted toward the MBE/WBE goal. Packagers, brokers, manufacturer's representatives, or other persons who arrange or expedite transactions are not material suppliers within the meaning of this paragraph.

(g) **Broker's/Manufacturer's Representatives:** One hundred percent (100%) of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees for transportation charges for the delivery of materials or supplies

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provided by an MBE/WBE broker/manufacturer's representative will be counted toward the MBE/WBE goal, provided they are determined by the Port Authority to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves will not be counted.

(h) Services: One hundred percent (100%) of fees or commissions charged by an MBE/WBE for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the work will be counted toward the MBE/WBE goal, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

(i) Joint Venture: Joint ventures between MBE/WBEs and non-MBE/WBEs may be counted toward the MBE/WBE goal in proportion to the total dollar value of the Agreement equal to the distinct, clearly defined portion of the work of the Agreement that the MBE/WBE performs with its own forces. Contact ODI at (201) 395-3117 for more information about requirements for such joint ventures.

(j) Retail Manager shall ensure that all approved MBE/WBE Work Providers performing Work on the Concession Area, maintain a regular on site presence at the Premises, as applicable, for the duration of the Work they are subcontracted to perform and that they exercise financial and operational management and control of such portions of the Work.

For the Port Authority

Initialed:

For the Retail Manager

EXHIBIT K

LOCAL BUSINESS ENTERPRISE & EMPLOYMENT OPPORTUNITY

As a matter of policy the Port Authority hereby requires Retail Manager, and Retail Manager shall require any Work Provider (as hereinafter defined) utilized by Retail Manager to perform the Work or any portion thereof to comply with the provisions set forth hereinafter in this Exhibit K (*Local Business Enterprise & Employment Opportunity*).

It is specifically understood and agreed that the requirements set forth herein for the participation of LBEs and Local Residents shall not alter, limit, diminish, or modify any of the obligations under this Agreement, including, without limitation, the obligation to comply with the Affirmative Action-Equal Opportunity and MBE and WBE provisions set forth in Exhibit J (*Affirmative Action; Equal Opportunity; Minority Business Enterprise, Women-Owned Business Enterprise Requirements*) hereof and the ACDBE provisions set forth in Exhibit L (*Airport Concession Disadvantaged Business Enterprise (ACDBE) Participation*) hereof.

As used herein, “Work Provider” shall mean (i) any bidder, Contractor, supplier or consultant of Retail Manager, (ii) any Person with whom any Contractor, supplier or consultant of Retail Manager has further subcontracted any part of the Work (at any tier) and (iii) any other Person utilized by or on behalf of Retail Manager to perform the Work (at any tier).

PART I. Local Business Enterprise

Retail Manager and each Work Provider shall use every good faith effort, as that term is described in this Part I of Schedule K, to maximize the participation of Local Business Enterprises (LBEs) in all phases and categories of the Work (categories include, but are not limited to, goods, services, professional services, architectural and engineering, and construction; categories exclude concessions).

Lists of potential LBEs, and additional information, including any meetings for LBEs scheduled by the Port Authority, are available either by contacting the Port Authority’s Office of Diversity & Inclusion (D&I) or the JFK Community Outreach Office (Phone: (718) 244-3834 - Email: jfkdevelopment@panynj.gov - Website: <https://www.anewjfk.com/>).

The Port Authority has not checked the references, capabilities or financial background of the firms listed in any directory and does not require a firm be listed in a directory to qualify as an LBE, but is making such information available solely for the purpose of informing Retail Manager, Work Providers and bidders of LBEs who may be interested in providing services and/or materials to Retail Manager, Subtenant or Work Provider.

Firms that are D&I or DMWBD certified as MBEs or WBEs that are in priority zone 1 or 2 are eligible to count both towards applicable MWBE Participation Goals and LBE Participation Goals.

If Retail Manager or a Work Provider would like to utilize any firm (including those on an LBE list provided by D&I or the JFK Community Outreach Office) that appears to meet the Port Authority's criteria for MWBE certification and is technically competent to perform proposed Work to be subcontracted to them, but is not currently certified as such, please notify D&I for expedited MWBE certification.

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Good faith efforts to include participation by LBEs in the Work shall include at least the following:

- A. Developing procurements and providing supportive strategies for the exclusive bidding of local businesses including local MBEs and WBEs certified by the Office of Business Diversity and Civil Rights of the Port Authority or by the Empire State Development's Division of Minority and Women Owned Business Development.
- B. Dividing the Work to be subcontracted and services and materials to be procured into smaller packages, where feasible, designed based on capacity to the preponderance of the local contractor community.
- C. Soliciting bids on portions of the Work to be subcontracted and services and materials to be procured from firms listed with D&I and the Community Outreach Office, and such other LBEs as Retail Manager deems appropriate.

