

**BY AUTHORITY**

ORDINANCE NO. \_\_\_\_\_

COUNCIL BILL NO. CB13-0448

SERIES OF 2013

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Airline Support Facilities Lease Agreement between the City and County of Denver and Republic Airline, Inc. related to leased space at Denver International Airport.**

**BE IT ENACTED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

**Section 1.** The proposed Airline Support Facilities Lease Agreement between the City and County of Denver and Republic Airline, Inc., in the words and figures contained and set forth in that form in the above-named Agreement available in the office and on the web page of City Council, and to be filed in the office of the Clerk and Recorder, Ex-Officio Clerk of the City and County of Denver, under City Clerk's Filing No. 2013-0566 is hereby approved.

COMMITTEE APPROVAL DATE: July 11, 2013

MAYOR-COUNCIL DATE: July 16, 2013

PASSED BY THE COUNCIL: \_\_\_\_\_, 2013

\_\_\_\_\_ - PRESIDENT

APPROVED: \_\_\_\_\_ - MAYOR \_\_\_\_\_, 2013

ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
EX-OFFICIO CLERK OF THE  
CITY AND COUNTY OF DENVER

NOTICE PUBLISHED IN THE DAILY JOURNAL: \_\_\_\_\_, 2013; \_\_\_\_\_, 2013

PREPARED BY: Max Taylor, Assistant City Attorney  DATE: August 22, 2013

Pursuant to section 13-12, D.R.M.C., this proposed ordinance has been reviewed by the office of the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed ordinance. The proposed ordinance is submitted to the City Council for approval pursuant to § 3.2.6 of the Charter.

Douglas J. Friednash, City Attorney for the City and County of Denver

BY: \_\_\_\_\_, Assistant City Attorney

DATE: August 22, 2013



**AIRLINE SUPPORT FACILITIES**

**LEASE AGREEMENT**

**Between**

**CITY AND COUNTY OF DENVER**

**And**

**REPUBLIC AIRLINE, INC.**

**At**

**DENVER INTERNATIONAL AIRPORT**

**AIRLINE SUPPORT FACILITIES  
LEASE AGREEMENT**

**THIS AIRLINE SUPPORT FACILITIES LEASE AGREEMENT**

(the "Lease"), made and entered into as of the date indicated on the City's signature page, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado, on behalf of its Department of Aviation hereinafter referred to as the "CITY", Party of the First Part, and **REPUBLIC AIRLINE, INC.**, a corporation organized and existing under and by virtue of the laws of the State of Indiana, and authorized to do business in the State of Colorado, hereinafter referred to as the "AIRLINE", Party of the Second Part;

**WITNESSETH**

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

**WHEREAS**, the Airline is engaged in the business of transporting property, cargo and mail, or one or more thereof, by aircraft; and

**WHEREAS**, the parties desire to enter into this Lease for the lease of certain premises and facilities 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 City and the Airline do hereby mutually undertake, promise and agree, each for itself and its successors, as follows:

**PART I  
LEASE AND USE OF DEMISED PREMISES**

**1.01 DEMISED PREMISES**

**(A) Ground and Facilities Premises**

The City, for and in consideration of the covenants and agreements hereinafter contained, hereby leases to the Airline, subject to the conditions hereinafter expressed, those certain parcels of real property depicted on the attached drawings marked Exhibit A and B (which drawings are incorporated herein and made a part hereof by reference) and situated in the City and County of Denver, State of Colorado, collectively hereinafter referred to as the "Demised Premises."

**(B) Demised Premises**

The Demised Premises shall consist of the following:

Landside and Building Space: (Joint Use Cargo Building, Suite F – Exhibit A)	13763.88 square feet, more or less
Ramp Space: (Joint Use Cargo Building, Suite F – Exhibit B)	9377.265 square feet, more or less
Total Ground Lease Area:	23,141.2 square feet, more or less

The Demised Premises constitute non-residential real property. Except to the extent required for the performance of any of the obligations of the Airline hereunder, nothing contained in this Lease shall grant to the Airline any rights whatsoever in the air space above the Demised Premises except as approved by the City.

### **1.02 USE OF DEMISED PREMISES**

The Airline shall use the Demised Premises for the purpose of supporting their line maintenance operations and for the storage of part. Any other use must first be authorized in writing by the Manager.

### **1.03 PAYMENT OF FIXED AND VARIABLE RATES, FEES AND CHARGES**

Rental payment for the Demised Premises shall commence at on September 1, 2013 or the date occupied by Republic, whichever is later and shall be paid in twelve (12) equal monthly installments, and shall be due and payable, in advance, without notice on or before the first day of the then current month.

The Airline agrees to pay rentals, rates, fees and charges established and fixed in accordance with cost-accounting concepts and ratemaking procedures established and adopted by the Manager.

In addition to the fixed rental rates, fees and charges provided herein, Airline shall pay for other common use facilities, equipment, services and maintenance utilized by Airline. Said common use rates, fees and charges shall be paid monthly, in advance, and adjusted, if necessary, every six (6) months, based upon the latest documented actual costs. Such services may include, but are not limited to, insurance, snow removal, law enforcement and/or security officers (as the case may be), industrial waste, sewer, and trash/refuse removal from the Demised Premises.

The City further reserves the right during the term and any extensions hereof for its Manager, subject to the requirements of any outstanding bond ordinances pertaining to the Airport, to alter, modify and change the rental rates, fees and charges in accordance with a schedule of rental rates, fees and charges adopted or modified from time to time by the Manager; provided, however, that such adopted or modified schedules of rentals, rates, fees and charges must be reasonable in relation to the cost of providing, operating and maintaining the particular air cargo facilities and services furnished to the Airline.

#### **1.04 PROJECTION OF RENTALS, RATES, FEES AND CHARGES**

Not later than forty-five (45) days prior to the end of each fiscal year during the term of this Agreement, City shall furnish Airline with a projection of the rentals, rates, fees and charges for the next ensuing fiscal year for each cost center of Airport. Such projection will include the Airport proposed expense budget and projection of aircraft operations, passenger enplanements, and debt service payments for the ensuing year. The City shall convene a meeting with the airlines operating at the Airport not later than thirty (30) days prior to the end of each fiscal year to consult and review with the airlines the projection of rentals, fees and charges for the next ensuing fiscal year.

#### **1.05 FINAL AUDIT AND RECONCILIATION**

Upon release by the City's independent auditors of the audited financial statements of Airport, the City shall furnish Airline with a copy of the annual audit report, prepared in accordance with Generally Accepted Accounting Principles and certified by an independent accountant, covering the operation of the Airport for such preceding fiscal year. As soon as practical following the release of the annual audit report, the City will prepare an analysis of additional charges or credit due (Year-End Settlement) along with the Airline Revenue Credit calculation to Airline for the preceding audited fiscal year. If the rentals, fees and charges paid by Airline were greater than the respective amounts chargeable to Airline, Airline shall receive credits promptly in the amount of such overpayment against future rentals, fees and charges. If the rentals, fees and charges paid by Airline were less than the respective amounts chargeable to Airline, Airline shall pay promptly the amount of any such deficiency.

### **PART II PROVISIONS RELATING TO DEMISED PREMISES**

#### **2.01 MAINTENANCE OF DEMISED PREMISES**

The Airline agrees to provide at its own expense all utilities, equipment, trash and janitorial services, and maintenance of the Demised Premises, including, but not by way of limitation, snow removal of the Demised Premises; fire extinguishers; maintenance, repair and replacement of doors and windows; water; gas; electricity; light; heat; power and telephone service.

The Airline shall be responsible for all maintenance and repair of the Demised Premises except for latent defects in the Demised Premises or repairs necessitated by the negligence or willful acts of the City, its employees, agents and contractors.

The Airline further agrees that it will at all times maintain its Demised Premises in a neat, clean, safe and orderly condition, in keeping with the general decor of the area in which they are situated.

## **2.02 ALTERATIONS TO DEMISED PREMISES**

The Airline may, with the prior written approval of the City's Manager, which shall not be unreasonably withheld, at its own cost and expense, install in the Demised Premises any fixture or improvement or do or make alterations or do remodeling, germane to the use herein or hereafter granted. Any fixtures, improvements, equipment and other property installed, erected or placed by the Airline in, on or about such Demised Premises shall be deemed to be personal and shall be and remain the property of the Airline, except as otherwise provided herein, and the Airline shall have the right at any time during the term hereof to remove any or all of its property, subject to the Airline's obligation to repair damage, if any, resulting from such removal. All such fixtures, improvements equipment and other property shall be removed from said Demised Premises by the expiration or earlier termination of letting and the Demised Premises restored to the condition existing at the time of the letting, reasonable wear and tear excepted, unless the City, acting by and through its Manager, shall have advised the Airline in writing at the time of such installation or not less than sixty (60) days in advance of such expiration or not less than thirty (30) days in advance of such earlier termination, of its willingness to accept title to such fixtures, improvements, equipment and other property in lieu of restoration of the Demised Premises. During such period and until such personal property is removed, Airline shall pay to the City the full rental applicable to those Demised Premises, as determined by the City's Manager, which are directly associated with said personal property and which Demised Premises are not usable by others until said personal property is removed.

