

**EXHIBIT C**

**AIR RIGHTS DEVELOPMENT EASEMENT –  
Peoria County**

THIS DOCUMENT PREPARED BY  
AND AFTER RECORDING  
RETURN TO:

Robert C. Hall  
Miller, Hall & Triggs, LLC  
416 Main Street, Suite 1125  
Peoria, IL 61602-1161

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**AIR RIGHTS DEVELOPMENT EASEMENT**

**THIS AIR RIGHTS DEVELOPMENT EASEMENT** (this “Easement”) is made and given by the Downtown Development Corporation of Peoria, an Illinois not-for-profit corporation (“DDC”), unto and for the benefit of Food Service Equipment Corporation, an Illinois corporation (“FSE”).

**W I T N E S S E T H**

**WHEREAS**, DDC is the owner of a certain parcel of real estate (the “DDC Parcel”) commonly known as 807 SW Washington Street, Peoria, Illinois, and more particularly as described as follows:

All of Lot 10 and the Southwesterly Half of the Southwesterly Half of Lot 11 in Block 77 in Balance’s Addition to the City of Peoria, Situated in Peoria County, IL

PIN: 18-09-330-038

**WHEREAS**, FSE is the owner of a certain parcel of real estate (the “FSE Parcel”) commonly known as 801 SW Washington Street, Peoria, Illinois, and more particularly as described as follows:

The Northeasterly  $\frac{3}{4}$  of Lot 11 and all of Lot 12 in Block 77, in BALLANCE’S ADDITION to the City of Peoria, EXCEPTING THEREFROM the Railroad right-of-way of the Chicago, Burlington and Quincy Railroad Company adjoining the alley across the rear of said Lots; all situate, lying an being in the City of Peoria, County of Peoria and State of Illinois;

PIN: 18-09-330-039

**WHEREAS**, FSE intends to develop the FSE Parcel as hereinafter described and, for purposes thereof, has purchased and provided consideration to DDC, the receipt of which is hereby acknowledged, for the providing by DDC to FSE of the rights and privileges herein set forth;

**NOW, THEREFORE**, in consideration of, and for purposes of, the above, DDC hereby gives and grants unto FSE the air rights development privileges and rights as set forth this Easement, subject to the limitations and restrictions herein, to-wit:

1, DDC, subject to the conditions set forth in this Easement, grants to FSE an exclusive easement for the use of all of the air rights of DDC within that volume of space above the following described portion of the DDC Parcel:

That area of air space existing and lying over a height of seven (7) feet above the current grade of the northeast twenty-five (25) feet of even width of the DDC Parcel, which current grade runs approximately from an elevation of four hundred seventy five (475) feet above sea level at its most southeastern boundary to an elevation of approximately four hundred eighty six (486) feet above sea level at its most northwestern boundary, subject to any and all covenants, easements and restrictions of record, if any, otherwise and/or additionally applicable thereto (such volume of space being sometimes herein referred to as the "Air Rights Easement Area").

FSE's exclusive right to the use of the Air Rights Easement Area shall be perpetual and "run with the land", and the DDC Parcel shall be subject to the terms and provisions of this Easement. In addition, such right of FSE to the use of the Air Rights Easement Area shall inure to the benefit of FSE, and its successors and assigns, exclusively for and as an appurtenance of the FSE Parcel as more particularly later described and defined.

2. The rights and privileges of the easement rights hereby granted unto FSE by this Easement shall be subject to the following covenants, conditions and restrictions:

a. FSE acknowledges and confirms that its intended use of the rights and privileges set forth in this Easement shall be to limit and prevent any construction of improvements within the Air Rights Easement Area so as to provide for and assure an open area (unimpeded by site line obstructions within the Air Rights Easement Area) from points lying and existing on the southwestern wall of the building improvement of FSE located upon the FSE Parcel, which points are expected to have windows, installed and/or used by FSE as part of the redevelopment planned for the FSE Parcel and the for building and other improvements situated thereupon.

