

**OFFICE SPACE LEASE**

**between**

**CITY AND COUNTY OF DENVER**

**And**

**CHAMPLAIN ENTERPRISES, LLC  
D/B/A COMMUTAIR**

**at**

**DENVER INTERNATIONAL AIRPORT**

## OFFICE SPACE LEASE

**THIS OFFICE SPACE LEASE**, (“**Lease**”), is entered into as of the date indicated on the City signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, for and on behalf of its Department of Aviation (the “**City**”), and **CHAMPLAIN ENTERPRISES, LLC D/B/A COMMUTAIR**, a Delaware corporation authorized to do business in the State of Colorado (“**Tenant**”), and collectively (the “**Parties**”).

### WITNESSETH

**WHEREAS**, the City owns, maintains and operates Denver International Airport (“**DEN**” or the “**Airport**”) and has the power to grant rights and privileges with respect thereto, as hereinafter provided; and

**WHEREAS**, the Tenant is an airline, who, upon approval will be operating as a United Express carrier at the Airport and pursuant to the obligations set forth in the United Airlines Use and Facilities Lease (“United ULA”) (Contract No. XC 2X000); and

**WHEREAS**, the Tenant now wishes to lease its own office space to support its operations at DEN; and

**WHEREAS**, in order to provide office space for the Tenant, the Parties desire to enter into this Lease for the use of certain office space at the Airport, all as more fully hereinafter set forth;

**NOW THEREFORE**, for and in consideration of the mutual covenants and agreements herein contained, the Parties hereby mutually undertake, promise and agree, each for itself and its successors, as follows:

## ARTICLE I. GENERAL

### 1.1 CONSIDERATION

City enters into this Office Space Lease for and in consideration of the payment of rent, the construction of all improvements by Tenant as herein provided, and the performance and observance by Tenant of the covenants and agreements herein.

### 1.2 INCORPORATION OF EXHIBITS AND ADDENDA

The exhibits attached to this Lease shall be deemed incorporated in this Lease. *Appendix A (Standard Federal Assurances)* is also incorporated herein by reference.

## ARTICLE II. DEFINITIONS

### 2.1 AIRPORT

"Airport" or “DEN” shall mean Denver International Airport.

## **2.2 AUDITOR**

"Auditor" shall mean the City's Auditor and his authorized representative.

## **2.3 CHIEF EXECUTIVE OFFICER**

"CEO" shall mean the Chief Executive Officer of the City and County of Denver's Department of Aviation, or its successor in function.

## **2.4 CONCOURSES**

"Concourses" shall mean Concourses A, B and C located at the Airport but specifically excepts the Terminal as herein defined.

## **2.5 COMMENCEMENT DATE**

"Commencement date" shall mean the date that the Tenant begins occupying the Office Space, as defined below.

## **2.6 CEO'S AUTHORIZED REPRESENTATIVE**

Wherever reference is made herein to the "CEO's authorized representative", or words of similar import are used, such officer or employee of the City shall be such authorized representative of said CEO until written notice otherwise is given to Tenant.

## **2.7 DEN DESIGN STANDARDS**

"DEN Design Standards" shall mean the design standards and criteria for Denver International Airport, and as hereafter amended.

## **2.8 DEN TENANT DEVELOPMENT GUIDELINES**

"DEN Tenant Development Guidelines" shall mean the criteria established at DEN for tenants and concessionaires for design, construction, installation, signage and related matters, and as hereafter amended.

## **2.9 PAST DUE INTEREST RATE**

"Past Due Interest Rate" shall mean interest accruing at 18% per annum commencing on the fifth business day after the date such amount is due and owing until paid to City.

## **2.10 OFFICE SPACE**

"Office Space" shall mean the office space as generally depicted on the Office Space Plan attached hereto as *Exhibit A*, which is located within the Terminal containing 1,616.4 square feet. City and Tenant acknowledge and agree that the dimensions and locations of the Office Space as

set forth in *Exhibit A* are approximate. The CEO may add or subtract square footage of up to 10% of the Office Space with the prior written consent of the Tenant without City Council approval.

## **2.11 TERMINAL**

"Terminal" shall mean the Jeppesen Terminal Building located at the Airport.

## **ARTICLE III. LEASE OF OFFICE SPACE**

### **3.1 OFFICE RIGHTS GRANTED**

City grants to Tenant the right to occupy and use the Office Space consistent with and subject to all of the terms and provisions of this Office Space Lease.

### **3.2 USE OF OFFICE SPACE**

Tenant may use the Office Space only for office use solely in support of its operations at DEN, and for no other purposes, unless otherwise authorized in writing by the CEO.

### **3.3 MEANS OF ACCESS**

**A.** Tenant, its agents and employees, have a non-exclusive right of ingress to and egress from the Office Space by a means of access located outside the boundaries of such space as specified by City. In non-public areas, such access shall be restricted under the Airport's security requirements as described in the section herein entitled "Security," and the City may at any time close, relocate, reconstruct or modify such means of access, provided that a reasonably convenient and adequate means of ingress and egress is available for the same purposes. The City has established access corridors and access door locations for the Office Space, and such plans are available from Airport Planning and Design.

**B.** Nothing in this Office Space Lease shall be construed to prevent the City from charging the operators of vehicles carrying passengers and property a fee for the privilege of entering upon the Airport or using the roadways in or on the Airport, or soliciting passengers upon the Airport, or otherwise operating on the Airport; and City reserves the right to make such charges provided that they do not discriminate unreasonably against the operators of vehicles used for carrying officers, employees, passengers or property of Tenant.

### **3.4 RIGHT OF INSPECTION**

City retains the full right of entry in and to the Office Space for any purpose necessary, incidental to or in connection with its obligations hereunder, or in the exercise of its governmental functions, or for the purpose of making any inspection it deems necessary.

## **ARTICLE IV. TERM**

#### 4.1 TERM

The Term of this Lease shall commence on the (“**Effective Date**”) and shall continue for one (1) year(s) thereafter. Tenant may request an extension of the Term at its current terms and conditions for two (2) additional, one-year periods, provided that the notice is provided to City at least ninety (90) days prior to the expiration of the then-current term. Any provision to the contrary notwithstanding, this Office Space Lease may be terminated by the City prior to the expiration of the Term or any extension thereof, with or without cause, upon sixty (60) days written notice to Tenant signed by the CEO. Tenant may terminate this Office Space Lease prior to the Expiration Date, with or without cause, upon sixty (60) days written notice to the City. The “Effective Date” shall mean the date of final City signatures to this Agreement, as indicated on the City signature page hereto.”

#### 4.2 SURRENDER OF OFFICE SPACE

Upon the expiration or earlier termination of this Office Space Lease or on the date specified in any demand for possession by City after any Default by Tenant, Tenant covenants and agrees to surrender possession of the Office Space to City in the same condition as when first occupied, ordinary wear and tear excepted.

#### 4.3 HOLDING OVER

If Tenant holds over after expiration of the Term or any extension thereof, thereafter Tenant's occupancy shall be deemed a month-to-month tenancy at a monthly rental equal to 150% of the monthly rent provided in Article V herein, unless otherwise modified in writing. Tenant shall be subject to all other terms and conditions of this Office Space Lease not specifically modified above. The CEO, in her sole discretion, may waive the additional rent and allow Tenant to holdover at the rates stated in Article V. Nothing herein shall be construed to give Tenant the right to hold over, and City may exercise any remedy at law or in equity to recover possession of the Office Space, as well as any damages incurred by City.

### ARTICLE V. RENT

#### 5.1 RENT

Tenant covenants and agrees, without offset, deduction or abatement, to pay the City the established rentals, rates, fees and charges in accordance with the cost- accounting concepts and rate-making procedures described in attached *Exhibit F* (“**Airline Rate-Making Methodology**”), as annual rent for the rights and privileges herein granted by City (the “**Annual Rent**”). Said obligation to pay rent shall commence upon the Commencement Date and continue through the Term hereof. All rentals, rates, fees and charges are subject to and established in accordance with the DEN Rules and Regulations (“**Rules and Regulations**”) Rule 120 and are updated on a yearly basis.

## **5.2 PAYMENT OF MONTHLY RENT**

The Annual Rent shall be payable by Tenant to City in twelve (12) equal installments (the “**Monthly Rent**”) in advance and without demand on the Commencement Date and on the first day of each month thereafter.

## **5.3 INTEREST ON PAST DUE AMOUNTS**

Any payments not made to City when due shall accrue interest at the Past Due Interest Rate, as herein defined.

## **5.4 PLACE AND MANNER OF PAYMENTS**

All sums payable to City hereunder shall be made without notice at the following: Airport Revenue Fund

Denver International Airport Revenue Fund  
PO Box 492065  
Denver, Colorado 80249-2065

or at such other place as the CEO or her authorized representative may hereafter designate by notice in writing to Tenant. All sums shall be made in legal tender of the United States. Any check given to the City shall be received by it subject to collection, and Tenant agrees to pay any charges, fees or costs incurred by the City for such collection, including reasonable attorney fees.

## **ARTICLE VI. USE OF OFFICE SPACE**

### **6.1 CARE OF AREA**

Tenant agrees that it will keep the Office Space in a neat, clean, safe, sanitary and orderly condition at all times, and further agrees that it will keep such area free at all times of all paper, rubbish, spills, and debris. Tenant, at its own expense, shall collect and deposit all trash and refuse at frequent intervals at collection station locations specified by the City. Accumulation of boxes, cartons, barrels or other similar items shall not be permitted in any public area in the Airport.

### **6.2 VENDING MACHINES**

No amusement or vending machines or other machines operated by coins, tokens or credit cards shall be installed or maintained in or upon the Office Space except with the written permission of the CEO or her authorized representative. This prohibition includes, but not by way of limitation, sales from vending machines of such items as cigarettes, candy, maps, coffee, soft drinks, newspapers, stamps and insurance policies; telephones; dispensation of cash, money orders and checks; and operation of mechanical or electronic game devices, electronic video games, and entertainment devices.

### 6.3 COMPLIANCE WITH ALL LAWS AND REGULATIONS

**A.** Tenant agrees not to use or permit the Office Space to be used for any purpose prohibited by the laws of the United States or the State of Colorado or the ordinances or Charter of the City and County of Denver, or not authorized hereunder, and it further agrees that it will use the Office Space in accordance with all existing and future applicable federal, state and local laws and all general rules and regulations adopted by the City or the CEO for the management, operation and control of the Airport, either promulgated by the City on its own initiative or in compliance with regulations or actions of the Federal Aviation Administration or other authorized federal agency.

**B.** Tenant agrees to submit any report, reports or information which the City is required by law or regulation to obtain from Tenant or which the CEO may reasonably request relating to Tenant's operations. Tenant further agrees that the City's Auditor or her authorized representative shall, until expiration of three (3) years after final payment under this Lease, have the right to inspect or examine any books and records of Tenant which are directly pertinent to Tenant's obligations under this Office Space Lease.

