GROUND LEASE

This **GROUND LEASE** ("**Lease**") is made and entered into as of the Effective Date (as hereinafter defined) between the City and County of Denver, a municipal corporation of the State of Colorado, acting on behalf of its Department of Aviation ("**Landlord**"), and Swire Infrastructure Inc., a Delaware corporation authorized to do business in Colorado, having its principal place of business at 12634 S. 265 W. Draper, Utah 84020 ("**Tenant**") (Landlord and Tenant are collectively referred to herein as "**Parties**" and may be individually referred to as a "**Party**"), with respect to the following facts, and is as follows:

RECITALS

WHEREAS, the Landlord is the owner of certain real property (the "**DEN Real Property**") and improvements, including the Denver International Airport ("**DEN**"), and a portion of such real property consists of the Property (as hereinafter defined); and

WHEREAS, Landlord desires (i) to lease to Tenant and Tenant desires to lease from Landlord the Property, and (ii) to permit Tenant to construct and own, at Tenant's sole cost and expense, buildings and other structures and improvements on the Property.

Now Therefore, the Parties intending to be legally bound by the terms of this Lease agree as follows:

1 AGREEMENT TO LEASE

1.1 Agreement to Lease and Description of Property. Landlord leases to Tenant and Tenant leases from Landlord the "**Property**" for the Permitted Uses in accordance with the provisions of this Lease. The Property is identified in **Exhibit A**; the Property contains 97.0 acres (4,225,515 square feet).

1.2 Right of First Refusal. Tenant shall have a right of first refusal ("**ROFR**") to lease the approximately 30.0 acres (1,306,804 square feet) of property identified in **Exhibit B** (the "**ROFR Land**"). Landlord will deliver written notice to Tenant (the "**ROFR Notice**") when Landlord has received an offer from a third-party to lease all or any portion of Landlord's interest in and to the ROFR Land, which ROFR Notice shall include the terms and conditions of such prospective lease, including, without limitation, the rental payable thereunder and all other material economic terms of the prospective lease (the "**ROFR Terms**"). Tenant shall have 30 days from receipt of the ROFR Notice to exercise its ROFR to lease the ROFR Land (the "**ROFR Exercise Notice**") by delivery of written notice to Landlord. If Tenant fails to timely deliver the ROFR Exercise Notice within such 30-day period, Tenant shall be deemed to have waived its ROFR and the ROFR shall be terminated, except as provided below. In exercising the ROFR, Tenant must agree to match the same ROFR Terms. After Landlord's receipt of the ROFR Exercise Notice, the parties will enter into a new lease agreement for the ROFR Land; the terms of the new lease

agreement will expire on the same expiration date of this Lease. If Tenant does not deliver a ROFR Exercise Notice but Landlord fails to enter into a lease pursuant to the terms of the ROFR Notice, then Tenant's ROFR shall remain in full force and effect. Further, if Tenant elects not to deliver a ROFR Exercise Notice and thereafter, the economic terms in the ROFR Notice are changed so that the rent decreases by five percent (5%) or more than the rent set forth in the ROFR Terms, Landlord shall be obligated to deliver a new ROFR Notice to Tenant with respect to such modified ROFR Terms. Tenant shall have 15 days from receipt of the modified ROFR Terms to exercise its ROFR.

1.3 Landlord/City. As used in this Lease, "**Landlord**" shall mean the City and County of Denver's Department of Aviation, and "**City**" shall mean the other divisions, departments and governing bodies of the City and County of Denver.

1.4 Deposit. Tenant has deposited with Land Title Guarantee Company (the "**Escrow Agent**") the sum of $250,000.00 (together with any interest accrued thereon, the "**Deposit**"). The Deposit shall be held in an interest-bearing account. Upon the later of (i) One hundred eighty (180) days after the Effective Date or (ii) Tenant's receipt of its parent company approval under Section 1.6, $100,000.00 of the Deposit shall become non-refundable to Tenant, except as expressly set forth in this Lease, and Escrow Agent will be directed to transfer that sum to Landlord by wire transfer as directed by Landlord. On the Rent Commencement Date, the remaining Deposit being held by the Escrow Agent ($150,000.00 plus accrued interest) shall become non-refundable to Tenant, except as expressly set forth in this Lease, and Escrow Agent will be directed to transfer those funds to Landlord by wire transfer as directed by Landlord. Following the Rent Commencement Date, Landlord will apply the Deposit towards the next-due installments of Rent payments due under this Lease.

1.5 Property Information. To the extent not delivered prior to the Effective Date, within five (5) days after the Effective Date, Landlord shall make available for review by Tenant copies of any information in Landlord's possession or control pertaining to the Property (collectively, the "**Property Information**"), including, without limitation, the following: (i) any existing surveys; (ii) any existing title insurance reports, commitments and/or policies (including any title exceptions noted in the title reports); (iii) all physical reports including, but not limited to, soil borings, environmental studies and assessments, engineering studies and drawings, topographical survey, and wetlands reports; (iv) the most current tax bills, if any; (v) all existing leases and service contracts; (vi) any other Landlord records, documents and instruments; and (vii) all entitlement correspondence and any permits issued to date. Notwithstanding the foregoing or anything else to the contrary, Landlord shall not be required to make available or disclose any confidential documents or information that is protected from disclosure under Applicable Law.

1.6 Due Diligence Period. Commencing on the Effective Date and for one-hundred twenty (120) days thereafter, the Tenant shall have the right, but not the obligation, to perform any and all tests, inspections, surveys and other due diligence analyses, the results of which shall be satisfactory to Tenant in Tenant's sole and absolute discretion (the "**Due Diligence Period**"). During the Due Diligence Period, if Tenant determines that the Property is not satisfactory for the Tenant's intended purposes, the Tenant may terminate this Lease upon written notice received by Landlord before the end of the Due Diligence Period, in which event, Escrow Agent shall promptly deliver the Deposit to Tenant, and this Lease shall terminate and be of no further force and effect as of the date of such notice, except for any provisions which expressly survive the termination of this Lease. Notwithstanding the foregoing, Tenant shall not be allowed to undertake any invasive (Phase II) environmental testing without Landlord's prior approval, which approval shall not unreasonably be withheld. In addition, Tenant has advised Landlord that Tenant's parent company needs until December 31, 2023 (the "**Parent Approval Period**") in which to secure all internal corporate approvals necessary to approve the Lease. During the Parent Approval Period, Tenant shall continue to diligently pursue the Proposed Project and seek the Development Approvals described below. If, for any reason, Tenant's parent company does not approve the Lease prior to the expiration of the Parent Approval Period, Tenant may elect to terminate the Lease by written notice to Landlord on or before expiration of the Parent Approval Period, in which event the Deposit shall be returned to Tenant. If Tenant fails to terminate the Lease prior to the expiration of the Parent Approval Period, the Lease shall remain in full force and effect and Tenant shall have no further right to terminate the Lease based on the approval of Tenant's parent company.

1.7 Delivery of Property. Landlord shall deliver to Tenant, and Tenant shall have the right to, possession of the Property as of the Effective Date, subject to the terms and conditions of this Lease. Except as expressly set forth in this Lease, Landlord makes no warranties or representations regarding the condition of the Property.

1.8 Development Approval Period.

1.8.1 Tenant shall have until the date which is fifteen (15) months from the Effective Date (the "**Development Approval Period**") to obtain, from the applicable governmental and quasi-governmental authorities, including, without limitation, the City, and at its sole cost and expense, all governmental and quasi-governmental approvals required in connection with the development and construction of Tenant's Proposed Project, which approvals may include, but shall not be limited to, site plan approval, which such site plan may also require, without limitation dedication of portions of the Property, subdivision approvals to create the Property or any portions thereof as separate legal parcels (if required) vested rights approvals; design and construction document approvals; all necessary approvals from the U.S. Department of Transportation, Federal Aviation Administration ("**FAA**");

all information, approvals and other permitting required in connection with any floodplain on the Property, and any approvals necessary to ensure the provision of water to the Property in a quantity sufficient, in Tenant's sole and absolute discretion, for the development of the Tenant's Proposed Project and the operation of the Property; approvals necessary to confirm that the plans and specifications for Tenant's Proposed Project are in accordance with the Design Criteria set forth on **Exhibit C** attached hereto; and any and all other applicable or discretionary development approvals or permits, which are necessary to develop the Tenant's Proposed Project, including without limitation, a building permit or permits for Tenant's Proposed Project, all in form acceptable to Tenant, in Tenant's sole and absolute discretion (collectively, the "**Development Approvals**"). If, in spite of Tenant's diligent efforts to obtain all Development Approvals within the Development Approval Period, one or more of such approvals are delayed by matters outside of Tenant's control, Tenant may extend the Development Approval Period for up to two periods of 90-days each (each, an "**Extended Approval Period**") by giving written notice thereof to Landlord, identifying the approval process that has been delayed, and the term "Development Approval Period" shall thereafter mean and refer to such period as extended by the Extended Approval Period(s). Tenant shall notify Landlord of its receipt of any such delayed Development Approval giving rise to the applicable Extended Approval Period within 5 days of Tenant's receipt of each Development Approval. The "**Proposed Project**" shall mean Tenant's construction and operation of the facility described on **Exhibit D** attached hereto. Landlord agrees that it shall cooperate with and assist Tenant in connection with Tenant's pursuit of its Development Approvals, including without limitation, by promptly reviewing, responding to and approving, in Landlord's reasonable discretion, Tenant's submittals.

1.8.2 **Termination**. If, in Tenant's sole discretion, Tenant is not reasonably satisfied with any aspect of all required Development Approvals as set forth in Section 1.8, then Tenant shall have the right to terminate the Lease by written notice to Landlord on or before the expiration of the Development Approval Period, or, if applicable, the Extended Approval Period, in which event Escrow Agent shall promptly deliver to Tenant any portion of the Deposit that was not previously released to Landlord in accordance with this Lease, and this Lease shall terminate and be of no further force and effect as of the date of such notice, except for any provisions which expressly survive the termination of this Lease. Within thirty (30) days following Tenant's notice of termination, Tenant shall deliver to Landlord copies of all of Tenant's Development Approval applications that were submitted to any applicable governmental or quasi-governmental authorities during the Development Approval Period (collectively, "**Reports**"). Delivery of such Reports by Tenant shall be on an as-is, where-

is basis, without any representation or warranty by Tenant or any of its consultants as to the accuracy of the contents or findings, and Landlord's use and reliance on such Reports shall be at Landlord's sole risk.

1.9 Mineral Estate and Water Rights Reserved. The Landlord expressly reserves unto itself, and Tenant shall have no rights whatsoever to, all oil, gas, and other mineral rights, and water rights associated with the Property. Landlord represents and warrants to Tenant as of the Effective Date that Landlord has not sold, leased, or otherwise transferred any of the oil, gas, or other mineral rights or water rights associated with the Property to any third party and, from and after the Effective Date for the duration of the Lease Term, Landlord shall not sell, lease, or otherwise transfer any of Landlord's right, title and interest in and to any of the oil, gas, or other mineral rights or water rights associated with the Property to any third party unless such third party enters into a surface use waiver agreement in form reasonably satisfactory to Tenant and consistent with the terms of this **Section 1.9**. During the Lease Term, Landlord will not enter upon or use, or permit any other parties to enter upon or to use, the surface of the Property for accessing, exploring for, developing, or producing any oil, gas, or other minerals or waters in and under, or that may be produced from, the Property, or for any purpose incidental thereto. Additionally, Landlord will not enter upon or use, or permit any other parties to enter upon or to use, the surface of the Property for the purpose of accessing, exploring for, developing, or producing any such mineral or water interests on other property, without Tenant's consent, which shall not be unreasonably withheld, and which access, if approved, would be from the surface of real property other than the Property, with any such access beneath the surface of the Property commencing at a depth of at least 1000 feet beneath the surface of the Property.

1.10 Avigation Easement. The Property is expressly subject to a perpetual nonexclusive easement and right of way (the "**Avigation Easement**") for the passage of any and all Aircraft landing at, taking off from, or otherwise operating to or from DEN, in, to, over and through all airspace of the Property to an indefinite height ("**Passage of Aircraft**"). As used herein, the term "Aircraft" shall include, but not be limited to, any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air, whether manned or unmanned and regardless of propulsion method. This easement includes the right to cause or create noise from the Aircraft over or above the Property, including sounds, vibrations, dust, turbulence, illumination, electronic interference, fumes, fuel vapor particles, interference with sleep and communication, and all other effects that may reasonably be caused by the Passage of Aircraft (collectively "**Incidental Effects**"), which Incidental Effects may enter or penetrate into or transmit through any improved or unimproved portion of the Property or any airspace above the ground surface of the Property (the "**Airspace**") including, without limitation, any Incidental Effects that may be objectionable or would otherwise constitute a trespass, a permanent or continuing nuisance, personal injury or taking or damage to the Property due to invasiveness, intermittence, frequency, loudness, intensity, interference, emission, odor,

annoyance or otherwise. This easement includes Incidental Effects from any future additions to or increases in or changes made to operations at DEN, including full DEN buildout of at least twelve runways, and other future development and/or increase in or expansion of DEN operations. For clarity, the intent of the Avigation Easement and Section 1.11 below is to preserve to the City the power to expand, operate and fully-utilize DEN without objection from Tenant, but not to waive or release any property rights Tenant may have under this Lease or in the Proposed Project, including pursuant to **Article 6**, "Damage or Destruction," **Article 7**, "Condemnation," or pursuant to applicable law.

