

Exhibit C

Retail Concession Lease and License Agreement Between the City of Chicago
(Department of Aviation) and "Nuts on Clark" Union Station, Inc.

"Nuts on Clark - Union Station Agreement"

1 **RETAIL CONCESSION LEASE AND LICENSE AGREEMENT**

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4 **BETWEEN**

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6
7 **THE CITY OF CHICAGO**
8 **(DEPARTMENT OF AVIATION)**
9

10
11 **AND**

12
13 **"Nuts on Clark" Union Station, Inc**
14

15
16 **AT**
17 **CHICAGO O'HARE INTERNATIONAL AIRPORT**
18



33 **RICHARD M. DALEY**
34 **MAYOR**

35
36 **NURIA I. FERNANDEZ**
37 **COMMISSIONER**
38

RETAIL CONCESSION LEASE AGREEMENT
NUTS ON CLARK UNION STATION, INC

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SIGNATURE PAGE

SIGNED:

CITY OF CHICAGO

By: Richard M. Daley ^{by MSH}
Mayor

RECOMMENDED BY: Kevin J. Leonard
Commissioner of Aviation

APPROVED AS TO FORM AND LEGALITY:

Dave Bag
Assistant Corporation Counsel

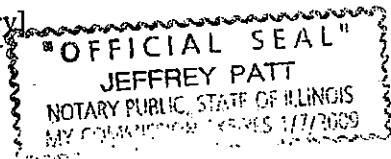
Nuts on Clark Union Station, Inc. (TENANT)

By: Estelle K. Kennedy

Its: PRESIDENT
[Title]

Date: July 13, 2007

[Notary]



Jeffrey Patt

Signature Page

RETAIL CONCESSION LEASE AND LICENSE AGREEMENT

This Retail Concession Lease and License Agreement ("**Agreement**") is entered into at Chicago, Illinois, as of August 22, 2007 ("**Effective Date**"). The Agreement is by and between Nuts on Clark Union Station, Inc an Illinois corporation ("**Tenant**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Department of Aviation.

BACKGROUND

The City owns and operates Chicago O'Hare International Airport ("**Airport**"), which includes an international terminal, three domestic terminals, and a transportation center (collectively, the "**Terminals**"). The City has determined that certain portions of the Terminals will be used for food, beverage and retail concessions designed to serve the needs of Airport patrons and employees and desires to operate its concession program at the Terminals to strive to meet the needs and desires of Airport users by providing first-class food, beverage, retail and service facilities.

The City issued a Request for Proposals ("**RFP**") for retail concessions at the Airport and Tenant responded with a proposal to operate a retail concession featuring popcorn, nuts, snacks and non-alcoholic beverages. The City desires to grant Tenant, and Tenant desires to accept, a license to operate such a retail concession at the Airport and a lease to operate the retail concession at the Terminal locations identified in this Agreement under the terms and conditions of this Agreement.

The 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 of Chicago, and that the City's right to supervise performance under this Agreement by Tenant is a valuable right incapable of quantification.

NOW, THEREFORE, the City and Tenant agree as follows:

ARTICLE 1 TERM SHEET

The summary of key terms and conditions of this Agreement, as approved by the City Council of the City of Chicago on April 11, 2007, is attached to the Agreement as Exhibit 1 and is incorporated here by reference ("**Term Sheet**"). There may be differences between the defined words and phrases used in this Agreement and the words and phrases used in the Term sheet. In the event of any substantive inconsistency between the Term Sheet and the terms and conditions of this Agreement, the Term Sheet will govern. Tenant must promptly notify the City if Tenant believes that there is such a substantive inconsistency.

ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS

2.1 Incorporation of Background. The Background set forth above is incorporated by reference as if fully set forth here.

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Term Sheet
Exhibit 2	Leased Space
Exhibit 3	Improvements, Improvement Costs, and Completion Dates
Exhibit 4	City's Shell and Core Obligations
Exhibit 5	Merchandise and Price List
Exhibit 6	Airport Concessions Program Handbook
Exhibit 7	Form of Letter of Credit
Exhibit 8	Insurance Requirements
Exhibit 9	ACDBE Special Conditions and Related Forms
Exhibit 10	Economic Disclosure Statement(s) and Affidavit(s)

ARTICLE 3 DEFINITIONS

3.1 Interpretation and Conventions.

A. The term "**include**," in all of its forms, means "include, without limitation," unless the context clearly states otherwise.

B. The term "**person**" includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

C. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies of this Agreement are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect its meaning, construction or effect.

D. Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders. Wherever an article, section, subsection, paragraph, sentence, exhibit, appendix, or attachment is referred to, the reference is to this Agreement, unless the context clearly indicates otherwise.

E. Where the approval or consent of the City is required under this Agreement, unless expressly stated otherwise, it means approval or consent of the Commissioner or the Commissioner's authorized representative as the Commissioner may designate from time to time. Where the approval

RETAIL CONCESSION LEASE AGREEMENT
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1 or consent of Tenant is required under this Agreement, it means the approval or consent of the
2 Tenant's authorized representative. To be binding on the City, all approvals or consents must be in
3 writing and signed by the appropriate party.

4 3.2 Definitions

5 In addition to terms defined elsewhere in this Agreement, the following words and phrases,
6 when capitalized, have the following meanings:

7 **"Additional Rent"** has the meaning set forth in Section 7.1.

8 **"Additional Space"** means Retail Space or Storage Space that is added to Leased Space after
9 the Effective Date pursuant to Section 5.1, but does not include Relocation Space.

10 **"Affiliate"**, except where otherwise defined, means any individual, corporation, partnership,
11 trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or
12 is owned or controlled by, or is under common ownership or control with Tenant.

13 **"Airport Concession Disadvantaged Business Enterprise" or "ACDBE"** means an entity
14 meeting the definition of airport concession disadvantaged business enterprise, as defined in U.S.
15 Department of Transportation Regulations Title 49, Code of Federal Regulations, Part 23, as
16 amended from time to time, and certified as such in accordance with those regulations.

17 **"Airport Concession Program Handbook"** means Exhibit 6, as it may be amended from
18 time to time by the Department of Aviation. Any amendment of the Airport Concession Program
19 Handbook by the Department of Aviation during the Term of this Agreement will be binding on
20 Tenant without need for amendment of this Agreement, provided that the amendment of Airport
21 Concession Program Handbook does not conflict with the other terms and conditions of this
22 Agreement.

23 **"Base Rent"** means the amount payable by Tenant on a square footage basis for use and
24 occupancy of the Leased Space as set forth in Section 7.1.

25 **"Chief Procurement Officer"** means the head of the Department of Procurement Services
26 of the City and any City officer or employee authorized to act on her behalf.

27 **"Commissioner"** means the head of the Department of Aviation of the City and any City
28 officer or employee authorized to act on her behalf.

29 **"Common Areas"** means those areas of the Terminals that are not leased, licensed, or
30 otherwise designated or made available by the Department of Aviation for exclusive or preferential
31 use by specific party or parties.

32 **"Comptroller"** means the head of the Department of Finance of the City and any City officer
33 or employee authorized to act on his behalf.

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1 **"Concession"** means Tenant's business of offering the Merchandise identified in Exhibit
2 5 for sale at retail to the public at the Airport pursuant to this Agreement.

3 **"Concession Management Representative"** means the entity retained by the City to assist
4 in overseeing Concessions, including the construction of Improvements, at the Airport.

5 **"Concessions Tenant Design and Construction Procedures Manual" or "TDCPM"**
6 means those certain design standards and policies prepared by the Department for the Concession
7 areas at the Airport, as amended by the Department from time to time:

8 **"Construction Documents"** means the drawings and specifications for the construction of
9 Improvements, approved by the Commissioner pursuant to Section 5.5.

10 **"Date of Beneficial Occupancy" or "DBO"** means, as to each Retail Space, the later to
11 occur of:

12 A. the date,

13 (i) for In-Line Sites, that is 60 days after the later to occur of (1) the date that the
14 City gives Tenant possession of the Retail Space or (2) the date that the building
15 permit for the Improvements is issued (provided that the Tenant promptly applies for,
16 and diligently pursues the issuance of, such building permit), or

17 (ii) for Kiosks, that is 45 days after the later to occur of (1) the date that the City
18 gives Tenant possession of the Retail Space or (2) the date that the building permit
19 for the Improvements is issued (provided that the Tenant promptly applies for, and
20 diligently pursues the issuance of, such building permit)

21 and

22 B. the date set forth in the Development Plan for the commencement of retail sales in
23 the applicable Retail Space.

24 Notwithstanding the foregoing, if Tenant commences retail sales in any Retail Space before the date
25 determined in accordance with the foregoing, the Date of Beneficial Occupancy for that Retail Space
26 is the date that retail sales commence. The Date of Beneficial Occupancy for any Storage Space is
27 the date that the City gives Tenant possession of the Storage Space.

28 **"Default Rate"** means 12% per annum.

29 **"Department"** means the City's Department of Aviation.

30 **"Development Plan"** means the Tenant's conceptual plan for construction of Improvements
31 and commencement of Concession operations, as set forth in Section 5.5.

32 **"Distribution Fee"** means the amount, if any, payable pursuant to Section 4.11 for the

RETAIL CONCESSION LEASE AGREEMENT
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Tenant's use of a centralized distribution and storage facility.

"Environmental Laws" means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

"Event of Default" has the meaning set forth in Article 9.

"Gross Revenues" means the total amount in dollars at the actual sales price of all receipts, whether for cash or on credit, that are derived from business conducted in, on or from the Leased Space and all mail or telephone orders received or filled at or from the Leased Space and all deposits not refunded to purchasers and all orders taken in and from the Leased Space whether or not the orders are filled elsewhere, and receipts or sales by Tenant and any other person or persons doing business in or from the Leased Space, including receipts from promotions, advertising, and income derived from retail display advertising or any other use of the Leased Space by Tenant. Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Tenant for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made in or from the Leased Space and included in Gross Revenue;
- C. bona fide transfers of merchandise to or from the Leased Space to any other stores or warehouses of Tenant;
- D. sales of Tenant's fixtures and store equipment not in the ordinary course of Tenant's business;
- E. returns to shippers, suppliers or manufacturers;
- F. bulk sales of Merchandise inventory not sold to the public and not in the ordinary

1 course of business; and

2 G. insurance proceeds received from the settlement of claims for loss of or damages to
3 Improvements, merchandise, fixtures, trade fixtures and other Tenant personal
4 property other than the proceeds of business interruption insurance.

5 A "sale" is deemed to have been consummated for purposes of this Agreement, and the entire
6 amount of the sales price must be included in Gross Revenues, at the time that: (A) the transaction
7 is initially reflected in the books or records of Tenant; or (B) Tenant receives all or any portion of
8 the sales price; or (C) the applicable goods or services are delivered to the customer, whichever
9 occurs first.

10 "Imposition" means real estate taxes, permit fees, license fees, and any other fee or charge
11 not specified in this Agreement but otherwise payable by Tenant pursuant to a statute, ordinance, or
12 regulation in order for Tenant to operate the Concession at the Airport.

13 "Improvement Costs" means the total amount paid by Tenant for categories of labor,
14 services, materials and supplies used in the design, development, installation and construction of the
15 Improvements. The minimum Improvement Costs as of the Effective Date are set forth in Exhibit
16 3. For purposes of this Agreement, Improvement Costs shall be deemed to be amortized over the
17 Term on a straight-line basis.

18 "Improvements" means the improvements to be made to the Leased Space by Tenant that
19 add or maintain value to the Leased Space, including fixtures and trade fixtures (but excluding
20 trademarked or proprietary trade fixtures) and any other enhancements of a permanent or temporary
21 nature made to the Leased Space, other than the Shell and Core, so that the Leased Space can be used
22 for Concession operations. The Improvements required as of the Effective Date are described in
23 Exhibit 3.

24 "In-Line Site" means a Retail Space, other than a Kiosk, that may be permanent or
25 temporary.

26 "Kiosk" means a Retail Space that is a non-mobile, free-standing, permanent or temporary
27 facility that is not affixed to the Terminals, whether completely free-standing or located against the
28 wall.

29 "Lease" means the lease by the City to the Tenant to use and occupy the Leased Space in
30 order to conduct and operate the Concession.

31 "Leased Space" means the total Retail Space and Storage Space leased to Tenant under this
32 Agreement, identified in Article 5 and Exhibit 2, which may be amended from time to time as space
33 may be added to, deleted from, or relocated during the Term in accordance with the provisions of
34 this Agreement. Leased Space shall be used for operation of the Concession and for no other
35 purpose unless otherwise approved in writing by the Commissioner.

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NUTS ON CLARK UNION STATION, INC

1 **"Lease Year"** means

2 A. for the initial Lease Year of this Agreement, a period beginning on the first Date of
3 Beneficial Occupancy of a Retail Space and ending on December 31 of that calendar
4 year, and

5 B. for the balance of the Term, each successive calendar year, but including only that
6 portion of the calendar year during which the Term expires or the Agreement is
7 otherwise terminated.

8 **"License"** means the privilege granted to Tenant under this Agreement to operate the
9 Concession at the Airport.

10 **"License Fee"** means the fee payable by Tenant for the License, equal to the greater of the
11 "Percentage Fee" or "Minimum Annual Guarantee", as set forth in Section 7.1.

12 **"Marketing Fee"** means the Tenant's contribution for promotions at the Airport, as set forth
13 in Section 4.10.B.

14 **"Merchandise"** means the merchandise that Tenant is permitted to sell in its Retail Space
15 and maintain in inventory in its Storage Space under the terms of this Agreement, as set forth by
16 category or item in Exhibit 5. As set forth in Article 4, Tenant was selected by the City specifically
17 to sell the Merchandise identified in Exhibit 5 and is not permitted to sell any goods or services not
18 identified in Exhibit 5 or conduct any other business from the Leased Space unless otherwise agreed
19 in writing by the Commissioner.

20 **"Relocation Space"** means space to which Tenant must relocate a Retail Space or Storage
21 Space at the request of the Commissioner after the Effective Date pursuant to Section 5.1.

22 **"Rent"** means all amounts payable by Tenant in connection with this Agreement, including
23 but not limited to Base Rent, License Fees, Additional Rent and any liquidated damages specified
24 in the Agreement for non-compliance with requirements for Concession operations.

25 **"Retail Space"** means a Leased Space used by Tenant for the sale at retail of Merchandise,
26 including any Additional Space or Relocation Space used for that purpose.

27 **"Shell and Core"** means those improvements to the Leased Space to be completed by the
28 City as specified in Exhibit 4 and, with respect to Additional Space or Relocation Space, as may be
29 agreed in writing by the Commissioner.

30 **"Storage Space"** means a Leased Space used by Tenant for storage of Merchandise
31 inventory to support a Retail Space. No Merchandise may be sold to the public from Storage Space.

32 **"Subcontractor"** means all entities providing services and materials to Tenant necessary
33 for its Concession operations or for the construction, repair, and maintenance of the Leased Space

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1 and Improvements. The term "Subcontractor" also includes subconsultants of any tier,
2 subcontractors of any tier, suppliers and materialmen, whether or not in privity with Tenant.

3 "Subcontracts" means all oral or written agreements with Subcontractors.

4 "Term" has the meaning set forth in Section 6.1.

5 "Use Agreements" means those certain airport use and lease agreements between the City
6 and the airlines operating out of the Airport regarding the use and operation of the Airport, as
7 amended or executed from time to time.

8 "Value Price" has the meaning set forth in Section 4.3.

9 "Work" means everything necessary for the design, engineering, construction and
10 installation of the Improvements; when referring to restoration of Improvements after Major
11 Damage, it means everything necessary for the replacement, repair, rebuilding, or restoration of the
12 Improvements.

13
14 **ARTICLE 4 LICENSE, LEASE AND TENANT'S OPERATIONS**

15 4.1 Concession License and Lease. This Agreement (and the Lease and License granted
16 under it) supersede, cancel and terminate any existing agreements or understandings between the
17 parties and relating to the subject matter of this Agreement. The City grants Tenant a License to
18 operate a Concession and a Lease to operate the Concession from the Leased Space. Tenant accepts
19 the License and Lease from the City and assumes the duties of Tenant provided in this Agreement
20 and in the Airport Concession Program Handbook. Tenant understands and agrees that both its
21 License to operate a Concession and its right to occupy the Leased Space will terminate upon the
22 expiration or earlier termination of this Agreement. If Tenant complies with the terms of this
23 Agreement, Tenant will have the right of ingress to and egress from the Leased Space, for Tenant,
24 its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject, however,
25 to all statutes, ordinances, rules and regulations from time to time enacted or established by the City,
26 the FAA, the TSA or any other governmental agency or authority having jurisdiction. Tenant must
27 not conduct its Concession operations in a manner that, in the judgment of the Commissioner:

28 A. interferes or might interfere with the reasonable use by others of Common Areas or
29 the leased or licensed space of other tenants or licensees at the Airport;

30 B. hinders or might hinder police, fire fighting or other emergency personnel in the
31 discharge of their duties;

32 C. would, or would be likely to, constitute a hazardous condition at the Airport;

33 D. would, or would be likely to, increase the premiums for insurance policies maintained

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1 by the City, unless the operations are not otherwise prohibited under this Agreement and Tenant pays
2 the increase in insurance premiums occasioned by the operations; or

3 E. would involve any illegal purposes.

4 4.2 No subleases, assignments or other uses. Tenant understands and agrees that the
5 Lease and the License granted under this Agreement are interdependent and that the locations of the
6 Retail Spaces were determined by the City so that the Concession operated by Tenant is an element
7 of an overall concession program and, as such, complements and does not conflict with other
8 concessions in the vicinity of the Retail Spaces. Accordingly, Tenant acknowledges: that the
9 principal purpose of this Agreement is to provide Tenant a License to operate its Concession,
10 without right of sublease or assignment, from the Leased Space and that any attempted sublease,
11 assignment or other use of the Leased Space without the written consent of the City in accordance
12 with the terms of this Agreement is absolutely prohibited and is an Event of Default.

13 4.3 Merchandise and Value Pricing.

14 A. Exhibit 5 to this Agreement constitutes the listing, by general category or specific
15 item, of all Merchandise that Tenant is allowed to sell from each Retail Space and the prices to be
16 charged to the public. Those items of Merchandise that Exhibit 5 indicates are mandatory, if any,
17 must be offered for sale to the public by the Tenant as a part of the Airport's overall concession
18 program. If Exhibit 5 is stated in general terms, upon request, Tenant must promptly provide the
19 Commissioner with a complete list of all Merchandise and prices. The City's execution of this
20 Agreement constitutes its approval of the sale of the products, services, and pricing as reflected on
21 Exhibit 5 on the Effective Date. Any changes to Exhibit 5 are subject to the Commissioner's prior
22 written approval.

23 B. Tenant must stock a sufficient amount of each item comprising its Merchandise
24 within the Retail Space so as to maximize Gross Revenues, subject to and consistent with Tenant's
25 and the City's desire to accommodate the convenience and needs of the Airport's patrons. The
26 Merchandise must be new, fresh and of top quality. Tenant must store Merchandise inventory in
27 excess of the amount needed to stock displays out of sight of customers before restocking a display.

28 C. Value Pricing. Notwithstanding the City's approval of any prices listed in Exhibit
29 5, a major inducement to the City to enter into this Agreement is Tenant's agreement that it will
30 comply with the following in establishing prices. Tenant must not charge in excess of Value Prices,
31 as defined below, for the Merchandise or any other products from time to time approved in writing
32 by the Commissioner for sale from the Retail Space. For the purposes of calculating Value Prices
33 as set forth below, the term "city of Chicago" means the area bounded by Congress Expressway on
34 the South, North Avenue on the North, Lake Michigan on the East, and Franklin Street on the West,
35 and the term "Chicago Metropolitan Area" means Cook County and all counties contiguous thereto
36 within the State of Illinois.

1 (i) The "Value Price" is determined by comparing Tenant's prices at the Retail Space
2 with the prices charged at the other retail sales locations of Tenant, if any, in the city
3 of Chicago. Tenant's prices on any specific product item may not exceed the highest
4 price charged for the same item (or if the same item is not offered, an equivalent
5 item) at Tenant's other retail sales locations in the city of Chicago. If the same or an
6 equivalent item is not offered at those other retail locations or if Tenant has no retail
7 locations in the city of Chicago, the Tenant will propose for Commissioner's
8 approval four comparable vendors within the city of Chicago or within the Chicago
9 Metropolitan Area as "Benchmark Stores", and, upon approval by the Commissioner,
10 Tenant's prices for the item may not exceed the average of the three highest prices
11 charged for the same or equivalent item at the Benchmark Stores. If the same or
12 equivalent item is not offered at a Tenant location or a Benchmark Store within the
13 city of Chicago or within the Chicago Metropolitan Area, Tenant must charge a
14 reasonable price for the item, which price will be subject to the review and approval
15 of the Commissioner.

16 (ii) Tenant must submit to the Commissioner, within 30 days after the end of each Lease
17 Year, or as requested from time to time by the Commissioner, a pricing report
18 demonstrating compliance by Tenant with the Value Price requirements. Any prices
19 that the Commissioner determines to be inconsistent with the Value Price
20 requirements must be adjusted accordingly. At any time, and from time to time, the
21 Commissioner may review the prices of the Merchandise then being offered for sale
22 by Tenant and require adjustments in prices of the Merchandise or particular items
23 in order to comply with the Value Price requirement. Following the Commissioner's
24 written notice to Tenant, Tenant shall promptly adjust the price of the Merchandise
25 or particular items, as applicable. Failure to comply within five days will constitute
26 an Event of Default. Tenant's failure to comply would cause the City damages,
27 including loss of goodwill, that are difficult or impossible to prove or quantify.
28 Therefore, in addition to other remedies for an Event of Default, for as long as non-
29 compliance continues after the five-day cure period, the Commissioner will assess
30 Tenant as liquidated damages and not as a penalty an amount of \$100 per day per
31 Retail Space.

32 D. At any time, and from time to time, the Commissioner may review the quality of the
33 Merchandise then being offered for sale by Tenant and require reasonable improvements in quality
34 of the Merchandise or particular items or may require elimination of particular items that the
35 Commissioner determines to raise safety or security issues. Following the Commissioner's written
36 notice to Tenant, Tenant shall promptly rectify or modify the quality of the Merchandise or particular
37 items or eliminate the particular items, as applicable. Failure to comply within five days will
38 constitute an Event of Default. Tenant's failure to comply would cause the City damages, including

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1 loss of goodwill, that are difficult or impossible to prove or quantify. Therefore, in addition to other
2 remedies for an Event of Default, for as long as non-compliance continues after the five-day cure
3 period, the Commissioner will assess Tenant as liquidated damages and not as a penalty an amount
4 of \$100 per day per Retail Space.

5 4.4 General Requirements for Operation of Concessions. Tenant has the authority to
6 manage and administer the Concession in the Leased Space, subject to the rights of the City under
7 the law, in equity, and under this Agreement to direct Tenant in order to ensure that the Airport
8 operates in the most effective and efficient way possible and to supervise the Tenant's performance.
9 Tenant covenants to take all commercially reasonable measures to maintain, develop, facilitate and
10 increase the business of the Concession so as to maximize Gross Revenues. Tenant further
11 covenants that neither it nor any Affiliate of Tenant will divert or cause or allow to be diverted any
12 business from the Leased Space to other locations not at the Airport that are operated by Tenant or
13 any Affiliate of Tenant. A material condition of this Agreement is that Tenant must operate the
14 Concession operations in accordance with the Airport Concession Program Handbook, attached
15 hereto as Exhibit 6, and the following general requirements:

16 A. Unless otherwise approved by the Commissioner in writing, Tenant must conduct
17 business in its Retail Space only in the Tenant's trade name identified in the Term Sheet.

18 B. Unless authorized in writing by the Commissioner, Tenant must not install or operate
19 any coin, card, token or otherwise activated vending machines or devices of any kind or type.

20 C. Tenant must conduct its Concession operations in a first-class, businesslike, efficient,
21 courteous, and accommodating manner consistent with the "**Physical Inspection Standards**" that
22 appear in Appendix 1 of the Airport Concession Program Handbook. The Commissioner has the
23 right to make reasonable objections to the appearance and condition of the Leased Space if they do
24 not comply with the Physical Inspection Standards. Tenant must discontinue or remedy any non-
25 compliant practice, appearance or condition within five days following receipt of a written notice
26 by the Commissioner (or immediately upon receipt of such a notice if the Commissioner or
27 Corporation Counsel deems non-compliance hazardous or illegal). Tenant's failure to timely cure
28 the non-compliance as required by the Commissioner would cause the City damages including,
29 among other things, loss of goodwill, that would be difficult or impossible to prove or quantify.
30 Accordingly, if Tenant fails to timely cure non-compliance, then, in addition to all other remedies
31 the City may have at law, in equity or under this Agreement, and beginning on the first day after
32 expiry of the five-day cure period, Tenant must pay the City, as liquidated damages in connection
33 with the loss of good will among visitors to the Terminals, and not as a penalty, the amount of \$200
34 per day for each non-compliant practice, appearance or condition specified in the notice that remains
35 uncured after the cure period.

36 D. Tenant must neither commit nor allow any nuisance, noise or waste in the Leased
37 Space or annoy, disturb or be offensive to others in the Terminals. Tenant must employ all

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1 reasonable means to prevent or eliminate unusual, nauseating or objectionable smoke, gases, vapors
2 or odors from escaping from the Leased Space. Tenant must employ all reasonable means to
3 eliminate vibrations and to maintain the lowest possible sound level in the operation of the
4 Concession.

5 E. Tenant must at all times accept as suitable payment for any sale of Merchandise any
6 of at least three nationally recognized credit cards, such as but not limited to American Express,
7 Visa, MasterCard and Discover. Tenant must give a receipt with each purchase and must post signs
8 prominently near its cash registers offering some bonus or compensation to the customer if no receipt
9 is given. Tenant must make change for the public regardless of whether or not a purchase is made.

10 F. Tenant must not place or install any racks, stands, or trade fixtures directly on or over
11 the boundaries of its Leased Space. Tenant must not use any space outside the Leased Space for sale,
12 storage or any other undertaking, other than in connection with deliveries made in a prompt, timely
13 and efficient manner.

14 G. In its capacity as Tenant under this Agreement, and not as an agent of the City, Tenant
15 must manage the Concession operations and the Leased Space in accordance with this Agreement,
16 in furtherance of which Tenant must, among other things:

- 17 (i) use reasonable efforts to remedy problems and issues raised by Airport patrons with
18 respect to the operation of the Leased Space;
- 19 (ii) answer in writing all written customer complaints within 72 hours after receipt,
20 furnishing a copy of the complaint and the answer to the Commissioner within that
21 period; and,
- 22 (iii) furnish the Commissioner within 72 hours after their receipt copies of all written
23 notices received by Tenant from any governmental authority or any Subcontractor
24 with respect to any part of the Leased Space or any Subcontract.

25 If Tenant fails to timely respond to customer correspondence or governmental notices and furnish
26 the requisite copies to the Commissioner, it is an Event of Default. Tenant acknowledges that the
27 City may suffer loss of goodwill and other harm the value of which is difficult to determine, and
28 thus, in addition to any remedies for the Event of Default, the Commissioner will assess as liquidated
29 damages against Tenant, and not as a penalty: (A) an amount of \$200 per day for each day after the
30 initial 72 hours until Tenant responds to the customer complaint or governmental notice and (B) if
31 Tenant fails to provide the requisite copies to the Commissioner, \$100 per day (up to a maximum
32 of 60 days) until the Tenant provides the Commissioner with the copies.

33 4.5 Hours of Operation.

34 A. Tenant must begin conducting its Concession operations in each Retail Space on the
35 Date of Beneficial Occupancy applicable to that Retail Space and continue them uninterrupted after

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that date during all required hours of operation. The Retail Space must be open, at a minimum, from 6:00 a.m. until 9:00 p.m. daily. If the Commissioner deems it necessary in order to serve the public at the Terminals, Tenant must keep any or all of its Retail Space open for additional hours as the Commissioner reasonably determines. From time to time, the Commissioner may require Tenant to extend its hours for peak holiday travel seasons or for flight delays due to inclement weather, or conversely, the Commissioner may allow the Tenant to open a Retail Space later than 6:00 a.m. or close it earlier than 9:00 p.m. when passenger traffic is light.