b. Notwithstanding the foregoing above limitation restricting any improvements within the Air Rights Easement Area, FSE shall have and

nevertheless retain the right and ability to install or place intrusions into such Air Rights Easement Area from the FSE Parcel items such as the following: building overhangs; balconies; awnings; signs, decorative poles (e.g. for flags and/or banners); light fixtures; and the like.

c. This Easement and the rights and privileges provided hereby shall only accrue to the benefit of and serve solely as an appurtenance to the FSE Parcel and not for the benefit of any other property.

d. If and to the extent that the Air Rights Easement Area and/or the air rights granted hereby are at any time separately assessed for real estate tax purposes (for which a separate real estate tax statement is issued therefor or for any special assessments or special service area impositions thereupon), then FSE shall pay any and all such separate statements prior to their delinquency. Except for the foregoing, all general real estate taxes covering and assessed against the DDC Parcel and/or the Air Rights Easement Area (being a part of the DDC Parcel) shall be paid prior to delinquency by DDC or its successors in interest.

e. The rights and privileges granted by this Easement shall commence as of the date hereof and exist hereafter to and for the benefit of FSE and the FSE Parcel in perpetuity until and unless terminated or otherwise limited by the parties hereto or by their successors in interest.

f. This Easement is granted pursuant to an Agreement for Purchase and Sale of Air Rights by and between DDC and FSE dated as of the \_\_\_ day of \_\_\_\_\_, 2020, the terms and conditions of which are hereby incorporated herein by this reference, all of which shall succeed and survive the execution and delivery of this Easement to and for FSE.

g. Consistent with the above, and as an inducement to DDC for the giving and granting of this Easement, FSE represents and warrants unto DDC that the FSE Parcel shall be used and developed as a mixed-use development generally consisting of not less than five thousand eight hundred eighty (5,880) square feet of commercial office and/or retail space, with the remainder of the space within the current and any future building(s) located upon the FSE Parcel to consist of, and be limited to, multi-family residential use unless otherwise approved in writing by DDC. This Easement shall be recorded as an encumbrance and restriction upon the FSE Parcel (together with any and all other Declaration of Covenants, Easements and Restrictions consistent herewith) as may be later requested in writing by DDC.

h. Nothing contained herein shall be construed to permit FSE to develop of and from, or have access to and from, the surface of the DDC Parcel, it being expressly understood that the rights and privileges herein granted do not begin or commence until a height of seven (7) feet above the grade surface of the DDC Parcel; and it is expressly understood that the surface rights of the DDC Parcel as may exist below the Air Rights Easement Area are reserved for the use of DDC

and its successors in interest to and for any legal and otherwise proper purpose including, without limitation, surface parking and ingress and egress to and from the DDC Parcel.

3. FSE shall defend, indemnify and hold DDC harmless:
  - a. From any and all claims by persons, firms or other entities for labor, services, materials or supplies provided in connection with the construction, installation and maintenance of any improvement made into the air space area or upon and for the FSE Parcel; and
  - b. From any and all claims or injuries to or death of any and all individuals, or for loss of or damage to property, or from any environmental damage, degradation, response and cleanup costs and all reasonable attorneys' fees and related costs which may be incurred by or threatened against DDC arising out of any use of or occupancy of the Air Rights Easement Area by FSE;

FSE shall obtain and keep in full force and effect throughout the duration of this Easement general comprehensive liability insurance effective as of the date hereof naming DDC and its successors in interest as an additional named insured with policy limits of not less than Two Million (\$2,000,000.00) Dollars for any one accident and property damage liability insurance not less than One Million (\$1,000,000.00) Dollars for any one accident. Such minimum limits, however, shall be increased by no less than ten (10%) percent at the end of each five-year period during the term of this Easement. FSE's obligations to defend, indemnify and hold DDC and its successors in interest harmless as stated herein shall survive any expiration or earlier termination of this Easement for any reason.

