

BY AUTHORITY

ORDINANCE NO. _____

COUNCIL BILL NO. CB12-0346

SERIES OF 2012

COMMITTEE OF REFERENCE:

BUSINESS, WORKFORCE, & SUSTAINABILITY

A BILL

For an ordinance approving a proposed Fourth Amendment to Lease Agreement between the City and County of Denver and Convenience Retailers LLC concerning a gas station, convenience store and food court at Denver International Airport.

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

Section 1. The proposed Fourth Amendment Agreement between the City and County of Denver and Convenience Retailers LLC in the words and figures contained and set forth in that form of 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. 95-796-D, is hereby approved.

COMMITTEE APPROVAL DATE: May 10, 2012

MAYOR-COUNCIL DATE: May 15, 2012

PASSED BY THE COUNCIL: _____, 2012

_____ - PRESIDENT

APPROVED: _____ - MAYOR _____, 2012

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

NOTICE PUBLISHED IN THE DAILY JOURNAL: _____, 2012; _____, 2012

PREPARED BY: Debra Overn,  Assistant City Attorney DATE: May 17, 2012

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: May 17, 2012

FOURTH AMENDMENT TO LEASE AGREEMENT

THIS FOURTH AMENDMENT TO LEASE AGREEMENT (this "Amendment"), is made and entered into effective on the date stated on the City's signature page below, by and between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado ("**City**"), and **CONVENIENCE RETAILERS LLC**, a Delaware limited liability company authorized to do business in Colorado ("**Tenant**").

RECITALS

WHEREAS, the City owns and operates Denver International Airport ("DIA" or "Airport") through its Department of Aviation; and

WHEREAS, the City and Conoco, Inc., a Delaware corporation, entered into that certain Lease Agreement, dated December 6, 1995, which was first amended by a First Amendment to Agreement dated May 13, 1997, further amended by a Second Amendment to Lease Agreement dated June 24, 2003, and subsequently fully amended and restated pursuant to an "Amended and Restated Lease Agreement" dated December 29, 2010, with Tenant, which is amended by this Fourth Amendment (collectively the "Lease"), leasing land on DIA property near Peña Boulevard and Gun Club Road; and

WHEREAS, the Manager of Aviation consented to a transfer of the rights and interest in the Lease to Tenant on January 29, 2009, and all rights in the Lease were assigned to Tenant on or about February 1, 2009; and

WHEREAS, the parties desire to further amend the Lease;

NOW THEREFORE, for and in consideration of the promises made below and other good and valuable consideration, the parties agree as follows:

1. **The attached Exhibit A, Depiction of Lease Premises**, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.
2. **The attached Exhibit A-1**, regarding monument signs, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.
3. **The attached Exhibit B**, regarding requirements imposed by the City's Division of Small Business Opportunities, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.

4. The attached **Exhibit D**, describing the Food Court Project, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.
5. The attached **Exhibit E**, describing the Forty Five Minute Waiting Area, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.
6. The attached **Exhibit X**, regarding Design Standards, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.
7. The attached **Exhibit N**, regarding DIA Environmental Requirements, is hereby added to the Lease, replacing any earlier version of this Exhibit, and is incorporated into the Lease by this reference.
8. The following language is **deleted** from **Section 1.01**:

The City and Tenant acknowledge and agree the City previously executed a Consent to Sublease dated August 21, 2002 (the "Sublease Consent"), wherein the City consented to a Sublease Agreement between Conoco, as sublessor, and DIA Auto Services, LLC, a Colorado limited liability company, as sublessee, dated October 2, 2001, which Sublease Agreement was amended by Amendment I to Sublease, dated October 2, 2001, Amendment II to Sublease, dated October 18, 2006, and Amendment III to Sublease, dated August 10, 2007 (collectively, the "Sublease"). The Sublease Consent, and the City's approval of the Sublease, shall remain in effect, and shall also apply in connection with this Lease.

9. The following language is added to **Section 2.06, "Land"**:

A land survey shall be conducted by the City, at its sole expense, after the Food Court Project is complete, to formalize property limits and square footage. The Manager may substitute such survey for **Exhibit A** and may add or subtract square footage of up to 10% of the Land without City Council approval.

10. **New Sections 2.15, 2.16, and 2.17**, are added to the Lease, as follows:

2.15 FAST FOOD RESTAURANT. "Fast Food Restaurant" shall mean food and coffee offerings that can be prepared and served quickly in a convenient location offering quality and competitive pricing. The Manager shall have the right to approve or reject the brands of the restaurants.

2.16 FOOD COURT PROJECT. "Food Court Project" shall mean an area in the location shown on Exhibit D, offering four Fast Food Restaurants and other services described in Exhibit D.

2.17 FORTY-FIVE MINUTE WAITING AREA. "Forty-Five Minute Waiting Area" shall mean an area of at least 160 parking spaces and associated improvements, as described in Exhibit E.

11. **Section 3.02** of the Lease, entitled "Use of Lease Premises," is hereby amended and restated to read as follows:

3.02 USE OF LEASE PREMISES.

- A. Tenant shall design, construct, and operate the following facilities on the Lease Premises:
- i. a public gas station for the sale of all grades of unleaded gasoline and diesel fuel for motor vehicles;
 - ii. a convenience store and Fast Food Restaurant; and
 - iii. the Food Court Project.
- B. Tenant also shall design and construct the Forty-Five Minute Waiting Area on property provided by the City, as shown on Exhibit E. The Forty-Five Minute Waiting Area shall not be considered part of the Leased Premises. After Tenant completes construction, the City will operate and maintain the Forty-Five Minute Waiting Area.
- C. In addition to the facilities listed in A. above, Tenant shall have the right to design, construct, and use the Lease Premises for any or all of the following purposes:
- i. the sale of propane and/or such other alternative fuels as approved by the Manager;
 - ii. the sale of automotive accessories, and the operation of a convenience store;
 - iii. sale of tobacco products;
 - iv. sale of alcoholic beverages;
 - v. Fast Food Restaurant
 - vi. Placement of Monument Signs, except that such Monument Signs may be located solely on the portion of the Land described and depicted in **Exhibit A-1**.

D. The Lease Premises shall be utilized for no other purposes than those stated in this Section, unless otherwise authorized in writing by the Manager.

12. **Section 4.01** of the Lease, entitled "Term," is amended by striking the words "December 31, 2022" and replacing them with "fourteen (14) years after the opening of any portion of the Food Court Project. The date of such opening shall be documented by a letter from the Manager to Tenant, and deemed effective only if and when Tenant has mutually acknowledged the same, which acknowledgment shall not be unreasonably withheld."