1.11 No Interference with Air Navigation. In furtherance of the Avigation Easement and rights set forth in **Section 1.10** above, Tenant hereby covenants at all times during the Lease Term as follows:

1.11.1 Tenant will not take any action, cause or allow any obstruction to exist that would penetrate the "imaginary surfaces" per 14 C.F.R. Part 77 for DEN's full twelve runway buildout, which the Parties acknowledge permit construction of buildings, as of the Effective Date, up to 150 feet in height, or construct any structure on the Property which would conflict, interfere with, or infringe DEN's operations. Tenant shall comply with 14 C.F.R. Part 77 including as it may be amended or replaced, to the extent it applies to the Property. Tenant will comply with any duly-adopted regulations established at any time by the Landlord or any other governmental authority with regard to electronic, electromagnetic and light emissions.

1.11.2 To the extent permitted by the Avigation Easement, DEN may clear and keep the Airspace clear of any portions of buildings, structures, or improvements of any and all kinds, and of trees, vegetation, or other objects, including the right to remove or demolish those portions of such buildings, structures, improvements, trees or any other objects, which extend into the Airspace and the right to cut to the ground level and remove any trees which extend into the Airspace; provided, however, DEN shall first provide reasonable, under the circumstances, written notice to Tenant to cure or remove an obstruction. Removal or modification of the Tenant Improvements constructed as approved by Landlord, if required for operation of DEN, must be accomplished through Article 7 or by amendment to this Lease.

1.11.3 To the extent permitted by the Avigation Easement, DEN may mark and light, or cause or require to be marked or lighted, as obstructions to air navigation, any and all buildings, structures, or other improvements, and trees or other objects now upon, or that in the future may be upon, the Property, and which extend into the Airspace; provided, however, DEN shall first provide reasonable, under the circumstances, written notice to Tenant to cure or remove an obstruction.

1.11.4 Tenant will not use or permit the use of the Property in such a manner as to create electrical or electronic interference with radio communication or radar operation between any installation upon DEN and any Aircraft in violation of any rules or regulations adopted by any governmental authority.

2 TERM

2.1 **Lease Term**. This Lease shall commence on the Effective Date and shall expire, if not canceled through the Cancellation Option, extended through the Extension Options set forth herein, or terminated pursuant to the provisions of this Lease, on the date which is seventy-five (75) Lease Years (the "**Initial Term**") after the Effective Date (the "**Expiration Date**"). The first "**Lease Year**" shall commence on the Effective Date and end on the last day of the month following 12 full calendar months. Thereafter, "**Lease Year**" shall mean each succeeding 12- month period.

2.2 **Extension Option**. Provided that, at the time Tenant gives notice to Landlord of the exercise of Tenant's right to extend the term of this Lease, and at the time of the initial Expiration Date, no Default by Tenant remains outstanding and uncured beyond the expiration of any applicable cure period under the terms of this Lease, Tenant shall have the right and option (each an "**Extension Option**" and collectively, the "**Extension Options**") to extend the term of this Lease for three (3) extension terms of eight (8) years each (each an "**Extension Period**" and collectively, the "**Extension Periods**"), by Tenant delivering written notice of Tenant's exercise of the applicable Extension Option to Landlord ("**Extension Exercise Notice**") not less than nine (9) months and not more than twenty-four (24) months prior to the applicable Expiration Date. The foregoing Extension Options shall also be for the benefit of and a right held by all permitted assignees of Tenant. The Base Rent during the applicable Extension Period shall be equal to the Base Rent payable for the preceding year, subject to periodic adjustments under **Section 3.2.2**.

2.3 **Cancellation Option**. Tenant shall have the right and option (each a "**Cancellation Option**") to cancel the Lease effective on the first day of the thirty-first (31st) and fifty-sixth (56th) Lease Years (each a "**Cancellation Date**"), by Tenant delivering written notice of Tenant's exercise of the Cancellation Option to Landlord ("**Cancellation Notice**") not less than nine (9) months and not more than twenty-four (24) months prior to the applicable Cancellation Date. The Cancellation Notice shall be invalid, and Tenant may not cancel this Lease, unless Tenant cures any outstanding Tenant Default on or before the Cancellation Date. The foregoing Cancellation Options shall also be for the benefit of and a right held by all permitted assignees of Tenant.

2.4 For all purposes under this Lease, the phrase "**Lease Term**," and terms of similar import shall mean, collectively, the Initial Term under **Section 2.1** and each and every Extension Period exercised by Tenant pursuant to **Section 2.2**.

3 RENT, TAXES

3.1 **Time and Manner of Payment**. Tenant shall pay Landlord rent which shall be comprised of the following: Base Rent and Additional Rent (collectively, "**Rent**"). Tenant's obligation to start paying Rent shall begin (the "**Rent Commencement Date**") on the earlier of: (i) the expiration of the Development Approval Period or the Extended Approval Period, or (ii) the date on which Tenant notifies Landlord in writing that Tenant has obtained all Development Approvals and all appeal periods with respect to the Development Approvals have expired.

3.1.1 Following the Rent Commencement Date, Tenant shall commence payment to Landlord of an installment of Base Rent for each month, equal to one-twelfth of the annual Base Rent for the Property, in advance, without offset, deduction or prior demand on the first day of each month during the Lease Term. If the Rent Commencement Date falls on a day other than the first day of a month, then Base Rent for the first partial month shall be prorated based upon the number of days of the respective month after the Rent Commencement Date.

3.1.2 All Rent shall be payable to Landlord at the following address: Denver International Airport Revenue Fund, P.O. Box 942065, Denver, CO 80249-2065 or by wire transfer with wiring instructions provided by Landlord.

3.2 **Rent Calculation**.

3.2.1 **Base Rent**. The "**Base Rent**" rental rate is $0.21 per square foot of gross square footage per year. The term "**gross square footage**" means the gross square footage of the Property as set forth in **Exhibit A**.

3.2.1.1 The Base Rent was established through that certain May 22, 2022 "Appraisal of the Market Ground Rent applicable to the Vacant Parcel of Land located to the East of Tower Road, to the north of Pena Boulevard, Denver, Denver County, CO 80111", prepared by Newmark Valuation & Advisory, LLC.

3.2.2 **Annual Rent Adjustment**. The Base Rent payable hereunder shall be subject to an annual two percent (2%) increase (each an "**Annual Rent Escalation**"), compounded annually, effective as of the first day of the Lease Year immediately following the completion of the first full Lease Year after the Rent Commencement Date, and each Lease Year thereafter during the Lease Term, except and excluding Lease Years in which a fair

market value adjustment is performed pursuant to **Section 3.2.3**, below (which together with the date of any FMV Rent Adjustment described below shall each be referred to as a "**Rent Adjustment Date**"), in accordance with this **Section 3.2**. The Base Rent, as adjusted, shall be payable by Tenant until the next following Rent Adjustment Date. **Exhibit E** attached hereto provides the Rent schedule due under this Lease reflecting the Base Rent and Annual Rent Escalation for each Lease Year until the first FMV Rent Adjustment.

3.2.3 FMV Rent Adjustment.

3.2.3.1 In addition to the Annual Rent Escalation, there shall be two (2) fair market value rental adjustments effective on the first day of Lease Years 31 and 56 during the Initial Term, to ensure the rental rate reflects the then-current fair market value of the Property, as determined in accordance with the process and procedures set forth in Section 3.2.4 below (each a "**FMV Rent Adjustment**"); provided, however, that in no event shall the FMV Rent Adjustment be more than the product of the Base Rent adjusted by a three percent (3%) annual compounded amount calculated from the Rent Commencement Date as to the Year 31 FMV Rent Adjustment or from the prior FMV Rent Adjustment as to Years 56 FMV Rent Adjustments. If the FMV Rent Adjustment rate (as determined pursuant to Section 3.2.4) is less than the Base Rent due and owing during Lease Year immediately preceding the applicable FMV Rent Adjustment, then such existing Base Rent shall be reduced to reflect the FMV Rent Adjustment, provided that the Base Rent will not be decreased by more than three percent (3%) from the Base Rent due and owing during Lease Year immediately-preceding the applicable FMV Rent Adjustment.

3.2.3.2 In addition to the foregoing, there shall be a FMV Rent Adjustment effective on the first day of the first exercised Extension Period. The new rental rate established through each FMV Rent Adjustment shall become the new Base Rent following each FMV Rent Adjustment, and the annual rent adjustments, in the form of the Annual Rent Escalations, shall apply to the new Base Rent as set forth in **Section 3.2.2**.

3.2.4 FMV Rent Adjustment Process. The following procedures shall apply to each FMV Rent Adjustment:

3.2.4.1 At least 12 months prior to each FMV Rent Adjustment, each Party shall select and engage a Qualified Appraiser, as defined in **Section 7.5.2.2**, to assess the current fair market value rental rate of the

Property. The Qualified Appraisers shall be given identical instructions to determine the fair market value rental rate of the Property, with each Qualified Appraiser acting as a neutral third party and not as an advocate for either Party, exercising their professional judgment and employing appraisal standards and techniques to the extent not inconsistent with the directions provided in this Lease. Each Qualified Appraiser shall be directed to consider, when determining the fair market value rental rate, (a) the amount of tenant improvement dollars funded by the other landlords, (b) the degree to which horizontal and vertical improvements were provided to the tenants without financial contribution by those tenants, (c) the amount of horizontal and vertical improvements paid for by the other tenants and (d) any other rent concessions provided to the other tenants, including, without limitation, free rent. Each Qualified Appraiser shall prepare an initial appraisal, which appraisal should be conducted within 45 days after the Qualified Appraiser is selected and will be at the sole cost and expense of the Party selecting the Qualified Appraiser. A true and correct copy of all communications regarding the appraisal report and the final appraisal report delivered to the Party retaining the Qualified Appraiser shall be delivered to the other Party at the same time. If the fair market value rental rates determined in the final report (the "**Appraisal Rate**") is no more than one hundred ten percent (110%) of the other appraisal, then the average of the Appraisal Rates of the two appraisals shall constitute the fair market value renal rate of the Property. Any appraisal stating a range of Appraisal Rates shall be disregarded and another appraisal substituted in its place at the expense of the Party who commissioned the disregarded appraisal.

3.2.4.2 If the Appraisal Rate of either appraisal is more than one hundred ten percent (110%) of the other appraisal, then the Qualified Appraisers shall meet with the Parties and each other and attempt to agree on the fair market value rental rate. If the Qualified Appraisers have not agreed on the fair market value rental rate within 30 days after the final appraisal reports are exchanged, a third Qualified Appraiser shall be selected by agreement among the first two Qualified Appraisers or, failing such agreement, by agreement between the Parties or by a court of competent jurisdiction. The third Qualified Appraiser shall receive copies of each of the prior appraisals and after reviewing such appraisals shall complete a third appraisal within 30 days and the costs and expense of the third appraisal shall be shared equally between Landlord and Tenant.

3.2.4.3 If three appraisals are prepared, the following selection process shall be followed to determine the fair market value rental rate: (a) if any

two Qualified Appraisers select the same Appraisal Rate, that shall be the rental rate for purposes of setting the FMV Rent Adjustment; (b) if the middle Appraisal Rate is no more than one hundred ten percent (110%) of the lowest Appraisal Rate and the highest Appraisal Rate is no more than one hundred ten percent (110%) of the middle Appraisal Rate, the average of the three Appraisal Rates shall be the rental rate for purposes of setting the FMV Rent Adjustment; (c) subject to subsection (e) below if the middle Appraisal Rate is more than one hundred ten percent (110%) of the lowest Appraisal Rate, the lowest Appraisal Rate shall not be considered and the average of the middle and high Appraisal Rate shall be the rental rate for purposes of setting the FMV Rent Adjustment; (d) subject to subsection (e) below if the highest Appraisal Rate is more than one hundred ten percent (110%) of the middle Appraisal Rate, the highest Appraisal Rate shall not be considered further, and the lowest and middle Appraisal Rates shall be averaged and that amount shall be the rental rate for purposes of setting the FMV Rent Adjustment; or (e) if both the lowest and the highest Appraisal Rates are not considered under subsections (c) and (d) above, the middle Appraisal Rate shall be the rental rate for purposes of setting the FMV Rent Adjustment.

3.3 **Additional Rent**. Except as otherwise expressly provided by this Lease, the Real Property Taxes and the Utilities, together with any other amounts owed by Tenant to Landlord under this Lease, are the only charges payable by Tenant under this Lease other than Base Rent, and such charges for Real Property Taxes and Utilities are sometimes called "**Additional Rent**." Unless this Lease provides otherwise, Tenant shall pay all Additional Rent then due with the next monthly installment of Base Rent.

3.3.1 **Real Property Taxes**. Except as expressly provided herein, Tenant shall pay and save Landlord harmless from any tax, possessory interest charge, assessment, or charge imposed on the interest of either Party in the Property during the Lease Term or imposed on the Parties or either of them by reason of this Lease or any improvement now or hereafter located on the Property (including any fees, taxes or assessments against, or as a result of, any Tenant Improvements installed on the Property by or for the benefit of Tenant ("**Improvement Taxes**")), hereinafter collectively referred to as the "**Real Property Taxes**". Tenant shall pay Real Property Taxes directly to the tax assessor and written evidence of the payment of Real Property Taxes and special assessments shall be furnished by the Tenant to the Landlord upon Tenant's receipt of any written request from Landlord for such written evidence of payment. If Tenant fails to pay the Real Property Taxes when due, Landlord shall have the right, but not the obligation, to pay the taxes, and Tenant shall reimburse Landlord for the amount of such tax payment as

Additional Rent. Real Property Taxes for the year in which the Effective Date occurs shall be prorated between the Parties, with the Tenant paying the Real Property Taxes attributed to the portion of the first year of the Lease Term from the Effective Date through December 31st of said Lease Year, and Landlord paying the portion of the Real Property Taxes attributed to the period prior to the Effective Date. Taxes for the year in which the Lease ends shall be prorated between the Landlord and Tenant as of the Expiration Date.