Said improvements, and all alterations thereof and additions thereto, shall in all respects be constructed in accordance with the ordinances and any applicable code or rule and regulation of the City and County of Denver, including the Airport Rules and Regulations governing tenant construction specifications and other non-technical requirements in accordance with the attached Exhibit G. "Design Standards, Construction Procedures and Environmental Requirements," which is incorporated herein by reference, in accordance with the requirements of 42 U.S.C. § 12101 et seq., 49 U.S.C. § 41705, and 14 C.F.R. Part 382, and pursuant to any required building permit to be obtained from the City and according to the customary terms and conditions thereof.

The Airline agrees that it shall include in its contracts with its general contractors covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics and laborers according to rates and classifications established under the federal Davis-Bacon Act and Section 20-76 of the Denver Revised Municipal Code, whichever is greater. The Airline further agrees, if requested by the City, to fully comply with the procedural requirements of Section 20-76 of the Denver Revised Municipal Code by requiring its general contractors and their subcontractors of any and all tiers to submit to the City true and correct copies of the payroll records of all workers, laborers and mechanics employed. Copies of all contractor application for payment requests shall be provided to the City Auditor's Office.

## **2.03 SUBLETTING, ASSIGNMENT AND GROUND HANDLING ARRANGEMENTS**

No interests or rights under this Lease may be transferred except as provided

under this Section 2.03.

Airline may sublet, assign or otherwise transfer the Demised Premises, in whole or in part, to another company, or use the Demised Premises for the handling by Airline's personnel of air transportation operations of other companies, subject, however, to each of the following conditions:

- (A) No sublease, assignment, ground handling agreement or other transfer shall relieve Airline from primary liability for any of its obligations hereunder, and Airline shall continue to remain primarily liable for the payment of rentals, fees and charges applicable to such premises and facilities hereunder;
- (B) Airline shall provide written notice to the City and a copy of the proposed sublease, assignment, ground handling agreement or other transfer not less than thirty (30) days prior to the effective date of such arrangement;
- (C) Any sublease, assignment, ground handling agreement or other transfer shall be subject to the prior written approval of the Manager; and
- (D) No sublease, assignment or other transfer hereunder to any affiliate or subsidiary corporation of Airline shall be permitted without compliance with all of the conditions set forth in subparagraphs (A), (B) and (C) above.

#### **2.04 RIGHT TO ENTER AND MAKE REPAIRS**

The City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption to the Airline's operations as is reasonably practicable) to enter upon the Demised Premises for the following purposes:

- (A) To inspect the Demised Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether the Airline has complied and is complying with the terms and conditions of this Lease with respect to the Demised Premises.
- (B) To perform maintenance and make repairs and replacements in any case where the Airline is obligated to do so and has failed after reasonable notice to do so, in which event the Airline shall reimburse the City for the reasonable cost thereof promptly upon demand.
- (C) To perform maintenance and make repairs and replacements in any case where the City is obligated to do so, and in any other case where the City, in its reasonable judgment, determines that it is necessary or desirable to



do so in order to preserve the structural safety of the Demised Premises or the building in which they are located or to correct any condition likely to cause injuries or damages to persons or property.

- (D) In the exercise of the City's lawful police power. No such entry by or on behalf of the City upon such Demised Premises leased to Airline shall cause or constitute a termination of the letting thereof or deemed to constitute an interference with the possession thereof by the Airline.

## **2.05 ABANDONMENT OF DEMISED PREMISES**

If the Airline ceases to occupy and use a material portion of the Demised Premises for a continuous period of six (6) consecutive months or longer, the City, acting by and through its Manager, may consider such portion of the Demised Premises abandoned, and upon not less than thirty (30) days prior written notice to the Airline, may terminate the lease for such portion of the Demised Premises.

## **2.06 DESTRUCTION OF PREMISES**

If by reason of any cause, Airline's Demised Premises, or any portion thereof, are damaged or destroyed by fire or other casualty, then:

- (A) The City, after consultation and agreement with Airline, shall forthwith repair, reconstruct and restore the damaged or destroyed portions of the Demised Premises to substantially the same condition, character, utility and value as existed prior to such damage or destruction, unless the City and Airline agree that no such reconstruction is necessary or that reconstruction to some other condition, character, utility and value is appropriate or desired; and
- (B) If such Demised Premises are damaged to such an extent that the Demised Premises are untenable, the City, acting by and through the Manager, will make all reasonable efforts to provide substantially equivalent substitute premises and facilities, and such substitute premises and facilities will be made available to Airline, subject to Airline's approval, consistent with those rentals, fees and charges for the use of The Airport established and modified from time to time by the City in accordance with this Lease.
- (C) For the portions of the Demised Premises that are untenable, Airline shall receive a pro rata abatement of rentals, fees and charges applicable thereof from the date of such occurrence to the date upon which such portions of the Demised Premises are repaired and restored.

## **PART III**

## **GENERAL PROVISIONS**

### **3.01 "MANAGER" DEFINED**

As used in this Lease, the term "Manager" or "Manager of Aviation" shall mean the Manager of the City's Department of Aviation or Manager's successor in function having jurisdiction over the management, operation and control of the Airport.

### **3.02 MANAGER'S AUTHORIZED REPRESENTATIVE**

Wherever reference is made herein to the "Manager's authorized representative", or words of similar import are used, such officer or employee of the City as shall be hereafter designated in writing by the Manager shall be such authorized representative of said Manager until notice otherwise is hereafter given to the Airline.

### **3.03 AGREEMENTS WITH THE UNITED STATES**

This Lease is subject and subordinate to the provisions of any agreements between the City and the United States relative to the operation or maintenance of the Airport, 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, or to the expenditure of federal funds for the extension, expansion or development of the Airport, including the expenditure of federal funds for the development of the Airport in accordance with the provisions of the Airport and Airway Improvement Act of 1982, as amended. Appendices 1 and 2 are attached hereto and the provisions thereof are incorporated herein by reference.

### **3.04 BOND ORDINANCE**

This 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 Lease acknowledge and agree that all property subject to this Lease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Airline agrees not to take any action that would impair, or omit to take any action required to conform, 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 Airline agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Lease) not to claim depreciation or an investment credit with respect to any property subject to this 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.

### **3.05 LAWS, REGULATIONS AND AGREEMENTS TO BE OBSERVED**

- (A) The Airline shall not use or permit the use by parties authorized by the Airline of the Demised Premises, or any other portion thereof, or any part of the Airport to

which it is granted a right of use or occupancy by this Lease, for any purpose or use other than those authorized by this Lease, or hereafter authorized in writing by the Manager. No use shall be considered authorized by this Lease if such use would adversely affect the tax exempt status of Airport Revenue Bonds.

- (B) The Airline shall comply with and shall cause its officers and employees and any other persons over whom it has control to comply with such reasonable rules and regulations governing the use of the Demised Premises and any other portion of the Airport as may from time to time be adopted and promulgated by the City for the management, operation and control of the Airport, including those pertaining to the operation of automobile and vehicular traffic and parking facilities thereon, and with such reasonable amendments, revisions, additions and extensions thereof as may from time to time be adopted and promulgated; provided, however, such rules and regulations shall not be inconsistent with the rights herein granted to the Airline; provided, further, that nothing herein shall be considered to restrict the police power of the City.
- (C) The Airline shall, at all times, faithfully obey and comply with all existing and future laws, rules and regulations adopted by federal, state, local or other governmental bodies and applicable to or affecting the Airline and its operations and activities in and at the Airport, including using the Airfield Area in accordance with the Federal Aviation Administration's (FAA) flight tracks and other restrictions and limitations regarding noise emanating from departing aircraft from the Airport, as set forth in the Final Environmental Impact Statement for the New Denver Airport.
- (D) It is agreed and understood by the parties hereto that disputes arising under or related to this Lease shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in Section 5-17, Revised Municipal Code of the City and County of Denver. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to Airline's right to appeal the determination under Colorado Rule of Civil Procedure 106.
- (E) The City represents that, to the best of its knowledge, the Premises are in full compliance with all applicable environmental laws, rules, requirements, orders, directives, ordinances and regulations of the United States of America or the State of Colorado and the City and County of Denver or any other lawful authority having jurisdiction over or affecting the Premises.
- (F) The City represents and the Airline acknowledges that the Premises and any common use areas comply with all applicable laws, regulations and building codes governing non-discrimination in public accommodations and commercial facilities, and that the Premises shall remain in compliance with such laws, regulations and building codes throughout the term of this Lease and any

extensions thereto.

