

**BY AUTHORITY**

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

COUNCIL BILL NO. CB13-0562

SERIES OF 2013

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

**A BILL**

**For an ordinance approving a proposed Airport Cargo Facilities Lease Agreement between the City and County of Denver and Air General, 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 Airport Cargo Facilities Lease Agreement between the City and County of Denver and Air General, 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. 2013-0762 is hereby approved.

COMMITTEE APPROVAL DATE: August 22, 2013

MAYOR-COUNCIL DATE: August 27, 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 29, 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 29, 2013



**AIRPORT CARGO FACILITIES  
LEASE AGREEMENT**

**Between**

**CITY AND COUNTY OF DENVER**

**and**

**AIR GENERAL, INC.**

**at**

**DENVER INTERNATIONAL AIRPORT**

**FOR A TERM BEGINNING JANUARY 1, 2013  
AND ENDING DECEMBER 31, 2016**

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## **AIRPORT CARGO FACILITIES LEASE AGREEMENT**

**THIS AIRPORT CARGO FACILITIES LEASE AGREEMENT** (the "Agreement"), 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, (the "CITY"), Party of the First Part, and **AIR GENERAL, INC.**, a corporation organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and authorized to do business in the State of Colorado, (hereinafter referred to as the "LESSEE"), Party of the Second Part;

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

**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; and

**WHEREAS**, the Lessee is engaged in the business of loading and unloading property, cargo and mail, or one or more thereof, from aircraft; and

**WHEREAS**, the parties desire to enter into this Agreement for the lease of certain cargo premises and facilities at the Airport as more fully hereinafter set forth;

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

### **PART I DEFINITIONS**

#### **1.01 "AIRFIELD AREA FACILITIES"**

Means (A) runways; (B) taxiways; (C) passenger ramp and apron areas (other than the cargo ramp and apron areas); and (D) any extensions or additions to the above and any other space or facilities provided by the City at the Airport for public and common use by aircraft operators in connection with the landing and taking off of aircraft, or in connection with operations to be performed by aircraft operators upon the runways, taxiways, passenger ramp and apron areas; but only as from time to time provided by the City at the Airport for public and common use by aircraft operators.

#### **1.02 "AIRPORT RULES AND REGULATIONS"**

Means the 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 Lessee; provided, further, that nothing herein shall be considered to restrict the police power of the City.

### **1.03 “CARGO LEASE AREA”**

Means the cargo ramp, building, and landside areas shown on Exhibit C and any extensions or additions to the above and any other cargo space or facilities provided by the City at the Airport for public and common use by cargo air carriers and cargo handlers.

### **1.04 “DEMISED PREMISES”**

Means, at any time, those areas and facilities which are leased to Lessee for its use and occupancy, as more specifically set forth in Sections 3.01 and 3.02. Such areas and facilities may not be used or occupied by others unless authorized by Lessee and approved by the City.

### **1.06 “FISCAL YEAR”**

Means January 1 through December 31.

### **1.07 “GENERAL BOND ORDINANCE”**

Means the 1984 Airport System General Bond Ordinance approved by the City Council of the City and County of Denver on November 29, 1984, Ord. 626, Series of 1984, as supplemented or succeeded.

### **1.08 “MANAGER”**

Means the Manager of the City’s Department of Aviation or the Manager’s successor in function having jurisdiction over the management, operation and control of the Airport. “Manager’s authorized representative” or words of similar import shall mean the officer or employee of the City designated in writing by the Manager as the Manager’s authorized representative, until notice otherwise is thereafter given to the Airline.

## **PART II CARGO LEASE AREA**

### **2.01 CARGO HANDLING SERVICES**

Lessee shall have the right to use the Cargo Lease Area for the purpose of loading and unloading freight, mail, supplies, and cargo transported or to be transported on aircraft owned and operated for and on behalf of British Airways as well as other client carriers, as more specifically set forth in Part III below, unless otherwise authorized by the Manager.

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

**3.01 DEMISED PREMISES**

The City hereby leases to the Lessee and the Lessee hereby agrees to lease from the City those certain parcels of real property at the Airport designated on Exhibit C (which drawings are incorporated herein and made a part hereof by reference) (collectively, the "Demised Premises"). It is acknowledged and agreed that the Demised Premises under this Agreement constitute non-residential real property. Except to the extent required for the performance of the obligations of the Lessee hereunder, nothing contained in this Agreement shall grant to the Lessee any rights whatsoever in the air space above the Demised Premises except as approved by the City.

The Demised Premises shall consist of the following:

Ramp Lease Area	17,182.9 sq. ft.
Air Cargo Building Lease Area	12,525.3 sq. ft.
Landside Lease Area	12,125.2 sq. ft.
Total Ground Lease Area	41,833.4 sq. ft.

**3.02 USE OF DEMISED PREMISES**

(A) The Air Cargo Building portion of the Demised Premises as shown on Exhibit C for the exclusive use of Lessee as follows:

- (1) For the reception, handling, build-up, breakdown, sorting and distribution of air cargo transported or to be transported on aircraft owned or operated for and on behalf of British Airways as well as other client air carriers; and the receipt, handling and distribution of other documents and packages.
- (2) For the reception, storage and distribution of repair parts, supplies and other personal property owned by, or in the possession of Lessee for the performance of minor repairs to personal property of the Lessee or that of its aircraft operators.
- (3) For the training of personnel employed or to be employed by the Lessee in connection with its air cargo operations.
- (4) For normal office purposes associated with the conduct of an air cargo business by Lessee.



- (5) Vending machines may be permitted for the use of Lessee's employees pursuant to paragraph 10.04 herein.
- (B) The portion of the Demised Premises designated "Ramp Lease Area-Parcels No. 1, 2, and 3" as shown on Exhibit C for the exclusive use of Lessee for ground equipment storage and circulation.
- (C) The portion of the Demised Premises designated "Landside Lease Area" as shown on Exhibit C for the non-exclusive use of Lessee for loading and unloading of cargo and for parking of motor vehicles by employees, customers, patrons, contractors, agents, and invitees of Lessee.

#### **PART IV**

### **PROVISIONS RELATING TO DEMISED PREMISES AND JOINT USE FACILITIES**

#### **4.01 MAINTENANCE**

(A) The City shall provide services and maintenance in the Demised Premises and Joint Use Facilities as indicated in Exhibit E, attached hereto and made a part hereof, and shall bear the cost thereof in consideration of payment to be made by the Lessee pursuant to the provisions hereof.