3.3.2 Tenant's Right to Contest Taxes. Tenant may contest the validity of an assessment against the Property. If required by law, Landlord shall join in the proceedings brought by Tenant, provided that Tenant shall pay all costs of the proceedings. Upon the final determination of any proceeding or contest, Tenant shall immediately pay the Real Property Taxes due, together with all costs, charges, interest, and penalties incidental to the proceedings. If Tenant does not pay the Real Property Taxes when due and contests such taxes, Tenant shall not be in Default under this Lease for nonpayment of such taxes until the earlier of (i) the date that such contest as to the validity of the assessment of such Real Property Taxes is finally resolved beyond any appeal rights or (ii) the date that such Real Property Taxes are required to be paid under protest to prevent the Property from being sold under a "tax sale" or similar enforcement proceeding.

3.3.3 Personal Property Taxes. Tenant shall pay all taxes levied or assessed against trade fixtures, furnishings, equipment or any other personal property or improvements belonging to Tenant or anyone claiming by or through Tenant. Tenant shall try to have personal property and improvements belonging to Tenant taxed separately from the Property.

3.3.4 Utilities. Tenant shall be liable for, and shall pay when due, all charges for all utility services furnished to the Property on and after the Effective Date during the Lease Term, including, but not limited to, light, heat, electricity, telephone, cable, natural gas, water, sewage, storm sewer, storm water, waste water, janitorial services, garbage and refuse disposal, and all other utilities and services supplied to the Property (collectively, the "**Utilities**"). Tenant shall pay for such utility services directly to the appropriate supplier prior to delinquency, to the extent possible, or to the extent any such utility services are billed to Landlord, to Landlord, on or before the date designated by Landlord for payment of such amounts which shall be no earlier than 30 days after Landlord's delivery to Tenant of an invoice for such amounts. All charges for utility installation or improvements shall be paid by Tenant. All utility services furnished to the Property except those existing on the Effective Date of this Lease shall be subject to Landlord's prior written approval and shall be subject to appropriate easements which shall be

subject to Landlord's prior written approval, which shall not be unreasonably withheld, conditioned or delayed.

3.3.5 Infrastructure Development Agreement. On or before one-hundred twenty (120) days following the Effective Date, Landlord and Tenant shall enter into an Infrastructure Development Agreement which shall be attached to this Lease as **Exhibit F**. The Infrastructure Development Agreement will govern the design and construction of the enabling infrastructure needed for the Second Creek Campus development district, including in support of the Proposed Project, and will reflect Landlord's participation in the design and development of the enabling infrastructure in an amount not to exceed $50,000,000. The Infrastructure Development Agreement may require Landlord to acquire design and construction services or may require Landlord to pay Tenant as reimbursement for agreed-upon design and construction work.

3.4 Late Payment. Any rental payment or other sum due under this Lease, all of which shall be deemed "Rent" by the Parties, not received within 10 days of the due date shall bear interest until collected, at a rate equivalent to the lesser of (i) the highest rate of interest allowed by law; and (ii) fourteen percent (14%) per annum, from the date due until paid.

3.5 Net Lease. It is understood and agreed by Tenant that this Lease is a triple net lease and the Rent, Additional Rent, and all other sums payable hereunder shall be absolutely net to Landlord. Tenant shall be responsible for all taxes, possessory interest tax or payments, payments in lieu of taxes, assessments, utility charges, liens, insurance, maintenance, repairs, and all other costs associated with the Property or the Tenant Improvements. Except as set forth in this Lease, Tenant shall pay all sums payable hereunder without notice or demand, and without set-off, abatement, suspension, or deduction, provided that in any action to collect Rent, terminate this Lease or enforce any rights of Landlord hereunder Tenant shall retain the right to assert a counterclaim or defense against the Landlord in any such action.

4 USE OF PROPERTY

4.1 Permitted Uses. Tenant, during the Lease Term, shall have the right to use and develop the Property for the following uses: manufacturing, warehouse, distribution, and administrative facilities (the "**Permitted Uses**").

4.2 Quiet Possession. After the Effective Date, subject to the terms of this Lease and the rights of Landlord under this Lease and under Applicable Law, Tenant may occupy and enjoy the Property for the full Lease Term without disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Property paramount to Landlord, and free of any encumbrance created or suffered by Landlord after the Effective Date that is material and adverse to Tenant's

Permitted Uses and rights under this Lease, and is not an encumbrance created or suffered by or through Tenant.

4.3 Construction of Proposed Project. After the Rent Commencement Date, at Tenant's sole cost and expense, Tenant shall develop and operate the Proposed Project, provided that its development and operation of the Proposed Project shall be in compliance with all Applicable Law. The actual facility designed and developed by the Tenant, including the utility infrastructure necessary to serve the Proposed Project, consistent with the Proposed Project described herein, shall be referred to as the "**Tenant Improvements**." Tenant shall commence construction of the Tenant Improvements within six (6) months after the later of: (i) the Rent Commencement Date, (ii) the date on which Tenant receives the building permit(s) necessary to commence construction of the Proposed Project, or (iii) the date on which (1) water, sewer, and electrical services are available to the Proposed Project to allow Tenant to commence construction of the Tenant Improvements and (2) adequate roadways to and from the Proposed Project are constructed to allow Tenant to commence construction of the Tenant Improvements.

4.3.1 Alterations; Landlord Approval. Tenant shall have the right at any time and from time to time after the Rent Commencement Date and during the Lease Term, at its sole cost and expense, to make such changes and alterations (including demolition of any existing Tenant Improvements), structural or otherwise, to the Tenant Improvements as Tenant shall deem necessary or desirable ("**Alterations**"); provided, however, that such Alterations shall be in compliance with all Applicable Laws and the Permitted Uses. No approval of the Landlord shall be required for maintenance, repair, replacement (with same or similar), or remodeling of Tenant Improvements on the Property, unless they constitute Major Alterations. "**Major Alterations**" mean Alterations which involve the construction of a new building outside of the building footprint of the initial Tenant Improvements, or the expansion of such footprint, and which costs in excess of 10% of the design and construction costs of the Initial Tenant Improvements. Except as expressly provided above, any and all Tenant Improvements and, Major Alterations to be made by Tenant shall be subject to Landlord's prior written confirmation that the proposed Tenant Improvements and, Major Alterations shall be in accordance with the requirements of this Lease, which review submission Tenant may make prior to or at the same time as its formal submission for permits and entitlements for any other governmental approvals. Landlord's approval shall not be unreasonably withheld, conditioned, or delayed. Landlord shall have fifteen (15) days to approve Tenant's submission or reject such submission with comments, or such submission shall be deemed approved.

4.3.2 Requirements to Commence Construction. Tenant shall not commence the construction of the Tenant Improvements until Tenant has met all of the

following conditions:

4.3.2.1 Tenant has contacted all appropriate utilities and verified the location, depth and nature of all utilities affecting the Property and any areas bordering upon the Property;

4.3.2.2 The Landlord has approved Tenant's conceptual development plans, proposed landscaping plan, and signage, which shall include a conceptual site plan for any new building, schematic architectural design of each building, and renderings of buildings and proposed landscaping, provided that Landlord shall have 30 days to approve Tenant's submission or reject such submission with comments specifying in reasonable detail the reasons for such disapproval, or such submission shall be deemed approved;

4.3.2.3 Tenant has delivered to Landlord (i) copies of all permits, approvals, and authorizations required by the building department and all other governmental authorities (other than Landlord) for the commencement of construction of the Tenant Improvements, together with a schedule of additional permits that will be required to complete the proposed Tenant Improvements and (ii) copies of the plans and specifications for the Tenant Improvements associated with the current building permits stamped approved by the building department;

4.3.2.4 Tenant has delivered to Landlord an irrevocable standby letter of credit, issued by a financial institution acceptable to Landlord and in a form reasonably approved by Landlord, in the amount of 10% of the amount of Tenant's Construction Contracts;

4.3.2.5 Tenant has delivered to Landlord a certificate confirming that it has entered into a fully executed construction contract with a general contractor, together with executed contracts for each of the major contractors for the project, or a fully executed construction management contract together with executed contracts for each of the major contractors (collectively, the "**Construction Contracts**"), for the construction of the Tenant Improvements, which Construction Contracts include the required Contractor Indemnity and Insurance;

4.3.2.6 Tenant has delivered to Landlord a certificate confirming that it has entered into fully executed agreements between Tenant and the architect and engineers engaged to design the Tenant Improvements ("**Design Contracts**");

4.3.2.7 Tenant has obtained, and has caused its general contractors, construction managers, architects, and subcontractors to obtain the insurance required in **Exhibit H** and has delivered to Landlord certificates (in form reasonably acceptable to Landlord) evidencing such insurance; and

4.3.2.8 Tenant's construction manager, contractors, and subcontractors shall have furnished to Landlord the indemnification agreement in the form set forth in **Exhibit I**.

4.4 Landlord's Cooperation. Landlord covenants and agrees to cooperate with and support, at no out-of-pocket cost or other material liability to Landlord, and at no material and adverse impact to Landlord or other property of Landlord, Tenant's development proposals in accordance with the terms and conditions of this Lease. Landlord and Tenant recognize and acknowledge that construction of the Tenant Improvements will require cooperation and coordination between the Parties, including, without limitation, Landlord agrees to promptly join in and execute any Application or Filing as Tenant may from time-to-time request. The term "**Application or Filing**" shall mean and refer to any instrument, document, agreement, certificate, or filing (or amendment of any of the foregoing) that is (i) necessary or appropriate for any development or construction contemplated under this Lease, including, without limitation, any application for any utility service or hookup, easement, covenant, condition, restriction, permit, application, subdivision map or plat, subdivision improvement or dedication agreement or such other instruments, or (ii) enables Tenant from time to time to seek any approval or to use and operate the Property in accordance with this Lease.

4.5 Title to Improvements and Personal Property.

4.5.1 The Tenant Improvements constructed or installed upon the Property shall, at all times during the Lease Term, be and remain real property, with title thereto being vested in Tenant for tax and all other purposes. During the Lease Term, Tenant shall have exclusive control, possession, occupancy, use, and management of the Property and Tenant Improvements, including, without limitation, the exclusive right to install signage subject to the terms herein. Upon expiration or early termination of the Lease, including through Tenant's exercise of the Cancellation Option, title to all Tenant Improvements not removed by Tenant shall automatically transfer to Landlord without any charge or cost to Landlord and Tenant shall have no obligation to remove such Tenant Improvements. Notwithstanding the forgoing, whether removed or not, Landlord shall never acquire title to any fuel storage tanks, and associated piping ("**Storage Tanks**"), installed by Tenant at the Property unless and until Landlord specifically notifies Tenant of Landlord's intent to acquire title to the Storage Tanks, in which case title

of the Storage Tanks shall transfer to Landlord without any charge or cost to Landlord.

4.5.2 Tenant shall have the right to place signage on the Property in accordance with any Applicable Laws. Signage shall be related to those commercial business activities, businesses, commercial projects and Tenant's business occurring at the Property in accordance with the Permitted Uses, and such signage shall not be used to advertise any activities that are illegal under state or federal law or "adult" entertainment, nudity, or pornographic products, and, without limiting the foregoing, Tenant shall not install, post, or display or allow the installation, posting, or displaying of any political advertising, posters, or signage. All signage placed on the Property shall be removed by Tenant at the expiration or earlier termination of this Lease except to the extent otherwise agreed in writing by Landlord in its sole and absolute discretion. Any damage or injury to the Property or any Tenant Improvements caused by such removal shall be repaired by Tenant, and if not so removed or repaired then Landlord may remove and repair the same at Tenant's expense.

4.5.3 All personal property (which for purposes of this **Section 4.5.3** shall exclude Tenant Improvements and all infrastructure improvements required for the function of such Tenant Improvements) shall be and remain the property of Tenant, provided that Tenant shall be solely liable for and shall pay (when due) all costs, charges, payments or other sums due with regard to such personal property. At the expiration or earlier termination of this Lease all such personal property shall be removed by Tenant. If any such personal property to be removed by Tenant is not so removed by Tenant, Landlord may remove and dispose of such items at Tenant's expense or such items shall become the property of Landlord, in whole or in part, at Landlord's option in its sole discretion and at no cost to Landlord.

4.6 **Maintenance and Repairs**. During the Lease Term, Tenant shall keep all portions of the Property and all Tenant Improvements in reasonably good and clean order, condition and repair as suited to its use, excluding ordinary wear, tear, casualty, condemnation, depreciation and physical, technological and/or economic obsolescence. Tenant shall be solely responsible for all snow plowing and removal and landscaping within the Property.