### 6.4 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS

**A.** Tenant, in conducting any activity on the Office Space, shall comply with all existing and future applicable local, state or federal environmental rules, regulations, statutes, laws or orders (collectively "**Environmental Requirements**"), including but not limited to Environmental Requirements regarding the office use and disposal of Hazardous Materials or Special Wastes and regarding releases or threatened releases of Hazardous Materials or Special Wastes to the environment. For purposes of this Office Space Lease the terms "Hazardous Materials" shall refer to those materials, including without limitation asbestos and asbestos-containing materials, polychlorinated biphenyls (PCBs), oil or any other petroleum products, natural gas, source material, pesticides, and any hazardous waste, toxic substance or related material, including any substance defined or treated as a "hazardous substance," "hazardous waste" or "toxic substance" (or comparable term) in the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Sec. 9601 et seq. (1990)), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 et seq. (1990)), and any rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute. Tenant shall comply with the City's Ordinance 196, as amended on March 18, 1991 (amendments to the City Uniform Public Code related to water conservation fixtures).

**B.** Tenant shall acquire all necessary federal, state and local environmental permits and comply with all applicable federal and state environmental permit requirements.

**C.** Tenant agrees to ensure that its Office Space is designed, constructed, operated and maintained in a manner that minimizes environmental impact through appropriate preventive measures and complies with all federal, state and local environmental requirements. Tenant agrees to evaluate methods to reduce the generation and disposal of waste materials. Wastewater from maintenance or operational activities shall be pretreated with sand and grease traps.

**D.** In the case of a release, spill or leak as a result of Tenant's activities, Tenant shall immediately control and remediate the contaminated media to applicable federal, state and local standards. Tenant shall reimburse the City for any penalties and all cost and expense, including without limitation attorney fees, incurred by the City as a result of the release or disposal by Tenant of any pollutant or hazardous material on the Airport.

#### **6.5 WASTE OR IMPAIRMENT OF VALUE**

Tenant agrees that nothing shall be done or kept in the Office Space which might impair the value of the City's property or which would constitute waste.

#### **6.6 HAZARDOUS USE**

Tenant agrees that nothing shall be done or kept in the Office Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Office Space which might be unsafe or hazardous to any person or property. Further, Tenant shall not do or permit to be done any act or thing upon the Office Space which will invalidate, suspend or increase the rate of any fire insurance policy required under this Office Space Lease, or carried by the City, covering the Office Space or the buildings in which the Office Space is located or which, in the opinion of the CEO or her authorized representative, may constitute a hazardous condition that will increase the risks normally attendant upon the operations contemplated under this Office Space Lease. If, by reason of any failure by Tenant to comply with the provisions of this section, after receipt of notice in writing from the City, any fire insurance rate on the Office Space or on the buildings in which the same is located, shall at any time be higher than it normally would be, then Tenant shall pay the City, on demand, that part of all fire insurance premiums paid by the City which have been charged because of such violation or failure of Tenant; provided, that nothing herein shall preclude Tenant from bringing, keeping or using on or about the Office Space such materials, supplies, equipment and machinery as are appropriate or customary in carrying on its business, or from carrying on the normal operations contemplated herein.

#### **6.7 STRUCTURAL OR ELECTRICAL OVERLOADING**

Tenant agrees that nothing shall be done or kept on the Office Space and no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Office Space which might impair the structural soundness of the building, result in an overload of utility lines serving the Terminal and/or Concourses or interfere with electric, electronic or other equipment at the Airport. In the event of violations hereof, Tenant agrees immediately to remedy the violation at Tenant's expense.

#### **6.8 NOISE, ODORS, VIBRATIONS AND ANNOYANCES**

Tenant shall conduct its operations in an orderly and proper manner so as not to commit any nuisance in the Office Space or annoy, disturb or be offensive to others in the Airport and shall take all reasonable measures, using the latest known and practicable devices and means, to eliminate any unusual, nauseous or objectionable noise, gases, vapors, odors and vibrations.

## **6.9 ACCESSIBILITY**

**A.** Tenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of utility, heating, ventilating or air conditioning systems or portions thereof on the Office Space or elsewhere on the Airport, nor do or permit to be done anything which may interfere with free access and passage in the Office Space or the public areas adjacent thereto, or hinder police, firefighting or other emergency personnel in the discharge of their duties. Further, Tenant shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of elevators or escalators in or adjacent to the Office Space, including lines, pipes, wires, conduits and equipment connected with or appurtenant thereto.

**B.** Tenant shall not place any additional lock of any kind upon any window or interior or exterior door in the Office Space, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefor is maintained on the Office Space, nor refuse, upon the expiration or sooner termination of this Office Space Lease, to surrender to the City any and all keys to the interior or exterior doors on the Office Space, whether said keys were furnished to or otherwise procured by Tenant. If any keys furnished to Tenant by City are lost, Tenant shall pay the City, on demand, the cost for replacement thereof.

## **6.10 NO AUCTION**

Tenant agrees not to allow or permit any sale by auction or hawking on the Office Space.

## **6.11 CONSTRUCTION OF IMPROVEMENTS/RESTRICTION ON CHANGES**

**A.** Tenant shall, at its sole cost and expense, construct and install any improvements pursuant to the Airport's Tenant Development Guidelines and Design Standards Manual, both of which are publicly available and incorporated herein by reference, and pursuant to the City's building permit process and the customary terms and conditions thereof.

**B.** Tenant shall, unless otherwise instructed, complete its design, obtain building permits and complete construction no later than thirty (30) days after execution of this Office Space Lease. Such period may be extended by the CEO if completion of Improvements was delayed through no fault of Tenant; however, in no event shall such extension affect the date upon which rent is due.

**C.** Thereafter, Tenant agrees not to alter, add to, remove or demolish any of the Improvements on the Office Space without the prior written approval of the CEO.

## **6.12 TITLE TO IMPROVEMENTS**

Tenant agrees that all improvements to the Office Space, including approved changes and renovations, which are affixed to the realty, shall become the property of the City upon their completion and acceptance by City.

### **6.13 REMOVAL OF TENANT'S EQUIPMENT**

Tenant shall retain title to and shall remove, at its sole cost, prior to the expiration or termination of this Office Space Lease, all of Tenant's Equipment, as hereinafter defined. "**Tenant's Equipment**" shall mean all equipment, apparatus, machinery, furnishings, trade fixtures and personal property installed by Tenant and used in the operation of the business of Tenant (as distinguished from the use and operation of the Office Space) which is listed on an annual inventory list submitted by Tenant and approved by the City and maintained in the City's Airport Property Office. If such removal shall injure or damage the Office Space, Tenant agrees, at its sole cost, at or prior to the expiration or termination of this Office Space Lease, to repair such injury or damage in good and workmanlike fashion and to place the Office Space in the same condition as the Office Space would have been if such Tenant's Equipment had not been installed. If Tenant fails to remove any of Tenant's Equipment by the expiration or termination of this Office Space Lease, City may, at its option, keep and retain any such Tenant's Equipment or dispose of the same and retain any proceeds therefrom, and City shall be entitled to recover from Tenant any costs of City in removing the same and in restoring the Office Space in excess of the actual proceeds, if any, received by City from disposition thereof.

### **6.14 JANITORIAL SERVICES AND MAINTENANCE**

Tenant shall, at its expense, be responsible for janitorial services for the Office Space.

## **ARTICLE VII. UTILITIES AND SERVICES**

### **7.1 HEATING AND AIR CONDITIONING (HVAC)**

**A.** Tenant shall, at its expense, furnish, install and maintain any ductwork and other connections within or leading into its Office Space required to connect and complete the HVAC from the Airport's central system for the Office Space.

**B.** City shall, at its expense, furnish normal and reasonable quantities of central air from the central HVAC system to the Office Space and all necessary power and electricity for such central air circulation. Subject to conditions beyond its control, the City shall maintain under normal conditions a temperature adequate for comfortable occupancy according to the season; provided, that Tenant properly maintains the ductwork and other connections within or leading into its Office Space and complies with the recommendations of the City's engineer regarding reasonable use of the Office Space.

### **7.2 ELECTRICITY**

Tenant shall, at its expense, furnish, install and maintain an electric meter at a location and of a type specified by the City, and shall pay all costs for electricity used within the Office Space. Tenant shall furnish, install and maintain all power circuits and connections required for equipment and mechanical systems used in the Office Space. Any bills by the City for such costs shall be due within thirty (30) days and shall accrue interest at the Past Due Interest Rate if not paid when due.

### **7.3 WATER SERVICE**

If Tenant requires water service to the Office Space, Tenant shall, at its expense, furnish, install and maintain a water meter for the Office Space at a location and of a type specified by the City and shall pay all costs for water used within the Office Space. Tenant shall be responsible for all pipe tie-in and water hook-up of its equipment.

### **7.4 LIGHTING**

Tenant shall, at its expense, furnish, install and maintain all lighting fixtures and wiring for general illumination of the Office Space. Levels of illumination and wattage requirements shall be subject to approval by City.

### **7.5 STRUCTURAL MAINTENANCE**

City shall, at its expense, maintain all structural parts of the Terminal and Concourses, including exterior glass, walls and roof but specifically excluding improvements made by Tenant.

### **7.6 COMMON USE SERVICES**

The CEO may establish common use services at the Airport, including but not limited to trash and refuse removal, deliveries, industrial waste handling, recycling and security guards. The CEO reserves the right to establish charges for common use services based upon documented actual costs. Trash, sewer and deliveries will be common use services, which Tenant may be required to use and pay its pro rata actual share; however, other common use services may be utilized at Tenant's option. Tenant agrees to pay the charges for those common use services which are utilized by Tenant.

### **7.7 INTERRUPTION OF SERVICES**

Tenant agrees that City shall not be liable for failure to supply any utility services. City reserves the right to temporarily discontinue utility services at such time as may be necessary by reason of accident, unavailability of employees, repairs, alterations or improvements or whenever by reason of strikes, lockouts, riots, acts of God or any other happenings beyond the control of the City, the City is unable to furnish such utility services. The City shall not be liable for damages to persons or property for any such discontinuance, nor shall such discontinuance in any way be construed as cause for abatement of rent or operate to release the Tenant from any of its obligations hereunder, except as otherwise provided in the section entitled "Damage, Destruction or Loss."

## **ARTICLE VIII. DEFENSE AND INDEMNIFICATION**

### **8.1 INDEMNITY**

**A.** Tenant hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work performed under this Lease (“**Claims**”), unless such Claims have been

specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Tenant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

**B.** Tenant's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether Claimant has filed suit on the Claim. Tenant's duty to defend and indemnify City shall arise even if City is the only party sued by claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of claimant's damages.

**C.** Tenant will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition to any other legal remedies available to City and shall not be considered City's exclusive remedy.

**D.** Insurance coverage requirements specified in this Lease shall in no way lessen or limit the liability of the Tenant under the terms of this indemnification obligation. The Tenant shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

**E.** This defense and indemnification obligation shall survive the expiration or termination of this Lease.

## **8.2 INSURANCE**

**A.** Tenant shall obtain and keep in force all of the minimum insurance coverage forms and amounts set forth in the United ULA during the entire term of this Lease, including any extensions of the Office Space Lease. All certificates of insurance and any required endorsements must be received and approved by DEN Risk Management before any airport access or work commences.