#### **PART IV TERM OF THE LEASE**

##### **4.01 TERM OF LEASE**

The term of this Lease shall commence on September 1, 2013 or the date occupied by Republic, whichever is later and shall terminate on the earlier to occur of:

(a) 12:00 noon M.S.T. on December 31, 2016; or

(b) at the City's option, upon the date following written notice from Airline that the use of the demised premises is no longer required; or

(c) at the City's option, upon the date on which the Airline's Airport Use and Facilities Lease Agreement expires or is terminated in accordance with its terms;

unless this Lease is earlier canceled or terminated as hereinafter provided.

##### **4.02 TERMINATION OF LEASE BY CITY**

The City, acting by and through its Manager, may declare this Lease terminated in part or in its entirety, as the Manager deems appropriate, upon the happening of one or more of the following events and may exercise all rights of entry and reentry with or without process of law, without liability for trespass upon the Demised Premises:

- (A) If the rentals, rates, fees, charges or other money payment which the Airline herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due; or
- (B) If the Airline shall use or permit the use of the Demised Premises covered hereby at any time for any purpose for which the use thereof at that time is not authorized by this Lease or by the subsequent written consent of the Manager, or shall use or permit the use thereof in violation of any law, rule or regulation to which the Airline has agreed in this Lease to conform; or
- (C) If the Airline shall be in violation of any provision of Section 2.03 with respect to the subletting of Demised Premises hereunder; or
- (D) If, during the term of this Lease, the Airline shall (a) apply for or consent to, in writing signed on behalf of the Airline by any of its officers or its duly authorized attorney, the appointment of a receiver, trustee or liquidator of the Airline or of all or a substantial part of its assets, (b) file a

voluntary petition in bankruptcy, or admit in writing its inability to pay its debts as they come due, (c) make a general transfer for the benefit of creditors, (d) file a petition or an answer seeking reorganization or arrangement with creditors or to take advantage of an insolvency law, or (e) file an answer admitting the material allegations of a petition filed against the Airline in any bankruptcy, reorganization or insolvency proceeding, or if during the term of this Lease an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Airline as bankrupt or insolvent, or approving a petition seeking a reorganization of the Airline or of all or a substantial part of its assets, and such order, judgment or decree shall continue unstayed and in effect for any period of ninety (90) consecutive days, then, and in any of such events, the City may give to the Airline a notice of intention to end the term of this Lease in its entirety after the expiration of thirty (30) days from the date of service of such notice, and on the date set forth in said notice the term of this Lease and all right, title and interest of the Airline hereunder shall expire as fully and completely as if that day were the date herein specifically fixed for the expiration of the term, and the Airline will then voluntarily and peaceably quit and surrender the Demised Premises covered hereby to the City, but the Airline shall remain liable as herein provided.

#### **4.03 TERMINATION OF LEASE BY AIRLINE**

The Airline, at its option, may declare this Lease terminated in part or in its entirety upon the happening of anyone or more of the following events:

- (A) If by reason of any action or non-action of any federal or other governmental agency having jurisdiction to grant a certificate of convenience and necessity, or similar document, authorizing the Airline to operate aircraft in or out of the Airport (including action in the nature of alteration, amendment, modification, suspension, cancellation or revocation of any such certificate, permit or document), the Airline shall cease to have authority to operate aircraft in or out of the Airport pursuant to such a certificate or document, provided that (1) such governmental action or non-action was not requested by the Airline, and the Airline made all reasonable efforts to prevent such governmental action or non-action, or in the alternate, (2) the City had a reasonable opportunity to appear before such federal or other governmental agency and be heard in opposition to such governmental action or non-action prior to the occurrence, if it desired to do so or, in the alternate, (3) the Airline gave the City reasonable advance notice that such governmental action or non-action was being requested or might occur, and the Airline made a reasonable effort to the end that the City might have an opportunity to appear and be heard as aforesaid; or

- (B) If by legislative action of the United States the Airline is deprived of such certificate or similar document; or
- (C) If a court of competent jurisdiction issues an injunction or restraining order against the City or any successor body to the City preventing or restraining the Airport for airport purposes in its entirety, or the use of any part thereof which may be used by the Airline and which is substantially necessary to the Airline for its operations, and if such injunction remains in force for a period of ninety (90) days or more and is not stayed by appeal or a writ of error; or
- (D) If the City's operation of the Airport is substantially restricted by action of any federal or other governmental agency having jurisdiction with respect thereto, or the occurrence of any fire or other casualty, substantially and adversely affects, for a period of at least ninety (90) days, Airline's use of the Airport in the conduct of its air cargo transportation business; provided, however, that none of the foregoing is due primarily to any fault of Airline; or
- (E) If the Demised Premises are damaged or destroyed by fire or other casualty as set forth in paragraph 2.06 herein, and the City and Airline mutually agree that such destruction of the premises is beyond repair and that substantially equivalent substitute premises and facilities are not available.

#### **4.04 EFFECTIVE DATE OF TERMINATION**

Notwithstanding anything to the contrary in this Lease, no termination declared by either party shall be effective until not less than thirty (30) days have elapsed after written notice to the other specifying the date upon which such termination shall take effect and the cause for which it is being terminated (and if such termination is by reason of a default under this Lease for which termination is authorized, specifying such default with reasonable certainty). No such termination shall be effective if such cause shall have been cured or obviated during such 30-day period, or in the event such cause is a default under this Lease (for which termination is authorized) and if by its nature such default cannot be cured within such 30-day period, such termination shall not be effective if the party in default commences to correct such default within said thirty (30) days and corrects the same as promptly as reasonably practicable; provided that the 30-day period shall not apply to termination declared for failure of the Airline to make money payments hereunder" for which termination may be declared by the City upon fifteen (15) days' written notice, unless Airline remedies such default within such fifteen day period; and provided further that the Airline will be allowed only two (2) notices of default with respect to money payments in anyone year which it may cure. Upon termination of this Lease, the parties hereto shall be relieved from all obligations hereunder except as set forth in Sections 4.05, 4.06, 5.02, 7.07, and 7.13. The right of any party hereto to terminate this Lease

shall not in any manner affect or limit such party's right to exercise any other right or remedy it may have rather than its right of termination.

#### **4.05 SURRENDER AND HOLDING OVER**

The Airline covenants that at the expiration of the period for which the Demised Premises are leased to it, or at the earlier termination of the letting thereof, it will quit and surrender such Demised Premises in good state and condition, reasonable wear and tear, acts of God or other casualty and damage due to the negligent or willful act or omission of City excepted, and, except as otherwise provided in Section 2.02, the Airline shall forthwith remove therefrom all equipment, trade fixtures and personal property belonging to it. The City shall have the right on such termination to enter upon and take possession of such Demised Premises with or without process of law, without liability for trespass.

Should the Airline hold over the use of or continue to occupy any portion of such Demised Premises after the expiration of the term of this Lease, such holding over shall be deemed merely a tenancy from month to month. Rent, fees and charges for each month of such holding over shall be paid as provided herein and in a sum equal to the monthly rental required for the month prior to the end of the term hereof or as reestablished as provided for herein. All conditions as herein or hereafter provided shall remain the same, except for term.

#### **4.06 TERMINATION OF HOLDOVER**

If the Airline holds over pursuant to Section 4.05 hereof, either party may, with or without cause, cancel or terminate said tenancy by giving not less than thirty (30) days prior written notice to the other party. Said notice shall set out the date of such cancellation and termination.

### **PART V PERFORMANCE BOND, INDEMNIFICATION AND INSURANCE**

#### **5.01 PERFORMANCE BOND**

Except as otherwise provided by the City's airport rules and regulations as they may be adopted or amended from time to time, upon execution of this Lease, the Airline shall deliver to the Manager for the City and County of Denver, and shall maintain in effect at all times during the term of this Lease, including a period of six (6) months after expiration (or earlier termination of the letting of the Demised Premises hereunder) of said Lease, a valid corporate Performance Bond, or an irrevocable Letter of Credit, in an amount equal to three (3) months rental and other charges payable hereunder, payable without condition to the City and County of Denver, with surety acceptable to and approved by the City's Manager, which bond or irrevocable letter of credit shall guarantee to the City full and faithful performance of all of the terms and provisions of this Lease to be performed by the Airline, and as said Lease may be amended, supplemented or extended.

Notwithstanding the foregoing, if at any time during the term hereof, said Manager reasonably deems the amount of the surety insufficient to properly protect the City from loss hereunder because the Airline is or has been in arrears with respect to such obligations or because the Airline has, in the reasonable opinion of the Manager, violated other terms of this Lease, the Airline agrees that it will, after receipt of notice, increase the surety to an amount required by said Manager; provided however, the percentage increase in the amount of surety shall not exceed the annual percentage increase that has occurred with respect to the Airline's rental and fee rates in effect under this Lease.