B. Except as otherwise permitted under this Agreement, if Tenant fails to operate its Concession from any portion of the Retail Space during all times that Tenant is required to do so under this Agreement and the failure continues for more than three days after the City gives Tenant notice, it is an Event of Default. In addition, Tenant acknowledges that failure to provide Concession services to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Merchandise, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Tenant must pay the City as liquidated damages (and not as a penalty) in connection with such loss of goodwill the lesser of \$50 per hour or \$500 per day, beginning as of the time that the City first notifies Tenant that it is not operating the Concession in accordance with the time requirements of this Agreement. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the affected portion of the Retail Space re-opens for business; (ii) the date that this Agreement expires or is terminated with respect to the affected portion of the Retail Space; and (iii) the date that the Commissioner receives possession of the affected portion of the Retail Space.

4.6 Personnel.

A. Staff.

(i) Tenant must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Tenant must maintain an adequate sales force so as to maximize Gross Revenues and use the utmost skill and diligence in the conduct of its Concession operations.

(ii) All employees of Tenant must at all times be clean, courteous, neat in appearance and helpful to the public, whether or not on duty. While on duty, Tenant's employees must be appropriately dressed and must wear Airport identification badges and any other form(s) of identification that may be required by the Commissioner from time to time.

(iii) Tenant and its personnel must at all times participate and cooperate fully in all quality assurance programs that may be instituted by the Commissioner from time to time. Tenant must cause its personnel to attend all customer service training meetings and participate in such other

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1 programs as may be required by the Commissioner. An appropriate officer or management
2 representative of Tenant must meet with the Commissioner as requested by the Commissioner to
3 discuss matters relating to this Agreement, including merchandising and marketing plans. In
4 addition, at the Commissioner's request, an appropriate officer or management representative of
5 Tenant must attend other meetings with the City, airlines, other users of the Terminals or any other
6 parties designated by the Commissioner.

7 (iv) The Commissioner reserves the right to object to the personnel responsible for the
8 day-to-day operation of the Concession. Upon receipt of such objection, Tenant must use its best
9 efforts to resolve the cause for Commissioner's objection or replace the personnel with personnel
10 satisfactory to the Commissioner.

11 B. General Manager. Tenant must designate a General Manager experienced in
12 management and supervision who has sufficient authority and responsibility to administer and
13 manage the Concession. The General Manager (or authorized representative) must be immediately
14 available to the Department whenever any of the Retail Spaces are open. The base of operations of
15 the General Manager must be at the Airport, and the General Manager must spend substantially all
16 of his or her working hours at the Airport, unless the Commissioner approves in writing another
17 arrangement. The General Manager is subject to removal at the direction of the Commissioner if the
18 Commissioner reasonably determines, in her sole discretion, that the General Manager is not
19 performing up to standards consistent with the fulfillment of Tenant's obligations.

20 C. Salaries. Salaries of all employees of Tenant and its Subcontractors performing
21 services or Work under this Agreement must be paid unconditionally and not less often than once
22 a month without deduction or rebate on any account, except only for those payroll deductions that
23 are mandated by law or permitted by the applicable regulations issued by the United States Secretary
24 of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108;
25 18 U.S.C. § 874, and 40 U.S.C. § 276c). Tenant must comply with all applicable "Anti-Kickback"
26 regulations and must insert appropriate provisions in all Subcontracts covering Work under this
27 Agreement to insure compliance of all Subcontractors with those regulations and with the other
28 requirements of this subsection, and is responsible for the submission of affidavits required under
29 them, except as the United States Secretary of Labor may specifically provide for variations of, or
30 exemptions from, the requirements of them.

31 4.7 Operation and Maintenance.

32 A. The City, at its sole cost and expense, will keep in good repair the Common Areas,
33 including the roof, structures, foundations and central mechanical, plumbing and electrical systems
34 in the Airport providing heating, ventilation, cooling, water, sewage and electrical service to the
35 Terminals. The City will provide, without separate charge to Tenant, heating, ventilating and
36 cooling of the Common Areas. The Commissioner reserves the right to interrupt temporarily the
37 heating, air cooling, ventilation, plumbing or electrical services furnished to the Common Areas, the

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Terminals or the Airport as a whole to make emergency repairs or for other reasonable purposes, and the Commissioner will restore the services as soon as reasonably possible. The City has no responsibility or liability for failure to supply heat, air cooling, ventilation, plumbing, electrical or any other service to the Leased Space, the Common Areas, the Terminals or the Airport, when prevented from doing so by laws, orders or regulations of any federal, state or local governmental requirement (including any requirement of any agency or department of the City) or as a result of the making of repairs or replacements, fire or other casualty, strikes, failure of the utility provider to provide service or due to any other matter not within the City's reasonable control.

B. Tenant must provide all cleaning and janitorial services to the Leased Space. Tenant must clean, maintain and repair (including replacements, where necessary) the Leased Space and Improvements in first-class condition and repair during the entire Term. Tenant is responsible for pest control within the Leased Space by contracting with a professional pest control service to provide service on a regular basis or as needed, or at the Commissioner's election, the Commissioner may provide or contract for the pest control and charge Tenant a reasonable charge for the service. If the Commissioner so requires, Tenant must coordinate all pest control service with the City's pest control contractor. Tenant must furnish the Commissioner a copy of its pest control contract. If fixtures or equipment are installed in or attached to roof vents or other openings in the structure or to ducts that connect with the openings, Tenant must keep the ducts, vents and openings free from the accumulation of grease, dirt and other exhaust matter and must furnish and service any filters or other equipment necessary to prevent such accumulation. To the extent any City ordinance imposes a stricter standard than the requirements of this section, the stricter standard must govern. With respect to a Leased Space that has been designated to be relocated, if any, Tenant's obligations with respect to repair and maintenance will continue until such time as Tenant has completed the Improvements in the Relocation Space to which the affected Leased Space is being relocated.

4.8 Utilities.

A. Tenant must pay for natural gas, water, sewage and electricity furnished to the Leased Space, to the extent separately metered. All utilities must be separately metered for usage within a Leased Space except to the extent that the Commissioner agrees otherwise in writing.

B. Tenant must maintain utility lines to the Leased Space as follows:

- (i) where the utility lines, including gas, electrical, telephone, hot and cold water, fire sprinkler, gas, and sewer serve the Leased Space and other areas of the Terminals, Tenant is only obligated to maintain those branch lines and facilities that are located within and serving the Leased Space; and
- (ii) where the utility lines are solely for the use of the Leased Space, Tenant is obligated to maintain the utility lines from the Leased Space up to the main entry point to the Terminals. Alternatively, the City may, at the Commissioner's sole discretion,

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maintain the lines and charge Tenant the reasonable cost of the maintenance. Tenant must maintain all electrical cables, conduits, wiring, fire alarm systems, electrical panels and associated equipment located within and serving the Leased Space.

4.9 Refuse Handling.

A. Tenant, at its own cost and expense, must provide for the handling of all refuse, including trash, garbage, and other waste created by the Concession operations and for their disposal at a centrally located dump site within the Airport designated by the Commissioner from time to time. Within its Leased Space, Tenant must provide a complete and proper arrangement for the adequate sanitary handling and disposal of trash, garbage and other refuse resulting from its Concession operations. Tenant must provide and use suitable covered metal receptacles for all trash, garbage and other refuse in accessible locations within the boundaries of each Leased Space. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Leased Space or the Common Areas is forbidden. The Commissioner reserves the right, from time to time, to establish time periods or schedules during which Tenant must remove refuse from the Leased Space.

B. Tenant 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. If and when any system for centralized waste disposal is put in place for the Terminals that is capable of appropriately allocating to Tenant its proportional share of the cost of disposal of the refuse that Tenant and others deposit in it, then Tenant must pay its proportional share as determined by the City of the portion of those disposal costs actually charged by any third party contractor to the City or billed directly to Tenant by the third party contractor.

4.10 Promotion.

A. Signs and Advertising. Tenant may, at its own expense and subject to obtaining any necessary permits, install and operate necessary and appropriate identification signs in and on the Retail Space for its promotional use (identifying the Concession operations at the Retail Space in question or the Merchandise sold there). All such signage (especially all signage visible from the Common Areas) must be in compliance with signage and other applicable criteria adopted by the Commissioner or other City agencies from time to time and subject to the prior written approval of the Commissioner as to the number, size, height, location and design (as applicable). Tenant must not install, affix, or display any signage outside the Retail Space except as permitted by the Department. Without the prior written consent of the Commissioner, Tenant and its Subcontractors must not distribute any advertising, promotional or informational pamphlets, circulars, brochures or similar materials at the Airport except within the Retail Space and except as are related to Tenant's Concession.

B. Marketing and Advertising Fund. The Department operates a marketing and

1 advertising fund for the purpose of financing a program for advertising and promoting Concessions
2 at the Airport ("**Marketing Fund**"). Such program may include special events, shows, displays,
3 signs, marquees, decor, seasonal events, and print, television, radio and other media advertisements.
4 In addition, the City may use the Marketing Fund to defray the costs of administration of the
5 Marketing Fund, including the expenses for a promotion and advertising manager. The Marketing
6 Fund is funded by contributions from tenants, as required by the provisions of their agreements with
7 the City. The monthly contribution by Tenant is in an amount equal to the product of the Gross
8 Revenues for the prior month multiplied by 0.005 (one-half percent) set forth below (the
9 "**Marketing Fee**"). The City may, but is not required to, contribute to the Marketing Fund. Tenant
10 has no ownership or beneficial interest whatsoever in the Marketing Fund.

11 **4.11 Distribution and Storage; Deliveries.**

12 A. It is necessary, due to the number of Concession tenants in the Airport, that the
13 Commissioner protect the Common Areas and the Terminal curbside for the flow of airline
14 passengers. Therefore, Concession deliveries must be made only within the times and at the
15 locations authorized by the Commissioner or his designated representative and otherwise in
16 accordance with the terms of this Agreement. All deliveries that require access to the aircraft
17 operations area ("**AOA**") must be made by vehicles and drivers qualified and permitted to drive over
18 AOA roadways.

19 B. At the option of the Commissioner, after first giving reasonable notice to Tenant, the
20 Commissioner may require Tenant to arrange for all deliveries to a central distribution and storage
21 facility at the Airport ("**Distribution and Storage Facility**"). The Distribution and Storage Facility
22 is not in place as of the Effective Date, but may be designed and developed by the City or a
23 designated third party. At the Commissioner's sole discretion, the Distribution and Storage Facility,
24 if implemented, may be operated through a third party contractor selected or approved by the
25 Commissioner. If the Distribution and Storage Facility is implemented, Tenant must pay the City
26 or a designated third party Tenant's proportional share of the cost for deliveries to or from the
27 Distribution and Storage Facility ("**Distribution Fee**") as determined by the Commissioner or a
28 designated third party. Such Distribution Fee may include development, utility, operation and
29 maintenance costs and other costs associated with the opening and/or operation of the Distribution
30 and Storage Facility and is considered to be Additional Rent. Tenant acknowledges that the City will
31 not be responsible for and will have no liability related to the operation of (or the failure to operate)
32 the Distribution and Storage Facility, including lost profits, consequential damages or any other
33 losses or damages whatsoever.

34 **4.12 Certain Rights Reserved By the City.**

35 A. Except as expressly provided otherwise in this Agreement: the City has the rights set
36 forth below, each of which the City may exercise with notice to Tenant and without liability to
37 Tenant for damage or injury to property, person or business on account of exercising them; the

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City's exercise of any such rights is not deemed to constitute a breach of this Agreement or a disturbance of Tenant's use or possession of or Lease to the Leased Space; the City's exercise does not give rise to any claim, including for set-off or abatement of Rent; the City's exercise also does not relieve Tenant of any obligation to pay all Rent when due. The rights include the rights to:

- (i) Install, affix and maintain any and all signs on the exterior and on the interior of the Terminals;
- (ii) Decorate or to make repairs, inspections, alterations, additions, or improvements, whether structural or otherwise, in and about the Terminals, or any part of them, and for such purposes to enter upon the Leased Space, and during the continuance of any of the work, to temporarily close doors, entryways, public space and corridors in the Terminals, and to interrupt or temporarily suspend services or use of facilities, all without affecting any of Tenant's obligations under this Agreement, so long as the Leased Space is reasonably accessible and usable;
- (iii) Require Tenant to furnish the City door keys for the entry doors of the Leased Space, where applicable, and to retain them at all times, and to use in appropriate instances, keys, including master keys and passkeys, to all doors within and into the Leased Space, but the keys will at all times be kept under adequate and appropriate security by the Commissioner. Tenant must purchase only from the City additional duplicate keys as required, and must not change any locks, nor affix locks on doors without the prior written consent of the Commissioner. Notwithstanding the provisions for the City's access to the Leased Space, Tenant releases the City from all responsibility arising out of theft, robbery, pilferage and personal assault unless the same results from the City's gross negligence or willful misconduct. Upon the expiration of the Term of this Agreement or Tenant's right to possession of the Leased Space, Tenant must return all keys to the Commissioner and must disclose to the Commissioner the combination of any safes, cabinets or vaults left in the Leased Space;
- (iv) Approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Leased Space and the Terminals so as not to exceed the legal load per square foot designated by the structural engineers for the Airport, and to require all such items and furniture and similar items to be moved into or out of the Terminals and the Leased Space only at the times and in the manner as the Commissioner directs in writing. Tenant must not install or operate machinery or any mechanical devices of a nature not directly related to Tenant's ordinary use of the Leased Space without the prior written consent of the Commissioner. Movements of Tenant's property into or out of the Terminals or the Leased Space and within the Terminals are entirely at the risk and responsibility of Tenant, and the Commissioner reserves the right to require permits before allowing any property to be moved into

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or out of the Terminals or the Leased Space;

- (v) Establish controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Terminals and the Leased Space;
- (vi) Regulate delivery and service of supplies and the usage of the apron area, loading docks, receiving areas and freight elevators and designate the times within which, and the locations at which, deliveries may be made to or by Tenant;
- (vii) Show the Leased Space to prospective Tenants and subtenants at reasonable times and, if vacated or abandoned, prepare the Leased Space for re-occupancy;
- (viii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Leased Space at reasonable locations;
- (xix) Enter the Leased Space for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement and exercise any rights granted to it in this Agreement; except in the case of emergency, however, the right must be exercised upon reasonable prior notice to Tenant and with an opportunity for Tenant to have an employee or agent present;
- (xx) Grant to any person the right to conduct any business or render any service in or to the Terminals or the Airport.
- (xxi) Promulgate from time to time rules and regulations regarding the operations at the Airport; and
- (xxii) Maintain newspaper vending machines at any location in the Airport.

B. If Tenant is required to perform any sprinkler Work, City reserves the right to perform the Work and charge the Tenant for the cost of the sprinkler Work and specify charges as Additional Rent under the Agreement or to approve Tenant's proposed sprinkler contractor, at the City's sole option.

ARTICLE 5 LEASED SPACE AND IMPROVEMENTS

5.1 Leased Space. As provided in Section 4.1, the City grants Tenant the right to use the Leased Space identified in Exhibit 2 for the Term of this Agreement for the operation of the Concession. Exhibit 2 may be amended from time to time to reflect changes in Leased Space. As of the Effective Date, all square footage identified in Exhibit 1 is approximate, and is subject to final correction in accordance with field measurements to be taken after completion of the Improvements. All such measurements relating to the Leased Space will be made to and from the "lease lines" as

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identified on Exhibit 2. If the actual measured square footage of the Leased Space differs from the square footage identified on Exhibit 1, the Base Rent will be applied to the actual measured square footage.

A. Retail Space. The Leased Space includes the Retail Space identified in Exhibit 2. Retail Space is to be used for the sale of Merchandise at retail to the public.

B. Storage Space. The Leased Space includes the Storage Space, if any, identified in Exhibit 2. Storage Space is to be used to store inventory and supplies for use in the Retail Space. It may be used for other purposes relating to the Concession with the consent of the Commissioner, but not as a point of retail sale of Merchandise. If the Commissioner determines that Tenant is using Storage Space for purposes unrelated to the Concession, the Commissioner may unilaterally delete the Storage Space from the Leased Space. If the Commissioner determines that the size of the Storage Space exceeds the needs of the Tenant, the Commissioner may unilaterally reduce the size of the Storage Space.

C. Additional Space.

(i) During the Term, the Commissioner may from time to time make Additional Space available in the Terminals for concession operations. In that event, the Commissioner in her absolute discretion may determine what portion, if any, of the space will be made available to Tenant under this Agreement, but not to exceed square footage set forth in the Term Sheet. In such event, the Commissioner will send written notice to Tenant to advise Tenant of the following:

- a. size and location of the Additional Space being offered, if any;
- b. whether it is being offered as Retail Space or Storage Space; and
- c. the City's Shell and Core obligations and Tenant's Improvement obligations for the Additional Space.

Within 30 days after receiving the notice from the Commissioner, Tenant must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space is Retail Space, the amount by which Tenant proposes to increase its Minimum Annual Guarantee to reflect the anticipated increase in Gross Revenues from the Additional Space. Upon notification from Tenant to the Commissioner that Tenant accepts the Additional Space and, if the Additional Space is Retail Space, acceptance by the Commissioner of the proposed increase in the Minimum Annual Guarantee, the square footage will be added to the Retail Space or Storage Space, as applicable, under this Agreement and Exhibit 2 modified accordingly. Upon notification from Tenant to the Commissioner that it rejects the Additional Space or if Tenant fails to notify the Commissioner within 30 days that it accepts the Additional Space, the

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offer will terminate and the Commissioner may offer the Additional Space to others.

- (ii) Nothing in (i) above requires the Commissioner to offer any Additional Space to Tenant or limits or restricts the Commissioner's or the City's right to enter into any Concession agreement with any third party.

D. Relocation Space. The Commissioner may at any time during the Term require Tenant to relocate all or 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 other Airport purposes or is in the best interest of the City. In such an 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 a Retail Space is being relocated and the Relocation Space for a Retail Space is not comparable in size, visibility, and traffic, in Tenant's reasonable business judgment, 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 rejects the Relocation Space, then the Lease for the affected Retail Space will terminate on the date for the relocation set forth in the Commissioner's notice, and the Minimum Annual Guarantee as of such date will be adjusted by a percentage equal to the percentage of Tenant's Gross Revenues from prior Lease Year that were generated at the affected Retail Space. Further, if Tenant rejects the Relocation Space, Tenant is entitled to a credit, equal to the unamortized portion of Tenant's minimum Improvement Costs, as determined under Exhibit 3, for the Retail Space being vacated (but excluding any Improvement Costs for Tenant 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.

- (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 as of the date of relocation, to the extent comparable Improvements do not already exist in the Relocation Space. In the case of a relocation, Tenant must promptly vacate the portion of the Leased Space required to be vacated and as to which this Agreement is being terminated and return the portion of the Leased Space in as good or better

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condition 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 Leased Space being vacated will be 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.

5.2 Rights Regarding Property in the Leased Space. Tenant shall retain title and ownership to all Tenant personal property in the Leased Space except in the event of deemed abandonment. The City owns all other property at the Leased Space, including the Shell and Core and Improvements. Tenant represents and warrants that all the personal property located in the Leased Space on the Date of Beneficial Occupancy will be owned by Tenant.

5.3 Shell and Core. The City is responsible for providing Shell and Core, as specified in Exhibit 4, for the Leased Space. 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.

5.4 Tenant's Improvement Obligations.

A. Retail Space and Storage Space. Tenant must complete, or cause to be completed, the Improvements described in Exhibit 3 in accordance with Construction Documents (defined below) that have been approved by the Commissioner and at Tenant's sole cost and expense, on or before the date set forth opposite each portion of the Leased Space set forth in Exhibit 3. The Improvement Costs must be not less than the amounts set forth in Exhibit 3. 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. Tenant, however, must furnish written certification from the Tenant's engineer stating that any supplemental heating, cooling and exhaust facilities to be installed on the Leased Space are designed for negative pressure inside the Leased Space so that hot or cold air will not be drawn out of the Common Areas into the Leased Space. If

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1 at any time the Tenant's supplemental heating, cooling and exhaust facilities fail to comply with the
2 requirement for negative pressure, Tenant must, on notice from the City, cause repairs to be made
3 so that Tenant is in compliance with this requirement.

4 B. Additional Space. Tenant must complete or cause to be completed, at Tenant's sole
5 cost and expense, the Improvements for each Additional Space, if any, identified by the
6 Commissioner by the Date of Beneficial Occupancy applicable to each such Additional Space, at a
7 total investment in Improvement Costs for each permanent Additional Space of \$200 per square foot
8 for In-Line Sites, and \$40,000 per Kiosk.

9 C. Relocation Spaces. Tenant must complete, or cause to be completed, at Tenant's
10 sole cost and expense, the Improvements for each Relocation Space, on or before the date established
11 by the Commissioner for relocation and at the level of expenditure needed to make Improvements
12 in the Relocation Space comparable to the Improvements in the Leased Space being vacated.

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

19 E. Improvement Costs. Only Improvement Costs of the types set forth in Exhibit 3 are
20 deemed to be validly incurred Improvement Costs for purposes of this Agreement. Tenant must
21 provide the Commissioner with a statement certified by Tenant, setting forth the aggregate amount
22 of the Improvement Costs expended by Tenant for each Leased Space, with such detail as may be
23 reasonably requested by the Commissioner. The certified statement must be submitted at the same
24 time as the "as-built" drawings for the Leased Space. Tenant must make available to the
25 Commissioner, at the Commissioner's request, receipted invoices for labor and materials covering
26 all Improvement Costs. The Commissioner has the right to audit the Improvement Costs. If there
27 is a discrepancy of 5% or more, the cost of the audit must be paid promptly by Tenant upon request.
28 If the Tenant's actual Improvement Costs for any Leased Space are less than a minimum per square
29 foot cost provided in this Agreement for such Leased Space, Tenant must, within 30 days after the
30 date of completion of the Work or the Date of Beneficial Occupancy, whichever is earlier, pay the
31 City the amount by which the sum determined by multiplying the square footage of such Leased
32 Space by the minimum per square foot cost requirement applicable to the Leased Space exceeds the
33 actual Improvement Cost.

34 F. Amortization of Improvement Costs. Except with the prior written approval of the
35 Commissioner, the Improvement Costs for each Leased Space must, for the purposes of determining
36 the unamortized value of the Improvements, never be more than the minimum amount of
37 Improvement Costs applicable to each such Leased Space. Amortization will be calculated on a

straight-line basis over the initial Term without regard to any possible extensions.

5.5 Work Requirements.

A. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF WORK UNDER THIS AGREEMENT.

B. Compliance with Standards. Tenant must comply in its design, construction, use, occupancy and operation of the Leased Space, at its own cost, with:

- (i) 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;
- (ii) 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") and the Airport Concession Program Handbook.

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.

C. Development Plan. Tenant must submit to the Commissioner for her approval, within one week after the Effective Date, a development plan that describes in detail the Tenant's thematic concept for the Retail Space and its plan and schedule for implementing the Improvements and commencing Concession operations in the Leased Space ("**Development Plan**"). The Development Plan must include the anticipated Date of Beneficial Occupancy of each Retail Space and the dates by which City must complete the Shell and Core and Tenant must obtain possession of the Retail Space in order to achieve the anticipated DBO. The Commissioner will attempt to meet with Tenant to review the TDCPM and the Tenant's Development Plan within 14 days after receipt of the Development Plan. Tenant must promptly respond to any changes in the Development Plan requested by the Commissioner:

D. 30 Percent Design Phase. Upon approval of the Development Plan by the Commissioner, Tenant must proceed with preparation of 30 percent design drawings and specifications for Improvements to each Leased Space ("**30 Percent Designs**") prepared pursuant to the guidelines set forth in the TDCPM within the earlier of 14 days following the approval of the Development Plan or 60 days before the date for beginning construction of Improvements as set forth

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1 in the Development Plan. The Commissioner will attempt to respond to the 30 Percent Designs for
2 the Improvements within 5 business days after Tenant's submission of the 30 Percent Designs with
3 an "accepted," "accepted [with comments] as noted," or "revise and resubmit." If any of the 30
4 Percent Designs requires resubmission, Tenant must resubmit the 30 Percent Designs addressing
5 the Commissioner's comments within 5 days after receiving the Commissioner's response. Tenant
6 must resubmit the 30 Percent Designs as many times as necessary until the Commissioner either
7 accepts them or accepts them as noted; however, if Tenant fails to provide acceptable 30 Percent
8 Designs after 5 attempts, it will be an Event of Default.

9 E. 60 Percent Design Phase. Within 60 days of an "accepted" or "accepted as noted"
10 response to the 30 Percent Designs from the Commissioner, Tenant must submit to the
11 Commissioner its proposed 60 percent design drawings and specifications prepared as required under
12 the TDCPM ("**60 Percent Designs**"), which must include revisions to and incorporate the
13 Commissioner's comments on the 30 Percent Designs as well as any Shell and Core modifications
14 or other modifications to base building systems required to accommodate Tenant's proposed
15 Improvements. The Commissioner will attempt to review and respond to the 60 Percent Designs
16 within 10 days after the Commissioner's receipt with an "accepted," "accepted [with comments] as
17 noted," or "revise and resubmit." If any of the 60 Percent Designs requires resubmission, Tenant
18 must resubmit the 60 Percent Designs addressing the Commissioner's comments within 5 days after
19 receiving the Commissioner's response. Tenant must resubmit the 60 Percent Designs as many times
20 as necessary until the Commissioner either accepts them or accepts them as noted; however, if
21 Tenant fails to provide acceptable 60 Percent Designs after 5 attempts, it will be an Event of Default.

22 F. 100 Percent Design Phase. Tenant must prepare and submit to the Commissioner,
23 within 20 days following its receipt of the Commissioner's approval of the 60 Percent Designs, the
24 100 percent design drawings and specifications and a construction schedule that complies with the
25 Development Plan ("**100 Percent Designs**"). The Commissioner will attempt to review and respond
26 to the 100 Percent Designs within 10 days after the Commissioner's receipt with an "accepted,"
27 "accepted [with comments] as noted," or "revise and resubmit." If any of the 100 Percent Designs
28 requires resubmission, Tenant must resubmit the 100 Percent Designs addressing the
29 Commissioner's comments within 5 days after receiving the Commissioner's response. Tenant must
30 resubmit the 100 Percent Designs as many times as necessary until the Commissioner either accepts
31 them or accepts them as noted; however, if Tenant fails to provide acceptable 100 Percent Designs
32 after 5 attempts, it will be an Event of Default. Upon acceptance by the Commissioner, the 100
33 Percent Designs drawings, specifications, and construction schedule will be deemed the approved
34 "**Construction Documents**". If Tenant desires to use the services of any Subcontractor, Tenant must
35 submit the name and qualifications of the Subcontractor to the Commissioner for review and
36 approval, which approval may be granted or denied in the Commissioner's sole discretion.
37 Commissioner may require Tenant and its Subcontractors to meet with the Department's
38 construction manager and Concessions Management Representative prior to starting construction.

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1 G. Start of Construction. Within 10 days after the date of delivery of possession for each
2 Leased Space, if Tenant has obtained applicable building permits, which Tenant must promptly and
3 diligently endeavor to do, Tenant must begin construction of the Improvements under and consistent
4 with the approved Construction Documents, in a diligent, first-class and workmanlike manner. In
5 all respects, the Improvements must:

6 (i) conform with all architectural, fire, safety, zoning and electrical codes and all federal,
7 State, City and other local laws, regulations and ordinances pertaining to them,
8 including the ADA, and all Airport standards, procedures and regulations;

9 (ii) be free and clear of any mechanics' or materialmen's liens or similar liens or
10 encumbrances; and

11 (iii) except as otherwise provided in this Agreement, be completed entirely at Tenant's
12 cost and expense and in accordance with the requirements of this Agreement.

13 Approval of the Construction Documents by the Commissioner does not constitute her or the City's
14 representation or warranty as to their conformity, and responsibility therefor at all times remains in
15 Tenant. Tenant must not permit its design and construction Subcontractors to make any
16 modifications to base building systems without prior written consent of the Commissioner.