In addition, good faith efforts may be demonstrated by other good faith efforts similar to those as described in Exhibit J Affirmative Action; Equal Opportunity; Minority Business Enterprise, Women-Owned, and Service-disabled Veteran Owned Business Enterprise Requirements).

A “**Local Business Enterprise**” or “**LBE**” shall mean, as a first priority, a business entity located within the following zip codes: 11405, 11411, 11412, 11413, 11414, 11416, 11417, 11418, 11419, 11420, 11421, 11422, 11423, 11428, 11429, 11430, 11432, 11433, 11434, 11435, 11436, 11451, 11691, 11692, 11693, 11694, 11695, 11697, 11559, 11598, 11096, 11516, 11557, 11003, 11580, 11581, 11582; as a second priority, LBEs located within the Borough of Queens, New York; as a third priority, LBEs located within other Boroughs; and as a fourth priority, LBEs located within the Port District.³

[In order to be eligible for LBE participation credit, a firm must have its principal place of business located within Zone 1 or Zone 2 for at least one year. A principal place of business is the firm's main office or headquarters, where high-level officers direct, control and coordinate the firm's activities.

Firms may also be eligible for LBE participation credit if they conduct significant business activities within Zone 1 or Zone 2. In order to receive credit for a firm not having its principal place of business within [Zone 1 or Zone 2], Retail Manager must submit an LBE review request to the Port Authority Office of Diversity & Inclusion and Government & Community Relations Department detailing the proposed firm's business activities both within and outside of Zone 1 and Zone 2, including information on the length of time they have been conducted.

The determination of eligibility for LBE credit shall be at the discretion of the Port Authority, and may be based on a number of factors, including but not limited to the significance of the activities in Zone 1 and 2 in comparison to the firm's overall activities, and the number of employees a firm has residing in

³ The Port Authority is a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey, created and existing by virtue of the Compact of April 30, 1921, made by and between the two States, and thereafter consented to by the Congress of the United States. The bi-state agency serves a Port District covering an area of about 1,500 square miles centering on New York harbor. As such, the Port Authority's workforce is primarily recruited from 9 counties in New York and 9 counties in New Jersey, as is confirmed by the distribution of employee residences. These counties in the State of New York are: Kings, Queens, Bronx, New York, Richmond, Westchester, Rockland, Nassau, and Suffolk; and in the State of New Jersey: Bergen, Passaic, Hudson, Essex, Morris, Union, Somerset, Middlesex, and Monmouth.

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Zone 1 and Zone 2. Any recent business presence established for the purpose of LBE eligibility on a Port Authority project, including but not limited to new office locations and the hiring of Zone 1 and Zone 2 employees, shall not be considered.]

PART II. Local Employment Opportunity

The Port Authority is committed to making employment opportunities available to Local Residents and expects that Retail Manager and its Work Providers will work with the Council for Airport Opportunity (CAO) to utilize the labor talent available from local communities surrounding the Airport. Information regarding Council for Airport Opportunity programs can be accessed at the following website:

☐ <http://www.caonynj.com>

Employment opportunities should be targeted to jobseekers in the order of local priority listed. A “**Local Resident**” is defined as a natural person residing: as a first priority, residing within the following zip codes: 11405, 11411, 11412, 11413, 11414, 11416, 11417, 11418, 11419, 11420, 11421, 11422, 11423, 11428, 11429, 11430, 11432, 11433, 11434, 11435, 11436, 11451, 11691, 11692, 11693, 11694, 11695, 11697, 11559, 11598, 11096, 11516, 11557, 11003, 11580, 11581, 11582; as a second priority, residing within the Borough of Queens, New York; as a third priority, residing within other Boroughs; and as a fourth priority, residing within the Port District.

For the Port Authority

Initialed:

For the Retail Manager

EXHIBIT L

**AIRPORT CONCESSION DISADVANTAGED BUSINESS
ENTERPRISE (ACDBE) PARTICIPATION**

In accordance with regulations of the US Department of Transportation 49 C.F.R. Part 23, the Port Authority has implemented an Airport Concession Disadvantaged Business Enterprise (“ACDBE”) program under which qualified firms may have the opportunity to operate an airport business. An airport concession is a for-profit business enterprise, which is subject to the Code of Federal Regulations 49 Part 23, that is engaged in the sale of consumer goods or services to the public at an airport under an agreement with the sponsor, another concessionaire, or the owner or operator of a terminal, if other than the sponsor.

The Port Authority has established an ACDBE participation goal, as measured by the total estimated annual gross receipts for the overall concession program. The goal is thirty percent (30%). This goal may be updated by the Port Authority from time to time based on updated studies undertaken by the agency and posted on the Port Authority website: www.panynj.gov/supplierdiversity.