## **5.02 INDEMNIFICATION**

The Airline agrees to indemnify and save harmless the City, its officers, and employees, from and against (A) any and all loss of or damage to property, or injuries to, or death of, any person or persons, including property and officers, employees and agents of the City; and (B) all claims, damages, suits, costs, expense, penalties, liability, actions or proceedings of any kind or nature whatsoever, of or by anyone whomsoever; which, with respect to clauses (A) and (B) hereof, in any way result from, or arise out of, Airline's operations in connection herewith, or its use or occupancy of any portion of the Airport and the acts, omissions, or wrongful conduct of officers, employees, agents, contractors or subcontractors of the Airline including without limitation, the provision or failure to provide security as herein required and the use, disposal, generation, transportation or release of pollutants, including but not limited to oil, glycol, toxic or hazardous materials at Denver International Airport by the Airline, its contractors, employees, agents, customers, or anyone claiming or acting by or through the Airline.

Airline further agrees that if a prohibited incursion into the Air Operations Area occurs, or the safety or security of the Air Operations Area, the Airfield, the Baggage System or other sterile area safety or security area is breached by or due to the negligence or willful act or omission of any of Airline's employees, agents, or contractors and such incursion or breach results in a civil penalty action being brought against the City by the U.S. Government, Airline agrees to reimburse the City for all expenses, including attorney fees, incurred by the City in defending against the civil penalty action and for any civil penalty or settlement amount paid by the City as a result of such incursion or breach of airfield or sterile area security. The City shall notify Airline of any allegation, investigation, or proposed or actual civil penalty sought by the U.S. Government for such incursion or breach. Civil penalties and settlement and associated expenses reimbursable under this Paragraph include but are not limited to those paid or incurred as a result of violation of Federal Aviation Administration (FAA) regulations or Transportation Security Administration (TSA) regulations, as they may be amended, or any similar law or regulations intended to replace or compliment such regulations.

Without limitation, the terms of this indemnity include an agreement by Airline to indemnify, defend and hold harmless the City from and against any and all expense, loss, claim, damage, or liability suffered by City by reason of Airline's breach of any environmental requirement existing under federal, state or local law, regulation, order or other legal requirement in connection with any of Airline's acts, omissions, operations or uses of property relating to this



Agreement, or such a breach by the act or omission of any of Airline's officers, employees, agents, or invitees, whether direct or indirect, or foreseen or unforeseen, including (but not limited to) all cleanup and remedial costs actually and reasonably incurred to satisfy any applicable remediation obligation required by federal, state or local law, and reasonable legal fees and costs incurred by City in connection with enforcement of this provision, but excluding damages solely relating to diminution in value of City real property.

Provided however, the City agrees that (I) the Airline need not save harmless or indemnify the City against damage to or loss of property, or injury to or death of persons, caused by the negligence or willful acts of the City, its officers, employees, contractors and agents, and (II) the City will give prompt written notice to the Airline of any claim or suit and the Airline shall have the right to assume the defense and compromise or settle the same to the extent of its own interest. Provided, however, the indemnity provided for herein shall apply only to the extent the City is not reimbursed out of insurance proceeds.

### **5.03 INSURANCE**

At all time during the term of this Lease, unless otherwise required by federal or state governmental law or regulation, the Airline is required and agrees, at its own cost and expense, to provide and keep in force for the benefit of the Airline and the City, a policy, or policies, of insurance written on a single limit each occurrence basis with limits of not less than Three Hundred Million Dollars (\$300,000,000.00) for bodily injury and property damage arising from any operation of the Airline at the Airport and contractual liability coverage. The Manager may increase the limit of insurance required when, in his discretion, he deems the amount stated herein is insufficient.

Such insurance policy, or policies, and certificates of insurance evidencing the existence thereof shall cover all operations of the Airline at the Airport (except the coverage required and provided pursuant to federal or state law or regulation), and shall be with a company acceptable to and approved by the Manager and City Attorney, and shall insure the Airline's agreement to indemnify the City as set forth in the indemnification provisions hereof. The amount of insurance required hereunder shall in no way limit the liability of the Airline as provided in Section 5.02 of this Lease. The City shall not be named insured of said insurance. Each such policy and certificate shall contain a special endorsement stating "This policy will not be materially changed or altered or canceled without first giving thirty (30) days written notice by certified mail, return receipt requested, to the Manager of Aviation, Denver International Airport, AOB - 9th Floor, 8500 Peña Boulevard, Denver, Colorado 80249-6340." All such policies of insurance, or copies thereof, shall be made available for review by the City at such times and places as required by the Manager. Certificates of insurance evidencing the existence of said policies shall be delivered to and left in the possession of said Manager.

### **5.04 LIENS**

Except to the extent inconsistent with other provisions of this Lease, the Airline covenants and agrees to pay promptly all lawful taxes, excises, license fees and permit fees

applicable to its operations at the Airport and to take out and keep current all licenses, municipal, state or federal, required for the conduct of its business at and upon said Airport, and further agrees not to permit any of said taxes, excises or licenses fees to become delinquent. The Airline further covenants and agrees at all times to maintain adequate Worker's Compensation Insurance in accordance with any present or future Colorado law with an authorized insurance company, or through the Colorado State Compensation Insurance Fund, or through an authorized selfinsurance plan approved by the State of Colorado insuring the payment of compensation to all its employees. The Airline also covenants and agrees not to permit any mechanic's or materialman's or any other lien to be foreclosed upon the Airport and improvements thereto or thereon, or any part or parcel thereof, by reason of any work or labor performed or materials furnished at the request of the Airline by any mechanic or materialman. The Airline further covenants and agrees to pay promptly when due all bills, debts and obligations incurred by it in connection with its operation of said business on the Airport, and not to permit the same to become delinquent and to suffer no lien, mortgage, judgment or execution to be filed against said premises or improvements thereon which will in any way impair the rights of the City under this Lease. The Airline shall have the right on giving the City prior written notice to contest any such mechanic's, materialman's or any other lien, and the Airline shall not, pending the termination of such contest, be obligated to pay, remove or otherwise discharge such lien or claim. The Airline agrees to indemnify and save harmless the City from any loss as a result of the Airline's action as aforesaid.

If the Airline shall in good faith proceed to contest any such tax, assessment or other public charge, or the validity thereof, by proper legal proceedings which shall operate to prevent the collection thereof or to prevent the appointment of a receiver because of nonpayment of any such taxes, assessments or other public charges, the Airline shall not be required to pay, discharge or remove any such tax, assessment or other public charge so long as such proceeding is pending and indisposed of; provided, however, that the Airline, not less than five (5) days before any such tax, assessment or charge shall become delinquent, shall give notice to the City of the Airline's intention to contest its validity. If such notice is so given by the Airline to the City and such contest is conducted in good faith by the Airline, the City shall not, pending the termination of such legal proceedings, pay, remove or discharge such tax, assessment or other charge.

#### **5.05 LOSS OR DAMAGE TO PROPERTY**

The 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 said Airport resulting from airport operations including but not limited to operating the elevators or electric lighting, or wind, water, rain or snow, which may come into or issue or flow from any part of said Airport, or from the pipes, plumbing, wiring, gas or sprinklers thereof or any other cause whatsoever, and the Airline hereby covenants and agrees to make no claim for any such loss or damage at any time. Airline shall not be responsible for loss or damage to property caused by latent defects in the Demised Premises.

#### **5.06 FORCE MAJEURE**

Neither the City nor the Airline shall be deemed to be in breach of this Lease by reason of failure to perform any of its obligations under this Lease if, while and to the extent that such failure is due to embargoes, shortages of materials, acts of God, acts of the public enemy, acts of superior governmental authority, sabotage, strikes, boycotts, labor disputes, weather conditions, riots, rebellion and any circumstances for which it is not responsible and which are not within its reasonable control. This provision shall not apply to failures by the Airline to pay rents, fees or other charges, or to make any other money payment whatsoever required by this Lease, except in those cases where provision is made in this Lease for the abatement of such rents, fees, charges or payments under such circumstances.

## **PART VI QUIET ENJOYMENT; INCONVENIENCES DURING CONSTRUCTION**

### **6.01 COVENANT OF QUIET ENJOYMENT**

Upon the payment by Airline of all rentals, rates, fees and charges properly assessed to Airline and the performance of the covenants and agreements on the part of Airline to be performed hereunder, Airline shall peacefully have and enjoy the premises, appurtenances, facilities, licenses and privileges granted herein; provided, however, it is recognized that certain temporary inconveniences may occur during construction.

### **6.02 INCONVENIENCES DURING CONSTRUCTION**

The Airline recognizes that from time to time during the term of this Lease it will be necessary for the City to initiate and carry forward extensive programs of construction, reconstruction, expansion, relocation, maintenance and repair in order that the Airport and its facilities may be suitable for the volume and character of air traffic and flight activity which will require accommodation, and that such construction, reconstruction, expansion, relocation, maintenance and repair may inconvenience the Airline in its operations at the Airport. The Airline agrees that no liability shall attach to the City, its officers, agents, employees, contractors, subcontractors and representatives by reason of minor inconvenience or minor discomfort as a result of such action and, for and in further consideration of the lease of the Demised Premises, the Airline waives any right to claim damages or other consideration for such minor inconvenience or minor discomfort.

