



City of Chicago

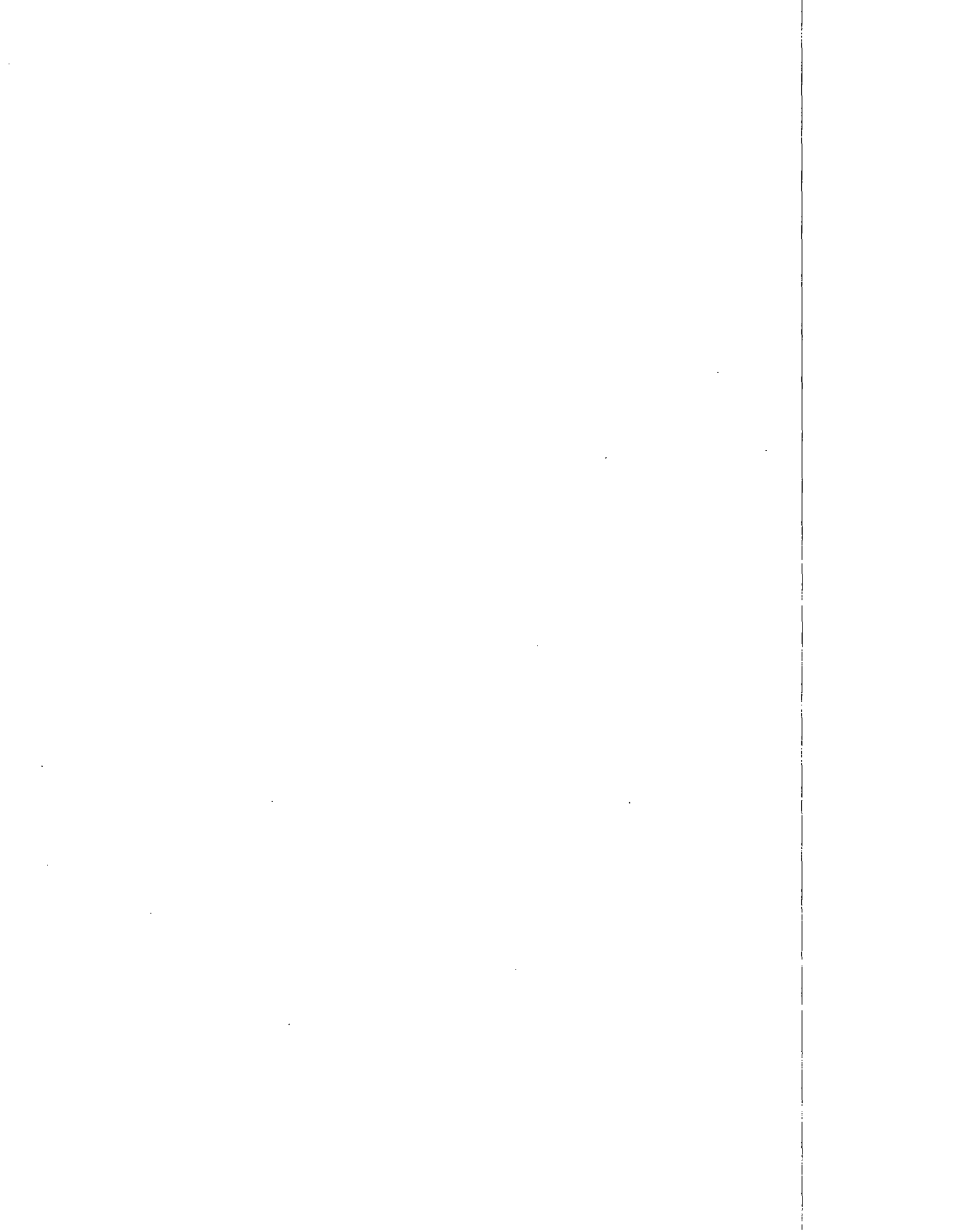


O2013-4175

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	6/5/2013
Sponsor(s):	Emanuel, Rahm (Mayor)
Type:	Ordinance
Title:	Facilities Lease ad Use Agreement between City of Chicago and Chicago Perishable Center, LLC at Chicago O'Hare International Airport
Committee(s) Assignment:	Committee on Aviation





OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

June 5, 2013

TO THE HONORABLE, THE CITY COUNCIL
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of Aviation, I transmit herewith an ordinance authorizing the execution of a lease agreement with Chicago Perishable Cargo regarding a facility located at O'Hare International Airport.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor



ORDINANCE

WHEREAS, the City of Chicago (the "City") is a home rule unit of local government as defined in Section 6(a), Article VII of the 1970 Constitution of the State of Illinois, and, as such, may exercise any power and perform any function pertaining to its government and affairs;

WHEREAS, the City owns and operates, through its Chicago Department of Aviation ("CDA"), an airport commonly known as Chicago O'Hare International Airport (the "Airport") and possesses the power and authority to lease premises and facilities and to grant rights and privileges with respect thereto; and

WHEREAS, the CDA recognized that a perishable goods cargo center represented an important commerce function for the City and the Airport; and

WHEREAS, as part of the commerce function and service needs of the Airport, the CDA issued a request for qualifications ("RFQ") for a perishable cargo center and determined that the respondent, Chicago Perishable Center, LLC, ("Chicago Perishable") was the sole respondent; and

WHEREAS, the City and Chicago Perishable desire to enter into an Agreement, substantially in the form of Exhibit 1 to this ordinance, to use certain space at the Airport for a perishable goods cargo center for the processing and distribution of flowers, fruits, vegetables and other perishable goods, and

WHEREAS, the City and Chicago Perishable acknowledge that the continued operation of the Airport as a safe, convenient and attractive facility is vital to the economic health and welfare of the City; and

WHEREAS, the City desires that the Mayor, upon recommendation of the Commissioner of CDA, ("Commissioner") have the authority to execute such Agreement; now therefore

Be It Ordained by the City Council of the City of Chicago:

SECTION 1. The above recitals are incorporated by reference as if fully set forth herein.

SECTION 2. The Mayor or his proxy, upon recommendation of the Commissioner is hereby authorized to execute an Agreement with Chicago Perishable in substantially the form attached hereto as Exhibit 1.

SECTION 3. The Commissioner and other City officials are further authorized to enter into and to execute all documents and perform any and all acts, including promulgation of any standards, rules or regulations, as shall be necessary or advisable to carry out the purpose and intent of this ordinance.

SECTION 4. To the extent that any ordinance, resolution, rule, order or provision of the City, or part thereof, is in conflict with the provisions of this ordinance, the provisions of this ordinance shall control. If any section, paragraph, clause or provision of this ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this ordinance.

SECTION 5. This ordinance shall be in full force and effect from the date of its passage and approval.

FACILITIES LEASE AND USE AGREEMENT
BETWEEN THE
CITY OF CHICAGO
AND
CHICAGO PERISHABLE CENTER, LLC.
AT
CHICAGO O'HARE INTERNATIONAL AIRPORT

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Exhibits

- Exhibit A - Premises
- Exhibit B - Rent Schedules and Security Deposit
- Exhibit C – Development Plan - Requirements for Tenant’s Work
- Exhibit D - Insurance Requirements
- Exhibit E – Description of Shell and Core Work

This Facilities Lease and Use Agreement ("Agreement") is made and entered into effective as of the ____ day of _____, 2013 ("Effective Date"), by and between the City of Chicago, an Illinois municipal corporation and home rule unit of local government under Sections 1 and 6(a), respectively, of Article VII of the 1970 Constitution of the State of Illinois ("City") and Chicago Perishable Center, LLC, a limited liability corporation ("Tenant").

RECITALS

WHEREAS, the City owns and, through its Chicago Department of Aviation ("CDA"), operates that certain airport known as Chicago O'Hare International Airport ("Airport"); and

WHEREAS, the City has the authority to lease premises and facilities and the power to grant rights and privileges with respect to the Airport; and

WHEREAS, City and Tenant desire to enter into an Agreement for providing in part for the use and enjoyment by Tenant of certain premises depicted in Exhibit A hereto ("Premises") owned by the City at the Airport for a perishable goods center for the processing and distribution of flowers, fruits, vegetables and other perishable goods; and

WHEREAS, City and Tenant acknowledge that the continued operation of the Airport as a safe, convenient and attractive facility is vital to the economic health and welfare of the City, and that the City's right to monitor Tenant's performance under this Agreement is a valuable right incapable of quantification;

NOW, THEREFORE, for and in consideration of use of the premises by Tenant and payment of rent to the City, and the other promises, mutual covenants and agreements herein contained, and other valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I - DEFINITIONS

Section 1.01 - Definitions. The following words, terms, and phrases, shall, for the purposes of this Lease, have the following meanings:

"Additional Space" means space or Storage Space that is added to Leased Space after the Effective Date pursuant to Section 2.11, but does not include Relocation Space. Except, as otherwise provided in Section 2.11, Additional Space, if any, that is offered to Tenant is solely at the discretion of the Commissioner. Except as otherwise provided in Section 2.11, Tenant has absolutely no right or entitlement to be offered any Additional Space, and the concept of Additional Space is solely for the benefit of the City.

"Affiliate" means a person controlling, controlled by, or under the common control of or in partnership or in other active business with Tenant.

"Agreement" means this Facilities Lease and Use Agreement, as may be hereafter amended or supplemented from time to time in accordance with its terms.

"Airport" means Chicago O'Hare International Airport, together with any additions thereto, or improvements or enlargements thereof, hereinafter made.

"Airport Rules and Regulations" means those rules and regulations governing the conduct and operations of the Airport promulgated from time to time by City as identified in Section 8.01 hereof.

"Airport Security Acts" means the Aviation and Security Improvement Act of 1990 (P.L. 101-604), as amended, the Aviation and Transportation Security Act of 2001, as amended, and all other federal laws governing security at airports, all as codified at 49 U.S.C. 44901 *et seq.*, including any rules, regulations, and directives promulgated and issued pursuant to them.

"Base Rent" is defined in Section 4.01.

"Building" means the approximately 27,597 square foot warehouse building located on the Land in which the Leased Space is located.

"Commissioner" means the Commissioner of the CDA (or any successor thereto in whole or in part as to his or her duties as the person in charge of the operation of the Airport on behalf of the City), or such person as she or he may designate in writing, or any successor to her or his rights and duties.

"Common Area(s)" means the Airside Space, the Landside Space and the other areas of the Land and Building that are not exclusively leased, licensed, or otherwise designated or made available to the Tenant by CDA for licensed or leased use and are to be maintained by and are the responsibility of CDA.

"Common Area Maintenance Costs" means the costs incurred by the City to maintain the Common Areas, including, without limitation, snow removal and repairs, including but not limited to snow removal, lighting, and patching of the parking lot, but excluding capital repairs, improvements and replacements and the remediation of Preexisting Environmental Conditions [Need to describe those costs to be included in CAM charges, such as maintenance of common areas, but not capital expenditures.

"Construction Documents" has the meaning assigned to such term in Section 5.01C.8.

"Date of Beneficial Occupancy" or **"DBO"** means, as to the Premises, the latest to occur

of (A) (B), or (C) as follows:

- A. the date Tenant begins operations; or
- B. the date that is 90 days after the building permit for the Improvements for the Premises in question is issued; provided that the Tenant has demonstrated to the reasonable satisfaction of the Commissioner that Tenant timely submitted design drawings in accordance with Sections 5.01C.7 and 5.01C.8 hereof and promptly applied for, and diligently pursued the issuance of, such building permit; or
- C in no event shall the date be more than 270 days after the Effective Date.

Notwithstanding the foregoing, if Tenant completes the Improvements in the Premises and commences operations before the DBO determined in accordance with the foregoing, the DBO for the Premises is the date that operations commence.

The DBO for the Premises shall be confirmed in writing by the parties, and such written **"confirmation(s) of DBO"** shall thereafter be attached to Exhibit A of this Agreement without need for a formal amendment of this Agreement.

The Date of Beneficial Occupancy for any Storage Space is the Delivery Date for that Storage Space.

"Default Rate" means the annual rate of four percent (4%) plus the Prime Rate (hereinafter defined), unless a lesser interest rate shall then be the maximum rate permissible by law with respect thereto, in which event said lesser rate shall be the Default Rate. Changes in the Default Rate based on the Prime Rate shall take effect immediately upon the occurrence of a change in the Prime Rate. As used herein, the term "Prime Rate" at any time shall mean the rate of interest then most recently announced by Chase Bank or its successors at Chicago, Illinois as its "corporate base rate." A certificate made by an officer of Chase Bank stating the "corporate base rate" in effect on any given day shall, for the purposes hereof, be conclusive evidence of the Prime Rate in effect on such day. In the event Chase Bank ceases to use the term "corporate base rate" in setting the base rate of interest for commercial loans, then the Prime Rate herein shall be determined by reference to the rate used by Chase Bank as a base rate of interest for commercial loans as the same shall be designated by Chase Bank. In the event Chase Bank ceases to exist, then the Prime Rate herein shall be determined by reference to the rate used by a lender qualified to be an Institutional Leasehold Mortgagee in Chicago, Illinois, selected by City, as a base rate of interest for commercial loans, as the same shall be designated by such lender.

"Development Plan" means the Improvements to be constructed and installed in the Leased Space by the Tenant as more particularly described in Exhibit C attached hereto.

"Effective Date" means the date first set forth above.

“Environmental Condition” is defined in Section 7.08 herein.

“Federal Aviation Administration” (sometimes abbreviated as “FAA”) means the Federal Aviation Administration created under the Federal Aviation Act of 1958, as amended, or any successor agency thereto.

“F, F and E” means trade fixtures, furnishings and equipment purchased and installed at the Premises by Tenant.

“Gross Revenues” means the aggregate amounts of all charges and fees of whatever nature that Tenant charges its customers for goods and services provided by Tenant from the Premises (including the Improvements and equipment located thereon). Gross Revenues also includes any usage or access fees and revenue from any Transfer (collectively, the **“Usage Charges”**). Gross Revenue does not include any taxes imposed by law which are separately stated and paid by the customer and are directly payable to the taxing authority by Tenant or discounts to customers, refunds and write offs for non-payment of items purchased on credit provided by Tenant. All revenues shall be deemed to be received by Tenant at the time of determination of the amount due to Tenant from its customers, whether for cash or credit, and not at the time of payment, unless otherwise specifically stated in this Agreement, or subsequently authorized in writing by the Commissioner. Gross Revenues, net of Usage Charges, shall further be deemed to be received by Tenant if received by or due to any of its contractors, sublessees, agents or wholly-owned or affiliated companies using or occupying space on the Premises and supplying any goods or services to customers on behalf of Tenant. 1

“Improvements” means any structures or other improvements on the Premises to be constructed or installed by the Tenant in accordance with the Development Plan and the Construction Documents and, except as otherwise provided herein, all fixtures now or hereafter located thereon.

“Leased Space” has the meaning assigned to such term in Section 2.01.

“Maintenance Rent” as defined in Section 4.01., **“Operations Space”** means the leased space used for the operation of the perishable goods center.

“Percentage Rent” is defined in Section 4.01 herein.

“Pre-Existing Condition” is defined in Section 7.08 herein.

“Premises” is defined in Section 2.01 herein.

“Rent” means, unless the context specifically otherwise requires, Base Rent, Maintenance Rent or Percentage Rent, as applicable, and any other amount which Tenant is obligated

to pay under this Agreement.

"Shell and Core" means the work to be performed by the Landlord to the Premises as described in Exhibit E attached hereto.

"Sustainable Airport Manual" or **"SAM"** means the manual developed by the CDA regarding environmentally sustainable practices in the construction and operation of the Airports. The manual is available on the CDA website and may be updated from time to time by the CDA. Any amendment of the SAM by the CDA during the Term of this Agreement will be binding on Tenant without need for amendment of this Agreement, provided that the amendment of SAM does not conflict with the other terms and conditions of this Agreement.

"Transfer" is defined in Section 14.01 herein.

"Transportation Security Administration" (sometimes abbreviated as "TSA") means the Transportation Security Administration created under the Aviation and Transportation Security Act of 2001, as amended, or any successor agency thereto.

"Work" means the furnishing by Tenant or its contractors of all labor, materials, equipment, and other incidentals necessary or convenient to the successful completion of Improvements made by Tenant to the Leased Space from time to time, and the carrying out of all the duties and obligations under the terms and conditions of this Agreement.

"Work Liaison" means the person designated by the Commissioner to coordinate activities between Tenant and the City.

Section 1.02 - Interpretation. Any headings preceding the text of the Articles and Sections of this Agreement, and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience or reference and shall not constitute a part of this Agreement, nor shall they affect the meaning, construction, or effect of this Agreement. The term "including" shall be construed to mean "including, without limitation" Unless the context otherwise requires, the terms "hereby," "herein," "hereof," "hereto," "hereunder" and any similar terms used in this Agreement refer to this Agreement; all section references, unless otherwise expressly indicated, are to sections of this Agreement; words importing persons shall include firms, associations, partnerships, trusts, corporations, and other legal entities, including public bodies, as well as natural persons. Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa, unless the context shall otherwise indicate. All references to any exhibit or document shall be deemed to include all supplements and/or amendments to any such exhibits or documents entered into in accordance with the terms and conditions hereof and thereof. All references to any person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such persons or entities in accordance

with the terms and conditions of this Agreement. All references to a number of days shall mean calendar days, unless otherwise expressly indicated.

Section 1.03 - Incorporation of Exhibits. The following exhibits attached hereto are incorporated by reference and made a part of this Agreement:

- Exhibit A - Premises
- Exhibit B - Rent Schedules and Security Deposit
- Exhibit C - Development Plan Requirements for Tenant's Work
- Exhibit D - Insurance Requirements
- Exhibit E - Description of Shell and Core Work

ARTICLE II - LEASE OF PREMISES

Section 2.01 - Premises. As of the Effective Date, City leases to Tenant, and Tenant leases from City, the land ("Land") depicted on Exhibit A, together with certain space in the Building located thereon as described below and depicted on Exhibit A-1 (the "Leased Space") (the Land and Leased Space being collectively referred to as the "Premises"), all located on the east side of the Airport.

- A. **Operations Space:** The Leased Space includes the exclusive use of approximately 27,597 square feet of warehouse space identified in Exhibit A. Operations Space is to be used for the operation of the perishable goods center, including office and related uses.
- B. **Storage Space:** The Leased Space includes the exclusive use of the Storage Space, if any, identified in Exhibit A. Storage Space is to be used to store inventory and supplies for use in the Operations Space.
- C. **Additional Office Space:** The Leased Space includes the exclusive use of approximately 1200 square feet of additional office space identified in Exhibit A. The Office Space is to be used by Tenant for administrative activity and services.
- D. **Airside Space:** Includes the non-exclusive use of the tarmac and ramps for parking, loading, and unloading of air crafting servicing the Premises.
- E. **Landside Space:** Includes the exclusive use of a designated portion of the surface parking lot adjacent to the Building for parking of vehicles, including trucks and trailers, as Exhibit A. To the extent that a designated portion of the designated surface parking lot is specifically being used for the parking of fumigation trailers, if such fumigation trailers are no longer being parked in that designated area, that designated area will no longer be included as a part of Tenant's Landside Space and such designated parking lot area will revert to the City.