13. **Section 5.01(i)** of the Lease, entitled "Compensation," is amended and restated to read as follows:

- (i) ground rent, to be calculated based on the square footage of the Lease Premises times the rate established under the Schedule of Fees and Charges, Airport Rules and Regulations Part 120.09, as it may be amended from time to time. The Manager shall timely notify Tenant of any change to Part 120.09. Ground Rent shall be paid in twelve (12) equal monthly amounts beginning on the Rent Commencement Date ("Monthly Ground Rent"); plus

14. **Section 5.01(ii)** of the Lease, entitled "Compensation," is hereby amended and restated to read as follows:

- (ii) the greater of:
 - (A) a minimum monthly guarantee of \$31,000 per month through April 2013, and an additional \$17,600 per month beginning after the opening of the Food Court Project, or May 1, 2013, whichever is earlier (the "Monthly Guarantee"); provided however that the May 1, 2013, milestone may be postponed by the Manager for good cause shown by the Tenant, including for reasons stated in Section 6.16.A.4 *infra*. Any such postponement shall be documented in a letter from the Manager to the Tenant. Or,
 - (B) a sum equal to the sum of: (i) ten percent (10%) of the monthly Gross Revenues, as herein defined, received by the Tenant for the calendar month in question from the sale by Tenant to the general public from the Lease Premises of all food, beverages, services, merchandise, and products, other than those set forth in the following subsection, and other than gasoline and fuel, plus (ii) fifteen percent (15%) of the monthly Gross Revenues derived by Tenant from the sale by Tenant to the general public from the Lease Premises of all alcohol, and fast food from any Fast Food Restaurant operated by Tenant on the Lease Premises ("Percentage Compensation Fee"); provided, however,

notwithstanding the foregoing, no amounts relating to gasoline shall be payable under this subsection (ii), and gasoline and fuel sales shall not be considered in determining amounts owing under this subsection (ii). In January of each calendar year during the Term, commencing January 1, 2012, the annual Monthly Guarantee shall be adjusted to be the higher amount of either (a) 85% of the Percentage Compensation Fee paid to the Airport for the prior calendar year under this subsection (ii), or (b) the prior calendar year's Monthly Guarantee, plus

15. The following language is added to the end of **Section 5.01(iv)** of the Lease:

Beginning January 1, 2023, the Fuel Commission shall be adjusted based on a market analysis of practices at similar airports, including but not limited to DFW, SMF, EWR, and JFK. The analysis will be performed by the Airport, and will be subject to the mutual agreement of the parties.

16. **Section 6.03** of the Lease, entitled "Hours of Operation," is hereby amended and restated to read as follows:

6.03 HOURS OF OPERATION. Tenant agrees to keep the convenience store, one Fast Food Restaurant, and a restaurant serving high-end coffee products open for business to the public twenty-five (24) hours per day, seven (7) days per week. Hours of operation for other facilities and services on the Lease Premises shall be by mutual agreement of the parties.

17. The first paragraph of **Section 6.07** of the Lease, entitled "Compliance with Environmental Requirements," is amended and restated to read as follows:

6.07 COMPLIANCE WITH ENVIRONMENTAL REQUIREMENTS. Tenant is required to comply with all federal, state, and local environmental rules, regulations, and requirements. This includes compliance with DIA Rule and Regulation 180, and the attached **Exhibit N**. Tenant shall acquire all necessary federal, state, local and airport permits and comply with all permit requirements. Any hazardous materials not normally used in Tenant's operations hereunder are barred from the Lease Premises. Tenant shall identify to the City all hazardous materials to be used at the Lease Premises.

18. The second paragraph of **Section 6.15** of the Lease, entitled "Restriction on Changes and Alterations," is amended and restated to read as follows:

First-class standards of design and construction will be required in connection with all such work, facilities, and improvements, and all improvements shall conform with applicable statutes, ordinances, building codes, regulations and other general requirements of City, including but not limited to compliance with DIA Design Standards and DIA Tenant Development Guidelines, Airport Rules and Regulations governing tenant construction specifications, and other requirements in the attached **Exhibit X**, "Design Standards, Construction Procedures and Environmental Requirements," which is incorporated into this Lease by this reference, as well as procurement of general liability and builder's risk insurance and performance and payment bonds, and compliance with worker's compensation, prevailing wage pursuant to Denver Revised Municipal Code Section 20-76 *et seq.*, federal DBE participation requirements, and compliance with the Americans with Disabilities Act, 42 U.S.C. 12,000 *et seq.*, and its regulations. The approval given by City shall not constitute a representation or warranty as to such conformity; responsibility therefore shall at all times remain with Tenant.

19. **Section 6.16.A** of the Lease, entitled "Renovation of Leased Premises," is hereby amended and restated to read as follows:

6.16 RENOVATION OF LEASED PREMISES.

A. Renovations.

1. **General Renovation.** Notwithstanding Section 6.15 above, Tenant shall, at its sole cost and expense, during the period from the Rent Commencement Date to a time no later than October 1, 2012, substantially complete renovating and refurbishing certain improvements, as generally described below in this Section 6.16(A) (collectively the "General Lease Improvements"), at a minimum investment of One Million Six Hundred Seventy-Three Thousand Dollars (\$1,673,000.00). This minimum investment shall not include financing costs, interest, inventory or intra company charges related to construction, but may include architectural and engineering charges not exceeding fifteen percent (15%) of the total minimum investment for the General Lease Improvements. These General Lease Improvements shall at a minimum include the following:

- i. Interior and exterior remodel of building in accordance with approvals granted by the Manager;
- ii. With the permission of the Manager regarding choice of service provided, building and commencing business from an on-site Fast-Food Restaurant.
- iii. A building extension to accommodate a drive through for the fast food service area, in accordance with approvals granted by the Manager in pursuant to Airport Rules and Regulations and the DIA Tenant Development Guidelines;
- iv. Upgrade of all existing fuel dispensers;
- v. Addition of four fuel dispensers;
- vi. Additional diesel fuel dispenser;
- vii. Commencement of beer sales, after all appropriate license have been obtained; and
- viii. Demolition of one car wash and upgrade of remaining car wash in accordance with approvals granted by the Manager in pursuant to Airport Rules and Regulations and the DIA Tenant Development Guidelines.

2. Food Court Project and Waiting Area. In addition to other required renovations, Tenant shall design and construct the Food Court Project and the Forty-Five Minute Waiting Area. Design and construction shall be complete and operation of the Food Court Project shall begin no later than May 1, 2013, at a minimum investment of Four Million Three Hundred Sixty Thousand Dollars (\$4,360,000.00). The minimum investment shall not include financing costs, interest, inventory or intra company charges related to construction, but may include architectural and engineering charges not exceeding fifteen percent (15%) of the total renovation minimum investment for these improvements.

a. Food Court Project Liquidated Damages. A daily liquidated damage of \$578.00 will be imposed for construction not completed by May 1, 2013, unless the Manager extends such deadline in accordance with section 6.16.A.4 *infra*.