17 H. Change Order Review. Tenant must cause all Work to be performed in a first class,
18 good and workmanlike manner and in accordance with the Construction Documents. Tenant may
19 request in writing that change orders relating to the Work be responded to by the City, and the City
20 will so respond within 10 days, unless a response within 10 days is unreasonable in the
21 circumstances, in which case the response period will be as reasonably determined by the City but
22 in no event longer than 20 days. At all times during the Work, Tenant must have on file with the
23 Commissioner and on the construction site for inspection by the Commissioner, a copy of the
24 approved Construction Documents. Tenant must immediately begin to reconstruct or replace and
25 diligently pursue to completion, at its sole cost and expense, before or after completion of the Work,
26 any Work that is not performed in accordance with the Construction Documents as approved by the
27 Commissioner.

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

32 J. Notice of Substantial Completion and Inspection. At least 14 days prior to anticipated
33 substantial completion of the construction of a Leased Space, Tenant must deliver to the
34 Commissioner a "notice of substantial completion". On the date specified in the notice of
35 substantial completion, the Commissioner will perform a final inspection of the Improvements for
36 compliance with the Construction Documents for the Improvements, and will, not later than 10 days

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1 after inspection, provide a punchlist to Tenant describing in sufficient detail any discrepancies
2 between the Improvements and the Construction Documents. Tenant must cause all discrepancies
3 (other than those approved by the Commissioner as variances) to be reconstructed, replaced or
4 repaired in substantial accordance with the Construction Documents. Within 10 days after the date
5 of substantial completion and prior to commencing Concession operations in Leased Space, Tenant
6 must provide, as evidence of the substantial completion of the Work, copies of any and all
7 Certificates of Occupancy and other approvals, if any, necessary for Tenant to occupy the portion
8 of the Leased Space for its intended use. Tenant shall not commence Concession operations in the
9 Leased Space until such documents have been received by the Commissioner and until authorized
10 to do so by the Commissioner.

11 K. Timeliness - Punch Lists; Opening for Business. Tenant acknowledges that if it fails
12 to comply with Construction Document requirements (including all tasks necessary to satisfy them,
13 such as, but not limited to, applying at the earliest possible time for and diligently pursuing all
14 necessary building permits), the delay may cause the City to suffer substantial damages, including
15 loss of goodwill, that might be difficult to ascertain or prove. For that reason, but subject to
16 extensions that may be approved by the Commissioner, if Tenant has not caused the Improvements
17 to be substantially completed and Retail Space to be open to the public for business in accordance
18 with the Construction Documents, the Development Plan and/or this Agreement:

- 19 (i) Tenant must pay the City liquidated damages at the rate of \$1,000 per day for each
20 day from and after the date the Improvements were required to be substantially
21 completed and the Retail Space to be open to the public for business, until the date
22 on which the Retail Space actually opens to the public for business; and
- 23 (ii) Tenant must cooperate with the Commissioner in providing the interim Concession
24 operations from Kiosks or other temporary locations, as the Commissioner may
25 reasonably require, to serve the patrons of the Terminals until the applicable
26 Improvements have been completed and the Retail Space is open to the public for
27 business; and
- 28 (iii) if, for any reason, Tenant fails to substantially complete the Improvements in
29 accordance with the approved Construction Documents relating to them and open the
30 Retail Space to the public for business within 30 days after the scheduled date, the
31 failure is an Event of Default, and the City has the right to exercise any and all
32 remedies under this Agreement, at law or in equity; and further,
- 33 (iv) if Tenant is permitted to open for business in accordance with the schedule in the
34 Construction Documents but any punchlist items are not completed within 30 days
35 following the date on which Tenant opens to the public for business, the
36 Commissioner will assess liquidated damages against Tenant at the rate of \$200 per
37 day per punchlist item not timely completed; and

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(v) if Tenant is permitted to open for business but any punchlist items are not completed within 60 days following the date on which Tenant opens to the public for business, the City reserves the right, at the Commissioner's sole discretion, to either:

A. complete the punchlist Work at the City's cost and bill the Tenant for this Work, in which case the charges are considered Additional Rent; or

B. close the affected Retail Space until all outstanding punchlist items are completed.

L. 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.

M. No 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 Lease 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 or 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 Lease 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 it 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, if requested by the Commissioner, Tenant must within 15 days following the Commissioner's request 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 her sole discretion, draw on the bond and make such payment. If the Commissioner has not requested a bond, then the Commissioner may, in 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.

5.6 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 Terminals served by the damaged Improvements, then the Commissioner must 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; 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 Terminals 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 must be prorated to the date of termination, and Tenant must surrender the affected portion of the Leased Space to the City.

(iii) If 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. If sufficient insurance proceeds are available to repair the damage and the damage can be repaired and the Improvements restored before the Term expires, then Tenant must repair the damage and restore the Improvements. If the 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.

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(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 Date of Possession, 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 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. If approved, Tenant will receive the unamortized Improvement Cost of the restoration upon termination or expiration of the Term, with amortization being calculated on a straight-line basis over a period of time equivalent to the original Term..

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 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.

5.7 Mid-Term Refurbishment If the Expiration Date is more than 72 months after the Effective Date, then Tenant must budget and expend such funds as necessary, but no less than 25

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1 percent of the initial Improvement Costs, to undertake a mid-Term refurbishment of the Retail Space
2 during or about the middle of the Term in order to ensure that the Retail Space presents a first-class
3 appearance to the public. The minimum expenditure does not include financing costs, interest,
4 inventory or intracompany charges of the Tenant. The scope and extent of the renovation,
5 remodeling, upgrade and/or redecorating for such mid-Term refurbishment shall be jointly
6 determined by the Commissioner and Tenant. If the Commissioner and Tenant cannot agree, then
7 Commissioner may reasonably determine the scope and the extent of the refurbishment, and Tenant
8 will be bound by her determination. If the mid-Term refurbishment is of a substantial nature, then
9 the provisions of Section 5.5 will apply.

10 5.8 City Resident Construction Worker Employment Requirement.

11 A. Use of Residents. In connection with and during the construction of the Work,
12 Tenant and its Subcontractors must comply with the provisions of § 2-92-330 of the Municipal Code
13 of the City of Chicago ("**Municipal Code**"), as amended from time to time concerning the minimum
14 percentage of total construction worker hours performed by actual residents of the City. (At least
15 50% of the total construction worker hours worked by persons on the site of the Work must be
16 performed by actual residents of the City. Tenant may request a reduction or waiver of this minimum
17 percentage level of Chicagoans in accordance with standards and procedures developed by the Chief
18 Procurement Officer of the City.) In addition to complying with this percentage, Tenant and its
19 Subcontractors are required to make good faith efforts to utilize qualified residents of the City in
20 both unskilled and skilled labor positions. "**Actual residents of the City**" means persons domiciled
21 within the City. The domicile is an individual's one and only true, fixed and permanent home and
22 principal establishment. Tenant and each Subcontractor (for purposes of this subsection,
23 "**Employer**") must provide for the maintenance of adequate employee residency records to ensure
24 that actual Chicago residents are employed. Each Employer will maintain copies of personal
25 documents supportive of every Chicago employee's actual record of residence.

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

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

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

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

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

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

28 5.9 Licensing of General Contractor. This Agreement is subject to Chapter 4-36 of the
29 Municipal Code which requires all persons acting as a general contractor (as defined in Chapter 4-
30 36) to be licensed as a general contractor by the City. Tenant's failure to ensure that any general
31 contractor working on Improvements complies with Chapter 4-36 will be an event of default.

32 5.10 Prevailing Wages. In connection with the construction, repair, and maintenance of
33 Improvements, Tenant must comply with the applicable provisions of 820 ILCS 130/0.01 et seq.
34 regarding the payment of prevailing wages, and the most recent Illinois Department of Labor
35 schedule of prevailing wages, and any successors to them. Tenant must insert appropriate
36 provisions in all Subcontracts covering construction work under this Agreement to ensure
37 compliance of all construction Subcontractors with the foregoing wage statutes and regulations.

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5.11 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.)"

ARTICLE 6 TERM OF AGREEMENT

6.1 Term. This Agreement is in full force and effect upon the Effective Date. The term of this Agreement ("Term") begins on the Effective Date and expires at 11:59 p.m. on the day that is the fifth anniversary of the Date of Beneficial Occupancy of the last Retail Space to open for Concession operations (excluding any Retail Space that is Additional Space or Replacement Space) unless this Agreement is terminated earlier in accordance with its terms.

6.2 Holding Over.

A. Without consent. If Tenant continues to occupy all or a portion of the Leased Space without the written consent of the Commissioner after expiration or termination of this Agreement in its entirety, or as to any such portion of the Leased Space that is expired or terminated, the holding over constitutes a Lease from month to month on the same terms and conditions as this Agreement, including payment of Rent attributable to all or the portions of the Leased Space, until terminated by the Commissioner upon not less than 30 days prior written notice. If Tenant continues to hold over after receipt of such written notice, Tenant must pay Rent for the entire holdover period for the Leased Space (or that portion of the Leased Space as to which this Agreement has expired or otherwise terminated), following the termination date under the notice, at double the annual rate of

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1 the Rent payable, on a per diem basis, during the that portion of the last calendar year falling within
2 the Term of this Agreement. No occupancy of the Leased Space by Tenant after the expiration or
3 other termination of this Agreement (in its entirety or as to the portion of the Leased Space in
4 question) extends the Term of this Agreement with respect to the portion of the Leased Space, except
5 as a holdover tenancy. Also, in the event of any unauthorized and willful occupancy after such
6 expiration or termination, Tenant must indemnify the City against all damages arising out of the
7 retention of occupancy, and all insurance policies and letters of credit required to be obtained and
8 maintained by Tenant as set forth in this Agreement must continue in effect.

9 B. With consent. Any holding over with the consent of the Commissioner in writing
10 constitutes a Lease from month-to-month on the same terms and conditions as this Agreement,
11 including payment of the Rent attributable to the portion or portions of the Leased Space Tenant
12 continues to occupy after the Term; Tenant must surrender and vacate the Leased Space no later
13 than the 30th day following notice from the Commissioner that the month-to-month holdover is
14 terminated.

15 6.3 Return of the Leased Space and Removal of Improvements.

16 A. At the termination or expiration for any reason of this Agreement or Tenant's Lease
17 as to any portion of the Leased Space, Tenant must promptly, peaceably, quietly and in good order
18 quit, deliver up and return the Leased Space (or that portion as to which the Lease has terminated,
19 in the case of a partial termination) in good condition and repair, ordinary wear and tear and damage
20 by fire or other casualty excepted. Except as provided below, Tenant must remove all Tenant
21 personal property from the Leased Space or the portions of the Leased Space before the date of
22 termination or expiration. Further, at the Commissioner's request (which request will be given in
23 writing at least 30 days before the termination or expiration of the Term) but not otherwise, Tenant
24 must remove all Improvements installed by or for Tenant, or Tenant's agents, employees or
25 Subcontractors, except for Improvements that the Commissioner may elect to require Tenant to leave
26 in place. Tenant must also cap off any plumbing or drains and remove, obliterate or paint out any
27 and all of its signs, advertising and displays as the Commissioner or his designated representative
28 may direct, and repair any holes or other damage left or caused by Tenant. Tenant must repair any
29 damage to the Leased Space caused by Tenant's removal of Tenant personal property, trade fixtures
30 and Improvements. All the removal and repair required of Tenant under this section are at Tenant's
31 sole cost and expense.

32 B. If Tenant fails to perform any of its obligations, then the Commissioner may cause
33 the obligations to be performed and Tenant must pay the cost of the performance, together with
34 interest thereon at the Default Rate from and after the date the costs were incurred until receipt of
35 full payment therefor. Any property of Tenant not removed by Tenant in accordance herewith is
36 deemed abandoned and the Commissioner may dispose of it as she sees fit, without any liability to
37 Tenant or any other person.

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1 C. Any Improvements not requested to be removed by the Commissioner will, upon
2 termination of this Agreement, if such is not already the case, become property of the City, except
3 that all of Tenant's trade dress, service marks, trademarks and trade names must be removed,
4 obliterated or painted out in a commercially reasonable manner at Tenant's cost, on or before the
5 expiration or termination of the Term.

6 6.4 Sale of Personal Property. If the Commissioner notifies Tenant in writing 30 or
7 more days before the Term expires or this Agreement is terminated that the City desires to purchase
8 any or all of Tenant personal property, Tenant must sell to the City, upon expiration of the Term or
9 termination of the Agreement and at fair market value, any and all Tenant personal property (except
10 trademarked items sold or leased to Tenant, and proprietary equipment), located or used in and about
11 the Leased Space or the Airport, and any interest in them held by Tenant. For the purposes of this
12 section, fair market value is equal to the net (of accumulated depreciation) book value of Tenant
13 personal property so acquired.

14 6.5 Termination Due to Change in Airport Operations. This Agreement, or the Lease of
15 any affected Leased Space, is subject to termination by either party on 60 days' written notice in the
16 event of any action by the FAA, the TSA or any other governmental entity or the issuance of an order
17 by any court of competent jurisdiction which prevents or restrains the use of the Airport, the
18 Terminals or a portion thereof that renders performance by either party in the Leased Space
19 impossible, and which governmental action or court order remains in force and is not stayed by way
20 of appeal or otherwise, for a period of at least 90 days, so long as the action or order is not the result
21 of any Event of Default of Tenant.

22 6.6 Eminent Domain. If the entirety of the Terminals or a substantial part of them,
23 including the entire Leased Space, is taken, the Term of this Agreement will end upon the earlier of
24 the date when possession is required by the condemning authority or the effective date of the taking.
25 If any eminent domain proceeding is instituted in which it is sought to take any part of the Airport
26 or the Terminals, the taking of which would, in the good faith judgment of the Commissioner or
27 Tenant, render it impractical or undesirable to conduct Concession operations on the remaining
28 portion of the Leased Space for the intended purposes, the Commissioner and Tenant will each have
29 the right to terminate this Agreement upon not less than 90 days' written notice to the other before
30 the date of termination designated in the notice. In the event of termination of this Agreement under
31 either of the preceding sentences, all Rent accrued to the termination date is payable to the date of
32 termination. Except as otherwise provided in this Agreement, no money or other consideration is
33 payable by the City to Tenant for the right of cancellation in connection with eminent domain.

34
35 **ARTICLE 7 RENT AND FEES**

36 7.1 Rent Payable.

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1 A. In consideration of Tenant's use of the Leased Space and the License to operate its
2 Concession in the Leased Space and the associated rights and privileges granted in this Agreement,
3 Tenant must pay the following, without notice or demand, beginning with the first month following
4 the first Date of Beneficial Occupancy of a Retail Space, as rent and fees the Base Rent, License Fee
5 and Additional (collectively, "**Rent**") as follows:

6 (i) Base Rent. The "**Base Rent**," which, during the initial Lease Year, is an amount
7 equal to the product of \$40.00 per square foot rate multiplied by the number of
8 square feet of Leased Space, whether permanent or temporary. In each succeeding
9 Lease Year following the initial Lease Year the Base Rent applicable to each Leased
10 Space will increase by 3 % over the previous Lease Year. The Base Rent for each
11 Lease Year is payable in equal monthly installments.

12 (ii) License Fee. An amount equal to the greater of a. or b.:

13 a. Percentage Rent. The "**Percentage Fee**" is an amount equal to 15 % of
14 Gross Revenues up to and including the first \$1,000,000 in Gross Revenues
15 in the applicable Lease Year plus 16% % of Gross Revenues from \$1,000,000
16 to \$2,000,000, and 17% of Gross Revenues in excess of \$2,000,000 in the
17 applicable Lease Year.

18 b. Minimum Annual Guarantee. The "**Minimum Annual Guarantee**" or
19 "**MAG**" for the first and second Lease Years is \$150,000, prorated for the
20 first Lease Year if less than 12 months. Beginning with the third Lease Year,
21 and for each Lease Year thereafter, the Minimum Annual Guarantee will
22 equal the greater of the total Percentage Fee payable for the preceding Lease
23 Year, and the Minimum Annual Guarantee for the second Lease Year. The
24 Minimum Annual Guarantee applicable to the last Lease Year will be pro-
25 rated if less than 12 months.

26 (iii) Additional Rent. The Marketing Fee and Distribution Fee, if any, and any other
27 charges payable to the City under this Agreement that are identified as Additional
28 Rent.

29 Failure by Tenant to pay Rent, or any portion thereof, when due is an Event of Default.

30 B. Impositions. Tenant must timely pay, as and when due, any and all taxes,
31 assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this
32 Agreement, the Leased Space, Tenant's leasehold, Tenant's Concession business or upon Tenant's
33 personal property, including but not limited to all permit fees and charges of a similar nature for
34 Tenant's conduct of any business or undertaking in the Leased Space (collectively, "**Impositions**").
35 Tenant must provide the Concession Management Representative with copies of any business
36 licenses or permits required for the Tenant to operate the Concession. Tenant must provide

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Commissioner a copy of all notices relating to leasehold taxes on the Leased Space within 30 days after receipt and must provide the Commissioner with a receipt indicating payment of leasehold taxes on the Leased Space when due. Nothing in this Agreement precludes Tenant from contesting the amount of an Imposition, including those taxes or charges enacted or promulgated by City; but Tenant must not contest the applicability of an Imposition in connection with the Leased Space. Failure of Tenant to pay any Imposition when due, except to the extent that Tenant is contesting the amount of the Imposition, will constitute an Event of Default.

C. Rent under this Agreement is not considered to be a tax and is independent of any Imposition levied by the City on the Tenant's business. Further, the payment of the Rent under this Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Tenant must pay all Rent without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement. If Tenant is directed to move its Concession operations to a Relocation Space, and the City determines that the affected Retail Space is to be closed before completion of the Improvements in the Relocation Space, then adjustments will be made to the Minimum Annual Guarantee until Tenant begins Concession operations in the Relocation Space. Such adjustments will be in the same proportion as the Gross Revenues attributable to the Retail Space to be closed bears to the Gross Revenues for the entire Retail Space to which the Minimum Annual Guarantee applies.

7.2 Time of Payments.

A. On or before the first day of each calendar month, prorated for any partial calendar month, beginning the first month following the first Date of Beneficial Occupancy and continuing throughout the Term, Tenant must pay to the City:

- (i) 1/12 of the Minimum Annual Guarantee, and
- (ii) 1/12 of the annual Base Rent.

B. On or before the 15th day of each month, Tenant must pay the City:

- (i) the amount, if any, by which the actual Percentage Fee for the preceding month exceeds 1/12 of the Minimum Annual Guarantee, and
- (ii) the Marketing Fee and Distribution Fee, if any.

C. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the period exceeds the amount of all payments made by Tenant to the City for the period in question, then Tenant must pay the amount of the underpaid Percentage Fee to the City upon the submission of the annual statement of Gross Revenues. If the annual statement of Gross Revenues indicates that the Percentage Fee attributable to the period is less than the amount of all payments made by Tenant to the City for the period in question, but the Percentage Fee still exceeds the MAG, then Tenant will receive a credit against the next Percentage Fee due under this

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1 Agreement for the amount by which the License Fee actually paid by Tenant exceeded the
2 Percentage Fee attributable to the period.

3 7.3 Material Underpayment or Late Payment. Without waiving any other remedies
4 available to the City, if:

5 (i) Tenant underpaid Rent due in any calendar year by more than 5%, or

6 (ii) Tenant failed to make any Rent payments within 5 days of the date due, then

7 Tenant must pay, in addition to the amount due the City as Rent, interest on the amount of
8 underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from
9 the date on which the original payment was due until paid in full and shall be considered Additional
10 Rent. The provision for the payment of interest does not constitute an authorization by the City of
11 underpayment or late payment.

12 7.4 Reports.

13 A. Monthly. Tenant must furnish to the Commissioner on or before the 15th day of each
14 calendar month falling wholly or in part within the Term of this Agreement a complete statement,
15 certified by Tenant, of the amount of Gross Revenues derived from each Retail Space by Tenant
16 during the preceding month.

17 B. Weekly. Tenant will furnish to the Commissioner weekly sales reports, if requested,
18 breaking down all sales and Gross Revenues by each separate Retail Space. If so requested, Tenant
19 will provide Commissioner with statistical information regarding the number and type of
20 transactions occurring at each Leased Space, in the form specified by the Commissioner.

21 C. Annually or more often.

22 (i) Tenant must furnish to the Commissioner on or before the 60th day following the end
23 of each Lease Year, or from time to time as required by the Commissioner, an
24 operations statement for the Concession.

25 (ii) Tenant also must furnish to Commissioner no later than March 1 of each Lease Year
26 falling wholly or in part within the Term of this Agreement, and within 120 days after
27 the expiration or termination of this Agreement, a complete statement of revenues
28 certified by an independent certified public accountant engaged by Tenant, showing
29 in all reasonable detail the amount of Gross Revenues made by Tenant in, on or from
30 the Leased Space during the preceding Lease Year and copies of all returns and other
31 information filed with respect to Illinois sales and use taxes as well as such other
32 reasonable financial and statistical reports as the Commissioner may, from time to
33 time, require by written notice to Tenant.

34 (iii) The annual statement must include a breakdown of Gross Revenues on a month by

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month basis and an opinion of an independent certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by [_____] for the year ended _____ relating to its operations at the Terminals pursuant to an Agreement dated _____, _____. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$_____ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended _____."

D. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Merchandise and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Tenant fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Tenant's books and records and to prepare the statements at Tenant's expense. Tenant must also provide the Commissioner with such other financial or statistical reports and information concerning the Leased Space or any part thereof, in the form as may be reasonably required from time to time by the Commissioner.

7.5 Books, Records and Audits.

A. ~~Except as provided below, Tenant must prepare and maintain at its office in Chicago~~ full, complete and proper books, records and accounts in accordance with generally accepted accounting procedures relating to and setting forth the Gross Revenues, both for cash and on credit, and must require and cause its operations personnel to prepare and keep books, source documents, records and accounts sufficient to substantiate those kept by Tenant. The books and source documents to be kept by Tenant must include true copies of all federal, state and local tax returns and reports, records of inventories and receipts of merchandise, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Leased Space by Tenant and any other persons conducting business in or from the Leased Space. Pertinent original sales records must include:

- (i) cash register tapes, including tapes from temporary registers,

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- (ii) serially pre-numbered sales slips,
- (iii) the original records of all mail and telephone orders at and to the Leased Space,
- (iv) original records indicating that merchandise returned by customers was purchased at the Leased Space by the customers,
- (v) memorandum receipts or other records of merchandise taken out on approval,
- (vi) detailed original records of any exclusions or deductions from Gross Revenues,
- (vii) sales tax records, and
- (viii) such other sales records, if any, that would normally be examined by an independent accountant under accepted auditing standards in performing an audit of Tenant's Gross Revenues.

B. Tenant must record at the time of each sale or other transaction, in the presence of the customer, all receipts from the sale or other transaction, whether for cash, credit or otherwise, in a cash register or cash registers having a cumulative total that must be sealed in a manner approved by the Commissioner and that must possess such other features as required by the Commissioner. The books, records and accounts, including any sales tax reports that Tenant may be required to furnish to any government or governmental agency, must at all reasonable times be open to the inspection (including the making of copies or extracts) of the Commissioner, the Commissioner's auditor or other authorized representative or agent at the Leased Space or Tenant's other offices in Chicago for a period of at least 3 years after the expiration of each calendar year falling wholly or in part within the Term.

C. The acceptance by the Commissioner of payments of any Percentage Fee is without prejudice to the Commissioner's right to conduct an examination of the Tenant's books and records relating to Gross Revenues and of inventories of merchandise at the Retail Space, in order to verify the amount of Gross Revenues made in and from the Retail Space.

D. After providing Tenant at least 3 days prior oral or written notice, the Commissioner may inspect the books and records of Tenant. Further, at its option, the Commissioner may at any reasonable time, upon no less than 10 days prior written notice to Tenant cause a complete audit to be made of Tenant's entire records relating to the Retail Space for the period covered by any statement issued by Tenant as above set forth. If the audit discloses that Tenant's statement of Gross Revenues is understated to the extent of:

- (i) 3% or more, Tenant must promptly pay the City the cost of the audit in addition to the deficiency (and any interest on the deficiency at the Default Rate), which deficiency is payable in any event; and if
- (ii) 5% or more, an Event of Default is considered to have occurred, and in addition to

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all other remedies available under this Agreement, at law, or in equity, the Commissioner has the right to terminate this Agreement immediately upon giving notice to Tenant, without any opportunity for Tenant to cure.

In addition to the foregoing, and in addition to all other remedies available to the City, if Tenant or the City's auditor schedules a date for an audit of Tenant's records and Tenant fails to be available or otherwise fails to comply with the reasonable requirements for the audit, Tenant must pay all reasonable costs and expenses associated with the scheduled audit.

7.6 Revenue Control. Upon the request of the Commissioner Tenant must make available monthly sales data for each Retail Space ("**Point of Sale Data**"), reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction, and specifying the sales category applicable to each item sold. At such time, if any, as computerized Point of Sale Data systems ("**POS Systems**") have been developed to a point where the Commissioner or its designated representative deems it necessary or desirable to install such a system, then Tenant must upon request and at its own expense, install such a POS system in the Retail Space or, if it already uses such a system, must use reasonable efforts to promptly cause the system to conform to the City's POS Systems. Any such system later installed by Tenant must be compatible with any POS System installed or reasonably contemplated to be installed by the Commissioner in the Terminals or elsewhere in the Airport generally, and Tenant must permit the Commissioner to connect the Commissioner's POS System to Tenant's POS System using fiber optic cable or otherwise.

7.7 Lien. In addition to any liens as may arise under Illinois law, the City has a contractual lien under this Agreement on all property, including Tenant personal property located on the Leased Space, as security for non-payment of any Rent due.

ARTICLE 8 INSURANCE, INDEMNITY AND SECURITY

8.1 Insurance. Tenant must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period following expiration or termination of this Agreement during which Tenant is holding over or Tenant is required to return to the Leased Space for any reason whatsoever, the types of insurance specified in Exhibit 8 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.2 Indemnification.

A. Except where this indemnity clause would be found to be inoperative or unenforceable under the Construction Contract Indemnification for Negligence Act, 740 ILCS 35/0.01 *et seq.* ("**Anti-Indemnity Act**"), Tenant must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees, from

and against any and all Losses.

B. "Losses" means, individually and collectively, liabilities of every kind, including losses, damages, and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, judgments or settlements, any or all of which in any way arise out of or relate to the acts or omissions of Tenant, its employees, agents, subtenants, and Subcontractors.

C. At the City Corporation Counsel's option, Tenant must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Tenant of any of its obligations under this Agreement. Tenant must not make any settlement without the prior written consent to it by the City Corporation Counsel if the settlement requires any action on the part of the City or in any way involving the Airport.

D. To the extent permissible by law, Tenant waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due under any Losses, including any claim by any employee of Tenant that may be subject to the Workers' Compensation Act, 820 ILCS 305/1 et seq or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The waiver, however, does not require Tenant to indemnify the City for the City's own negligence to the extent doing so would violate the Anti-Indemnity Act. The City, however, does not waive any limitations it may have on its liability under the Worker's Compensation Act or under the Illinois Pension Code.

E. The indemnities contained in this section survive expiration or termination of this Agreement, for matters occurring or arising during the Term of this Agreement or as the result of or during the holding over of Tenant beyond the Term. Tenant acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Tenant's duties under this Agreement, including the insurance and Security requirements.

8.3 Security

A. Form of Security.

(i) Tenant must provide the City no later than the Effective Date an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be maintained by Tenant, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal \$75,000 the first and second Lease Year and in each Lease Year thereafter be 50% of an amount equal to the Rent Tenant is required to have paid the City for the immediately preceding Lease Year, excluding any

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Additional Rent. The Letter of Credit must be in the form set forth in Exhibit 7 or as otherwise approved by the Corporation Counsel.

(ii) In lieu of the Letter of Credit, Tenant may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "Security." The original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Tenant of all of Tenant's obligations under this Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Corporation Counsel has been furnished to the Corporation Counsel at least 30 days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Tenant's obligations under this Agreement. The Commissioner is not obligated to pay or credit Tenant with interest on any Security.

(iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Tenant and held by the City for the payment of any obligation of Tenant arising before or after the Event of Default.

(iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Tenant must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within 5 days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

B. Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Tenant to immediately close some or all of the Leased Space until the

Letter of Credit is in place and effective.

C. Right to Require Replacement of Letter of Credit. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

D. No Excuse from Performance. None of the provisions contained in this Agreement nor in the Letter of Credit required under this Agreement excuse Tenant from faithfully performing in accordance with the terms and conditions of this Agreement or limit the liability of Tenant under this Agreement for any and all damages in excess of the amounts of the Letter of Credit.

E. Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Tenant to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Tenant to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

ARTICLE 9 DEFAULT, REMEDIES AND TERMINATION

9.1 Events of Default. The following A. through N. constitute Events of Default by Tenant under this Agreement. The Commissioner will notify Tenant in writing of any event that the Commissioner believes to be an Event of Default. Tenant will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed 30 days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Tenant promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within 45 days from delivery of the notice, Tenant will have the additional time, not in any event to exceed 45 days, to cure the failure.

A. Any material misrepresentation made by Tenant to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.

B. Tenant's failure to make any payment in full when due under this Agreement and

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1 failure to cure the default within five days after the City gives written notice of the non-payment to
2 Tenant. In addition, Tenant's failure to make any such payment within five days after the written
3 notice more than three times in any Lease Year constitutes an Event of Default without the necessity
4 of the City giving notice of the fourth failure to Tenant or any opportunity to cure it.

5 C. Tenant's failure to promptly and fully keep, fulfill, comply with, observe, or perform
6 any promise, covenant, term, condition or other non-monetary obligation or duty of Tenant contained
7 in this Agreement.

8 D. Tenant's failure to promptly and fully perform any obligation or duty, or to comply
9 with any restriction of Tenant contained in this Agreement concerning Transfer or Change in
10 Ownership, whether directly or indirectly, of Tenant's rights or interests in this Agreement or of the
11 ownership of Tenant.

12 E. Tenant's failure to provide or maintain the insurance coverage required under this
13 Agreement (including any material non-compliance with the requirements) and the failure to cure
14 the Event of Default within two days following oral or written notice from the Commissioner; or,
15 if the noncompliance is non-material, the failure to cure the Event of Default within 20 days after
16 the Commissioner gives written notice. The Commissioner, in her sole discretion, will determine
17 if noncompliance is material.

18 F. Tenant's failure to conduct Concession operations in any Retail Space at all times
19 Tenant is required to do so under this Agreement.

20 G. Tenant's failure to comply with the Value Pricing policy.

21 H. Tenant's failure to begin or to complete its Improvements on a timely basis or to
22 timely open for business in the Leased Space or any portion of it.

23 I. An Event of Default by Tenant or any Affiliate under any other agreement it may
24 presently have or may enter into with the City during the Term of this Agreement and failure to cure
25 the default within any applicable cure period.

26 J. Tenant or Guarantor, if any, does any of the following and the action affects Tenant's
27 ability to carry out the terms of this Agreement:

28 (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code
29 as amended from time to time; or

30 (ii) fails to pay its debts generally as they mature; or

31 (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute;
32 or

33 (iv) makes a general assignment for the benefit of creditors, or

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(v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or

(vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.

K. An order for relief is entered by or against Tenant or Guarantor (if any) under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within 60 days following its issuance.

L. Tenant is dissolved.

M. A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Tenant, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Tenant's performance of this Agreement in accordance with its terms.

N. Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.

9.2 Remedies.

If an Event of Default occurs and is not cured by Tenant in the time allowed, in addition to any other remedies provided for in this Agreement, including the remedy of Self-help as provided in Section 9.3, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

A. Terminate this Agreement with respect to all or a portion of the Leased Space and exclude Tenant from that part of the Leased Space affected by the termination. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Tenant that this Agreement ceases and expires and becomes absolutely void with respect to the Leased Space or that part identified in the notice on the date specified in the notice, to be no less than five days after the date of the notice, without any right on the part of Tenant after that to save the forfeiture by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. At the expiration of the time limit in the notice, this Agreement and the Term of this Agreement, as well as the right, title and interest of Tenant under this Agreement, wholly ceases and expires and becomes void with respect to the Leased Space identified in such notice in the same manner and with the same force and effect (except as to Tenant's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term with respect to the Leased Space identified in such notice.

B. Recover all Rent, including Additional Rent and any other amounts due that have

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1 accrued and are then due and payable and also all damages available at law or under this Agreement.
2 If the Agreement is terminated, whether in its entirety or with respect to a part of the Leased Space,
3 the damages will include damages for the balance of the scheduled Term, based upon any and all
4 amounts that Tenant would have been obligated to pay for the balance of the Term with respect to
5 the Leased Space, or if this Agreement is terminated with respect to a portion of the Leased Space,
6 that portion of the Leased Space affected by the termination, calculated as provided in this
7 Agreement or, if not fixed, as reasonably estimated and prorated among the various portions of the
8 Leased Space. In determining the amount of damages for the period after termination, the
9 Commissioner may make the determination based upon the sum of any future payments that would
10 have been due to the City, for the full Lease Year immediately before the Event of Default. All
11 amounts that would have been due and payable after termination for the balance of the Term with
12 respect to all or a portion of the Leased Space must be discounted to present value at the Default
13 Rate existing as of the date of termination. The Commissioner may declare all amounts to be
14 immediately due and payable.

15 C. At any time after the occurrence of any uncured Event of Default, whether or not the
16 Lease under this Agreement has been terminated, reenter and repossess the Leased Space and/or any
17 part of it with or without process of law, so long as no undue force is used, and the City has the
18 option, but not the obligation, to re-lease all or any part of the Leased Space. The City, however, is
19 not required to accept any Tenant proposed by Tenant or to observe any instruction given the City
20 about such a re-lease. The failure of the City to re-lease the Leased Space or any part or parts of it
21 does not relieve or affect Tenant's liability under this Agreement nor is the City liable for failure to
22 re-lease. Reentry or taking possession of the Leased Space does not constitute an election on the
23 City's part to terminate this Agreement unless a written notice of the election by the Commissioner
24 is given to Tenant. Even if the City re-leases without termination, the Commissioner may at any
25 time after that elect to terminate this Agreement for any previous uncured Event of Default. For the
26 purpose of re-leasing, the Commissioner may decorate or make repairs, changes, alterations or
27 additions in or to the Leased Space to the extent deemed by the Commissioner to be desirable or
28 convenient, and the cost of the decoration, repairs, changes, alterations or additions will be charged
29 to and payable by Tenant as Additional Rent under this Agreement. Any sums collected by the City
30 from any new Tenant obtained on account of Tenant will be credited against the balance of the Rent
31 due under this Agreement. Tenant must pay the City monthly, on the days when payments of Rent
32 would have been payable under this Agreement, the amount due under this Agreement less the
33 amount obtained by the City from the new Tenant, if any.

34 D. Enter upon the Leased Space, distrain upon and remove from it all inventory,
35 equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned
36 by Tenant or by others, and to proceed without judicial decree, writ of execution or assistance or
37 involvement of constables or the City's and Tenant's officers, to conduct a private sale, by auction
38 or sealed bid without restriction. Tenant waives the benefit of all laws, whether now in force or later

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1 enacted, exempting any of Tenant's property on the Leased Space or elsewhere from distraint, levy
2 or sale in any legal proceedings taken by the City to enforce any rights under this Agreement.

3 E. Seek and obtain specific performance, a temporary restraining order or an injunction,
4 or any other appropriate equitable remedy.

5 F. Seek and obtain money damages; including special, exemplary, incidental and
6 consequential damages.

7 G. Deem Tenant and Affiliates non-responsible in future contracts or concessions to be
8 awarded by the City.

9 H. Declare Tenant and Affiliates in default under any other existing contracts or
10 agreements they might have with the City and to exercise any remedies available under those other
11 contracts or agreements.

12 I. Accept the assignment of any and all Subcontracts between Tenant and the design and
13 construction Subcontractors.

14 J. require Tenant to terminate a Subcontractor that is causing breaches of this
15 Agreement.

16 9.3 Commissioner's Right to Perform Tenant's Obligations.

17 A. Upon the occurrence of an Event of Default that Tenant has failed to cure in the time
18 provided, the Commissioner may, but is not obligated to, make any payment or perform any act
19 required to be performed by Tenant under this Agreement in any manner deemed expedient by the
20 Commissioner for the purpose of correcting the condition that gave rise to the Event of Default
21 ("Self-help"). The Commissioner's inaction never constitutes a waiver of any right accruing to the
22 City under this Agreement nor do the provisions of this section or any exercise by the Commissioner
23 of Self-help under this Agreement cure any Event of Default. Any exercise of Self-help does not
24 limit the right of any other City department or agency to enforce applicable City ordinances or
25 regulations.

26 B. The Commissioner, in making any payment that Tenant has failed to pay:

27 (i) relating to taxes, may do so according to any bill, statement or estimate, without
28 inquiry into the validity of any tax, assessment, sale, forfeiture, tax lien or title or
29 claim;

30 (ii) for the discharge, compromise or settlement of any lien, may do so without inquiry
31 as to the validity or amount of any claim for lien that may be asserted; and

32 (iii) in connection with the completion of construction, furnishing or equipping of the
33 Leased Space or the licensing, operation or management of the Leased Space or the

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1 payment of any of its operating costs, may do so in such amounts and to such persons
2 as the Commissioner may deem appropriate.

3 Nothing contained in this Agreement requires the Commissioner to advance monies for any purpose.

4 C. If Tenant fails to perform its obligations under this Agreement to maintain and
5 operate the Leased Space in accordance with specified standards within 3 days following written
6 notice from the Commissioner, or in the event of a serious health or safety concern or in an
7 emergency (in which case no notice is required) the Commissioner may, but is not obligated to,
8 direct the Department to perform or cause the performance of any such obligation in any manner
9 deemed expedient by the Commissioner for the purpose of correcting the condition in question.

10 D. All sums paid by the City under the provisions of this Section and all necessary and
11 incidental costs, expenses and reasonable attorneys' fees in connection with the performance of any
12 such act by the Commissioner, together with interest thereon at the Default Rate, from the date of
13 the City's payment until the date paid by Tenant, are deemed Additional Rent under this Agreement
14 and are payable to the City within 10 days after demand therefor, or at the option of the
15 Commissioner, may be added to any Rent then due or later becoming due under this Agreement, and
16 Tenant covenants to pay any such sum or sums with interest at the Default Rate.

17 9.4 Effect of Default and Remedies

18 A. Tenant, for itself and on behalf of any and all persons claiming through or under it
19 (including creditors of all kinds), waives and surrenders all right and privilege that they or any of
20 them might have under or by reason of any present or future law, to redeem the Leased Space or to
21 have a continuance of this Agreement for the Term, as it may have been extended, after having been
22 dispossessed or ejected by process of law or under the terms of this Agreement or after the
23 termination of this Agreement as provided in this Agreement.

24 B. The City's waiver of any one right or remedy provided in this Agreement does not
25 constitute a waiver of any other right or remedy then or later available to the City under this
26 Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect
27 to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement
28 by Tenant will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the
29 City to act with respect to any prior, contemporaneous or later violation or Event of Default or with
30 respect to any continuation or repetition of the original violation or Event of Default. The acceptance
31 by the City of payment for any period or periods after an Event of Default or violation of any of the
32 terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor
33 create any limitation upon any right of the City under this Agreement to terminate this Agreement
34 for subsequent violation or Event of Default, or for continuation or repetition of the original violation
35 or Event of Default. Tenant has no claim of any kind against the City by reason of the City's exercise
36 of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the

exercise of rights.

C. All rights and remedies of the City under this Agreement are separate and cumulative and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement or the taking or recovery of the Leased Space deprives the City of any of its remedies against Tenant for Rent, including Additional Rent or other amounts due or for damages for the Tenant's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

ARTICLE 10 SPECIAL CONDITIONS

10.1 Warranties and Representations. In connection with the execution of this Agreement, Tenant warrants and represents statements A. through K. below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Tenant must promptly notify the Commissioner in writing. Failure to do so will constitute an Event of Default. Tenant must incorporate all of the provisions set forth in this Section 10.1 in all contracts entered into with any suppliers of materials, furnishers of services, Subcontractors, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Tenant as to the matters set forth in this Section. Tenant must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontractor is a partnership or joint venture, Tenant must also include provisions in its Subcontract insuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

A. Tenant is financially solvent; Tenant holds itself to very high standards of quality and professionalism; Tenant and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Tenant in accordance with all of its provisions and requirements; Tenant has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Tenant can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement

B. Tenant is a corporation duly organized, validly existing and in good standing under the laws of the State of Illinois; Tenant is qualified to do business in the State of Illinois; and Tenant has a valid current business privilege license to do business in the City, if required by applicable law.

C. The person signing this Agreement on behalf of Tenant has been duly authorized to do so by Tenant; all approvals or consents necessary in order for Tenant to execute and deliver this

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1 Agreement have been obtained; and neither the execution and delivery of this Agreement, the
2 consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms
3 and conditions of this Agreement:

4 (i) conflict with or result in a breach, default or violations of: Tenant's organizational
5 documents; any law, regulation, ordinance, court order, injunction, or decree of any
6 court, administrative agency or governmental body, or any Lease or permit; or any
7 of the terms, conditions or provisions of any restriction or any agreement or other
8 instrument to which Tenant is now a party or by which it is bound; or

9 (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature
10 whatsoever upon any of the property or assets of Tenant under the terms of any
11 instrument or agreement.

12 D. There is no litigation, claim, investigation, challenge or other proceeding now pending
13 or, to Tenant's knowledge after due and complete investigation, threatened, challenging the existence
14 or powers of Tenant, or in any way affecting its ability to execute or perform under this Agreement
15 or in any way having a material adverse affect on the operations, properties, business or finances of
16 Tenant.

17 E. This Agreement constitutes the legal, valid and binding obligation of Tenant,
18 enforceable against Tenant in accordance with its terms, subject to applicable bankruptcy,
19 insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the
20 application of equitable principles.

21 F. No officer, agent or employee of the City is employed by Tenant or has a financial
22 interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be
23 paid under it except as may be permitted in writing by the Board of Ethics established under Chapter
24 2-156 of the Municipal Code or as may be permitted by law.

25 G. Tenant has not and will not knowingly used the services of any person or entity for
26 ~~any purpose in its performance under this Agreement, when such person or entity is ineligible to~~
27 perform services under this Agreement or in connection with it, as a result of any local, state or
28 federal law, rule or regulation, or when person or entity has an interest that would conflict the
29 performance of services under this Agreement.

30 H. There was no broker instrumental in consummating this Agreement and no
31 conversations or prior negotiations were had with any broker concerning the rights granted in this
32 Agreement with respect to the Leased Space. Tenant must hold the City harmless against any claims
33 for brokerage commission arising out of any conversations or negotiations had by Tenant with any
34 broker.

35 I. Neither Tenant nor any Affiliate of Tenant, nor any subtenant or affiliate of subtenant,

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1 is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S.
2 Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of
3 Commerce or their successors, or on any other list of persons with which the City may not do
4 business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the
5 Unverified List, and Entity List, and the Debarred List.

6 J. Tenant, and to the best of Tenant's knowledge, its Affiliates, Subcontractors, any of
7 their respective owners holding 7.5% or more beneficial ownership interest, and any of Tenant's
8 directors, officers, members, or partners:

9 (i) have no interest, directly or indirectly, that conflicts in any manner or degree with
10 Tenant's performance under this Agreement;

11 (ii) have no outstanding parking violation complaints or debts, as the terms are defined
12 in Section 2-92-380 of the Municipal Code (with the exception of any debt or
13 obligation that is being contested in a pending administrative or judicial proceeding)
14 and agrees that, for the Term, they will promptly pay any debts, outstanding parking
15 violation complaints or monetary obligations to the City that may arise during the
16 Term, with the exception of any debt or obligation that is being contested in a
17 pending administrative or judicial proceeding;

18 (iii) are not in default under any other City contract or agreement as of the Effective Date,
19 nor have been deemed by the City to have been in default of any other City contract
20 or agreement within five years immediately preceding the Effective Date;

21 (iv) are not in violation of the provisions of § 2-92-320 of the Municipal Code pertaining
22 to certain criminal convictions or admissions of guilt and are not currently debarred
23 or suspended from contracting by any Federal, State or local governmental agency;

24 (v) are not delinquent in the payment of any taxes due to the City; and

~~25 (vi) will not at any time during the Term have any interest or acquire any interest, directly~~
~~26 or indirectly, that conflicts or would or may conflict in any manner or degree with~~
~~27 Tenant's performance under this Agreement.~~

28 (vii) will not make use of the Leased Space in any manner that might interfere with the
29 landing and taking off of aircraft at the Airport under current or future conditions or
30 that might otherwise constitute a hazard to the operations of the Airport or to the
31 public generally.

32 K. Except only for those representations, statements, or promises expressly contained
33 in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference
34 in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing,
35 or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Tenant to

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enter into this Agreement or has been relied upon by Tenant, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the services to be performed;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- the compensation provisions of this Agreement; or
- (v) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

10.2 Business Documents, Disclosure of Ownership Interests and Maintenance of Existence.

A. Tenant must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Tenant.

B. Tenant has provided the Commissioner with an Economic Disclosure Statement and Affidavit ("EDS") for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Tenant, copies of which are attached to this Agreement as Exhibit 10. Upon request by the Commissioner, Tenant must further cause its Subcontractors, subtenants, sublicensees and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Tenant must provide the Commissioner, upon request, a "no change" affidavit if the information in the EDS(s) attached as Exhibit 10 remains accurate, or revised and accurate EDS(s) if the information contained in the attached EDS(s) has changed. In addition, Tenant must provide the City revised and accurate EDS(s) within 30 days of any event or change in circumstance that renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

10.3 Licenses and Permits. Tenant must in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained at its expense, the permits, licenses, authorizations and approvals as are necessary under federal, state or local law for Tenant, its subtenants (if any), and Subcontractors: to operate the Concession; to construct, operate, use and maintain the Leased Space; and otherwise to comply with the terms of this Agreement and

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the privileges granted under this Agreement. Tenant must promptly provide copies of any required licenses and permits to the Commissioner and to the Concession Management Representative.

10.4 Confidentiality. Except as may be required by law during or after the performance of this Agreement, Tenant will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Tenant is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Tenant must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Tenant, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Tenant must require each prospective Subcontractor to abide by such restrictions in connection with their respective Subcontracts.

10.5 Subcontracts and Assignments.

A. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Airport, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

B. Limits on Tenant's transfers and changes in ownership:

(i) Tenant may not sell, assign, sublease, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the License, the Leased Space, the Term, or otherwise permit any third party to use the Leased Space, without prior consent of the City, which consent may be given or denied in the City's sole and absolute discretion. Consent by the City does not relieve Tenant from obtaining further consent from the City for any subsequent Transfer. Transfers involving all of Tenant's interest in this Agreement require approval of the City Council. Transfers of less than all of Tenant's interest in this Agreement require approval of the Commissioner. Consent by the City to any Transfer does not relieve Tenant (or if Tenant is a joint venture, any of the entities comprising Tenant) from the requirement of obtaining consent from the City for any subsequent Transfer.

(ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Tenant (or if Tenant is a joint venture or other entity comprised of other entities, then of any of the entities comprising Tenant), whether to an

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Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Tenant, or any merger or consolidation of Tenant (individually and collectively, "**Change in Ownership**"), is subject to the consent of:

- a. City Council if the Change in Ownership involves a 100% Change in Ownership of Tenant (or if Tenant is a joint venture or other entity comprised of other entities, 100% ownership of any of the entities comprising Tenant), or
- b. the Commissioner if the Change in Ownership involves less than a 100% Change in Ownership of Tenant (or if Tenant is a joint venture or other entity comprised of other entities, of less than 100% of any of the entities comprising Tenant), in the sole discretion of the City Council or the Commissioner, as applicable.

Consent by the City to any such Change in Ownership does not relieve Tenant from obtaining further consent from the City for any subsequent Change in Ownership of any nature.

- (iii) If Tenant (or, if Tenant is a joint venture or other entity comprised of other entities, any of the entities comprising Tenant) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 5% or more of the shares of Tenant's (or if Tenant is a joint venture or other entity comprised of other entities, of any of the entities comprising Tenant) stock is subject to the City's consent as set forth above. In that event, Tenant must provide the City with such prior notice of a Change in Ownership as is not prohibited by law or by a confidentiality agreement executed in connection with the proposed Change in Ownership. If such prior notice is not permitted, then Tenant must notify the City as soon as possible after the Change in Ownership to obtain the City's consent to the Change in Ownership, which consent the City may grant or deny in its sole discretion. If Tenant is a publicly traded corporation, a Change in Ownership of less than 5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 5% or more.

- (iv) Consent by the City to any Change in Ownership does not relieve Tenant (or if Tenant is a joint venture, any of the entities comprising Tenant) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.

- (v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Tenant of any of its obligations under this

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Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Tenant or to take any other action as provided in this Agreement be deemed or construed to constitute consent to the Tenant's request by the Commissioner or by the City Council. If the City is found to have breached its obligations under this Section, then Tenant's sole remedy is to terminate this Agreement without liability to either the City or Tenant.

(vi) Notwithstanding any permitted Transfer by Tenant of any rights under this Agreement, Tenant remains fully liable for all payments due to the City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of the License or all or any portion of the Leased Space or Transfer of all or any portion of the Term, where the fees payable to Tenant exceed the Rent or pro rata portion of the Rent under this Agreement, as the case may be, for the License, Leased Space or Term, Tenant must pay the City monthly, as Additional Rent, at the same time as the monthly installments of other Rent under this Agreement that are payable in monthly installments, the excess of the fees payable to Tenant pursuant to the Transfer over the Rent payable to the City under this Agreement.

(vii) Any or all of the requests by Tenant for consents under this Section must be made in writing and provided to the Commissioner (a) at least 60 days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least 120 days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed Economic Disclosure Statements and Affidavits for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Tenant in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole and absolute discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Tenant that, notwithstanding the proposed Transfer or Change in Ownership, Tenant remains fully and completely liable for all obligations of Tenant under this Agreement.

(viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not

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prohibited by this section, the Commissioner may collect the Rent payable under this Agreement from any transferee of Tenant and in that event will apply the net amount collected to the amounts payable by Tenant under this Agreement without, by doing so, releasing Tenant from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Tenant and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

- (ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Tenant and are payable to the City as Additional Rent.

C. The provisions of this Agreement, to the extent applicable, are deemed a part of any sublease or contract between Tenant and a subtenant or Subcontractor.

D. Assignment of Subleases, Sublicenses and Subcontracts.

- (i) Tenant shall assign to the City all of Tenant's right, title and interest in and to each and every permitted sublease and sublicense and each and every Subcontract with a design and construction Subcontractor, now or later executed by Tenant in connection with the License or the Leased Space or any part of it. In connection with the assignment, Tenant must deliver all originally executed subleases, sublicenses and Subcontracts to the Commissioner. Any such assignment will become operative and effective only when and if the City accepts the assignment by giving written notice to Tenant and:

a. either this Agreement and the Term of this Agreement or Tenant's right to possession under this Agreement are terminated pursuant to Article 9; or

~~b. in the event of the issuance and execution of a dispossession warrant or of any other re-entry or repossession by the City under the provisions of this Agreement; or~~

c. if an Event of Default exists.

- (ii) At the time, if any, that the assignment becomes effective as provided above, the subtenants or Subcontractors will be deemed to have waived all claims, suits, and causes of action against the City arising out of or relating to the period before the effective date of the assignment. Further, in no instance will the City be responsible for any claims by a subtenant or Subcontractor arising from or related to any fraud, misrepresentation, negligence or willful or intentionally tortious conduct by Tenant,

1 its officials, employees, or agents.

2 10.6 Compliance with Laws. Tenant must at all times observe and comply with all
3 applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative
4 orders and directives of the federal, state and local government, now existing or later in effect
5 (whether or not the law also requires compliance by other parties), including the Americans with
6 Disabilities Act and Environmental Laws, that may in any manner affect the performance of this
7 Agreement (collectively, "Laws"), and must not use the Leased Space, or allow the Leased Space
8 to be used, in violation of any Laws or in any manner that would impose liability on the City or
9 Tenant under any Laws. Tenant must notify the City within seven days of receiving notice from a
10 competent governmental authority that Tenant or any of its Subcontractors may have violated any
11 Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this
12 Agreement whether or not they appear in this Agreement or, upon application by either party, this
13 Agreement will be amended to make the insertion; however, in no event will the failure to insert the
14 provisions before or after this Agreement is signed prevent its enforcement. Without limiting the
15 foregoing, Tenant covenants that it will comply with all Laws, including but not limited to the
16 following:

17 A. In connection with Section 2-92-320 of the Municipal Code, Tenant has executed an
18 Economic Disclosure Statement and Affidavit which is attached to this Agreement as Exhibit 10 and
19 which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and
20 under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of
21 the Municipal Code continues for 3 years following any conviction or admission of a violation of
22 Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a
23 business entity has committed any offense under the section on behalf of such an entity and under
24 the direction or authorization of a responsible official of the entity, the business entity is chargeable
25 with the conduct. If, after Tenant enters into a contractual relationship with a Subcontractor, it is
26 determined that the contractual relationship is in violation of this subsection, Tenant must
27 immediately cease to use the Subcontractor. All Subcontracts must provide that Tenant is entitled
28 ~~to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of~~
29 ~~the contractual relationship, the use of the Subcontractor would be violative of this subsection.~~

30 B. It is the duty of Tenant and all officers, directors, agents, partners, and employees of
31 Tenant to cooperate with the Inspector General of the City in any investigation or hearing undertaken
32 under Chapter 2-56 of the Municipal Code. Tenant understands and will abide by all provisions of
33 Chapter 2-56 of the Municipal Code. Tenant must inform all Subcontractors of this provision and
34 require under each Subcontract compliance herewith by each Subcontractor as to each such
35 Subcontractor and all of its officers, directors, agents, partners and employees.

36 C. Tenant must not use or allow the Leased Space to be used for the release, storage, use,
37 treatment, disposal or other handling of any hazardous substance, as defined in any Environmental

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1 Laws, except in full compliance with all Environmental Laws. Tenant must not use or allow the
2 Leased Space to be used for the storage of any such hazardous substances except small amounts of
3 cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts
4 of such hazardous substances customarily handled or used in connection with the Concession
5 operations, all of which must be stored and used in compliance with all applicable Environmental
6 Laws. Upon the expiration or termination of this Agreement, Tenant must surrender the Leased
7 Space to the City free from the presence and contamination of any hazardous substances.

8 D. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Tenant
9 warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated
10 and are not in violation of the following sections of the Municipal Code (collectively, the "Waste
11 Sections"):

12 7-28-390 Dumping on public way—Violation—Penalty;

13 7-28-440 Dumping on real estate without permit;

14 11-4-1410 Disposal in waters prohibited;

15 11-4-1420 Ballast tank, bilge tank or other discharge;

16 11-4-1450 Gas manufacturing residue;

17 11-4-1500 Treatment and disposal of solid or liquid waste;

18 11-4-1530 Compliance with rules and regulations required;

19 11-4-1550 Operational requirements;

20 11-4-1560 Screening requirements; and

21 any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

22 ~~During the period while this Agreement is executory, Tenant's or any Subcontractor's violation of~~
23 ~~the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a~~
24 ~~breach of and an Event of Default under this Agreement, for which the opportunity to cure, if~~
25 ~~curable, will be granted only at the sole designation of the Commissioner. Such breach and Event~~
26 ~~of Default entitles the City to all remedies under the Agreement, at law or in equity. This section~~
27 ~~does not limit the Tenant's and its Subcontractors' duty to comply with all Environmental Laws, in~~
28 ~~effect now or later, and whether or not they appear in this Agreement. Non-compliance with these~~
29 ~~terms and conditions may be used by the City as grounds for the termination of this Agreement, and~~
30 ~~may further affect the Tenant's eligibility for future City agreements.~~

31 E. Section 2-92-586 of the Municipal Code: The City encourages Tenant to use
32 contractors and subcontractors that are firms owned or operated by individuals with disabilities, as
33 defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise

prohibited by federal or state law.