- F. **Basement and Mezzanine Office Space:** Includes the use of the basement and/or mezzanine space for no additional Rent, provided that Tenant improves the space to make it ADA and code compliant.

Section 2.02 – Priority and Coordination of Use of Airside Space. The City acknowledges that the Tenant's use of the Premises is for the purpose of receiving via aircraft, warehousing and distributing perishable goods and that it is imperative that the arriving aircraft be able to quickly access the Premises to offload perishable cargo. The City will coordinate with the Tenant and any other tenants to develop a comprehensive operational plan for the purpose of coordinating and facilitating the landing and movement of aircraft serving the Premises.

Section 2.03 Relocation Space. The Commissioner may at any time during the Term of the Lease require Tenant to relocate all or a portion of the Leased Space to another location within the Airport and terminate the Lease with respect to the Leased Space being vacated when, in the sole discretion of the Commissioner, the relocation is necessary for Airport purposes unrelated to Tenant's current uses as a warehouse and distribution center for perishable goods and is in the best interest of the City. In such event:

- (i) The Commissioner will notify Tenant in writing within a reasonable period of time prior to the relocation of all or part of the Leased Space. Such notice will be not less than 90 days in advance of the relocation, but in any event , notice is not required more than 180 days in advance.
- (ii) If the Leased Space is being relocated and the Relocation Space is not, in Tenant's reasonable business judgment, acceptable to Tenant because of its size location or access by aircraft, Tenant may reject the Relocation Space by notifying the Commissioner in writing no later than 15 days after Tenant receives the Commissioner's notice. If Tenant requests the Relocation Space, then the Lease for the affected Leased Space will terminate on the date for the relocation set forth in the Commissioner's notice and all Rents will be adjusted as necessary. Further, if Tenant rejects the Relocation Space, Tenant is entitled to a credit, equal to the unamortized portion of Tenant's actual Improvement Costs, as determined under Exhibit C, and as approved by the Commissioner, for the Leased Space being vacated (but excluding any Improvement Costs for Tenant's personal property or any portion of the Improvements that can be moved and used by Tenant elsewhere), against Rent due and owing to the City from Tenant until the full amount of the credit has been applied against Rent. If Tenant rejects the relocation space, the City is responsible for costs incurred by Tenant in the disassembling and moving of Tenant's cooling units and inventory.
- (iii) Except when Tenant rejects Relocation Space pursuant to (ii) above, the City is responsible for costs incurred in the relocation or replication of the

Improvements in the Leased Space being vacated, including the cost of moving Tenant's equipment and inventory and the cost of constructing replacement Improvements comparable to the condition of the improvements in the Leased Space being vacated and as to which this Lease is being terminated and return the portion of the Leased Space in as good or better conditions as existed as of the date that the City gave Tenant possession of the Leased Space being vacated, unless the Commissioner otherwise agrees in writing. The City will endeavor not to require Tenant to move from the Leased Space being vacated to the Relocation Space before work on Improvements in the Relocation Space is completed, but the Leased Space being vacated may be needed for other Airport purposes prior to the completion of Improvements in the Relocation Space. Because the City is replacing Improvements in kind, Tenant is not entitled to any credit for unamortized Improvement Costs for the Leased Space being vacated, and the unamortized Improvement Costs for the Lease Spaced being vacated will deemed to be the unamortized Improvement Costs for the Relocation Space and continue to be amortized on the same schedule as the original Leased Space.

Section 2.04 - Easements and Rights of Entry.

A. Tenant's leasing of the Premises is subject to any and all easements, licenses and other rights of entry with respect to the Premises granted to or vested in any other governmental entities or agencies, such as the FAA or TSA and suppliers and/or owners of utilities that service the Airport, whether now in existence or granted during the term of this Agreement.

B. The City hereby reserves unto itself and other users of the Airport the rights and easements to those areas of the Premises, if any, identified as service roads for ground vehicles, as may be necessary for ground vehicles other than those of Tenant to access the Premises. The City further reserves unto itself the right to relocate such service roads from time to time, all at the City's own cost. City shall use all reasonable efforts to minimize the impact of any such relocation upon Tenant's operations. In the event that such relocation renders a portion of the Premises unusable, the City will delete the square footage of that unusable portion from the calculation of Rent for the period that such portion remains unusable Notwithstanding the foregoing, in the event that any such easements or rights of entry now existing or hereafter granted by the City shall unreasonably interfere with the Tenants use and possession of the Premises, Tenant may by the delivery of written notice to the City, elect to terminate this Lease and the City shall pay Tenant's relocation costs in the same manner as provided In Section 2.03(ii) for the Tenant's rejection of Relocation Space.

C. The City hereby reserves such rights and such easements as may be necessary to enter onto the Premises for the purpose of conducting any operations related to the function of the Airport without such entering causing or constituting a termination of this

Agreement, including, without limitation, the right to do all things necessary to operate and maintain water mains, sewer mains and other utilities that may exist beneath the surface of the Premises and to service any antennas or communications facilities now or hereafter located on the roofs of buildings located on the Premises. (The City shall operate and maintain only its water mains and sewer mains, and assumes no responsibility or liability for the operation or maintenance of any sewer or water laterals within the Premises that are used exclusively by Tenant.) The City, its officers, employees, agents, representatives, contractors, and furnishers of utilities and other services, shall have the right at all reasonable times to enter the Premises for the purpose of inspecting the same, for emergency repairs to utilities systems, and for any other purpose necessary for, incidental to, or connected with the performance of City's obligations hereunder, or in the exercise of its governmental functions.

D. City agrees to use reasonable efforts to not unreasonably interfere, or to cause grantees of easements not to unreasonably interfere, with Tenant's use and possession of the Premises when exercising any of the rights reserved under this Section 2.03.

Section 2.05 - Permitted Uses and Time. Subject to the terms and provisions contained in this Agreement and all applicable rules, regulations, laws, ordinances, codes and orders of any federal, state or local government or subdivision thereof in connection with the conduct of activities by Tenant at the Airport, Tenant is hereby granted a non-exclusive privilege, to operate a perishable goods center for processing and distribution of flowers, fruits, vegetables and other perishable goods and office related functions. Tenant is permitted to operate twenty four (24) hours a day, seven days per week. The Premises shall be used solely for the foregoing purposes and for no other purpose whatsoever, unless otherwise expressly agreed in writing by the Commissioner. Failure to comply with the foregoing shall be an Event of Default under this Agreement.

Section 2.06 - First-Class Operation. The principal purpose of the City entering into this Agreement is for Tenant to operate a perishable goods center for the processing and distribution of flowers, fruits, vegetables and other perishable goods at the Airport. Tenant accordingly agrees to conduct its business in a first-class, clean and sanitary manner in accordance with this Agreement and in compliance with all applicable federal, state and local health codes and other applicable laws, including, but not limited to fumigation, receiving, processing and distribution of its goods. Tenant shall use all commercially reasonable efforts to conduct its perishable center in accordance with the provisions of the Sustainable Airport Manual.

Section 2.07 - Quiet Enjoyment. Subject to the provisions of this Agreement, City covenants that, so long as Tenant performs all of its obligations hereunder, it shall be entitled to and shall have the use and enjoyment of the Premises, and the rights and privileges granted to it hereunder. Tenant shall be entitled to lawfully and quietly occupy and enjoy the Premises during the term of this Agreement, provided Tenant is not in default of any of its obligations under this Agreement.

Section 2.08 - Ingress and Egress. Subject to Airport Rules and Regulations, Tenant shall have the right and privilege (a) of ingress to and egress from the Premises and the public areas of the Airport, for its employees, agents, guests, patrons, and invitees, suppliers of materials, furnishers of service, and its equipment, vehicles, machinery and (b) to provide transportation of its employees to, from, and within the Airport. Tenant shall not block or otherwise obstruct the common use taxiways, taxi lanes or service roads at any time or in any manner which will impair or adversely affect the use or operation of said taxiway, taxi lane or service road areas by City or other Airport users.

Section 2.09 - Present Condition of Premises. Subject to those exceptions explicitly set forth herein and in Sections 5.01B, 6.01 and 7.08, Tenant, by the execution of this Agreement, accepts the Premises "AS IS". Subject to those exceptions explicitly set forth herein and in Sections 5.01B, 6.01 and 7.08, Tenant shall be responsible for the compliance of the Premises with all applicable Federal, State, and local laws, statutes, codes, ordinances, rules, regulations, and orders, including any and all requirements set forth in Section 7.08. Other than what may be explicitly provided for herein, the City shall have no obligation or responsibility whatsoever to do any work or furnish any improvements of any kind to the Premises or perform any maintenance or repairs on the Premises. City makes no warranty as to the environmental conditions of the Premises or the Airfield. EXCEPT AS EXPRESSLY PROVIDED HEREIN, CITY MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION OF THE PREMISES OR THAT THE PREMISES SHALL BE SUITABLE FOR TENANT'S PURPOSES OR NEEDS. CITY SHALL NOT BE RESPONSIBLE FOR ANY LATENT DEFECT AND TENANT SHALL NOT, UNDER ANY CIRCUMSTANCES, WITHHOLD ANY RENT OR OTHER AMOUNTS PAYABLE TO CITY HEREUNDER ON ACCOUNT OF ANY DEFECT IN THE PREMISES. CITY AGREES REPRESENTS AND WARRANTS THAT THE ROOF OF THE BUILDING IS OR WILL BE REPAIRED PRIOR TO DELIVERY OF THE PREMISES TO TENANT AND THAT THE STRUCTURAL COMPONENTS OF THE BUILDING AND BUILDING SYSTEMS ARE IN GOOD WORKING ORDER AND OTHERWISE TENANT ACCEPTS THE PREMISES AS BEING FREE AND CLEAR FROM ALL DEFECTS AND IN GOOD, SAFE, CLEAN, AND ORDERLY CONDITION AND REPAIR. Tenant waives any and all claims against the City regarding the condition of the Premises which may currently exist or which may arise in the future by contract, at common law, in equity, or under statute, now or then currently in effect, including those which relate to environmental conditions on, under, or near the Premises; provided, however, that such waiver does not extend to fines and penalties for which the City would be liable, and neither Tenant nor its predecessors in interest would be liable, under any Environmental Law Subject to Section 2.03, but notwithstanding the foregoing, if the condition of the Premises or the existence of any defect impairs the ability of the Tenant to timely complete the Tenant's Work or causes a significant increase in the costs of such Work or unreasonably interferes with Tenant's use of the Premises, then Tenant may by the delivery of written notice to the City, elect to terminate this Lease.

Section 2.10 - Accessibility. City and Tenant agree that, except for the obligations of the City as provided in Section 5.01B, Tenant shall have the responsibility to ensure that the

Premises and the services that Tenant provides to its customers are in compliance with the Americans with Disabilities Act and related regulations, as amended from time to time. Tenant shall submit its certification of such compliance to the Commissioner within thirty (30) days after written request.

Section 2.11 - Covenant against Waste. Tenant will not do or permit or suffer any waste, damage, impairment or injury to or upon the Premises or any part thereof.

Section 2.12- Additional Space.

During the first 36 months of the Term, the Tenant will be given the option to expand its operations into the approximately 24,000 square feet of space located adjacent to the Premises, provided that (a) the intended use of the expansion space is for the warehousing and distribution of perishable goods (b) Tenant exercises its option within thirty-six (36) months of the Effective Date of the Lease, and (c) such expansion is subject to the approval of the Commissioner, not be unreasonable withheld: The expansion notice given by the Commissioner to the Tenant will include the following:

- a. size and location of the Additional Space being offered, if any; and
- b. the City's Shell and Core obligations and Tenant's Improvement obligations for the Additional Space.

Within 30 days after delivery of the expansion notice, the City and the Tenant shall enter into an amendment to this Lease, pursuant to which the square footage of the Additional Space identified in the expansion notice will be added to the Leased Space, under this Agreement and Exhibits A-C modified accordingly as well as Tenant's Rent obligations. Tenant will pay annual Base Rent per square foot for the Additional Space based upon the annual Base Rent per square foot payable for the Leased Space .

ARTICLE III - TERM

Section 3.01 - Initial Term. The initial term of this Agreement ("Initial Term") commences on the Effective Date and shall expire on _____, 202_, unless extended or earlier terminated in accordance with the provisions of this Agreement. The City's early termination of Tenant's lease for the Premises or any portion thereof shall in no way diminish Tenant's obligations under this Agreement that survive expiration or termination of this Agreement.

Section 3.02 - Options to Extend. By mutual agreement, and provided that the Initial Term has not already been terminated or been converted to month-to-month for a specific parcel, the Initial Term for the Premises may be extended for no more than three (3) additional one-year periods (the Initial Term and such extension being the "Term"), provided that:

- A. Tenant provides the City written notice of its intent to extend the Initial Term no less

than fifteen (15) months before expiration of the Initial Term of this Agreement and not less than sixty (60) days prior to the expiration of each one year extension period; and

B. There is no existing Event of Default, or any condition with which the giving of notice and/or the passage of time could become an Event of Default, as of the commencement of the extended Term.

The fifteen (15) month, or sixty (60) day, as applicable, expiration period in (A) is intended to provide the City time to find a replacement tenant. If Tenant inadvertently fails to provide timely notice pursuant to (A), the Commissioner may, in his or her sole and absolute discretion, waive the fifteen (15) month or sixty (60) day, as applicable, requirement and allow Tenant to exercise its option to extend. Except as provided in Article IV, Tenant's occupancy of the Premises during any extension of the Term shall be on the same terms and conditions as otherwise contained herein. If Tenant exercises its option to extend the Initial Term of this Agreement, the word "Term" shall be construed to include the extension. Any holding over by Tenant after the expiration of the Term shall be on a month-to-month basis, which may be terminated by the Commissioner with thirty days (30) days written notice.

Section 3.03 - Early Termination. In addition to an early termination due to an uncured Event of Default by Tenant, either party may terminate this Agreement with 30 days' written notice in the event that Tenant is no longer authorized to provide a perishable goods operation at the Airport by any governmental agency (other than the City). Further, Tenant and the Commissioner may mutually agree to terminate the Agreement, or convert the Term to a month-to-month lease, if they determine it to be in the best interests of the parties.

Section 3.04 – Right of First Refusal. If the City shall receive an offer to lease ("Offer to Lease") any space in the Building for a perishable goods operation similar to Tenant's permitted uses as described in Section 2.05, City shall deliver a copy of such offer to Tenant and Tenant shall have thirty (30) days from the receipt of such Offer to Lease to lease such space upon the same terms and conditions as the Offer to Lease, except that the use of the space shall be the Tenant's permitted uses hereunder.

ARTICLE IV - RENT

Section 4.01 - Rent. In consideration of this Agreement for lease and use of the Premises, Tenant shall pay City sums in such form and amount as set forth below. For the purposes of this Agreement, all such sums are Rent.

A. **No Rent.** From the Effective Date until DBO, Tenant shall not be obligated to pay any rent to the City, except Percentage Rent, if applicable, as described in paragraph (D) below.

B. **Maintenance Rent.** From the DBO until eighteen months (18) from the Effective Date, Tenant shall pay Maintenance Rent in the amount of thirty (30) cents per square foot of Leased Space. Tenant shall pay the Maintenance Rent in equal monthly installments according to the schedule set forth in Exhibit B, attached hereto and incorporated by reference herein.

C. **Base Rent.** From eighteen (18) months after the Effective Date until the balance of the Term, Tenant shall pay an amount equal to the product of the annual per square foot rental rate set forth in Exhibit B (the Base Rent Rate) multiplied by the number of square feet of Leased Space as set forth in Exhibit A, (to the extent that the Leased Space has been delivered to Tenant and prorated as needed for partial year occupancy of Leased Space). Tenant shall pay Base Rent according to the schedule set forth in Exhibit B, attached hereto and incorporated by reference herein, subject to paragraph (D) below.

D. **Percentage Rent.** From thirty-six (36) months after DBO, Tenant shall pay as Rent for the Premises, Percentage Rent consisting of four (4) percent of its Gross Revenues or Base Rent, whichever is greater. In the event that Tenant subleases any of its Premises, including Operations Space, Storage Space, or Office Space, at any time during the term of this Lease, Tenant shall pay the City three (3) percent of the rent charged to any sub-lessee and such rent charged to any sub-lessee shall not be included in Tenant's Gross Revenues

E. **Common Area Maintenance ("CAM"):** Tenant shall be responsible for paying CAM costs of .22 cents per square foot of the Leased Space in the Building to help defray costs incurred by the City to maintain the Common Areas.

Failure by Tenant to pay Rent, or any portion thereof, within 5 days following the receipt of written notice from City, is an Event of Default.

Section 4.02 - Escalation upon Term Extension.

A. The Base Rent payable to the City pursuant to Exhibit B shall increase upon the commencement of an extension pursuant to Section 3.02. The amount of such increase shall be five percent (5%) for each of the three (3) exercised one-year extension options.

Section 4.03 – [Reserved].

Section 4.04 - Method and Manner of Payment. Rent shall be paid to City, without set-off, deduction or discount, in lawful money of the United States, at the Office of the City Comptroller, 333 South State Street, Room 402, Chicago, Illinois 60614, or to such other place or person as City may direct Tenant by written notice, and shall be made in monthly installments, due on the first of each calendar month, commencing on the first full calendar month following the Effective Date. Payments for partial months or calendar years may be

appropriately prorated.

Section 4.05 - Rent Credits. Tenant shall offset no credits against Rent due to the City except as expressly provided in this Agreement or expressly authorized in writing by the Commissioner.

Section 4.06 - Late Payments. Each and every installment of Rent accruing under the provisions of this Agreement which is not paid when due shall bear interest at the Default Rate, from the date when the same is due until the same shall be paid. All other sums becoming due or payable to the City under this Agreement, including, without limitation, all monies expended by the City pursuant to this Agreement or on account of any default by Tenant in the performance or observance of any of the covenants and agreements contained in this Agreement shall likewise bear interest from the respective dates when the same shall be advanced or paid by City, or otherwise due to City, at the rate per annum which shall be the lower of (a) the highest rate permitted by law or (b) the Default Rate, until the same shall be paid by Tenant to City. All sums so advanced or paid by City shall become so much additional Rent under the terms of this Agreement, due and payable on the date of such advance or payment.

Section 4.07 - Security Deposit. On or before the Effective Date of this Agreement, Tenant shall pay to the City a security deposit in an amount equal to the three (3) months of Base Rent. Such security deposit may be in the form of cash or a letter of credit, which letter of credit shall be in the form reasonably acceptable to the Commissioner. . The security deposit will be refunded to Tenant, less any sums which may be due and owing to the City, subsequent to the expiration or termination of this Agreement.

Section 4.08 - Rent Absolute. Tenant covenants and agrees that the Rent specified in this Article IV shall be absolutely net to the City, to the end that this Agreement shall yield net to City the entire Rent, and so that all costs, fees, interest, charges, expenses, real estate taxes, reimbursements and obligations relating to the Premises for which Tenant is responsible under this Lease may arise or become due during the Term (other than City's legal fees not otherwise covered by this Agreement) shall be paid or discharged or caused to be discharged by Tenant as so much additional Rent, and Tenant covenants and agrees that City shall be indemnified and saved harmless by Tenant from and against all such costs, fees, interest, charges, expenses, real estate taxes, reimbursements and obligations for which Tenant is responsible under this Lease.