3. Midterm Refurbishment. A refurbishment of the Leased Premises at a minimum investment of Four Hundred Thousand Dollars (\$400,000) shall be required not later than May 01, 2020. This shall consist of 50% aesthetics and 50% for customer service experience. The Manager shall have the right to approve or reject the proposed midterm refurbishment plan.

4. Extension of Deadlines. Notwithstanding the foregoing, the completion date shall be extended for one (1) day for each day of delay in substantial completion caused by force majeure events, or any events otherwise beyond the reasonable control of Tenant. The Manager may extend the completion date for any delays caused by the acts or omissions of the City or its agents, representatives or employees (including, without limitation, any failure by the City to comply with its obligations under this Lease), or delays caused by approval and permitting processes of the FAA, Denver International Airport and/or the City and County of Denver which directly affect the Tenant's ability to practicably or legally operate the Food Court. The Manager also may extend the deadlines stated in this Amendment for good cause shown by the Tenant. Any such extensions shall be documented in a letter from the Manager to the Tenant.

20. Except as otherwise provided herein, all of the terms, provisions, and conditions of the Existing Lease shall remain in full force and effect as though set out in full here, and are hereby ratified and reaffirmed.

21. This Fourth Amendment to Lease Agreement shall not be effective or binding on the City until fully executed by all signatories of the City and County of Denver and approved by the City Council.

**[END OF AGREEMENT]
[SIGNATURE PAGE FOLLOWS]**

Contract Control Number: PLANE-AC59013-04

Contractor Name: Convenience Retailers, LLC

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

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

By _____

By _____

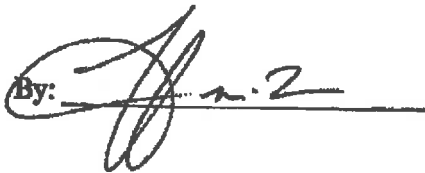
By _____



IN WITNESS WHEREOF, the parties have hereunto set their hands and affixed their seals at Denver, Colorado as of the date indicated on the City signature page.

Contract Control Number: AC59013-4

Vendor Name: CONVENIENCE RETAILERS LLC

By: 

Name: HAMILTON TRAN
(please print)

Title: General Counsel/ Secretary
(please print)

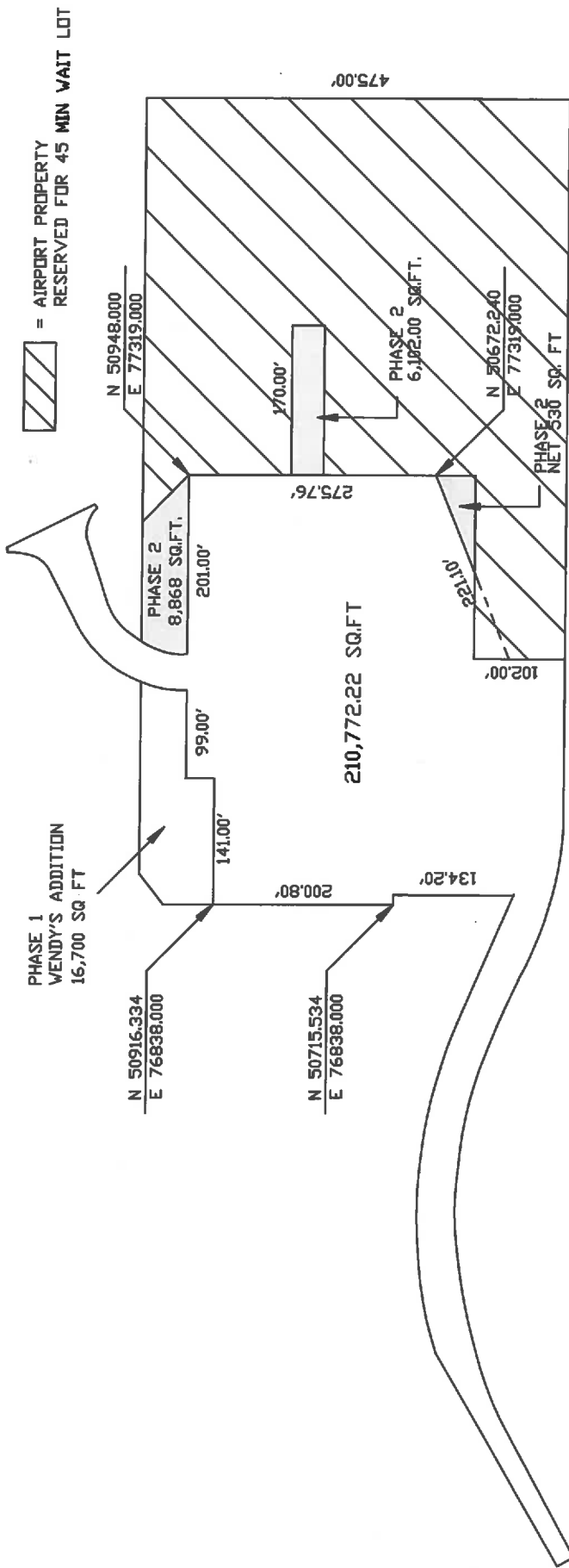
ATTEST: [if required]

By: 

Name: Liz Bermudez
(please print)

Title: Sr. Paralegal
(please print)