F. Prohibition on Certain Contributions (Mayoral Executive Order No. 05-1):

1. Licensee agrees that Tenant, any person or entity who directly or indirectly has an ownership or beneficial interest in Tenant of more than 7.5 percent ("Owners"), spouses and domestic partners of such Owners, Tenant's 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 bid, proposal or 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 the 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 the 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. 05-1 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 05-1.~~

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. 05-1 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.

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6. If Tenant violates this provision or Mayoral Executive Order No. 05-1 prior to award of the Agreement resulting from this specification, the Chief Procurement Officer may reject Tenant's bid.

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

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Chapter 2-156 of the Municipal code of Chicago, as amended.

G. Tenant covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Tenant further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

H. Pursuant to section 2-156-030(b) of the Municipal Code, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. **Violation of §2-156-030(b) by any elected official with respect to this Agreement is grounds for termination of this Agreement.** Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest will not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his office or employment; (iii) any economic benefit provided equally to all residents of the city; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" will not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the city.

I. Visual Rights Act.

(i) The Tenant will cause any artist who creates artwork for the Leased Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "Artwork") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 *et seq.*) (the "Copyright Act"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. The Tenant acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, the Tenant acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building

1 or other structure in such a way that removing, storing, relocating, reinstalling or transferring the
2 Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

3 (ii) The Tenant represents and warrants that it will obtain a waiver of Section 106A and
4 Section 113 of the Copyright Act as necessary from any employees and subcontractors, or any other
5 artists. Tenant must provide City with copies of any such waivers required by Section 106A and
6 Section 113 of the Copyright Act prior to installation of any Artwork in the Leased Space.

7 10.7 Airport Security.

8 A. This Agreement is expressly subject to the airport security requirements of Title 49
9 of the United States Code, Chapter 449, as amended ("**Airport Security Act**"), the provisions of
10 which govern airport security and are incorporated by reference, including the rules and regulations
11 promulgated under it. Tenant is subject to, and further must conduct with respect to its
12 Subcontractors and the respective employees of each, such employment investigations, including
13 criminal history record checks, as the Commissioner, the TSA or the FAA may deem necessary.
14 Further, in the event of any threat to civil aviation, as defined in the Airport Security Act, Tenant
15 must promptly report any information in accordance with those regulations promulgated by the
16 United States Department of Transportation, the TSA and by the City. Tenant must, notwithstanding
17 anything contained in this Agreement to the contrary, at no additional cost to the City, perform under
18 this Agreement in compliance with those guidelines developed by the City, the TSA and the FAA
19 with the objective of maximum security enhancement. The drawings, plans, and specifications
20 provided by Tenant under this Agreement must comply with those guidelines for airport security
21 developed by the City, the TSA and the FAA and in effect at the time of their submission.

22 B. Further, Tenant must comply with, and require compliance by its Subcontractors,
23 suppliers of materials and furnishers of services, employees, and business invitees, with all present
24 and future laws, rules, regulations, or ordinances promulgated by the City, the TSA or the FAA, or
25 other governmental agencies to protect the security and integrity of the Airport, and to protect against
26 access by unauthorized persons. Subject to the approval of the TSA, the FAA and the
27 ~~Commissioner, Tenant must adopt procedures to control and limit access to the Airport and the~~
28 Leased Space by Tenant and its Subcontractors, suppliers of materials and furnishers of services,
29 employees, and business invitees in accordance with all present and future City, TSA and FAA laws,
30 rules, regulations, and ordinances. At all times during the Term, Tenant must have in place and in
31 operation a security program for the Leased Space that complies with all applicable laws and
32 regulations.

33 C. Gates and doors located on the Leased Space, if any, that permit entry into restricted
34 areas at the Airport must be kept locked by Tenant at all times when not in use or under Tenant's
35 constant security surveillance. Gate or door malfunctions must be reported to the Commissioner or
36 the Commissioner's designee without delay and must be kept under constant surveillance by Tenant
37 until the malfunction is remedied.

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1 D. In connection with the implementation of its security program, Tenant may receive,
2 gain access to or otherwise obtain certain knowledge and information related to the City's overall
3 Airport security program. Tenant acknowledges that all such knowledge and information is of a
4 highly confidential nature. Tenant covenants that no person will be permitted to gain access to such
5 knowledge and information, unless the person has been approved by the Commissioner in advance
6 in writing. Tenant further must indemnify, hold harmless and defend the City and other users of the
7 Airport from and against any and all claims, reasonable costs, reasonable expenses, damages and
8 liabilities, including all reasonable attorney's fees and costs, resulting directly or indirectly from the
9 breach of Tenant's covenants and agreements as set forth in this section.

10 10.8 Non-Discrimination.

11 A. Tenant for itself, its personal representatives, successors in interest, and assigns, as
12 a part of the consideration of this Agreement, covenants that: (i) no person on the grounds of race,
13 color, or national origin will be excluded from participation in, be denied the benefits of, or
14 otherwise be subjected to discrimination in the use of the Leased Space; (ii) in the construction of
15 any Improvements on, over, or under the Leased Space and the furnishing of services in them, no
16 person on the grounds of race, color, or national origin will be excluded from participation in, be
17 denied the benefits of, or otherwise be subjected to discrimination; (iii) Tenant will use the Leased
18 Space in compliance with all other requirements imposed by or under 49 C.F.R. Part 21,
19 Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those
20 regulations may be amended; and (iv) Tenant shall operate the Concession on a fair, equal, and not
21 illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and
22 nondiscriminatory prices for Merchandise (but Tenant is allowed to make reasonable and
23 nondiscriminatory discounts, rebates, or other similar types of price reductions to volume
24 purchasers.) In addition, Tenant assures that it will comply with all other pertinent statutes,
25 Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of
26 race, creed, color, national origin, sex, age, or handicap be excluded from participating in any
27 activity conducted with or benefitting from federal assistance.

28 B. It is an unlawful practice for Tenant to, and Tenant must at no time: (i) fail or refuse
29 to hire, or discharge, any individual or discriminate against the individual with respect to his or her
30 compensation, or the terms, conditions, or privileges of his or her employment, because of the
31 individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate,
32 or classify its employees or applicants for employment in any way that would deprive any individual
33 of employment opportunities or otherwise adversely affect his or her status as an employee, because
34 of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the
35 exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any
36 manner, including the use of the Leased Space, against any person or group of persons because of
37 race, creed, color, religion, national origin, age, handicap, sex or ancestry. Tenant must post in
38 conspicuous places to which its employees or applicants for employment have access, notices setting

1 forth the provisions of this non-discrimination clause.

2 C. Tenant must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.
3 (1981), as amended, and to the extent required by the law, must undertake, implement and operate
4 an affirmative action program in compliance with the rules and regulations of the Federal Equal
5 Employment Opportunity Commission and the Office of Federal Contract Compliance, including
6 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319
7 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg.
8 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act,
9 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans
10 with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as
11 amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

12 D. Tenant must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq.
13 as amended and any rules and regulations promulgated in accordance with it, including the Equal
14 Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Tenant must
15 comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as
16 amended, and all other applicable state statutes, regulations and other laws.

17 E. Tenant must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et
18 seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further,
19 Tenant must furnish or must cause each of its Subcontractor(s) to furnish such reports and
20 information as requested by the Chicago Commission on Human Relations.

21 F. Tenant must insert these non-discrimination provisions in any agreement by which
22 Tenant grants a right or privilege to any person, firm, or corporation to render accommodations
23 and/or services to the public on the Leased Space. Tenant must incorporate all of the above
24 provisions in all agreements entered into with any subtenants, suppliers of materials, furnishers of
25 services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft
26 union skilled labor, or that may provide any such materials, labor or services in connection with this
27 ~~Agreement, and Tenant must require them to comply with the law and enforce the requirements. In~~
28 all solicitations either by competitive bidding or negotiations by Tenant for work to be performed
29 under a Subcontract, including procurements of materials or leases of equipment, each potential
30 Subcontractor or supplier must be notified by Tenant of the Tenant's obligations under this
31 Agreement relative to nondiscrimination.

32 G. Noncompliance with this Section will constitute a material breach of this Agreement;
33 therefore, in the event of such breach, Tenant authorizes the City to take such action as federal, state
34 or local laws permit to enforce compliance, including judicial enforcement. In the event of Tenant's
35 noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such
36 sanctions as it or the Federal or state government may determine to be reasonably appropriate,
37 including cancellation, termination or suspension of the Agreement, in whole or in part.

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1 H. Tenant must permit access to its books, records, accounts, other sources of
2 information, and its facilities as may be determined by the City, the Commissioner or the Federal
3 government to be pertinent to ascertain compliance with the terms of this Section. Tenant must
4 furnish to any agency of the Federal or state government or the City, as required, any and all
5 documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart
6 E, including an affirmative action plan and Form EEO-1.

7 10.9 Airport Concession Disadvantaged Business Enterprises (ACDBEs). This Agreement
8 is subject to the requirements of the U.S. Department of Transportation's regulations 49 C.F.R. Parts
9 26 and 23, as amended from time to time. Tenant must comply with the Special Conditions
10 Regarding ACDBE participation attached hereto as Exhibit 9 and incorporated here by reference.
11 Failure to comply with such Special Conditions shall be an Event of Default

12 10.10 No Exclusive Rights. Nothing contained in this Agreement must be construed to
13 grant or authorize the granting of an exclusive right, including an exclusive right to provide
14 aeronautical services to the public as prohibited by section 308(a) of the Federal Aviation Act of
15 1958, as amended, and the City reserves the right to grant to others the privilege and right of
16 conducting any one or all activities of an aeronautical nature. It is clearly understood by Tenant that
17 no right or privilege has been granted that would operate to prevent any person, firm, or corporation
18 operating aircraft on the Airport from performing any services on its own aircraft with its own
19 regular employees (including maintenance and repair) that it may choose to perform.

20 10.11 Airport Landing Area. The City reserves the right to further develop or improve the
21 landing area of the Airport as it sees fit, regardless of the desires or view of Tenant, and without
22 interference or hindrance. The City reserves the right, but is not obligated to Tenant, to maintain and
23 keep in repair the landing area of the Airport and all publicly-owned facilities of the Airport, together
24 with the right to direct and control all activities of Tenant in this regard.

25 10.12 No Obstructions. Tenant must comply with applicable notification and review
26 requirements covered in Part 77 of the Federal Aviation Regulations if any future structure or
27 ~~building is planned for the Leased Space, or in the event of any planned modification or alteration~~
28 of any present or future building or structure situated on the Leased Space. Tenant, by accepting the
29 Lease, expressly agrees for itself, its successors and assigns that it will not erect nor permit the
30 erection of any structure or object nor permit the growth of any tree on the Leased Space above the
31 applicable mean sea level elevation set forth in Part 77 of the Federal Aviation Regulations. If these
32 covenants are breached, the City serves the right to enter upon the Leased Space and to remove the
33 offending structure or object and/or cut down the offending tree, all of which will be at the expense
34 of Tenant.

35 10.13 Avigation Easement. There is reserved to the City, its successors and assigns for the
36 use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the
37 Leased Space. This public right of flight includes the right to cause in the airspace any noise

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1 inherent in the operation of any aircraft used for navigation or flight through the airspace or landing
2 at, taking off from, or operation on the Airport. Tenant by accepting this Lease agrees for itself, its
3 successors, and assigns that it will not make use of the Leased Space in any manner that might
4 interfere with the landing and taking off of aircraft from Airport or otherwise constitute a hazard.
5 If these covenant is breached, the City reserves the right to enter upon the Leased Space and cause
6 the abatement of the interference at the expense of Tenant.

7 10.14 National Emergency. This Agreement and all the provisions of this Agreement are
8 subject to whatever right the United States Government now has or in the future may have or acquire
9 affecting the control, operation, regulation, and taking over of the Airport, or the exclusive or non-
10 exclusive use of the Airport by the United States during the time of war or national emergency.

11
12 **ARTICLE 11 GENERAL CONDITIONS**

13 11.1 Entire Agreement. This Agreement contains all the terms, covenants, conditions and
14 agreements between the City and Tenant relating in any manner to the use and occupancy of the
15 Leased Space and otherwise to the subject matter of this Agreement. No prior or other agreement
16 or understandings pertaining to these matters are valid or of any force and effect. This Agreement
17 supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the
18 parties. No representations, inducements, understandings or anything of any nature whatsoever
19 made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or
20 in writing, have induced Tenant to enter into this Agreement, and Tenant acknowledges, represents
21 and warrants that Tenant has entered into this Agreement under and by virtue of Tenant's own
22 independent investigation.

23 11.2 Counterparts. This Agreement may be comprised of several identical counterparts
24 and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed
25 to be an original, but all such counterparts together must constitute but one and the same Agreement.

~~26 11.3 Amendments. Except as otherwise expressly provided in this Agreement, the~~
27 ~~provisions of this Agreement may be amended only by a written agreement signed by the City and~~
28 ~~Tenant. No review or approval by the Commissioner, including approval of Construction~~
29 ~~Documents, constitutes a modification of this Agreement (except to the extent that the review or~~
30 ~~approval expressly provides that it constitutes such a modification or it is apparent on its face that~~
31 ~~the review or approval, if made in writing, modifies terms or provisions of this Agreement that are~~
32 ~~within the express powers of the Commissioner under this Agreement to modify), nor excuse Tenant~~
33 ~~from compliance with the requirements of this Agreement or of any applicable laws, ordinances or~~
34 ~~regulations. Amendments must be signed by the Mayor, provided that the Commissioner alone may~~
35 ~~sign amendments to the Exhibits. Notwithstanding the foregoing, any amendment that would modify~~
36 ~~the Agreement such that the Agreement would no longer substantially comply with the Term Sheet~~

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NUTS ON CLARK UNION STATION, INC

requires approval by the City Council.

11.4 Severability. Whenever possible, each provision of this Agreement must be interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts. All obligations imposed on Tenant under this Agreement pertaining to the maintenance and operation of the Leased Space and compliance with the ACDBE requirements in this Agreement are deemed to include a covenant by Tenant to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law. This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Tenant irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in anyway concerning the execution or performance of this Agreement. Tenant consents to service of process on Tenant, at the option of the City, 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. If any action is brought by Tenant against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Notices. Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been 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 are deemed given on the date of receipt if by personal service,~~ or one day after deposit with a nationally recognized commercial overnight courier, 3 days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Tenant in writing, all notices or communications from City to Tenant will be addressed to the person identified as the Tenant's contact person in the Tenant's Economic Disclosure Statement and Affidavit, as attached as Exhibit 10. All notices or communications from Tenant to the City must be addressed to:

Commissioner, Department of Aviation
City of Chicago

RETAIL CONCESSION LEASE AGREEMENT
NUTS ON CLARK UNION STATION, INC

O'Hare International Airport
10510 W. Zemke Rd
Chicago, Illinois 60666

and with a copy to: Managing Deputy Commissioner of Commercial Development at the same address.

If the notice or communication relates to payment of Rent or other payments to the City or relates to the insurance requirements, a copy must be sent to:

City Comptroller
City of Chicago
City Hall - Room 501
121 N. LaSalle Street
Chicago, Illinois 60602

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

Corporation Counsel
City of Chicago
Department of Law
City Hall, Room 600
121 N. LaSalle Street
Chicago, Illinois 60602

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

~~11.8 Successors and Assigns; No Third Party Beneficiaries. This Agreement inures to the~~
exclusive benefit of, and be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Tenant not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Tenant for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Tenant or any third party claiming

RETAIL CONCESSION LEASE AGREEMENT
NUTS ON CLARK UNION STATION, INC

by or through Tenant or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

A. This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Airport, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Airport. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Tenant consents to the changes to this Agreement.

B. This Agreement and all rights granted to Tenant under this Agreement are expressly subordinated and subject to any existing agreement or any Use Agreement with any airline utilizing the Airport, including the Terminals, and any existing agreement with any airline consortium pertaining to the operation of the Airport, including the Terminals.

C. To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraphs A. and B. above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs A. and B.

11.10 Conflict. In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any sublease or Subcontract between Tenant and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Tenant. Whenever in this Agreement the City is obligated to pay Tenant an amount, then the City Comptroller may elect to require Tenant to offset the amount due against Rent or other payments owed by Tenant to the City, in lieu of requiring the City to pay such amount. Tenant shall have no right to offset any amount due to City under this Agreement against amounts due to Tenant by City unless so directed in writing by the City Comptroller.

~~11.12 Waiver Remedies. No delay or forbearance on the part of any party in exercising any~~
right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Tenant for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner. Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given

RETAIL CONCESSION LEASE AGREEMENT
NUTS ON CLARK UNION STATION, INC

1 by the Commissioner or by such other person as may be duly authorized by the City Council, unless
2 the context clearly indicates otherwise.

3 11.14 Estoppel Certificate. From time to time upon not less than 15 days prior request by
4 the other party, a party or its duly authorized representative having knowledge of the following facts,
5 will execute and deliver to the requesting party a statement in writing certifying as to matters
6 concerning the status of this Agreement and the parties' performance under this Agreement,
7 including the following:

8 A. that this Agreement is unmodified and in full force and effect (or if there have been
9 modifications, a description of the modifications and that the Agreement as modified is in full force
10 and effect);

11 B. the dates to which Rental, including Additional Rental, have been paid and the
12 amounts of the Rental most recently paid;

13 C. that the requesting party is not in default under any provision of this Agreement, or,
14 if in default, the nature of it in detail;

15 D. that, to its knowledge, the requesting party has completed all required improvements
16 in accordance with the terms of this Agreement, and Tenant is in occupancy and paying Rental on
17 a current basis with no offsets or claims; and

18 E. in the case of the City's request under this Agreement, such further matters as may
19 be requested by the City, it being intended that any such statement may be relied upon by third
20 parties.

21 11.15 No Personal Liability. Tenant, or any subtenant, sublicensee, assignee or
22 Subcontractor, must not charge any elected or appointed official, agent, or employee of the City
23 personally or seek to hold him or her personally or contractually liable to Tenant, subtenant,
24 sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision
25 of this Agreement or because of any breach of its provisions or because of his or her execution,
26 approval, or attempted execution of this Agreement.

27 11.16 Limitation of City's Liability. Tenant, its subtenants and Subcontractors must make
28 no claims against the City for damages, charges, additional costs or fees or any lost profits or costs
29 incurred by reason of delays or hindrances by the City in the performance of its obligations under
30 this Agreement. All Tenant, subtenant, and Subcontractor personal property upon the Leased Space
31 or upon any other part of the Airport, is at the risk of Tenant, subtenant, or Subcontractor
32 respectively only, and the City is not liable for any loss or damage to it or theft of it or from it. The
33 City is not liable or responsible to Tenant, its subtenants or Subcontractors, and Tenant waives, and
34 will cause its subtenants and Subcontractors likewise to waive, to the fullest extent permitted by law,
35 all claims against the City for any loss or damage or inconvenience to any property or person or any

RETAIL CONCESSION LEASE AGREEMENT
NUTS ON CLARK UNION STATION, INC

1 lost profits any or all of which may have been occasioned by or arisen out of any event or
2 circumstance, including theft, fire, act of God, public enemy, injunction, riot, strike, insurrection,
3 war, court order, requisition or order of governmental body or authority, or water leakage, steam,
4 excessive heat or cold, falling plaster, or broken glass; or any act or neglect of the City or any
5 occupants of the Airport, including the Terminals or the Leased Space, or repair or alteration of any
6 part of the Airport, or failure to make any such repairs or any other thing or circumstance, whether
7 of a like nature or a wholly different nature. If the City fails to perform any covenant or condition
8 of this Agreement that the City is required to perform and, notwithstanding the foregoing, Tenant
9 recovers a money judgment against the City, the judgment must be satisfied only out of credit against
10 the Rent and other monies payable by Tenant to the City under this Agreement, and the City is not
11 liable for any deficiency except to the extent provided in this Agreement and to the extent that there
12 are legally available Airport funds.

13 11.17 Joint and Several Liability. If Tenant, or its successors or assigns, if any, is comprised
14 of more than one individual or other legal entity (or a combination of them), then in that event, each
15 and every obligation or undertaking stated in this Agreement to be fulfilled or performed by Tenant
16 is the joint and several obligation or undertaking of each such individual or other legal entity.

17 11.18 Non-Recordation. Tenant must not record or permit to be recorded on its behalf this
18 Agreement or a memorandum of this Agreement, in any public office.

19 11.19 Survival. Any and all provisions set forth in this Agreement that, by its or their
20 nature, would reasonably be expected to be performed after the expiration or termination of this
21 Agreement survive and are enforceable after the expiration or termination. Any and all liabilities,
22 actual or contingent, that have arisen in connection with this Agreement, survive any expiration or
23 termination of this Agreement. Any express statement of survival contained in any section must not
24 be construed to affect the survival of any other section, which must be determined under this section.

25 11.20 Force Majeure. Neither party is liable for non-performance of obligations under this
26 Agreement due to delays or interruptions beyond their reasonable control, including delays or
27 ~~interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God~~
28 ("force majeure event"). As a condition to obtaining an extension of the period to perform its
29 obligations under this Agreement, the party seeking such extension due to a *force majeure* event
30 must notify the other party within 20 days after the occurrence of the *force majeure* event. The
31 notice must specify the nature of the delay or interruption and the period of time contemplated or
32 necessary for performance. The foregoing notwithstanding, however, in no event will Tenant be
33 entitled to an extension of more than 60 days due to a *force majeure* event.

34 *[Exhibits follow this page; signature page immediately follows the Table of Contents.]*

Exhibit 1

Term Sheet

EXHIBIT 1

TERM SHEET FOR CONCESSION LEASE AGREEMENT

between

THE CITY OF CHICAGO ("CITY")

and

"Nuts on Clark" Union Station, Inc.

at

O'HARE INTERNATIONAL AIRPORT

1. **Tenant.** "Nuts on Clark" Union Station, Inc. an Illinois corporation.

2. **Lease Term.**

Initial Term: Begins on the Date that the Agreement is fully executed by both parties and expires on the fifth anniversary after the Date of Beneficial Occupancy of the lease Space.

Option Periods: None.

Holdover: Month to month.

3. **Leased Space.** A total of approximately 200 square feet (plus or minus 10 percent) of Leased space, as follows:

100 square feet in Terminal 1 – Space T1C.U.30.K

100 square feet in Terminal 2 – Space T2EF.U.20.B

~~The Commissioner may delete portions of the Leased space upon relocation or upon certain events of default.~~

4. **Additional Space.** The Commissioner may from time to time make additional space available to Tenant not to exceed 2,000 square feet in the aggregate. Tenant may accept or reject.

5. **Permitted Use.** Tenant will be permitted to use the Leased space for the sale of popcorn, nuts, snacks and the sale of non-alcoholic beverages.

6. **Lease Fees.**

Tenant will pay the following fees:

- a. Base Rent: \$40 per square foot of Leased space for the first Lease year; the amount to escalate at three percent per year for each succeeding year. If storage space is assigned to Tenant, the rent will be assessed on the storage space.
- b. In addition, (i) OR (ii) below, whichever is greater:
 - (i) Percentage Rent: the sum of (a) through (c) as follows:
 - (a) 15 percent of gross revenues to \$1,000,000;
 - (b) 16 percent of gross revenues from \$1,000,000 to \$2,000,000;
 - (c) 17 percent of gross revenues over \$2,000,000.
 - (ii) Minimum Annual Guarantee Fee: \$150,000 annually in years one and two. Commencing with the third Lease year and each Lease year after that, the fee is equal to the greater of (a) the percentage fee in the preceding Lease year, and (b) \$150,000.
- c. Marketing Fund:
Tenant will pay a fee of 0.5 percent of gross revenues as contribution to the marketing fund.
- d. Central Distribution; Deliveries

In the event that the City establishes a central distribution facility for concessions at the Airport, the Commissioner may require the Tenant to use such facility for all of Tenant's deliveries to the Airport and to pay a proportionate share of the costs of operating and maintaining such facility and the costs of transporting such deliveries from the facility to Tenant's leased space.

- 7. Security. For the first Lease year, the security is equal to \$75,000. For each succeeding Lease year, the security must be equal to 50% of the total amount of the Lease fees paid to the City for the immediately preceding Lease year, excluding any fees paid for the marketing fund, and the central distribution facility. The security may be in the form of cash or letter of credit in a form acceptable to the City.
- 8. Gross Revenues. The total amount in dollars at the actual sales price of all receipts derived from business conducted from the Leased premises including all mail or telephone sales, all deposits not refunded to purchasers, all orders taken in the Leased space, receipts from promotions, advertising and income derived from retail display advertising, and any other use of the of the Leased space. Gross Revenues do not, however, include: any sums collected for and paid out by Tenant for any taxes; the amount of cash or credit refunds, if the original sale was made from the Leased space and included in Gross Revenues; bona fide transfers of merchandise to or from the Leased space to any other stores or warehouse of the Tenant; sale of

fixtures and store equipment not in the ordinary course of Tenant's business; returns to shippers, suppliers or manufacturers; bulk sales of merchandise not sold to the public and not in the ordinary course of business; and insurance proceeds from the settlement of claims for loss or damages of improvements, merchandise, fixtures, trade fixtures and other Tenant personal property other than the proceeds of business interruption insurance.

9. **Sublicensing, Assignment or Transfer of Interest.** Tenant must obtain Commissioner approval to sell, assign, convey, pledge, encumber or otherwise transfer all or any part of its rights or interests in or to the Agreement, the Leased space, the term, or otherwise to permit any third party to use the Leased space. Any transaction involving a transfer of all of the ownership interest in License is subject to the approval of the City Council; other transfers of ownership interests in the Tenant are subject to the Commissioner's approval.
 10. **DBE Participation.** 100%. Nuts on Clark is a City certified ACDBE.
 11. **Capital Investment.** Tenant will invest a minimum of \$200 per square foot for in-line sites (concession space other than kiosks) and \$40,000 per kiosk (non-mobile, freestanding concession space).
 12. **Amortization.** Tenant will amortize its capital investment in the leased space (subject to the stated maximum) over five years, straight-line basis. If the City takes back any leased space and does not offer replacement space (or if the Tenant rejects replacement space that is offered by the City because the location is not comparable), the Tenant will be entitled to offset, against fees due to the City, its unamortized capital investment (prorated for any partial year) for the leased space being taken back. If the offset exceeds amounts due to the City, the City will refund the excess. The City has no obligation to pay Tenant any other amount, including but not limited to lost profits for the unexpired term. Tenant will not be entitled to such an offset, refund or any other amount if the City takes back leased space as a remedy for Tenant's default.
-
13. **Relocation and Termination Obligations.** Tenant must relocate if required by the Commissioner. Tenant will have the right to terminate the Lease if the designated relocation area is not comparable in size, visibility and traffic.
 14. **City Construction Obligations.** None. City to deliver shell and core "as is" to Tenant.
 15. **Utilities.** City to provide heating, ventilation and cooling of terminal common areas. Tenant to maintain utility lines and provide supplemental heating, cooling and exhaust facilities in Leased space and to bear cost of those utilities.
 16. **Pricing.** Tenant will be required to value price its merchandise in accordance with standards generally reflective of "value prices" approved by the Commissioner, the nature and comparables of which will be described in the Agreement.

17. **General Conditions.** The Agreement may include provisions typically found in commercial concession agreements or agreements of comparable duration, as well as provisions typically found in concession leases of government-owned property (e.g. City ownership of improvements, the City as additional insured, indemnification of the City). In addition, the Agreement will be subject to compliance with all statutory and policy requirements for conducting operations at the Airport and for documenting compliance with those requirements.

This term sheet does not constitute a binding agreement between the potential Tenant and the City. City Council approval and a fully executed Concession Lease Agreement are required.