(B) The Lessee agrees that it will at all times under its control maintain its Demised Premises and Joint Use Facilities in a neat, clean, safe and orderly condition, in compliance with the requirements of 42 U.S.C. § 12101 *et seq.*, 49 U.S.C. § 41705, and 14 C.F.R. Part 382, and in keeping with the general decor of the area in which they are situated, and that it will perform those maintenance services shown on said Exhibit E to be performed by an Airline, including but not limited to:

(i) 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.

(ii) 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.

#### **4.02 ALTERATIONS TO DEMISED PREMISES**

The Lessee may, with prior written approval of the Manager, 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 Lessee in, on or about such Demised Premises shall be deemed to be personal and shall be and remain the property of the Lessee, except as otherwise provided herein and the Lessee shall have the right at any time during the term hereof to remove any or all of its property, subject to the Lessee's obligation to

repair damage, if any, resulting from such removal. All such fixtures, improvements, equipment and other property shall be removed from the 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 Lessee 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. It is understood and agreed that during such period and until such personal property is removed, the Lessee shall pay to the City the full rental applicable to those Demised Premises, as determined by the 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.

#### **4.03 SUB-LETTING, ASSIGNMENT AND GROUND HANDLING ARRANGEMENTS**

No interest or rights under this Agreement may be transferred except as provided under this Section 4.03

Lessee 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 Lessee's personnel of air transportation operations of other companies, subject, however, to each of the following conditions:

(A) No sub-lease, assignment, ground handling agreement or other transfer shall relieve Lessee from primary liability for any of its obligations hereunder, and Lessee shall continue to remain primarily liable for the payment of rentals, fees and charges applicable to such premises and facilities hereunder;

(B) Lessee 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

Any sublease, assignment or other transfer by Lessee to any affiliate or subsidiary company of Lessee shall be permitted without compliance with the conditions set forth above.

#### **4.04 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 Lessee'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 Lessee has complied and is complying with the terms and conditions of this Agreement with respect to the Demised Premises.

(B) To perform maintenance and make repairs and replacements in any case where the Lessee is obligated to do so and has failed after reasonable notice to do so, in which event the Lessee shall promptly upon demand reimburse the City for the actual cost thereof, plus a 15% administrative charge.

(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 police power.

No such entry by or on behalf of the City upon such Demised Premises leased to Lessee shall cause or constitute a termination of the letting thereof or be deemed to constitute an interference with the possession thereof by the Lessee.

#### **4.05 ABANDONMENT OF DEMISED PREMISES**

If the Lessee 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 the Manager, may consider such portion of the Demised Premises abandoned, and if needed for another use, upon not less than thirty (30) days' written notice to the Lessee, terminate the lease for such portion of the Demised Premises.

#### **4.06 DESTRUCTION OF PREMISES**

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

(A) The City, after consultation with Lessee, 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 Lessee 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 Lessee 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 Agreement.

(C) For portions of the Demised Premises that are untenable, Lessee 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 V GENERAL PROVISIONS**

### **5.01 AGREEMENTS WITH THE UNITED STATES**

This agreement 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. The provisions in the attached Appendices 1 and 2 are hereby incorporated herein by reference.

### **5.02 BOND ORDINANCES**

This Agreement 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 Agreement acknowledge and agree that all property subject to this Agreement which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Lessee agrees not to take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Lessee agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Agreement) not to claim depreciation or an investment credit with respect to any property subject to this Agreement 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.

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

(A) The Lessee shall not use, or authorize the use by any other person or party, of all or any portion of the Demised Premises, or any part of the Airport to which it is granted a right

of use or occupancy by this Agreement, for any purpose or use other than those authorized by this Agreement, or hereafter authorized in writing by the Manager. No use shall be considered authorized by this Agreement if such use would adversely affect the tax-exempt status of Airport Revenue Bonds.

(B) The Lessee shall comply with and shall cause its officers and employees and any other persons over whom it has control to comply with the Airport Rules and Regulations.

(C) The Lessee shall, at all times, faithfully obey and comply with all existing laws, rules and regulations adopted by federal, state, local or other governmental bodies and applicable to or affecting the Lessee and its operations and activities in and at the Airport, including 49 U.S.C. § 41705 (the Air Carrier Access Act) and implementing regulations at 14 C.F.R., Part 382, and 42 U.S.C. § 12101 et seq. (the Americans with Disabilities Act) and implementing regulations.

(D) It is agreed that any disputes regarding laws, ordinances, rules and regulations regarding the Airport issued by the City shall first be presented to administrative hearing before the Manager or the Manager's authorized representative following the procedure outlined in Denver Revised Municipal Code Section 5-17. It is further agreed that no action shall be brought against the City contesting any such laws, ordinances, rules and regulations until there has been full compliance with the terms of said section 5-17. Nothing herein shall be construed to prevent Lessee from contesting in good faith any laws, ordinances, rules or regulations without being considered in breach hereof during such time as is required to exhaust the administrative hearing procedures, so long as such contest is diligently commenced and prosecuted by Lessee.

## **PART VI RENTALS, RATES, FEES, AND CHARGES**

### **6.01 GENERAL PROVISIONS**

Rentals, Rates, Fees, and Charges shall be established in accordance with Section 120 of the Airport Rules and Regulations, as amended. The City, acting by and through its Manager, may from time to time reestablish the rentals, rates, fees and other charges for the use of Airport in accordance with ordinary cost-accounting concepts and ratemaking procedures established and adopted by the Manager for establishing rentals, rates, fees and charges.

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

(A) Rentals for the Demised Premises 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.

(B) In addition to the fixed rates, fees, and charges provided herein, Lessee shall pay for other common use facilities, equipment, services and maintenance utilized by Lessee. Said rates, fees and charges shall be paid monthly, in advance, and adjusted, if necessary, based on such actual costs. Any additional amount due from the Lessee or refund owed to the Lessee, as

the case may be, based on such actual costs, shall be paid by the Lessee or credited by the City, as the case may be, to rates, fees and charges. Such services may include, but are not limited to, industrial waste, sewer and water and trash.

### **6.03 AUDIT AND RECONCILIATION**

Upon release by the City's independent auditors of the audited financial statements of Airport, the City shall post 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. If the rentals, fees and charges paid by Lessee were greater than the respective amounts chargeable to Lessee, Lessee shall receive credits promptly in the amount of such overpayment against future rentals, fees and charges. If the rentals, fees and charges paid by Lessee were less than the respective amounts chargeable to Lessee, Lessee shall pay promptly the amount of any such deficiency.