LEASE DESCRIPTION OF STATION LEASE AREAS

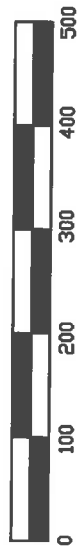
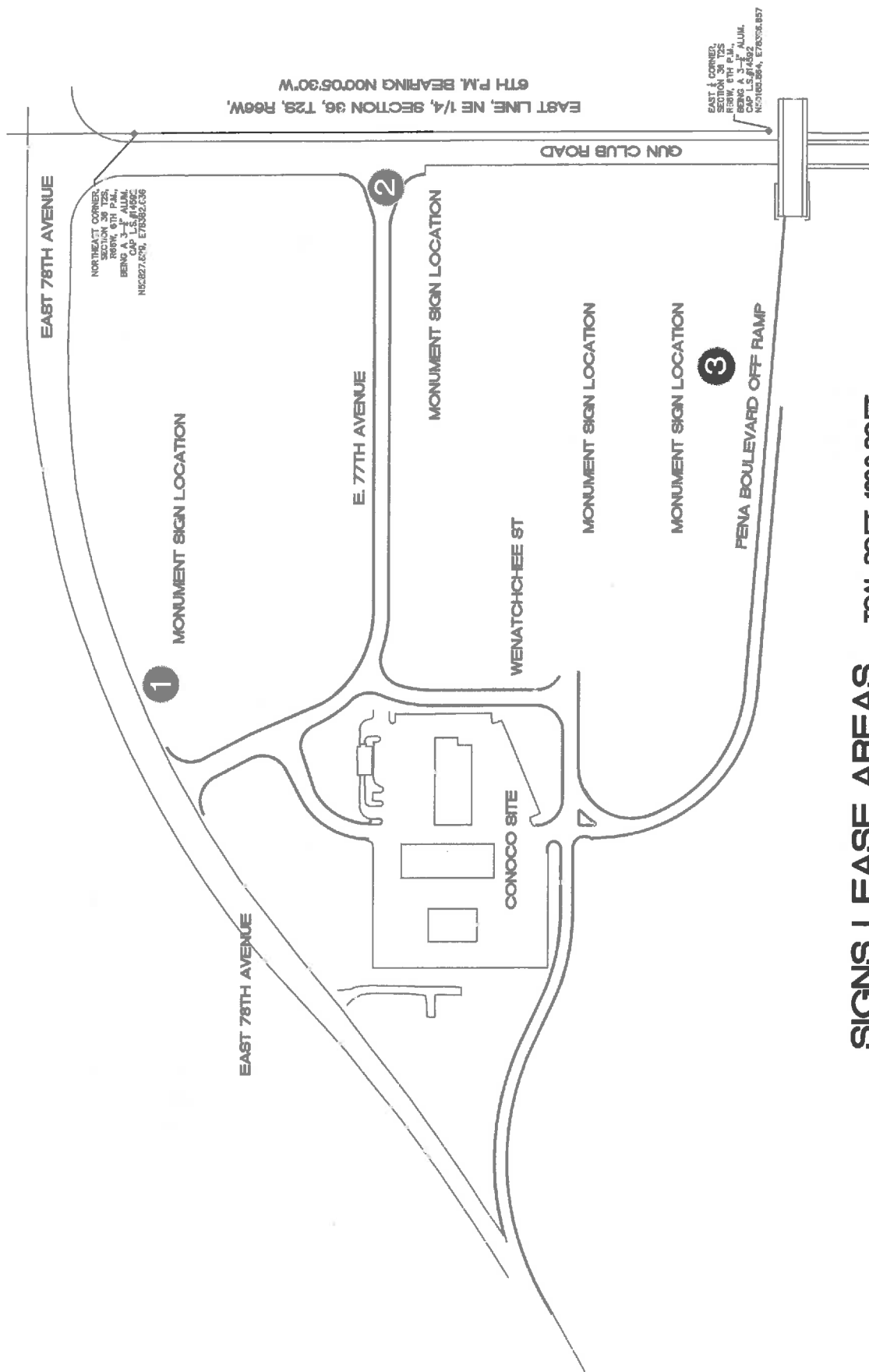


EXHIBIT A

4TH AMENDMENT 03-23-2012



SIGNS LEASE AREAS **TOAL 90.FT 169.9 90.FT**

No Scale:

EXHIBIT A-1

4TH AMENDMENT 03-23-2012

EXHIBIT D

(Page 1 of 2)

FOOD COURT PROJECT

Location:

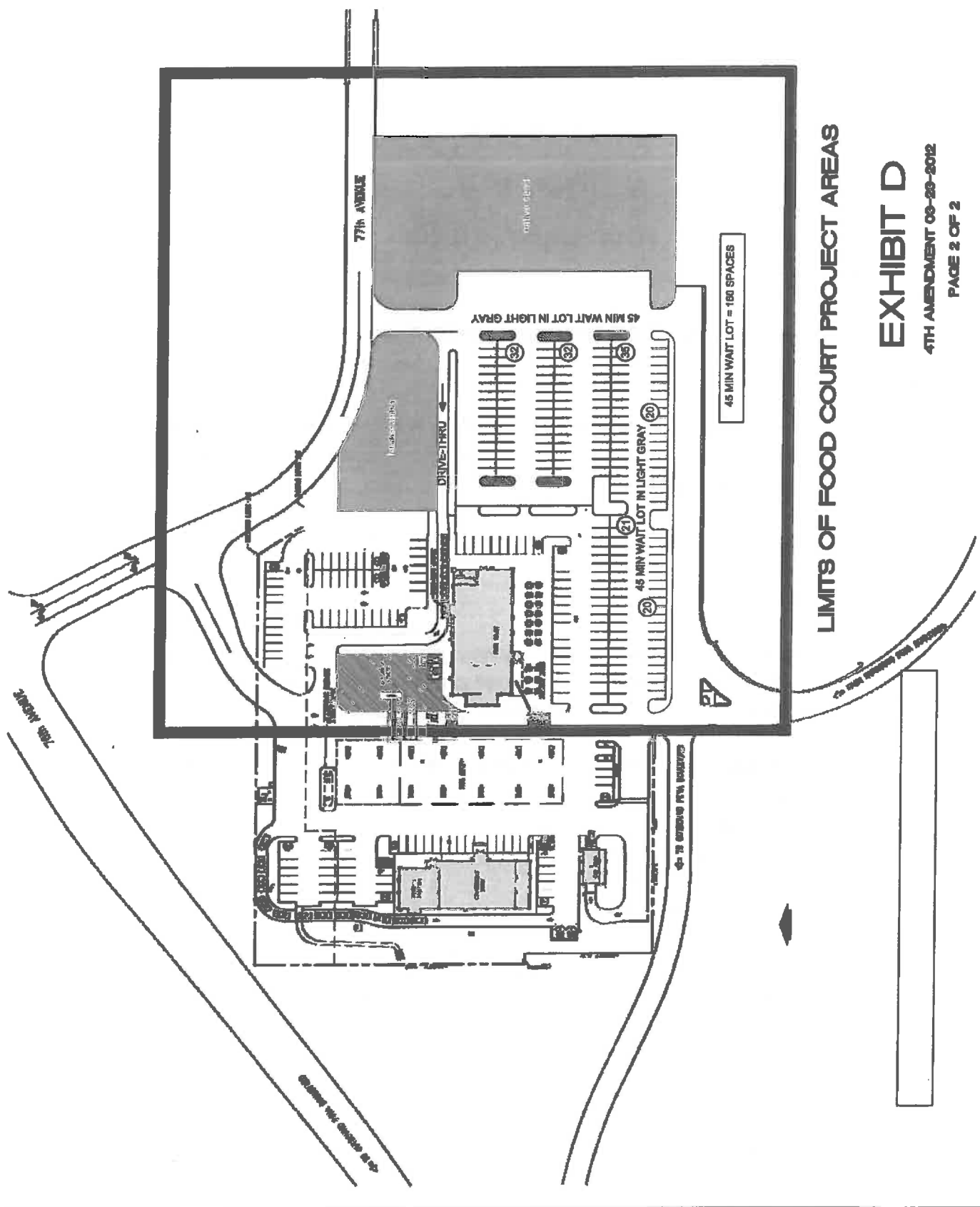
7680 Pena Boulevard, Denver, CO 80249 (At the former DIA Auto Service)