Section 4.09 - Tenant Books and Records. Tenant shall maintain at its office in Chicago, Illinois, or at the Airport, books, records, and accounts relevant to the determination of Rent or any other sums owed to City under this Agreement, including, without limitation, records of its operations at the Airport. If such books, records, and accounts are not maintained at such office, Tenant shall in any case maintain such books, records, and accounts within the United States, and Tenant shall promptly furnish the Commissioner and City Comptroller in Chicago with all information reasonably requested by them with respect to such books, records, and accounts. The Commissioner and City Comptroller, and such

persons as may be designated by them, shall have the right, at all reasonable times, subject to prior written notice to Tenant, to audit, examine, make copies of, and take extracts from such books, records, and accounts. In the event that (i) an audit reveals any discrepancy of greater than 5% of the gross receipts which are the subject of such audit, and (ii) such error resulted in an underpayment by Tenant to the City, Tenant shall reimburse the City for any and all of its expenditures for such audit. In the event that an audit reveals no irregularities, such audit shall be at the expense of the City. Without limiting the foregoing, City has the right to inspect Tenant's records of its operations at the Airport. City shall, to the extent permitted under applicable law, preserve the confidentiality of all information obtained through such inspections, unless Tenant has consented to disclosure or has publicly released such information.

Section 4.10 - Abatement in the Event of Closing. Except as otherwise expressly set forth below, Tenant shall have no right to abatement or set-off of Rent of any kind. In the event that, for a period of time in excess of fifteen (15) consecutive days, the Airport is closed by any order or direction of City or any other governmental authority or agency, or by any order or direction of any court of competent jurisdiction and not stayed by way of appeal or otherwise, then, except as otherwise provided in Section 15.06, the sole and exclusive remedy of Tenant shall be that the Rent payable by Tenant shall abate for the period of such closing. There shall be no abatement or reduction of Rent or deletion from the Premises where the unusable condition is caused by the willful or negligent act or omission of Tenant, its agents, employees, licensees, contractors, subcontractors, or invitees.

ARTICLE V- CONSTRUCTION, MAINTENANCE & REPAIR

Section 5.01 - Operations Space, Office Space and Storage Space.

A. Unless otherwise agreed to in writing by the Commissioner, Tenant must complete, or cause to be completed, the Improvements as described in the Development Plan. Improvements shall be at Tenant's sole cost and expense and must be completed on or before the Date of Beneficial Occupancy for each portion of the Leased Space in accordance with the schedule set forth in the Development Plan, subject to Section 15.06, "Force Majeure".

B. Shell and Core. The City is responsible for providing Shell and Core, if any are specified in Exhibit E, for the Leased Space, which can be modified by mutual agreement of the parties. The City makes no warranty, either express or implied, as to the design or condition of the Leased Space, including the Shell and Core, or the suitability of the Leased Space, including the Shell and Core, for the Tenant's purposes or needs. The City is not responsible for any patent or latent defect, and Tenant must not, under any circumstances, withhold any amounts payable to the City under this Agreement on account

of any defect in the Leased Space, including the Shell and Core; if feasible, however, the City will assign to Tenant any warranties obtained from the City's contractor for the Shell and Core and/or the right to enforce City's rights under its contract for the Shell and Core. After the City delivers the Shell and Core to Tenant, Tenant must immediately notify the Commissioner of any defects in the Shell and Core.

C. Tenant's Improvement Obligations.

1. Operations Space and Storage Space. Unless otherwise agreed in writing by the Commissioner, Tenant must complete, or cause to be completed, the Improvements as described in the Development Plan. Improvements shall be at Tenant's sole cost and expense and must be completed on or before the Date of Beneficial Occupancy set forth for each portion of the Leased Space in accordance with the schedule set forth in the Development Plan, subject to Section 15.06, "Force Majeure".

2. Additional Space. Tenant must complete or cause to be completed, at Tenant's sole cost and expense, the Improvements for each Additional Space approved by the Commissioner by the proposed Date of Beneficial Occupancy applicable to each such Additional Space,

3. Temporary Relocation Space and Additional Space. The Commissioner may require Tenant to operate the perishable goods center, prior to the Date of Beneficial Occupancy applicable to any Relocation Space and Additional Space, from a temporary Relocation Space, at City's sole cost and expense. If approved by the Commissioner, Tenant may use temporary or used fixtures, trade fixtures and equipment and is not required to install Improvements except to the extent necessary to make the temporary Relocation Space useable.

4. Improvement Costs. Only Improvement Costs of the types set forth in the budget in the Development Plan are deemed to be validly incurred Improvement Costs for purposes of this Agreement. Tenant must provide the Commissioner with a statement certified by Tenant, setting forth the aggregate amount of the Improvement Costs expended by Tenant for each Leased Space, with such detail as may be reasonably requested by the Commissioner. The certified statement must be submitted at the same time as the "as-built" drawings for the Leased Space. Tenant must make available to the Commissioner, at the Commissioner's request, receipted invoices for labor and materials covering all Improvement Costs. The Commissioner has the right to audit the Improvement Costs. The actual Improvement Costs, as approved by the Commissioner, will be memorialized in the confirmation of DBO for the Leased Space in question and attached to Exhibit A.

5. Work Requirements.

(i) . TIME IS OF THE ESSENCE IN THE PERFORMANCE OF WORK UNDER THIS AGREEMENT.

- (ii). Compliance with Standards. Tenant must comply in its design, construction, use, occupancy and operation of the Leased Space, at its own cost, with:
 - (iii) all regulations and directives now or later promulgated by the United States Federal Aviation Administration (“FAA”) or Transportation Security Administration (“TSA”) pertaining to airport security, as such regulations and directives may be amended or modified from time to time during the Term of this Agreement;
 - (iv) all federal, State of Illinois, and City laws, rules, regulations and ordinances, including all building, zoning and health codes and all Environmental Laws; and
 - (iii) the Tenant Design and Construction Procedures Manual (“TDCPM”), the Airport Concession Program Handbook, and the Sustainable Airport Manual.

Tenant must complete or cause to be completed all Improvements in accordance with all rules, regulations and standards, including the TDCPM, and the approved Construction Documents (as defined below) for any Improvements. If there is a conflict between work requirements stated in this Agreement and those set forth in the TDCPM, the Commissioner has the sole discretion to determine which prevails. No construction must take place until the Commissioner has approved the Construction Documents.

Tenant must provide for any supplemental heating, cooling and exhaust facilities that Tenant may require to properly heat, cool, ventilate and exhaust air in the Leased Space. All such supplemental facilities must be designed and installed in accordance with the TDCPM and applicable building codes, and must be approved by the Commissioner prior to installation. If at any time the Tenant’s supplemental heating, cooling and exhaust facilities fail to comply with the design and operational standards set forth in the TDCPM, Tenant must, on notice from the City, cause repairs to be made so that Tenant is in compliance with this requirement.

In addition to the requirements set forth in the TDCPM, Tenant acknowledges the City’s goal to incorporate environmentally sustainable design in building, infrastructure, and tenant improvements at the Airport. Accordingly, Tenant agrees to use best efforts to incorporate sustainable design practices in the development and build out of the Leased Space, to engage a LEED® (Leadership in Energy and Environmental Design) accredited professional on its architectural team, to create an operational plan that incorporates sustainable practices in all aspects of the daily operation of the Leased Space, and to comply to the extent that it is commercially reasonable to the requirements of the Sustainable Airport Manual.

6. Development Plan. Tenant’s Development Plan, as approved by the Commissioner, is attached hereto as Exhibit C. It describes and depicts the Tenant’s thematic concept for the Operations Space (including design images, as appropriate), floor plan(s) of the Operations Space, its plan and schedule for implementing the Improvements and commencing operations in the Leased Space, temporary facilities that may be

necessary to meet the requirements of this Agreement, and its other submission requirements as set forth in the TDCPM. The Development Plan must include the anticipated Date of Beneficial Occupancy of each space, the budgeted Improvement Costs for each space, and the dates by which City must complete the Shell and Core and the Delivery Date necessary in order to achieve the anticipated DBO for each space.

7. 60 Percent Design Phase. Within 45 days of the Effective Date, Tenant must submit to the Commissioner its proposed 60 percent design drawings and specifications prepared as required under the TDCPM ("**60 Percent Designs**"), which must include any Shell and Core modifications or other modifications to base building systems required to accommodate Tenant's proposed Improvements in conformance with the Development Plan. The Commissioner will attempt to review and respond to the 60 Percent Designs within 10 days after the Commissioner's receipt with an "accepted," "accepted [with comments] as noted," or "revise and resubmit." If any of the 60 Percent Designs requires resubmission, Tenant must resubmit the 60 Percent Designs addressing the Commissioner's comments within 5 days after receiving the Commissioner's response. Tenant must resubmit the 60 Percent Designs as many times as necessary until the Commissioner either accepts them or accepts them as noted; however, if the parties fail to agree on acceptable 60 Percent Designs after 5 attempts, either party may terminate this Lease by written notice to the other.

8. 100 Percent Design Phase. Tenant must prepare and submit to the Commissioner, within 30 days following its receipt of the Commissioner's approval of the 60 Percent Designs, the 100 percent design drawings and specifications and a construction schedule that complies with the Development Plan ("**100 Percent Designs**"). The Commissioner will attempt to review and respond to the 100 Percent Designs within 10 days after the Commissioner's receipt with an "accepted," "accepted [with comments] as noted," or "revise and resubmit." If any of the 100 Percent Designs requires resubmission, Tenant must resubmit the 100 Percent Designs addressing the Commissioner's comments within 5 days after receiving the Commissioner's response. Tenant must resubmit the 100 Percent Designs as many times as necessary until the Commissioner either accepts them or accepts them as noted; however, if the parties fail to agree on acceptable 100 Percent Designs after 5 attempts, either party may terminate this Lease by written notice to the other. Upon acceptance by the Commissioner, the 100 Percent Designs drawings, specifications, and construction schedule will be deemed the approved "**Construction Documents**". If Tenant desires to use the services of any Subcontractor, Tenant must submit the name and qualifications of the Subcontractor to the Commissioner for review and approval, which approval may be granted or denied in the Commissioner's sole discretion. Within 10 days following the receipt of Commissioner's approval of the 100 Percent Designs, Tenant must prepare and submit to the City's Department of Buildings, or its successor agency, applications for all building permits required to undertake construction of the Improvements.

D. Start of Construction. For each portion of the Leased Space, within 10 days after the latest of occur of: 1) the date the City delivers to Tenant possession of said

portion of the Leased Space, 2) the date Tenant has obtained applicable building permits for said portion of the Leased Space, and 3) the date of commencement of construction set forth in the Development Plan, Tenant must begin construction of the Improvements under and consistent with the approved Construction Documents, in a diligent, first-class and workmanlike manner. Commissioner may require Tenant and its Subcontractors to meet with the Department's construction manager and Concessions Management Representative prior to starting construction. Among other requirements, the Improvements:

- (i) Must conform with all architectural, fire, safety, zoning and electrical codes and all federal, State, City and other local laws, regulations and ordinances pertaining to them, including the ADA, and all Airport standards, procedures and regulations.
- (ii) Must be free and clear of any mechanics' or materialmen's liens or similar liens or encumbrances.
- (iii) Except as otherwise provided in this Agreement, must be completed entirely at Tenant's cost and expense and in accordance with the requirements of this Agreement including, but not limited to, the requirements and procedures set forth in the TDCPM.
- (iv) Upon the request of the Commissioner, Tenant must purchase and install a security camera and connect the camera feed into a junction box at a location to be determined by the Commissioner. Tenant will permit the Commissioner to connect the security camera to the Airport security system.

Approval of the Construction Documents by the Commissioner does not constitute his/her or the City's representation or warranty as to their conformity with any architectural, fire, safety, zoning, electrical or building code, and responsibility therefore at all times remains with Tenant. Tenant must not permit its design and construction Subcontractors to make any modifications to base building systems without prior written consent of the Commissioner.

E. Change Order Review. Tenant must cause all Work to be performed in a first class, good and workmanlike manner and in accordance with the Construction Documents. Any change order ("Material Change Order") that would (i) increase or decrease the budget for the Work by more than \$25,000 or (ii) affect any structural component of the Premises shall require the City's approval. . Tenant may request in writing that Material Change Orders relating to the Work be responded to by the City, and the City will so respond within 10 days, unless a response within 10 days is unreasonable in the circumstances, in which case the response period will be as reasonably determined by the City but in no event longer than 20 days. At all times during the Work, Tenant must have on file with the Commissioner and on the construction site for inspection by the Commissioner, a copy of the approved Construction Documents. Tenant must immediately begin to reconstruct or replace and diligently pursue to completion, at its sole cost and expense, before or after

completion of the Work, any Work that is not performed in accordance with the Construction Documents as approved by the Commissioner.

F. Inspection of Improvements in Progress. The Department has the right to enter upon the Leased Space for the purposes of inspecting and recording the Improvements in progress, ensuring that Tenant's construction complies with the Construction Documents, and rejecting any such construction that does not so conform.

G. Notice of Substantial Completion and Inspection. At least 10 days prior to anticipated substantial completion of the construction of a Leased Space, Tenant must deliver to the Commissioner a "**notice of substantial completion**" in order for the Commissioner to schedule a representative to inspect the Improvements. On the date specified in the notice of substantial completion, the Department will perform a final inspection of the Improvements for compliance with the Construction Documents for the Improvements, and will, not later than 10 days after inspection, provide a punchlist to Tenant describing in sufficient detail any discrepancies between the Improvements and the Construction Documents. Tenant must cause all discrepancies (other than those approved by the Commissioner as variances) to be reconstructed, replaced or repaired in substantial accordance with the Construction Documents. Within 10 days after the date of substantial completion and prior to commencing Concession operations in Leased Space, Tenant must provide, as evidence of the substantial completion of the Work, copies of any and all Certificates of Occupancy and other approvals, if any, necessary for Tenant to occupy the portion of the Leased Space for its intended use. Tenant shall not commence Concession operations in the Leased Space until such documents have been received by the Commissioner and until authorized to do so by the Commissioner.

H. Timeliness - Punch Lists; Opening for Business. Tenant acknowledges that if it fails to comply with Construction Document requirements (including all tasks necessary to satisfy them, such as, but not limited to, applying at the earliest possible time for and diligently pursuing all necessary building permits), the delay may cause the City to suffer substantial damages, including loss of goodwill, that might be difficult to ascertain or prove. For that reason, but subject to Force Majeure extensions or extensions that may be approved by the Commissioner, if Tenant has not caused the Improvements to be substantially completed in accordance with the Construction Documents and the perishable goods center is open for business not later than the scheduled Date of Beneficial Occupancy in the Development Plan, either party may terminate this Lease by delivery of written notice to the other.

I. Post-construction Documentation. Tenant must submit a complete set of "**as-built**" drawings and documentation as outlined in the TDCPM to the Commissioner within 30 days after the date the Commissioner authorizes Tenant to begin Concession operations in the Leased Space. The as-built drawings and documentation are and become the property of the City, except to the extent of any intellectual property reflecting Tenant's trademarks, trade names or trade dress contained in them.

J. Mechanics' Liens. Tenant must not permit any mechanics' lien for labor or materials furnished or alleged to have been furnished to it to attach to any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement in any way relating to any work performed by or at the direction of Tenant. Upon making payments to Subcontractors, Tenant must obtain from each Subcontractor a waiver of mechanics' liens against any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement arising out of any Work done by the Subcontractor and each and every of the Subcontractor's materialmen and workmen. If, nonetheless, any such mechanics' lien is filed upon any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement, Tenant must indemnify, protect, defend and save harmless the City against any loss, liability or expense whatsoever by reason of the mechanic's lien and must promptly and diligently proceed with or defend, at its own expense, the action or proceedings as may be necessary to remove the lien. Tenant must deliver notice to the Commissioner of any such lien or claim within 15 days after Tenant has knowledge of it. Tenant may permit the mechanics' to remain undischarged and unsatisfied during the period of the contest and appeal; provided that, upon request by the Commissioner, Tenant must post a bond with the City equal to 150% of the amount of the lien. If the lien is stayed and the stay later expires or if by nonpayment of any lien any portion of the Leased Space, the Airport, Tenant's leasehold interest, or this Agreement will be, or is claimed to be, subject to loss or forfeiture, then Tenant must immediately pay and cause to be satisfied and discharged the lien. If Tenant fails to do so, the Commissioner may, in his or her sole discretion, draw on the bond and make such payment. If the Commissioner has not requested a bond, then the Commissioner may, in his or her sole discretion, make such payment out of legally available Airport funds and, in such event, the amount paid shall immediately be payable by Tenant as Additional Rent. Failure to post a bond when requested by the Commissioner or pay such Additional Rent shall be an Event of Default.

Section 5.02 - Damage or Destruction of Improvements.

A. Insubstantial Damage. If Improvements to any Leased Space are damaged, in whole or in part, by fire or casualty, and there is no Major Damage (as defined below) to the portion of the Building served by the damaged Improvements, then the City will repair any damage to the Shell and Core at the City's expense, and Tenant must repair the damage to the Improvements as soon as reasonably possible (after completion of the Shell and Core) at Tenant's expense.

B. Major Damage.

(i) **"Major Damage"** means any damage or destruction that, based on reasonable estimates made by the Department within 60 days after the

occurrence of the damage or destruction, in order to be repaired to the condition existing before the damage or destruction:

- a. would cost, with respect to the Improvements, in excess of 50% of the replacement cost value of all Improvements or the Leased Space; and
 - b. would cost, with respect to the Shell and Core, in excess of 50% of the replacement cost of the Shell and Core, or would require, in the sole judgment of the Commissioner, more than nine months to complete.
- (ii) If any part of the Building suffers Major Damage, whether or not including any portion of the Leased Space located in them, in whole or in part by fire or other casualty, the Commissioner has the right, for a period of six months starting on the date of the occurrence, to elect not to repair the Major Damage as otherwise required under this section, by giving written notice of the election to Tenant. If the Commissioner notifies Tenant of the Commissioner's election not to repair the Major Damage, this Agreement will terminate as to the affected Leased Space effective as of the date of the Major Damage, all Rent due under this Agreement will be prorated to the date of termination, and Tenant must surrender the affected portion of the Leased Space to the City.
 - (iii) If the Shell and Core or any portion of the Leased Space suffers Major Damage, and if after the occurrence of the damage the Agreement is not terminated, the Commissioner and the Airport architect will estimate the cost of restoration and the length of time that will be required to repair the damage and will notify Tenant of the estimate. Subject to Tenant's right to terminate provided in Section 15.06, if the damage can be repaired and the Improvements restored before the date that is [90] days following the occurrence of the Major Damage, then City must restore the Shell and Core and Tenant must repair the damage and restore the improvements to the Leased Space. If repair and restoration cannot be substantially completed before the Term expires, then this Agreement terminates as to the portion of the Leased Space as of the date of the Major Damage.
 - (iv) If this Agreement is not terminated in accordance with paragraphs (B)(ii) or (iii) and a casualty has damaged or destroyed any portion of the Shell and Core involving the Leased Space, the City will restore the Shell and Core to the condition existing on the Delivery Date, according to the original as-built plans and specifications. Upon completion of the City's Shell and Core restoration work, if any, Tenant must proceed to rebuild the Improvements as nearly as possible to the character of Improvements existing immediately before the occurrence.