## **PART VII TERM OF THE AGREEMENT**

### **7.01 TERM OF AGREEMENT**

The term of this Lease shall commence on January 1, 2013 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 on which British Airways' 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

### **7.02 TERMINATION OF LEASE BY CITY**

The City, acting by and through its Manager, may declare this Agreement terminated in part or in its entirety, as the Manager deems appropriate, upon the happening of any 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 Lessee herein agrees to pay, or any part thereof, shall be unpaid after the date the same shall become due; or
- (B) If the Lessee 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 Agreement 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 Lessee has agreed in this Agreement to conform; or
- (C) If Lessee shall be in violation of any provision of Section 4.03 with respect to the subletting of the Demised Premises hereunder; or

(D) If, during the term of this Agreement, the Lessee shall (a) apply for or consent to, in writing signed on behalf of the Lessee by any of its officers or its duly authorized attorney, the appointment of a receiver, trustee or liquidator of the Lessee 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 Lessee in any bankruptcy, reorganization or insolvency proceeding, or if during the term of this Agreement an order, judgment or decree shall be entered by any court of competent jurisdiction, on the application of a creditor, adjudicating the Lessee as bankrupt or as insolvent, or approving a petition seeking a reorganization of Lessee 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 Lessee a notice of intention to end the term of this Agreement 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 Agreement and all right, title and interest of Lessee 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 Lessee will then voluntarily and peaceably quit and surrender the Preferential Use Facilities and Demised Premises covered hereby to the City, but the Lessee shall remain liable as herein provided; or

(E) If any of Lessee's directors or officers assigned to or responsible for operations at the Airport shall be or have been convicted of any crime which is a disqualifying offense under 49 CFR 1544 governing issuance of airport security badges.

### **7.03 TERMINATION OF LEASE BY LESSEE**

The Lessee, at its option, may declare this Agreement terminated in part or in its entirety upon the happening of any one or more of the following events:

(A) If by any 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 British Airways 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), British Airways shall cease to have authority to operate aircraft in and out of the Airport pursuant to such a certificate or document, provided that (1) such governmental action or non-action was not requested by British Airways, and British Airways 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 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) British Airways or the Lessee gave the City reasonable advance notice that such governmental action or non-action was being requested or might occur, and British Airways or the Lessee 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 British Airways is deprived of such certificate of 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 Lessee and which is substantially necessary to the Lessee 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 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, Lessee's use of Airport in the conduct of its air transportation business; provided, however, none of the foregoing is due primarily to any fault of Lessee.

(E) If the Demised Premises are damaged or destroyed by fire or other casualty as set forth in paragraph 4.06 herein, and the City and Lessee mutually agree that such destruction of the premises is beyond repair and that substantially equivalent substitute premises and facilities are not available; or

(F) The Lessee may, by prior written notice sent to and received by the City, elect to terminate this Agreement if the Lessee fails to maintain any agreements, of any kind, to handle in any manner property, cargo, or mail at the Airport. This termination shall be effective no sooner than thirty (30) days after the receipt of notice by the City. Such termination and acceptance by the City shall not be a waiver of, or relieve the Lessee from, any obligations under this Agreement that arose during occupancy or that survive termination.

#### **7.04 EFFECTIVE DATE OF TERMINATION**

Notwithstanding anything to the contrary in this Agreement, 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 Agreement 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 thirty (30) day period, or in the event such cause is a default under this Agreement (for which termination is authorized) and if by its nature such default cannot be cured within such thirty (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 thirty (30) day period shall not apply to termination declared for failure of Lessee to make money payments hereunder, for which termination may be declared by the City upon fifteen (15) days' written notice, unless Lessee remedies such default within such fifteen (15) day period; and provided further that the Lessee will be allowed only two (2) notices of default with respect to money payments in any one year which it may cure. Upon termination of this Agreement, the parties hereto shall be relieved from all obligations hereunder except as set forth in Sections 6.05, 7.05, 7.06, 8.02, 10.08, 10.14, and 10.15. The right of any party hereto to terminate this Agreement 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.



## **7.05 SURRENDER AND HOLDING OVER**

The Lessee 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 the City excepted, and except as otherwise provided in Section 4.02, the Lessee shall forthwith remove there from 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.

Holding over by Lessee following the expiration of the term of this Agreement or any extension thereof, without an express agreement as to such holding over, shall be deemed and taken to be a periodic tenancy from month-to-month. The Lessee shall be subject to all the terms and conditions of this Agreement as amended from time to time or any extension thereof. 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 of this Agreement or as reestablished as provided for herein. In the event Lessee fails to surrender the Preferential Use Facilities and Demised Premises upon termination or expiration of this Agreement, or such month-to-month tenancy, then Lessee shall indemnify City against loss or liability resulting from any delay of Lessee in not surrendering same.

## **7.06 TERMINATION OF HOLDOVER**

If Lessee holds over pursuant to Section 7.05 hereof, either party may, with or without cause, cancel or terminate said tenancy by giving not less than thirty (30) days written notice to the other party. Said notice shall set out the date of such cancellation and termination.

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

### **8.01 PERFORMANCE BOND**

Unless otherwise provided by Airport Rules and Regulations, as they may be adopted or amended from time to time, upon the commencement of the term of this Agreement, the Lessee 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 Agreement, including a period of six (6) months after expiration (or earlier termination of the letting of the Demised Premises hereunder) of said Agreement, a valid corporate Performance Bond, or an irrevocable Letter of Credit, in the amount of Three Million Dollars (\$3,000,000.00), or an amount equal to three (3) months of rent, rates, fees or charges payable hereunder, whichever is less, 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 Agreement to be performed by the Lessee, and as said Agreement may be amended, supplemented or extended.

Notwithstanding the foregoing, if at any time during the term hereof, the Manager deems the amount of the surety insufficient to properly protect the City from loss hereunder because the

Lessee is or has been in arrears with respect to such obligations or because the Lessee has, in the opinion of the Manager, violated other terms of this Agreement, the Lessee agrees that it will, after receipt of notice, increase the surety to an amount required by the 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 Lessee's rental and fee rates in effect under this Agreement.

## **8.02 INDEMNIFICATION**

The Lessee 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, Lessee'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 Lessee 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 Lessee, its contractors, employees, agents, customers, or anyone claiming or acting by or through the Lessee.

Lessee 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, or other sterile area safety or security area is breached by or due to the negligence or willful act or omission of any of Lessee'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, Lessee 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 Lessee 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 complement such regulations.