**B.** Unless specifically excepted in writing by DEN Risk Management, if Tenant shall be using subcontractors to provide any part of the services under this Lease, Tenant shall do one of the following:

1. Include all subcontractors performing services hereunder as insureds under its required insurance and specifically list on all submitted certificates of insurance; or
2. Ensure that each subcontractor provides its own insurance coverage in accordance with the requirements set forth in this Lease.

C. The City in no way warrants or represents the minimum limits contained herein are sufficient to protect Tenant from liabilities arising out of the performance of the terms and conditions of this Office Space Lease by Tenant, its agents, representatives, employees, or subcontractors. Tenant shall assess its own risks and maintain higher limits and/or broader coverage as it deems appropriate and/or prudent. Tenant is not relieved of any liability or other obligations assumed or undertaken pursuant to this Office Space Lease by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

D. In no event shall the City be liable for any of the following: (i) business interruption or other consequential damages sustained by Tenant; (ii) damage, theft, or destruction of Tenant's inventory, or property of any kind; or (iii) damage, theft, or destruction of an automobile, whether or not insured.

E. The Parties understand and agree that the City, its elected and appointed officials, employees, agents and volunteers are relying on, and do not waive or intend to waive by any provisions of this Lease, the monetary limitations and any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 to 120, C.R.S., or otherwise available to the City, its elected and appointed officials, employees, agents and volunteers.

### **8.3 PERFORMANCE SURETY**

Upon execution of this Office Space Lease, Tenant shall deliver to the CEO, and maintain in effect at all times throughout the Term an irrevocable letter of credit, or such other acceptable surety as first approved in writing by City, in an amount equal to six (6) months of monthly rent, which amount is subject to increase by the CEO. Such guarantee shall be payable without condition to the City and guarantee to the City full and faithful performance of (i) all of the terms and provisions of this Office Space Lease as it may be amended, supplemented or extended and (ii) all obligations and duties under all general rules and regulations adopted by the City or the CEO for the management, operation and control of the Airport as amended or supplemented. All irrevocable letters of credit shall be in a form, and issued by a bank, acceptable to the City.

### **8.4 NO PERSONAL LIABILITY**

No director, officer or employee of either party hereto shall be held personally liable under this Office Space Lease or because of its execution or attempted execution.

### **8.5 TAXES, LICENSES, LIENS AND FEES**

Tenant agrees to promptly pay all taxes, excises, license fees and permit fees of whatever nature applicable to its operations hereunder and to take out and keep current all municipal, state or federal licenses required for the conduct of its business at and upon the Office Space and further agrees not to permit any of said taxes, excises, license fees or permit fees to become delinquent. Tenant also agrees not to permit any mechanic's or materialman's or any other lien to become attached or be foreclosed upon the Office Space or improvements thereto, or any part thereof, by reason of any work or labor performed or materials furnished by any mechanic or materialman. Tenant agrees to furnish to the CEO, upon request, duplicate receipts or other satisfactory evidence

showing the prompt payment by it of Social Security, unemployment insurance and worker's compensation insurance, and all required licenses and all taxes. Tenant further agrees to promptly pay when due all bills, debts and obligations incurred by it in connection with its operations hereunder and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against the Office Space or improvements thereon which will in any way impair the rights of the City under this Office Space Lease.

## **ARTICLE IX. DEFAULT AND REMEDIES**

### **9.1 DEFAULT**

Tenant shall be in default under this Office Space Lease if Tenant:

- A.** Fails to timely pay when due to City the compensation, rent or any other payment required hereunder; or
- B.** Tenant is in default under any other Agreement with the City at the Airport; or
- C.** Becomes insolvent, or takes the benefit of any present or future insolvency or bankruptcy statute, or makes a general assignment for the benefit of creditors, or consents to the appointment of a receiver, trustee or liquidator of any or substantially all of its property; or
- D.** Transfers its interest under this Office Space Lease, without the prior written approval of the City, by reason of death, operation of law, assignment, sublease or otherwise, to any other person, entity or corporation; or Abandons, deserts or vacates the Office Space; or
- E.** Suffers any lien or attachment to be filed against the Office Space, the Airport or City's property because of any act or omission of Tenant, and such lien or attachment is not discharged or contested by Tenant in good faith by proper legal proceedings within twenty (20) days after receipt of notice thereof by Tenant; or
- F.** Fails to keep, perform and observe any other promise, covenant or agreement set forth in this Office Space Lease and such failure continues for a period of more than thirty (30) days after delivery by CEO of a written notice of such breach or default, except where a shorter period is specified herein, or where fulfillment of its obligation requires activity over a period of time and Tenant within ten (10) days of notice commences in good faith to perform whatever may be required to correct its failure to perform and continues such performance without interruption except for causes beyond its control; or
- G.** Uses or gives its permission to any person to use for any illegal purpose any portion of the Airport made available to Tenant for its use under this Office Space Lease.

### **9.2 REMEDIES**

If Tenant defaults in any of the covenants, terms and conditions herein, the City may exercise any one or more of the following remedies:

**A.** The City may elect to allow this Office Space Lease to continue in full force and effect and to enforce all of City's rights and remedies hereunder, including without limitation the right to collect rent as it becomes due together with Past Due Interest; or

**B.** The City may cancel and terminate this Office Space Lease and repossess the Office Space, with or without process of law, and without liability for so doing, upon giving thirty (30) days written notice to Tenant of its intention to terminate, at the end of which time all the rights hereunder of the Tenant shall terminate, unless the default, which shall have been stated in such notice, shall have been cured within such thirty (30) days. Notwithstanding the foregoing, Tenant shall be allowed only two notices of default hereunder which it may cure within the time specified in this section. The third notice shall be final, and the City shall at its option (1) cancel and terminate all rights hereunder of the Tenant, reenter the Office Space, remove therefrom all property of the Tenant and store the same at the expense of the Tenant, or (2) elect to proceed under subparagraph C. below.

If City elects to terminate, Tenant shall be liable to City for all amounts owing at the time of termination, including but not limited to rent due plus interest thereon at the Past Due Interest Rate together with any other amount to fully compensate City for all loss of rent, damages, and costs, including attorney fees, caused by Tenant's failure to perform its obligations hereunder, or which in the ordinary course would likely result therefrom.

**C.** The City may elect to reenter and take possession of the Office Space and expel Tenant or any person claiming under Tenant, and remove all effects as may be necessary, without prejudice to any remedies for damages or breach. Such reentry shall not be construed as termination of this Office Space Lease unless a written notice specifically so states; however, the City reserves the right to terminate this Office Space Lease at any time after reentry. Following reentry, the City may relet the Office Space, or any portion thereof, for the account of Tenant, on such terms and conditions as the City may choose and may make such repairs or improvements as it deems appropriate to accomplish the reletting. The City shall not be responsible for any failure to relet or any failure to collect rent due for such reletting.

Tenant shall be liable to City for all costs of reletting, including attorney fees and repairs or improvements. Notwithstanding re-entry by the City, Tenant shall continue to be liable for all amounts due as rent under this Office Space Lease, on the dates specified and, in such amounts, as would be payable if default had not occurred. Upon expiration of the Term, or any earlier termination of this Office Space Lease by the City, the City, having credited to the account of Tenant any amounts recovered through reletting, shall refund, without interest, any amount that exceeds the rent, damages and costs payable by Tenant under this Office Space Lease.

### **9.3 REMEDIES CUMULATIVE**

The remedies provided in this Office Space Lease shall be cumulative and shall in no way affect any other remedy available to City under law or equity.

#### **9.4 ADMINISTRATIVE HEARING**

Disputes arising out of this Office Space Lease shall be resolved by administrative hearing before the CEO following the procedures outlined in Denver Revised Municipal Code Section 5-17; provided, that City shall retain its right to obtain an order of eviction in accordance with applicable state law. It is further agreed that no cause of action shall be brought against the City until there has been full compliance with the terms of this paragraph.

#### **9.5 WAIVERS**

No failure of City to insist upon the strict performance of a term, covenant or agreement contained in this Office Space Lease, no failure by City to exercise any right or remedy under this Office Space Lease, and no acceptance of full or partial payment during the continuance of any default by Tenant shall constitute a waiver of any such term, covenant or agreement or a waiver of any such right or remedy or a waiver of any default by Tenant.

### **ARTICLE X. DAMAGE, DESTRUCTION OR LOSS**

#### **10.1 DAMAGE TO OR DESTRUCTION OF OFFICE SPACE**

If the Office Space, or any portion thereof, is destroyed or damaged by fire or otherwise to an extent which renders it unusable, City may rebuild or repair any portions of the building structure destroyed or damaged, and, if the cause was beyond the control of Tenant, the obligation of Tenant to pay the rent hereunder shall abate as to such damaged or destroyed portions during the time they are unusable. If the City elects not to proceed with the rebuilding or repair of the building structure, it shall give notice of its intent within ninety (90) days after the destruction or damage. Tenant may then, at its option, cancel and terminate this Office Space Lease.

#### **10.2 COOPERATION IN THE EVENT OF A LOSS**

If the City elects to rebuild, this Office Space Lease shall continue in full force and effect subject to the abatement of rent during the time the damaged or destroyed portions are unusable. City and Tenant shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss or damage.

#### **10.3 LOSS OR DAMAGE TO PROPERTY**

City shall not be liable for any loss of property by theft or burglary from the Airport or for any damage to person or property on the Airport resulting from operating the elevators, or electric lighting, or water, rain or snow, which may come into or issue or flow from any part of the Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or that may be caused by the City's employees or any other cause, and Tenant agrees to make no claim for any such loss or damage at any time, except for any abatement of rent or right to insurance proceeds provided for in this Section.

## **10.4 MUTUAL WAIVER/INSURANCE COVERAGE**

City and Tenant each waive any and every claim for recovery from the other for any and all loss of or damage to the Office Space or to the contents thereof, which loss or damage is covered by valid and collectible fire and extended insurance policies, to the extent that such loss or damage is recoverable under such insurance policies. Since this mutual waiver will preclude the assignment of any such claim by subrogation or otherwise to an insurance company or any other person, Tenant agrees to give to each insurance company which has issued, or may issue, to the Tenant policies of fire and extended coverage insurance, written notice of the terms of this mutual waiver, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of the insurance coverage by reason of this waiver.

## **ARTICLE XI. MISCELLANEOUS PROVISIONS**

### **11.1 ADVERTISING AND PUBLIC DISPLAYS**

Tenant shall not install or have installed or allow to be installed upon or within the Office Space, without the prior written approval of the CEO or her authorized representative, any sign, either lighted or unlighted, poster or other display of advertising media, including material supplied by manufacturers of merchandise offered for sale, as well as other types of display specified in the DEN Design Standards. Permission will not be granted for any advertising which fails to comply with DEN Design Standards or DEN Tenant Development Guidelines, or any advertising material, fixture or equipment which extends beyond the Office Space.

### **11.1 AGREEMENT BINDING UPON SUCCESSORS**

This Office Space Lease, subject to the provisions of the Section 11.4 entitled "Assignment," shall be binding upon and extend to the heirs, personal representatives, successors and assigns of the respective parties hereto.