## **PART VII MISCELLANEOUS PROVISIONS**

### **7.01 LEASE BINDING**

This Lease shall be binding on and extend to any successors of the respective parties hereto.

### **7.02 PARAGRAPH HEADINGS AND INDEX**

The paragraph or Section headings and index or table of contents contained

herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Lease.

### **7.03 SIGNS**

The Airline agrees that no signs or advertising displays shall be painted on or erected in any manner upon its Demised Premises without the prior written approval of the City's Manager or the Manager's authorized representative; and that signs identifying the Airline will conform to reasonable standards established by the Manager, or the Manager's authorized representative, with respect to type, size, design, location and content.

### **7.04 VENDING MACHINES**

No telecommunication devices, personal computers, amusement or vending machines or other machines operated by coins or tokens, cards, paper currency, or any imaging or voice process, and no cash machines or pay telephones shall be installed or maintained in or upon the Airline's Demised Premises except with the permission of the Airline and the Manager and the number, type, kind and locations thereof shall be in the discretion of the Manager and the Airline. 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, entertainment devices, phone cards and internet access. The Airline shall not permit the installation of any such machines, except by a concessionaire authorized by the Manager and subject to and in accordance with the concessionaire's agreement with the City. If and when the Airline permits the installation of vending machines in its Demised Premises, the Airline shall make no charge to the concessionaire for the privilege of installing or maintaining such machines, except that if the Airline provides the electric current or water to the concessionaire a reasonable charge may be made to cover the cost of the electricity and water consumed, and all fees paid by the concessionaire for the privilege shall be the property of the City.

### **7.05 PURCHASES BY AIRLINE**

Property, services and materials (except as otherwise provided in this Lease) may be purchased or otherwise obtained by the Airline from any person or corporation of its choice and no unjust, or unreasonable discriminatory limitations, restrictions, charges or conditions shall be imposed by the City, directly or indirectly, against the Airline or its suppliers for the privilege of purchasing, selling, using, storing, withdrawing, handling, consuming, loading, unloading or delivering any personal property of the Airline, by the Airline or its suppliers, or for the privilege of transporting such personal property to, from or on the Airport.

### **7.06 NON-DISCRIMINATION**

The Airline, for itself, its successors and assigns, as a part of the consideration hereof does hereby agree as follows:

- (A) As more fully set forth in Appendices No. 1 and 2 attached hereto and incorporated herein by reference, if facilities are constructed, maintained or otherwise operated on the Demised Premises for purposes in which federal financial assistance is extended under a Department of Transportation program or activity, or for another purpose involving the provision of a similar service or benefit, the Airline shall maintain and operate such facilities and services in compliance with all requirements of 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
- (B) The Airline will in all of its operations and activities in and at the Airport comply with all requirements of the Air Carrier Access Act, 49 U.S.C. § 41705, and regulations implementing such Act at 14 C.F.R. Part 382, and the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq. and all regulations implementing such Act.

**7.07 NO PERSONAL LIABILITY**

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

**7.08 NOTICES**

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

Manager, Denver International Airport  
AOB - 9th Floor  
8500 Peña Boulevard  
Denver, Colorado 80249-6340

and

Property Management Section  
Manager, Airlines  
Denver International Airport  
8500 Pena Blvd., AOB, 9<sup>th</sup> Floor  
Denver, CO 80249-6340

all notices required to be given to the Airline hereunder shall be in writing and shall be sent by certified mail, return receipt requested, addressed to:

Republic Airline, Inc.  
Attn: Scott Durgin

8909 Purdue Rd., Ste. 300  
Indianapolis, IN 46268

provided that the parties or either of them, may designate in writing from time to time the addresses of substitute or supplementary persons in connection with said notices. The effective date of service of any such notice shall be the date such notice is mailed to the Airline or said Manager.

#### **7.09 PLACE AND MANNER OF PAYMENTS**

In all cases where the Airline is required by this Lease to pay any rentals, fees or other charges or to make other payments to the City, such payments shall be due and payable without notice and shall be made at the office of the Airport Revenue Fund, Denver International Airport, P. O. Box 492065, Denver, Colorado 80249-2065 or at such other place in the City and County of Denver as the City may hereafter designate by notice in writing to the Airline, and shall be made in legal tender of the United States. Any check shall be received by the City subject to collection, and the Airline agrees to pay any bank charges for the collection of any such check.

Any payment not made to the City or Airline when due shall accrue interest at the rate of 18% per annum commencing five (5) business days after such due date.

#### **7.10 SEVERABILITY**

In the event any covenant, condition or provision contained in this Lease is held by any court of competent jurisdiction to be invalid, the invalidity of any such covenant, condition or provision shall in no way affect any other covenant, condition or provision herein contained if the invalidity of any such covenant, condition or provision does not materially prejudice either party hereto in its respective rights and obligations contained in the valid covenants, conditions or provisions in this Lease.

#### **7.11 SECURITY**

It is understood and agreed by the Airline that in addition to the Airline's responsibilities to maintain the Demised Premises as provided herein, it shall take reasonable security precautions to maintain the Demised Premises in a manner as to keep them secure from unauthorized intrusion and shall with respect to any area of the premises opening to an air operations area of the Airport provide for an adequate security system designed to prevent unauthorized persons or vehicles from entering such air operations area. An "air operations area" is defined to mean any area of the Airport used or intended to be used for landing, takeoff or surface maneuvering of aircraft. An "adequate security system" is further defined as providing for security at a standard no less than required and set out in Transportation Security Administration (TSA) regulations, including 49 C.F.R., Subtitle B, Chapter XII, as it may be amended, or any similar law or regulations intended to replace or compliment such regulations.

It is further understood and agreed by the Airline that at any time during the term hereof when requested in writing by the Manager, or his authorized representative, the Airline shall submit to the said Manager the security plans that are to be used and are being used by the Airline on any or all of the Demised Premises.

#### **7.12 WAIVERS**

No waiver of default by either party of any of the terms, covenants or conditions hereof to be performed, kept and observed by the Airline or the City shall be construed, or operate, as a waiver of such term, covenant, or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained to be performed, kept and observed by the Airline or the City.

The subsequent acceptance of rent hereunder by the City shall not be deemed to be a waiver of any preceding breach by the Airline of any term, covenant or condition of this Lease other than the failure of the Airline to pay the particular rental so accepted, regardless of the City's knowledge of such preceding breach at the time of acceptance of such rent.

#### **7.13 AIRLINE BOOKS AND RECORDS**

The Airline agrees that the Auditor of the City or any of the Auditor's duly authorized representatives, until the expiration of three (3) years after the termination of this Lease, shall have the right, at any reasonable time and at its own expense, to have access to and the right to examine any books, documents, papers and records of the Airline pertinent to this Lease.

#### **7.14 CITY SMOKING POLICY**

The Airline and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 99, or any successor executive order prohibiting smoking in all indoor buildings and facilities. Airline agrees that it will take reasonable actions to prohibit smoking by its employees and the public in the Demised Premises except in specially designated areas.

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

The Airline and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 94 and Attachment A thereto, or any successor executive order concerning the use, possession or sale of alcohol or drugs.

#### **7.16 THIRD PARTIES**

This Lease does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties (excepting parties to whom the Airline may assign this Lease in accordance with Section 2.03 hereof, and excepting any successor to the City) any right to claim

damages or to bring any suit, action or other proceeding against either the City or the Airline because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained.

#### **7.17 SUPPLEMENTAL INFORMATION TO BE SUPPLIED BY AIRLINE**

Not later than fifteen (15) calendar days after the end of each month, the Airline shall complete and file with the City written activity reports for the preceding month on forms provided or agreed to by the City. Information to be provided will include, but not be limited to, mail, in and out and express and freight, in and out.

#### **7.18 MASTER PLAN**

Airline 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.

#### **7.19 UNITED STATES DEPARTMENT OF TRANSPORTATION PROVISIONS**

This 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 extension, expansion or development of the Denver Airport System including the provisions of Appendices 1 and 2 which are incorporated herein by reference.

#### **7.20 CITY NON-DISCRIMINATION**

In connection with the performance of work under this Lease, the Airline agrees not to fail or refuse to hire, nor to discharge, promote or demote, nor to otherwise discriminate in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Airline further agrees to insert the foregoing provision in all subcontracts hereunder.

#### **7.21 ENTIRE LEASE**

The provisions contained in this Lease constitute the entire agreement and understanding between the parties with respect to the subject matter thereof, 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. This Lease cannot be changed or terminated orally. No alterations, amendments, changes or modification, unless expressly reserved to the Manager herein, shall be valid unless executed by an instrument in writing by both parties hereto with the same formality as this Lease.



## **7.22 SALE OF FOOD AND BEVERAGES**

The Airline shall not sell, or permit the sale of food, food products or beverages (both alcoholic and non-alcoholic) upon the Demised Premises occupied by it except by a concessionaire to whom the City has granted the right to provide such services in said Demised Premises and except that, with respect to the interior portion of Exhibit A, Airline may sell, or permit the sale of, such items on its own behalf or by a concessionaire selected by Airline. Airline agrees to pay the same rates, fees and charges that would be applicable to an Airport concessionaire with respect to the sale of such products.