Without limitation, the terms of this indemnity include an agreement by Lessee 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 Lessee's breach of any environmental requirement existing under federal, state or local law, regulation, order or other legal requirement in connection with any of Lessee's acts, omissions, operations or uses of property relating to this Agreement, or such a breach by the act or omission of any of Lessee'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 Lessee 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 Lessee of any claim or suit and the Lessee 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.

### **8.03 INSURANCE MAINTAINED BY LESSEE**

At all time during the term of this Agreement, unless otherwise required by federal or state governmental law or regulation, the Lessee is required and agrees, at its own cost and expense, to provide and keep in force for the benefit of the Lessee and the City, a policy, or policies, of insurance written on a single limit each occurrence basis with limits of not less than Ten Million Dollars (\$10,000,000.00) for bodily injury and property damage arising from any operation of the Lessee at the Airport and contractual liability coverage. The Manager may increase the limit of insurance required when, in her discretion, she 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 Lessee at the Airport, shall be in a form and written by a company, or companies, approved by the Airport's Risk Manager and shall insure the Lessee'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 Lessee as provided in Section 8.02 of this Agreement. 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- 9<sup>th</sup> Floor, 8500 Peña Boulevard, Denver, Colorado 80249-6340." All such policies of insurance, or certified copies thereof, together with receipts showing payment of premiums thereon, 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.

### **8.04 LIENS**

Except to the extent inconsistent with other provisions of this Agreement, the Lessee 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 license fees to become delinquent. The Lessee 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 self-

insurance plan approved by the State of Colorado insuring the payment of compensation to all its employees at the Airport. The Lessee 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 Lessee by any mechanic or materialman. The Lessee 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 Agreement. The Lessee 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 Lessee shall not, pending the termination of such contest, be obligated to pay, remove or otherwise discharge such lien or claim. The Lessee agrees to indemnify and save harmless the City from any loss as a result of the Lessee's action as aforesaid.

If the Lessee 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 Lessee 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 undisposed of; provided, however, that the Lessee, not less than five (5) days before any such tax, assessment or charge shall become delinquent, shall give notice to the City of the Lessee's intention to contest its validity. If such notice is so given by the Lessee to the City and such contest is conducted in good faith by the Lessee, the City shall not, pending the termination of such legal proceedings, pay, remove or discharge such tax, assessment or other charge.

#### **8.05 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 that may be caused by the City's employees or any other cause whatsoever, and the Lessee hereby covenants and agrees to make no claim for any such loss or damage at any time.

#### **8.06 FORCE MAJEURE**

Neither the City nor the Lessee shall be deemed to be in breach of this Agreement by reason of failure to perform any of its obligations under this Agreement 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 Lessee to pay rents, fees or other charges, or to make any other money payment

whatsoever required by this Agreement, except in those cases where provision is made in this Agreement for the abatement of such rents, fees, charges or payments under such circumstances.

## **PART IX QUIET ENJOYMENT; INCONVENIENCE DURING CONSTRUCTION**

### **9.01 COVENANT OF QUIET ENJOYMENT**

Upon the payment by Lessee of all rentals, rates, fees and charges properly assessed to Lessee and the performance of the covenants and agreements on the part of Lessee to be performed hereunder, Lessee 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.

### **9.02 INCONVENIENCE DURING CONSTRUCTION**

The Lessee recognizes that from time to time during the term of this Agreement 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 Lessee in its operations at the Airport. The City shall consult with Lessee prior to taking any such action which would adversely affect the Lessee's operations at the Airport unless such action is necessitated by circumstances which in the opinion of the Manager pose an immediate threat to the health and safety of persons using the Airport. The Lessee 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 Lessee waives any right to claim damages or other consideration for such minor inconvenience or minor discomfort.

## **PART X MISCELLANEOUS PROVISIONS**

### **10.01 LEASE BINDING**

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

### **10.02 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 Agreement.

### **10.03 SIGNS**

The Lessee 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 Manager or the Manager's authorized representative; and that signs identifying the Lessee, or for any other purpose, will conform to reasonable standards established by the Manager, or the Manager's authorized representative, with respect to type, size, design, location, and content. The initial Lessee directional signage package (roadway, Terminal, Concourse and directory) is provided by the City. All subsequent revisions and installations are at Lessee's expense unless required pursuant to paragraph 4.08 herein.

### **10.04 VENDING MACHINES**

No telecommunication devices, personal computers, amusement or vending machines or similar machines operated by coins or tokens, credit 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 Lessee's Demised Premises except with the permission of the Lessee and the Manager and the number, type, kind and locations thereof shall be in the discretion of the Manager and the Lessee. 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 Lessee 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 Lessee permits the installation of vending machines in its Demised Premises, the Lessee shall make no charge to the concessionaire for the privilege of installing or maintaining such machines, except that if the Lessee 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.

### **10.05 SALE OF FOOD, BEVERAGES AND MERCHANDISE**

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

### **10.06 PURCHASES BY LESSEE**

Property, services and materials (except as otherwise provided in this Lease) may be purchased or otherwise obtained by the Lessee 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 Lessee or its suppliers for the privilege of purchasing, selling, using, storing, withdrawing, handling, consuming, loading, unloading, or delivering any personal property of the Lessee, by the Lessee or its suppliers, or for the privilege of transporting such personal property to, from or on the Airport.

#### **10.07 NON-DISCRIMINATION**

The Lessee, 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 Appendix 1 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 Lessee 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 Lessee will in all of its operations and activities in and at the Airport comply with all applicable 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.

#### **10.08 NO PERSONAL LIABILITY**

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

#### **10.09 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 of Aviation  
Denver International Airport  
8500 Peña Boulevard, AOB 9<sup>th</sup> Floor  
Denver, Colorado 80249-6340

and Asset Development Section  
Manager, Lessees  
Denver International Airport  
8500 Peña Boulevard, AOB, 9<sup>th</sup> Floor,  
Room 9870  
Denver, Colorado 80249-6340

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

President  
Air General  
403 The Hill  
Portsmouth NH 03801

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 Lessee or said Manager.

#### **10.10 PLACE AND MANNER OF PAYMENTS**

In all cases where the Lessee is required by this Agreement 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 sent to: Airport Revenue Fund, Denver International Airport, P. O. Box 492065, Denver, Colorado 80249-2065, overnight express mail shall be addressed to: Airport Revenue Fund, Denver International Airport, Attn. Accounts Receivable, 8500 Peña Boulevard, Denver, CO 80249-6340 or at such other place in the City and County of Denver as the City may hereafter designate by notice in writing to the Lessee. All payments shall be made in legal tender of the United States. Any check or electronic payment shall be received by the City subject to collection, and the Lessee agrees to pay any bank charges for use of electronic payment methods or for the collection of any payments.