Services

- 1. Exterior and interior remodel and expansion of the former auto service repair facility into a Quick Service Restaurant Facility housing a food court area, four quick service restaurants and public restrooms.**
 - **Includes Flight Information and Display Monitors (FIDS)**
 - **Includes an exterior courtyard**
 - **Colorado & Airport inspired image**

- 2. Development and operation of four quick service restaurants offering at least four of the below listed concepts or any other concept as mutually agreed by both parties. At least one concept will offer Drive-Thru service.**
 - **Starbucks coffee equivalent such as Dunkin Donuts, Caribou, Dazbog, Seattle's Best**
 - **Subway/Deli Sandwiches or equivalent**
 - **Pizza/Italian or equivalent**
 - **Baja Fresh or equivalent**
 - **Or other concepts as approved by the Manager**

- 3. Design and construction of a 45 minute parking waiting area (minimum of 160 parking spaces) and associated improvements as outlined in Exhibit E.**

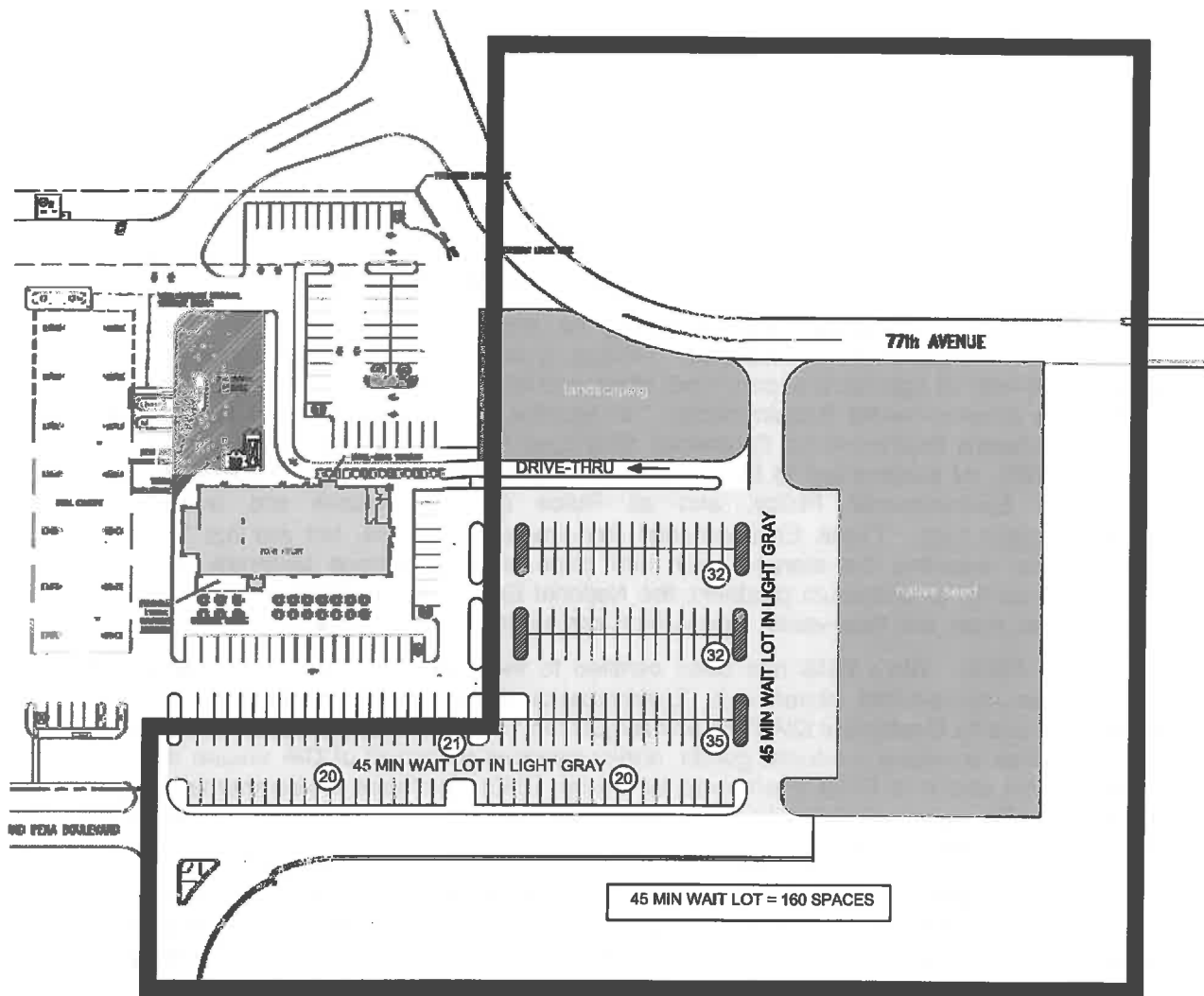


LIMITS OF FOOD COURT PROJECT AREAS

EXHIBIT D

4TH AMENDMENT 08-20-2012

PAGE 2 OF 2



LIMITS OF 45 MIN WAIT LOT AREA

SCOPE OF WORK AND RESPONSIBILITIES SHALL INCLUDE BUT ARE NOT LIMITED TO :

1. EXTENSION OF 77TH AVENUE TO 45 MIN WAIT LOT
2. EXTENSION OF INBOUND PENA ROADWAY TO EAST END OF 45 MIN LOT
3. DEMO OF PORTION OF EXISTING CONCRETE ROADWAY (WINNEPEG)
4. RELOCATION OF EXISTING STORM SEWER SYSTEM/UTILITIES
5. SITE PREP/GRADING/DRAINAGE
6. PARKING LOT LIGHTING (FIXTURES AND BASES)
7. PROVIDING ELECTRICAL SERVICE TO LIGHT FIXTURES
8. ASPHALT PAVING
9. STRIPING AND SIGNAGE
10. LANDSCAPING

MAINTENANCE AND SNOW REMOVAL OF THE 45 MIN WAIT LOT SHALL BE THE CITY'S RESPONSIBILITY. THE TENANT SHALL BE RESPONSIBLE FOR INSTALLING TRASH RECEPTACLES IN THE 45 MIN WAIT LOT AND SHALL BE RESPONSIBLE FOR TRASH REMOVAL OF THE 45 MIN WAIT LOT ON A DAILY BASIS.