4. In addition to the foregoing, the following miscellaneous covenants and provisions shall govern the rights and conditions upon which this Easement is granted:

- a. The execution and providing of this Easement by DDC is not to be construed as a warranty of its title or any status of the conditions of the Air Rights Easement Area. FSE acknowledges and confirms that it has had an adequate opportunity to inspect and become familiar with Air Rights Easement Area and confirms that the Air Rights Easement Area is being received and accepted in an "**AS IS / WHERE IS**" basis without warranty or representation except as may be specifically otherwise set forth in this Easement. **FSE HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION AND USE OF THE AIR RIGHTS EASEMENT AREA INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE.**
- b. DDC and FSE each represent and warrant to the other that it has the authority to execute and be bound by the terms and conditions of this Easement.
- c. This Easement may only be amended by a written agreement executed by both DDC and FSE or their respective successors in interest. The waiver of any breach of any provision of this Easement by either DDC or FSE shall not operate

as or be construed as a waiver by the other party of any subsequent breach. Each and every right, remedy and power granted to either DDC or FSE under this Easement or allowed by law shall be cumulative and not exclusive of any other.

d. With respect to any use and application of this Easement for the benefit of FSE, FSE agrees to use and operate of and from the Air Rights Easement Area at all times in accordance with applicable law.

e. If any of the provisions of this Easement or its application under any circumstances is determined to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Easement or its application.

f. This Easement shall be binding upon the parties hereto and their respective successors and assigns.

g. This Easement constitutes the entire understanding between the parties with respect to the matters set forth herein. There are no other written or oral understandings or representations directly or indirectly related to the Air Rights Easement Area that are not expressly set forth in this Easement.

h. All notices required or permitted to be given hereunder shall be delivered either (i) personally, or (ii) by national overnight courier service to the respective Parties named below, or (iii) by United States Registered or Certified Mail, return receipt requested, postage prepaid, or (iv) by electronic transmission (email) with proof of delivery required, addressed to Seller and Purchaser as follows:

Downtown Development Corporation  
c/o Michael J. Freilinger  
408 NE Jefferson Ave.  
Peoria, Illinois 61603  
Telephone: 309 / 369-6038  
Email: michael@downtownpeoria.us

With a copy to: Miller, Hall & Triggs, LLC  
Attn: Robert C. Hall  
416 Main Street, Suite 1125  
Peoria, Illinois 61602-1161  
Email: robert.hall@mhtlaw.com

Food Service Equipment Corporation  
Attn: Edward A. LaHood  
1933 W. Teton Drive

Peoria, Illinois 61614  
Email: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such changed addresses as each respective party may designate in writing. Any such notice shall be deemed to be given and effective when received.

i. This Easement shall be governed by the laws of the State of Illinois as shall be in effect from time to time.

j. This Easement may be executed in duplicate original counterparts and all copies of this Easement so executed shall be deemed to be one easement document.

DDC has given and granted this Easement the day and year first above written.

**DOWNTOWN DEVELOPMENT CORPORATION OF PEORIA, an Illinois not-for-profit corporation**

By: \_\_\_\_\_  
Michael J. Freilinger

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF PEORIA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Michael J. Freilinger who is \_\_\_\_\_ of \_\_\_\_\_ Downtown Development Corporation of Peoria, an Illinois not-for-profit corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

(Notarial Seal)

(ACCEPTANCE OF FSE ON FOLLOWING PAGE)

**ACCEPTANCE**

Food Service Equipment Corporation, an Illinois corporation (“FSE”), hereby accepts the foregoing Easement and assumes and agrees to perform each and every obligation, condition, covenant and/or limitation as above set forth in such Easement.

**FOOD SERVICE EQUIPMENT  
CORPORATION**, an Illinois corporation

By: \_\_\_\_\_  
Edward A. LaHood

STATE OF ILLINOIS     )  
  ) SS.  
COUNTY OF PEORIA    )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020 by Edward A. LaHood who is \_\_\_\_\_ of Food Service Equipment Corporation, an Illinois corporation, on behalf of the corporation.

(Notarial Seal)

\_\_\_\_\_  
Notary Public