Exhibit 2

Leased Space

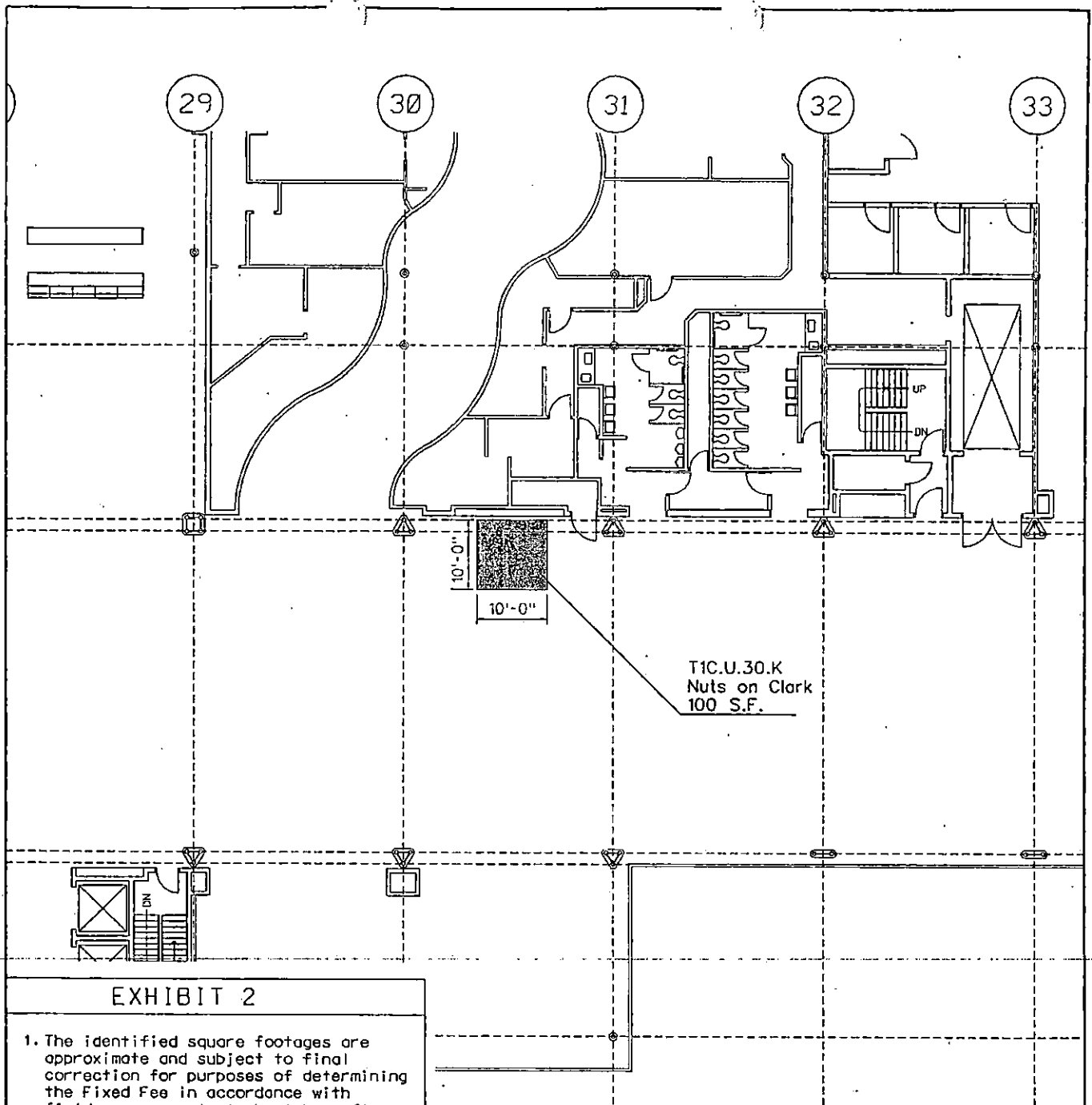


EXHIBIT 2

1. The identified square footages are approximate and subject to final correction for purposes of determining the Fixed Fee in accordance with field measurements to be taken after completion.
2. City reserves the right to change locations and dimensions.
3. All Kiosks (freestanding and wall units) are measured three (3) feet out from the outside sales area (queuing space).

Chicago O'Hare International Airport
Richard M. Daley • Mayor

Department of Aviation
Nuria I. Fernandez • Commissioner

UNISON - MAXIMUS

Terminal 1 / Concourse C

Nuts on Clark
Popcorn/ Snack

Scale: 1" = 20'-0"

Date: May 15, 2007

Created by CAD Services

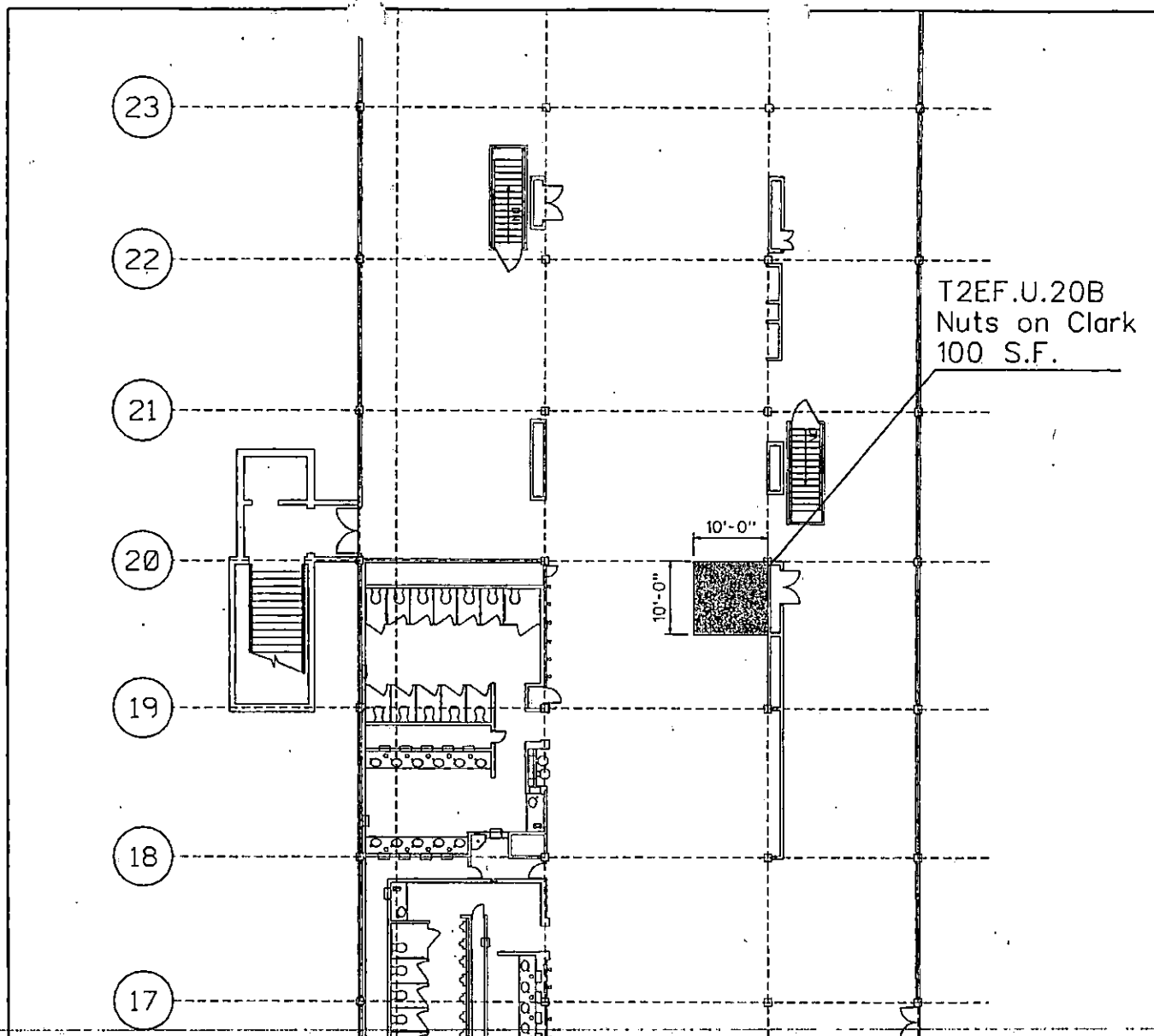


EXHIBIT 2

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2. City reserves the right to change locations and dimensions.
3. All Kiosks (freestanding and wall units) are measured three (3) feet out from the outside sales area (queuing space).

Chicago O'Hare International Airport
Richard M. Daley • Mayor

Department of Aviation
Nurio I. Fernandez • Commissioner

UNISON - MAXIMUS

Terminal 2 / Concourse EF

NUTS ON CLARK
Popcorn/ Snack

Scale: 1" = 20'- 0"

Date: May 15, 2007

Created by CAUD Services

Exhibit 3

Improvements, Improvement Costs, and Completion Dates

CAPITAL INVESTMENT AND FINANCING SOURCES PLAN

Please provide estimated capital investment for each store location and financing sources. Indicate improvements and furnishings, fixtures and equipment. If Respondent is a partnership, joint venture, or LLP or LLC, indicate the percentage of equity or borrowings that each partner, joint venturer, or LLP or LLC member or manager will provide. Use the following format. Attach additional sheets if necessary.

Package 1 Location KIOSC TERH² Store Name "NUTSON CLARK"

Respondent's Estimated Capital Investment

A. Architectural & Engineering Fees	\$ <u>42,000.-</u>
B. Improvements	\$ <u>40,000.-</u>
C. Furnishing, Fixtures and Equipment	\$ <u>10,000.-</u>
D. Working Capital	\$ <u>115,000.-</u>
E. Initial Inventory	\$ <u>10,000.-</u>
F. Improvements Completion Bond	\$ <u>2,000.-</u>
G. Other (please specify)	\$ <u>5,000.-</u>
H. Total Investment	\$ <u>67,000.-</u>

Financing Sources

A. Debt (by source)	\$ <u>ASSOCIATED BANK</u>
B. Equity	\$ <u></u>
C. Total Investment	\$ <u>67,000.-</u>

CAPITAL INVESTMENT AND FINANCING SOURCES PLAN

Please provide estimated capital investment for each store location and financing sources. Indicate improvements and furnishings, fixtures and equipment. If Respondent is a partnership, joint venture, or LLP or LLC, indicate the percentage of equity or borrowings that each partner, joint venturer, or LLP or LLC member or manager will provide. Use the following format. Attach additional sheets if necessary.

Package 1 Location Kiosk Concourse Store Name NUTS ON CLARK

Respondent's Estimated Capital Investment

A. Architectural & Engineering Fees	\$ <u>4200.-</u>
B. Improvements	\$ <u>40,000.-</u>
C. Furnishing, Fixtures and Equipment	\$ <u>10,000.-</u>
D. Working Capital	\$ <u>115,000.-</u>
E. Initial Inventory	\$ <u>10,000.-</u>
F. Improvements Completion Bond	\$ <u>2,000.-</u>
G. Other (please specify)	\$ <u>5,000.-</u>
H. Total Investment	\$ <u>67,000.-</u>

Financing Sources

A. Debt (by source)	\$ <u>ASSOCIATED BANK</u>
B. Equity	\$ <u></u>
C. Total Investment	\$ <u>67,000</u>

Exhibit 3

Improvement Costs*

Architect Fees	\$ _____
Construction Costs (as detailed on Attachment 1)	\$ _____
Permits	\$ _____
Total Improvement Costs for Concession Area	\$ _____

- * Improvement Costs specifically shall not include any Lessee staff cost or overhead; all labor, services, materials and supplies must be provided by third-party non-affiliates unless approved by the Commissioner.
-

Attachment 1 to Exhibit 3

Construction Costs

<u>TRADE ITEM</u>	<u>AMOUNT</u>
Concrete	\$
Masonry	\$
Metals	\$
Rough Carpentry	\$
Finish Carpentry	\$
Waterproofing	\$
Insulation	\$
Roofing	\$
Sheet Metal	\$
Doors	\$
Windows	\$
Glass	\$
Lath and Plaster	\$
Drywall	\$
Tile Work	\$
Acoustical	\$
Wood Flooring	\$
Resilient Flooring	\$
Painting and Decorating	\$
Specialties	\$
Trade Fixtures	\$
Appliances	\$
Blinds, Shades, Artwork	\$
Carpets	\$
Special Construction	\$
Elevators	\$
Plumbing and Hot Water	\$
Heat and Ventilation	\$
Air Conditioning	\$
Electrical	\$
TOTAL COSTS:	\$

EXHIBIT 4

CITY'S SHELL AND CORE OBLIGATIONS

The City and the Department of Aviation will deliver the spaces detailed in Exhibit 2, to "Nuts on Clark" Union Station, Inc., in as is condition.

Exhibit 4

City's Shell and Core Obligations

Exhibit 5

Merchandise and Price List **(to be provided by Tenant)**



"NUTS ON CLARK" CURRENT PRICES APRIL 2007
SUBMITTED BY: ESTELLE KENNEY, PRES.

"NUTS ON CLARK"

GOURMET NUTS

SALTED-NO SALT-RAW

PER LB PRICE

CASHEWS.....	9.99
MIX NUTS.....	9.99
PISTACHIO.....	9.99
ALMONDS.....	6.99
MACADAMIA.....	19.99
PEANUTS.....	2.99
TURK.PISTACHIO...	10.99
SUNFLOWER SEED...	4.99
SMOKED ALMOND...	10.99
PECANS.....	11.99
PIST. NO SHELL.....	12.99
SOY NUTS.....	5.99

"NUTS ON CLARK"

FANCY DRIED FRUITS

FANCY FRUIT MIX...	6.99
PEARS.....	7.49
GINGER CANDIED...	7.99
PINEAPPLE	5.99
BANANA CHIP.....	4.99
CRANBERRIES.....	9.99
PAPAYA	5.99
MANGO.....	9.99
CALIF APRICOT.....	14.99
TURK APRICOT.....	5.99
PEACHES.....	8.49
NECTARINES.....	8.49

"NUTS ON CLARK"

BUTTER TOFFEE NUTS

PEANUTS.....	6.59
PECANS.....	12.99
CASHEWS.....	12.99
ALMONDS.....	10.99

"NUTS ON CLARK"
 FINE CHOCOLATE
 COVERED NUTS
 PER LB LIST PRICE CUSTOMER
 PRICE

PEANUTS.....	14.99	..7.50
RAISINS.....	14.99	..7.50
MALT MILK BALLS....	14.99	..7.50
CASHEWS MILK.....	18.99	..9.50
CASHEWS DARK.....	18.99	..9.50
ALMONDS MILK.....	17.99	..9.00
ALMONDS DARK.....	17.99	..9.00
BRIDGE MIX.....	14.99	..7.50
PEANUT CLUST.....	15.99	..8.00
MACADAMIA.....	27.99	14.00
PECANS MILK.....	20.99	10.50
PECANS DARK.....	20.99	10.50
WHT PRETZELS.....	15.99	..8.00
CHOC PRETZELS.....	15.99	..8.00
KISSEES (TURTLES)...	20.99	10.50

"NUTS ON CLARK"
 CANDY

GUMMI BEARS.....	6.39
GUMMI WORMS.....	6.39
SWEDISH FISH.....	6.99
EURO RASPBERRY....	6.99

"NUTS ON CLARK"
 LICORICE

RED TWISTS.....	6.99
BLK TWISTS.....	6.99
RED LACES.....	8.99
RED WHEELS.....	6.99
GOOD & PLENTY.....	6.99
SNAPS.....	7.99

"NUTS ON CLARK"

DELICIOUS

HONEY ROASTED NUTS

PEANUTS.....	6.59
PECANS.....	12.99
CASHEWS.....	12.99
ALMONDS.....	10.99

"NUTS ON CLARK"

HEAVENLY CINNAMON

PECANS.....	14.99
ALMONDS.....	15.99

"NUTS ON CLARK"

SUGAR-COATED NUTS

SESAME CRUNCH....	6.99
BOST BKED BEANS..	4.99
FR BRT PEANUTS....	4.99
MPL NUT GOODIE....	6.99
JORDAN ALMOND....	7.99

"NUTS ON CLARK"

SNACKS & HEALTHY

TRAIL MIXES

BAR B Q.....	7.49
CRANBERRY MIX.....	8.99
DELIGHTFUL DIET....	7.49
TRAIL NO SALT.....	7.49
COCKTAIL PARTY.....	7.49
FESTIVE.....	7.49
CONFETTI.....	7.49
ORIENTAL RICE CRA.	7.49
ORIENTAL & PEAS....	7.89
HOT TO TROT.....	7.89
PRETZEL & MORE....	7.49
ALL FRUIT.....	6.99

"NUTS ON CLARK"

POP & WATER

SMALL.....1.78 + TAX

LARGE.....2.75 + TAX

JUICE 1.92 + TAX.

"NUTS ON CLARK" POPCORN PRICES IN BAGS

	4 oz	10oz	1lb	2 ½ lb
CARAMELCORN	2.50	5.25	9.00	21.00
	3oz	8oz	1lb	
CHEESECORN	2.50	5.75	12.75	
	5oz	10oz	1lb	2lb
MIX (CAR & CHE)	4.00	6.00	9.25	19.25
	MEDIUM	JUMBO		
POPCORN	2.25	4.00		

**"NUTS ON CLARK" GOLD GIFT CANNISTERS
CHICAGO SCENE**

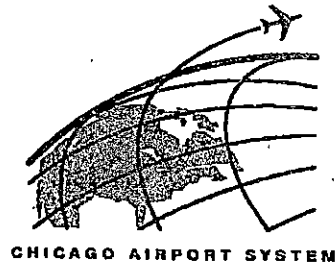
	1 gallon	2 gallon	3 ½ gallon
CARAMELCORN	25.00	46.00	75.00
CHEESECORN	25.00	48.00	70.00
2 WAY	25.00	46.00	73.00
3 WAY		46.00	73.00

Exhibit 6

Airport Concessions Program Handbook

EXHIBIT 6

**AIRPORT CONCESSIONS PROGRAM
HANDBOOK**



CITY OF CHICAGO
DEPARTMENT OF AVIATION
March 2007

EXHIBIT 6
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INTRODUCTION:

The City of Chicago ("City"), the Department of Aviation ("DOA") and UNISON-MAXIMUS Retail Management ("Unison") welcome you to the family of concessionaires operating at the City's Airports. Your concession represents an excellent business and professional opportunity to serve the traveling public as well as operate a profitable enterprise. In order to ensure quality and uniformity among all concessions, we have designed a Concessions Program that is outlined in this handbook. It is important that you review and adhere to these standards as they will serve as tools for the successful operation of your concession.

THE CONCESSIONS PROGRAM:

The DOA's Airport Concessions Program serves as the primary resource to meet the needs of the traveling public with regard to the provision of quality, reasonably-priced goods and services at Chicago's airports. To this end, DOA is further responsible for the outreach, selection, coordination and monitoring of concessionaires. In order to fulfill these responsibilities, DOA has several functional units that, as part of their overall duties, operate as liaisons to prospective and existing concessionaires. The primary units and their concession-related functions are as follows:

<u>DOA UNIT</u>	<u>FUNCTIONS</u>
Commissioner's Office	Policy generation and resolution.
Managing Deputy Commissioner	Overall coordination of revenue, finance, bonding, insurance, property management and concessions functions/issues including merchandising plans, outreach, proposal generation and evaluation, contract negotiation, and overall coordination and processing.
Director of Airport Concessions	Coordination of terminal operations (e.g., access and egress, storage, construction, parking, etc.), the monitoring program and general airport guidelines.
Management Representative	UNISON-MAXIMUS Retail Management (Unison) is the retail management company responsible for the day to day operation of certain airport concessionaires.
Planning/Coordinating Architects	Plan and design review; construction coordination and monitoring.
Finance/Revenue	Financial reporting, review and auditing.
Security	Coordination of security identification and other related issues.

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THE MONITORING PROGRAM:

The Monitoring Program is designed to provide a process to ensure that concessions operating in the Airports comply with the ordinances and policies of the City, provisions of their respective Lease Agreements and specific airport guidelines as established by the DOA and Unison. The primary areas that will be reviewed include financial commitments, maintenance of concession space(s), licensing (where required), and overall adherence to the provisions of the Lease Agreement.

The intent of the Monitoring Program is to benefit the traveling public and other airport visitors, concessionaires and the City.

THE PRE-MONITORING PROCESS:

After a prospective concession is selected by DOA there are five stages that precede the commencement of the Monitoring Program.

STAGE 1 - CITY COUNCIL APPROVAL

Upon completing financial negotiations with the concessionaire, the DOA forwards the negotiated term sheets to the City's Law Department. After the Law Department's review of the form and legality of the proposed concession agreement, the proposed tenant is introduced to the full City Council, then sent to the Aviation Committee for review. The Aviation Committee then approves, rejects or requests further information. Once approved by the Aviation Committee, the recommendation is forwarded to the full City Council for final approval. In most cases, recommendations submitted to the full Council by Committee are ratified, usually at the next meeting. This approval is documented in the "Journal of Proceedings." The documented approval and contract are then forwarded to the Mayor and other pertinent City departments for execution.

STAGE 2 - LEASE AGREEMENT

The Lease Agreement outlines a concessionaire's contractual relationship with the City. It delineates the responsibilities, expectations and the requirements of both parties, financial and non-financial. During negotiation of the terms of the agreement, you will have cause to interact with individuals from the DOA and the Unison Office. The Managing Deputy Commissioner of Commercial Development will oversee the processing of the Lease Agreement as well the Monitoring Program.

STAGE 3 - DESIGN APPROVAL

For an in-line operation, kiosk or a retail merchandising unit ("RMU") all concessionaires must submit a conceptual, schematic drawing which shows the general design of the unit.

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The Planning and Architecture departments will review the concept, and if the approval is given a letter will be sent giving conceptual approval and requesting 100% architectural drawings including a complete materials board, plans and specifications so the plans meet the DOA requirements and aesthetic appeal. Architecture will then send a letter to the concessionaire giving authority to apply to the City Building Department for building permits. In no case should construction begin prior to the receipt of this approval. The Planning Unit will also monitor construction in progress.

STAGE 4 - PRE-CONSTRUCTION APPROVAL

Prior to construction, each concession will meet with the DOA at a pre-construction conference. The purpose of this meeting will be to familiarize each concessionaire with general airport construction guidelines. Examples of these guidelines are locations and times for pick-ups, deliveries, refuse disposal, elevator usage, and badging.

STAGE 5 - CONSTRUCTION

After the contract is finalized, each concessionaire generally has a specified period to commence and complete construction based on approved design and construction specifications. During this period each concessionaire has the responsibility to expeditiously begin and obtain all necessary approvals, licenses, insurances, etc. Each concessionaire should maintain communication with the DOA during the process to ensure that all construction and licensing requirements are addressed in a timely fashion. It is important that the concession be open to the public within the time parameters specified in your Agreement.

KEY ELEMENTS OF THE MONITORING PROGRAM:

The Concessions Monitoring Program consists of two primary elements: operation reviews and audits. Operations reviews will be conducted on an ongoing basis by the City's Management Representative. The operations review form in Appendix 2 will provide a frame work for this component of the Monitoring Program.

Two types of audits, financial and compliance, will be conducted on an annual and periodic basis, respectively. Financial audits will review all financial, bonding and insurance related requirements.

PHYSICAL INSPECTIONS

The Monitoring Process will include ongoing site inspection of each concession site by the Management Representative's personnel. Typical inspections will consist of reviews of facilities, general maintenance, employee practices, product/price conformity and space utilization. Inspection staff will use the Management Representative's Operation Review Form (Appendix 2) to record their findings and observations. Reviews will be sent to the concession manager for review and follow-up on all review items. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

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FINANCIAL AUDITS

In accordance with the provisions of the standard Concession Lease Agreement, DOA reserves the right to require a certified public and/or City audit of all books, ledgers, journals, accounts and records of its concessions.

COMPLIANCE AUDITS

DOA will review compliance with insurance coverage, financial commitments and financial reporting requirements. This review will occur on a regular basis. Non-compliance could result in liquidated damages being levied and/or commencement of default proceedings, dependent upon the nature of the violation.

SECRET SHOPS

The DOA, from time to time, may hire an outside contractor to perform "secret shops" and evaluate employee performance of each concession location. Such shops shall be used to monitor customer service and cash handling procedures among other things.

SUMMARY:

The Monitoring Program will provide a basis of uniformity to all concessions. Adherence to the Concession Lease Agreement as well as the elements of this Handbook will contribute to the successful operation of your business.

The following Appendices will further delineate additional information/requirements stated above.

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APPENDIX 1

EXHIBIT 6

PHYSICAL INSPECTION STANDARDS:

FACILITY MAINTENANCE STANDARDS

ITEMS:

- Overall appearance.
- Cleanliness of counters, displays, floors, fixtures, equipment, etc.
- Litter management/control.
- Pest control.

STANDARD:

- Clean and neat to the eye.
- Free of dust and litter upon inspection.

ACTION:

- Expect employees to clean/dust/sweep/vacuum/mop daily.
- Utilize covered metal waste receptacles.
- Have waste receptacles in high traffic areas.
- Empty waste receptacles into designated compactor areas on a regular basis.
- Have grease traps serviced and cleaned as often as necessary.
- Instruct employees to look for and clean problem areas.
- Provide for regular pest control service to sales and storage areas.
- Have a plan/system for emergency clean-ups and replacement of broken or worn fixtures.
- Report any damage to the premises to DOA and your insurance company (if applicable) immediately.

ITEMS:

- Lease line maintenance
- "Pop-out" areas

STANDARD:

- All customer lines must be maintained within the Leased area.
- Merchandise and displays must be maintained within the Leased area.
- Solicitation and sampling must be maintained within the Leased area.
- Only DOA approved fixtures may be placed in the pop-out area at the front of the space.

ACTION:

- Train employees to direct customer lines so they do not spill out into the public corridor.
- Review tenant design criteria for approved "pop-out" merchandising and fixtures.
- Obtain written approval from DOA prior to adding or removing any merchandise fixtures or other objects within the pop-out area.

ITEMS:

- Altering of layout.
- Renovations/construction.
- Signage/advertising.

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STANDARD:

Written approval, prior to action, by the Commissioner of Aviation.

ACTION:

Consider areas for improving the concession location either from layout changes or renovation.

Submit requested changes for approval with appropriate drawings, etc., to the Management Representative prior to initiation of the changes.

All signs must be professionally produced.

All signs and signholders must be kept clean and in good repair.

All signs must be pre-approved by the Commissioner or a representative of the Commissioner.

ITEMS:

Properly functioning equipment.

STANDARD:

Preventative maintenance program.

Ongoing, reliable source for immediate repairs.

ACTION:

Have employees spot check all equipment for possible malfunction.

Maintain a back-up/alternative plan.

Repair equipment as soon as possible.

EMPLOYEE STANDARDS

ITEMS:

Courteous and professional appearance

Proper dress

Proper identification including DOA security badge

Customer Service

Attend customer service meetings, as offered

STANDARD:

Employees should be polite and courteous to the traveling public.

Employees must not eat while on duty.

Employees must wear clean and neat uniforms or approved attire.

Employees must display a DOA issued security badge in addition to any other employee identification.

Employees must be familiar with the Merchant Handbook and the laminated Reference Guide.

Employees are to offer general public services:

-Making change

-Giving directions.

ACTION:

EXHIBIT 6

Train employees in proper customer service techniques using the Merchant Handbook provided to all companies.

Give all new employees airport tours so they are familiar with the airport layout and services and services available.

Encourage employees to be polite and courteous.

Provide necessary employee breaks to discourage eating while on duty.

Supply employees with uniforms or at least a written standard, if they are responsible for their own, as well as guidelines for proper maintenance of the uniform.

Supply employees with company identification.

Obtain DOA security badges for all employees.

Supply employees with company policies and procedures so that they know what is expected of them.

ITEMS:

Sanitary handling of foods/beverages.

Proper cleaning and maintenance of food areas.

STANDARD:

Employees must handle food in safe and sanitary manner.

Employees must comply with all company and governmental health regulations and Lease requirements.

ACTION:

Provide explicit instructions to employees on the safe and sanitary handling of foods.

Obtain and post proper instructions regarding health information available from City, State and Federal sources.