- (v) Before beginning to replace, repair, rebuild or restore Improvements, Tenant must deliver to the Commissioner a report of an independent consultant acceptable to the Commissioner setting forth:
 - a. an estimate of the total cost of the Work;
 - b. the estimated date upon which the Work will be substantially completed; and
 - c. a statement to the effect that insurance proceeds are projected to be sufficient to pay the costs of the Work.
- (vi) The Commissioner will use commercially reasonable efforts to provide suitable temporary Relocation Space during the period of restoration subject to the reasonable approval of Tenant. Tenant must relocate the Concession operations to the temporary Relocation Space, and the costs associated with any such relocation, including moving expenses and the cost of reconstructing the Improvements in the temporary Relocation Space, must be borne by Tenant.

C. Tenant's Option. If the Shell and Core or the Leased Space or a portion of it is subject to Major Damage during the final three years of the Term, Tenant has the right, for a period of 60 days beginning on the date of the occurrence, to elect not to restore the affected Improvements as otherwise required under this Agreement by giving the Commissioner written notice of the election, in which event this Agreement will, as to the portion of the Leased Space, terminate upon the notice. If Tenant desires to rebuild the affected Leased Space, it may do so only upon the written approval of the Commissioner.

D. Insufficient Insurance. In no event will the City be obligated to repair, alter, replace, restore, or rebuild any Improvements, or any portion of them, nor to pay any of the costs or expenses for them. If Tenant's available insurance proceeds are not sufficient to cover the cost of the restoration as required under this Section, then Tenant is liable to complete the repairs at its own cost and expense, except as provided in this Section 15.06

Section 5.03 City Resident Construction Worker Employment Requirement.

A. Use of Residents. In connection with and during the construction of any Work in excess of \$100,000 in Improvement Costs, Tenant and its Subcontractors must comply with the provisions of § 2-92-330 of the Municipal Code of the City of Chicago ("**Municipal Code**"), as amended from time to time concerning the minimum percentage of total construction worker hours performed by actual residents of the City. (At least 50% of the total construction worker hours worked by persons on the site of the Work must be performed by actual residents of the City. Tenant may request a reduction or waiver of this minimum percentage level of Chicagoans in accordance with standards and procedures developed by the Chief Procurement Officer of the City.) In addition to complying with this percentage, Tenant and its Subcontractors are required to make good faith efforts to utilize

qualified residents of the City in both unskilled and skilled labor positions. **"Actual residents of the City"** means persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. Tenant and each Subcontractor (for purposes of this subsection, **"Employer"**) must provide for the maintenance of adequate employee residency records to ensure that actual Chicago residents are employed. Each Employer will maintain copies of personal documents supportive of every Chicago employee's actual record of residence.

B. Certified Payroll Reports. Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted by hard copy or electronically to the Commissioner and must identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

C. Inspection of Records. Each Employer must provide full access to its employment records to the Chief Procurement Officer, the Commissioner, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Each Employer must maintain all relevant personnel data and records for a period of at least 3 years after final acceptance of the Work. At the direction of the Commissioner, affidavits and other supporting documentation may be required of each Employer to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

D. Level of Effort. Efforts on the part of each Employer to provide utilization of actual Chicago residents that are not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer will not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by actual Chicago residents.

E. Shortfalls; Liquidated Damages. When the Work is completed, in the event that the City has determined that Tenant has failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by actual Chicago residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1% of the aggregate hard construction costs of the Improvement Costs (the product of .0005 x such aggregate hard construction costs) (as evidenced by approved contract value for the actual contracts) must be surrendered by Tenant to the City as liquidated damages, and not as a penalty, in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Tenant and/or the Subcontractors to prosecution. The City may draw against the Security any amounts that

appear to be due to the City under this provision pending the City's determination as to the full amount of liquidated damages due on completion of the Work.

F. Nothing set forth in this section acts as a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents, as applicable.

G. Inclusion in Subcontracts. Tenant must cause or require the provisions of this section to be included in all construction Subcontracts related to the Work.

Section 5.04 - Licensing of General Contractor. This Agreement is subject to Chapter 4-36 of the Municipal Code which requires all persons acting as a general contractor (as defined in Chapter 4-36) to be licensed as a general contractor by the City. Tenant's failure to ensure that any general contractor working on Improvements complies with Chapter 4-36 will be an Event of Default.

Section 5.05 - Prevailing Wages. In connection with the construction, repair, and maintenance of Improvements, Tenant must comply with the applicable provisions of 820 ILCS 130/0.01 et seq. regarding the payment of prevailing wages, and the most recent Illinois Department of Labor schedule of prevailing wages, and any successors to them. Tenant must insert appropriate provisions in all Subcontracts covering construction work under this Agreement to ensure compliance of all construction Subcontractors with the foregoing wage statutes and regulations.

Section 5.06 - Subcontractor Certifications. Tenant must require all Subcontractors performing Work in connection with this Agreement to be bound by the following provision and Tenant must cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

"Subcontractor certifies and represents that Subcontractor and any entity or individual that owns or controls, or is controlled or owned by, or is under common control or ownership with Subcontractor is not currently indebted to the City and will not at any time during the Term be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if the breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against the payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor will

be liable for all excess costs and other damages resulting from the termination.)”

Section 5.07 - MBE/WBE Compliance. Tenant shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises (“MBE/WBE”) in the design and construction of Tenant’s Improvements, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 24% MBE and 4% WBE. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 9 and should be used by Tenant’s Contractors. Tenant must submit to the CMR completed Schedules C’s and D’s from its design and construction Contractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Tenant must submit periodic reports to the CMR, in a form and frequency determined by the Commissioner, documenting its Contractors’ compliance with their commitments.

Section 5.08 - Title to Improvements. City and Tenant mutually agree that any and all existing Improvements on the Premises are property of the City. Any new Improvements constructed on the Premises, other than Tenant’s F, F and E, shall become and remain the property of City upon their completion.

Section 5.09 - City-funded Improvements. From time to time the Commissioner may delegate in writing to Tenant, and Tenant may elect to accept such delegation, the responsibility for undertaking Improvements to the Premises and agree to reimburse Tenant for costs incurred in connection therewith. Eligible costs are actual, reasonable costs of labor and materials involved in performing the Work and actual, reasonable architectural, engineering, and consulting fees, and no others. Upon acceptance of such delegation, Tenant must publicly advertise the Work associated with any such Improvements and comply with the then-current City requirements for participation by City residents and Minority and Women’s Business Enterprises. Tenant must complete all such Improvements to the reasonable satisfaction of Commissioner and submit all invoices, sworn statements, lien waivers and any other appropriate documentation requested by the Commissioner to verify the costs paid in good faith by Tenant with respect thereto. The Commissioner shall have the right to approve the reasonableness, allocability and allowability of those costs which are to be reimbursed, such approval not to be unreasonably withheld or delayed.

Section 5.10 - Other Improvements. In addition to City-funded Improvements, Tenant may from time to time construct or install in the Premises, at its own expense, other Improvements, including pavement, facilities and equipment, and any additions thereto, reasonably necessary in connection with any use permitted under the provisions of this Agreement, subject to the prior written approval of the Commissioner in accordance with Section 5.01.

Section 5.11 - Liens Prohibited. Tenant shall keep the Premises free and clear of any and all liens in any way arising out of the construction of Improvements, or use of the Premises by Tenant; provided, however, Tenant may in good faith contest the validity of any lien, provided such contest does not impair the City's rights with respect to the Premises. City's rights to the Premises and the Airport are and always shall be paramount to the interests of Tenant in the Premises. Nothing in this Agreement empowers Tenant to commit or engage in any act which can, shall, or may encumber the rights of City. In no event shall this Agreement or any rights or privileges hereunder be an asset of Tenant under any bankruptcy, insolvency, or reorganization proceedings.

Section 5.12 - Maintenance and Repair. Tenant shall be responsible for and shall perform or cause to be performed all maintenance and repair of the Leased Space and shall keep such Leased Space clean and free from all debris. Tenant shall at all times:

A. Keep the Leased Space and all fixtures, equipment and personal property in a clean, safe, and orderly condition and appearance;

B. Maintain the same in good condition (reasonable wear and tear excepted) and perform all ordinary repairs, replacements, and painting; such repairs, replacements, and painting by Tenant shall be of a quality not inferior to the standards set forth in any rules and regulations adopted by City for the Airport;

C. Control all of its vehicular traffic on the Airport and take all precautions reasonably necessary to promote the safety of its passengers, customers, business visitors, and other persons, and employ such means as may be necessary to safely direct the movements of its vehicular traffic;

D. Either directly or through a licensed independent contractor, dispose of its garbage, debris, and other waste materials at properly permitted facilities and in accordance with the Sustainable Airport Manual.

E. If the performance of any of the foregoing maintenance, repair, replacement, or painting obligations of Tenant requires work to be performed where safety of airport operations might be involved, Tenant shall post guards or erect barriers or other safeguards as required and approved by the Commissioner at such locations prior to Tenant's performance of any such maintenance, repair, replacement or painting

F. The City will be responsible for capital repairs and replacements of the roof and Shell and Core and other structural components of the Building..

Section 5.13 - Repairs Necessitated by Casualty.

A. Subject to Section 5.02, In the event any Improvement from time to time upon the Premises shall be damaged or destroyed, in whole or in part, (regardless of the cause therefor) Tenant covenants and agrees that Tenant, at its own expense (notwithstanding insufficiency of insurance proceeds), shall repair, restore or rebuild any such Improvement so damaged, injured or partially destroyed, or erect, finish and complete a like new building and Improvements on the Premises. Any such repair, restoration, or rebuilding or construction of a new building is herein sometimes referred to as a "Restoration."

B. Insurance proceeds shall be made available for Restoration on the terms and conditions set forth in this Section. In the event that the Premises, or any portion thereof, are damaged or destroyed by fire or other casualty, Tenant, after consultation with City, and subject to the limitations set forth in this Section and Section 5.02, shall repair, reconstruct or restore the damaged or destroyed Premises to (i) substantially the same condition, character and utility value as existed prior to the event causing such damage or destruction, or (ii) such other condition, character and value as may be agreed upon by City and Tenant; provided, however, that in the event that the damage, and the insurance proceeds therefor, are less than \$100,000, Tenant may effect such repairs, reconstruction or restoration as Tenant may deem reasonably necessary.

C. Tenant shall provide prompt written notice to the City of any event that may require a Restoration. Within sixty (60) days of the date of such notice, Tenant shall provide to the City plans and specifications for such Restoration, which plans and specifications are subject to City review and approval. Upon approval of such plans and specifications, Tenant shall immediately proceed to diligently perform the Restoration and complete such Restoration in a timely manner. In the event that Tenant fails to diligently perform the Restoration or complete the Restoration in a timely manner, the City may exercise its rights under Section 12.06 of this Agreement.

D. Prior to making any Restoration of more than \$100,000, Tenant shall in good faith estimate the cost of the Restoration and furnish City supporting estimates by a reputable, experienced architect, engineer and contractor qualified to make such estimate.

E. Without limiting any of the other terms hereof, it is expressly understood and agreed that, except and to the extent provided herein, no loss or partial destruction of or damage to the Premises or the buildings or other improvements from whatsoever cause, shall operate to terminate this Agreement or to relieve or discharge Tenant from its liability to pay the full Rent and additional charges payable under this Lease, or to relieve Tenant from any of its other obligations under this Agreement. Except and to the extent provided herein, Tenant waives any right now or hereafter conferred upon it, whether by statute or otherwise, to surrender this Agreement or possession of the Premises or any part thereof, or to obtain any suspension, diminution, abandonment or reduction of Rent, on account of any such loss, damage or destruction to the buildings or any other property at the Premises.

F. Any insurance proceeds greater than \$100,000.00 shall be made payable to both City and Tenant. If Tenant does not commence a required Restoration promptly upon City approval of the plans and specifications for such Restoration, or if the Agreement expires or terminates at any time for any reason prior to application of all insurance proceeds, then all insurance proceeds shall be payable solely to City.

Section 5.14 - Inspection. City shall have the right to inspect the Premises and direct Tenant to make ordinary repairs. City shall provide reasonable notice prior to such inspection, unless in an emergency situation, and shall notify Tenant's representative on the Premises at the beginning of any such inspection.

Section 5.15 - Signs. Any signs installed by Tenant on the Premises shall be limited to those which advertise the perishable goods center operated by Tenant; third party advertising is strictly prohibited. The number, general type, size, design, and location of such signs shall be subject to the prior written approval of the Commissioner.

Section 5.16 - Non-Interference with Airport Operations. The Work and the operations of Tenant and its officials, agents, employees, contractors, guests, patrons, and invitees on the Premises shall be conducted in an orderly and proper manner and shall not otherwise annoy, disturb, or be offensive to others at the Airport. In the event that Tenant is not in compliance with this Section, at the written request of the Commissioner, Tenant shall immediately conform the demeanor or conduct of Tenant or its officials, agents, employees, contractors, guests, patrons, and invitees to the standard set forth in this Section.

Section 5.17 - Access by City. Upon the giving of reasonable notice, which may in certain circumstances determined at the City's sole discretion be only by oral notice, Tenant shall allow City, its officers, agents or employees, free access to the Premises for the purposes of examining them to ascertain if Tenant is performing its obligations under this Agreement, and for conducting such other activities deemed reasonably necessary by the City for the operation of the Airport.

ARTICLE VI - MAINTENANCE AND OPERATION OF AIRPORT

Section 6.01 - Maintenance Obligations. City shall operate and maintain in a manner consistent with that of a reasonably prudent operator of an Airport, and keep in good condition and repair, the runway and the taxiway, roadways, water lines, sewer lines, drainage ditches, additions, improvements, facilities, and equipment, now or hereafter provided by City, serving the Leased Space but located outside the Leased Space, including the removal of snow, ice, vegetation, stones, and other foreign matter, as reasonably as may be done, from the runway and taxiway, connections therefrom, and roadways. Tenant shall maintain the Leased Space and perform general maintenance of

the building systems located in and exclusively serving the Leased Space, including general maintenance of the roof and structural components of the Building appurtenant to the Leased Space. The City will be responsible for capital repairs and replacements of the roof and Shell and Core and other structural components of the Improvements and any building systems not located in and exclusively serving the Tenant's Premises and the repaving and restriping of the parking areas, tarmacs and aprons comprising the Airside Space and Landside Space and any required repairs and replacements of light fixtures in such areas.

Section 6.02 - Tenant's Remedy. In the event that the City fails to cure any failure in its performance of its obligations under Section 6.01 within a reasonable period, and provided that the Airport is not closed at the direction of the City or any other governmental authority or agency as addressed in Section 12.01 hereof, Tenant's sole and exclusive remedies are to cure such default and offset the cost thereof against future payments of Rent as provides in Section 12.07 or terminate this Agreement by providing notice to the City pursuant to the terms of Article XIV hereof.

ARTICLE VII - ADDITIONAL OBLIGATIONS OF TENANT

Section 7.01 - Taxes. Tenant shall pay such taxes or special assessments, if any, which may be levied or assessed upon Tenant's interest in the Premises. Tenant shall provide the Commissioner with copies of all notices relating to such taxes within thirty (30) days of request and shall provide the Commissioner with a receipt indicating payment of such taxes. Nothing herein shall preclude Tenant from contesting such charge or tax, including those taxes or charges enacted or promulgated by City.

Section 7.02 - Utilities. Tenant shall be responsible for payment of all costs of utilities for the Premises, including, but not limited to, water/sewer, electricity and telephone service to the extent separately metered. If utilities are not separately metered, Tenant will cooperate with the City to establish baseline costs after six (6) months of Tenant's operations. Otherwise, Tenant shall pay its proportionate share of such utilities.

Section 7.03 - Permits, Licenses. Tenant shall be responsible for obtaining, at its own expense, all necessary governmental approvals, inspections, permits, or licenses needed in connection with the Premises, any business conducted thereon, or any Work performed thereon.

Section 7.04 - Compliance with All Laws. Tenant shall comply with all applicable federal, state, and local laws, codes, regulations, ordinances, rules, and orders; provided, however, that Tenant may, without being considered to be in breach hereof, contest any such laws so long as such contest is diligently commenced and prosecuted by Tenant and does not jeopardize the health or safety of persons at the Airport or Airport operations.

Section 7.05 - Compliance with City/State Requirements. Tenant agrees to execute such certificates as may be necessary to comply with all applicable Federal, State, and local laws, codes, regulations, ordinances, executive orders, rules, and orders, including without limitation such certifications as are listed below.

A. Economic Disclosure Statement and Affidavit ("EDS"). Tenant has executed an EDS(s), in compliance with 720 ILCS 5/33E-3, 4 and 11(B), as amended; 65 ILCS 5/11-42.1-1; Chapters 2-56, 2-154, and 2-156 of the Municipal Code; and such other statutes, ordinances, regulations and executive orders as may be in effect from time to time. Tenant shall provide updated EDS(s) in the event of any change in circumstance which renders the EDS on file with the City inaccurate or obsolete.

B. Anti-Scofflaw. In accordance with Section 2-92-380 of the Municipal Code of Chicago, and in addition to any other rights and remedies (including any of set-off) available to City under this Agreement or permitted at law or in equity, City shall be entitled to set off a portion of any amounts due Tenant by City under this Agreement in an amount equal to the amount of the fines and penalties for each outstanding parking violation complaint and/or the amount of any debt owed by Tenant to City. For purposes of this section, "outstanding parking violation complaint" means a parking ticket, notice of parking violation or parking violation complaint on which no payment has been made or appearance filed in the Circuit Court of Cook County within the time specified on the complaint, and "debt" means a specified sum of money owed to City for which the period granted for payment has expired.

Notwithstanding the provisions of the immediately preceding paragraph, no such debt(s) or outstanding parking violation complaints shall be offset from any amounts due Tenant from City under this Agreement if one or more of the following conditions are met (good)

1. Tenant has entered into an agreement with the Department of Revenue, or other appropriate City department, for the payment of all outstanding parking violation complaints and/or debts owed to City and Tenant is in compliance with the agreement; or
2. Tenant is contesting liability for or the amount of the debt in a pending administrative or judicial proceeding; or
3. Tenant has filed a petition in bankruptcy and the debts owed City are dischargeable in bankruptcy.

C. Ethics. Tenant shall comply with Chapter 2-156 of the Municipal Code of Chicago, "Governmental Ethics", including, but not limited to, Section 2-156-120 pursuant to which no payment, gratuity, or offer of employment shall be made in connection with any City contract, by or on behalf of a subcontractor to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order. Any contract negotiated, entered into, or performed in violation of

any of the provisions of such Chapter shall be voidable as to City.