## **7.23 CONDITION; FINAL APPROVAL**

This Lease is expressly subject to, and shall not be or become effective or binding on the City until approved by Denver City Council and fully executed by all signatories of the City and a fully executed copy has been delivered to Airline.

**END OF DOCUMENT  
SIGNATURE PAGES FOLLOW**

## APPENDIX NO. 1

### 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.

## APPENDIX NO. 2

### **DISADVANTAGED BUSINESS ENTERPRISES - REQUIRED STATEMENTS**

**Policy.** It is the policy of the Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement.

**DBE Obligation.** The City and its contractors agree to ensure that disadvantaged business enterprises as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts financed in whole or in part with federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The City and its contractors shall not discriminate on the basis of race, color, sex, creed or national origin in the award and performance of DOT-assisted contracts.

49 CFR 26.5 defines a DOT-assisted contract as “any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees.” “Contractor” means one who participates through a contract or subcontract (at any tier) in a DOT-assisted highway, transit, or airport program.

Contract Control Number: PLANE-201310293-00

Contractor Name: Republic Airline, Inc.

By: 

Scott L. Durgin  
Vice President, Lean Methods and Administration

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

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

**ATTEST: [if required]**

By: 

Name: Marilyn Thomas  
(please print)

**Marilyn Thomas**  
**Document Management Specialist**

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



**Contract Control Number:** PLANE-201310293-00

**Contractor Name:** Republic Airline, Inc.

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**Contract Control Number:** PLANE-201310293-00

**Contractor Name:** Republic Airline, Inc.

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:

DOUGLAS J. FRIEDNASH, Attorney  
for the City and County of Denver

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION FOR THE PROPOSED REPUBLIC AIRLINE, INC. LEASE  
AREA**

Date: Feb. 1, 2013

A parcel of land situated in Section 33, Township 2 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Bearings used in this legal description are based on the east-west mid-section line of said Section 33, which bears North 89°52'40" East, a distance of 5289.55 feet, monuments as shown.

Commencing at the West Quarter corner of said Section 33;

Thence North 89°52'40" East along the east-west mid-section line, a distance of 3271.54 feet;

Thence South 00°00'00" East, a distance of 24.80 feet to the Point of Beginning of Parcel 12;

Thence North 90°00'00" East, a distance of 63.36 feet to Point A;

Thence South 00°00'00" East, a distance of 64.06 feet;

Thence North 90°00'00" West, a distance of 33.36 feet to point on a non-tangent curve concaved to the northeast, which the radius point bears North 01°03'18" East;

Thence 41.54 feet along an arc of said curve to the right, having a central angle of 75°47'53" and a radius of 31.41 feet;

Thence North 00°00'00" East, a distance of 39.80 feet to the Point of Beginning.

Said Parcel 12 contains 3869.161 square feet.

Commencing from Point A described above;

Thence North 90°00'00" East, a distance of 25.00 feet to the Point of Beginning of Parcel 13;

Thence continuing North 90°00'00" East, a distance of 88.05 feet;

Thence South 00°00'00" East, a distance of 39.06 feet to point on a non-tangent curve concaved to the northwest, which the radius point bears North 89°30'08" West;

Thence 35.52 feet along an arc of said curve to the right, having a central angle of 79°27'53" and a radius of 25.61 feet;

Thence South 90°00'00" West, a distance of 66.90 feet;

Thence South 00°00'00" East, a distance of 64.06 feet to the Point of Beginning.

Said Parcel 13 contains 5508.104 square feet.

Total area of Parcels 12 & 13 equals 9377.265 square feet.

See Exhibit "B"





EXHIBIT "B"

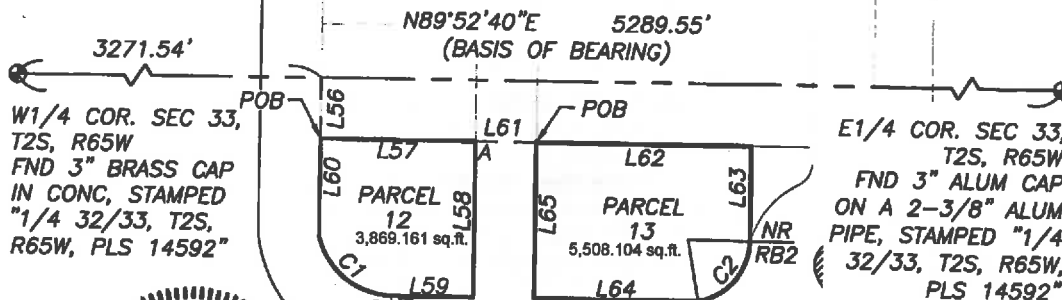
SCALE: 1"=60'

LEGEND

L=LENGTH  
 C=CURVE  
 POB=POINT OF BEGINNING  
 SQ FT=SQUARE FEET  
 ALUM=ALUMINUM  
 NR=NON-RADIAL  
 RB=RADIUS BEARING

RADIUS BEARING

1 N01°03'18"E  
 2 N89°30'08"W



I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECT SUPERVISION.

*Dennis E. Hamlin*  
 DENNIS E. HAMLIN, PLS  
 COLO. REGISTRATION NO. 34577

Note: This does not represent a monumented land survey. Nor does it represent a search for easements or Rights-of-Way of record. It is intended only to depict the attached description

*Michael H. Steffens* 2/4/13  
 Michael H. Steffens, P.E. Date  
 Manager of Construction



CITY AND COUNTY OF DENVER  
 DEPARTMENT OF AVIATION  
 DENVER INTERNATIONAL AIRPORT

REVISED		
NO.	DATE	NAME

Republic Airline, Inc. Lease Area  
 Situated in Section 33, Township 2 South, Range 65 West of the  
 6th Principal Meridian, City and County of Denver, State of  
 Colorado.

REQUESTED BY: Moore, Susan	DATE 11/07/11	SCALE 1"=60'	DRAWN BY: TJB FIELD BY: NA CHECKED BY: RTL	SHEET NO. 1 OF 2 SHEETS	DRAWING NO. S: DRAWINGS113T 13T0907RLeaseExhibits
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**EXHIBIT "B"**

LINE TABLE		
Line #	Direction	Length
L56	S00°00'00"E	24.80'
L57	N90°00'00"E	63.36'
L58	S00°00'00"E	64.06'
L59	N90°00'00"W	33.36'
L60	N00°00'00"E	39.80'
L61	N90°00'00"E	25.00'
L62	N90°00'00"E	88.05'
L63	S00°00'00"E	39.06'
L64	S90°00'00"W	66.90'
L65	S00°00'00"E	64.06'


CURVE TABLE			
Curve #	Delta	Radius	Length
C1	75°47'53"	31.41'	41.54'
C2	79°27'25"	25.61'	35.52'



I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECT SUPERVISION.

Dennis E. Hamlin  
 DENNIS E. HAMLIN, PLS  
 COLO. REGISTRATION NO. 34577

Michael H. Steffens 2/4/13  
 Michael H. Steffens, P.E. Date  
 Manager of Construction

	<b>CITY AND COUNTY OF DENVER                  DEPARTMENT OF AVIATION                  DENVER INTERNATIONAL AIRPORT</b>																				
	<b>Republic Airline, Inc. Lease Area</b> Situated in Section 33, Township 2 South, Range 65 West of the 6th Principal Meridian, City and County of Denver, State of Colorado.																				
<table border="1"> <thead> <tr> <th align="center" colspan="3">REVISED</th> </tr> <tr> <th>NO.</th> <th>DATE</th> <th>NAME</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>	REVISED			NO.	DATE	NAME										REQUESTED BY: Moore, Susan	DATE 11/07/11	SCALE 1"=60'	DRAWN BY: TJB FIELD BY: NA CHECKED BY: RTL	SHEET NO. 2 OF 2 SHEETS	DRAWING NO. S:\DRAWINGS\13T\13T0907R\Lease Exhibits
REVISED																					
NO.	DATE	NAME																			

**EXHIBIT "A"**

**LEGAL DESCRIPTION FOR THE PROPOSED REPUBLIC AIRLINE, INC. LEASE  
AREA**

Date: Feb. 1, 2013

A parcel of land situated in Section 33, Township 2 South, Range 65 West of the 6<sup>th</sup> Principal Meridian, City and County of Denver, State of Colorado, more particularly described as follows:

Bearings used in this legal description are based on the east-west mid-section line of said Section 33, which bears North 89°52'40" East, a distance of 5289.55 feet, monuments as shown.