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

#### **10.11 SEVERABILITY**

In the event any covenant, condition or provision contained in this Agreement 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 Agreement.

#### **10.12 SECURITY**

It is understood and agreed by the Lessee that in addition to the Lessee's responsibilities to maintain the Demised Premises as provided herein, it shall take reasonable security precautions to use and 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 CFR, 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 Lessee that at any time during the term hereof when requested in writing by the Manager or his authorized representative, the Lessee shall submit to the Manager the security plans that are to be used and are being used by the Lessee on any or all of the Demised Premises.



### **10.13 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 Lessee 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 Lessee 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 Lessee of any term, covenant or condition of this Agreement other than the failure of the Lessee 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.

### **10.14 LESSEE BOOKS AND RECORDS**

The Lessee agrees that the Manager and the Auditor of the City or any of their duly authorized representatives, until the expiration of three (3) years after the termination of this Agreement, shall have the right, at any reasonable time and at their own expense, to have access to and the right to examine any books, documents, papers and records of the Lessee pertinent to this Agreement. The Lessee, upon request by either, shall make all such books and records available for examination and copying in Denver.

### **10.15 CITY BOOKS AND RECORDS**

The City shall follow such procedures and keep and maintain in Denver such books, records and accounts as are necessary or required under the provisions of this Agreement or the General Bond Ordinance. Such books, records and accounts shall contain all items affecting the computation of Lessee rentals, rates, fees and charges, recorded in accordance with reasonable accounting principles or procedures. Lessee shall have the right, at any reasonable time and at its own expense, until the expiration of three (3) years after the termination of this Agreement, to examine and make copies of the City's books, records and accounts pertinent to the Agreement.

### **10.16 CITY SMOKING POLICY**

The Lessee agrees that it will prohibit smoking by its employees and the public in the Demised Premises and will not sell or advertise tobacco products. Lessee acknowledges that smoking is not permitted in Airport buildings and facilities except for designated smoking lounges. The Lessee and its officers, agents and employees shall cooperate and comply with the provisions of the City's Executive Order No. 99 dated December 1, 1993, Executive Order No. 13 dated July 31, 2002, the provisions of Denver Revised Municipal Code, §§ 24-301 to 317 et. seq., and the Colorado Clean Indoor Air Act, C.R.S. §§ 25-14-201 et. seq.

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

The Lessee and its officers, agents and employees shall cooperate and comply with the provisions of Denver Executive Order No. 94 dated October 29, 2002, and Attachment A thereto, or any successor executive order concerning the use, possession or sale of alcohol or drugs.

#### **10.18 THIRD PARTIES**

This Agreement 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 Lessee may assign this Agreement in accordance with Section 4.03 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 Lessee because of any breach hereof or because of any of the terms, covenants, agreements and conditions herein contained.

#### **10.19 SUPPLEMENTAL INFORMATION TO BE SUPPLIED BY LESSEE**

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

#### **10.20 CITY NON-DISCRIMINATION**

In connection with the performance of work under this Agreement, the Lessee agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability. The Lessee further agrees to insert the foregoing provision in all subleases hereunder.

#### **10.21 DISPUTES**

It is agreed and understood by the parties hereto that disputes under or related to this Agreement 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, or such other substantially similar ordinance as may be adopted hereafter by the City. The City, however, shall retain its right to obtain an order of eviction in accordance with applicable state laws. The parties hereto agree that the Manager's determination resulting from said administrative hearing shall be final, subject only to the right of the parties to appeal the determination under Colorado Rule of Civil Procedure 106, or subject to rights under federal law.

#### **10.22 AMENDMENTS TO EXHIBITS AND APPENDICES**

The parties acknowledge that the rights and obligations of each of them as set forth in this Agreement will extend over a period of years. The Exhibits and Appendices hereto are intended to set forth the parties' current understandings and expectations with respect to the intended leasehold interests and such understandings and expectations may change over time. Therefore, the Manager is expressly authorized to make adjustments to such exhibits and appendices from time to time to reflect agreed-upon changes, without affecting the underlying rights and obligations as set forth herein. Any such adjustments shall be evidenced in writing.

#### **10.23 ENTIRE AGREEMENT; AMENDMENT**

The parties acknowledge and agree that the provisions contained in this Agreement 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 Agreement 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 all the parties with the same formality as this Agreement.

#### **10.24 CONDITION; FINAL APPROVAL**

This Agreement 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 Lessee. This Agreement may be signed electronically by either party in the manner specified by the City.

**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-201310728-00

Contractor Name: Air General, Inc.

By: Paula A. Dexter

Name: PAULA A. DEXTER  
(please print)

Title: PRESIDENT  
(please print)

ATTEST: [if required]

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

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

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



**Contract Control Number:** PLANE-201310728-00

**Contractor Name:** Air General, 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 B – [RESERVED FOR FUTURE USE]**

**LEGAL DESCRIPTION FOR THE PROPOSED AIR GENERAL LEASE AREA**

Date: May 9, 2012; Revised April 15, 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 5289.46 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 North 00°02'02" West along said interior wall line, a distance of 159.10 feet to the centerline of a common wall, also being the Point of Beginning;

Thence South 89°57'58" West along said centerline, 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 43.18 feet to the southerly interior wall extended;

Thence North 89°57'58" East along said interior wall, a distance of 20.12 feet to the easterly interior wall;

Thence North 00°02'02" West along said interior wall, a distance of 19.54 feet to the northerly interior wall;

Thence South 89°57'58" West along said interior wall, a distance of 20.12 feet to the centerline the westerly wall;

Thence North 00°02'02" West along said centerline, a distance of 50.60 feet to the interior wall extended westerly;

Thence North 89°57'58" East along said interior wall, a distance of 114.00 feet to the interior wall;

Thence South 00°02'02" West along said interior wall, a distance of 113.32 feet to the Point of Beginning.

Said Building Lease Area contains 12525.34 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 113.32 feet;

Thence North  $89^{\circ}57'58''$  East, a distance of 107.00 feet to the centerline of the westerly wall of said existing building;

Thence South  $00^{\circ}02'02''$  East along said centerline, a distance of 113.32 feet to Point A.