THE TENANT SHALL BE RESPONSIBLE FOR DESIGNING AND CONSTRUCTING THE 45 MIN WAIT LOT IN ACCORDANCE WITH DIA DESIGN AND CONSTRUCTION STANDARDS.

EXHIBIT E

4TH AMENDMENT 03-23-2012

EXHIBIT N

DIA ENVIRONMENTAL REQUIREMENTS

Section 1. General Requirements. As used below the term "Tenant" shall mean and include the "Party of the Second Part. Tenant, in conducting any activity on DIA property, shall comply with all applicable airport, local, state, and federal rules, regulations, statutes, laws, and orders (Environmental Requirements). In addition, these Environmental Requirements include applicable Environmental Guidelines developed for DIA's Environmental Management System (EMS), as summarized in DIA Rules and Regulations Part 180. DIA's Environmental Guidelines, Environmental Policy, and all Rules and Regulations are available at www.flydenver.com. These Environmental Requirements address, but are not limited to, requirements regarding the storage, use, and disposal of Hazardous Materials, solid and hazardous waste, or petroleum products; the National Environmental Policy Act (NEPA); and other federal, state, and local water, wastewater, and air quality regulations.

A. EMS: DIA's EMS has been certified to the ISO 14001 standard. DIA's EMS includes the above-noted airport-wide Environmental Policy and is designed around the significant aspects identified in DIA Rule and Regulation 180. It is a requirement of the standard that all entities providing products, goods, and/or services on behalf of DIA ensure that their personnel are aware of DIA's Environmental Policy, DIA's significant environmental aspects, and the specific environmental aspects and associated impacts for the products, goods, and/or services that will be provided by the Tenant,

B. Permits: Tenant shall acquire all necessary federal, state, local and airport permits/approvals and comply with all permit/approval requirements. Tenant shall prepare and update all plans and provide all information required by the City for regulatory compliance purposes and provide copies of all permit applications and permits to DIA.

C. Hazardous Materials Limited: Any hazardous materials not normally used in Tenant's operations are barred from DIA premises. Tenant shall identify all hazardous materials to be used at DIA along with a description of how these materials and any associated hazardous or other waste materials generated by Tenant will be managed while on airport property. This information is required prior to the Tenant conducting activities on DIA property.

D. MSDSs: Prior to operation, Tenant shall maintain copies of Material Safety Data Sheets (MSDSs) for all chemicals to be used in their activities, including those used for cleaning and maintenance. This obligation is continuing for the term of this Agreement, and Tenant shall make this documentation available for inspection by DIA upon request.

E. Pollution Prevention: Tenant is encouraged to utilize the concepts of pollution prevention, energy efficiency and waste minimization with regard to its activities at DIA.

Section 2. Review of Environmental Documents. Tenant, at the request of the City, shall make available for inspection and copying, upon reasonable notice and at reasonable times, any or all of the documents and materials that the Tenant has prepared pursuant to any Environmental Requirement hereunder or submitted to any governmental or regulatory agency. If there is a requirement to file any notice or report of a release or threatened release of a substance on, under or about the work conducted on DIA property, Tenant shall provide a copy of such report or notice to the City.

Section 3. Access for Environmental Inspection. The City shall have an unimpeded right of access to the occupancy or work areas without prior notice to Tenant to

inspect the same in order to confirm that Tenant is conducting its activities in accordance with this Agreement. At the City's request, Tenant shall conduct any testing and analysis at its cost as is necessary to ascertain whether the Tenant is in compliance with this Agreement.

Section 4. Correction of Environmental Non-Compliance. If the Tenant fails to comply with any applicable Environmental Requirement, the City, in addition to its rights and remedies described elsewhere in this Agreement, at its election, may enter the facility and/or work area and take such measures as may be necessary to ensure compliance with the Environmental Requirements, all at the Tenant's expense.

Section 5. Duty to Notify City. In the event of a release or threatened release of a substance relating to or arising out of the Tenant's use or activities on DIA, or in the event any claim, demand, cause of action, or notice is made against the Tenant with regard to the Tenant's failure or alleged failure to comply with any requirement hereunder, the Tenant, immediately shall notify the City verbally by contacting the Airport Communications Center (303-342-4200) and the appropriate regulatory agency. Tenant shall immediately control and remediate the contaminated media and, as provided below, follow-up Tenant's verbal notice with a written report within three days of such incident. In addition, the Tenant shall provide the City, at Tenant's expense, with copies of any written claims, demands, notices or actions so made.

Section 6. Environmental Remediation. Tenant shall undertake all actions necessary to remedy or remove any released or spilled materials and any other contamination discovered on or under DIA property introduced by or affected by Tenant and shall restore the Access Premises to either its condition immediately prior to the initiation of this Agreement or to a condition in compliance with all applicable local, state, federal, or airport laws, rules, regulations, or orders, at the City's sole discretion. This work shall be performed at Tenant's expense and the City shall have the right to review the project plan and review and inspect all such work at any time using consultants and representatives of the City's choice. Tenant shall further conduct surface and subsurface monitoring pertaining to Tenant's activities hereunder to ensure compliance with applicable laws, rules, regulations, and permits or as determined by the Manager of Aviation.

Section 7. Environmental Requirements for Construction. Tenant agrees to ensure that its premises are designed, constructed, operated, and maintained in a manner that minimizes environmental impacts through application of appropriate preventive measures and complies with all federal, state, and local environmental requirements. Tenant shall comply with the DIA Tenant Development Guidelines, as amended, for any alterations to existing facilities or the construction of any new facilities. In addition, the Tenant shall comply with **Exhibit X** of this agreement.

EXHIBIT X

PROVISIONS FOR DESIGN AND CONSTRUCTION OF IMPROVEMENTS

GENERAL PROVISIONS

SECTION 1: GENERAL. Except as the context otherwise requires and unless otherwise expressly provided herein, the capitalized terms in this *Exhibit X* to the Agreement shall have the same meaning as any similarly capitalized terms defined in the Agreement or any exhibit thereto. Reference to Denver International Airport (DIA), Department of Aviation or Manager of Aviation shall mean that entity specifically, or that division or individual authorized to represent that entity. As used below the term "Tenant" shall mean and include the "Party of the Second Part.

SECTION 2: IMPROVEMENTS. "Improvements," which may also be known as "Concession Improvements" or "Tenant Improvements," shall mean any new construction, equipment, finishes, fixtures, systems, furnishings and furniture installed by Tenant, as well as modifications or alterations to existing construction, equipment, finishes, fixtures, systems, furnishings and furniture which conform to drawings and specifications approved in writing by the Manager of Aviation. Such drawings and specifications must provide for the necessary and proper operation of the business contemplated under this Agreement.