4.7 **Compliance with Legal Requirements**. Tenant shall comply with all current and future applicable laws, rules, regulations, ordinances, standards, permits and permit requirements, orders, decrees, DEN Rules and Regulations, and other governmental requirements of all governmental bodies having authority over the Property or any improvements on the Property, or over Tenant as they pertain to Tenant's operations on the Property, or any activity conducted thereon or related thereto, including, but not limited to, those pertaining to police, fire, safety, sanitation, environment, storm

water, odor, dust and other emissions, noise, and track-out, as currently in effect or as hereafter amended or issued, and applicable FAA regulations and advisory circulars (collectively "**Applicable Law**"). Landlord shall not directly use or apply any Applicable Law to circumvent this Lease by modifying, restricting, or altering Tenant's rights hereunder; provided, however, that nothing herein shall prevent the City's application of any Applicable Laws in the proper exercise of its "police powers," which refers to the inherent power of the City to enact and enforce regulations for the protection of the public health, safety and welfare. Tenant shall not knowingly cause or permit the Property to be used in any way which constitutes a violation of any Applicable Law, or which constitutes a public or private nuisance. Tenant shall obtain and pay for all permits, licenses and other authorizations required for Tenant's use of the Property or any part thereof, and for the construction, operation and maintenance of the Tenant Improvements or any part thereof.

4.8 Hazardous Material.

4.8.1 General. Tenant's use of the Property shall be in compliance with any Applicable Law related to the use, management, disposal, or cleanup of any Hazardous Materials (collectively "**Environmental Law**"). As used in this Lease, the term "**Hazardous Materials**" includes but is not limited to any flammable items, explosives, radioactive materials, hazardous or toxic substances, material or waste or related materials, including any substances defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "toxic substances", "pollutant", or "pollution", now or subsequently regulated under any Environmental Law, including without limitation petroleum-based products, paints, solvents, lead, cyanide, DDT, printing inks, acids, pesticides, ammonia compounds and other chemical products, asbestos, PCBs and similar compounds, any per-and polyfluoroalkyl substances, and including any different products and materials which are now or subsequently found to have adverse effects on the environment or the health and safety of persons. As used in this Lease, the term "Release" shall have the meaning as defined in 42 U.S.C. 9601. The term "Release" shall also include a threatened Release.

4.8.2 Monitoring. Landlord or its designated agents may, at Landlord's sole discretion and at reasonable times following provision of 2 business days' prior written notice to Tenant, enter upon the Property for the purpose of (1) monitoring Tenant's activities conducted thereon if Landlord reasonably believes a breach of Tenant's obligations under this **Section 4.8** has occurred, and (2) conducting environmental testing and sampling to determine compliance with Applicable Law and Environmental Law and the terms of this Lease (collectively "**Monitoring Activities**"). Notwithstanding the foregoing: (i) 2 business days' shall not be required

where Landlord reasonably believes there is an emergent condition requiring Monitoring Activities; (ii) such Monitoring Activities shall not unreasonably interfere with Tenant's operation of the Property, and (iii) the Monitoring Activities shall not occur more than once per two-year period, provided that any emergency Monitoring Activities shall not count towards such two-year limit. If such Monitoring Activities disclose the presence or Release of Hazardous Material in violation of either Applicable Law or Environmental Law or this Lease, which violation remains uncured and was caused by Tenant or the directors, officers, employees, representatives, contractors, subcontractors, invitees, agents or guests of Tenant (collectively "**Tenant Parties**") or related to Tenant's tenancy under this Lease, or which occur during the term (except and excluding a Release of Hazardous Material that originates from other adjacent lands of the City or the Landlord), the reasonable cost of such Monitoring Activities shall be paid by Tenant. Landlord shall provide Tenant with written reports prepared in connection with such Monitoring Activities. Landlord's discretionary actions pursuant to this subsection shall not constitute a release, waiver, or modification of Tenant's obligations otherwise specified in this Lease, or of any of Landlord's rights under this Lease.

4.8.3 Notifications. Tenant shall notify Landlord and any applicable governmental agency required to be notified under Applicable Law or Environmental Law within 2 business days' (or such other reporting time set forth in the DEN Rules and Regulations) of Tenant becoming aware of any Release of Hazardous Material outside of the walls of the Proposed Project onto the Property, and shall promptly provide Landlord with a copy of any notifications given to any governmental entity regarding any such Release. Tenant has disclosed to Landlord that Tenant uses certain Hazardous Materials in connection with its manufacturing operations and shall not be required to report its periodic use of such Hazardous Materials unless Tenant fails to use, store and dispose of such Hazardous Material in compliance with Environmental Laws. Tenant shall promptly provide Landlord with copies of any inspection report, order, fine, request, notice or other correspondence from any governmental entity regarding any Release of Hazardous Material on, at, under, from or onto the Property Tenant shall provide Landlord with a copy of all reports (except discharge monitoring reports submitted pursuant to a National Pollutant Discharge Elimination System (or state equivalent) permit), manifests, material safety data sheets, and identification numbers regarding Hazardous Material at the same time they are submitted to the appropriate governmental authorities.

4.8.4 Environmental Assessment. Tenant shall, upon written request from Landlord, based on (i) Landlord's reasonable belief there has been a Release on or about the Property in violation of Applicable Law or Environmental Law during the term of this Lease caused by Tenant or Tenant Parties,

related to Tenant's tenancy under this Lease, or caused by any third-party (except and excluding a Release of Hazardous Material that originates from other adjacent lands of the City or the Landlord), or (ii) a discovery (either during or after the term of this Lease) of the presence of any Hazardous Material in violation of Applicable Law or Environmental Law reasonably believed by Landlord to be caused by Tenant or Tenant Parties, related to Tenant's tenancy under this Lease, or caused by any third-party during the Lease Term (except and excluding a Release of Hazardous Material that originates from other adjacent lands of the City or the Landlord), promptly provide Landlord with an environmental assessment prepared at Tenant's cost and by a qualified professional approved in advance by Landlord. Tenant's obligations under this subsection shall survive expiration or other termination of this Lease.

4.8.5 Benchmark Environmental Assessments. During the Due Diligence Period Tenant was provided the opportunity to conduct environmental due diligence of the Property, and if such environmental assessment was conducted then Tenant at its cost shall, within 15 days after the end of the Due Diligence Period, provide a copy of any such final, third-party report(s) to Landlord. Upon expiration or termination of this Lease, Tenant, at its sole cost and expense, shall provide Landlord with a Phase I Environmental Site Assessment, and, if warranted by the Phase I and approved by Landlord, conduct a Phase II Environmental Site Assessment and prepare a Phase II Environmental Site Assessment report (prepared by a qualified professional reasonably approved in advance by Landlord), reasonably satisfactory to Landlord, to verify Tenant's compliance with the requirements of **Section 4.8** of this Lease. Tenant shall be responsible for remediation of Hazardous Material to the extent required by applicable Environmental Law (i) on, at, under, or about the Property (with the exception of Pre-Existing Contamination, as defined below), (ii) migrating therefrom, or (iii) in any other areas, caused by Tenant or Tenant Parties, related to Tenant's tenancy under this Lease, or caused by any third-party during the Lease Term (except and excluding a Release of Hazardous Material that originates from other adjacent lands of the City or the Landlord). As an alternative to the remediation addressed in the preceding sentence, where there has been a Release of a Hazardous Material at the Property, Tenant may obtain written confirmation from the applicable governmental authority that no such remediation is required. Tenant's obligations under this subsection shall survive the termination of this Lease.

4.8.6 Remediation; Indemnity. Tenant shall promptly cure any violation of Environmental Law or Applicable Law with respect to the Property, caused by (i) Tenant or Tenant Parties during the term of this Lease or related to Tenant's tenancy under this Lease or (ii) any third-party during the Lease Term (except and excluding Pre-Existing Contamination or a Release of

Hazardous Material that originates from other adjacent lands of the City or the Landlord). If, after notice from Landlord and an opportunity to cure that is reasonable under the circumstances, (provided that except in the case of a threat of imminent harm, such opportunity shall be no fewer than 90 days after Landlord's provision of written notice specifying in reasonable detail the nature of such violation), Tenant does not act in a prompt manner to cure, Tenant does not commence to cure and thereafter diligently prosecute the cure of such environmental contamination, Landlord reserves the right, but shall not have the obligation, to enter the Property and take such reasonable action as Landlord deems necessary to ensure compliance with Environmental Law or to mitigate such contamination. If Landlord reasonably believes that Tenant is in violation of any Applicable Law or Environmental Law, or that Tenant's or Tenant Parties' actions or inactions present an imminent threat of a violation or an imminent threat of a Release on the Property in violation of Applicable Law or Environmental Law, or damage to the Property or any other property in the vicinity of the Property, and after notice from Landlord and an opportunity to cure that is reasonable under the circumstances (provided that, absent a threat of imminent harm, such opportunity shall be no fewer than ninety (90) days after Landlord's provision of written notice specifying the nature of such violation in reasonable detail), Tenant does not act in a prompt manner to cure, Tenant does not commence to cure and thereafter diligently prosecute the cure of such violation or mitigate such threat, Landlord reserves the right, but shall not have the obligation, to enter the Property and take such reasonable corrective or mitigating action as Landlord deems necessary. All reasonable costs and expenses incurred by Landlord in connection with any such actions shall be due and payable by Tenant within thirty (30) days after presentation of an invoice therefor, along with reasonable supporting documentation of the costs reflected in such invoice. In addition to any other indemnity in this Lease, Tenant shall defend (with attorneys reasonably approved in writing by Landlord), indemnify and hold harmless Landlord from and against any and all losses, claims, damages, fines, or penalties of whatsoever nature, asserted against the Landlord or the Property arising from any Release of Hazardous Material in violation of this Lease or Environmental Laws affecting the Property or any other property to the extent caused by Tenant or Tenant Parties or related to Tenant's tenancy or use or occupancy of the Property. Such obligation shall include, but shall not be limited to, reasonable environmental response and remedial costs, other reasonable cleanup costs, reasonable environmental consultants' fees, reasonable attorneys' fees, fines and penalties, reasonable laboratory testing fees, death, bodily injuries, physical damage to real and personal tangible property, and Landlord's reasonable expenses as provided in this Lease, including but not limited to this Section and **Sections 4.8.4** and **4.8.5**. Such obligation shall also include, but shall not be limited to, claims by third parties and governmental authorities, including, without limitation, claims

for death, bodily injuries, physical damage to real and personal tangible property, and any other reasonable costs, and Landlord's reasonable expenses (including but not limited to consultants' fees and attorneys' fees). Tenant's obligations under this subsection shall survive expiration or other termination of this Lease.

4.8.7 **Pre-Existing Contamination**. Landlord will not assert any claim against Tenant, and shall release Tenant and Tenant Parties from liability, for any claims, causes of action, orders, demands, expenses, fees, costs, fines, penalties, damages and liabilities arising out of Hazardous Material existing on the Property as of the Effective Date ("**Pre-Existing Contamination**"). Landlord shall be responsible for any and all necessary remediation of Pre-Existing Contamination, except to the extent such Pre-Existing Contamination was caused or is exacerbated by the acts or omissions of Tenant or Tenant Parties or any third-party during the Lease Term. Landlord's obligations under this subsection shall survive expiration or other termination of this Lease.

4.8.8 **Storage Tanks**. Tenant is not leasing any underground storage tanks from Landlord. Title to any fuel storage tanks or fueling lines Tenant causes to be placed on the Property shall be and remain the property of Tenant. Except as otherwise provided in this Lease, Landlord expressly denies any ownership, operation, responsibility, or liability for the installation, operation, maintenance, or removal of fuel tanks or fuel lines related to the Proposed Project at any time before, during, or after the Lease Term. Upon the expiration or earlier termination of this Lease, Tenant shall, at Landlord's request, either remove all of Tenant's storage tanks from the Property or conduct such studies as necessary to confirm (i) the structural integrity of all Storage Tanks and (ii) that there have been no releases of Hazardous Materials from the Storage Tanks.

4.9 **No Liens**. Tenant shall pay when due all claims for labor and material furnished on or about the Property or in connection with the Tenant Improvements. Tenant shall not suffer or permit any mechanic's or materialmen's or other lien to be filed against the Property, any Tenant Improvements, or the interest of either Landlord or Tenant in this Lease, whether by reason of any work, labor, services, or materials done for, or supplied to, or claimed to have been done for or supplied to Tenant or anyone occupying or holding any interest in the Property or any part thereof through or under Tenant. If any such lien shall at any time be filed during the Lease Term, then within sixty (60) days, the Tenant shall cause the same to be canceled and discharged of record, by bond or otherwise, at the election and expense of the Tenant, provided, however, that Tenant shall have the right to contest, with due diligence, the validity or amount of any such lien or claimed lien.

4.10 Inspections. Landlord and its agents, representatives, and contractors may enter the Property at any reasonable time on not less than two (2) business days' written notice (or no notice in the event of an emergency, provided Landlord has provided as much notice as is reasonable given the circumstances) to inspect the Property, provided that such inspections do not occur more than one (1) time per two-year period. In connection with any entry by Landlord, Landlord's representatives, or any other party: (a) to the extent requested by Tenant, Landlord agrees to collect a duly executed non-disclosure agreement on Tenant's then-current form prior to permitting any third party (person or entity) to enter the Property, (b) Tenant shall have the right to deny access to the Property or certain portions thereof to third parties if Tenant determines in its sole discretion that allowing such third party potential exposure to Tenant's proprietary and confidential information within the Property or such portion of the Property would be detrimental to Tenant's business interests, and the same cannot reasonably be protected by means other than such denial of access, and (c) except in an emergency where necessary to prevent imminent damage to persons or property, Landlord and any other party shall enter the Property only when accompanied by a representative of Tenant and only in compliance with Tenant's reasonable security programs, confidentiality requirements and such other reasonable rules and regulations as Tenant may impose. Landlord shall exercise its entry rights in a manner that will not unreasonably interfere with or unreasonably interrupt Tenant's ordinary business activities at the Property. Nothing in this provision alters or impacts the right of the City to access and enter the Property pursuant to the proper exercise of the City's police powers.