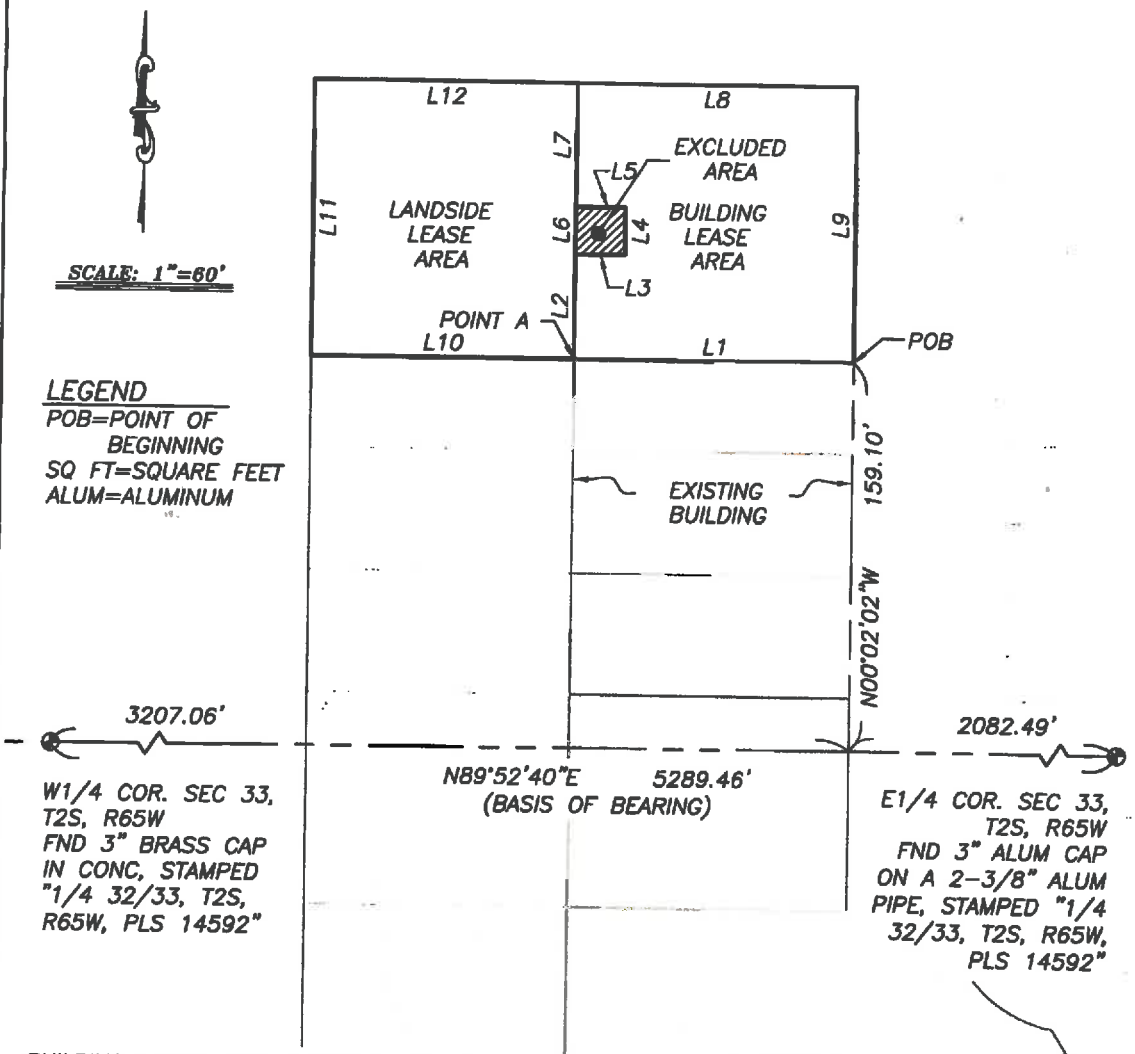
Said Landside Lease Area contains 12125.24 square feet.

Total area of Building Lease area and Landside Lease area equals 24650.58 square feet.



 4/12/13  
Approved by: Michael H. Steffens, P.E. Date





BUILDING LEASE AREA 12525.34 SQ FT  
 LANDSIDE LEASE AREA 12125.24 SQ FT  
 TOTAL 24650.58 SQ FT



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* 4/10/13  
 Michael H. Steffens, P.E. Date  
 Manager of Construction



**CITY AND COUNTY OF DENVER  
 DEPARTMENT OF AVIATION  
 DENVER INTERNATIONAL AIRPORT**

REVISED		
NO.	DATE	NAME

**Air General 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 05/09/12	SCALE 1"=60'	DRAWN BY: TJB FIELD BY: NA CHECKED BY: RTL	SHEET NO. 1 OF 2 SHEETS	DRAWING NO. S:\DRAWINGS\1371 13T0907RLeaseExhibits
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LINE TABLE		
Line #	Direction	Length
L1	S89°57'58"W	114.00'
L2	N00°02'02"W	43.18'
L3	N89°57'58"E	20.12'
L4	N00°02'02"W	19.54'
L5	S89°57'58"W	20.12'
L6	S00°02'02"E	19.54'
L7	N00°02'02"W	50.60'
L8	N89°57'58"E	114.00'
L9	S00°02'02"E	113.32'
L10	S89°57'58"W	107.00'
L11	N00°02'02"W	113.32'
L12	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

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



**CITY AND COUNTY OF DENVER  
DEPARTMENT OF AVIATION  
DENVER INTERNATIONAL AIRPORT**

REVISED		
NO.	DATE	NAME

**Air General 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  
05/09/12

SCALE  
1"=60'

DRAWN BY: TJB  
FIELD BY: NA  
CHECKED BY: RTL

SHEET NO. 2  
OF 2 SHEETS

DRAWING NO.  
S:\DRAWINGS\13T\13T0907R\LeaseExhibits

**LEGAL DESCRIPTION FOR THE PROPOSED AIR GENERAL LEASE AREA**

Date: November 14, 2011

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 5289.46 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 North 00°00'00" East, a distance of 231.55 feet to the Point of Beginning of Parcel 3;

Thence continuing North 00°00'00" East, a distance of 40.71 feet;

Thence North 90°00'00" East, a distance of 212.48 feet;

Thence South 00°00'00" East, a distance of 78.68 feet;

Thence North 72°50'17" West, a distance of 118.39 feet;

Thence North 00°00'00" East, a distance of 13.74 feet;