### **11.2 AGREEMENT MADE IN COLORADO**

This Office Space Lease shall be deemed to have been made in and shall be construed in accordance with the laws of the State of Colorado.

### **11.3 OFFICE SPACE LEASE SUBORDINATE TO AGREEMENTS WITH UNITED STATES**

This Office Space Lease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between the City and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to the City for Airport purposes and the expenditure of federal funds for the development of the Airport or airport system, in accordance with the provisions of the Airport and Airway Improvement Act of 1982, as amended. The Federal Appendices, which are attached hereto as *Appendix A*, are incorporated herein by this reference.

## 11.4 ASSIGNMENT

Tenant shall not assign, pledge or transfer its duties, obligations, and rights under this Lease, in whole or in part, without first obtaining the written consent of the CEO or his/her authorized representative. Any attempt by Tenant to assign or transfer its rights hereunder without such prior written consent shall, at the option of the CEO or his/her authorized representative, automatically terminate this Lease and all rights of Tenant hereunder.

## 11.5 BOND ORDINANCES

This Office Space Lease is in all respects subject and subordinate to any and all City bond ordinances applicable to the Airport and airport system and to any other bond ordinances which should amend, supplement or replace such bond ordinances. The parties to this Office Space Lease acknowledge and agree that all property subject to this Office Space Lease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Tenant agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Tenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Office Space Lease) not to claim depreciation or an investment credit with respect to any property subject to this Office Space Lease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election.

## 11.6 BOOKS OF ACCOUNT AND AUDITING

**A.** Bookkeeping System – Tenant agrees to establish and maintain a system of bookkeeping satisfactory to the City Auditor. Such system shall be kept in a manner that distinguishes each location that is operated by Tenant from all other locations operated by Tenant.

**B.** Records Maintenance - Tenant shall maintain, in accordance with GAAP, accurate books and records in connection with the business conducted by Tenant hereunder. Tenant shall retain such books and records for a period of three (3) years, in accordance with this Office Space Lease and shall make such books and records available for inspection by representatives of the City, including, without limitation, the City’s Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Receipts, Direct Operating Expenses, Net Operating Profits, Net Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances (collectively, the “**Financial Records**”).

**C.** Examination of Records – Any authorized agent of the City, including the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Financial Records and other pertinent books, documents, papers and records of Tenant (together with the Financial Records, the “**Records**”), involving transactions related to this Lease until the later of three (3) years after the final payment under

this Office Space Lease, final closeout by Federal Emergency Management Agency (“FEMA”) or expiration of any applicable statute of limitations. Tenant shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Tenant may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Tenant as appropriate.

**D. Audit Deficiencies** - If the City determines after an audit for any Contract Year that any payment(s) made to the City were understated or materially misstated in the Annual Report, Tenant shall pay the amount of the deficiency plus interest two percent 2% per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than one percent 1%, Tenant shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Tenant.

**E. Inspection of Records** - Tenant agrees that the City, and any of the City’s agents including the City’s Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Tenant with the City’s Manager of Finance and any related reports, document, data or other information generated by the City’s Manager of Finance or employees under the control of the Manager of Finance in connection with any investigation or audit of Tenant by the City’s Department of Finance. Tenant authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City’s Auditor or an authorized representative of the Auditor, and waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

**F. Required Onsite Records** - Tenant shall keep within the location proper, adequate, and accurate accounting books and records prepared in accordance with a bookkeeping system approved in writing by the City documenting all business and transactions engaged in by Tenant pursuant to this Office Space Lease. Such onsite books and records shall include, without limitation, daily receipts and expenses, daily bank deposits, daily sales records, and copies of all business tax returns filed with the State of Colorado and all federal income tax returns.

**G. Cash Registers and Inventory Sheets** - At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross Receipts from that location. At each location where cash registers are not used, the Inventory Method shall be used to determine Gross Receipts. Tenant shall retain all cash register receipts and stand inventory sheets in accordance with this Agreement; and these documents are subject to audit by the City in accordance with this Agreement.

## **11.7 COLORADO OPEN RECORDS ACT**

**A.** Tenant acknowledges that the City is subject to the provisions of the Colorado Open Records Act (“**CORA**”), C.R.S. §§ 24-72-201 et seq., and Tenant agrees that it will fully cooperate with the City in the event of a request or lawsuit arising under such act for the disclosure of any materials or information which Tenant asserts is confidential or otherwise exempt from disclosure. Any other provision of this Agreement notwithstanding, all materials, records, and information provided by Tenant to the City shall be considered confidential by the City only to the extent provided in CORA, and Tenant agrees that any disclosure of information by the City consistent with the provisions of CORA shall result in no liability of the City.

**B.** In the event of a request to the City for disclosure of such information, time and circumstances permitting, the City will make a good faith effort to advise Tenant of such request in order to give Tenant the opportunity to object to the disclosure of any material Tenant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Tenant objects to disclosure, the City, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the City may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Tenant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Tenant does not wish disclosed. Tenant agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Tenant’s objection to disclosure, including prompt reimbursement to the City of all reasonable attorney’s fees, costs, and damages the City may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff, whose costs shall be computed at the rate of two hundred dollars and no cents (\$200.00) per hour of City Attorney time.

### **11.8 FORCE MAJEURE**

Neither party hereto shall be liable to the other for any failure, delay or interruption in the performance of any of the terms, covenants or conditions of this Office Space Lease due to causes beyond the control of that party, including without limitation strikes, boycotts, labor disputes, embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, floods, riots, rebellion, sabotage, pandemic or any other circumstance for which such party is not responsible or which is not in its power to control, but in no event shall this paragraph be construed so as to allow Tenant to reduce or abate its obligation to pay the rent herein, or any other compensation due hereunder.

### **11.9 INCONVENIENCES DURING CONSTRUCTION**

Tenant recognizes that from time to time during the Term of this Office Space Lease, it may be necessary for City to commence or complete extensive programs of construction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be completed and operated in accordance with any present or future master layout plan, and that such construction, expansion, relocation, maintenance and repair may inconvenience the Tenant in its operation at the Airport. Tenant agrees that no liability shall attach to City, its officers, agents,

employees, contractors, subcontractors and representatives by way of such inconveniences, and Tenant waives any right to claim damages or other consideration therefrom.

### **11.10 MASTER PLAN**

Tenant agrees that no liability shall attach to the City, its officers, agents and employees by reason of any efforts or action toward implementation of any present or future master layout plan for the Airport and waives any right to claim damages or other consideration arising therefrom.

### **11.11 INDEPENDENT CONTRACTOR**

Tenant shall, at all times, have the status of an independent contractor without the right or authority to impose tort or contractual liability upon the City.

### **11.12 NOTICES**

All notices required to be given to the City or Tenant hereunder shall be in writing and sent by certified mail, return receipt requested, as follows:

to City: CEO  
Denver International Airport  
Airport Office Building, 9th Floor  
8500 Peña Boulevard  
Denver, CO 80249-6340

with a copy to: Airline Affairs  
Denver International Airport  
Airport Office Building, 8th Floor  
8500 Peña Boulevard  
Denver, CO 80249-6340

to Tenant: Champlain Enterprises, LLC d/b/a Commutair  
24950 Country Club Boulevard, Suite 200  
North Olmsted, OH 44070  
Attention: CFO  
Phone 440-779-4588  
Email: notices@commutair.com

Either party hereto may designate in writing from time to time the address of substitute or supplementary persons within the State of Colorado to receive such notices. The effective date of service of any such notice shall be the date such notice is mailed or delivered to Tenant or CEO.

### **11.13 PARAGRAPH HEADINGS**

The paragraph headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of this Office Space Lease.

#### **11.14 PATENTS AND TRADEMARKS**

Tenant represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under this Office Space Lease. Tenant agrees to save and hold harmless the City, its officers, employees, agents and representatives from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trademark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Tenant under this Office Space Lease.

#### **11.15 SENSITIVE SECURITY INFORMATION**

Tenant acknowledges that, in the course of performing its work under this Agreement, Tenant may be given access to Sensitive Security Information (“SSI”), as material is described in the Code of Federal Regulations, 49 C.F.R. Part 1520. Tenant specifically agrees to comply with all requirements of the applicable federal regulations, including but not limited to, 49 C.F.R. Parts 15 and 1520. Tenant understands any questions it may have regarding its obligations with respect to SSI must be referred to the DEN’s Security Office.

Tenant shall cause its officers, contractors, agents and employees to comply with any and all existing and future security regulations adopted by the City or the TSA, including 49 C.F.R. Subtitle B, Chapter XII, as amended from time to time.

#### **11.16 SECURITY**

A. Tenant, its officers, authorized officials, employees, agents, subcontractors, and those under its control, shall comply with safety, operational, or security measures required of Tenant or the City by the FAA or TSA. If Tenant, its officers, authorized officials, employees, agents, subcontractors or those under its control, fail or refuse to comply with said measures and such non-compliance results in a monetary penalty being assessed against the City, then, in addition to any other remedies available to the City, Tenant shall fully reimburse the City any fines or penalties levied against the City, and any attorney fees or related costs paid by the City as a result of any such violation. Tenant must pay this amount within fifteen (15) days from the date of the invoice or written notice. Any fines and fees assessed by the FAA or TSA against the City due to the actions of Tenant and/or its agents will be deducted directly from the invoice for that billing period.

B. Tenant is responsible for compliance with Airport Security regulations and 49 C.F.R. Parts 1542 (Airport Security) and 14 C.F.R. Parts 139 (Airport Certification and Operations). Any and all violations pertaining to Parts 1542 and 139 resulting in a fine will be passed on to and borne by Tenant. The fee/fine will be deducted from the invoice at time of billing.

### **11.17 SEVERABILITY**

In the event, any of the provisions, or applications thereof, of this Office Space Lease are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

### **11.18 SURVIVAL OF PROVISIONS**

All terms and conditions of this Office Space Lease which, by reasonable implication, contemplate continued performance or compliance beyond the termination of this Office Space Lease (by expiration of the term or otherwise) shall survive such termination and continue to be enforceable as provided herein.

### **11.19 THIRD PARTIES**

This Office Space Lease shall not be deemed or construed to confer upon any third party or parties (except parties to whom the Tenant may assign this Office Space Lease in accordance with the terms hereof, and except any successor to the City) any right to claim damages or to bring any action or proceeding against either the City or the Tenant because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein.

### **11.20 USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS**

Tenant, its officers, agents and employees shall cooperate and comply with the provisions of the Federal Drug-Free Workplace Act of 1988 and Denver Executive Order No. 94, or any successor thereto, concerning the use, possession or sale of alcohol or drugs. Tenant shall also prohibit consumption of alcohol within the Office Space. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Tenant from City facilities or participating in City operations.