Provide explicit instructions for cleaning food areas in a manner that will not possibly lead to any harmful contamination.

PRODUCT STANDARDS

ITEMS:

Proper/professional approved signage

Adequate inventory level

Selling of authorized products only

Merchandising

Product pricing

STANDARD:

Only authorized products can be sold as determined in the Lease Agreement.

Only use professionally produced or printed signage as approved by DOA.

Merchandising permitted only within the confines of the locations, unless as authorized in writing, by DOA.

Must adhere to "Value Pricing" as provided in the Lease Agreement.

ACTION:

EXHIBIT 6

- Consider innovative ways to merchandise your products/services.
- Obtain written approval from the Commissioner of Aviation prior to implementing merchandising that will go beyond the confines of your space or that is outside of the terms of the Lease Agreement.
- Maintain adequate inventory levels.
- Notify the Department when adding, deleting or changing merchandise or changing prices.
- Use professionally produced, approved signage only.
- Maintain pricing as provided in the Lease Agreement.

AUXILIARY SPACE STANDARDS

ITEM:

- Storage Area
- Corridors, common areas
- Pick-up, delivery and disposal

STANDARD:

- Safe use of storage space.
- Proper storage of potentially flammable items in accordance with fire codes.
- Provide adequate ingress and egress within storage space.
- Clear aisles and corridors.
- Pick-ups and deliveries during designated hours at designated locations as determined by DOA.
- Refuse disposal during designated hours at designated locations as determined by DOA/Unison.

ACTION:

- Use storage space wisely.
- Maintain a system providing for access by authorized personnel only.
- Report any tampering with or malfunctioning of security locks, gates, etc.
- Keep corridors and common areas free of debris, trash, carts and stock.
- Provide pest control service on a regular basis.
- Refrain from using luggage carts for deliveries.
- Dispose of refuse during designated hours.

EXHIBIT 6

APPENDIX 2

OPERATIONS REVIEW D'HARE INTERNATIONAL AIRPORT In-Line Unit

POINT SYSTEM:

Store: _____
Date: _____
Time: _____
Location: _____

- 3 First class level of service/operation
2 Satisfies basic level of service/operation
1 Below acceptable level of service/operation
0 Non-compliant

A) Exterior Condition		
1	Trash receptacles/litter control?	
2	Are all surfaces clean - check sides, counters, trim?	
3	Are the windows clean?	
4	Are display windows merchandised?	
5	Are any signs/items infringing on corridor?	
6	Is the exterior in good condition (blade sign, painting, baseboards, side walls, trim)?	
7	Are deliveries being stored in the corridor?	
B) Store Maintenance		
1	Condition of light fixtures, fire extinguishers. Are any lights out, are extinguishers in working order?	
2	Is the floor clean/vacuumed?	
3	Are there any delivery boxes/notes visible?	
4	Are the fixtures and product clean and maintained?	
5	Are there any cleaning supplies in view?	
6	Are luggage carts being used for deliveries?	
7	Are storage closet doors closed?	
8	Is there adequate circulation space for passenger traffic?	
C) Merchandising		
1	Signage and fixtures professionally done?	
2	Is pricing prominently marked or signed?	
3	Are merchandise levels adequate?	
D) Point of Purchase		
1	Is the POP signage in good condition and not blocking access?	
2	Is the cash/wrap clean and free of debris?	
3	Is the cash register in good condition?	
E) Customer Service		
1	Are store hours posted?	
2	Is the employee wearing appropriate attire?	
3	Is employee greeting customers?	
4	Is the employee courteous?	
5	Is the employee eating or on the phone?	
6	Is off-shift staff affecting on-shift staff?	
7	Is employee wearing airport ID badge?	
Other Comments:		

Total Possible Points 84

Operator Score _____ Maintenance Score (Sections A,B,C,D) 63
Customer Service Score (Section E) 21

Reviewed By: _____

OPERATIONS REVIEW

HARE INTERNATIONAL AIRPORT

Food & Beverage

Store: _____
 Date: _____
 Time: _____
 Location: _____

POINT SYSTEM:

- 3 First class level of service/operation
 2 Satisfies basic level of service/operation
 1 Below acceptable level of service/operation
 0 Non-compliant

1) Exterior Condition		Comments
1	Is floor clean of debris?	
2	Are any signs/items infringing on corridor?	
3	Are blade, fascia and sign holders in good condition?	
4	Is the exterior in good condition (painting, baseboards, side walls, tracking clean)?	
2) Store Maintenance		
1	Condition of light fixtures, fire extinguishers. Are any lights out? Are extinguishers in working order?	
2	Are counters, floors, walls, ceiling, lights and vents clean and maintained?	
3	Are the soda and condiment stations clean/working properly?	
4	Are all furniture and fixtures clean and maintained?	
5	Are maintenance audits posted & filled out? Are hood inspection stickers up to date?	
3) Food Product and Quality		
1	Does all the food appear to be fresh and is product level adequate?	
2	Is pricing prominently marked or signed?	
4) Point of Purchase		
1	Cash/wrap clean and free of debris? Front of house clean?	
2	Condition of cash wrap (no paint chips, scuffs)?	
5) Kitchen and Storage Areas		
1	Is the staffing schedule posted?	
2	Is certified food service manager on duty and present?	
3	Is there a hand sink in kitchen? Hot water temps 110° - 120°? Anti-bacterial soap available?	
4	Are sinks draining properly?	
5	Is hot and cold water available and is everything properly connected?	
6	Are coolers at the proper temperatures? (40° or less)	
7	Are cleaning supplies segregated from food product?	
8	Are supplies / product raised off the floor? Space behind shelving? Is the area clean?	
9	Are trash receptacles clean?	
6) Customer Service / Employee Standards		
1	Are store hours posted?	
2	Are employees wearing appropriate and clean uniforms? ID Badge visible?	
3	Are employees wearing hair restraints?	
4	Are employees wearing hanging jewelry in food prep area?	
5	Are employees in grill area wearing aprons?	
6	Are cash handling employees working food prep area?	
7	Is employee courteous, informed & greeting customers?	
8	Are employees eating in customer view?	
9	Is off-shift staff affecting on-shift staff?	
Other Comments:		

Total Possible Points 93

Maintenance Score (Sections 1,2,3,4,5) 66

Customer Service Score (Section 6) 27

Operator Score _____

Reviewed by: _____

OPERATIONS REVIEW HARE INTERNATIONAL AIRPORT Cart/Kiosk

Store: _____
 Date: _____
 Time: _____
 Location: _____

POINT SYSTEM:

- 3 First class level of service/operation
- 2 Satisfies basic level of service/operation
- 1 Below acceptable level of service/operation
- 0 Non-compliant

		Points	Comments
A) Exterior Condition			
1	Trash receptacles/litter control?		
2	Are all surfaces clean - check sides, counters, trim?		
3	Is the top of the unit clean?		
4	Is the floor clean below the unit?		
5	Is the floor clean/vacuumed around the unit?		
6	Are any signs/items infringing on corridor?		
7	Is there a blade sign? In good condition?		
8	Is the exterior in good condition (painting, baseboards, side walls, trim)?		
9	Are the light fixtures in good condition? Are any lights out?		
10	Condition of fire extinguishers. Are extinguishers in working order?		
11	Are there any delivery boxes/totes stacked?		
12	Are the fixtures and product dusted/clean?		
13	Are there cleaning supplies in view?		
B) Merchandising			
1	Signage and fixtures professionally done?		
2	Is there adequate promotional signage?		
3	Is pricing prominently marked or signed?		
4	Are merchandise levels adequate?		
5	Is there adequate circulation space for passenger traffic?		
C) Point of Purchase			
1	Is the POP signage blocking access?		
2	Is the cash/wrap clean and free of debris?		
3	Is the cash register in good condition?		
D) Customer Service			
1	Are store hours posted?		
2	Is the employee wearing appropriate attire?		
3	Is employee greeting customers?		
4	Is the employee eating or on the phone?		
5	Is off-shift staff affecting on-shift staff?		
6	Is employee wearing airport ID badge?		
Other Comments: _____ _____ _____ _____			

Total Possible Points 84

Maintenance Score (Sections A,B,C) 63

Customer Service Score (Section D) 21

Operator Score _____

Reviewed by: _____

EXHIBIT 6

APPENDIX 3

EXHIBIT 6

FINANCIAL AUDIT STANDARDS:

In accordance with the provisions of most Concession Lease Agreements, DOA reserves the right to audit and review the records of each concession as they relate to the operation of the concession. Therefore, the following will serve as the standards and practices that will govern those audits/reviews.

Lease Fees

Each concessionaire shall submit the following rents in accordance with its Lease Agreement:

- Base Rent
- Minimum Annual Guaranteed Fee/Percentage Fee
- Marketing Fee
- Common Area Maintenance Fee (if applicable)
- Liquidated damages, Interest, Late Payments (if applicable)
- Other items as required in the Lease Agreement.

Records

Each concession is required to maintain true and accurate accounts, records, books and data recording all sales made and services performed on the premises for cash, credit or other conveyance including the gross receipts. The following represent appropriate practices that will reflect the prior stated requirements:

- Maintenance of an internal control system (e.g. cash register, point of sale equipment) to insure proper reporting to the City (this must be approved by the City prior to commencement of the Agreement and if the concessionaire decides to make subsequent change to the system).
- Books, ledgers, journals, accounts and/or records must be maintained according to generally accepted accounting procedures.
- Each concession must provide timely submission of the audited "Statement of Sales and Fees" and annual audited financial statements based upon their individual reporting system.
- Other items as required in the Lease Agreement.

Insurances

The following insurances are customarily required during the terms of the Agreement and should be maintained at the levels specified by the Lease Agreement:

- Worker's Compensation

EXHIBIT 6

- Comprehensive General Liability
- Comprehensive Automobile Liability
- Property Insurance
- Other insurance as required in the Lease Agreement

The City of Chicago will be named as "Additional Insured", with the following language: "The City, and its elected and appointed officials, agents, representatives, and employees shall be named as additionally insureds..."

Security Deposit/Letter of Credit

All concessions must provide a letter of credit or cashier's check per the terms of their specific Lease Agreement.

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APPENDIX 4

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COMPLIANCE AUDIT STANDARDS:

All Lease Agreements have provisions, other than those that relate to financial commitments that must be complied with. They may vary from Agreement to Agreement and, therefore, those stated here may not be all inclusive. They do, however, represent some of the key provisions contained in City's most recent Lease Agreement.

General Airport Guidelines

The following guidelines are examples of the types of issues that will be reviewed with the City's Management Representative who will provide each operator with specific guidelines for their concession.

- Pick-up and deliveries to/from specific areas at specified times.
- Refuse disposal at specific and designated areas/times.
- Unauthorized use of restricted Airport areas.
- Adherence to minimum business operating hours.
- Agreement to emergency hours as may be determined by DOA under special conditions.
- Elevator use at designated times.
- Ingress and egress from designated areas, as outlined in Lease Agreement.
- Proper and improper use of signage.

Laws and Ordinances

- DOA reserves the right to adopt and enforce reasonable rules and regulations with respect to the use of the Airport, terminal buildings, terminal concourse areas, and related facilities.
- All concessions must observe all laws, ordinances, regulations and rules of the Federal, State, County and Municipal governments which may be applicable to the operation the Airport.
- Permits and Leases necessary for the operation of the concession areas must be applied for prior to the first day of operation, and renewed annually as needed. Examples of these types of permits are as follows:
 - Business Lease
 - Food Purveyor
 - Tobacco, Liquor
 - Zoning Lease
 - Hardware Lease
 - Others as required

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Default Notices

The DOA reserves the right to issue a Default Notice to any concessionaire who is not in compliance with their Lease Agreement.

Examples of default items are as follows:

- Excessive late or nonpayment of rents.
- Non-reporting of sales as required in the Lease Agreement.
- Product infringement or additional products (must receive prior approval by DOA).
- Improper price changes (must receive prior approval by DOA).
- Sublease or change of ownership of concession (must receive prior approval as required by this Lease Agreement).
- Not properly displaying all of the proper Leases.
- Non-compliance with the Hours of Operation stated in the Lease Agreement.

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APPENDIX 5

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KEY DEPARTMENT OF AVIATION PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Angela Manning-Hardimon Managing Deputy Commissioner of Commercial Development	(773)894-3033
Stephanie Hatch Director of Concessions	(773)894-3912
Robert Dawson Architecture	(773)686-6630
Erin O'Donnell Deputy Commissioner/MDW	(773)838-0608

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KEY UNISON-MAXIMUS Retail Management PERSONNEL:

<u>NAME/TITLE</u>	<u>TELEPHONE NUMBER</u>
Sandra Williamson General Manager	(773) 894-3909 (773) 550-6175 (cell)
Yolanda Woodruff Lease Administrator/Accountant	(773) 894-5463
Logan (Tony) Burnett Property Manager / ORD	(773) 894-3903 (312) 388-3530 (cell)
Dorine Litman Operations Manager	(773) 894-3908 (773) 671-3908 (cell)
Patricia Gryzb Property Manager / MDW	(773) 838-0733 (312) 907-8820 (cell)
TBD Tenant Design Coordinator - ORD and MDW	(773) 894-3380 (773) 209-2599 (cell)

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APPENDIX 7

EXHIBIT 6

KEY CITY OF CHICAGO OFFICES:

<u>DEPARTMENT</u>	<u>TELEPHONE NUMBER</u>	<u>AREAS OF RESPONSIBILITY</u>
Consumer Services	(312)744-9400	Food Purveyor Licensing
Health Department	(312)247-9884	Inspections
Construction Inspections	(312)744-6695	Certificate of Occupancy
Electrical Inspections	(312)744-3460	Electrical Inspections
Plumbing Inspections	(312)744-3502	Plumbing Inspections
Plan Examinations/Permits	(312)744-8876	Plan Examinations/Permits
Occupancy Certificates	(312)744-3455	Zoning Plans
Mayor's Office of Employment	(312)744-4078	Employment
Revenue	(312)744-3947	Lease Inquiries

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APPENDIX 8

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RULES AND REGULATIONS:

Lessee shall, at all times during the term of the Lease Agreement will:

1. Use, maintain and occupy the Premises in a careful, safe, professional and lawful manner, keep Premises and its appurtenances in a clean and safe condition.
2. Keep all glass in the doors and windows of the Premises clean and in good repair with floor displays and shelving cleaned daily.
3. Not place, maintain or sell any merchandise or place any signage in any vestibule or entry to the public area adjacent to the Premises, or place any signage in the public area adjacent to the Premises, or elsewhere on the outside of the Premises without the prior written consent of the Commissioner.
4. At its own cost, keep Premises in a clean, orderly and sanitary condition, free of insects, rodents, vermin and other pests.
5. Not permit accumulation of garbage, trash, rubbish and other refuse inside or outside the Premises, and keep refuse in closed containers within the interior of the Premises until removed.

Not place any rubbish, litter, trash, or material of any nature in the parking areas, exterior areas, entryways, passages, doors, elevators, hallways, or stairways of the Airport. Comply with any recycling program as directed by the Commissioner.
6. Not use, or permit the use of any apparatus or instruments for musical or other sound reproductions or transmissions in such manner that the sound emanating therefrom or caused thereby shall be audible beyond the interior of the Premises without the prior written consent of the Commissioner.
7. Helium balloons and blinking lights are not permitted.
8. Not cause or permit objectionable odors to emanate from the Premises.
9. Not deliver or permit delivery of merchandise at any time other than those times allowed by the Commissioner or his designated representative.
10. Maintain and keep operational all electric signs, and where applicable, light the show windows and exterior signs of Premises during hours of operation.
11. Use only signage of professional quality. All signage must be approved by the Commissioner or his designated representative. Handwritten signs of any kind are not permitted. Never tape signage or other materials to windows.

Prominently sign or mark pricing on each product or mark with easily recognizable professional signage.

EXHIBIT 6

12. Keep all mechanical apparatus free of vibration and noise.
13. Not overload the floors or electrical wiring or install any additional electrical wiring or plumbing without the Commissioner's prior written consent.
14. Not use show windows on the Premises for any purpose other than display of merchandise for sale in a neat, professional and attractive manner.
15. Not conduct, permit or suffer any public or private action sale to be conducted on or from the Premises.
16. Not solicit business in the common area of the Airport or distribute handbills or other advertising materials in the common area. If this provision is violated, the Lessee shall pay the City the cost of collecting same from the common area for trash disposal. Lessee shall not hold demonstrations in the Premises or any other area of the Airport. Lessee agrees to cooperate and assist the City in the prevention of canvassing, soliciting and peddling within the Premises or Airport.
17. Not use the plumbing facilities in the Premises for any purpose other than that for which they were constructed or dispose of any foreign substance therein, whether through the utilization of "garbage disposal units" or otherwise. If Lessee uses the Premises for the sale, preparation or service of food for on-premises consumption, Lessee shall install such grease traps as shall be necessary or desirable to prevent the accumulation of grease or other wastes in the plumbing facilities servicing the Premises. Lessee shall contract with a grease trap/plumbing service for periodic maintenance of its plumbing facilities. Lessee shall provide the City with a copy of said service contracts.
18. Not operate in the Premises or in any part of the Airport any coin or token operated vending machines or similar devices for the sale of any merchandise or service, except as may be allowed in the Lease Agreement or with the prior written consent of the Commissioner.
19. Not have slot machines, devices, or other gambling games on the Premises or in any part of the Airport without the prior written consent of the Commissioner.
20. Refer all contractors or contractor's representatives rendering any service on or to the Premises for the Lessee, to the City or the City's Management Representative for approval before performance of any contractual service provided that they meet insurance requirements.

Lessee's contractors and installation technicians shall comply with the City's rules and regulations pertaining to construction and installation. This provision shall apply to all work performed on or about the Premises or the Airport, including installation of telecommunication devices, electrical devices, attachments and installations of any nature affecting floors, walls, woodwork, trim, windows, ceilings and equipment or any other physical portion of the Premises or project.
21. All personal property, cups, papers, cleaning and other supplies must be kept from public view.
22. Employees must not eat, drink or sleep in public view.

EXHIBIT 6

23. Not at any time occupy any part of the Premises or project as sleeping or lodging quarters.
24. Not place, install or operate on the Premises or in any part of the Airport any engine, stove or machinery, or conduct mechanical operations or cook thereon or therein, or place or use in or about the Premises or project any explosives, gasoline, kerosene, oil, acids, caustics, or any flammable, explosive or hazardous material.
25. Insure that staff members are, at all times, appropriately dressed (as designated in the Lease Agreement) with airport badges in view.
26. Not hold the City responsible for lost or stolen personal property, equipment, money or jewelry from the Premises or the Airport regardless of whether such loss occurs when the area is locked against entry or not.
27. Not have dogs, cats, fowl, or other animals brought into or kept in or about the Premises or Airport.
28. Not use the public restrooms for any purpose other than those for which they were constructed, and any damage resulting to them from misuse or by the defacing or injury of any part of the building shall be borne by the person who shall cause it. No person shall waste water by interfering with the faucets or otherwise.
29. Not lay floor covering within the Premises without written approval of the Commissioner. The use of cement or other similar adhesive materials not easily removed with water is expressly prohibited.
30. Comply with and ensure that Lessee's employees comply with the City's non-smoking policy for the Airport.
31. Post any Emergency Evacuation Plan adopted by the City. Lessee shall post said plan in a place which is non-visible to Lessee's customers, but visible to Lessee's employees.
32. Along with its employees, agents and invitees park their vehicles only in those parking areas allowed by the City. If requested, furnish the City with state automobile Lease numbers of Lessee's vehicles and its employees' vehicles and shall notify the City of any changes within five (5) days after such change occurs. Concessionaire or its employees shall not leave any vehicle in a state of disrepair (including without limitation, flat tires, out-of-date inspection stickers or Lease plates) on the Airport or in its parking areas.
33. Comply with all parking rules and regulations including any sticker or other identification system established by the City. Failure to observe the rules and regulations shall terminate Lessee's right to use the parking area and subject the vehicle in violation of the parking rules and regulations to removal or impoundment. No termination of parking privileges or removal or impoundment of a vehicle shall create any liability on the City or be deemed to interfere with Lessee's right to possession of its Premises. Vehicles must be parked entirely within the parking lines and all directional signs, security notices, arrows and posted speed limits must be observed. Parking is prohibited in areas not striped for parking, in aisles, where "No Parking" signs are posted, on ramps, in cross hatched areas, and in other areas as may be designated by the City.

EXHIBIT 6

Parking stickers or other forms of identification, if any, supplied by the City shall remain the property of the City and not the property of Lessee and are not transferable. Every person is required to park and lock his vehicle. All responsibility for damage to vehicles or persons is assumed by the owner of the vehicle or its driver.

34. Follow all ID Badging procedures as may be required by the Commissioner or his designated representative.
35. Instruct employees to report spills, hazardous conditions and any suspicious activities to the appropriate party as directed by the Commissioner or his designated party.
36. Not use luggage carts for product deliveries.
37. Use only delivery carts and equipment as approved by the Commissioner or his designated party.
38. Use only designated elevators for deliveries.
39. Surrender all keys to the Premises to the Commissioner upon termination of this Lease Agreement.
40. Comply with the City's desire to maintain in the Airport the highest standard of dignity and good taste consistent with comfort and convenience for the Lessee. Any action or condition not meeting this high standard should be reported directly to the City. Lessee's cooperation will be mutually beneficial and sincerely appreciated.
41. The City reserves the right to make such other and further reasonable rules and regulations as in its judgment may from time to time be necessary for the safety, care and cleanliness of the Premises and for the preservation of good order therein.

Exhibit 7

Form of Letter of Credit

EXHIBIT 7

SAMPLE FORM OF LETTER OF CREDIT

Issuing Bank Letterhead
(must be a bank located in the Chicagoland area)

Irrevocable Standby Letter of Credit

Letter of Credit No. _____

Date: _____, 20__

Department of Aviation
City of Chicago
Chicago's O'Hare International Airport
P.O. Box 66142
Chicago, Illinois 60666

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed \$_____ Dollars ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Department of Aviation, or her designee.

Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.

2. Partial and multiple drawings are permitted hereunder.
3. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall no in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.

This credit shall expire on _____, 20__, unless extended as provided herein.

4. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporate Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.

Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. _____".

5. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices at on or before the close of business on the expiry date.
6. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
7. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 - 101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
8. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By: _____

Name: _____

Title: _____

THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT
NO. _____

EXHIBIT A

CERTIFICATE FOR DRAWING

THE UNDERSIGNED, THE COMMISSIONER OF THE DEPARTMENT OF AVIATION, REPRESENTS, WARRANT AND CERTIFIES TO _____ (the "BANK") WITH REFERENCE TO LETTER OF CREDIT NO. (to be inserted) ISSUED BY THE BANK IN FAVOR OF THE CITY OF CHICAGO (the "BENEFICIARY") THAT:

1. A BREACH OF THE LICENSE AGREEMENT, DATED AS OF _____, 20____, AS AMENDED, MODIFIED OR SUPPLEMENTED, BETWEEN THE CITY OF CHICAGO AND _____, AN _____, HAS OCCURRED. AS A RESULT, THE CITY OF CHICAGO IS MAKING DEMAND UNDER THE LETTER OF CREDIT TO PAY _____ DOLLARS (\$_____) ON THE _____ DAY OF _____, 20____ OR REPLACEMENT LETTER OF CREDIT IDENTICAL IN FORM TO THE LETTER OF CREDIT HAS NOT BEEN ISSUED TO THE CITY OF CHICAGO BY A FINANCIAL INSTITUTION MEETING THE REQUIREMENTS SET FORTH IN THE LICENSE AGREEMENT.

2. PAYMENT OF THE DRAFT SHALL BE MADE BY BANK WIRE PAID TO OUR ACCOUNT AS PER OUR WIRE INSTRUCTIONS BELOW:

(NAME OF BANK)

(CITY & STATE)

(ABA NO.)

(ACCOUNT NAME)

(ACCOUNT NO.)

(REF. NO., IF ANY)

3. ALL DEFINED TERMS USED BUT NOT DEFINED HEREIN SHALL HAVE THE MEANING ASSIGNED THERETO IN THE LETTER OF CREDIT.

IN WITNESS HEREOF, THE CITY OF CHICAGO HAS EXECUTED THIS CERTIFICATE AS OF THIS _____ DAY OF _____, 20____.

THE CITY OF CHICAGO

BY: _____

ITS: COMMISSIONER OF AVIATION

Exhibit 8

Insurance Requirements

EXHIBIT 8

INSURANCE REQUIREMENTS

The kinds and amounts of insurance required under this Agreement are as follows:

- 1.1 Workers' Compensation and Employer's Liability. Workers' Compensation and Employer's Liability Insurance, in accordance with the laws of the State of Illinois or any other applicable jurisdiction, covering all employees of Tenant. Employer's liability coverage with limits of not less than \$100,000 for each accident or illness must be included.
- 1.2 Commercial Liability Insurance. Commercial General Liability insurance or equivalent, with limits of not less than \$2,000,000 per occurrence for bodily injury, property damage and personal injury liability. Coverages must include the following: Leased Space and operations; explosions, collapse, and underground hazards; products liability and completed operations; defense; separation of insureds; contractual liability specifically covering this Agreement (with no limitation endorsement); host liquor liability (if applicable). The City and its elected and appointed officials, agents, representatives and employees must be named as additional insureds on a primary, non-contributory basis, for any liability arising directly or indirectly under this Agreement.
- 1.3 Automobile Liability. When any motor vehicles (owned, non-owned or hired) are used in connection with activities conducted under this Agreement, Tenant must provide comprehensive automobile liability insurance against bodily injury and property damage claims, subject to limits of liability of not less than \$1,000,000 per occurrence for non-airfield access, and not less than \$5,000,000 per occurrence for airfield access. The City, and its elected and appointed officials, agents, representatives and employees, must be named as additional insureds on a primary, non-contributory basis, for any liability arising directly or indirectly under this Agreement.
- 1.4 Property. 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 as a loss payee, as its interests may appear. Tenant is responsible for all loss or damage to its personal property including equipment, fixtures and contents.
- 1.5 Liquor Liability. When applicable, Tenant must obtain Liquor Liability Insurance with limits of not less than \$1,000,000 per occurrence, combined single limit. The City, its elected and appointed officials, agents, representatives and employees, must be named as additional

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NUTS ON CLARK UNION STATION, INC

insureds on a primary, non-contributory basis for any liability arising directly or indirectly from this Agreement or Tenant's operations under this Agreement.

1.6 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. The City of Chicago must be named as loss payee as its interests may appear.

2 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 City reserves the right, in addition to the other rights set forth in this Agreement, to require Tenant to furnish certified copies of the original policies of all insurance required under this Agreement at any time upon 30 days' written notice to Tenant.

3. Tenant must furnish:

3.1 the City, Department of Aviation, Attention: Concessions; O'Hare International Airport, P.O. Box 66142, Terminal 2, Upper Level, Concessions, Chicago, Illinois 60666; and

3.2 the City Management Representative and, if applicable, the City Construction Representative, at the addresses provided by the representatives,

original Certificates of Insurance evidencing the required coverages to be in force on the date of this Agreement, and renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the Term of this Agreement. Tenant must submit evidence of insurance on the City's "Insurance Certificate of Coverage Form" or equivalent before the Effective Date of this Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements under this Agreement. The failure of the City to obtain certificates or other insurance evidence from Tenant is not a waiver by the City of Tenant's obligations to obtain and maintain the specified coverages. Tenant must advise all insurers of this Agreement's provisions regarding insurance. Non-conforming insurance will not relieve Tenant of its obligation to provide insurance as specified in this Agreement.

4 The insurance specified above must be carried at all times during the Term of this Agreement. Failure to carry or keep the insurance in force constitutes an Event of Default and does not relieve Tenant from any liability under this Agreement. The City maintains the right to suspend the Tenant's performance and rights under this Agreement, or suspend this Agreement, until proper evidence of insurance is provided. If Tenant fails to maintain the full insurance coverage required

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1 under this Agreement, the City may, but is under no obligation to, obtain the required insurance.
2 Payments made by the City regarding the premiums for the insurance become an additional
3 obligation of Tenant, as Additional Rental to be paid under this Agreement, to be repaid in full to
4 the City, payable on demand, with interest at the Default Rate. The insurance policies must provide
5 for 60 days prior written notice to be given to the City at the addresses set forth in Subsection 3
6 above, if coverage is substantially changed, reduced, canceled, or non-renewed.