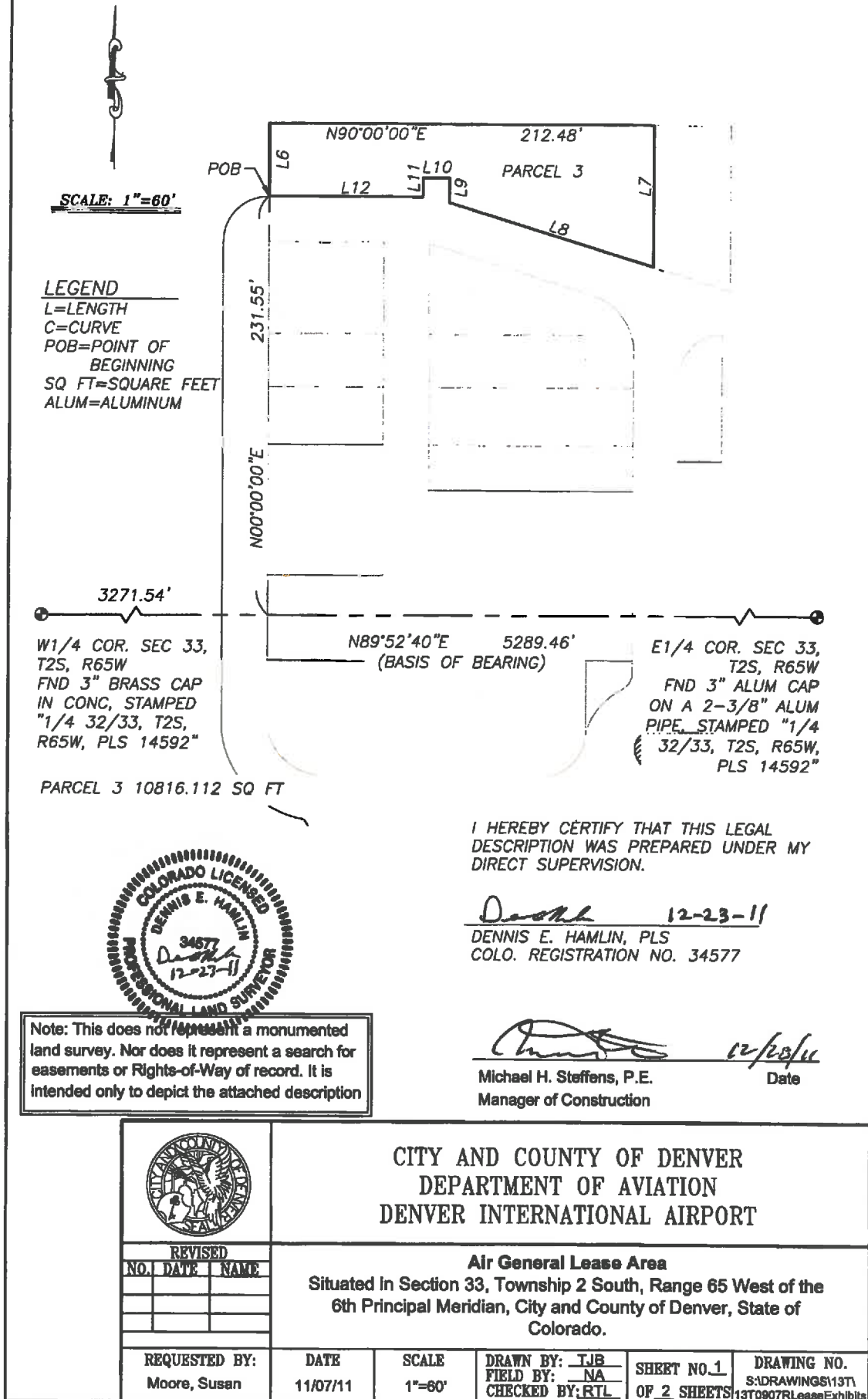
Thence North 90°00'00" West, a distance of 14.33 feet;

Thence South 00°00'00" East, a distance of 10.71 feet;

Thence North 90°00'00" West, a distance of 85.03 feet to the Point of Beginning.

Said Parcel 3 contains 10816.112 square feet.







LINE TABLE		
LINE #	DIRECTION	LENGTH
L6	N00°00'00"E	40.71'
L7	S00°00'00"E	78.68'
L8	N72°50'17"W	118.39'
L9	N00°00'00"E	13.74'
L10	N90°00'00"W	14.33'
L11	S00°00'00"E	10.71'
L12	N90°00'00"W	85.03'



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

Dennis E. Hamlin 12-27-11  
DENNIS E. HAMLIN, PLS  
COLO. REGISTRATION NO. 34577

Michael H. Steffens 12/28/11  
Michael H. Steffens, P.E.  
Manager of Construction  
Date



CITY AND COUNTY OF DENVER  
DEPARTMENT OF AVIATION  
DENVER INTERNATIONAL AIRPORT

REVISED		
NO.	DATE	NAME

**Air General 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. 2  
OF 2 SHEETS

DRAWING NO.  
S:\DRAWINGS\13T\13T0907R\LeaseExhibits

**LEGAL DESCRIPTION FOR THE PROPOSED AIR GENERAL LEASE AREA**

Date: November 14, 2011

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 5289.46 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 North 00°00'00" East, a distance of 155.82 feet to the Point of Beginning of Parcel 1;

Thence continuing North 00°00'00" East, a distance of 50.50 feet;

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

Thence South 00°00'00" East, a distance of 50.50 feet to Point A;

Thence North 90°00'00" West, a distance of 63.36 feet to the Point of Beginning.

Said Parcel 1 contains 3199.950 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 2

Thence North 00°00'00" East, a distance of 49.93 feet;

Thence South 72°50'17" East, a distance of 90.68 feet;