5 INSURANCE; INDEMNITY

5.1 Tenant's Insurance. Tenant shall, at its sole cost and expense, obtain and keep in force at all times during the Lease Term when the Tenant is operating the Proposed Project, the insurance as set forth in **Exhibit H**.

5.2 General Insurance Provisions.

5.2.1 Certificates of Insurance; Policies; No Cancellation. Tenant shall deliver to Landlord certificates of insurance, executed by a duly authorized representative of each insurer, evidencing the existence of all insurance required to be maintained by Tenant. Landlord shall be provided at least thirty (30) days prior written notice prior to cancellation, non-renewal, or material change in any policy. At Landlord's request, Tenant shall deliver complete policies of insurance maintained by Tenant in accordance with this Lease, and all endorsements thereto. Insurance must be maintained without any lapse in coverage during the Lease Term. Failure of Landlord to demand such certificates or policies or identify any deficiency or noncompliance with coverage requirements, shall not be construed as a

waiver of Tenant's obligation to maintain the insurance required by this Lease.

5.2.2 **Additional Insureds**. Landlord shall be named as additional insured on a form reasonably approved by Landlord under all of the policies required to be maintained or maintained by Tenant, except workers' compensation, and said policies shall provide for severability of interest.

5.2.3 **Primary Coverage**. All insurance to be maintained by Tenant shall be primary, without right of contribution from insurance of Landlord.

5.2.4 **No Limitation on Liability**. The limits of insurance maintained by Tenant pursuant to this **Section 5** shall not limit Tenant's liability under this Lease.

5.3 **Waiver of Subrogation**. To the extent of the proceeds of insurance paid with respect to a claim of loss or damage, Landlord and Tenant each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage is covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. Upon obtaining the required policies of insurance, Landlord and Tenant shall give notice to the insurance carriers of this mutual waiver of subrogation.

5.4 **Indemnity.**

5.4.1 As used solely in this **Section 5.4**, the term "**City**" shall include both the City and Landlord.

5.4.2 Tenant hereby agrees to defend, indemnify, reimburse and hold harmless City, its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the Tenant's breach of this Lease and Tenant's possession, development and use of the Property ("**Claims**"), unless such Claims have been specifically determined by the trier of fact to be the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Tenant or its subcontractors either passive or active, irrespective of fault, including City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of City.

5.4.3 Tenant's duty to defend and indemnify City in accordance with **Section 5.4.2** above, shall arise at the time written notice of the Claim is first provided to City or Tenant, regardless of whether claimant has filed suit on the Claim.

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

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

5.4.6 Tenant's obligations under this **Section 5.4** shall survive the expiration or earlier termination of this Lease.

6 DAMAGE OR DESTRUCTION

6.1 **Casualty.** If Tenant becomes aware of any material damage or destruction to all or any material portion of the Property or Tenant Improvements, whether ordinary or extraordinary, foreseen, or unforeseen (each, a "**Casualty**"), Tenant shall promptly notify Landlord of such fact.

6.2 **Effect of Casualty.** If any Casualty occurs, except as expressly set forth in this Lease to the contrary: (i) Landlord shall have no duty to repair or restore any part of the Property or Tenant Improvements, (ii) no Rent or Additional Rent or other charges shall abate, (iii) except as expressly set forth in this Section, this Lease shall not terminate or be impaired, and (iv) Tenant shall have the right, but not the obligation, to restore the Property and Tenant Improvements following such Casualty. If Tenant elects not to restore the Property or Tenant Improvements, or any portion thereof, Tenant shall, at Tenant's sole cost and expense, and in compliance with all Applicable Law: (1) raze the Tenant Improvements (or such portion thereof as Landlord may request) to the top of the underlying building slab; provided that if Tenant elects to terminate the Lease under this subsection, then all slabs, footings, and foundations shall also be removed by Tenant unless otherwise agreed in writing by Landlord in its reasonable discretion; and provided further, Tenant will not remove any infrastructure improvements unless requested to do so in writing by Landlord; and (2) clear the Property of all debris, and level and clear all areas not restored. If a Casualty occurs during the last ten (10) years of the Lease Term and such Casualty renders more than ten percent (10%) of the Property and Tenant Improvements unusable, or Tenant otherwise reasonably determines that the Tenant Improvements are not economically viable and leasable building(s) in working order and condition in comparison to similarly aged buildings within the Denver commercial market, then Tenant shall have the option of terminating this

Lease upon written notice to Landlord, which termination shall be effective as of the date set forth in said notice, provided that in no event shall such date be earlier than the date of such Casualty, and provided further that such notice shall be given no later than one hundred eighty (180) days after the date of such Casualty.

6.3 Adjustment of Claims; Use of Property Insurance Proceeds. Tenant shall have the sole right to negotiate and settle any and all claims with Tenant's insurers pertaining to any Casualty. All insurance proceeds from Tenant's insurance payable as a result of any Casualty shall belong to and be payable to Tenant, subject to the rights of any Leasehold Mortgagee.

7 CONDEMNATION

7.1 General. If a portion of the Property is taken under the power of eminent domain or sold under the threat of that power (collectively, "**Taking**"), the Parties' rights and obligations shall be governed by the common law of the State of Colorado, the applicable Colorado statutes, and this Lease. To the extent allowed by law, in the event of conflict between the statute, common law, and this Lease, this Lease shall prevail.

7.2 Total Taking. In the event of a Taking of the fee title to the entire Property and the Tenant Improvements thereon (a "**Total Taking**"), this Lease shall automatically terminate as of the earlier of (i) the date actual physical possession is taken by the condemnor or (ii) the date title actually passes to the condemnor (the "**Vesting Date**", which term shall also include the date actual physical possession is taken by the condemnor or title actually passes to the condemnor with respect to a Substantial Taking or a Partial Taking) and the Rent shall be apportioned to the date of termination.

7.3 Substantial Taking. In the event of (i) any Taking that occurs during the last 10 years of the Lease Term, wherein the Award payable to Tenant is insufficient to cover the cost of repairing, reconstructing, or replacing any Tenant Improvements, or (ii) any Taking of less than all of the Property (other than a Temporary Taking (as hereinafter defined)), which Tenant determines, in Tenant's commercially reasonable discretion, within 120 days following the Vesting Date, renders the remaining Property no longer economically and feasibly usable by Tenant for the Permitted Uses (in either instance, a "**Substantial Taking**"), then, in either event, Tenant shall have the right to terminate this Lease with written notice delivered to Landlord, which termination shall be effective as of the Vesting Date and the Rent under this Lease shall be apportioned to such Vesting Date.

7.4 Partial Taking. Upon any Taking affecting fee title to the Property or a portion thereof that is neither a Total Taking nor a Substantial Taking (a "**Partial Taking**"), then this Lease shall automatically terminate as of the Vesting Date with respect to that portion of the Property subject to the Taking, and this Lease shall remain in

full force and effect with respect to the portion of the Property not subject to the Taking, except that the Rent shall be reduced in proportion to the reduction in the gross square footage of the Property by reason of such Taking.

7.5 Award.

7.5.1 Allocation of Award. Landlord and Tenant shall cooperate and shall seek to maximize the award in any condemnation, including without limitation seeking compensation for costs incurred by Tenant in pursuing development or restoration of the Property and Tenant Improvements and the Parties' respective losses resulting from the condemnation. Landlord and Tenant shall cooperate in negotiations or litigation with the Taking authority to secure an award with respect to the Property, Tenant's leasehold estate in and to the Property in accordance with this Lease, and the Tenant Improvements, as applicable. Except as otherwise agreed in writing by the Parties, in the event of a Taking, Landlord and Tenant shall cause and direct the total compensation paid for the Taking (the "**Award**") in the condemnation proceeding to be deposited, in escrow, with Escrow Agent, whose fees and charges shall be paid and shared by Landlord and Tenant based on their respective interests in the Award. The entire amount of such Award shall be apportioned and paid by Escrow Agent as follows: (i) First, to Landlord until Landlord has recovered the Taking Land Value, (ii) Second, the balance of the Award shall be paid to Tenant. As used herein, the "**Taking Land Value**" means the value of the reversionary interest of Landlord (assuming a termination of the Lease on the effective date of the Taking) in the portion of the Property (but not any Tenant Improvements thereon) that is taken, condemned, or purchased in lieu thereof, as encumbered by this Lease, as determined by appraisal in accordance with the provisions of **Section 7.5.2**, taking into account the Parties' rights and obligations under this Lease. All proceeds from any taking or condemnation related to Landlord's reversionary interest in the portion of the Property subject to the Taking and any improvements thereon not constructed or installed by Tenant shall belong to and be paid to Landlord. Landlord and Tenant agree that the condemning authority or the court with jurisdiction over the condemnation shall use the Award allocation stipulated by Landlord and Tenant in this **Section 7.5**. However, if the amount to be allocated to each Party has not been determined by the court in the condemnation proceeding and Landlord and Tenant cannot agree upon the amount to be allocated between Landlord and Tenant within a reasonable time by good faith negotiations, then such amount shall be determined pursuant to **Section 13** using the Award allocation stipulated by Landlord and Tenant in this **Section 7.5**.

7.5.2 Determination of Taking Land Value. When the nature of the Taking is finally determined, the Parties shall meet to attempt in good faith to agree

on the Taking Land Value. If the Parties reach agreement, they will issue joint instructions to the Escrow Agent regarding disbursement of the Award.

7.5.2.1 If the Parties have not issued joint instructions to the Escrow Agent, within sixty (60) days after the Award is deposited, then the Taking Land Value shall be established through the process described below; provided, however, the Parties may at any time terminate such appraisal process and mutually agree on the Taking Land Value, in which case they shall issue joint instructions to the Escrow Agent regarding disbursement of the Award.

7.5.2.2 Two or three independent appraisers, each of whom has the MAI designation, is a member of the Appraisal Institute or any comparable successor organization, has an office in the greater City area, and has at least 15 years' experience in appraising commercial property in the area surrounding DEN (each, a "**Qualified Appraiser**") shall be engaged by the Parties to determine the Taking Land Value, with each Party selecting a Qualified Appraiser. The Qualified Appraisers shall be given identical instructions to determine Taking Land Value, each acting as a neutral third party and not as an advocate for either Party, exercising their professional judgment and employing appraisal standards and techniques to the extent not inconsistent with the directions provided in this Lease. Each Qualified Appraiser shall prepare an initial appraisal, which appraisal should be conducted within 45 days after the Qualified Appraiser is selected and will be at the sole cost and expense of the Party selecting the Qualified Appraiser. A true and correct copy of all communications regarding the appraisal report and the final appraisal report delivered to the Party retaining the Qualified Appraiser shall be delivered to the other Party at the same time. If the value of either appraisal set out in the final report is no more than one hundred ten percent (110%) of the other appraisal, then the average of the two appraisals shall constitute the Taking Land Value.

7.5.2.3 If the value of either appraisal is more than one hundred ten percent (110%) of the other appraisal, then the Qualified Appraisers shall meet with the Parties and each other and attempt to agree on the Taking Land Value. If the Qualified Appraisers have not agreed on the Taking Land Value within 30 days after the final appraisal reports are exchanged, a third Qualified Appraiser shall be selected by agreement among the first two Qualified Appraisers or, failing such agreement, by agreement between the Parties or by a court of competent jurisdiction. The third Qualified Appraiser shall receive copies of each of the prior appraisals and after reviewing such appraisals shall complete a third appraisal within 30 days and the

costs and expense of the third appraisal shall be shared equally between Landlord and Tenant. Each Qualified Appraiser shall state a single number that he or she has determined to be the Taking Land Value as defined in this Lease (the "**Appraised Taking Value**"). Any appraisal stating a range of values as the Appraised Taking Value shall be disregarded and another appraisal substituted in its place at the expense of the Party who commissioned the disregarded appraisal.

7.5.2.4 If three appraisals are prepared, the following selection process shall be followed to determine the Taking Land Value: (a) if any two Qualified Appraisers select the same Appraised Taking Value, that shall be the Taking Land Value for purposes of setting the Taking Land Value; (b) if the middle Appraised Taking Value is no more than one hundred ten percent (110%) of the lowest Appraised Taking Value and the highest Appraised Taking Value is no more than one hundred ten percent (110%) of the middle Appraised Taking Value, the average of the three Appraised Taking Values shall be the Taking Land Value; (c) subject to subsection (e) below if the middle Appraised Taking Value is more than one hundred ten percent (110%) of the lowest Appraised Taking Value, the lowest Appraised Taking Value shall not be considered and the average of the middle and high Appraised Taking Values shall be the Taking Land Value; (d) subject to subsection (e) below if the highest Appraised Taking Value is more than one hundred ten percent (110%) of the middle Appraised Taking Value, the highest Appraised Taking Value shall not be considered further, and the lowest and middle Appraised Taking Values shall be averaged and that amount shall be the Taking Land Value; or (e) if both the lowest and the highest Appraised Taking Values are not considered under subsections (c) and (d) above, the middle Appraised Taking Value shall be the Taking Land Value.

7.6 **Temporary Taking**. In the event of a Taking of all or any portion of the Property for a temporary use that does not materially interfere with Tenant's use of the Property (a "**Temporary Taking**"), the foregoing provisions in this **Section 7** shall be inapplicable thereto, and this Lease shall continue in full force and effect, unless such temporary Taking is for a period that exceeds the balance of the Initial Term or the then-current Extension Period, in which event, this Lease shall terminate effective as of the Vesting Date of such Temporary Taking. The Award payable in connection with any such Temporary Taking shall be paid to Tenant.