D. **MacBride Principles.** City, through the passage of the MacBride Principles Ordinance, seeks to promote fair and equal employment opportunities and labor practices for religious minorities in Northern Ireland and provide a better working environment for all citizens in Northern Ireland. If Tenant conducts any business operations in Northern Ireland, it is hereby required that Tenant shall make all reasonable and good faith efforts to conduct any business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

E. **Inspector General and Legislative Inspector General.** It shall be the duty of Tenant and all officers, directors, agents, partners, and employees of Tenant to cooperate with the Inspector General and Legislative Inspector General of the City in any investigation or hearing undertaken pursuant to Chapter 2-56 or 2-55 of the Code, respectively. Tenant understands and will abide by all provisions of Chapters 2-56 and 2-55 of the Code.

F. **Americans with Disabilities Act.** Any and all design and construction of Improvements shall comply with all Federal, State and local laws and regulations regarding accessibility standards for disabled or environmentally limited persons including, but not limited to, the following: Americans with Disabilities Act, P.L. 101-336, 42 U.S.C. 12101 *et seq.* and the Uniform Federal Accessibility Guidelines for Buildings and Facilities and the Illinois Environmental Barriers Act, 410 ILCS 25/1 *et seq.*, and the regulations promulgated thereto at 71 Ill. Admin. Code Ch. 1, Sec. 400.110. In the event that the above-cited standards are inconsistent, Tenant shall comply with the standard providing greater accessibility.

G. **Conflicts of Interest.** Tenant represents and warrants that no member of the governing body of the City or other unit of government and no other officer, employee or agent of the City or other unit of government who exercises any functions or responsibilities in connection with this Agreement has any personal interest, direct or indirect, in this Agreement, or in Tenant. Tenant further covenants that (i) no member of the governing body of the City and no officer, employee or agent of the City or other unit of government exercising any functions or responsibilities in connection with this Agreement shall acquire any personal, financial or economic interest, direct or indirect, in Tenant or this Agreement, and (ii) no member of or delegate to the Congress of the United States or the Illinois General Assembly and no alderman of the City or employee of the City shall be admitted to any share or part of this Lease or any financial benefit to arise from it.

H. **Shakman Accord.**

1. The City is subject to the May 31, 2007 Order entitled "Agreed Settlement Order and Accord" (the "Shakman Accord") and the June 24, 2011 "City of

Chicago Plan” (the “City Hiring Plan”) entered in *Shakman v. Democratic Organization* entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United State District Court for the Northern District of Illinois). Among other things, the Shakman Accord and the City Hiring Plan prohibit the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

2. Tenant is aware that City policy prohibits City employees from directing any individual to apply for a position with tenants, either as an employee or as a subcontractor, and from directing tenants to hire an individual as an employee or as a subcontractor. Accordingly, Tenant must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Tenant under this Agreement are employees or subcontractors of Tenant, not employees of the City of Chicago. This Agreement is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Tenant.

3. Tenant will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under the Agreement, or offer employment to any individual to provide services under the Agreement, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this policy, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

4. In the event of any communication to Tenant by a City employee or City official in violation of paragraph (2) above, or advocating a violation of paragraph 2 above, Tenant will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the Commissioner of the Chicago Department of Aviation.

I. Mayoral Contributions; Executive Order 2011-4.

1. Tenant agrees that it, and any person or entity who directly or indirectly has an ownership or beneficial interest in it of more than 7.5 percent (“Owners”), spouses and domestic partners of such Owners, its Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any

Subcontractor of more than 7.5 percent ("Sub-owners") and spouses and domestic partners of such Sub-owners (Tenant and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall not make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fund-raising committee (i) after execution of this Agreement by Tenant, (ii) while this Agreement or any Other Contract is executory, (iii) during the term of this Agreement or any Other Contract between Tenant and the City, or (iv) during any period while an extension of this Agreement or any Other Contract is being sought or negotiated.

2. Tenant represents and warrants that since the date of public advertisement of specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached Tenant or the date the Tenant approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fund-raising committee.

3. Tenant agrees that it shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fund-raising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fund-raising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fund-raising committee.

4. Tenant agrees that the Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

5. Tenant agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

6. If Tenant violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Agreement, the Commissioner may rescind this Agreement.

7. For purposes of this provision:

"Bundle" means to collect contributions from more than one source which are then delivered by one person to the Mayor or to his political fund-raising committee.

"Other Contract" means any other agreement with the City of Chicago to which Tenant is a party that is (i) formed under the authority of chapter 2-92 of the Municipal Code of Chicago; (ii) entered into for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the city council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

Individuals are "Domestic Partners" if they satisfy the following criteria:

- (a) they are each other's sole domestic partner, responsible for each other's common welfare; and
- (b) neither party is married; and
- (c) the partners are not related by blood closer than would bar marriage in the State of Illinois; and
- (d) each partner is at least 18 years of age, and the partners are the same sex, and the partners reside at the same residence; and
- (e) two of the following four conditions exist for the partners:
 - (i) The partners have been residing together for at least 12 months.
 - (ii) The partners have common or joint ownership of a residence.
 - (iii) The partners have at least two of the following arrangements:
 - a. joint ownership of a motor vehicle;
 - b. a joint credit account;
 - c. a joint checking account;
 - d. a lease for a residence identifying both domestic partners as tenants.
 - (iv) Each partner identifies the other partner as a primary beneficiary in a will.

"Political fund-raising committee" means a "political fund-raising committee" as defined in Chapter 2-156 of the Municipal code of Chicago, as amended.

Section 7.06 - Non-discrimination.

A. Federal Requirements. It shall be an unlawful employment practice for Tenant (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, or the terms, conditions, or privileges of his employment, because of such individual's race, color, religion, sex, age, handicap, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of

employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, age, handicap, or national origin. Tenant shall comply with The Civil Rights Act of 1964, 42 U.S.C. sec. 2000 *et seq.* (1981), as amended. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. 2000(e) note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. sec. 6101-6106 (1981); Rehabilitation Act of 1973, 29 U.S.C. sec. 793794 (1981); Americans with Disabilities Act, P.L. 101-336; and 41 C.F.R. Part 60, *et seq.* (1990).

B. State Requirements. Tenant shall comply with the Illinois Human Rights Act, 775 ILCS 5/1-101, *et seq.*, as amended, and any rules and regulations promulgated in accordance therewith, including, but not limited to the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Tenant shall comply with the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 *et seq.*, as amended.

C. City Requirements. Tenant shall comply with the Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.* of the Municipal Code of Chicago, as amended. Further, Tenant shall furnish and shall cause each of its contractors to furnish such reports and information as requested by the Chicago Commission on Human Relations.

Section 7.07 - Affirmative Action Program and MBE/WBE Requirements. Tenant assures that it will undertake an affirmative action program which sets forth all applicable Federal standards as required by 14 C.F.R. Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, religion, age, national origin, or sex be excluded from participating in any employment activities covered in 14 C.F.R. Part 152, Subpart E. Tenant assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by Subpart E. Tenant assures that it will require that its covered suborganizations provide assurances to Tenant that they similarly will undertake an affirmative action program and that they will require assurances from their organizations, as required by 14 C.F.R., Part 152, Subpart E, to the same effect. In furtherance thereof, Tenant also agrees to coordinate with the City's Department of Procurement Services so as to comply with the then current City requirements for participation of Minority Business Enterprises and Women's Business Enterprises on construction of any Improvements.

Section 7.08 - Compliance With Environmental Laws

A. Pre-Existing Conditions. For the purposes of this Section 7.08, the presence of any Hazardous Material or Special Waste on or about the Premises that would give rise to liability to any person on the part of Tenant or City, or violate any Environmental Law, shall be known as an Environmental Condition. The City shall be and remain responsible for any Environmental Condition, whether known or unknown, that exists on or about the Premises as of the date that the Tenant takes occupancy of the Premises (a "Preexisting Environmental Condition").

B. Compliance with Environmental Laws

1. Tenant shall comply with all laws relating to the environment, including, without limitation, those relating to fines, orders, injunctions, penalties, damages, contribution, cost recovery, compensation, losses or injuries resulting from the release or threatened release of Hazardous Materials, Special Wastes or other contaminants into the environment and to the generation, use, storage, transportation, or disposal of solid wastes, Hazardous Materials, Special Wastes or other contaminants including, without limitation, the Comprehensive Environmental Response and Compensation Liability Act (42 USC § 9601 *et seq.*), the Hazardous Material Transportation Act (49 USC § 1801 *et seq.*), the Resource Conservation and Recovery Act of 1976 (42 USC § 6901 *et seq.*), the Clean Water Act (33 USC § 1251 *et seq.*), the Clean Air Act (42 USC § 7401 *et seq.*), the Toxic Substances Control Act of 1976 (15 USC § 2601 *et seq.*), the Safe Drinking Water Act (42 USC § 300f), the Occupational Safety and Health Act of 1970 (29 USC § 651 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 USC § 11001 *et seq.*), the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*), and the Municipal Code of Chicago; additionally, any analogous future or present local, state or federal ordinance or statute, rule and regulation promulgated under or pursuant to the foregoing, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order, or directive which regulates, relates to, imposes liability for or establishes standards of conduct concerning any Hazardous Materials that may be set forth by the Federal government, any state or any political subdivision thereof, or any agency, court or body of the Federal government, any state or any political subdivision thereof exercising executive, legislative, judicial, regulatory or administrative functions (collectively, "Environmental Laws").

2. If Tenant is required pursuant to any Environmental Laws to file any notice or report of a release or threatened release of Hazardous Materials or Special Wastes on, under or about the Premises, Tenant shall provide a copy of such report or notice to the City. In the event of a release or threatened release of Hazardous Materials or Special Waste into the environment, or in the event of any claim, demand, action or notice is made against Tenant regarding Tenant's failure or alleged failure to comply with any Environmental Law, Tenant shall immediately notify the City.

3. City shall have reasonable access to the Premises to inspect the same to confirm that Tenant is using the Premises in accordance with Environmental Laws. Tenant, at the reasonable request of City and at Tenant's expense, shall conduct such testing and analysis as is necessary to ascertain whether Tenant is using the Premises in compliance with all Environment Laws. Any such tests shall be conducted by qualified independent environmental consultants chosen by Tenant and subject to City's reasonable approval. Copies of any reports or test results shall be provided to City.

4. In addition to any other remedy afforded at law, in equity or by the terms of this Agreement, if Tenant fails to comply with any Environmental Law which results in, or may result in, a material adverse impact to the Premises or potential liability to the City, the City may (i) enter the Premises and take necessary measures to insure compliance with Environmental Laws, including, but not limited to, testing and soil sampling, all at Tenant's expense, and/or (ii) terminate this Agreement in accordance with the default provisions of this Agreement.

5. City makes no warranty, express or implied, regarding the condition of any underground storage tanks on the Premises, the presence of Hazardous Materials and Special Wastes on the Premises, that the Premises are free of Hazardous Materials and Special Wastes, or any other environmental contaminant. Subject to the limitations set forth in Sections 7.08(A) and 7.10 as to Preexisting Environmental Conditions, in the event that City is named in any enforcement action or lawsuit by any party in connection with the environmental condition of the Premises or Improvements thereon, Tenant shall defend City and indemnify City for any costs, damages or fines that might be found against City; provided, however, that Tenant shall not be held accountable by the City under this Agreement in the event that contamination is the result of a Preexisting Environmental Condition, a third party leasing space in the Building or traversing a right of way on the Premises or the negligence of the City. Tenant's obligation to indemnify the City pursuant to this section in no other way limits nor is limited by any other indemnification provided in this Agreement.

6. Tenant's liability and obligations under this Section 7.08 shall survive the termination of this Agreement, in whole or in part. Tenant hereby waives any right of action or claim pursuant to any Environmental Law against the City, its officers, officials, agents or employees except for any Environmental Condition directly caused by the City after the Effective Date.

C. Environmental Permits

1. Tenant must show evidence of, and keep current throughout the term of this Agreement, all waste hauling, Special Waste hauling, disposal permits and insurance certificates required by Federal, state, City or other local governmental body or agency pursuant to any Environmental Law.

2. When requested by the Commissioner, Tenant shall submit copies of all hauling permits required by any Environmental Law. Copies of all permits and insurance certificates that require periodic renewal must be forwarded to the Commissioner throughout the duration of this Agreement. Non-compliance with this requirement may be cause for termination of this Agreement.

3. Environmental Records and Reports: Tenant shall be required to prepare and maintain proper, accurate and complete records of accounts of all transactions related to the operations of this Agreement, including, but not limited to, the following:

- a. Vehicle maintenance records
- b. Safety and accident reports
- c. IEPA or OSHA manifests
- d. Disposal records, including disposal site used, date, truck number and disposal weight.
- e. Permit documentation and all other documentation and transactions pertaining to all Environmental Laws.

All such records and accounts shall be subject to review by the City and shall be made available to the City upon the request of the Commissioner. The City's review of any such records and accounts shall in no way serve to limit Tenant's obligations or liability under the terms and conditions of this Agreement or any Environmental Law.

D. Disposal of Materials, Construction and Demolition Debris, Soil and Waste

1. Tenant shall be responsible for the proper disposal of all materials, construction and demolition debris, soil and other waste generated by Tenant's business operations, including but not limited to the construction of Improvements, or Tenant's activities as set forth in Section 7.08. Hauling and disposal by a subcontractor does not relieve Tenant from responsibility for proper disposal. Disposal of all materials, construction debris, soil, and other wastes shall be at a disposal site that is properly licensed and permitted to accept the particular materials, construction debris, soil and other wastes delivered to it in accordance with all Environmental Laws. Tenant shall identify the disposal site(s) or transfer station(s) to which it has contractual access and for which proper, sanitary landfill permits and/or licenses have been obtained. Failure to identify disposal site(s) for materials, construction debris, soil and other wastes or to submit such information when requested by the Commissioner may be cause to terminate this Agreement.

2. Upon request by the Commissioner, Tenant shall provide the Commissioner with copies of all load tickets, manifests, bills of lading, scale tickets and other pertinent documents, including copies of all permits and/or licenses for the proposed transfer station and/or landfill. In the event that the transfer station and/or landfill proposed for use by Tenant does not possess the necessary permits and/or licenses to accept the materials, construction debris, soil or other wastes, Tenant will replace the transfer station and/or landfill submitted as part of their bid proposal at no additional cost to the City. If Tenant disposes of materials, construction debris, soil or other wastes at a site which is not properly permitted, Tenant shall be responsible for all costs associated with the removal of the waste to a properly

licensed/permitted landfill or disposal site.

3. Tenant shall accept full responsibility for compliance with all Environmental Laws and must comply with all present and future laws, orders and regulations and any rules and regulations promulgated by the Commissioner regarding the separation, sorting and recycling of garbage, refuse and trash, including but not limited to those policies, rules and regulations incorporated in the Sustainable Airport Manual.

4. Tenant shall notify the Commissioner within 24 hours of receipt of any environmental complaints, fines, citations, violations or notices of violation ("Claim") by any governmental body or regulatory agency against Tenant or by any third party relating to the loading, hauling or disposal of materials, construction debris, soil or other wastes. Tenant will provide evidence to the Commissioner that any such Claim has been addressed to the satisfaction of the issuer or initiator of such Claim.

5. Tenant shall notify the City of any community meetings, media involvement or media coverage related to the loading, hauling or disposal of materials, construction debris, soil and other wastes under this Agreement in which Tenant is asked to participate.

6. Tenant shall verify, in writing, whenever requested by the Commissioner, that all materials, construction debris, and other waste accepted by Tenant from the City of Chicago, has been disposed of in compliance with all Environmental Laws.

7. Non-compliance with these terms and conditions may affect Tenant's eligibility for future contracts.

E. Equipment and Environmental Control During Transport. Tenant shall haul materials, including but not limited to fuel of any nature, any construction debris, soil and other wastes in vehicles and/or containers complying with all applicable Environmental Laws. All equipment used to transfer materials, construction and demolition debris, soil and other wastes shall be designed to prevent spillage during the hauling operation. Tenant's equipment shall fully comply with all City, state and federal regulations, laws and ordinances pertaining to size, load weight, safety and any Environmental Law.

F. Open Dumping Prohibited. Tenant's must identify debris and waste disposal/handling site(s) and acknowledge terms and conditions relating thereto in a form approved by the Commissioner (the "Form") and provided to the Commissioner before any debris or waste is removed from the Premises for disposal or handling elsewhere. In addition to the representations and requirements that may be contained in the Form, Tenant understands and agrees that Tenant, unless otherwise authorized in writing by the City's Commissioner of Environment, shall not continue to use a disposal/handling site identified in the Form that (i) has been cited as being in violation of any environmental law or regulation or of any City ordinance or (ii) does not have a necessary permit. If only one site was identified in the

Form, Tenant shall arrange for a substitute disposal/handling site which meets the requirements specified in the Form and provide a revised Form to the Commissioner of Environment. Tenant further understands and agrees that any such substitution shall be at no additional cost to the City, regardless of the reason necessitating such substitution.

Section 7.09 - Contractors. Tenant agrees that all of the provisions set forth in Sections 7.03 through and including 7.07 of this Article 7 will be incorporated in all contracts entered into with any suppliers of materials, furnishers of services, contractors of any tier, and labor organizations which furnish skilled, unskilled, and craft union skilled labor, or which may provide any materials, labor, or services in connection with this Agreement for amounts of \$10,000 or more. Tenant agrees to cause its contractors to execute such certificates as may be necessary in furtherance of these provisions. Such certifications shall be attached and incorporated by reference in the contracts. In the event that any contractor is a partnership or joint venture, Tenant shall also include provisions in its contract insuring that the entities comprising such partnership or joint venture shall be jointly and severally liable for its obligations thereunder.

Section 7.10 - Indemnification. Subject to those limitations set forth in Section 7.08(A) hereof, and in addition to the indemnifications set forth in Article XI hereof, Tenant hereby indemnifies and agrees to defend and hold harmless the City, its agents, partners, officers, representatives and employees, from all Claims arising from or attributable to: (a) the presence due to Tenant's operations of Hazardous Materials and Special Wastes on the Premises or the subsurface thereof or the violation of any Environmental Laws due to Tenant's operations (including, without limiting the generality thereof, any cost, claim, liability, or defense expended in remediation required by a governmental authority, or by reason of any release of any Hazardous Material or Special Waste due to Tenant's operations or violation of any Environmental Laws), or (b) any aggravation of any condition on the Premises caused, directly or indirectly, by Tenant's operations, or (c) any breach by Tenant of any of its warranties, representations or covenants in this Article VII. Tenant's obligations hereunder shall survive the termination or expiration of this Agreement, and shall not be affected in any way by the amount of or absence in any case of covering insurance or by the failure or refusal of any insurance carrier to perform any obligation on its part under any insurance policies affecting the Premises or Tenant's operations at the Airport.

ARTICLE VIII - AIRPORT MATTERS

Section 8.01 - Airport Rules and Regulations. Tenant shall observe and obey all Airport rules and regulations governing the conduct and operations of the Airport, promulgated from time to time by City, provided, however, that such Airport rules and regulations must be neither (i) inconsistent with the exercise by Tenant of any right or privilege granted to it hereunder or under any other agreement between Tenant and City relating to the Airport, nor (ii) inconsistent with the rules and regulations or orders of any Federal or State agency having jurisdiction over the Airport. Except in cases of emergency, no such rule or

regulation shall be applicable to Tenant unless it has been given fifteen (15) days prior written notice of the adoption thereof.