Commencing at the East Quarter corner of said Section 33;

Thence South 89°52'40" West along the east-west mid-section line, a distance of 2082.49 feet to the interior wall of an existing building known as Joint Cargo;

Thence South 00°02'02" East along said interior wall, a distance of 65.71 feet to the centerline of a common wall, also being the Point of Beginning;

Thence continuing South 00°02'02" East along said interior wall, a distance of 62.28 feet to an interior wall;

Thence South 89°57'58" West along said interior wall, a distance of 114.00 feet to the centerline of the westerly wall, also being Point A;

Thence North 00°02'02" West along said centerline, a distance of 62.28 feet to the centerline of a common wall;

Thence North 89°57'58" East along said centerline, a distance of 114.00 feet to the Point of Beginning.

Said Building Lease Area contains 7099.92 square feet.

Beginning at Point A as described above;

Thence South 89°57'58" West, a distance of 107.00 feet;

Thence North 00°02'02" West, a distance of 62.28 feet;

Thence North 89°57'58" East, a distance of 107.00 feet to the centerline of the westerly wall of said existing building;

Thence South 00°02'02" East along said centerline, a distance of 62.28 feet to Point A.

Said Landside Lease Area contains 6663.96 square feet.

Total area of Building Lease area and Landside Lease area equals 13763.88 square feet.

See Exhibit "B"






EXHIBIT "B"


LINE TABLE		
Line #	Direction	Length
L43	S00°02'02"E	65.71'
L44	S00°02'02"E	62.28'
L45	S89°57'58"W	114.00'
L46	N00°02'02"W	62.28'
L47	N89°57'58"E	114.00'
L48	S89°57'58"W	107.00'
L49	N00°02'02"W	62.28'
L50	N89°57'58"E	107.00'



I HEREBY CERTIFY THAT THIS LEGAL DESCRIPTION WAS PREPARED UNDER MY DIRECT SUPERVISION.

  
 DENNIS E. HAMLIN, PLS  
 COLO. REGISTRATION NO. 34577

 2/4/13  
 Michael H. Steffens, P.E.  
 Manager of Construction Date

	<b>CITY AND COUNTY OF DENVER                  DEPARTMENT OF AVIATION                  DENVER INTERNATIONAL AIRPORT</b>				
	<b>Republic Airline, Inc. Lease Area</b> Situated in Section 33, Township 2 South, Range 65 West of the 6th Principal Meridian, City and County of Denver, State of Colorado.				
	REVISED NO. DATE NAME				
	REQUESTED BY: Moore, Susan	DATE 05/09/12	SCALE 1"=80'	DRAWN BY: TJB FIELD BY: NA CHECKED BY: RTL	SHEET NO. 2 OF 2 SHEETS

## EXHIBIT G

### Design Standards, Construction Procedures and Environmental Requirements

**Section 1. Design Standards.** The Airline agrees to utilize and comply with the Denver International Airport Design Standards Manuals for design of the Facilities. The Airline further agrees to design, construct, and operate the Facilities in accordance with the Denver International Airport Tenant Development Guidelines and the Denver International Airport Rules and Regulations, as they may be established or amended from time to time, and any other applicable design, construction, operation, and maintenance standards. See additional information at <http://business.flydenver.com/bizops/bizRequirements.asp>

All civil design drawings submitted by the Airline to the City shall be provided and submitted according to FAA requirements in Advisory Circular AC150/5300-18B GIS Standards: Collection of airport data through field and post processing methodologies are specified in this FAA Advisory Circular. The data model specifies the following Geographical Information System (GIS) feature groups: Airfield, Airspace, Cadastral, Environmental, Geospatial, Man Made Structures, Navigational Aids, Seaplane, Security, Surface Transportation, and Utilities. The model incorporates safety critical data including runway thresholds, navigational aids as well as other airport features including runways, taxiways, aprons, buildings, roadways, cadastral, land-uses, and utilities. The single GIS airport database will serve numerous needs and therefore requires a very robust set of data features and associated attributes. As a result, significant time and effort is required to collect and input the metadata (data about data). The power of an airport GIS database is derived from the metadata. The long term application of airport GIS data collection methodology will reduce survey costs, errors, and missing data.

To facilitate these FAA requirements GIS/CADD data submittals shall adhere to the data standards set forth in DIA Design Standards Manual 12 (DSM 12). CADD/GIS files must be submitted that are compatible with the FAA's AGIS database and includes all features required by the FAA relevant to the project. Each feature shall be fully and accurately attributed according to the specifications of FAA AC 150/5300-18B. Any files rejected by the FAA must be corrected and resubmitted to DIA's Project Manager until satisfactorily accepted by the FAA. Final CADD survey data required for FAA submission should adhere to the standards provided in DSM 12.

Approval of the City shall extend to and include consideration of architectural and aesthetic matters and the City reserves the right to reject any designs submitted and to require the Airline to resubmit designs and layout proposals until they meet with the City's approval.

In the event of disapproval by the City of any portion of the plans and specifications, the Airline shall promptly submit necessary modifications and revisions thereof.

**Section 2. Construction Procedures.** All construction work shall comply with the requirements of and standards established by the City and all other appropriate governmental agencies and entities.

The City shall at all times have the right to monitor and inspect the construction of the Facilities and all site improvements to assure that the Facilities and all site improvements are constructed and installed in compliance with the Plans and Specifications.

In order to assist the City in monitoring and inspecting such construction, the Airline's contractor or contractors shall submit, or cause to be submitted to the City, for information and record purposes, copies of all (i) permit applications, permits and plans required by permits, (ii) field test reports, (iii) material certificates, (iv) approved shop drawings to be reviewed for compliance with the Airport design and construction standards, (v) requests for payment to contractors or subcontractors, (vi) progress reports, (vii) notification of substantial completion of the leased facilities and all site improvements and final acceptance thereof, (viii) two copies of maintenance and operation manuals in connection with building systems and all updates thereof, (ix) as-constructed drawings, and (x) any other documents related to the construction of the Facilities which may be reasonably requested by the City.

No change order which materially changes the scope of the work shall be effected by the Airline without the approval of the Manager, which approval shall not be unreasonably withheld. The City will approve, conditionally approve or disapprove submissions of change orders within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason therefore.

All construction work, materials, and installations involved in or incidental to the construction of the Facilities and all other improvements on Airport Property undertaken by the Airline throughout the term hereof shall be subject at all times to inspection and approval by the City.

The Airline shall give or cause to be given to the Manager advance notice before performing any modification to Airport Property.

The Airline shall cause all construction work, workmanship, materials, and installations to be in full compliance with plans and specifications. The City shall have the right to halt construction of the Facilities or any site improvement at any time if such construction is at material variance from the Plans and Specifications until such variance is corrected, or if such construction poses an immediate safety hazard at the Airport, until such safety hazard is eliminated. The City shall cooperate and use its best efforts to alleviate and resolve any such variance or impediment to the safe operation of the Airport so as to permit continuation of construction as expeditiously as possible.

The Airline, at its sole cost and expense, shall make and obtain such utility connections, hook-ups or taps as shall be necessary and shall have the right to receive all necessary utilities and services and shall secure all necessary applications and permits and shall pay all application and permit fees, hook-up or tap fees and all other user charges of whatever nature occasioned thereby. The Airline further agrees at its sole cost and expense to provide meters adequate to measure the amount of utilities and water used or consumed and to maintain said equipment in such a manner as to supply accurate measurement of such usage and consumption.

The Airline shall also include in its agreements with its general contractors covenants that require the construction contractor and its subcontractors of any tier to pay all workers, mechanics, and laborers in accordance with the rates and classifications established under the federal Davis-Bacon Act and Section 20-76 or the Denver Revised Municipal Code, whichever is greater. The Airline further agrees, if requested by the Manager, to fully comply with the procedural requirements of Section 20-76 of the Denver Revised Municipal Code by requiring its general contractors and their subcontractors of any and all tiers to submit to the City true and correct copies of the payroll records of all workers, laborers and mechanics employed.

The Airline throughout the term of this Agreement shall not without the prior written approval of the Manager make any material or structural alterations, improvements or additions to Airport Property, including without limitation any interior modifications or improvements.

Any work necessary to make any alterations, improvements or additions to the premises throughout the term of this Agreement shall be done at the Airline's sole cost and expense and in accordance with and subject to all of the required approvals, submittals and procedures, and all other requirements of whatsoever nature, set forth herein in reference to the initial construction by the Airline of the Facilities and its related site improvements.

Upon completion of such work, the Airline shall deliver to the City revised as-constructed drawings, and evidence of payment, contractor's affidavits, and full and final waivers of any liens for labor, services, or materials. The Airline shall include in the Airline's agreement with its contractors provisions whereby such contractors shall defend and hold the City harmless from all costs, damages, liens, and expenses related to such work.

All work done by the Airline or its contractors shall be done in a first-class workmanlike manner using only good grades of materials and shall comply with all insurance requirements and all applicable laws and ordinances and rules and regulations of governmental departments or agencies. Whenever a conflict arises between state or local law, ordinances or regulations, and federal law or regulations, Federal law or regulations applicable to this agreement shall control.