7.7 **Settlement**. Landlord shall not, without consent of Tenant and any senior Leasehold Mortgagee, which consents shall not be unreasonably withheld, conditioned, or delayed, (i) make any settlement with the condemning authority, (ii)

convey any portion of the Property to such authority in lieu of condemnation, or (iii) consent to any Taking.

7.8 **Notice.** A Party receiving any notice of a Taking or the threat of a Taking shall promptly give notice to the other of the receipt, contents and date of notice received.

7.9 **Taking by Landlord**. Except in the case of a Temporary Taking, the provisions of this **Section 7** shall not apply to a Taking by Landlord or other body under Landlord's control (a "**Landlord Taking**"). In the event of a Landlord Taking other than a Temporary Taking, the Award to Tenant shall be the sum of: (i) the fair market value of the portion of the Tenant Improvements and Tenant's remaining interest under this Lease (including, without limitation, any unexercised options) so taken, and (ii) any reasonable costs incurred or to be incurred by Tenant to repair or rebuild any remaining Tenant Improvements ("**Rebuilding Costs**") and/or relocate operations; provided, however, that the Award for a Landlord Taking shall in no event be less than the sum of the unamortized costs of Tenant's Improvements so taken, and any reasonable Rebuilding Costs incurred or to be incurred by Tenant under subpart (ii) above.

8 ASSIGNMENT

8.1 **Selection of Tenant**. Landlord and Tenant have entered into this Lease to permit and require the development of the Property in accordance with the Proposed Project. Tenant acknowledges that:

8.1.1 The qualifications and identity of Tenant and its management personnel are of particular concern to Landlord; and

8.1.2 It is because of such qualifications and identity that Landlord is entering into this Lease; and

8.1.3 In doing so, Landlord is willing to accept and rely upon the obligations of Tenant for the faithful performance of all undertakings and covenants to be performed by it under this Lease.

8.2 **Assignments**. Provided Tenant is not in Default under this Lease beyond the expiration of any applicable cure period, Tenant shall have, with the prior written consent of Landlord in accordance with **Section 8.2.1**, the right to assign all or part of Tenant's interest in this Lease. Notwithstanding the foregoing, Landlord's prior written consent shall not be required in the case of (i) an assignment to an affiliate of Tenant, (ii) an assignment to a Leasehold Mortgagee for security purposes pursuant to **Section 11** of this Lease, or (iii) an assignment to an entity with a net worth, as demonstrated in a current audited financial statement, of not less than the highest net present value amount of Base Rent remaining to be paid under the Lease, as reflected in the schedule attached as **Exhibit J** for the applicable Lease year. In

connection with any assignment or partial assignment (other than the granting of a security interest to a Leasehold Mortgagee), the assignee shall enter into an assumption agreement with Landlord and Tenant pursuant to which it assumes all of the duties and obligations of Tenant (or applicable duties in the event of a partial assignment) under this Lease with respect to the portion of the interest being assigned. Tenant shall pay Landlord's reasonable, out-of-pocket attorneys' fees and costs incurred in connection with any assignment by Tenant.

8.2.1 In addition to the foregoing, any assignment requiring Landlord's consent under **Section 8.2** shall be at Landlord's reasonable discretion. Tenant's assignment request shall include the following:

8.2.1.1 such records and financial statements as may be necessary and appropriate to allow Landlord, in its reasonable judgment, to establish that the proposed assignee is financially capable of meeting the obligations under the Lease.

8.2.1.2 Such information demonstrating that the proposed assignee is experienced in operating properties in accordance with the Permitted Uses.

8.3 Additional Assignment Provisions. Notwithstanding anything to the contrary, without Landlord's consent, no Leasehold Mortgagee or other party shall be permitted to acquire Tenant's interests under this Lease, whether in connection with an assignment, or the exercise by Leasehold Mortgagee of its rights and remedies under any Leasehold Mortgage, or otherwise, in the event such party (the proposed assignee) or any person or entity that directly or indirectly owns or controls such party (a) is an entity debarred from doing business with the City or any governmental agency; (b) has been convicted of a violation of any state or federal law directly related to the transaction of business with any public entity and involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy, or material misrepresentation; (c) is identified on the OFAC List, or (d) a person with whom a citizen of the United States is prohibited to engage in transactions by any trade embargo, economic sanction, or other prohibition of United States law, rule, regulation or Executive Order of the President of the United States, (in either such case, a "**Prohibited Party**"). The term "**OFAC List**" shall mean the list of specially designated nationals and blocked persons and blocked countries subject to financial sanctions that is maintained by the U.S. Treasury Department, Office of Foreign Assets Control and any other similar list maintained by the U.S. Treasury Department, Office of Foreign Assets Control pursuant to any law, rule, regulation or Executive Order of the President of the United States, including, without limitation, trade embargo, economic sanctions, or other prohibitions imposed by Executive Order of the President of the United States.

9 DEFAULTS; REMEDIES

9.1 Tenant Default. The occurrence of any one or more of the following events shall be deemed a "**Default**" by Tenant under this Lease:

9.1.1 Default in Rent. Failure to make any required Rent payment on the due date of such payment and such failure continues for ten (10) business days following Landlord's written notice of such failure; or

9.1.2 Default in Other Covenants. Default in the performance of any other covenant or agreement on the part of Tenant to be performed hereunder (other than the payment of Rent), if such Default continues for a period of thirty (30) days following receipt of written notice from Landlord, provided, however, that if such Default or failure cannot, with due diligence, be cured within thirty (30) days after receipt by Tenant of any such written notice, then the time within which to remedy that Default or failure shall be extended for such period as may be necessary to complete same with due diligence, provided that Tenant provides a written explanation within 30 days after receipt of notice of Default of the reasons why the Default cannot with due diligence be cured within thirty (30) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the Default, and Tenant promptly commences and continuously and diligently prosecutes the cure to completion; or

9.1.3 Tenant abandons the Property or any portion thereof which for the purposes of this **Section 9.1.3** shall mean the cessation of all Permitted Uses for a period not less than twenty-four consecutive (24) months; or

9.1.4 Tenant's (i) making of a general assignment for the benefit of creditors, (ii) filing of a voluntary petition in bankruptcy or being adjudicated a bankrupt or insolvent by any court, (iii) filing of a petition for reorganization or an arrangement under the Federal Bankruptcy Code or any state insolvency act, or (iv) suffering of the appointment of a receiver or trustee for all or a substantial portion of its property in any proceeding other than a bankruptcy proceeding, and such appointment shall not be vacated within ninety (90) days after it has been made.

9.2 Landlord's Remedies. Upon the occurrence of an event of Default, subject to the provisions of **Sections 9.2.5**, **9.2.6, 9.2.7** and **11** below, Landlord may exercise any one or more of the remedies set forth in this Section or any other remedy available under Applicable Law or contained in this Lease.

9.2.1 **Termination**. Landlord may terminate this Lease and Tenant's right to possession of the Property upon thirty (30) days written notice, without affecting Landlord's right to recover damages; provided, however, that if Tenant cures the Default within the time period hereinbefore provided, then this Lease shall continue in full force and effect.

9.2.2 **Re-Entry**. Landlord may re-enter the Property either by summary eviction proceedings or by any suitable action or proceeding at law, and may repossess the same, and may remove any person from the Property, to the end that Landlord may have, hold, and enjoy the Property, in accordance with such process of law.

9.2.3 **Reletting**. Following such termination or re-entry, Landlord may relet the whole or any part of the Property from time to time, either in the name of Landlord or otherwise, to such tenants, for such terms ending before, on, or after the expiration date of the Lease Term, at such rentals and on such other conditions as Landlord may reasonably determine to be appropriate.

9.2.4 **Damages**. If the Landlord terminates this Lease and Tenant's rights of possession to the Property, or re-enters the Property and repossesses the same, Landlord has the right to recover: (i) the amount of the unpaid Base Rent and Additional Rent which had been earned or is due at the time of termination or re-entry; (ii) the net present value of the amount by which the unpaid Base Rent that would have been earned after the termination of this Lease for a period equal to the least of (i) the balance of the Lease Term, or (ii) 10 years from such termination; and (iii) any reasonable, third-party costs incurred by Landlord in connection with recovering possession of the Property, expenses of reletting, including necessary repair and renovation of the Property.

9.2.5 **Cure and Limitation on Damages.** After the expiration of any applicable notice and cure periods, Landlord shall have the right (but not the obligation) to cure any Default by Tenant under this Lease, and, if Landlord chooses to do so, recover on demand all reasonable costs and expenses incurred by Landlord in curing any such Default, including, without limitation, reasonable attorneys' fees and interest on the costs and expenses so incurred at the rate of 14% per year as Additional Rent; provided, however, that Landlord's right to cure shall be limited to Defaults creating circumstances reasonably believed by Landlord to present an emergency, or presenting risks to safety, human health, or the environment, or presenting risks to Landlord's property interests. Notwithstanding anything to the contrary herein, in the event of a Tenant Default during the Development Approval

Period, Landlord's sole and exclusive remedies after the expiration of any cure periods shall be (i) the right to terminate this Lease and the right to damages for any matters arising due to such Tenant Default up to such termination date, and (ii) Landlord shall not have the remedies set forth in **Section 9.2.4** for lost Base Rent or reletting and renovation expenses.

9.2.6 Notice. Prior to exercising any remedies under this Lease with respect to an event of Default, Landlord shall provide a second written notice to Tenant, and an additional thirty (30) day cure period, which shall state in bold, capitalized letters in not less than 12 point font: URGENT – IMMEDIATE CURE OR CORRECTIVE ACTION REQUIRED WITHIN THIRTY (30) DAYS, THE FAILURE OF WHICH TO CURE MAY RESULT IN A TERMINATION OF THE LEASE.

9.2.7 Disqualification. If the Landlord terminates this Lease, such termination may also, at the sole discretion of the Landlord, constitute grounds for disqualifying Tenant from submitting bids or proposals for future contracts with the Landlord and the City.

9.3 Landlord's Default. In the event of a breach or default of this Lease by Landlord, Tenant shall have all rights available to it hereunder or at law or in equity, including, without limitation, termination of the Lease. In addition, if Landlord shall fail to cure any such default within thirty (30) days following receipt of written notice from Tenant identifying the default, or, if such default or failure cannot, with due diligence, be cured within thirty (30) days, then the time within which to remedy the default shall be extended for such period as may be necessary to complete same with due diligence, provided that Landlord provides a written explanation within 30 days after receipt of notice of default of the reasons why the default cannot with due diligence be cured within thirty (30) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the default, and Landlord promptly commences and continuously and diligently prosecutes the cure to completion, then and in any such event, Tenant shall have the right (but not the obligation) to cure such default on behalf of Landlord and any reasonable costs and expenses actually and reasonably incurred and paid by Tenant in connection therewith, together with interest therein at 14% until reimbursed, shall be reimbursed by Landlord to Tenant not later than thirty (30) days after written demand therefor is made by Tenant of Landlord. If Landlord fails to reimburse Tenant within such 30-day period of time, for any amounts that Landlord must reimburse Tenant in accordance with the terms of this Section and such failure to reimburse does not involve a good faith contest by Landlord of the amount or validity of the reimbursement obligation, Tenant may, after providing notice to Landlord, offset the unreimbursed amount owed by Landlord against Base Rent or any other sums due Landlord pursuant to this Lease. Any request for reimbursement

made by Tenant of Landlord in accordance with the preceding sentence shall be accompanied by copies of invoices and other evidence showing Tenant to have actually incurred and paid the costs and expenses for which reimbursement is sought.

9.4 **Remedies Cumulative**. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the Party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

9.5 **No Waiver**. No failure by Landlord or Tenant to insist on the strict performance of any provision of this Lease or to exercise any right or remedy consequent upon a default hereunder shall constitute a waiver of any such default or of any then-existing or subsequent default of the same type. No waiver of any breach shall affect or alter this Lease, which shall continue in full force and effect.

9.6 **Duty to Mitigate.** Landlord and Tenant shall each have a duty to mitigate their respective damages following an alleged default by the other Party under the terms and conditions of this Lease.

9.7 **No Special or Consequential Damages**. Except as otherwise expressly provided in this Lease, neither Party shall be entitled to recover special or consequential damages as a result of a breach of this Lease by the other Party.

10 Representations and Warranties.

10.1 **Landlord's Representations and Warranties.** Landlord represents and warrants to Tenant that the following facts and conditions exist and are true as of the Effective Date, each of which is material and being relied upon by Tenant:

10.1.1 **Due Authorization and Execution.** Landlord has the requisite power and authority to execute and perform this Lease and all related agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "**Lease Documents**"); the execution, delivery and performance of the Lease Documents have been duly authorized by all requisite actions of Landlord; the Lease Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease Documents nor the consummation of the transactions contemplated thereby violates any agreement (including Landlord's charter

documents), contract or other restriction to which Landlord is a party or is bound.

10.2 Tenant's Representations and Warranties.

10.2.1 Due Authorization and Execution. Tenant has the requisite power and authority to execute and perform the Lease Documents; the execution, delivery, and performance of the Lease Documents (subject to obtaining the final investment committee approval prior to the expiration of the Due Diligence Period and the Development Approval Period), have been duly authorized by all requisite actions of Tenant; the Lease Documents constitute valid, binding, and enforceable obligations of Tenant (subject to the terms and conditions contained therein); and neither the execution of the Lease Documents nor the consummation of the transactions contemplated thereby violates any agreement (including Tenant's organizational documents), contract or other restriction to which Tenant is a party or is bound. Tenant's representations and warranties contained in this **Section 10.2** shall continue to apply in full force and effect throughout the Lease Term as if made continuously during the Lease Term.