Section 8.02 - Other Legal Requirements. Tenant shall comply, and shall cause its contractors to comply, with all applicable federal, state and local laws, codes, regulations, ordinances, rules and orders including, without limitation, those promulgated by the FAA and the TSA, which shall include, but not be limited to, the following:

A. **Prohibition Against Exclusive Rights.** It is hereby specifically understood and agreed that nothing contained in this Agreement shall be construed to grant or authorize the grant to Tenant of an exclusive right to use Airport facilities or to provide aeronautical services to the public as prohibited by Section 308(a) of the Federal Aviation Act of 1958, as amended, and City reserves the right to grant to others at the Airport similar privileges and rights.

B. **Subordination of Agreement.** Tenant covenants and agrees that this Agreement shall be subordinated to the provisions of any existing or future agreement between the City and the United States Government, the execution of which has been or will be required as a condition precedent to the granting of Federal funds for the development of the Airport. Tenant further agrees that it shall not cause the City to violate any assurances made by the City to the Federal government in connection with the granting of such Federal funds.

C. **Non-discrimination in the Use of the Premises.** This Agreement involves the use of or access to space on, over, or under real property acquired or improved under the Airport Development Aid Program of the Federal Aviation Administration, and therefore involves activity which serves the public. Tenant, for itself, its personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree, as a covenant running with the land, that (a) no person on the grounds of race, creed, color, religion, age, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities; (b) that no person on the grounds of race, creed, color, religion, age, sex, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the construction of Improvements on, over, or under such land and the furnishing of services thereon; and (c) that Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to regulations of the U.S. Department of Transportation. In the event of a breach of the above nondiscrimination-covenants by Tenant, City shall have the right to terminate this Agreement and to reenter and repossess the Premises and the facilities thereon, and hold the same as if this Agreement had never been executed.

D. **Non-Discrimination in Furnishing Services.** Tenant agrees that it shall provide its services and products promptly, efficiently and adequately to meet all reasonable demands therefor, all on a fair and non-discriminatory basis to all users thereof, at charges which are fair, reasonable and non-discriminatory; provided that reasonable discounts, rebates or

other similar types of price reductions may be made to volume purchasers.

Section 8.03 - Airport Agreements. Tenant's use and occupancy of the Premises shall be and remain subject to (i) the provisions of any existing or future agreements between City and the United States government, FAA or other governmental authority, relative to the operation or maintenance of the Airport, the execution of which has been or will be required as a condition precedent to the granting of federal or other government funds, including, without limitation, grant agreements, and (ii) any use agreement heretofore or hereafter executed by the City with airlines operating at the Airport, including, without limitation, the O'Hare Airport Use Agreement and Facilities Lease and any ordinance or indenture, or both, authorizing bond anticipation notes or bonds or other obligations adopted by the City Council of the City authorizing the issuance of notes, bonds or other obligations for the Airport and securing such obligations by a pledge of revenues or net revenues of the Airport and any ordinance or indenture supplemental thereto, which shall also include any master indenture.

Section 8.04 - Airport Security Acts. This Agreement is expressly subject to the Airport Security Acts, as amended from time to time, the provisions of which are hereby incorporated by reference, including, without limitation all rules and regulations promulgated thereunder. Tenant and its employees, contractors, subcontractors, suppliers of materials, or providers of services are subject to such employment investigations, including criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary. Further, in the event of any threat to civil aviation, as defined in the Airport Security Acts, Tenant shall promptly report any information in accordance with those regulations promulgated by the Secretary of the United States Department of Transportation, the Secretary of the Department of Homeland Security and the City. Tenant shall, notwithstanding anything contained herein to the contrary, at no additional cost to City, perform under this Agreement in compliance with those directives guidelines developed by City, the TSA and the FAA with the objective of maximum security enhancement, including without limitation any confidentiality directives and guidelines established by the TSA with respect to information that has been deemed by the TSA to be Security Sensitive Information.

Section 8.05 - Airport Noise Restrictions. Tenant agrees to abide by any guidelines, rules or regulations for the Airport which result from any Part 150 study or any other restrictions imposed on noise and which are applicable to the use of the Premises as an flight kitchen facility or otherwise.

Section 8.06 - Regulating the Airport; Airport Operation. City reserves the right to regulate, police and further develop, improve, reconstruct, modify or otherwise alter the Airport in City's sole discretion. City reserves the right, but shall not be obligated to Tenant, to maintain and keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport. City shall not have any obligation to continue to operate the Airport or any part as an airport for passenger or freight air transportation or at any particular level of operation and may at any time limit or discontinue use of the Airport or

any means of access to or within the Airport in whole or in part, whereupon Tenant shall have the option to terminate this Lease and the City shall pay Tenant's relocation costs in the same manner as provided in Section 2.03 (ii) for the Tenant's rejection of Relocation Space. This provision shall not be interpreted to grant a right to limit or discontinue means of access to the Premises by Tenant from outside the Airport from dedicated public streets.

ARTICLE IX - EXERCISE BY CITY OF GOVERNMENTAL FUNCTIONS

Nothing contained herein shall impair the right of City, in the exercise of its governmental functions, to require Tenant to pay any tax or inspection fees or to procure necessary permits or licenses. Nothing herein shall be construed to prevent Tenant from contesting in good faith any tax or inspection fee so long as such contest is diligently commenced and prosecuted by Tenant.

Nothing contained herein shall be deemed to be the grant of any franchise, license, permit or consent to Tenant to operate motor coaches, buses, taxicabs or other vehicles carrying passengers or property for hire or other consideration over the public ways to and from the Airport.

ARTICLE X - INSURANCE

Tenant shall provide and maintain at all times, at Tenant's own expense during the term of the Agreement and during any period subsequent to the expiration of the Term if Tenant is required to return to perform Work or perform any activities to comply with any Environmental Law, the types of insurance specified in Exhibit D, with insurance companies authorized to do business in the State of Illinois, covering all operations under this Agreement, whether performed by Tenant, its contractors or subcontractors.

City shall be responsible for providing replacement cost all risk casualty insurance covering the Building.

ARTICLE XI - INDEMNIFICATION BY TENANT

Section 11.01 - Indemnity. Tenant agrees to protect, defend, indemnify, keep, save and hold the City of Chicago, its officers, officials, employees and agents (collectively "**City Indemnified Parties**") free and harmless from and against any and all liabilities, losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind, nature and character arising out of or relating to any and all claims, liens, demands, obligations, actions, suits, judgments or settlements, proceedings or causes of action of every kind, nature and character (collectively "**Claims**") in connection with or arising directly or indirectly out of the performance or failure to perform hereunder by Tenant, its officials, agents, employees, and subcontractors, including but not limited to, the enforcement of this indemnification provision, except for Claims shown by final

judgment to have been caused by or attributable to the Indemnified Parties' negligence, in which event the Indemnified Parties shall contribute to the payment of damages decreed by judgment, and the actual costs of defense borne by Tenant not otherwise covered by insurance, to the extent the Indemnified Parties are found liable by such judgment. Without limiting the foregoing, any and all such Claims relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged infringement of any patent, trademark, copyright or of any other tangible or intangible personal property right, actual or alleged employment discrimination or wrongful discharge, or any actual or alleged violation of any applicable statute, ordinance, order, rule or regulation, or decree of any court, shall be included in the indemnity hereunder. The foregoing indemnity provision excludes the negligence of the Indemnified Parties to the extent prohibited by 740 ILCS 35/1 *et seq.* (Construction Contract for Indemnification Act) and/or 740 ILCS 150/0.01 *et seq.* (Structural Work Act), respectively. Tenant further agrees to investigate, handle, respond to, provide defense for and defend all suits for any and all Claims, at its sole expense and agrees to bear all other costs and expenses related thereto, even if the Claims are considered groundless, false or fraudulent.

The Indemnified Parties shall have the right, at their respective options and cost, to participate in the defense of any suit, without relieving Tenant of any of its obligations under this indemnity provision, provided that the Indemnified Parties and their respective attorneys shall coordinate and cooperate with Tenant's attorneys. Tenant further expressly understands and agrees that the requirements set forth in this indemnity to protect, defend, indemnify, keep, save and hold the Indemnified Parties free and harmless are separate from and not limited by Tenant's responsibility to obtain insurance pursuant to other Sections in this Agreement. Further, the indemnities contained in this Section shall survive the expiration or termination of this Agreement.

Section 11.02 - Release of City.

A. The City shall not be liable to Tenant, or to Tenant's agents, representatives, contractors, subcontractors, or employees, for any injury to, or death of, any of them or of any other person, or for any damage to any of Tenant's property, or loss of revenue caused by any third person in the maintenance, construction, or operation of facilities at the Airport, or caused by City or any third person using the Airport or navigating any aircraft on or over the Airport, except where there has been a final determination by a court of competent jurisdiction that any injury, death, or damage is due to the negligence or willful misconduct of City, and only to the extent Tenant or any of the above described parties is not covered by insurance.

B. The City shall not be liable to Tenant for damage to property of Tenant or any loss of revenues to Tenant resulting from City's acts or omissions in the maintenance and operation of the Airport, except where there has been a final determination by a court of competent jurisdiction that such damage or loss has been caused by the negligence or willful misconduct of City, and then only to the extent Tenant is not reimbursed by insurance.

C. Notwithstanding any reference herein to Tenant's release and indemnification being ineffective in certain instances where City or its agents, employees or representatives have been negligent, nothing herein shall be construed to make City liable in any case or instance where City would otherwise be immune from any tort liability because of its being a municipal corporation.

Section 11.03 - Non-Liability of Public Officials/Tenant's Shareholders. No official, employee, or agent of City shall be charged personally by Tenant, or by any assignee or contractor of Tenant, with any liability or expenses of defense, or be held personally liable to them under any term or provision of this Agreement, or because of City's execution or attempted execution hereof, or because of any breach hereof. Except to the extent permitted by law, no officer, shareholder or employee of the Tenant shall be charged personally by the City with any liability or expenses of defense, or be held personally liable to the City under any term or provision of this Agreement, or because of Tenant's execution of this Agreement, or because of any breach hereof by Tenant.

Section 11.04 - Limitation on City Liability. City, its officers, directors, commissioners, agents and employees, shall, to the extent permitted by law, have absolutely no personal liability with respect to any provision of this Agreement or any obligation or liability arising from this Agreement or in connection with this Agreement or the Premises in the event of a breach or default by City of any of its obligations. Tenant (and any person claiming by or through Tenant) shall look solely to legally available Airport discretionary funds from time to time up to the Maximum Limit. The term "Maximum Limit" means the fair market value of the City's interest in the Premises, as encumbered by this Agreement. The Maximum Limit shall be an aggregate limit over the term of this Agreement and shall be reduced by any prior payments or credits by City on account of a breach or default (or alleged breach or default) made with respect to the Premises. The Maximum Limit shall be determined as of the date of the City's liability for any breach or default is adjudicated. Such limitation of liability shall be absolute to the full extent permitted by law and without any exception whatsoever.

Section 11.05 - City Approvals. Nothing herein is intended nor shall it be construed to provide any limitation upon Tenant's obligation to comply with the terms and conditions of this Agreement. No City review or approval of any act of Tenant or document provided by Tenant, including, but not limited to, plans and specifications, shall in any way serve to attenuate, diminish or otherwise limit Tenant's obligations hereunder, nor shall any such review or approval constitute a waiver by the City of any non-compliance with the terms and conditions of this Agreement. Unless otherwise required by law or as expressly provided otherwise in this Agreement, any City review or approval required by this Agreement is deemed to mean the review or approval of the Commissioner.

Section 11.06 - Survival Beyond Termination of this Agreement. Tenant's obligations under Section 7.08, Section 7.10, and Article XI shall survive the termination or expiration of this Agreement.

ARTICLE XII - DEFAULT AND TERMINATION

Section 12.01 - Events of Default. Each of the following is an event of default under this Agreement:

A. Tenant becomes insolvent (as such terms is defined under Section 101 of the Federal Bankruptcy Code, 11 U.S.C. 101 *et seq.* (the "Code"), or any successor statute thereto); or fails to pay its debts generally as they mature; or takes the benefits of any present or future federal or state insolvency statute; or makes a general assignment for the benefit of creditors.

B. Tenant files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Code or under any other law or statute of the United States or of any State thereof; or consent to the appointment of a receiver trustee, custodian, liquidator, or other similar official, of all or substantially all of its property; or an order for relief is entered by or against Tenant under any chapter of the Code.

C. By order or decree of a court, Tenant is adjudged a debtor or bankrupt, or an order is made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the restructuring of its indebtedness under the Code or under any other law or statute of the United States or any state thereof and such order or decree is not stayed or vacated within ninety (90) days of its issuance.

D. A petition under any chapter of the Code or an action under any federal or state insolvency statute is filed against Tenant and is not dismissed or stayed within ninety (90) days after being filed.

E. By or pursuant to, or under authority of any legislative act, resolution or rule, or order or decree of any court or governmental board, agency or officer, a receiver, trustee, custodian, liquidator, or other similar official takes possession or control of all or substantially all of the property of Tenant and such possession or control continues in effect for a period of ninety (90) days.

F. Tenant becomes a corporation in dissolution and such dissolution continues in effect for more than thirty (30) days.

G. The letting, license, or other interest of or rights of Tenant hereunder is transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with, or as a result of any bankruptcy, insolvency, trusteeship, liquidation or other proceedings or occurrence described in Subparagraphs (A) through (E) of this Section 12.01.

H. Tenant fails to duly and punctually pay any Rent required to be paid hereunder or fails to make payment when due of any other sum required to be paid to City pursuant to

this Agreement, for a period of five (5) business days after written notice specifying such failure and requesting that it be remedied is given to Tenant by City.

I. Tenant fails to keep, perform, and observe any promise, covenant, or other provision of this Agreement, other than the obligation to pay Rent, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied is given to Tenant by City; provided, however, that any such failure which can be remedied, but which cannot with due diligence be remedied within such thirty (30) day period, shall not give rise to City's right to terminate this Agreement if corrective action is instituted by Tenant within such thirty (30) day period and diligently pursued until the failure is remedied.

J. Any lien is filed against the Premises or any portion thereof resulting from any act or omission of Tenant, and is not discharged within thirty (30) days, unless Tenant within the aforesaid thirty (30) days furnishes the City such security as the Commissioner in his discretion determines to be adequate to protect the interests of City.

K. Tenant ceases using or abandons substantially all of the Premises for a consecutive period of ninety (90) days.

L. Tenant makes any purported Transfer without the consent of City as set forth in Article XIV.

M. Tenant fails to maintain its corporate existence, or fails to remain duly qualified to do business in the State of Illinois, and it is not cured within thirty (30) days or Tenant dissolves or otherwise disposes of all or substantially all of its assets, or consolidates with or merges into another corporation; provided, however, that it shall not be an Event of Default if Tenant consolidates with or merges into an Affiliate; or

N. Tenant fails to receive authorization to conduct fixed base operations or general aviation functions at the Airport by any governmental entity, or the FAA objects to or disapproves this Agreement.

Section 12.02 - City's Remedies.

A. Whenever an Event of Default has occurred and is continuing, City may, at its option, immediately and without prior notice of such Event of Default:

1. terminate this Agreement and the licenses and other rights of Tenant hereunder, without discharging any of Tenant's obligations hereunder and, at City's further option, exclude Tenant from the Premises; or

2. without terminating this Agreement, exclude Tenant from the Premises and attempt to grant such Premises to another party for the account of Tenant, holding Tenant liable for all payments due hereunder up to the effective date of such grant and for the excess over the Rent and other amounts which are paid by such new

party under such new agreement, if any, of other amounts payable by Tenant under this Agreement for the remainder of the term of this Agreement.

B. The remedies set forth in this Article are in addition to all other remedies which are or may be available to City at law or in equity. In addition, City may, from time to time, take whatever action at law or in equity appears necessary or desirable to collect Rent and any other amounts payable by Tenant hereunder then due and thereafter to become due, and to enforce the performance and observance of any obligation, agreement, or covenant of Tenant under this Agreement.

C. All rights and remedies hereinbefore given to City and all rights and remedies given to City by law, shall be cumulative and concurrent. No termination of this Agreement or the taking or recovering of the Premises shall deprive City of any of City's remedies or actions against Tenant for Rent or for any other sum required to be paid to City pursuant to this Agreement, or for damages or for the breach of any covenant herein contained, nor shall the bringing of any action for fees or breach of covenant, or the resort to any other remedy herein provided for the recovery of fees be construed as a waiver of the right to obtain possession of the Premises.

Section 12.03 - Removal of Tenant's Property.

A. Tenant's F, F and E financed with funds other than Special Facility Revenue Bonds or other City funds and placed or installed by Tenant in the Premises shall remain the property of Tenant and must be removed on or before the expiration of the term or the expiration of any extension or renewal thereof at Tenant's sole risk and expense. Any damage to the Airport, the Premises, or any fixtures located therein, resulting from such removal shall be paid for by Tenant. In the event of the termination of this Agreement, by default or otherwise, Tenant shall have thirty (30) days after such termination during which to remove such property; provided, however, City shall have the right to assert such liens against said property as City may by law be permitted. So long as any such property remains in the Premises, Tenant's obligation to pay City Rent and any other sums which may be due the City under the Agreement shall continue.

B. If Tenant's property is not removed as herein provided, City may, at its option, deem such property abandoned and keep such property or after written notice to Tenant and at Tenant's sole risk and expense, remove such property to a public warehouse for deposit, or retain the same in City's possession and after the expiration of thirty (30) days sell the same, with notice and in accordance with applicable law, the proceeds of which shall be applied first to the expenses of such removal and sale, second to any sum owed by Tenant to City, and any balance remaining shall be paid to Tenant.

Section 12.04 - Condemnation.

A. Any condemnation or taking of such a substantial part of the Land, the Improvements or the Premises that results in the Premises being unsuitable or incapable

of being used for the purposes stated herein, is hereafter referred to as a "Total Taking." In the event of a Total Taking, this Agreement shall be terminated as of the date of the filing of the petition to condemn. Tenant may thereafter petition the Court for an award of the value of its interest, which may include the amount of the unamortized construction costs under Section 4.05. Tenant shall apply any such award to the defeasance of any outstanding Special Facility Revenue Bonds issued by the City for use and repayment by Tenant.

B. In the event of a taking of the Premises other than a Total Taking (a "Partial Taking"), this Agreement shall remain in effect as to the remaining portion of the Premises and, if the proceeds of any award received by City on account of such Partial Taking are sufficient to restore or replace the Premises so taken, City shall deposit the proceeds of the award with respect to the Premises in a construction fund and City shall forthwith (subject to unavoidable delays) apply such proceeds to the restoration or replacement of the Premises so taken as nearly as possible to (i) such condition, character, and utility value as existed prior to such Partial Taking or (ii) to such other condition, character, and value as may be agreed upon by City and Tenant. If for any reason the proceeds of an award received by City for a Partial Taking are in excess of the amount necessary to restore or replace the Premises, the amount of such excess shall be paid to City. If such proceeds are insufficient to replace or restore the Premises as provided in (i) and (ii) above, City shall not be required to restore or replace in excess of the proceeds of such awards.