The overall ACDBE goal is a key element of the Port Authority’s airport concession program and Retail Manager/Concessionaire shall, and shall cause its Subtenants to, take all necessary and reasonable steps to comply with the requirements of the Port Authority’s ACDBE program. Retail Manager/Concessionaire commits to the maximum extent feasible consistent with Retail Manager/Concessionaire’s exercise of good business judgment, including but not limited to considerations of cost competitiveness, to make good faith efforts to, at a minimum, consistently achieve and maintain the above-stated ACDBE participation goal in connection with those matters contracted out in its performance of this Agreement. Information regarding specific good faith steps can be found in the Port Authority’s ACDBE program located on its above-referenced website. In addition, Retail Manager/Concessionaire shall keep and provide such records as shall enable American and the Port Authority to comply with their respective obligations under the Lease and 49 C.F.R. Part 23 regarding efforts to offer opportunities to ACDBEs and effectively monitor the Concession Area ACDBE program and participation.

Pursuant to 49 C.F.R. 23.25 (f), ACDBE participation must be, to the greatest extent practicable, in the form of direct ownership arrangements with ACDBEs. A direct ownership arrangement means a joint venture, partnership, sublease, license, franchise or other arrangement in which an ACDBE firm owns and controls a concession. ACDBE participation through joint ventures must be approved by American and the Port Authority prior to agreement execution. Only firms certified as ACDBEs and approved joint ventures can be counted toward the ACDBE participation goal. A firm applying for ACDBE certification cannot be counted toward the participation goal until the certification process is complete and such firm is certified as an ACDBE. Similarly, a joint venture with a certified ACDBE cannot be counted toward the goal until such venture is reviewed and approved. Failure to demonstrate good faith efforts to achieve and maintain the ACDBE participation at any time during the term of this Agreement may be considered an Event of Default.

A detailed description of outreach efforts that are expected to be utilized to fulfill the ACDBE participation commitment is set forth on Schedule A to Exhibit L (*ACDBE Outreach Efforts*) hereto.

Qualification as an ACDBE

To qualify as an ACDBE, the firm must meet the definition set forth below and be certified by the New York State or New Jersey State Uniform Certification Program (UCP). The New York State UCP directory is available on-line at <http://nysucp.newnycontracts.com> and the New Jersey State UCP at <http://njucp.dbesystem.com>

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An ACDBE must be a small business concern whose average annual receipts for the preceding three (3) fiscal years does not exceed the amount defined in 49 C.F.R. Part 23.33 as the same shall be modified pursuant to periodic federal update. It must be (a) at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals, or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially or economically disadvantaged individuals who own it. Further, the ACDBE must meet the personal net worth standard established pursuant to 49 C.F.R. Part 23.35 as the same shall also be modified subject to periodic federal update. The ACDBE may, if other qualifications are met, be a franchisee of a franchisor.

The Port Authority makes a rebuttable presumption that individuals in the following groups who are citizens of the United States or lawful permanent residents are “socially and economically disadvantaged”:

- a. Women;
- b. Black Americans which includes persons having origins in any of the Black racial groups of Africa;
- c. Hispanic Americans which includes persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- d. Native Americans which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;
- e. Asian-Pacific Americans which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia or Hong Kong;
- f. Asian-Indian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives Islands, Nepal or Sri Lanka; and
- g. Members of other groups, or other individuals, found to be economically and socially disadvantaged by the Small Business Administration under Section 8(a) of the Small Business Act, as amended (15 U.S.C. Section 637(a)).

Other individuals may be found to be socially and economically disadvantaged on a case-by-case basis. For example, a disabled Vietnam veteran, an Appalachian white male, or another person may claim to be disadvantaged. If such individual requests that his or her firm be certified as ACDBE, the Port Authority, as a certifying partner in the New York State and New Jersey State UCPs will determine whether the individual is socially or economically disadvantaged under the criteria established by the federal government. These owners must demonstrate that their disadvantaged status arose from individual circumstances, rather than by virtue of membership in a group.

Certification of ACDBEs hereunder shall be made by the New York State or New Jersey State UCP. Firms certified as an ACDBE by other states are not guaranteed certification by the Port Authority and shall be required to submit an Interstate Certification Application, which shall be subject to the Port Authority's review and approval. If Retail Manager or any Subtenant wishes to utilize a firm not listed in the UCP directories but which Retail Manager or such Subtenant believes should be certified as an ACDBE, that

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firm shall complete and submit to the Port Authority a Certification Application (available at: <https://panynj.diversitysoftware.com>) and such forms as may be required under 49 C.F.R. Part 23, through the Authority's online portal. Contact certhelp@panynj.gov for inquiries or assistance.

General

In the event the signatory to this agreement is a Port Authority permittee, the term Concessionaire shall mean the permittee herein. In the event the signatory to this agreement is a Port Authority lessee, the term Concessionaire shall mean Retail Manager herein.