SECTION 3: COMPLIANCE WITH LAWS AND REGULATIONS. Tenant agrees to comply with and require its contractors to comply with all applicable federal, state and local laws and all general rules and regulations applicable to construction at DIA, including but not limited to payment of prevailing wages and sales and use taxes, compliance with the Americans with Disabilities Act, 42 USC 12,000 et seq. and its regulations.

In addition to the above, the Tenant and its contractors shall comply with all DIA specific rules and regulations regarding site access, use of site, safety, security, design and construction and shall obtain and pay for all related permits. Failure to comply will be grounds for denial of access and/or suspension of construction activities. Regulations in force specific to DIA include but are not limited to the following:

The Denver Municipal Airport System Rules and Regulations

DIA Design Standards

DIA Tenant Development Guidelines

SECTION 4: PAYMENT OF PREVAILING WAGE RATES. Tenant shall require its contractor and all of its subcontractors to pay every worker, laborer or mechanic employed by them in the performance of the construction of the Improvements prevailing wages, including fringe benefits or their cash equivalent, for the same class and kind of work in the City and County of Denver, as determined by the Career Service Board under the provisions of Section 20-76 of the Denver Revised Municipal Code. The wages shall be those prevailing at the time of the contractor's final bid, and the Tenant shall require the contractor to submit with its bid the wage schedule applicable. The contractor shall post in a prominent and easily accessible place at the site of the Improvements the scale of wages to be paid by the contractor and all subcontractors at any tier working under the contractor. The contractor shall furnish to the Mayor's Office of Contract Compliance and to the Auditor, or the Manager's authorized representative, each week during which work is in progress, a true and correct copy of the payroll records of all workers employed to perform the work. All payroll records shall include information showing the number of hours worked by each worker, the hourly pay of such

worker, any deductions made from pay, and the net amount of pay received by such worker for the period covered by the payroll. The payroll record shall be accompanied by a sworn statement of the contractor that the copy is a true and correct copy of the payroll records of all workers performing the work, either for the contractors or subcontractors, that payments were made to the workers as set forth in the payroll records, that no deductions were made other than those set forth in such records, and that all workers were paid the prevailing wages as of the contractor's final bid for the work. Compliance with above requirements shall be deemed a work "specification" as such word is used in Section 5-18(d), Denver Revised Municipal Code. Violation of the prevailing wage requirement and its documentation, hereinabove set forth, shall result in an order from the Manager of Aviation for the work to cease until there is satisfactory evidence that the violation has been remedied and will not reoccur. The issuance of a stop-work order shall not relieve contractor's surety of any liability on contractor's bond or bonds, but such a stop-work order shall be deemed a default by the contractor insofar as said surety's obligation is concerned.

SECTION 5: SBE AND MBE/WBE PARTICIPATION. This Agreement is subject to the requirements of Articles III and VII of the Denver Revised Municipal Code.

Tenant agrees that it shall provide for participation of Small Business Enterprises (SBEs) in the design and construction of Improvements, in compliance with Article VII, Division 1 of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), or any successor ordinance effective at the time of any design and construction that Tenant may carry out during the life of this Agreement. The goal for percentage of design and construction work to be performed by SBE firms is set forth on the Construction Summary Page, and Tenant shall make a good faith effort to meet such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize SBEs and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

Tenant agrees that it shall provide for participation of Minority Business Enterprises ("MBE") and Women Business Enterprises ("WBE") in the design and construction of Improvements, in compliance with the requirements of Article III, Divisions 1 and 3 of Chapter 28, of the Denver Revised Municipal Code ("MBE/WBE Ordinance"), or applicable successor ordinance, during the life of this Agreement. Tenant agrees to comply with rules and regulations issued by the Director of the Division of Small Business Opportunity ("DSBO"), a division of the Mayor's Office of Economic Development. The goal for percentage of design and construction work to be performed by MBE/WBE firms is set forth on the Construction Summary Page, and Tenant shall meet, or make a good faith effort to meet, such goals as have been set in accordance with the ordinance. Further, the City and County of Denver encourages Tenants to utilize MBE/WBE firms and to divide the design and construction work into economically feasible units or segments to allow the most opportunity for subcontracting.

SECTION 6: INSURANCE REQUIREMENTS. Refer to Appendix B of Manual 1 of the DIA Tenant Development Guidelines for insurance requirements for Tenant, Tenant's Design Consultants and Tenant's Contractors for required insurance coverage for design and construction of Improvements and completed Improvements, including requirements for submittal of certificates and renewals of insurance.

SECTION 7: EVIDENCE OF INSURANCE. Certified copies of required insurance policies, or certificates, in the standard form required, evidencing the existence thereof, or binders, shall be delivered to the DIA Division of Planning and Development at least 15 days prior to the commencement of any design work to be performed by Tenant's consultants and any construction work for Improvements. If a binder is delivered, it shall be replaced within 30

days by a certified copy of the policy or the required certificate. Policies shall be in a form and of a company acceptable to and approved by the City, and certificates shall be on standard City and County of Denver Certificate of Insurance forms.

Each such policy or certificate shall contain a valid provision or endorsement that the policy may not be canceled, terminated, changed or modified without 45 days prior written notice (10 days for nonpayment of premium) given by certified mail, return receipt requested, to the Manager of Aviation, 8500 Peña Boulevard, Denver, Colorado 80249-6340.

Each such policy or certificate shall further provide that any coverage afforded the City and County of Denver as an additional insured under the policy shall apply as primary insurance and any other insurance issued to the City and County of Denver shall apply as excess and noncontributing insurance.

Any renewal certificate shall be delivered to the Manager of Aviation at least 10 days prior to the expiration of each expiring policy. If at any time any of the insurance policies shall be or become unsatisfactory to the Manager of Aviation as to form or substance, or if any of the carriers issuing such policies shall be or become unsatisfactory to the Manager of Aviation, Tenant shall promptly obtain a new and satisfactory replacement policy.

SECTION 8: LIMITATION ON LIABILITY. Tenant agrees that no liability shall attach to the City for any damages or losses incurred or claimed by Tenant or any other person or party on account of the construction or installation of the Improvements or other Improvements to the Tenant's site made by the Tenant. Tenant agrees that no liability shall attach to the City for any interference or delay caused by construction in adjacent areas, travelers, other businesses or airport operations, including without limitation damages or losses in the nature of delay damages, lost labor productivity, and impact damages. Tenant agrees to indemnify, defend and hold harmless the City from any loss, cost, damage or expense incurred, claimed, asserted or arising in connection with Tenant's or its contractors' or agents' construction or installation of the Improvements or other Improvements to the site made by the Tenant.

DESIGN PROVISIONS

SECTION 9: DESIGN PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding design, including but not limited to design process and schedule, submittal requirements, review and approval process, design modifications and project coordination.