### **11.21 CITY SMOKING POLICY**

Tenant and its officers, agents and employees shall cooperate and comply with the provisions of Denver Revised Municipal Code Sec. 24-301, et. seq. prohibiting smoking in City buildings and facilities, the City's Executive Order No. 99 dated December 1, 1993 and Executive Order No. 13 dated July 31, 2002 prohibiting the sale or advertising of tobacco products, the provisions of Denver Revised Municipal Code §§ 24-301 et. seq. and the Colorado Indoor Clean Air Act, C.R.S. §§ 25-14-201 et. seq. Tenant agrees that it will prohibit smoking by its employees and the public in the Office Space and will not sell or advertise tobacco products.

### **11.22 NONDISCRIMINATION**

In connection with the performance of work under this Office Space Lease, Tenant agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, gender variance or physical or

mental disability; and Tenant further agrees to insert the foregoing provision in all subcontracts hereunder.

### **11.23 ENTIRE AGREEMENT**

The parties agree that the provisions herein constitute the entire agreement and that all representations made by any officer, agent or employee of the respective parties unless included herein are null and void and of no effect. No amendments, unless expressly reserved to the CEO herein, shall be valid unless executed by an instrument in writing by all the parties with the same formality as this Office Space Lease.

### **11.24 FINAL APPROVAL**

This Office Space Lease is expressly subject to and shall not be or become effective or binding on the City until fully executed by all signatories of the City and County of Denver.

### **11.25 PAYMENT OF MINIMUM WAGE**

Tenant shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City's Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Lease, Tenant expressly acknowledges that Tenant is aware of the requirements of the City's Minimum Wage Ordinance and that any failure by Tenant, or any other individual or entity acting subject to this Lease, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

**SIGNATURE PAGE, APPENDIX AND  
EXHIBITS FOLLOW**

## APPENDIX A

### STANDARD FEDERAL ASSURANCES AND NONDISCRIMINATION

NOTE: As used below the term "contractor" shall mean and include the Airline, and the term "sponsor" shall mean the "City".

During the term of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations.** The contractor shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination.** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, creed, color, sex, national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment.** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.

4. **Information and Reports.** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the sponsor of the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance.** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the sponsor shall impose such contract sanctions as it or the FAA may determine to be appropriate, including, but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

6. **Incorporation of Provisions.** The contractor shall include the provisions of paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the sponsor or the FAA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the sponsor to enter into such litigation to protect the interests of the sponsor and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this agreement for a purpose for which a DOT program or activity is extended or for another purpose involving the provision of similar services or benefits, the Airline shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

8. The Airline for itself, representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land: (1) that no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, sex, creed or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Airline shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

### **9. NONDISCRIMINATION IN AIRPORT EMPLOYMENT OPPORTUNITIES**

The Airline assures that it will comply with pertinent statutes, Executive Orders and such rules as are promulgated to assure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefiting from Federal assistance.

It is unlawful for airport operators and their lessees, tenants, concessionaires and contractors to discriminate against any person because of race, color, national origin, sex, creed, or handicap in public services and employment opportunities.

**Contract Control Number:** PLANE-202158394-00  
**Contractor Name:** Champlain Enterprises, LLC

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PLANE-202158394-00  
Champlain Enterprises, LLC

DocuSigned by:  
By: Sean Frick  
19498C89F0504C7...

Name: Sean Frick  
(please print)

Title: Sr. VP & CFO  
(please print)

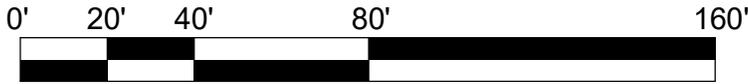
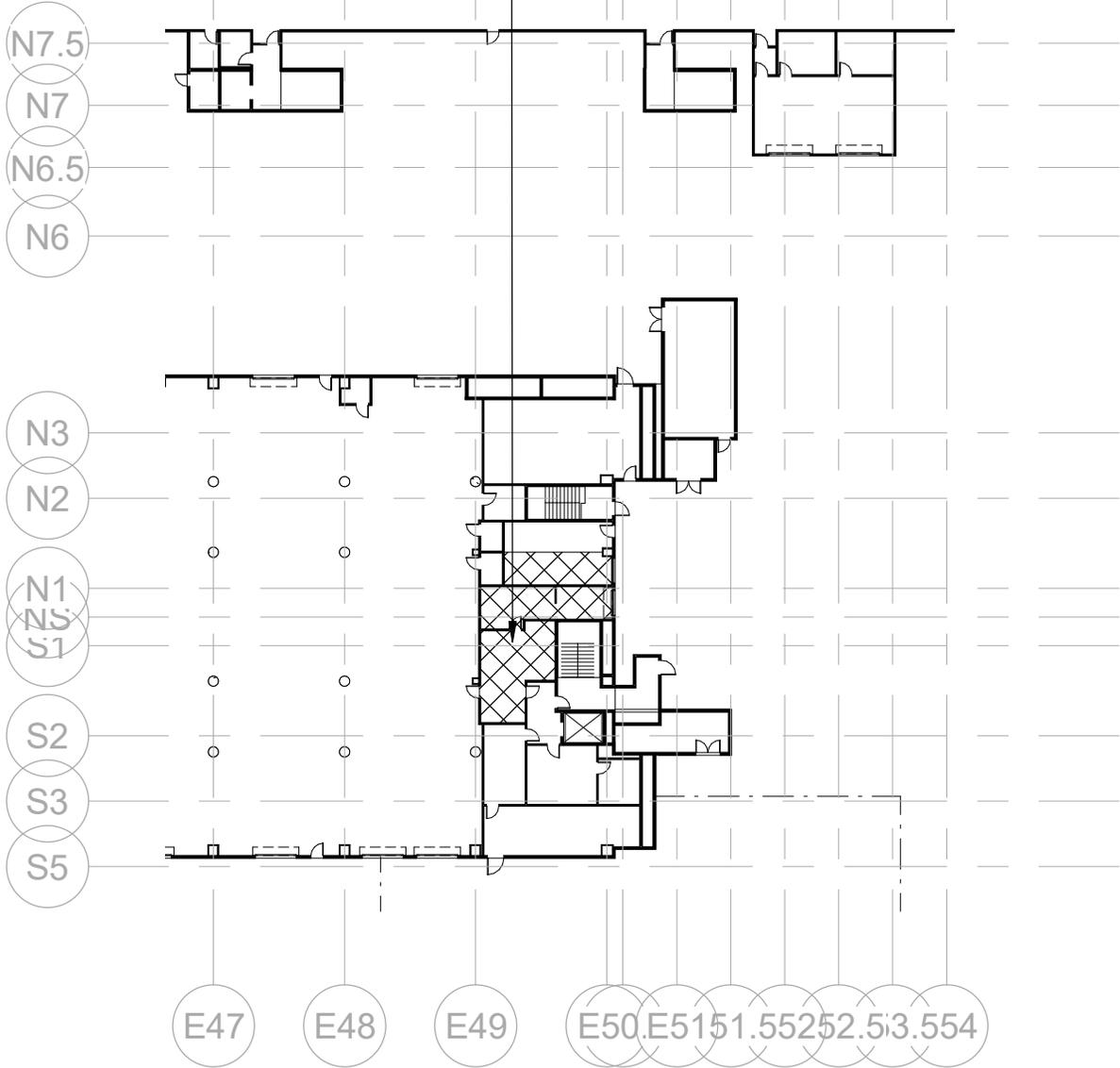
ATTEST: [if required]

By: \_\_\_\_\_

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

**COMMUTAIR OFFICE**  
**889.5 SF**  
**CCB 01 8E 064**



SCALE: 1" = 40'-0"

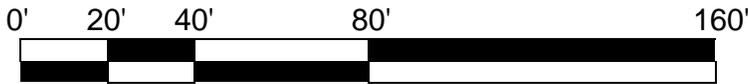
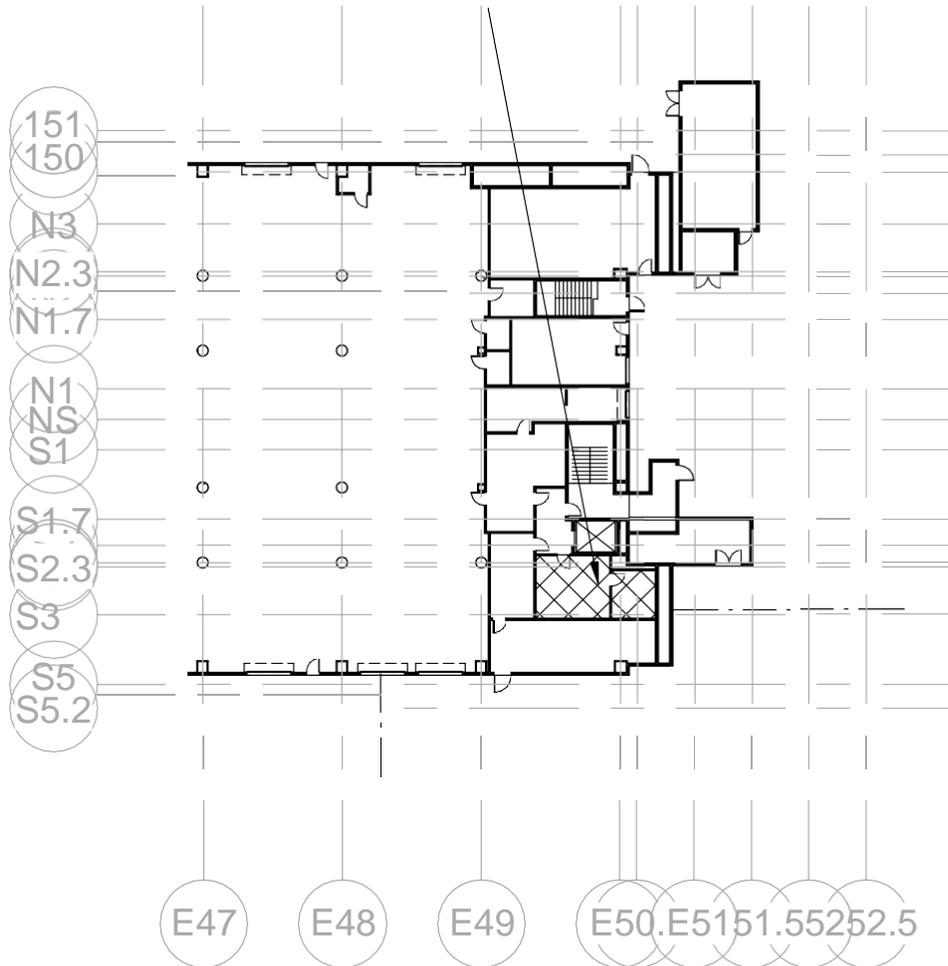


NOTE: THIS EXHIBIT SHOWS DIMENSIONS AND SQUARE FOOTAGE OF LEASED AREA BASED UPON PLANNING DATA AND IS NOT INTENDED TO DEPICT DIMENSIONS FOR CONSTRUCTION DETAILS. IT IS THE RESPONSIBILITY OF THE LEASEE TO FIELD VERIFY EXISTING CONDITIONS. ADDITIONALLY, IT IS THE RESPONSIBILITY OF THE LEASEE AND DESIGNERS OF RECORD TO FOLLOW ALL APPLICABLE BUILDING CODES AND REQUIREMENTS.