For the Port Authority

Initialed:

For the Retail Manager/Permittee

Schedule A to Exhibit L

ACDBE OUTREACH EFFORTS

(I) a full description of where, how and when outreach efforts will take place for ACDBE opportunities;

(II) a description of what has been accomplished to date with regard to outreach and pre-selection of potential ACDBE firms;

(III) a detailed timeline for each type of outreach effort;

(IV) a detailed description of the methods to be used in selecting ACDBE firms that will participate in Retail Manager's ACDBE program;

(V) a description of the process to be used by Retail Manager to insure that ACDBE firms selected to participate in Retail Manager's ACDBE program are certified and the method for ensuring that participating firms submit certification applications and complete the certification process, in a timely manner (it being acknowledged that firms certified as ACDBE by another state are not guaranteed certification by the Port Authority and shall be required to submit an Interstate Certification Application, which shall be subject to the Port Authority's review and approval);

(VI) if applicable, a description of the process utilized by Retail Manager to insure that joint ventures including ACDBE participation are approved by the Office of Diversity and Inclusion of the Port Authority and what efforts to monitor for compliance with federal rules, regulations and guidance will be undertaken;

(VII) a description of the methods for insuring ACDBE participation is fulfilled throughout the term of each Concession Sublease; and

(VIII) a description of how ACDBE participation will be monitored throughout the Term.

EXHIBIT M

FAA NONDISCRIMINATION REQUIREMENTS

Title VI Clauses for Leases, Deeds, Licenses, Permits, or Similar Instruments
Involving Use of Airport Space

For the avoidance of doubt, the capitalized term “Contractor” as utilized in this Exhibit M shall be read and interpreted to refer to Retail Manager, for application of such requirements to Retail Manager, and each Subtenant, for application of such requirements to any Subtenant.

[A5.3.2]

GENERAL CIVIL RIGHTS PROVISIONS

The contractor/permittee/concessionaire/lessee/operator (hereinafter referred to as the “Contractor”) agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Contractor transfers its obligation to another, the transferee is obligated in the same manner as the Contractor.

This provision obligates the Contractor for the period during which the property is owned, used or possessed by the Contractor and the airport remains obligated to the Federal Aviation Administration. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

[A6.4.1]

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor for itself, its assignees, and successors in interest agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the

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contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

[A6.4.4]

- A. The (grantee, licensee, lessee, permittee, etc., as applicable) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the grantee, licensee, lessee, permittee, etc. will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above nondiscrimination covenants, Port Authority will have the right to terminate the license, permit, etc., as applicable and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said license, permit, etc., as applicable had never been made or issued.

- C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Port Authority will there upon revert to and vest in and become the absolute property of Port Authority and its assigns.

[A6.4.5]

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, contractor/permittee/concessionaire/lessee/operator, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- 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);
- 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);
- 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);
- 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;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which 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;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- 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.*).

DRAFT – TO BE FINALIZED UPON COMPLETION OF RFP PROCESS

For the Port Authority

Initialed:

For the Contractor

EXHIBIT N

SUSTAINABILITY INITIATIVES

Solid Waste Management & Recycling

- Comply with applicable recycling requirements, including requirements of the Port Authority and the terminal operator
- Comply with applicable materials bans, e.g., plastic bags
- Periodically inspect concessions space to ensure compliance with recycling requirements
- Provide training to subtenants on recycling practices
- Remain current on proposed and new solid waste and recycling requirements
- Coordinate with janitorial staff to maintain source separation
- Evaluate year-over-year improvements in concessions recycling rates and progress in minimizing waste, including food waste
- Identify alternatives to single-use plastics, e.g., beverage containers, utensils, straws and work with concessions on utilizing these alternatives
- Identify opportunities for concessions to donate goods, materials or edible food to charitable organizations or community groups
- Minimize waste by working with subtenants and their vendors, suppliers and wholesalers to minimize product and transport packaging and identifying green procurement strategies
- Audit subtenants' waste streams to identify potential improvements to recycling and waste minimization
- Coordinate with the Port Authority on support of zero waste goals

Applicable laws and regulations:

- New York City source separation requirements: NYC Local Law 19.5
- New York City requirements on the recycling of organic waste at commercial facilities: Rules of the City of New York, Title 16, Section 1-11
- State of New York electronic waste recycling law: ENV 27-2601 et seq.
- State of New York paint recycling: ECL 27-2001 et seq.
- New York's Bag Waste Reduction Law: ECL 27-2801 et seq.
- State of New York prohibition on loose polystyrene fill: NY Senate Bill 7508-B
- State of New York polystyrene food container ban: ENV 27-3001 et seq.

Water Conservation

Work with subtenants to identify opportunities to reduce the water intensity of their operations

Energy Efficiency

Work with subtenants to identify opportunities to improve the energy efficiency of their operations