10.2.2 Condition of Property. In the event Tenant does not elect to terminate this Lease pursuant to **Sections 1.6** and **1.8.2** Tenant shall be deemed to have accepted the Property in its "AS IS", "WHERE IS", and "WITH ALL FAULTS" condition, subject to Landlord's obligations under this Lease (including, without limitation, any express representations and warranties contained in the Lease) and all encumbrances affecting the Property which are set forth on **Exhibit K** attached hereto, Applicable Law, ordinances, governmental regulations and orders.

10.3 Brokers. Each Party represents and warrants to the other that it has not dealt with any broker, finder, or other person with respect to this Lease, other than CBRE who solely represents Landlord's interests with respect to this Lease ("**Landlord Broker**") and Cantalamessa Partners, LLC who solely represents Tenant's interests with respect to this Lease ("**Tenant Broker**"). Within 30 days following the Rent Commencement Date, Landlord shall pay Landlord Broker and Tenant Broker each a commission in accordance with their separate agreement.

10.4 Maintenance of Business and Existence. Tenant will continue to engage in business operations which are permitted by the Permitted Uses, and will do all things necessary to preserve, renew, and keep in full force and effect its corporate existence and rights and franchises necessary to continue such business and preserve and keep in force and effect all licenses and permits necessary for the proper conduct of its business, unless prior written approval of the Landlord is obtained.

10.5 Conduct of Business. Tenant shall maintain cordial relationships with City and the neighbors of West Approach area and shall be sensitive to the concerns of Landlord and the neighborhood.

10.6 Compliance with Agreements. Tenant will comply with all material provisions of all contracts, agreements, undertakings or other instruments to which it is a party relating to or affecting the Property or the Tenant Improvements.

10.7 Notification of Disputes. Tenant will promptly notify Landlord of any materially adverse claims, actions or proceedings affecting the Property or the Tenant Improvements or its performance of this Lease.

10.8 Notification of Attachments. Tenant will promptly notify Landlord of any levy, attachment, execution or other process against its assets, which may adversely affect the Property or the Tenant Improvements or its performance of this Lease.

10.9 Books and Records and Audit.

10.9.1 Records Maintenance. Tenant shall maintain, in accordance with GAAP, accurate books and records in connection with the construction of the Proposed Project, including any Major Alterations, conducted by Tenant in accordance with this Lease (collectively, the "**Construction Financial Records**"). Tenant shall retain the Construction Financial Records for a period in accordance with this Lease and shall make such books and records available for inspection by representatives of the City, including, without limitation, the City's Auditor and independent auditors hired by the City. The City acknowledges that in no event shall the City have the right to examine any books, records or other financial information of Tenant that is unrelated to the Construction Financial Records.

10.9.2 Examination of Records. Any authorized agent of the City, including the Landlord, the City Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Construction Financial Records of Tenant and other pertinent books, documents, papers and records of Tenant directly related thereto (together with the Construction Financial Records, the "**Records**"), involving transactions related to the construction of the Proposed Project, or any Major Alterations, conducted by Tenant pursuant to this Lease until the later of three (3) years after the completion of the construction of such Proposed Project, or any Major Alterations, as evidenced by the issuance of a final certificate of occupancy for the same, or expiration of any applicable statute of limitations. Tenant shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Tenant may satisfy this requirement by either: (i) making the Records available for examination within the Denver

metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Tenant as appropriate.

10.9.3 Inspection of Records. Tenant agrees that the City, and any of the City's agents including the City's Auditor or an authorized representative of the Auditor, may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Tenant with the City's Manager of Finance and any related reports, document, data or other information generated by the City's Manager of Finance or employees under the control of the Manager of Finance in connection with any investigation or audit of Tenant by the City's Department of Finance. Tenant authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the City's Auditor or an authorized representative of the Auditor, and waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information. The foregoing shall apply solely with respect to the Records, and in no event shall it extend to any other books, records or other financial information of Tenant.

11 FINANCING

11.1 Tenant's Financing. Landlord agrees and acknowledges that Tenant shall have the right and power, but not the obligation, to finance construction, alteration or removal of the Tenant Improvements and otherwise obtain interim, take-out or permanent financing, or a variety of possible financing alternatives (including, without limitation, bond financing) for the purpose of repaying any construction financing, holding and operating the Tenant Improvements and other purposes related to the Property (collectively, the "**Financing**"). Any such Financing may be evidenced by one or more promissory notes and may be secured by one or more mortgages, deeds of trust or other security instruments (the "**Leasehold Mortgage**"), subject to all of the terms and conditions set forth in this **Section 11**. Landlord agrees to cooperate in good faith and to use reasonable efforts to cooperate with and accommodate Tenant's Financing, subject to all of the terms and conditions set forth in this **Section 11**.

11.2 Leasehold Mortgages. Tenant may, with notice to Landlord, encumber Tenant's interest in the leasehold estate hereby created and Tenant's interest in the Tenant Improvements, by a Leasehold Mortgage, upon condition that all rights acquired under such Leasehold Mortgage shall be subject to each and all of the covenants, conditions and restrictions set forth in this Lease, and all rights and interests of

Landlord. In no event shall Landlord's fee interest in the Property or Landlord's interest as Landlord in the Lease be subordinate to or encumbered by any Leasehold Mortgage. Any and all Leasehold Mortgages shall not extend beyond the Lease Term, and shall in all events be terminated no later than the earlier of (i) the expiration of this Lease Term, or (ii) any earlier termination of this Lease, and released promptly thereafter, subject to the rights of a Leasehold Mortgagee under **Section 11** of this Lease. The execution and delivery of any Leasehold Mortgage shall not be deemed to constitute a transfer or assignment of this Lease nor shall the holder of any Leasehold Mortgage ("**Leasehold Mortgagee**"), as such, be deemed a transferee or assignee of this Lease so as to require such Leasehold Mortgagee to assume the performance of any of the terms, covenants or conditions on the part of Tenant to be performed hereunder. Landlord and Tenant agree to the following:

11.2.1 Notice. If Tenant or any Leasehold Mortgagee shall have delivered to Landlord prior written notice of the address of any Leasehold Mortgagee, Landlord shall mail to such Leasehold Mortgagee a copy of any notice or other communication from Landlord to Tenant under this Lease at the time of giving such notice or communication to Tenant, and no termination of this Lease or termination of Tenant's right of possession of the Property or reletting of the Property by Landlord predicated on the giving of any notice to Tenant shall be effective unless Landlord gives to such Leasehold Mortgagee written notice or a copy of its notice to Tenant of such default or termination, as the case may be.

11.2.2 Right to Cure. In the event of any Default by Tenant under the provisions of this Lease, any Leasehold Mortgagee shall have the same concurrent cure periods as are given Tenant under this Lease for remedying a Default or causing it to be remedied, plus, in each case, an additional period of thirty (30) days after the later to occur of (a) the expiration of such cure period, (b) the date that Landlord has served notice of such Default upon Leasehold Mortgagee, and Landlord shall accept such performance on the part of such Leasehold Mortgagee as though the same had been done or performed by Tenant, and for such purpose Landlord and Tenant hereby authorize such Leasehold Mortgagee to enter upon the Property and to exercise any of its rights and powers under this Lease and, subject to the provisions of this Lease, under the Leasehold Mortgage. In addition, in those instances which reasonably require any Leasehold Mortgagee to be in possession of the Property to cure any Default by Tenant, the time therein allowed any Leasehold Mortgagee to cure any Default by Tenant shall be deemed extended to include the reasonable period of time required by any Leasehold Mortgagee to obtain such possession with due diligence and in accordance with this Lease and within the time set forth elsewhere in this Lease or in this **Section 11**, whichever is later, and in those instances in which any Leasehold Mortgagee is prohibited by any process or injunction issued by

any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceeding involving Tenant from commencing or prosecuting foreclosure or other appropriate proceedings in the nature thereof, the time herein allowed any Leasehold Mortgagee to prosecute such foreclosure or other proceeding shall be extended for the period of such prohibition, provided that, in either such instance, (i) such Leasehold Mortgagee shall have fully cured any Default in the payment of any monetary obligation of Tenant under this Lease which is not cured within the applicable cure period hereunder, and shall continue to make payments of Rent and any other monetary payments to Landlord in accordance with the terms and within the time frames set forth in this Lease, and (ii) such Leasehold Mortgagee shall provide Landlord a written explanation within 60 days after receipt of notice of Default of the reasons why the default cannot with due diligence be cured within sixty (60) days after receipt of such notice, and the actions to be taken and the time reasonably required to cure the Default, and thereafter promptly commence and continuously and diligently prosecute the cure to completion.

11.2.3 No Termination During Foreclosure or Cure. In the event of any non-monetary Default by Tenant hereunder, Landlord shall not terminate or take any action to effect a termination of this Lease or reenter, take possession of or relet the Property or similarly enforce performance of this Lease as permitted by **Section 9**, so long as (i) prior to the expiration of the applicable cure period specified in **Section 9**, a Leasehold Mortgagee gives Landlord written notice that it intends to undertake the curing of such Default, or to cause the same to be cured, or to exercise its rights to acquire the leasehold interest of Tenant by foreclosure or otherwise with the intent to cure such Default, and promptly commences and then proceeds with all due diligence and in good faith to do so, whether by performance on behalf of Tenant of its obligations under this Lease, or by entry on the Property by foreclosure or otherwise with the intent to cure such Default; and (ii) during the period the Leasehold Mortgagee is proceeding to cure such non-monetary Default there occurs no default in the payment of Rent or other monetary obligations due and payable by Tenant under this Lease.

11.2.4 New Lease. In the event Tenant's interest under this Lease is terminated by Landlord for any reason including, without limitation, Tenant's Default or rejection of this Lease by a trustee in bankruptcy or a debtor in possession (and provided an unsatisfied Leasehold Mortgage stands of record) or in the event Tenant's interest under this Lease shall be sold, assigned or transferred pursuant to the exercise of any remedy of any Leasehold Mortgagee, or pursuant to judicial or other proceedings, Landlord shall within the time frame for contracts in the City, endeavor to execute and deliver a new lease of the Property to such Leasehold Mortgagee or its nominee, purchaser, assignee or transferee, upon written request by such

Leasehold Mortgagee or such nominee, purchaser, assignee or transferee given within 60 days after such sale, assignment or transfer for the remainder of the Lease Term with the same agreements, covenants and conditions (except for any requirements which have been fulfilled by Tenant prior to termination) as were contained herein and with priority equal to that hereof; provided, however, that such Leasehold Mortgagee shall promptly cure any default of Tenant which is susceptible to cure by such Leasehold Mortgagee. If more than one Leasehold Mortgagee requests a new lease within the 60-day period described above, the requesting Leasehold Mortgagee holding the most junior Leasehold Mortgage shall prevail; provided, however, that as a condition to entering into such a new lease, the junior Leasehold Mortgagee shall (i) execute any documents necessary to create a new Leasehold Mortgage encumbering such new lease in favor of the senior Leasehold Mortgagee(s), which Leasehold Mortgage shall secure the amounts then outstanding under any such senior Leasehold Mortgages, and (ii) cure any then-existing defaults under the senior Leasehold Mortgage(s) which are susceptible to cure by such Leasehold Mortgagee(s), including delinquent amounts. Landlord shall be under no obligation to determine which Leasehold Mortgagee is entitled to a new lease as set forth in this **Section 11.2.4**. If a new lease is entered into as provided in this **Section 11.2.4**, the ownership of the Tenant Improvements, to the extent owned by Tenant, shall be deemed to have been transferred directly to such successor of Tenant's interest in this Lease. A new lease under this **Section 11.2.4** shall have the same terms and conditions of this Lease, including the Lease Term; Landlord is under no obligation to provide a lease term that extends the Lease Term.

11.2.5 No Conflict. In the event of a default under a Leasehold Mortgage, such Leasehold Mortgagee may exercise with respect to the Property any right, power or remedy under the Leasehold Mortgage which is not in conflict with the provisions of this Lease.

11.2.6 Transfer After Foreclosure. This Lease may be assigned, without the consent of Landlord, to any Leasehold Mortgagee or an affiliate thereof, pursuant to foreclosure or similar proceedings, or pursuant to an assignment or other transfer of this Lease to such Leasehold Mortgagee (or its affiliate) in lieu thereof, and may be thereafter assigned by such Leasehold Mortgagee (or its affiliate) subject to the provisions of **Section 8.3** hereof, and any Leasehold Mortgagee shall be liable to perform the obligations herein imposed on Tenant only for and during the period it is in possession or ownership or control of the leasehold estate created hereby.

11.2.7 No Surrender Binding. No surrender (except a surrender upon the expiration of the Lease Term or upon termination by Landlord pursuant and subject to the provisions of this Lease) by Tenant to Landlord of this Lease,

or of the Property, or any part thereof, or of any interest therein, and no termination of this Lease by Tenant shall be valid or effective, without the prior written consent of any Leasehold Mortgagee. It shall be the responsibility of Tenant to obtain any required consent of a Leasehold Mortgagee.

11.2.8 Multiple Leasehold Mortgages. If at any time there shall be more than one Leasehold Mortgage, the holder of the Leasehold Mortgage prior in lien shall be vested with the rights under **Section 11** hereof (other than the provisions for receipt of notices as provided herein, and other than as provided in **Section 11.2.4**) to the exclusion of the holder of any junior Leasehold Mortgage.