DEN Planning and Design

<p><b>KEY PLAN CONCOURSE B</b></p> <p>CCB-01</p>		<p>DENVER INTERNATIONAL AIRPORT</p> <p>EXHIBIT <b>A</b></p> <p>S18-1-1-E49-S1-1</p> <p>COMMUTAIR OFFICE</p> <p>CC#:</p> <p>DATE: 03/11/21</p>
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**COMMUTAIR OFFICE**  
378.4 SF



SCALE: 1" = 40'-0"

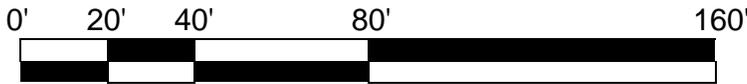
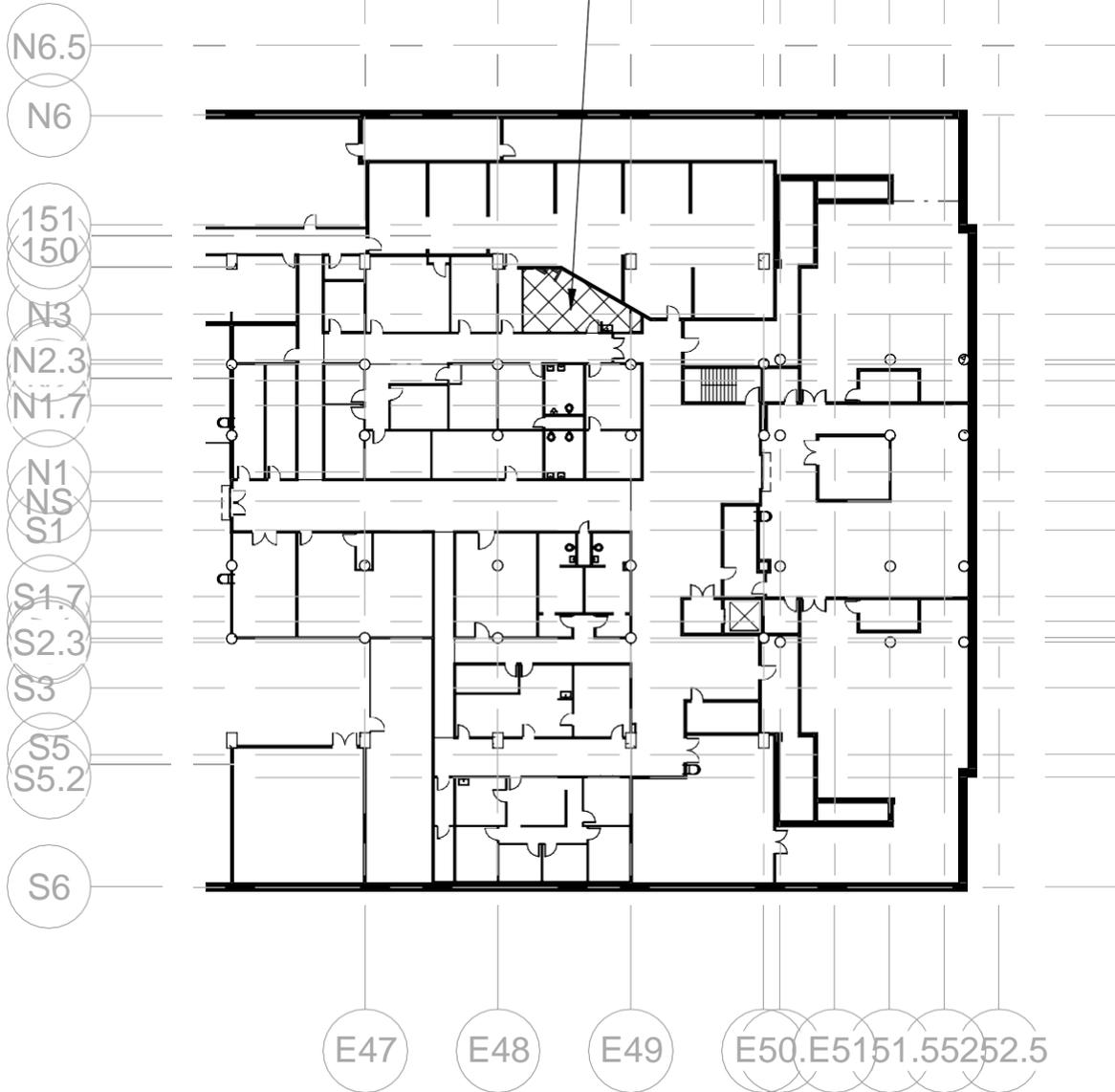


DEN Planning and Design

NOTE: THIS EXHIBIT SHOWS DIMENSIONS AND SQUARE FOOTAGE OF LEASED AREA BASED UPON PLANNING DATA AND IS NOT INTENDED TO DEPICT DIMENSIONS FOR CONSTRUCTION DETAILS. IT IS THE RESPONSIBILITY OF THE LEASEE TO FIELD VERIFY EXISTING CONDITIONS. ADDITIONALLY, IT IS THE RESPONSIBILITY OF THE LEASEE AND DESIGNERS OF RECORD TO FOLLOW ALL APPLICABLE BUILDING CODES AND REQUIREMENTS.

<p><b>KEY PLAN CONCOURSE B</b></p> <p>The key plan shows Concourse B with gates labeled 10W, 8W, 6W, 4W, 2W, 1C, 3C, 2E, 4E, 6E, 8E, 10E, 12E, 9W, 7W, 5W, 3W, 1W, 2C, 1E, 4C, 3E, 5E, 7E, 9E, 11E, 5C/AGT, and 1SC-3SC. A north arrow is located in the bottom left corner of the key plan.</p> <p>CCB-01</p>		<p>DENVER INTERNATIONAL AIRPORT</p> <p>EXHIBIT A</p> <p>S18-1-1-E50-S3-1</p> <p>COMMUTAIR OFFICE 2</p> <p>CC#:</p> <p>DATE: 03/23/21</p>
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**COMMUTAIR OFFICE**  
348.5 SF



SCALE: 1" = 40'-0"



DEN Planning and Design

NOTE: THIS EXHIBIT SHOWS DIMENSIONS AND SQUARE FOOTAGE OF LEASED AREA BASED UPON PLANNING DATA AND IS NOT INTENDED TO DEPICT DIMENSIONS FOR CONSTRUCTION DETAILS. IT IS THE RESPONSIBILITY OF THE LEASEE TO FIELD VERIFY EXISTING CONDITIONS. ADDITIONALLY, IT IS THE RESPONSIBILITY OF THE LEASEE AND DESIGNERS OF RECORD TO FOLLOW ALL APPLICABLE BUILDING CODES AND REQUIREMENTS.

<p><b>KEY PLAN CONOURSE B</b></p>		<p>DENVER INTERNATIONAL AIRPORT</p>
		<p>EXHIBIT A S18-1-0-E49-N3-1 COMMUTAIR OFFICE 3</p>
		<p>CC#: _____ DATE: 03/23/21</p>

## DENVER INTERNATIONAL AIRPORT AIRLINE RATE-MAKING METHODOLOGY

### GENERAL RATE-MAKING CONCEPTS

The City will use a "compensatory" methodology to establish Terminal Complex rental rates. The Airlines will pay the fully allocated cost of the space that they lease in the Landside Terminal building and airside concourses.

Landing fees will be established according to a "cost center residual cost" methodology, under which the airlines will pay the costs of the Airfield, after first deducting airfield revenues from other sources (primarily general aviation landing fees and fuel flowage fees).

### RATE-MAKING PROCEDURES AT THE AIRPORT

At the Airport, the City intends to use cost accounting concepts and rate-making procedures as described in the following sections.

#### 1. COST CENTERS

A. Direct (revenue-producing) cost centers include the following:

1. **Terminal Complex** All levels of space in the Landside Terminal and airside Concourses A, B, and C, including the pedestrian bridge to Concourse A, public escalators, elevators and moving walkways.
2. **Commuter and Regional Jet Facilities** All levels of space in facilities in the Terminal Complex airside Concourses A and C primarily used for commuter and regional jet operations. The Commuter and Regional Jet Facilities cost center excludes the Concourse B Commuter Facility which is allocated to the Concourse B Tenant Finish cost center as outlined in the Stipulated Order dated November 21, 2003. Any additional commuter facilities on Concourse B will be allocated to the Commuter and Regional Jet Facilities. Sub-cost centers will be established for each respective facility. Commuter and Regional Jet ramp areas are assessed separately.
3. **Airline Tenant Finishes and Equipment** Airline space finishes and equipment in the Terminal Complex, ticketing facilities, loading bridges, communications equipment, baggage and flight information display systems, and baggage sortation systems which shall include related equipment and space within Concourses A and B (and additional concourses as such sortation systems are operational), and approved modifications to the Automated Baggage system and Space. Sub-cost centers will be established for the Landside Terminal, International Facilities, each airside concourse and each airline as applicable.
4. **Interline Bag Transfer Area** All space in the Landside Terminal used

by airlines for interline baggage transfer operations.

5. **Common Use Terminal Equipment** All costs associated with the installation and maintenance of the City's common use terminal equipment. The airline is responsible for its proprietary equipment.
6. **Concourse Joint Use Facilities** All space and related equipment in Concourses A, B, and C for tug space (parking, drives, and circulation) and common use facilities, (including, but not limited to, pre-conditioned air facilities, triturators, etc.). The apron level on Concourse C shall be included in the Concourse C tug circulation space (excluding the space occupied by the baggage carousels on the Concourse C Apron).
7. **Baggage Claim** All baggage claim space and equipment in the Landside Terminal including carousels, input conveyors and related inbound baggage handling space in the Landside Terminal.
8. **Automated Baggage System and Space** The inbound and outbound automated DCV baggage systems (AABS and UABS), including their equipment and related space (excluding the Tunnel space allocated to the AGTS and Tunnel cost center) in the Landside Terminal and in the Tunnel from the Landside Terminal to the Concourses, separately serving Concourse A (the "AABS") and separately serving Concourse B (the "UABS"), including the costs of the maintenance space, control room equipment and related control room space, (excluding the costs of baggage sortation system equipment and space in the concourses and the costs of approved modifications to the automated systems which are included in the baggage sortation for each concourse).
9. **Conventional Baggage System** The outbound conveyor baggage system and equipment, including all costs of baggage equipment, and construction costs to accommodate the Conventional Baggage System and related operations, Landside Terminal tug spaces (parking, drives and circulation), porter warming shelters, and odd size lift space in the Landside Terminal, Baggage Sortation space in the Landside Terminal, related maintenance space and the Baggage Sortation Space in the parking structure used for the Conventional Baggage System.
10. **AGTS and Tunnels** The Automatic Guideway Transit System ("AGTS"), including vehicles and equipment, the AGTS tunnels and the baggage and tug tunnels between the Landside Terminal and the airside concourses and tunnel modifications for tug and cart operations.
11. **International Facilities** International gates on Concourse A and related holdrooms, sterile circulation space, ramp areas, operations space, international baggage recheck belt space and equipment, and the FIS area in the Landside Terminal, and the international portion of the connector to

Concourse A.