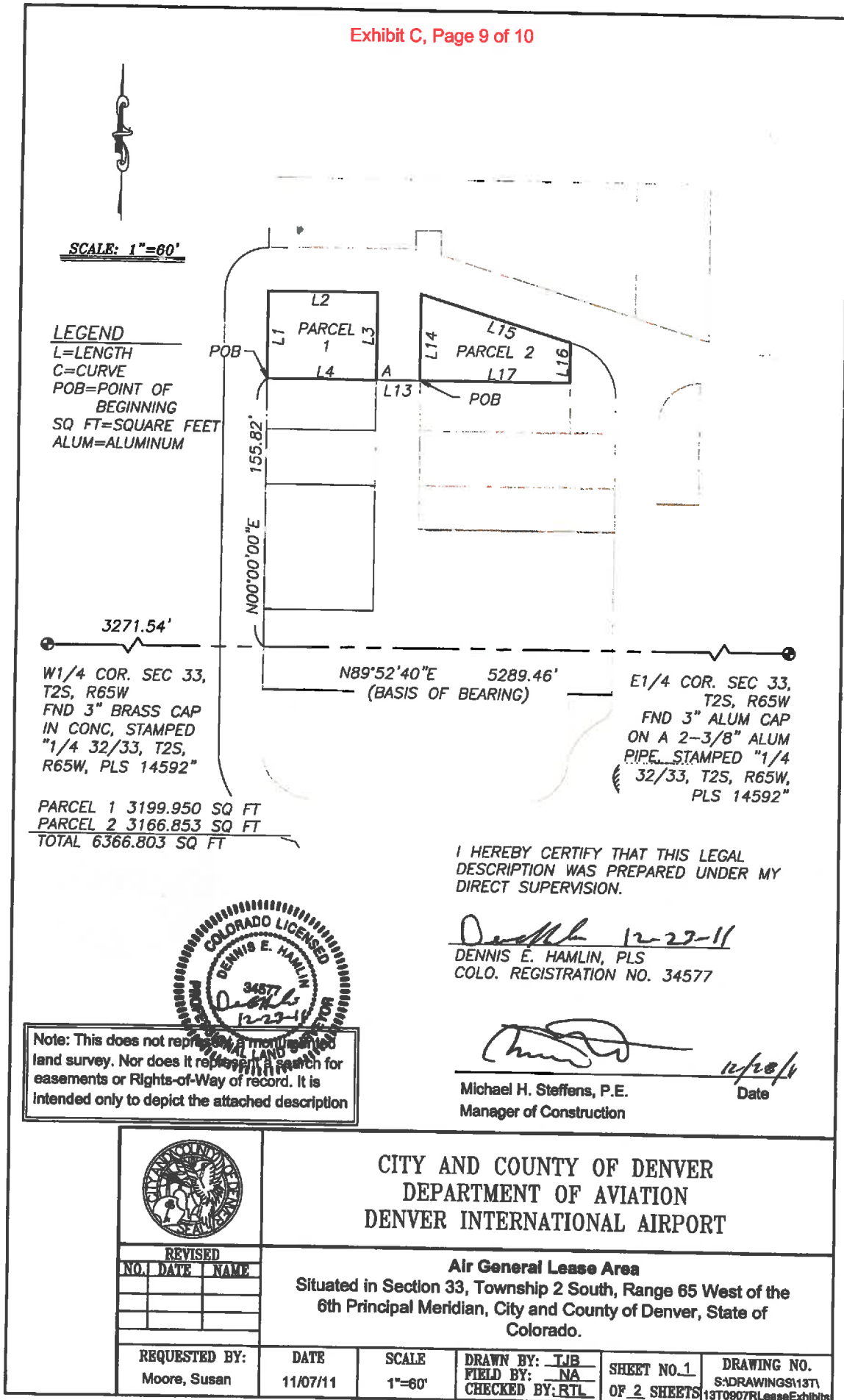
Thence South 00°00'00" East, a distance of 23.17 feet;

Thence North 90°00'00" West, a distance of 86.64 feet to the Point of Beginning.

Said Parcel 2 contains 3166.853 square feet.

Total area of Parcels 1 & 2 equals 6366.803 square feet.





CITY AND COUNTY OF DENVER  
 DEPARTMENT OF AVIATION  
 DENVER INTERNATIONAL AIRPORT

REVISED		
NO.	DATE	NAME

**Air General 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:\DRAWINGS\137\1370907RLeaseExhibits
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LINE TABLE		
LINE #	DIRECTION	LENGTH
L1	N00°00'00"E	50.50'
L2	N90°00'00"E	63.36'
L3	S00°00'00"E	50.50'
L4	N90°00'00"W	63.36'
L13	N90°00'00"E	25.00'
L14	N00°00'00"E	49.93'
L15	S72°50'17"E	90.68'
L16	S00°00'00"E	23.17'
L17	N90°00'00"W	86.64'



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

Dennis E. Hamlin 12-23-11  
DENNIS E. HAMLIN, PLS  
COLO. REGISTRATION NO. 34577

Michael H. Steffens 12/28/11  
Michael H. Steffens, P.E.  
Manager of Construction

	<b>CITY AND COUNTY OF DENVER</b> <b>DEPARTMENT OF AVIATION</b> <b>DENVER INTERNATIONAL AIRPORT</b>				
	<b>Air General 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: DATE SCALE DRAWN BY: TJB Moore, Susan 11/07/11 1"=80' FIELD BY: NA CHECKED BY: RTL				
	SHEET NO. 2		DRAWING NO. S: DRAWINGS\13T\13T0907RLeaseExhibits		

**EXHIBIT D -[RESERVED FOR FUTURE USE]**

EXHIBIT E – CARGO AREA

**DENVER INTERNATIONAL AIRPORT  
SUMMARY OF OPERATION AND MAINTENANCE RESPONSIBILITIES**

	Demised Premises	Preferential Use Premises	Public Areas	Airfield
Core Shell Building*	C			
Building Exteriors	C	-	-	C
Overhead Doors	A	-	-	
Landscaping	-	-	-	C
Roadways	-	-	-	C
Fire Protection System/Equipment	C**	A		
Law Enforcement, Fire Protection, Emergency Medical Services	C	C	C	C
Plumbing	C (1,2)	-	-	C
Electrical and Lighting	C (1,2)	-	C (1,4)	C
HVAC	C (1)	-	-	-
Glass Breakage	C (1)	-	C	C
Communications Systems	C (1)	-	C (1)	C
Custodial Service/Window Cleaning	A	-	-	C
Trash Removal				
Signage	A	-	C (1,4)	C
Snow Removal	A	A (3)	C (4)	C

Key:     A = Airline  
          C = City

- 1 Airline is responsible for maintenance, repair and replacement of Airline-installed devices and equipment.
- 2 Airline is responsible for routine maintenance, including relamping.
- 3 Airline is responsible for cleaning and snow removal on aircraft parking ramp (from building to VSR), including emergency stairs on outside of building.
- 4 Public Areas are the public roadways

\*City is responsible for the building structure, including exterior and supporting walls, base floor, roof structure and roof.

\*\* City is responsible for maintaining building sprinkler system and fire alarm system. If airline constructs areas requiring additional fire protection equipment, Airline is responsible for constructing and maintaining the system according to building and fire code requirements. Airline is responsible for providing and maintaining fire extinguishers.

If Airline fails to perform its maintenance and repair obligations as stated in this Agreement, the City may perform the work after thirty day written notice and recover its entire cost from Airline as additional rent on the next rent date.

7/26/2012

**EXHIBIT F – [RESERVED FOR FUTURE USE]**

## 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.