Section 12.05 - No Waiver by City. Failure by City to take any action with respect to any default or violation by Tenant of any of the terms, covenants, or conditions of this Agreement shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of City to act with respect to any prior, contemporaneous, or subsequent violation or default. The acceptance by City of payment for any period or periods after a default or violation of any of the terms, conditions, and covenants of this Agreement shall not constitute a waiver or diminution of, nor create any limitation upon any right of City pursuant to this Agreement to terminate this Agreement for subsequent violation or default, or for continuation or repetition of the original violation or default.

Section 12.06 - City's Right to Perform Tenant's Obligations.

A. In the event that Tenant fails to perform any of its obligations under this Agreement, the City may, but is not obligated to, upon prior written notice to Tenant, and without waiving or releasing Tenant from any of its obligations hereunder, make any payment or perform any other act which Tenant is obligated to make or perform under this Agreement in such manner and to such extent as City may deem desirable; and in so doing city shall also have the right to enter upon the Premises, including any Improvement to the Premises, for any purpose reasonably necessary in connection therewith and to pay or incur any other necessary and incidental costs and expenses, including reasonable attorneys' fees. All sums so paid and all liabilities so incurred by City, together with interest thereon at the lesser of the then current Default Rate or the highest interest rate permitted by law, shall be deemed additional Rent hereunder and shall be payable to City upon

demand as additional Rent. City shall use reasonable efforts to give prior notice, which may be oral, of its performance, if reasonably feasible under the circumstances.

B. The performance of any such obligation by City shall not constitute a waiver of Tenant's default in failing to perform the same. Inaction of City shall never be considered as a waiver of any right accruing to it pursuant to this Agreement. City, in making any payment hereby authorized: (a) relating to taxes, may do so according to any bill, statement or estimate, without inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or claim thereof; (b) for the discharge, compromise or settlement of any lien, may do so without inquiry as to the validity or amount of any claim for lien which may be asserted; or (c) in connection with the completion of construction of Improvements to the Premises or the repair, maintenance or reconstruction of Improvements to the Premises or payment of operating costs thereof, may do so in such amounts and to such persons as City may reasonably deem appropriate. Nothing contained herein shall be construed to require the City to advance monies for any purpose. City shall not in any event be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant or any other occupant of the Premises or any part thereof, by reason of making repairs or the performance of any work on the Premises or on account of bringing materials, supplies and equipment into or through the Premises during the course thereof and the obligations of Tenant under this Lease shall not thereby be affected in any manner. In doing so, however, City shall use reasonable efforts not to interfere with Tenant's operations.

Section 12.07 – Tenant's Right to Perform City's Obligations. In the event that the City fails to perform any of its obligations under Section 7.08 to remediate Preexisting Environmental Conditions or Section 6.01 with respect to maintenance, the Tenant may, but is not obligated to, upon prior written notice to the City, and without waiving or releasing the City from any of its obligations hereunder, make any perform any other obligation in such manner and to such extent as Tenant may deem desirable. All sums so paid and all liabilities so incurred by the Tenant, together with interest thereon at the lesser of the then current Default Rate or the highest interest rate permitted by law, shall be immediately due and payable and may be offset against the Rent payable by the Tenant hereunder.

Section 12.08 - Attorneys' Fees and Expenses. In the event Tenant defaults under this Agreement and City employs attorneys or incurs other expenses for the collection of Rent or any other amounts due hereunder, or for the enforcement or performance or observance of any obligation or agreement on the part of Tenant herein contained, Tenant shall, on demand, pay to City the reasonable fees and expenses of such attorneys and any such other reasonable expenses incurred by City as a result of such default.

ARTICLE XIII - TRANSFERS

Section 13.01 - Tenant's Right to Transfer.

A. Transfers Generally. Tenant covenants that it will not assign, sublet, transfer,

convey, sell, mortgage, pledge, or encumber (any of the foregoing events being referred to as a "Transfer") the Premises or any part thereof, or any rights of Tenant hereunder or any interest of Tenant in this Agreement, or effect any sale of Tenant stock that may have the effect of a Transfer, nor will Tenant allow the use of such Premises hereunder by any other person, except as otherwise provided in Article II of this Agreement, without in each instance having first obtained the prior written consent of City as set forth below. Transfers of interest in the Tenant by devise or descent do not require the Commissioner's consent, however, the Commissioner shall be notified of any such transfer within thirty (30) days of such transfer. Where consent by the City may be granted by the Commissioner, the City agrees such consent will not be withheld or delayed unreasonably.

B. **Transfer to an Affiliate.** Transfers of this Agreement, in whole or in part, to an Affiliate of Tenant are subject to consent of the Commissioner. The Commissioner will not withhold his consent to such Transfer provided that: (i) the proposed transferee is in compliance with all of the legal requirements of this Agreement, (ii) the proposed transferee demonstrates to the Commissioner's satisfaction that it is sufficiently financially responsible, experienced and capable to perform those obligations of Tenant under this Agreement that Tenant seeks to Transfer, (iii) the proposed transferee assumes all of Tenant's obligations under this Agreement that Tenant seeks to Transfer, (iv) in the Commissioner's sole opinion, the Transfer will not have a material adverse effect upon the Airport, (v) no event of default then exists, and (vi) the transferee executes the City's Economic Disclosure Statement and Affidavit.

C. **City Consent.** Except where the Transfer is to an Affiliate, the consent of the City Council on behalf of City shall be required for any Transfer of (i) all of the Premises, (ii) all rights of Tenant hereunder, or (iii) all of Tenant's interest in this Agreement. The consent of the Commissioner on behalf of City shall be required for any other Transfer. Consent by City to any type of Transfer described in this Article or elsewhere in this Agreement shall not in any way be construed to relieve Tenant from obtaining further authorization from City for any subsequent Transfer of any nature whatsoever. In determining whether or not to consent to a Transfer, City will take into account those factors (i) through (vi) set forth in the immediately preceding paragraph and, without limitation, the promotion of a competitive environment at the Airport in light of the then-existing circumstances, the proposed use of the Premises by any transferee, the balanced utilization of the Airport facilities, operational considerations relating to the characteristics of the proposed transferee, the financial condition of the proposed transferee, and the impact on City's ability to exercise control over the Airport.

D. **Tenant to Remain Primarily Liable.** Notwithstanding any Transfer, with or without City consent, Tenant shall remain fully liable for the payment of all of its fees and fully responsible for the performance of all of its other obligations hereunder.

E. **Request for City Consent.** Any and all requests by Tenant for consent to a Transfer shall be made in writing by certified mail to City and shall include copies of the proposed documents of Transfer. Said documents of Transfer shall completely disclose any and all

considerations made or to be made to Tenant for said Transfer.

F. **City's Right to Collect from Transferee.** City may collect Rent and other sums to be paid from any assignee, sublessee, or other transferee of Tenant, and in such event shall apply the net amount collected to the Rent and other sums payable by Tenant hereunder without such action by City releasing Tenant from this Agreement or any of its obligations hereunder. If any Transfer requiring City consent occurs without such consent and City collects Rent or other sums payable by Tenant from the transferee and applies the net amount collected in the manner described in the preceding sentence, such actions by City shall not be deemed to be consent to the Transfer.

G. **Transfers Without City Consent Void.** Any Transfer without the written consent of the City as provided for herein shall be void and of no effect.

Section 13.02 - City's Right to Transfer. The City reserves the right to transfer all or any part of its interests hereunder, including but not limited to the assignment of this Agreement in its entirety to a private operator of the Airport.

ARTICLE XIV - NOTICE

Any notices or other communications pertaining to this Agreement shall be in writing and shall be deemed to have been duly given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices shall be deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, three days after deposit in the U.S. mails, or otherwise upon refusal of receipt. All notices or communications intended for Tenant shall be addressed to:

O'Hare Perishables Center, Inc.
181 W. Madison; Ste. 4700
Chicago, Illinois 60602
Attn: Samuel Sax

All notices or communications intended for the City shall be addressed to:

Commissioner, Chicago Department of Aviation
City of Chicago
O'Hare International Airport
10510 Zemke Road
Chicago, Illinois 60666

with a copy to: City Comptroller
City of Chicago

Room 501 City Hall
121 North LaSalle Street
Chicago, Illinois 60602

and with a copy to: Corporation Counsel
Department of Law
City of Chicago
Room 610
121 North LaSalle Street
Chicago, Illinois 60602
Attention: Deputy Corporation Counsel – Aviation

Either party may change its address or the individual to whom such notices are to be given by a notice given to the other party in the manner set forth above.

ARTICLE XV - MISCELLANEOUS

Section 15.01 - Entire Agreement. This Agreement, and the exhibits attached hereto and incorporated hereby, shall constitute the entire agreement between the parties and no other warranties, inducements, considerations, promises, or interpretations shall be implied or impressed upon this Agreement that are not expressly addressed herein and therein.

Section 15.02 - Counterparts. This Agreement is comprised of several identical counterparts, each to be fully executed by the parties and each to be deemed an original having identical legal effect.

Section 15.03 - Amendments. No changes, amendments, modifications, cancellation, or discharge of this Agreement, or any part thereof, shall be valid unless in writing and signed by the parties hereto, or their respective successors and assigns.

Section 15.04 - No Partnership or Agency. Nothing herein contained as intended or shall be construed to in any respect create or establish any relationship other than that of lessor and lessee, and nothing herein shall be construed to establish any partnership, joint venture, or association or to make Tenant the general representative or agent of City for any purpose whatsoever.

Section 15.05 - Representatives. City and Tenant shall each designate a representative who, except as otherwise provided hereunder, shall be authorized to act for City and Tenant, respectively, with respect to any actions to be taken by either of them under the terms of this Agreement. Except as specifically set forth herein, for the purposes of actions to be taken by it or by the Commissioner, City's representative shall be the Commissioner. Tenant's representative shall be designated in a written notice delivered to City. Any party hereto may change its designated representative by notice to the other party.

Section 15.06 - Force Majeure.

A. Neither party hereto shall be liable to the other for any failure, delay, or interruption in performing its obligations hereunder due to causes or conditions beyond its control, including, without limiting the generality hereof, strikes, boycotts, picketing, slow-downs, work stoppages, or other labor actions affecting City or Tenant, their respective contractors or subcontractors, except to the extent that such failure, delay or interruption is the result of the negligence of that party; provided that nothing in this Section is intended or shall be construed to abate, postpone, or in any respect diminish Tenant's obligations to make any payments due City pursuant to this Agreement.

B. City shall be under no obligation to supply any service 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, county, or municipal law, rule, regulation, requirement, order, or directive.

C. Tenant shall not be liable for the performance of any obligation of Tenant hereunder and may terminate the lease, if such performance is prohibited or materially affected by the issuance of any order, rule, or regulation, or the taking of any action by the City, (including the City's exercise of its right to grant easements and rights of way provided in Section 2.04), the Federal Aviation Administration, the Transportation Security Administration or other government authority substantially affecting, for a period of at least sixty (60) days, Tenant's use of the Airport or the Premises, provided, however, that none of the foregoing is due to any fault of Tenant and the City shall pay Tenant's relocation costs in the same manner as provided In Section 2.03(ii) for the Tenant's rejection of Relocation Space.

Section 15.07 - Governing Law. This Agreement shall be governed in accordance with the laws of the State of Illinois. Tenant hereby irrevocably submits, and shall cause its subcontractors to submit, to the original jurisdiction of those State or Federal courts located within the County of Cook, State of Illinois, with regard to any controversy arising out of, relating to, or in any way concerning the execution or performance of this Agreement. Tenant agrees that service of process on Tenant may be made, at the option of City, either by registered or certified mail addressed to the applicable office as provided for, in this Agreement, by registered or certified mail addressed to the office actually maintained by Tenant, or by personal delivery on any officer, director, or managing or general agent of Tenant.

Section 15.08 - Consent to Service of Process and Jurisdiction. All judicial proceedings brought by Tenant with respect to this Agreement shall be brought in Cook County, Illinois, and by execution and delivery of this Agreement, Tenant accepts, for itself and in connection with its properties, generally and unconditionally, the nonexclusive jurisdiction of the aforesaid courts, and irrevocably agrees to be bound by any final judgment rendered thereby from which no appeal has been taken or is available. Tenant irrevocably waives any objection (including without limitation any objection of the laying of

venue or based on the grounds of forum nonconveniens) which it may now or hereafter have to the bringing of any action or proceeding with respect to this Agreement in the jurisdiction set forth above. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of City to bring proceedings against Tenant in the courts of any other jurisdiction.

Section 15.09 - Severability. If any provisions of this Agreement shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or of any constitution, statute, ordinance, rule of law, or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative, or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

Section 15.10 - Assigns. All of the terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors, transferees, and assigns.

Section 15.11 - Co-Operation by Parties. The parties hereby agree to use good faith in the performance of this Agreement and to co-operate with each other. City must be expressly identified as a third party beneficiary in any of Tenant's contracts for construction of Improvements or performance of Primary Commercial Support Services and must be granted a direct right of enforcement thereunder. If this Agreement is terminated for any reason, or if it expires by its own terms, Tenant shall make every reasonable effort to assure an orderly transition to another fixed base operator or provider of general aviation services, if any; orderly demobilization of its own operation; and the uninterrupted provision of fixed base operations and general aviation services. During any transition period Tenant shall otherwise comply with the reasonable requests and requirements of the Commissioner in connection with the termination or expiration of this Agreement.

ARTICLE XVI - AUTHORITY

Section 16.01 - City's Authority. This Agreement is authorized by an Ordinance passed by City of Chicago City Council on _____ (C.J.P. _____). Wherever this Agreement provides that an act is to be taken or performed, or approval or consent is to be given by City, such act may be taken or performed, or approval or consent may be given, by the Commissioner, without further action by the City Council of Chicago, as long as such act, approval or consent does not result in either (i) an extension of the Term (beyond any permitted renewals), (ii) a decrease in the Rent other than such decreases expressly provided for herein, or (iii) expansion of the Premises (beyond any permitted expansions); provided, however, that non-material changes may be made to the boundaries of the Premises to conform to a survey. The Commissioner may execute an amendment to the

Agreement provided that he or she is authorized to take or perform the act, or provide the consent or approval, giving rise to such amendment.

Section 16.02 - Tenant's Authority. Execution of this Agreement by Tenant is authorized by corporate resolution, and the Tenants of each person signing on behalf of Tenant have been made with complete and full authority to commit Tenant to all terms and conditions of this Agreement, including each and every representation, certification, and warranty contained herein, attached hereto and collectively incorporated by reference herein, or as may be required by the terms and conditions hereof.

IN WITNESS WHEREOF, City of Chicago has caused this Agreement to be executed on its behalf by its Mayor, pursuant to due authorization of the City Council of the City of Chicago, and Tenant has caused this Agreement to be executed on its behalf by its _____ and pursuant to due authorization.

CITY OF CHICAGO

Rahm Emanuel, Mayor

Recommended by:

Rosemary S. Andolino
Commissioner of the Chicago Department of Aviation

TENANT: Chicago Perishable Center, LLC.

By: _____ Attest:

Tenant: _____

By: _____

By: _____

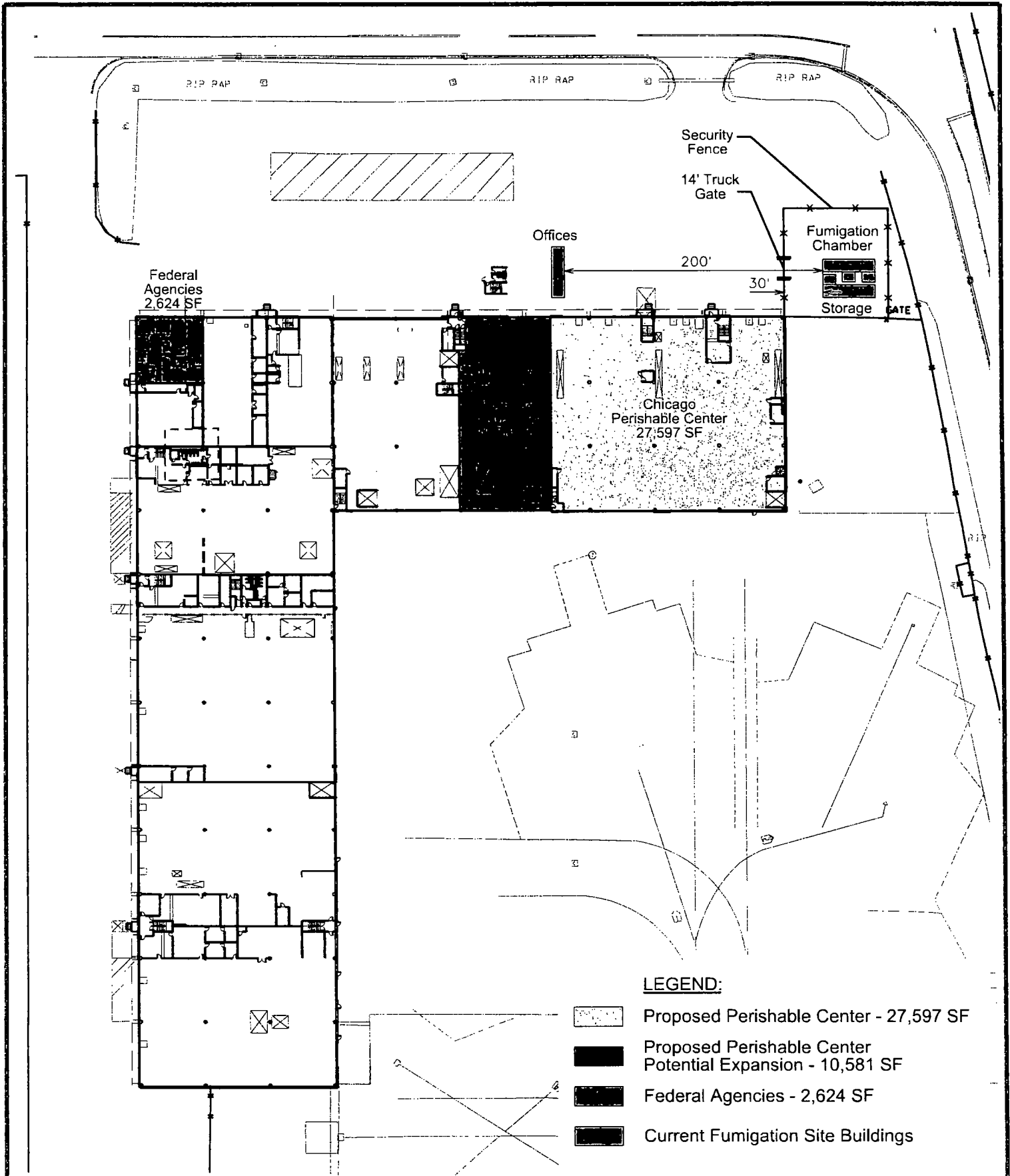
Its: _____

Date: _____

Designation of Agent for City
Clerk Service of Process

Name: _____

Address: _____



Chicago O'Hare International Airport
 Rahm Emanuel • Mayor

Chicago Department of Aviation
 Rosemarie S. Andolino • Commissioner

Real Estates

Exhibit A

Chicago Perishable Center

Date: May 22, 2013

Scale: 1"=100'



EXHIBIT B – RENT SCHEDULE AND OTHER FEES

Maintenance Rent - \$0.30/SF

Base Rent - \$3.00/SF

Percentage Rent – 4% of Gross Revenues or Base Rent, whichever is greater

Common Area Maintenance - \$0.22/SF

Security Deposit – Three (3) months of Base Rent

Exhibit C

Development Plan- Requirements for Tenant's Work

(To be completed after the Ordinance and Lease are signed)

Exhibit D

INSURANCE REQUIREMENTS

Chicago Department of Aviation
Perishable Goods Center at
Chicago O'Hare Airport

The Tenant agrees to provide and maintain at Tenant's own expense or cause to be maintained, during the term of the Lease and on any earlier date the Tenant is permitted to enter onto the Leased Premises, and until each and every obligation of the Tenant contained in the Lease has been fully performed, (including any time period following the Termination Date if the Tenant is required to return to the Leased Premises and perform any additional work), the insurance coverages and requirements specified below, insuring all operations under this Lease.