Within 60 days after completion of construction of the Facilities, the Airline shall furnish to the Manager two sets of as-constructed drawings, showing in detail all construction, including the locations of all underground and above ground utility lines.

All civil as-constructed drawings shall be provided by the Airline to the City in accordance with the City's design standards, and shall be submitted to: AC150/5300-18B GIS Standards and shall adhere to the data standards set forth in DIA Design Standards Manual 12 (DSM 12). CADD/GIS files must be submitted that are compatible with the FAA's AGIS database and include all features required by the FAA relevant to the project. Each feature shall be fully and accurately attributed according to the specifications of FAA AC 150/5300-18B. Any files rejected by the FAA must be corrected and resubmitted to DIA's Project Manager until satisfactorily accepted by the FAA. Final CADD survey data required for FAA submission should adhere to the standards provided in DSM 12.



### **Section 3. Compliance with Environmental Requirements.**

(a) Compliance by the Airline. The Airline, in conducting any activity on the Airport, including any environmental response or remedial activities, shall comply with all applicable local, state, and federal environmental rules, regulations, statutes, laws or orders, (collectively, "Environmental Requirements").

The Airline agrees to ensure that any new facilities or any modifications or alterations to existing facilities are 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, including the Airport's Tenant Development Guidelines, which shall be provided to Airline.

The Airline shall financially reimburse the City for penalties incurred by the City as a result of the release of any pollutant or contaminant from the premises covered in this Agreement resulting from or arising out of the Airline's operations.

The Airline shall conduct all environmental monitoring pertaining to Airline construction, operation, and maintenance activities required by Environmental Requirements. Monitoring records shall be retained as required by Environmental Requirements and available for inspection. The Airline is required to release any or all nonprivileged environmental data upon request from the City.

The Airline shall obtain all necessary federal, state, and local environmental permits and comply with all applicable federal, state, and local environmental permit requirements concerning its operations at the airport.

In the case of a release, spill, or leak caused by Airline construction, operation or maintenance activities, the Airline shall immediately call the Airport Communications Center at x4200. The Airline then shall, as soon as reasonably practicable, control and remediate the contaminated media as required by applicable Environmental Requirements.

(b) Review of Environmental Documents. The Airline, at the request of the City, shall make available for inspection and copying at the City's expense, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Airline has prepared or submitted to any governmental agency. If there is a federal, state or local duty to file any notice or report of a release or threatened release of Regulated Materials on, under or about the leased facilities, the Airline shall provide a copy of such report or notice to the City.

For purposes of this Agreement, "Regulated Materials" shall mean any wastes, substances, radiation, or materials (whether solids, liquids, or gases) that are defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "solid wastes", "universal wastes", "toxic substances", "toxic pollutants", "contaminants", "pollutants", "regulated substances", or words of similar import, under any applicable federal, Colorado, or local rules, regulations, statutes, laws, or orders.

(c) Access for Environmental Inspection. The City shall have a right of access to the leased facilities and to any of the improvements thereon without prior notice to inspect the same to confirm that the Airline is using the premises in accordance with the Environmental Requirements. Such inspection will not unreasonably interfere with Airline's operations. If the City finds evidence of non-compliance or threatened non-compliance with Environmental Requirements, the Airline, at the request of the City, shall conduct such testing and analysis as is necessary to ascertain whether the Airline is using the premises in compliance with all Environmental Requirements.

(d) Correction of Environmental Non-Compliance. If the Airline fails to comply in all material respects with any applicable Environmental Requirement, the City, after providing Airline with reasonable notice under the circumstances and reasonable opportunity to correct such noncompliance, in addition to its rights and remedies described elsewhere in this Agreement, at its election, may enter the premises and take such measures as may be necessary to insure compliance with the Environmental Requirements, all at the Airline's expense.

(e) Duty to Notify City. In the event of a release or threatened release of pollutants to the environment caused by Airline's use or occupancy of the premises, the Airline shall immediately notify the Airport Communications Center at x4200 and shall notify the City in writing as soon as reasonably practicable. In the event any claim, demand, action or notice is made against the Airline with regard to the Airline's failure or alleged failure to comply with any Environmental Requirements, the Airline, shall notify the City in writing as soon as reasonably practicable, and provide the City with copies of any written claims, demands, notices or actions so made.

(f) Environmental Remediation. The Airline shall undertake all actions as required by applicable Environmental Requirements to remedy or remove any Regulated Materials and any other environmental contamination discovered on or under the premises and/ caused by the Airline to bring the premises into compliance with all applicable Environmental Requirements in effect as of the date thereof.

The work shall be performed at the Airline's expense after the Airline submits to the City a written plan for completing such work and receives the prior written approval of the City, not to be unreasonably withheld, and the City shall have the right to review and inspect all such work at any time and at the City's expense using consultants and representatives of the City's choice. Cleanup levels for any environmental remediation work shall comply with applicable Environmental Requirements.

(g) Environmental Requirements for New Construction (including modifications or alterations to existing facilities). Throughout the construction activities for any facilities, the Airline is responsible for complying with all of the requirements under Denver International Airport Technical Specifications Section 01566 (Environmental Controls), Section 16642 (Cathodic Protection) and the Airports' Tenant Development Guidelines, all of which shall be provided to Airline.

(1) Air Pollution. All activities associated with the construction of the Facilities shall be performed under the Airline's (or its agent's) fugitive dust permit for

the construction project. The Airline is responsible for complying with the terms of its permit.

In order to comply with the above-referenced permit requirements, the Airline shall implement the procedures and techniques identified in Technical Specifications Section 01566.

(2) Water Pollution Controls. The Airline shall comply with the environmental specifications identified in Technical Specifications Section 01566.

(3) Soil Erosion and Sedimentation Control. The Airline shall comply with the environmental specifications for soil erosion and sediment control during construction, identified in Technical Specifications Section 01566. The Airline shall implement "best management practices" in preventing soil erosion and controlling sedimentation. The Airline shall obtain all necessary state and local permits for new development or construction. The Airline is responsible for the preparation and implementation of any plan required by the permits.

(4) Solid and Hazardous Waste Controls. This subsection applies to solid waste and hazardous waste as defined by federal and state regulations. Solid waste is defined as all putrescible and non-putrescible solid, semi-solid and liquid wastes, but does not include hazardous waste. The Airline is responsible to minimize the amount of solid and hazardous waste generated during construction activities. A commercially reasonable effort should be made to recycle generated construction debris. The Airline is responsible for the safe disposal of all solid and hazardous waste and shall dispose of such waste in accordance with Environmental Requirements and Mayor's Executive Order No. 115 (City requirement to direct all non-hazardous waste to DADS Landfill for disposal). Disposal of hazardous wastes on Denver International Airport property is prohibited. Recyclable waste is accepted at approved Airport recycling locations.

The Airline is responsible for complying with the solid and hazardous waste control requirements listed in Technical Specifications Section 01566.

(5) Noise and Vibration Control. Noise and vibration control requirements are listed in Technical Specifications Section 01566.

(h) Environmental Requirements for Operation and Maintenance.

(1) Storage Tanks and Ancillary Equipment. All underground storage tanks and pipelines, and any above-ground storage tanks and pipelines in contact with the ground, and any other underground metallic structures installed by Airline on Airport Property shall be integrated into a cathodic protection program. Airport officials shall be notified of any removal, addition, or modification of underground tanks, piping, and other metallic structures.

Wastewater from maintenance activities shall be pretreated with a water quality pre-treatment device. These devices shall be inspected and maintained by the Airline.

The Airline shall be responsible for all containment, treatment, and disposal of all fuel spills caused by Airline operations using "Best Management Practices." The Airline shall make all "best efforts" to recycle recovered fuel. A Spill Prevention Control and Countermeasures Plan shall be prepared and submitted according to federal (40 CFR 112) and state requirements.

Fuel storage tanks shall either be installed above ground, according to appropriate federal and state requirements, or underground in accordance with EPA regulations cited in 40 CFR Part 280 and State of Colorado CCR 1101-14.

(2) Air Pollution Control. The Airline shall obtain all necessary air emission control permits associated with operation and maintenance of its facilities.

(3) Water Pollution Control. The Airline shall obtain all necessary permits under NPDES (National Pollutant Discharge Elimination System) stormwater regulations (40 CFR Part 122-124), Colorado Pollutant Discharge System (CDDS), and industrial and sanitary pretreatment requirements.

The Airline shall comply with all federal and state water pollution control requirements. Upon the direction of the City, the Airline will be responsible for conducting all appropriate water quality monitoring related to its Denver International Airport operations. This data shall be released to the City upon the City's request.

(i) Waste Management Plan.

(1) The Airline shall prepare and submit to the City upon request a waste management plan outlining its program for recycling, waste management and waste minimization at DIA to the extent reasonably possible.

(2) The Airline shall make good faith efforts to participate in recycling programs offered by the Airport and to identify upon request locations on the Demised Premises at which recycling collection containers may be placed.