12. **Concourse Ramp Area** The aircraft parking aprons and pushback zones located adjacent to the airside concourses.
13. **Airfield Area** The runway and taxiway system, deicing and related facilities, undeveloped acreage, and 50% of the costs incurred to develop the North Cargo Site prior to February 28, 1995.
14. **Public Parking Area** All space allocated for public parking in the parking structure and all other public parking lots (excluding the cost of the parking structure space allocated to the Conventional Baggage System in the Conventional Baggage System cost center in the event the average number of cars in the Parking Structure exceeds 12,000 for 22 consecutive days).
15. **Employee Parking Area** The employee parking lot(s).
16. **Fueling System** The fuel storage and distribution system, including hydrant fueling pits at the aircraft parking aprons.
17. **Commercial Vehicle Facilities** The surface parking area and building to be used for staging commercial vehicles and the dedicated commercial roadways serving the Terminal Complex. Commercial vehicles include but not limited to hotel/motel courtesy vans, taxis and limousines.
18. **Rental Car Facilities** Areas and roadways provided for rental car operations (excluding the Terminal Complex).
19. **Cargo Area** The joint use air cargo facilities (including apron, building, ground service equipment, and truck parking areas) and other areas provided for air cargo carriers and freight forwarders. Sub-cost centers will be established for cargo building, cargo apron, cargo tenant finishes, and cargo ground service equipment areas.
20. **Airline Maintenance and Support Area** Areas provided for airline maintenance facilities, cargo facilities, ground service equipment facilities and inflight kitchens.
21. **Airport Mail Facility** Areas provided for the Airport mail facility.
22. **Future Concourses** Costs related to all levels of space and associated apron areas of any airside concourses in addition to Concourses A, B, and C shall be allocated to new cost centers to be established.
23. **Future Baggage Systems** Costs related to all levels of space and equipment for future baggage systems.

- B. Indirect (nonrevenue-producing) cost centers are to include, but not limited to:
1. **Access, Terminal, and Service Roadways** Peña Boulevard, other secondary access roads, the terminal area roadways, the terminal curbsides, the perimeter circulation roadway, and other secondary internal roadways.
  2. **Airport Maintenance** Airport maintenance facilities and indirect (unallocated) maintenance expenses.
  3. **Airport Administration** Airport administrative facilities and administrative expenses.
  4. **Aircraft Rescue And Fire Fighting (ARFF)** The rapid response stations, structural fire station(s) and ARFF operating expenses.

## 2. CERTAIN COST CENTER ALLOCATIONS

The net requirement of the Terminal Complex will be recovered through rental rates. Net Terminal Complex requirements will be divided by total Rentable Space in the Terminal Complex to determine the average rental rate per square foot of rentable space. For purposes of calculating the average Terminal Complex rental rate, Rentable Space shall be the sum of (a) 65% of approximately 99,000 square feet of Concourse B Basement Space on Concourse B, and (b) 100% of all other airline and nonairline Rentable Space in the Terminal Complex. Concourse B Basement Space shall be defined as exclusive use space on Concourse B located in the basement below the apron level. Concourse B Basement Space shall not include Baggage Sortation Space, Automated Baggage System Space, or Concourse Joint Use Facility space. The rental rate per square foot charged for 99,000 square feet of Basement Space on Concourse B will be equal to 65% of the average Terminal Complex rental rate. The rental rate for all other airline space shall be equal to 100% of the average Terminal Complex rental rate. Space costs associated with baggage claim, Automated Baggage System and Space, International Facilities, and baggage sortation space on Concourse B shall be determined using the average Terminal Complex rental rate.

The net requirement of Commuter and Regional Jet Facilities shall be computed independently for each airside concourse. The requirement of each concourse Commuter and Regional Jet Facilities shall include all allocated Airport Costs. The requirement of each concourse Commuter and Regional Jet Facilities will be recovered through separate fees assessed based on the City's estimate of full utilization of the respective facility and allocated based on landed weight.

Charges for the Interline Bag Transfer Area will be assessed among airlines based on their respective linear feet of baggage shelving area in the Interline Baggage Transfer Area as a percent of total linear baggage shelving area.

The requirement for the Common Use Terminal Equipment (CUTE) will be recovered through a fee assessed to airlines utilizing the system. The CUTE fee will be assessed based on the City's estimate of full utilization of the equipment and allocated based on landed weight.

The net requirement of the Concourse Ramp Area will be recovered through separate ramp fees assessed on a per-linear-foot basis measured two hundred and fifty (250) feet from the exterior

walls of each concourse. Commuter and regional aircraft ramp fees will be calculated based on a 50% of the sum of the per-lineal-foot measurement of the respective ramp area.

The net requirement of the Airfield Area will be recovered through landing fees assessed on the basis of the total landed weight of all aircraft using the Airport.

International fees will be assessed as follows to recover costs allocable to the International Facilities cost center. A fee will be assessed per deplaned international passenger for the FIS area and a separate fee will be assessed per enplaned and deplaned passenger for the gate-use fee. The City will record the shortfall of revenues each year as a payment-in-aid and will keep a cumulative account of this shortfall. If revenues exceed expenses in any given year the cumulative payment-in-aid will be reduced.

Fueling system charges will be distributed 10% equally and 90% on a gallonage basis among airlines to recover all of the costs associated with the fueling system.

Charges for the AGTS and Tunnels will be assessed among airlines on the basis of their respective (a) originating and destination passengers at the Airport for domestic flights, (b) originating passengers at the Airport for international flights for the preceding three-month period, and (c) numbers of connecting passengers who deplane their inbound flight in one concourse and enplane their outbound flight in another concourse, with such numbers to be based upon estimates and set forth in Rule 120 of the Airport Rules and Regulations.

Baggage Claim space will be costed at the average rental rate in the Terminal Complex. This amount will be added to the Baggage Claim cost center costs. Charges for the Baggage Claim cost center will be allocated among airlines on the basis of their respective deplaned domestic destination passengers for the preceding three-month period until outbound bag tracking information is available when charges will be allocated based upon the respective number of outbound bags including odd-size bags.

Landside Terminal space allocated to the Conventional Baggage System will be costed at the average rental rate of the Terminal Complex. The cost of this space shall be allocated to airlines based on Airline rented square footage in the Landside Terminal. Space in the Public Parking Area will be costed at the average cost per square foot of the Parking Structure, and, when applicable, will be added to the Conventional Baggage System cost center. Charges for the Conventional Baggage System cost center, including equipment, construction costs and related Baggage Sortation Space in the Landside Terminal, and related Public Parking Area space will be allocated to a sub-cost center for each of the modules presently developed in the Landside Terminal and Parking Structure (additional modules will be added when developed). The costs of each module shall be charged to the airline(s) leasing or using those facilities. In the event the Conventional Baggage System equipment and/or space is jointly used by two or more airlines, such costs will be allocated among such airlines on the basis of their proportional number of carousels in the module exclusively used by each airline to the total number of carousels in their module. Furthermore, if a carousel is jointly used by two or more airlines, the costs allocated to such carousel will be further allocated to each carrier using the carousel based on their proportional share of originating passengers.

The cost of the Parking Structure and Baggage Sortation Space in the Landside Terminal will be allocated to each module based on the square footage of that module used for the Conventional Baggage System. However, the airlines will not be charged for such costs until the average number of cars in the Parking Structure exceeds 12,000 for 22 consecutive days.

The cost of Concourse Joint Use Facilities shall be determined on the basis of the average Terminal Complex rate. The cost of the Joint Use Facilities in each concourse shall be separately allocated based on Airline rentable square footage within the respective concourse and charged to the respective airlines using the facilities in each concourse based on their proportional share of rented square footage to the total airline rentable square footage. Airline rentable space used to allocate the cost of Concourse Joint Use Facilities on Concourse C shall include approximately 83,855 square feet of undeveloped space on that concourse. If the approximately 83,855 square feet of undeveloped space on Concourse C, or any portion thereof, is leased by an airline, the leased portion shall be reclassified as airline rentable and the remainder of the approximately 83,855 square feet shall remain a part of the airline rentable space used to allocate the cost of Concourse Joint Use Facilities on Concourse C.

The space associated with the Automated Baggage System and Space in the Terminal Complex will be costed at the average rental rate of the Terminal Complex. This amount will be added to the equipment costs of the Automated Baggage System and Space and allocated 65% to UABS serving Concourse B and 35% to AABS serving Concourse A and assessed among the airlines on each respective concourse on the basis of their respective originating and destination passengers on each concourse for the preceding three-month period. Debt service on Bonds issued to construct the Airport originally, amortization charges, and variable rate bond fees included in the 35% of costs allocable to the AABS shall be reduced by PFC revenues, which shall be allocated to the AABS. The PFC revenue allocated to the AABS will be adjusted from time to time by the City and the City will use its best efforts to achieve a 12% premium in the weighted average effective rate per square foot on Concourse A in comparison to the weighted average effective rate on Concourse C. The methodology to calculate the weighted average effective rate per square foot on each concourse is described below. The amount of PFC revenue allocated to the AABS shall not exceed the portion of the Automated Baggage System and Space that is eligible to be funded with PFC revenues under the Record of Decision. The Record of Decision states that Baggage Systems are 47.22% eligible.

The weighted average effective rate per square foot for each concourse shall be equal to the sum of: (a) the average Terminal Complex rental rate, (b) the average tenant finish and equipment rate per square foot applicable to each concourse, (c) the cost of Concourse Joint Use Facilities divided by airline rentable space on each concourse, (d) baggage sortation equipment charges divided by total airline rented space on each concourse, and (e) Automated Baggage System and Space charges divided by total airline rented space on each concourse. For purposes of calculating the weighted average effective rate per square foot, Concourse A total airline rented space shall be 91,760 square feet.

Airline Tenant Finish and Equipment costs, excluding the costs of the baggage sortation equipment and approved modifications to the Automated Baggage System and Space to provide for the automated system on Concourses A and B, shall be allocated to the applicable sub-costs centers and then divided by total airline rentable space in that cost center to determine the average

tenant finish rate per square foot. The cost of Baggage Sortation Space located on concourses shall be determined using the average Terminal Complex rental rate and allocated based on airline rentable space located on each respective concourse.

The costs of the Concourse A baggage sortation system equipment and approved modifications, so long as such equipment is not being leased or utilized, shall be allocated exclusively to the airlines operating on Concourse A on the basis of their respective passenger enplanements on Concourse A. One-half of Concourse A baggage sortation equipment is located on the east side of Concourse A and one-half of said equipment is located on the west side of Concourse A.

If an airline or airlines lease or utilize all of the baggage sortation system equipment on Concourse A, or a portion of said equipment on both the east and west sides of Concourse A, the costs of such equipment shall be allocated exclusively to such airline or airlines leasing or utilizing all the equipment on the basis of their respective Concourse A passenger enplanements. To the extent all of the Concourse A baggage sortation equipment is leased or utilized by an airline or airlines, all other airlines operating on Concourse A will not be responsible for costs associated with the Concourse A baggage sortation equipment.