7 5 Tenant must require all Subcontractors to carry the insurance required in this Agreement, or
8 Tenant may provide the coverage for any or all Subcontractors, and, if so, the evidence of insurance
9 submitted must so stipulate.

10 6 Tenant and each Subcontractor agree that their insurers must waive their rights of
11 subrogation against the City, its employees, elected or appointed officials, agents or representatives.

12 7 Tenant acknowledges that any insurance or self insurance programs maintained by the City
13 apply in excess of and do not contribute to insurance provided by Tenant under the Agreement.
14 Tenant acknowledges that any insurance protection, coverages and limits furnished by Tenant under
15 this Agreement in no way limit Tenant's responsibilities and liabilities under this Agreement or by
16 law.

17 8 Any and all deductibles or self insured retentions on referenced insurance coverages must
18 be borne solely by Tenant.

19 9 The insurance required to be carried is not limited by any limitations expressed in the
20 indemnification language in this Agreement or by any limitation placed on the indemnity given in
21 this Agreement as a matter of law. If Tenant, or its Subcontractors, desire additional coverage,
22 higher limits of liability, or other modifications for their own protection, Tenant and each of its
23 Subcontractors are responsible for the acquisition and cost of the additional protection. The City's
24 Risk Management Department maintains the right to modify, delete, alter or change the insurance
25 requirements. Notwithstanding anything in this Agreement to the contrary, Tenant may, at its option,
26 include any of the insurance coverage required under this Agreement in either general or blanket
27 policies of insurance. Tenant may use any combination of primary and umbrella (or excess)
28 insurance policies to comply with the insurance requirements set forth above, as long as the resulting
29 insurance coverage is equivalent to the coverages required under this Agreement.
30
31

Exhibit 9

ACDBE Special Conditions and Related Forms

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SAMPLE SPECIAL CONDITIONS REGARDING
DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

I. POLICY AND PROGRAM

It is the policy of the City of Chicago ("City") not to discriminate on the basis of race, color, sex or national origin in the award or performance of airport concession agreements. Because the City is a recipient of Airport Improvement Program funds from the Federal Aviation Administration, the concessions at the City's airports are subject to 49 CFR Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions ("Part 23"). The City will not, directly or indirectly, through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or impeding the accomplishment of the objectives of Part 23. Compliance Part 23 requirements will not diminish or supplant the Tenant's obligations to comply with non-discrimination laws as required elsewhere in the Agreement. In the event of a conflict between the provisions of these Special Conditions and the requirements of Part 23, the requirements of Part 23 shall prevail. Part 23 is available on-line at www.access.gpo.gov/nara/cfr/waisidx_06/49cfr23_06.html.

It is further the policy of the City, in accordance with the requirements of Part 23, that Airport Concession Disadvantaged Business Enterprises ("ACDBEs") have the maximum opportunity to participate fully in the City's airport concession program. As used throughout these Special Conditions, the term "ACDBE" means an ACDBE that has been certified under the Illinois Unified Certification Program ("UCP"). If a firm is not certified by the Illinois UCP as an ACDBE in accordance with the standards in Part 23, the firm's participation is not counted for Part 23 purposes. ACDBEs certified by other jurisdictions are not considered certified ACDBEs for purposes of this Agreement and will not be counted as such unless that have also been certified by the Illinois UCP.

In accordance with Part 23, Subpart B, the City has submitted an ACDBE Program for approval by the FAA. Upon approval, the City will provide a copy to Tenant. Until such time as the ACDBE Program is approved, the City continues to administer its concession program pursuant to Part 23 requirements, as documented in these Special Conditions. In the event of any amendments or revisions to Part 23 (or any related or superseding regulations), these Special Conditions shall be subject to such revised regulations and any City-promulgated program, regulations, or goals established thereunder. Upon request by the City, this Agreement shall be amended to replace these Special Conditions with revised Special Conditions that reflect the then-current federal regulations, if necessary.

The following assurances are required to be included in the Agreement by 49 CFR §23.9(c). Tenant is deemed to be the "concessionaire or contractor" referenced.

1. This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin or sex in connection with the award or

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performance of any concession agreement, management contract, or subcontract, purchase order or other agreement covered by 49 CFR Part 23.

2. The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR Part 23, that it enters and cause those businesses to similarly include the statements in further agreements.

II. GOALS

The City is in the process of completing new aspirational goals for ACDBE participation in its airport concessions program as required by Part 23, Subpart D. Generally, ACDBE participation in airport concessions is measured as a percentage of annual gross receipts earned by the concessions. Details on counting ACDBE participation are found in 49 CFR §§ 23.53 (rental car concessions) and 23.55 (all other types of concessions) and described further below.

Until such time as the new aspirational goals are approved by the FAA, the City will continue to use its FY2005 goals of 18.18% for O'Hare and 24.49% for Midway Airports. These goals reflect combined non-rental car and rental car concessions. The new aspirational goals will, in accordance with Part 23, Subpart D, have separate goals for non-rental car and rental car concessions.

The aspirational goals are for the City's concessions program as a whole. With respect to this Agreement, the City established a contract-specific ACDBE Participation Goal of 30 percent at the time that the City issued a Request for Proposals. Tenant's proposal either included participation by ACDBE(s) that met or exceeded that ACDBE Participation Goal or Tenant demonstrated good faith efforts, as defined in Part 23, to meet that ACDBE Participation Goal.

III. TENANT'S ACDBE COMMITMENT

A. INITIAL ACDBE COMMITMENT

The extent and nature of ACDBE participation commitment by Tenant is documented in Schedule D attached to these Special Conditions ("ACDBE Commitment"). ACDBE Commitment in the form of ACDBE(s) acting as sublicensee(s) or subcontractor(s), if any, is further documented in Schedule(s) C attached to these Special Conditions. ACDBE Commitment in the form of ACDBE(s) acting as joint venture member(s) is documented in Schedule B and the joint venture agreement attached to Schedule B.

B. CHANGES IN ACDBE PARTICIPATION

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DISADVANTAGED BUSINESS ENTERPRISE COMMITMENT

Arbitrary changes by the Tenant in its ACDBE Commitment are prohibited. Further, after entering into an agreement with each approved ACDBE, Tenant and each ACDBE must thereafter neither terminate the agreement, reduce the scope of the ACDBE's participation in the concession, nor decrease the compensation to the ACDBE, without in each instance receiving the prior written approval of the Commissioner. Tenant must promptly notify the Commissioner of any proposed change in an agreement between Tenant and an ACDBE. If the ACDBE is a subcontractor, a copy of the proposed amendment to the subcontract must be provided. If the ACDBE is a joint venture member, a copy of the proposed amendment to the joint venture agreement must be provided. In any event, the collective participation of the previously approved ACDBE(s) must either continue to contribute to the concession at least the value of the ACDBE Commitment or substitute ACDBE(s) must be retained by Tenant pursuant to (D) below to maintain the ACDBE Commitment, except as provided in (C) below. Failure to comply with the ACDBE Commitment is an event of default under the Agreement. If the proposed change in ACDBE participation is approved by the City, Tenant and ACDBE(s) must complete revised Schedules D, B or C, as applicable.

C. INVOLUNTARY CHANGES IN ACDBE PARTICIPATION

1. In the event that it appears that Tenant will not comply with its ACDBE Commitment because: (i) an ACDBE has defaulted in its subcontract, sublicense or joint venture agreement through no fault of Tenant, (ii) an ACDBE is decertified by the Illinois UCP through no fault of Tenant and the ACDBE's participation can no longer be counted, (iii) the ACDBE's certified area of specialty has been changed through no fault of Tenant and the ACDBE's participation can no longer be counted, or (iv) an ACDBE is otherwise unable or unwilling to perform its obligations through no fault of Tenant, then Tenant must promptly notify the City, specifying one or more of the foregoing reasons as the cause for potential non-compliance with the ACDBE Commitment. If the City concurs with the specified reason, Tenant shall use good faith efforts as described in Section VI below to replace the ACDBE's participation with participation by another ACDBE. As provided in Section VI, Tenant must demonstrate those good faith efforts to the satisfaction of the Commissioner. In the event that Tenant wishes to replace an ACDBE or reduce an ACDBE's participation for reasons other than the foregoing, Tenant must replace the ACDBE's participation with participation by an ACDBE that is acceptable to the City so that total ACDBE participation meets or exceeds the ACDBE Commitment. Failure to comply with the foregoing shall be an event of default under the Agreement.
2. Tenant's position in these cases must be fully explained and supported with adequate documentation. Stated reasons which will NOT be acceptable include: A replacement firm has been recruited to perform the same function under terms more advantageous to the Tenant; issues about performance by the committed ACDBE were disputed (unless every reasonable effort has already been taken to

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have the issues resolved or mediated satisfactorily); and a ACDBE has requested reasonable price escalation which may be justified due to unforeseen circumstances.

D. ACDBE SUBSTITUTION

If Tenant identifies a substitute, replacement or additional ACDBE for the City's approval, Tenant's request for approval shall include the name, address, and principal official of the proposed ACDBE; the nature and essential terms of the agreement under which the ACDBE will participate; and a letter of intent signed by Tenant and the ACDBE to enter into such an agreement upon approval by the City. Tenant must provide such other affidavits and documents as the City may request to evaluate the request. The City will evaluate and respond to the submitted documentation within fifteen working days after the submittal of a complete request. The response may be in the form of requesting more information, or requesting an interview.

Actual use of an ACDBE should not be made by Tenant before City approval is given. An agreement between Tenant and the ACDBE must be executed within the time specified by the City, and a fully executed copy of the agreement must be submitted immediately to the City.

E. AGREEMENT EXTENSIONS

If the Agreement contains a term extension option, as a condition precedent to exercise of the option the Tenant will be required to revisit and possibly adjust its ACDBE Commitment to ensure compliance with Part 23 as it may have been amended in the interim. Tenant will be required to provide amended Schedules D, B, or C, along with amended subcontracts, sublicenses or joint venture agreements, to reflect any required changes to the ACDBE Commitment.

IV. COUNTING ACDBE PARTICIPATION

A. NON-RENTAL CAR CONCESSIONS

In order for their participation in the concession to be counted and reported to the FAA, ACDBEs must perform a commercially useful function, as defined in 49 CFR § 23.55(a). The work performed or gross receipts earned by a firm after its ACDBE eligibility has been removed are not counted, except as provided in 49 CFR § 23.55(j). Costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "buildout") are not counted. Otherwise, ACDBE participation in non-rental car concessions is counted as follows:

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1. Tenant is an ACDBE. When Tenant is an ACDBE or a joint venture consisting only of ACDBEs, the gross receipts earned by Tenant are counted. Gross receipts attributable to a non-ACDBE sublicensee of Tenant are not counted.
2. Separate locations. When an ACDBE performs as a sublicensee to Tenant with its own concession location or when Tenant is a joint venture which includes a non-ACDBE and in which an ACDBE operates its own separate location, the gross receipts earned by the ACDBE at its separate location are counted. The ACDBE location must be independently operated by the ACDBE as evidenced by the ACDBE's responsibility for all aspects of the management and operation of the location. Gross receipts attributable to a non-ACDBE sublicensee of the ACDBE are not counted.
3. Joint venture, no separate locations. When Tenant is a joint venture with an ACDBE participant and the ACDBE jointly participates with a non-ACDBE in the operation of all locations, only the portion of the Tenant's gross receipts attributable to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces is counted. When the City has reason to doubt the extent of an ACDBE joint venturer's commercially useful contribution towards the concessionaire's gross receipts, the City may require Tenant to submit evidence to substantiate the ACDBE's contribution.
4. Subcontractor participation. When an ACDBE provides, as a subcontractor to Tenant, goods or services for operation of the concession, the amounts paid to the ACDBE are counted as provided below. However, if the ACDBE enters into a subcontract with a non-ACDBE to provide the goods or services, the amounts paid to the non-ACDBE are not counted.
 - a. The entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that the City determines this amount to be reasonable and not excessive as compared with fees customarily paid for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.
 - b. The entire amount of the cost of goods obtained from an ACDBE manufacturer, as provided in 49 CFR § 23.55(f).
 - c. The entire amount of the cost of goods purchased or leased from a ACDBE regular dealer, as provided in 49 CFR § 23.55(g).
 - d. For goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer, the amount of reasonable fees, commissions, or

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delivery charges earned by the ACDBE, as provided in 49 CFR § 23.55(h).

B. RENTAL CAR CONCESSIONS

If Tenant is a rental car company, ACDBE participation counts in accordance with the requirements of 49 CFR §23.53. Rental car companies may include purchases or leases of vehicles from any vendor that is a certified ACDBE. If a rental car company chooses to include purchases or leases of vehicles from an ACDBE vendor, the rental car company must also submit to the Commissioner documentation of the good faith efforts it has made to obtain ACDBE participation from ACDBE providers of other goods and services. Goods and services will be counted in accordance with the following:

1. The entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services; and further provided that any portion of a fee paid by a manufacturer to an ACDBE car dealership for reimbursement of work performed under the manufacturer's warranty is excluded;
2. The entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the Tenant, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.
3. For other goods and services, ACDBE participation counts as provided in 49 CFR §26.55 and §23.55. In the event of any conflict between these two sections, §23.55 controls.
4. If a rental car company has a national or regional contract with an ACDBE, it must count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract as provided in §23.55(f).

Rental car companies may also count ACDBE direct participation through direct ownership arrangements, but such arrangements are not required.

V. CERTIFICATION, RECORDS, REPORTS AND MONITORING

A. CERTIFICATION

Copies of letters of certification from a member of the Illinois UCP for each ACDBE that is part of Tenant's ACDBE Commitment are attached to their respective Schedule C or Schedule B. All letters of certification issued by the City of Chicago include a statement of the ACDBE firm's area of specialization.

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Each ACDBE must promptly notify Tenant if there is any change in the ACDBE's certification status. Tenant, in turn, must notify Commissioner of any change in an ACDBE's certification status and provide a copy of any correspondence from the certifying agency regarding the status of an ACDBE's certification.

The ACDBE's scope of work, as detailed by Schedule D and its Schedule B or C, must conform to its stated area of specialization. If, during the course of this Agreement, Tenant proposes to amend Schedules D, B or C so that an ACDBE performs additional work or supply additional goods, materials or services not covered by its area of certification, the ACDBE must request an extension of its certification for such work, goods, materials or services in order to count toward the ACDBE's participation in the concession. The request to expand the scope of the ACDBE's certification, together with all documentation required by the City to process that request, must be received by the City at least 60 days in advance of the proposed date to perform such additional work or supply such additional goods, materials or services .

B. RECORDKEEPING

The Tenant must maintain records of all relevant data with respect to the utilization of ACDBEs, retaining these records for a period of at least three years after termination or expiration of the Agreement. Tenant grants full access to these records to the City of Chicago, Federal or State authorities, the U.S. Department of Justice, or their duly authorized representatives.

C. REPORTING

Tenant must file monthly ACDBE utilization reports, together with its monthly concession license fee payment, delineating for the month and cumulatively for the year-to-date: (i) contribution by ACDBE joint venture member(s) or sublicensee(s) to Tenant's gross receipts and (ii) payments to ACDBE subcontractor(s). Each ACDBE utilization report must be signed by an authorized officer or representative of the Tenant and be notarized.

D. MONITORING

The City will, from time to time during the term of the Agreement, conduct investigations and interviews to monitor and verify that ACDBE participation in the concession meets or exceeds the ACDBE Commitment. Tenant must give, upon request, earnest and prompt cooperation to the City in submitting to inspections and interviews, in allowing entry to places of business, in providing further documentation, and in requiring the cooperation of its ACDBEs.

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If the City determines that an ACDBE's actual role or responsibilities do not comply with the representations made by Tenant and the ACDBE in Schedules D, B or C, it shall be an event of default under the Agreement.

VI. GOOD FAITH EFFORTS

A. EXAMPLES

Examples of "good faith efforts" are described below and in 49 CFR § 23.25, 49 CFR §26.53, and Appendix A to 49 CFR Part 26. As provided in § 23.25, §26.53 and Appendix A to 49 C.F.R. Part 26, the following are examples of documented actions the City may consider to determine whether Tenant made good faith efforts:

1. Soliciting through all reasonable and available means (e.g., advertising and/or written notices) the interest of all certified ACDBEs who have the capability to perform work or services or to supply goods relevant to the concession. Tenant must solicit this interest within sufficient time to allow the ACDBEs to respond to the solicitation. Tenant must determine with certainty if the ACDBEs are interested by taking appropriate steps to follow up initial solicitations.
2. Soliciting the work, services or goods in portions that increase the likelihood that an ACDBE can perform the work or services or provide the goods. This includes, when appropriate, breaking out contract items into economically feasible units to facilitate ACDBE participation, even when the concessionaire might otherwise prefer to perform these work items with its own forces.
3. Providing interested ACDBEs with adequate information about the operations, management and requirements of the concession in a timely manner to assist them in responding to a solicitation.
4. Negotiating in good faith with interested ACDBEs. Evidence of such negotiation includes the names, addresses and telephone numbers of ACDBEs that were considered; a description of the information provided regarding the opportunities selected for possible ACDBE participation; and evidence as to why agreement could not be reached for ACDBEs to perform the work.

NOTE: A concessionaire using good business judgment would consider a number of factors in negotiating with potential business partners or subcontractors, including ACDBEs, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using ACDBEs is not in itself sufficient reason for a failure to meet the ACDBE Commitment, as long as such costs are reasonable. Concessionaires are not, however, required to accept higher quotes from ACDBEs if the price difference is excessive or unreasonable.

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5. Not rejecting ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The ACDBE's standing within its industry, membership in specific groups, organization or associations and political or social affiliation (for example union vs. non-union employee status) are not legitimate causes for rejection.
6. Making efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance as required by the City or Tenant.
7. Making efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. Effectively using the services of available minority/women community organizations and contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of ACDBEs.

B. DOCUMENTATION

Whenever Tenant is required to demonstrate good faith efforts by Part 23 or these Special Conditions, Tenant must provide supporting documentation to the satisfaction of the Commissioner. This means documentation to show that Tenant took all necessary and reasonable steps which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain compliance, even if not fully successful. The following types of documentation, as applicable to the situation, will be considered by the City in determining whether Tenant has made good faith efforts:

1. A listing of all ACDBE firms that were contacted that includes:
 - a. names, address and telephone numbers of ACDBE firms contacted;
 - b. date and time of contact;
 - c. method of contact (written, telephone, transmittal of facsimile documents, etc.);
 - d. name of the person contacted.
2. Copies of letters or any other evidence of mailing that substantiates outreach to ACDBE vendors that include:
 - a. concession identification and location;
 - b. descriptions/classification/commodity of work, services or goods for which quotations were sought; and

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- c. date, time and location for submittal of bids or proposals.
- 3. Detailed statement which summarizes direct negotiations with appropriate ACDBE firms and indicates why negotiations were unsuccessful.
- 4. Affirmation that good faith efforts have been demonstrated by choosing opportunities likely to be performed by ACDBEs by not imposing any limiting conditions which were not mandatory for all potential bidders/proposers; or denying the benefits ordinarily conferred for the type of opportunity that was solicited.
- 5. Copies of proposed portions of the work, services or goods to be performed or provided by ACDBEs in order to increase the likelihood of ACDBE participation.
- 6. Evidence that Tenant negotiated in good faith with interested ACDBEs.
- 7. Evidence that Tenant did not reject ACDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.
- 8. Evidence that Tenant made efforts to assist interested ACDBEs in obtaining bonding, lines of credit or insurance, as required by the City or the concessionaire.
- 9. Evidence that Tenant made efforts to assist interested ACDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- 10. Evidence that Tenant has provided timely notice of the opportunity to at least 50 percent of the applicable ACDBEs listed in the Illinois UCP Directory. The City may contact the ACDBEs identified by Tenant for verification of such notification.
- 11. Evidence that ACDBE participation is excessively costly. ACDBE participation will be deemed excessively costly when the ACDBE bid or proposal exceeds the average price quoted by others by more than 15 percent. In order to establish that a ACDBE's quote is excessively costly, Tenant must provide the following information:
 - a. A detailed statement of the opportunity identified for ACDBE participation for which Tenant asserts the ACDBE quote(s) were excessively costly (in excess of 15 percent higher).
 - b. A listing of all potential business partners or subcontractors contacted for a quotation on that opportunity.

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- c. Prices quoted by all such potential business partners or subcontractors for that opportunity.
- d. Other documentation that demonstrates to the satisfaction of the City that the ACDBE quotes are excessively costly, even though not in excess of 15 percent higher than the average price quoted.

C. ADMINISTRATIVE RECONSIDERATION

- 1. For the purposes of this Agreement, the City has delegated the responsibility for making the determination regarding a Tenant's good faith efforts to the Department of Aviation. The determination shall be based upon the Department's review of the documentation that the Tenant has timely submitted. Within five days of being informed by the Department that Tenant has not documented sufficient good faith efforts, Tenant may request administrative reconsideration. The request must be made in writing to the following official:

Department of Aviation
10510 West Zemke Road
Chicago, Illinois 60666
Attention: Commissioner

NOTE: The Commissioner may not have played any role in the original determination that the Tenant did not make or timely document sufficient good faith efforts. The Commissioner may appoint a reconsideration officer, who did not play any role in the original determination, to act in his or her stead.

with copies to:

Department of Procurement Services
City Hall, Room 403
121 N. LaSalle Street
Chicago, Illinois 60602
Attention: Chief Procurement Officer

Department of Aviation
10510 West Zemke Road
Chicago, Illinois 60666
Attention: Deputy Commissioner for Commercial Development

Department of Law
30 North LaSalle Street, Room 900
Chicago, Illinois 60602

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Attention: Deputy Corporation Counsel, Aviation

2. As part of this reconsideration, the Tenant will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts. The Tenant will have the opportunity to meet in person with the reconsideration officer to discuss whether it did so. The Department will send the Tenant a written decision on reconsideration, explaining the basis for finding that the Tenant did or did not make adequate good faith efforts.

VII. NON-COMPLIANCE AND DAMAGES

A. NON-COMPLIANCE GENERALLY

Tenant's failure to comply with these Special Conditions constitutes a material breach of the Agreement and entitles the City to declare an event of default. If Tenant fails to cure the default within the time allowed under the default provisions of the Agreement, the City may exercise those remedies provided for in the Agreement, at law or in equity, including termination of the Agreement. In addition to any remedies specified in the Agreement, at the City's option the term of this Agreement will become month-to-month until the City locates a new Tenant. At the City's option, any improvements added by Tenant must remain for the new tenant at no cost to the City or the new tenant.

B. NON-COMPLIANCE WITH AGREEMENT WITH ACDBE

If Tenant has not complied with the requirements of an agreement between Tenant and an ACDBE, the affected ACDBE may seek to recover from Tenant damages suffered by the ACDBEs as a result of such non-compliance. Such disputes may impact the quality of concessions at the City's airports and/or the ability of other airport tenants to solicit ACDBE participation. Therefore, Tenant consents to have any disputes between Tenant and affected ACDBEs resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorneys' fees, being recoverable by the prevailing party in accordance with any applicable regulations. This provision is intended for the benefit of all ACDBEs affected by Tenant's failure to comply with agreements and grants ACDBEs specific third party beneficiary rights. In cases deemed appropriate by the City, a dispute may lead to the withholding of sums that the City may owe Tenant until the City receives a copy of the final arbitration decision, but in no event will Tenant be excused from making any payments due to the City during the pendency of a dispute. Noncompliance or non-cooperation with the City may affect continued eligibility to enter into future contracting arrangements with the City.



City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lurupkin
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

October 10, 2006

Mrs. Estelle Kenney, President
Nuts on Clark/Midway Airport
3830 N. Clark Street
Chicago, IL 60613

Annual Certificate Expires:
Vendor Number:

November 1, 2007

Dear Mrs. Kenney:

We are pleased to inform you that **Nuts on Clark/Midway Airport** has been certified as an Airport Concession Disadvantaged Business Enterprise (ACDBE) by the City of Chicago in accordance with **49 CFR Part 23**. This ACDBE certification is valid until **November 1, 2011**; however your firm must be re-validated annually. Your firm's next annual validation is required by **November 1, 2007**.

As a condition of continued certification during this five-year period, you must file a No-Change Affidavit within 60 days prior to the date of expiration. **Please note that you must include a copy of your most current Federal Corporate Tax Return.** Failure to file this Affidavit will result in the termination of your certification. You must also notify the City of Chicago of any changes in ownership or control of your firm or any other matters or facts affecting your firm's eligibility for certification.

The City may commence actions to remove your firm's eligibility if you fail to notify us of any changes of facts affecting your firm's certification or if your firm otherwise fails to cooperate with the City in any inquiry or investigation. Removal of eligibility procedures may also be commenced if your firm is found to be involved in bidding or contractual irregularities.

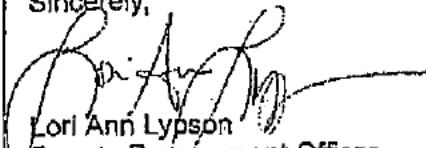
Your firm's name will be listed in the Illinois Unified Certification Program (ILUCP) Directory of Disadvantaged Business Enterprises in the specialty area(s) of:

**Airport Concessions: Nuts, Candy, Popcorn,
Confections and Gourmet Foods**

Your firm's participation on City contracts will be credited only toward ACDBE goals in your area(s) of specialty. While your participation on City contracts is not limited to your specialty, credit toward ACDBE goals will be given only for work done in the specialty category.

Thank you for your continued interest in the City's Airport Concession Disadvantaged Business Enterprise Program.

Sincerely,


Lori Ann Lypson
Deputy Procurement Officer

LAL/kp





City of Chicago
Richard M. Daley, Mayor

Department of
Procurement Services

Barbara A. Lumpkin
Chief Procurement Officer

City Hall, Room 403
121 North LaSalle Street
Chicago, Illinois 60602
(312) 744-4900
(312) 744-2949 (TTY)
<http://www.cityofchicago.org>

October 6, 2006

Estelle Kenney, President
"Nuts on Clark Street" Union Station
3830 North Clark Street
Chicago, Illinois 60613

Annual Certificate Expires:
Vendor Number:

June 1, 2007

Dear Ms. Kenney:

The City of Chicago Department of Procurement Services has reviewed your *Continued DBE Eligibility Affidavit* and supporting documentation and are pleased to inform you that your firm continues to meet the Disadvantaged Business Enterprise (DBE) program certification eligibility standards set forth in 49 CFR Part 26. Your certification is in effect for a five (5) year period. Your next **No Change Affidavit** is due **June 1, 2007**. Notification will be sent to you sixty (60) days prior to this date.

This certification allows your firm to participate as a DBE in the Illinois Unified Certification Program (IL UCP). The participating agencies include the Illinois Department of Transportation, the City of Chicago, the Chicago Transit Authority, Metra and Pace.

If there is any change in circumstances during the course of your five-year certification period that affect your ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information provided in your initial application, you must provide written notification to this agency within thirty (30) days of the occurrence of the change. Failure to provide this information is a ground for denial of certification based on failure to cooperate pursuant to 49 CFR 26.109(c).

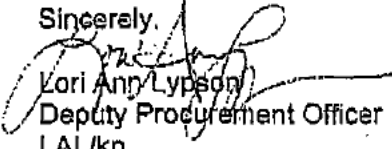
Your firm's name will appear in the IL UCP DBE Directory under the following category name:

Confectionery and Nuts Stores

The Directory is used by prime contractors/consultants, as well as other agencies, to solicit participation of DBE firms. The Directory can be accessed on the Internet at (agency web site address).

Your participation on contracts will only be credited toward DBE contract goals when you perform in your firm's approved area(s) of specialty. Credit for participation in an area outside your specialty requires prior approval (verification of resources, expertise, and corresponding support documentation, etc.).

Sincerely,


Lori Ann Lyndon
Deputy Procurement Officer
LAL/kp

IL UCP HOST: City of Chicago