A. **INSURANCE TO BE PROVIDED**

1) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Lease, and Employers Liability coverage with limits of not less than \$ 1,000,000 each accident, illness or disease.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$10,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations, independent contractors, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly, indirectly from or in connection with this Lease.

3) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Tenant must provide Automobile Liability Insurance with limits of not less than \$10,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

4) Property

The Tenant must maintain All Risk Property Insurance for the leased space including improvements and betterments, in the amount of their full replacement cost. Coverage extensions must include Business Income and Extra Expense. The City is to be named as an additional insured and a loss payee, as its interest may appear. Tenant is responsible for all loss or damage to its personal property including equipment, fixtures and contents.

5) All Risk Blanket Builders Risk

When Tenant undertakes any construction, including improvements, betterments and/or

repairs. Tenant must provide All Risk Blanket Builders Risk Insurance to cover materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility/Leased Space Property. The City of Chicago must be named as loss payee as its interests may appear.

B. ADDITIONAL REQUIREMENTS

Under no circumstances must Tenant or any Subcontractor actually begin Work (or continue Work, in the case of renewal) or conduct Concession Operations under this Agreement without procuring the required insurance and providing evidence of it to the City.

The Tenant must furnish the City of Chicago, Department of Aviation, Real Estate Division, 10510 W. Zemke Road, 60666 original Certificates of Insurance, or such similar evidence, to be in force on the date of this Lease, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Lease. The Tenant must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to Execution of Lease. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Lease have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Lease. The failure of the City to obtain certificates or other insurance evidence from Tenant is not a waiver by the City of any requirements for the Tenant to obtain and maintain the specified coverages. The Tenant shall advise all insurers of the Lease provisions regarding insurance. Non-conforming insurance does not relieve Tenant of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Lease, and the City retains the right to stop work until proper evidence of insurance is provided, or the Lease may be terminated.

The Tenant must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Tenant.

The Tenant hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Tenant in no way limit the Tenant's liabilities and responsibilities specified within the Lease or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Tenant under the Lease.

The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Lease or any limitation placed on the indemnity in this Lease given as a matter of law.

If Tenant is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Tenant must require all subcontractors to provide the insurance required herein, or Tenant may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Tenant unless otherwise specified in this Lease.

If Tenant or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Agreement to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

Aviation Concessions Lease

EXHIBIT E – SHELL AND CORE OBLIGATIONS

Prior to DBO, the City shall ensure that the roof over the Leased Space is in good repair and without any leaks. In addition, the City will ensure that the heating building system is in good working order. Further the City will ensure that access to the mezzanine level in the Leased Space is secured so as to prevent any access. Finally, the City will work with Tenant and at the City's expense to stripe an agreed number of parking spaces in front of the Leased Space of the Premises.

SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- | | |
|---|---|
| <input type="checkbox"/> Person | <input checked="" type="checkbox"/> Limited liability company |
| <input type="checkbox"/> Publicly registered business corporation | <input type="checkbox"/> Limited liability partnership |
| <input type="checkbox"/> Privately held business corporation | <input type="checkbox"/> Joint venture |
| <input type="checkbox"/> Sole proprietorship | <input type="checkbox"/> Not-for-profit corporation |
| <input type="checkbox"/> General partnership | (Is the not-for-profit corporation also a 501(c)(3))? |
| <input type="checkbox"/> Limited partnership | <input type="checkbox"/> Yes <input type="checkbox"/> No |
| <input type="checkbox"/> Trust | <input type="checkbox"/> Other (please specify) |

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity? n/a

- Yes No N/A

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.

NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
O'Hare Perisables Center, Inc.	Manager
Samuel Wm. Sax	Chairman
Adela Cepeda	Vice Chairman
Shlomo Danieli	Founding Director
James Richards	Founding Director

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
Samuel Wm. Sax	181 West Madison, Suite 4700, Chicago, IL 60602	51%
Adela Cepeda	150 North Wacker, Suite 2160, Chicago, IL 60606	10%
Shlomo Danieli	287 Crestwood Village, Northfield, IL 60093	19-1/2%
James Richards	620 Supreme Drive, Bensenville, IL 60106	19-1/2%

SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

Yes No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
Elvin E. Charity	20 N. Clark, Suite 1150, Chicago, IL 60602	Attorney	\$20,000-\$25,000 (estimated)

(Add sheets if necessary)

Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

SECTION V -- CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes No No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes No

B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

n/a

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

8. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the execution date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

Samuel Wm. Sax, Commissioner, Public Building Commission of Chicago
Adela Cepeda, Commissioner, Chicago Housing Authority

9. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$20 per recipient (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

is is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

n/a

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes No

NOTE: If you checked "Yes" to Item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

Yes No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name	Business Address	Nature of Interest
n/a		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to

comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

X 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

n/a

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. N/A

Is the Disclosing Party the Applicant?

Yes

No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes

No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes

No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes

No

If you checked "No" to question 1. or 2. above, please provide an explanation:

**SECTION VII -- ACKNOWLEDGMENTS, CONTRACT INCORPORATION,
COMPLIANCE, PENALTIES, DISCLOSURE**

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available on line at www.cityofchicago.org/Ethics, and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

Chicago Perishable Center LLC

(Print or type name of Disclosing Party)

By: Samuel W. Sax

(Sign here)

Samuel Wm. Sax

(Print or type name of person signing)

Chairman

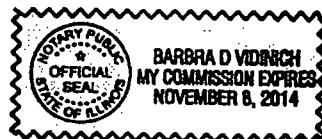
(Print or type title of person signing)

Signed and sworn to before me on (date) May 28, 2013,
at Cook County, Illinois (state).

Barbra D Vidnich

Notary Public.

Commission expires: 11.8.2014



**CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
APPENDIX A**

FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

Yes

No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.

**CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT
AND AFFIDAVIT**

SECTION I -- GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting this EDS. Include d/b/a/ if applicable:

O'Hare Perishables Center, Inc.

Check ONE of the following three boxes:

Indicate whether the Disclosing Party submitting this EDS is:

1. the Applicant

OR

2. a legal entity holding a direct or indirect interest in the Applicant. State the legal name of the Applicant in which the Disclosing Party holds an interest: _____

OR

3. a legal entity with a right of control (see Section II.B.1.) State the legal name of the entity in which the Disclosing Party holds a right of control: Chicago Perishable Center LLC

B. Business address of the Disclosing Party: 181 West Madison, Suite 4700

Chicago, IL 60602

C. Telephone: (312) 327-3180 Fax: (312) 327-3174 Email: ssax@frichicago.com

D. Name of contact person: Samuel Wm. Sax

E. Federal Employer Identification No. (if you have one): Applied for

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains. (Include project number and location of property, if applicable):

Lease for 510 Cargo Road, Chicago, IL (known as Lynx Bldg)

G. Which City agency or department is requesting this EDS? Chicago Department of Aviations

If the Matter is a contract being handled by the City's Department of Procurement Services, please complete the following:

Specification # _____ and Contract # _____

SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

- Person
 - Publicly registered business corporation
 - Privately held business corporation
 - Sole proprietorship
 - General partnership
 - Limited partnership
 - Trust
 - Limited liability company
 - Limited liability partnership
 - Joint venture
 - Not-for-profit corporation
- (Is the not-for-profit corporation also a 501(c)(3))?
- Yes No
- Other (please specify)
-

2. For legal entities, the state (or foreign country) of incorporation or organization, if applicable:

Illinois

3. For legal entities not organized in the State of Illinois: Has the organization registered to do business in the State of Illinois as a foreign entity? n/a

- Yes No N/A

B. IF THE DISCLOSING PARTY IS A LEGAL ENTITY:

1. List below the full names and titles of all executive officers and all directors of the entity.

NOTE: For not-for-profit corporations, also list below all members, if any, which are legal entities. If there are no such members, write "no members." For trusts, estates or other similar entities, list below the legal titleholder(s).

If the entity is a general partnership, limited partnership, limited liability company, limited liability partnership or joint venture, list below the name and title of each general partner, managing member, manager or any other person or entity that controls the day-to-day management of the Disclosing Party.

NOTE: Each legal entity listed below must submit an EDS on its own behalf.

Name	Title
<u>Samuel Wm. Sax</u>	<u>President & CEO</u>

2. Please provide the following information concerning each person or entity having a direct or indirect beneficial interest (including ownership) in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture,

interest of a member or manager in a limited liability company, or interest of a beneficiary of a trust, estate or other similar entity. If none, state "None." NOTE: Pursuant to Section 2-154-030 of the Municipal Code of Chicago ("Municipal Code"), the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

Name	Business Address	Percentage Interest in the Disclosing Party
Samuel Wm. Sax	181 West Madison, Suite 4700, Chicago, IL 60602	100%

SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

Yes No

If yes, please identify below the name(s) of such City elected official(s) and describe such relationship(s):

SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

Name (indicate whether retained or anticipated to be retained)	Business Address	Relationship to Disclosing Party (subcontractor, attorney, lobbyist, etc.)	Fees (indicate whether paid or estimated.) NOTE: "hourly rate" or "t.b.d." is not an acceptable response.
--	------------------	--	---

(Add sheets if necessary)

Check here if the Disclosing Party has not retained, nor expects to retain, any such persons or entities.

SECTION V -- CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage on any child support obligations by any Illinois court of competent jurisdiction?

Yes No No person directly or indirectly owns 10% or more of the Disclosing Party.

If "Yes," has the person entered into a court-approved agreement for payment of all support owed and is the person in compliance with that agreement?

Yes No

B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows: (i) neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and (ii) the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City. NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
- b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
- c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
- d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
- e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted by the City or by the federal government, any state, or any other unit of local government.

3. The certifications in subparts 3, 4 and 5 concern:

- the Disclosing Party;
- any "Contractor" (meaning any contractor or subcontractor used by the Disclosing Party in connection with the Matter, including but not limited to all persons or legal entities disclosed under Section IV, "Disclosure of Subcontractors and Other Retained Parties");
- any "Affiliated Entity" (meaning a person or entity that, directly or indirectly: controls the Disclosing Party, is controlled by the Disclosing Party, or is, with the Disclosing Party, under common control of another person or entity. Indicia of control include, without limitation: interlocking management or ownership; identity of interests among family members, shared facilities and equipment; common use of employees; or organization of a business entity following the ineligibility of a business entity to do business with federal or state or local government, including the City, using substantially the same management, ownership, or principals as the ineligible entity); with respect to Contractors, the term Affiliated Entity means a person or entity that directly or indirectly controls the Contractor, is controlled by it, or, with the Contractor, is under common control of another person or entity;
- any responsible official of the Disclosing Party, any Contractor or any Affiliated Entity or any other official, agent or employee of the Disclosing Party, any Contractor or any Affiliated Entity, acting pursuant to the direction or authorization of a responsible official of the Disclosing Party, any Contractor or any Affiliated Entity (collectively "Agents").

Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

- a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
- b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
- c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
- d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of (1) bid-rigging in violation of 720 ILCS 5/33E-3; (2) bid-rotating in violation of 720 ILCS 5/33E-4; or (3) any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), 2-56 (Inspector General) and 2-156 (Governmental Ethics) of the Municipal Code.

7. If the Disclosing Party is unable to certify to any of the above statements in this Part B (Further Certifications), the Disclosing Party must explain below:

n/a

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

8. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the execution date of this EDS, an employee, or elected or appointed official, of the City of Chicago (if none, indicate with "N/A" or "none").

Samuel Wm. Sax, Commissioner, Public Building Commission of Chicago

9. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than \$20 per recipient (if none, indicate with "N/A" or "none"). As to any gift listed below, please also list the name of the City recipient.

None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

1. The Disclosing Party certifies that the Disclosing Party (check one)

is is not

a "financial institution" as defined in Section 2-32-455(b) of the Municipal Code.

2. If the Disclosing Party IS a financial institution, then the Disclosing Party pledges:

"We are not and will not become a predatory lender as defined in Chapter 2-32 of the Municipal Code. We further pledge that none of our affiliates is, and none of them will become, a predatory lender as defined in Chapter 2-32 of the Municipal Code. We understand that becoming a predatory lender or becoming an affiliate of a predatory lender may result in the loss of the privilege of doing business with the City."

If the Disclosing Party is unable to make this pledge because it or any of its affiliates (as defined in Section 2-32-455(b) of the Municipal Code) is a predatory lender within the meaning of Chapter 2-32 of the Municipal Code, explain here (attach additional pages if necessary):

n/a

If the letters "NA," the word "None," or no response appears on the lines above, it will be conclusively presumed that the Disclosing Party certified to the above statements.

D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

Yes No

NOTE: If you checked "Yes" to Item D.1., proceed to Items D.2. and D.3. If you checked "No" to Item D.1., proceed to Part E.

2. Unless sold pursuant to a process of competitive bidding, or otherwise permitted, no City elected official or employee shall have a financial interest in his or her own name or in the name of any other person or entity in the purchase of any property that (i) belongs to the City, or (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the City (collectively, "City Property Sale"). Compensation for property taken pursuant to the City's eminent domain power does not constitute a financial interest within the meaning of this Part D.

Does the Matter involve a City Property Sale?

Yes No

3. If you checked "Yes" to Item D.1., provide the names and business addresses of the City officials or employees having such interest and identify the nature of such interest:

Name	Business Address	Nature of Interest
n/a		

4. The Disclosing Party further certifies that no prohibited financial interest in the Matter will be acquired by any City official or employee.

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

Please check either 1. or 2. below. If the Disclosing Party checks 2., the Disclosing Party must disclose below or in an attachment to this EDS all information required by paragraph 2. Failure to

comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

X 1. The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

____ 2. The Disclosing Party verifies that, as a result of conducting the search in step 1 above, the Disclosing Party has found records of investments or profits from slavery or slaveholder insurance policies. The Disclosing Party verifies that the following constitutes full disclosure of all such records, including the names of any and all slaves or slaveholders described in those records:

SECTION VI -- CERTIFICATIONS FOR FEDERALLY FUNDED MATTERS

NOTE: If the Matter is federally funded, complete this Section VI. If the Matter is not federally funded, proceed to Section VII. For purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

A. CERTIFICATION REGARDING LOBBYING

1. List below the names of all persons or entities registered under the federal Lobbying Disclosure Act of 1995 who have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter: (Add sheets if necessary):

n/a

(If no explanation appears or begins on the lines above, or if the letters "NA" or if the word "None" appear, it will be conclusively presumed that the Disclosing Party means that NO persons or entities registered under the Lobbying Disclosure Act of 1995 have made lobbying contacts on behalf of the Disclosing Party with respect to the Matter.)

2. The Disclosing Party has not spent and will not expend any federally appropriated funds to pay any person or entity listed in Paragraph A.1. above for his or her lobbying activities or to pay any person or entity to influence or attempt to influence an officer or employee of any agency, as defined by applicable federal law, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the award of any federally funded contract, making any federally funded grant or loan, entering into any cooperative agreement, or to extend, continue, renew, amend, or modify any federally funded contract, grant, loan, or cooperative agreement.

3. The Disclosing Party will submit an updated certification at the end of each calendar quarter in which there occurs any event that materially affects the accuracy of the statements and information set forth in paragraphs A.1. and A.2. above.

4. The Disclosing Party certifies that either: (i) it is not an organization described in section 501(c)(4) of the Internal Revenue Code of 1986; or (ii) it is an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 but has not engaged and will not engage in "Lobbying Activities".

5. If the Disclosing Party is the Applicant, the Disclosing Party must obtain certifications equal in form and substance to paragraphs A.1. through A.4. above from all subcontractors before it awards any subcontract and the Disclosing Party must maintain all such subcontractors' certifications for the duration of the Matter and must make such certifications promptly available to the City upon request.

B. CERTIFICATION REGARDING EQUAL EMPLOYMENT OPPORTUNITY

If the Matter is federally funded, federal regulations require the Applicant and all proposed subcontractors to submit the following information with their bids or in writing at the outset of negotiations. N/A

Is the Disclosing Party the Applicant?

Yes

No

If "Yes," answer the three questions below:

1. Have you developed and do you have on file affirmative action programs pursuant to applicable federal regulations? (See 41 CFR Part 60-2.)

Yes

No

2. Have you filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance Programs, or the Equal Employment Opportunity Commission all reports due under the applicable filing requirements?

Yes

No

3. Have you participated in any previous contracts or subcontracts subject to the equal opportunity clause?

Yes

No

If you checked "No" to question 1. or 2. above, please provide an explanation:

**SECTION VII -- ACKNOWLEDGMENTS, CONTRACT INCORPORATION,
COMPLIANCE, PENALTIES, DISCLOSURE**

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. The full text of these ordinances and a training program is available on line at www.cityofchicago.org/Ethics, and may also be obtained from the City's Board of Ethics, 740 N.

Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. **NOTE:** With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing **PERMANENT INELIGIBILITY** for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U. S. General Services Administration.

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

NOTE: If the Disclosing Party cannot certify as to any of the items in F.1., F.2. or F.3. above, an explanatory statement must be attached to this EDS.

CERTIFICATION

Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS and Appendix A (if applicable) on behalf of the Disclosing Party, and (2) warrants that all certifications and statements contained in this EDS and Appendix A (if applicable) are true, accurate and complete as of the date furnished to the City.

O'Hare Perishables Center, Inc.
(Print or type name of Disclosing Party)

By: Samuel W. Sax
(Sign here)

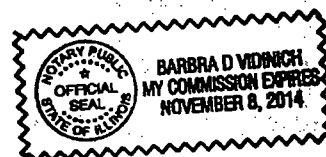
Samuel Wm. Sax
(Print or type name of person signing)

President and CEO
(Print or type title of person signing)

Signed and sworn to before me on (date) May 28, 2013
at Cook County, Illinois (state).

Barbra D Vidnich Notary Public.

Commission expires: 11.8.2014



**CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT AND AFFIDAVIT
APPENDIX A**

FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS

This Appendix is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all executive officers of the Disclosing Party listed in Section II.B.1.a., if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

Yes

No

If yes, please identify below (1) the name and title of such person, (2) the name of the legal entity to which such person is connected; (3) the name and title of the elected city official or department head to whom such person has a familial relationship, and (4) the precise nature of such familial relationship.