Approval of the Manager of Aviation extends to and includes consideration of architectural, structural, mechanical, electrical, specialty systems, site, signage, landscaping and aesthetic matters, and DIA reserves the right to reject any design submitted and to require Tenant to resubmit designs and layout proposals until they meet with the approval of the Manager of Aviation. No substantial changes or alterations shall be made in said drawings or specifications after approval by the Manager of Aviation, and no alterations or improvements shall be made to or upon the Tenant's site without prior approval.

Tenant CADD Submittal Requirements: All issue for construction and project record drawings shall be provided by the Tenant to DIA in AutoCAD Rel. 2007 .dwg file format in accordance with DIA CADD standards set forth in Design Standards Manual 1. All design drawings submitted by the Tenant to the DIA shall be provided in the latest release of AutoCAD format in accordance with the DIA's Design Standards Manual.

Concession CADD Submittal Requirements: AutoCAD 2007 .dwg format CADD files that match the Tenant's hardcopy drawings must be submitted via: CD-ROM or DVD-ROM in MS-Windows format. All drawings must represent precision input and follow industry standard

CADD practices. The drawings must reflect true design dimensioning and must NOT be graphic representations of the design. All site, civil and utility drawings MUST be produced using units in feet and the DIA Grid Coordinate System. The DIA Project Manager must approve submittal and may require adherence to the requirements set forth in DIA design standards.

In addition to the above, Tenant is responsible for coordination with the Denver Building Inspection Division, Zoning, Fire Department, Wastewater Management, Consumer Protection, Health and Hospitals, etc. as may be required to comply with submittal, review and approval requirements in order to obtain all required permits. Prior to the issuance of a Notice to Proceed with Improvements from the Manager of Aviation, the Tenant shall obtain and pay for all approvals, licenses and permits required for the Improvements. Whenever a conflict arises between state or local law, ordinances or regulations and federal law or regulations, the most stringent law or regulations applicable to this Agreement shall control.

SECTION 10: DESIGN STANDARDS. First-class standards of design and construction are required, and all Improvements shall conform to applicable statutes, ordinances, building codes, and regulations as well as the DIA Design Standards and DIA Tenant Development Guidelines, as they may be amended from time to time and any other applicable design, construction and maintenance standards.

Approval of the Manager of Aviation 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 Tenant to resubmit designs and layout proposals until they meet with the City's approval. If any portion of the plans and specifications is disapproved by the City, the Tenant shall promptly submit necessary modifications and revisions thereof. The approval given by the Manager of Aviation shall not constitute a representation or warranty as to such conformity; therefore, responsibility remains with the Tenant at all times.

CONSTRUCTION PROVISIONS

SECTION 11: CONSTRUCTION PROCEDURES. Refer to Manual 1 of the DIA Tenant Development Guidelines for procedures and requirements regarding construction, including but not limited to construction schedule, submittal requirements, review and approval process, construction inspections, construction modifications and project coordination.

Compliance with standards: 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 any construction to assure that the Improvements are constructed and installed in full compliance with the plans and specifications.

Standard of Performance: All work done by the Tenant 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.

City Inspection: All construction work, materials and installations involved in or incidental to the construction of the improvements undertaken by the Tenant throughout the term hereof shall be subject at all times to inspection and approval by the City. DIA shall at all times have the right of access to the construction site and to monitor and inspect the construction of all Improvements to insure that all Improvements are constructed and installed in compliance with approved drawings and specifications.

DIA shall have the right to halt construction of the Improvements or deny access to the site at any time if construction is at material variance from the approved drawings 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 continued construction as expeditiously as possible.

In order to assist DIA in monitoring and inspecting construction, the Tenant shall submit, or cause to be submitted for information and record, copies of all field test reports, certificates of insurance, waivers of liens, material certificates, shop drawings and submittals for review for compliance with DIA design and construction standards, contractor application for payment requests, construction progress reports, notification of substantial completion of Improvements and final acceptance, two copies of maintenance and operation manuals in connection with building systems and all updates thereof, as-built documents, and any other documents related to the construction of the Improvements which may be reasonably requested by DIA.

No change order or other contract modification that materially changes the scope of the Improvements shall be executed without prior approval of the Manager of Aviation, whose approval shall not be unreasonably withheld. The City will approve, conditionally approve or disapprove submissions of change orders that materially change the scope of the work within a reasonable period of time following receipt thereof. Any conditional approval or disapproval shall be accompanied by an explanation as to the reason for the condition.

The Building Inspection Division of the City and County of Denver shall also receive copies of all change orders. Any conditional approval or disapproval shall be accompanied by an explanation of the reasons.

Tenant is responsible for all temporary utilities required during construction. Tenant, at its sole cost and expense, shall obtain and make utility connections, hook-ups or taps as necessary or as stipulated in this Agreement, securing all necessary applications or permits and paying all associated fees. Tenant, at its sole cost and expense, shall provide meters, calibrated by the utility company, and maintain equipment as required to provide accurate measurement of usage and consumption. DIA makes no warranty as to the location of structures, wiring, fixtures or systems, and Tenant accepts them on an "as is" basis without further recourse against DIA as to their location, number or suitability for the particular purposes of the Tenant.

Tenant is responsible for maintaining a clean, orderly and safe construction site, free of accumulated construction debris and waste materials and shall be responsible for legal removal of same. Construction shall be accomplished without interfering with travelers, airport operations or other businesses, providing barricades and/or construction enclosures as required.

SECTION 12: CONSTRUCTION BONDS AND PERMITS. Prior to Notice to Proceed with construction Improvements, Tenant and its contractor shall deliver to the Manager of Aviation performance and payment bonds and copies of all required permits, licenses and all other documents as required by Manual 1 of the DIA Tenant Development Guidelines.

SECTION 13: MODIFICATIONS AND ALTERATIONS. Modifications and alterations to existing Tenant improvements are subject to the same requirements and provisions as new tenant improvements as itemized in this *Exhibit X* and this Agreement.

Advance Notice of Modification: The Tenant shall give or cause to be given to the City advance notice before performing any material modification to the improvements.

Expense of Alterations. Any work necessary to make any alterations, improvements, or additions to the facility throughout the term of this Agreement shall be done at the Tenant's cost and expense, in accordance with and subject to all of the required approvals, submittals, and procedures, and all other requirements of whatsoever nature, as set forth herein.

SECTION 14: AS-BUILT DOCUMENTS. Not later than 60 days after completion of all work for the Improvements, Tenant shall provide DIA two complete sets of as-built documents prepared in accordance with DIA requirements. If Tenant fails to provide as-built documents after written notice from DIA, DIA may elect to have the documents completed and charge the Tenant for the costs associated therewith. Tenant agrees that, upon the request of DIA, Tenant will inspect the Improvements jointly with DIA to verify as-built documents.