If an airline or airlines lease or utilize all or any portion of the Concourse A baggage sortation system equipment at only one of the two locations, 50% of the cost of the Concourse A baggage sortation system equipment shall be allocated exclusively to such airline or airlines on the basis of their respective passenger enplanements on Concourse A. Costs of the Concourse A baggage sortation system equipment not being leased or utilized by an airline or airlines shall continue to be allocated to all airlines operating on Concourse A on the basis of their respective passenger enplanements on Concourse A.

The costs of the Concourse B baggage sortation system equipment and approved modifications shall be allocated exclusively to the airlines operating on Concourse B on the basis of their respective passenger enplanements on Concourse B. The costs of the Concourse C baggage sortation system equipment as of February 28, 1995 shall be allocated to the Concourse B sortation system equipment until such equipment is otherwise utilized or leased by other airlines.

In the event an automated baggage system is constructed for Concourse C or for any additional airside concourse, the costs related to such baggage system(s), equipment and space shall be allocated to Concourse C, or the new concourse as applicable, and charged exclusively to the airlines operating on such concourse.

In the event a Future Baggage System is constructed for any concourse or concourses, the costs related to such baggage system(s), equipment and space shall be charged to the airlines operating on such concourse(s) as the City and airlines may reasonably allocate. Costs associated with the planning and design, excluding construction documents, for the Future Baggage System will be allocated to the Terminal Complex Cost Center.

Costs associated with undeveloped acreage will be allocated to the Airfield Area until the land is developed. Costs and revenues associated with developed acreage will be allocated to the applicable cost center.

Not more than forty percent (40%) of the costs (debt service and operating and maintenance expenses) associated with the Access and Terminal Roadways shall be allocated to the Terminal Complex.

Costs associated with the Service Roadways shall be allocated back to the direct cost centers based primarily on which cost centers benefit from such Service Roadways.

Not more than eighty percent (80%) of the costs associated with Aircraft Rescue and Fire Fighting shall be allocated to the Airfield Area cost center.

Costs associated with the Airport Administration cost center will be allocated based on a 50/50 revenue/direct expense formula: fifty percent (50%) on the percentage distribution of operating revenue by cost center and the remaining fifty percent (50%) allocated on the percentage distribution of direct Operation and Maintenance Expenses by cost center.

Undeveloped space shall include space in which no buildout has occurred.

Rentable Space shall mean space leased pursuant to an agreement or on a per use basis, or typically available for lease in the Terminal Complex except for: (i) mechanical and electrical space, (ii) public spaces including restrooms, circulation spaces, stairwells, stairways, escalators, elevators, public lounges and public queuing space, (iii) Undeveloped Space, (iv) approximately 83,855 square feet of space in the basement of Concourse C until such space is leased or utilized, (v) the space in level 3 of the Landside Terminal interior to the tug circulation rights-of-way not otherwise leased or used, (vi) approximately 108,000 square feet of baggage sortation space on Concourse A, (vii) baggage sortation space in the Landside Terminal, unless the average number of cars in the parking structure exceeds 12,000 for 22 consecutive days, (viii) approximately 105,100 square feet of Concourse B baggage sortation space, (ix) space in the Administration Office Building and (x) space for security checkpoint areas and areas for explosive detection systems and explosive trace detection. The City shall determine what constitutes the various types of space and associated square footage in this paragraph and shall have the right, from time to time, to revise the categories of space and the square footage of each category.

If the 108,000 square feet of former baggage sortation Concourse A space is leased, the space will not be included in the calculation of airline rates and charges and, specifically, the calculation of the average Terminal Complex rental rate. The annual rental rate per square foot charged for Concourse A baggage sortation space shall be equal to 50% of the average Terminal Complex rental rate in that year.

Baggage Sortation Space includes all areas where out-bound baggage is sorted for delivery to departing aircraft.

### **3. AIRPORT COSTS**

- A. Airport Costs (also referred to as "requirements") include without limitation:
  - 1. Operation and Maintenance Expenses.
  - 2. Deposits to the Operation and Maintenance Reserve Account of the General

## Bond Ordinance

3. Debt service including variable rate bond fees on Bonds issued for Airport and any other amounts required under the General Bond Ordinance except debt service paid by PFC revenues.
4. Debt service including variable rate bond fees on Bonds used for Airport land acquisition.
5. Equipment and capital outlays
6. Amortization of 50% of the City's Airport expenditures incurred prior to January 1, 1990, from Capital Fund and Operating Fund moneys used for (a) pre-1990 planning and administrative costs, (b) Airport land acquisition, (c) Airport project costs, and (d) debt service including variable bond fees, on Bonds used for Airport land acquisition.
7. Amortization of all investments made for the New Airport project from other than Bonds or grants after January 1, 1990 and prior to February 28, 1995.
8. Amortization of the City's investment in the Airport Coverage Account to be accumulated prior to February 28, 1995.
9. For the purposes of items (6), (7), and (8) above, amortization charges are to be calculated over 15 years at the weighted average effective interest cost on all Airport fixed-rate Bonds as originally issued prior to January 1, 1997. Except and only to the extent, if any, that the rights of the owners of its airport revenue bonds (including, without limitation, the rights arising from the rate maintenance covenant) are not thereby materially impaired, the City will cause, by January 1, 1997 (or as soon thereafter as possible consistent with the City's aforesaid obligations to owners of its airport revenue bonds), amortization of the net unamortized balance of City's investments in items (6), (7) and (8) above on a straight-line basis for the balance of the period through March 1, 2025.
10. Amortization of reimbursements made to United Airlines related to costs for modifications to the United Airlines automated DCV baggage system, not to exceed \$45 million, from other than bonds shall be calculated on a straight line basis over 30 years, effective as of the date of any such reimbursement, at the weighted average effective interest rate of all Airport fixed-rate bonds prior to January 1, 1997.
11. Amortization of the City's investments from the Capital Fund, subsequent to February 28, 1995, shall be amortized at the average rate of the Airport fixed-rate bonds over 15 years or the life of the asset, whichever is shorter, and charged to the Airlines.

12. All airline bad debt will be allocated to the airfield cost center.
13. Notwithstanding anything to the contrary in paragraphs (9) and (11) above, amortization charges shall be calculated and charged to the Airlines as follows:
  - a. Amortization on Existing City Investments. From and after January 1, 2015, the unamortized amount of all City investments from the Capital Fund made prior to January 1, 2015 that are charged to Airlines will be amortized at an interest rate of 4.5%.
  - b. Amortization on Future City Investments. From and after January 1, 2015, the City will amortize any City investments from the Capital Fund made on or after January 1, 2015 that are charged to Airlines based on the life for each project, as reasonably determined by the City up to the economic life of the project, and calculated using an interest rate set to equal the average ali-in cost of Airport debt sold by the City during the calendar year when such project is put in service or, if no Airport debt was sold, set to equal comparable published average borrowing costs.

#### **4. PFC REVENUES**

PFC Revenues will not be treated as Gross Revenues for the purpose of establishing airline rates, fees and charges. For rate-making purposes, PFC revenues shall be allocated to the extent available, to at least fifty percent (50%) of the capital costs and/or debt service associated with the following eligible projects in the following order of priority: (1) facilities for the Federal Inspection Services, (2) the portion of Pena Boulevard from an interchange with E-470 to the Terminal Complex and terminal area roads, (3) the AGTS and Tunnels. That portion of the capital costs or debt service paid for by PFC revenues will not be included in the calculation of the airline rate base.

#### **5. AIRPORT "CREDITS"**

- A. **Interest Income** Interest income on the Bond Reserve Fund (provided that the minimum Bond Reserve Requirement has been funded) and on the Interest and Principal Accounts of the Bond Fund that are Gross Revenues shall be credited to the cost centers of the Airport in the same proportion as the debt service allocation.
- B. **Other Credit** To the extent the City receives revenues for the use and lease of all, or any part, of the 108,000 square feet of undeveloped Concourse A baggage sortation space, such revenues will be allocated to the cost centers of the Airport in the same proportion as debt service on Bonds issued for the Original Airport Project.
- C. **Airline Revenue Credit** The City shall establish accounts within the Capital Fund as illustrated in Figure 1. Net Revenues of the Airport System, as defined in the General Bond Ordinance, flowing to the Capital Fund each year are to be used

to replenish reserve funds or accounts as required in the General Bond Ordinance and the Coverage Account and to fund the Equipment and Capital Outlay Account for equipment and capital outlays included in the operating budget. Remaining Net Revenues are to be allocated as follows: (a) 75% from March 1, 2000 through February 28, 2006 and 50% thereafter, up to a maximum of \$40 million to flow into the Airline Revenue Credit Account to be applied as a credit against Signatory Airlines rates and charges in the following fiscal years and (b) the balance to flow into the Capital Improvement Account.

The City shall maintain a Coverage Account and fund that account up to an amount equal to twenty-five percent (25%) of Debt Service Requirements on Bonds issued to finance the Airport, improvements at the Airport and land acquired for the Airport. Bonds shall not include Special Facilities Bonds and other Bonds to finance support facilities such as cargo, maintenance and food preparation facilities). The Coverage Account shall be considered as Other Available Funds (as defined in the General Bond Ordinance) for the purpose of meeting the Rate Maintenance Covenant of the General Bond Ordinance.

#### **6. REDUCTION OF AIRLINE RATES AND CHARGES**

The City will reduce all airline rates and charges by \$4 million per year from 2004 through 2010. The sources available to the City for the rates and charges cost reductions include, but are not limited to: \$1.50 PFC revenues, the City's share of revenue credit, and annual debt service interest savings from refunding outstanding airport revenue bonds.

The rates and charges cost reductions outlined above shall cease if (i) there is an insufficient annual deposit to the Capital Improvement Account to make the annual \$1.5 million payment to Stapleton Development Corporation, (ii) the City is unable to meet its annual irrevocable commitment to pay debt with PFC revenues under the Bond Ordinance, or (iii) regulatory or other legal action precludes payment of these rates and charges cost reductions (cost reductions will be deferred during the pendency of any such actions, and reinstated and extended as necessary upon a successful conclusion to such action to ensure that all airlines receive the full benefit of these reductions).

The City's rates and charges cost reduction contribution shall be reduced if Airport management (i) determines in good faith that there is a deficiency in any of the required Airport fund balances, (ii) receives an official written communication from any rating agency that a downgrade of the Airport's existing credit rating is likely unless a reduction to the City's rates and charges cost reduction contribution is made, or (iii) determines in good faith that operating cash balances are insufficient and contributions would jeopardize the ongoing operation of the airport.

#### **7. MISCELLANEOUS**

All defined terms used herein shall be consistent and subordinate to the defined terms in the General Bond Ordinance.

#### **8. CONCOURSE A BAGGAGE SORTATION SPACE**

The City redeemed Airport project Bonds equal to the principal outstanding associated with

approximately 108,000 square feet of Concourse A baggage sortation space.

Debt service costs associated with Bonds issued by the City to redeem the Bonds associated with the 108,000 square feet of Concourse A baggage sortation space shall be allocated to the cost centers of the Airport in the same proportion as debt service on Bonds issued for the Original Airport Project.