11.2.9 Consent of Landlord Not Required. The foreclosure of a Leasehold Mortgage, or any sale thereunder, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Tenant to any Leasehold Mortgagee or its affiliate through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute a Default under this Lease, and upon such foreclosure, sale or conveyance, Landlord shall recognize any Leasehold Mortgagee or such affiliate, or any purchaser at such foreclosure sale, as Tenant hereunder; provided, however, the purchaser at a foreclosure sale must meet the requirements of **Section 8.3**. The Leasehold Mortgagee or its affiliate or any purchaser at such foreclosure sale shall pay Landlord's reasonable attorneys' fees and costs incurred in connection with any assignment by such Leasehold Mortgagee or its affiliate.

11.2.10 Cooperation. Landlord and Tenant shall cooperate in including in this Lease by suitable amendment (subject to approval by the Denver City Council) from time to time any reasonable provision which may be requested by any proposed Leasehold Mortgagee, or may otherwise be reasonably necessary, to implement the provisions of this **Section 11**; provided, however, that any such amendment shall not in any way affect the Lease Term nor the Rent due hereunder nor affect adversely in any other material respect any rights of Landlord under this Lease. In particular, Landlord shall be required to execute any reasonable non-disturbance agreement requested by any Leasehold Mortgagee to ensure that the Leasehold Mortgagee's interest in the leasehold estate shall not be disturbed by the Landlord in the event of a foreclosure action.

12 No Merger of Title. There shall be no merger of the leasehold estate created by this Lease with the fee estate in the Property by reason of the fact that the same person may own or hold (a) the leasehold estate created by this Lease or any interest in such leasehold estate, and (b) any interest in such fee estate; and no such merger shall occur unless and until all

persons having any interest in (i) the leasehold estate created by this Lease, and (ii) the fee estate in the Property, shall join in a written instrument effecting such merger and shall duly record the same.

13 **Dispute Resolution**. Disputes under or related to this Lease shall be resolved by administrative hearing which shall be conducted in accordance with the procedures set forth in D.R.M.C. Section 5-17, or such other substantially similar ordinance as may be adopted hereafter by the City. The Landlord, however, shall retain its right to obtain an order of eviction in accordance with applicable state laws. The Parties agree that the determination resulting from an administrative hearing shall be final, subject to the right of the Parties to appeal the determination under Colorado Rule of Civil Procedure 106, or subject to rights under federal law, including any appellate rights.

14 **Notices**. All notices required or permitted under this Lease shall be in writing and shall be personally delivered or sent by certified mail, return receipt requested, postage prepaid, or sent for overnight delivery by a nationally recognized courier such as Federal Express, at the addresses set forth below. All notices shall be effective upon delivery or delivery refused by the proper addressee. Either Party may change its notice address upon written notice to the other Party.

If to Landlord:

Chief Executive Officer
Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

With a copy to:

Senior Vice President, DEN Real Estate
Airport Office Building
8500 Peña Boulevard, 10th Floor
Denver, Colorado 80249-6340

and

General Counsel, Denver International Airport
Airport Office Building
8500 Peña Boulevard, 9th Floor
Denver, Colorado 80249-6340

If to Tenant:

Swire Pacific Holdings Inc.
12634 S. 265 W.
Draper, Utah 84020
Attn: President

With copies to:
Properties Manager
Same Address

Legal Department
Same Address

15 Non-Discrimination and Affirmative Action.

15.1 Compliance with Minority and Women-Owned Business Enterprises Requirements.

15.1.1 The Minority and Women-Owned Business Enterprise ("**MWBE**") requirements in this **Section 15.1** shall apply while Tenant is undertaking the design and construction of the Proposed Project, as well as any design and construction related to Major Alterations, but shall not otherwise extend to any operations of Tenant conducted on the Property.

15.1.2 MWBE Participation Goals. This Lease and the related design and construction work are subject to Article III, Divisions 1 and 3 of Chapter 28, Denver Revised Municipal Code ("**D.R.M.C.**"), designated as §§ 28-31 to 28-40 and 28-51 to 28-90 (the "**MWBE Ordinance**"), and any Rules and Regulations promulgated pursuant thereto (the "**DSBO Rules**"). As of the Effective Date, the scope of Tenant's Proposed Project is too conceptual to allow Denver's Division of Small Business Opportunity ("**DSBO**") to assign MWBE participation goals for construction on the Proposed Project. Therefore, pursuant to the MWBE Ordinance and the DSBO Rules, a MWBE Design Goal will be established at this time and a MWBE Construction Goal will be established pursuant to section 15.1.4. Additional MWBE participation goals may be established for any Major Alterations.

15.1.3 Goal for Design ("MWBE Design Goal"). The design work under this Lease is subject to §§ 28-31 to 28-40 and 28-51 to 28-90 of the MWBE Ordinance and the DSBO Rules. The design goal for MWBE participation established for this Lease by DSBO is 20%. In accordance with Chapter 28 Article III of the D.R.M.C., Tenant must make adequate and substantial good faith efforts to meet this goal.

15.1.4 Goal for Construction ("MWBE Construction Goal"). The construction work under this Lease is also subject to §§ 28-31 to 28-40 and 28-51 to 28-90 of the MWBE Ordinance and the Rules and Regulations. The construction goal for MWBE participation established for this Lease by DSBO will be established once the Tenant has developed its 60% design plans for the Proposed Project. DSBO will establish a construction goal for MWBE participation based on the total value of all construction work under the lease. In accordance with Chapter 28 Article III of the D.R.M.C., Tenant

must make adequate and substantial good faith efforts to meet this goal.

15.1.4.1 The Tenant shall contact DSBO within the earlier of five (5) business days after Tenant has developed 60% design plans or thirty (30) business days prior to procuring a contract for construction to request the MWBE Construction Goal for the Proposed Project. Contact should be made in the form of an email to dsbo@flydenver.com and should reference Contract Number 202367353.

15.1.5 MWBE Equity, Diversity, & Inclusion Plan. Tenant shall comply with the MWBE Equity, Diversity and Inclusion Plan ("**MWBE EDI Plan**") and as it may be modified in the future by the DSBO. As noted above, the MWBE EDI Plan shall constitute the Utilization Plan required by D.R.M.C. § 28-62. Notwithstanding the foregoing, as of the Effective Date, Tenant and DSBO have not finalized the MWBE EDI Plan. Tenant shall have 90-days following the Effective Date of the Lease Agreement to finalize, and obtain DSBO approval of, Tenant's MWBE EDI Plan. The MWBE EDI Plan must include Tenant's commit to meet the MWBE Design Goal and the MWBE Construction Goal, and require Tenant to complete the DSBO MWBE Form: "Commitment to MWBE Participation."

15.1.6 Under § 28-68, D.R.M.C., Tenant has an ongoing, affirmative obligation to maintain for time periods noted in **Section 15.1.1**, at a minimum, compliance with the MWBE participation. Tenant acknowledges that:

15.1.6.1 Tenant is required to comply with the MWBE EDI Plan in accordance with § 28-62, D.R.M.C., for construction, and § 28-63, D.R.M.C., for design. Along with the MWBE EDI Plan requirements, the Tenant must establish and maintain records and submit regular reports, as directed by DSBO, which will allow the City to assess progress in complying with the MWBE EDI Plan and achieving the MWBE participation design goal and construction goal. The MWBE EDI Plan is subject to modification by DSBO.

15.1.6.2 The Tenant shall have a continuing obligation to promptly inform DSBO in writing of any agreed upon increase or decrease in the scope of work of such contract, upon any of the bases under § 28-70, D.R.M.C., regardless of whether such increase or decrease in scope of work has been reduced to writing at the time of notification of the change to the City.

15.1.6.3 If amendments or other contract modifications are issued under the Lease that include an increase in the scope of work of this Lease, which increases the dollar value of the development of

the Proposed Project, whether or not such change is within the scope of work designated for performance by an MWBE at the time of contract award, such amendments or modifications shall be promptly submitted to DSBO for notification purposes.

15.1.6.4 Those amendments or other modifications that involve a changed scope of work that cannot be performed by existing project subcontractors or subconsultants are subject to the original goal. The Tenant shall satisfy the goal with respect to such changed scope of work by soliciting new MWBEs in accordance with § 28-70, D.R.M.C. The Tenant must also satisfy the requirements under § 28-70, D.R.M.C., for construction; or §§ 28-64 and 28-73, D.R.M.C., for design, with regard to changes in scope or participation. The Tenant shall supply to DSBO all required documentation under §§ 28-60, 28-70, and 28-73, D.R.M.C., for construction; or §§ 28-64, 25-70, and 28-73, D.R.M.C., for design, with respect to the modified dollar value or work under the contract.

15.1.6.5 If applicable, for contracts of one million dollars ($1,000,000.00) and over, Tenant is required to comply with § 28-72, D.R.M.C., regarding prompt payment to MWBEs. Payment to MWBE subcontractors shall be made by no later than thirty-five (35) days after receipt of the MWBE subcontractor's invoice.

15.1.6.6 Termination or substitution of a Small Business Enterprise subcontractor requires compliance with § 28-73, D.R.M.C.

15.1.6.7 Failure to comply with these provisions may subject Tenant to sanctions set forth in § 28-76 of the MWBE Ordinance.

15.1.6.8 Should any questions, concerns or additional information arise regarding DSBO requirements, Tenant should consult the MWBE Ordinance or may contact the Proposed Project's designated DSBO representative at dsbo@flydenver.com.

15.2 Prevailing Wage.

15.2.1 The requirements in this Section 15.2 shall apply while Tenant is undertaking the design and construction of the Proposed Project, as well as any design and construction related to Major Alterations, but shall not otherwise extend to any operations of Tenant conducted on the Property.

15.2.2 Tenant shall comply with, and agrees to be bound by, all requirements, conditions and determinations of the City regarding the Payment of Prevailing Wages Ordinance, D.R.M.C. §§20-76 through 20-79, including, but not limited to, the requirement that every covered worker working on a City-owned or leased building or on City-owned land shall be paid no less

than the prevailing wages and fringe benefits in effect on the Effective Date for all employees hired with respect to the design and construction of the Proposed Project. In no event shall the foregoing apply to any operations conducted by Tenant on the Property.

15.2.3 Prevailing wage and fringe rates will adjust on and only on the yearly anniversary of the Effective Date. Unless expressly provided for in this Lease, Tenant will receive no additional compensation for increases in prevailing wages or fringe rates.

15.2.4 Tenant shall provide the Auditor of the City with a list of all subcontractors providing any services under the Lease.

15.2.5 Tenant shall provide the Auditor with electronically-certified payroll records for all covered workers employed under the Lease in a manner specified by the Auditor.

15.2.6 Tenant shall prominently post at the work site the current prevailing wage and fringe rates. The posting must inform workers that any complaints regarding the payment of prevailing wages or fringe benefits may be submitted to the Denver Auditor by calling 720-913-5000 or emailing auditor@denvergov.org.

15.2.7 If Tenant fails to pay workers as required by the Prevailing Wage Ordinance, such failure will constitute an event of Default continuing until documentation of payment satisfactory to the Auditor has been provided. The Auditor may enforce the Prevailing Wage Ordinance in a manner provided by law, including the Prevailing Wage Ordinance. The Landlord may also declare a Default if Tenant fails to pay required wages and fringe rates.

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

15.4 City's Non-Discrimination Policy. In connection with the performance of the work, or exercise of any rights, under this Lease, and in accordance with D.R.M.C. Section 28-91 et seq., Tenant agrees not to refuse to transact with, hire, discharge, promote,

demote, or to discriminate in matters of compensation against any person otherwise qualified solely because of race, creed, color, religion, national origin, gender, age, military status, sexual orientation, gender variance, marital status, and/or physical and mental disability. Tenant further agrees to insert the foregoing provision in all subcontracts hereunder.

16 Miscellaneous Provisions.

16.1 Severability. A determination by a court of competent jurisdiction that any provision of this Lease or any part thereof is illegal or unenforceable shall not cancel or invalidate the remainder of such provision or this Lease, which shall remain in full force and effect.

16.2 No Waiver. The failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option or election herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, option or election unless this Lease specifies otherwise. A receipt by Landlord of Rent with knowledge of the breach of any covenant herein shall not be deemed a waiver of such breach.

16.3 Bond Ordinance. This Lease is in all respects subject and subordinate to any and all City bond ordinances applicable to DEN, the airport system, and to any other bond ordinances which should amend, supplement, or replace such bond ordinances. The Parties acknowledge and agree that all property subject to this Lease which was financed by the net proceeds of tax-exempt bonds is owned by the City, and Tenant agrees not to knowingly take any action that would impair, or omit to take any action required to confirm, the treatment of such property as owned by the City for purposes of Section 142(b) of the Internal Revenue Code of 1986, as amended. In particular, the Tenant agrees to make, and hereby makes, an irrevocable election (binding on itself and all successors in interest under this Lease) not to claim depreciation or an investment credit with respect to any property subject to this Lease which was financed by the net proceeds of tax-exempt bonds and shall execute such forms and take such other action as the City may request in order to implement such election. For the avoidance of doubt, The Tenant Improvements constructed by Tenant at its sole cost do not constitute property subject to the terms and conditions of this **Section 16.3.**

16.4 Federal Provisions. This Lease is subject and subordinate to the terms, reservations, restrictions and conditions of any existing or future agreements between Landlord and the United States, the execution of which has been or may be required as a condition precedent to the transfer of federal rights or property to City for Landlord's purposes and the expenditure of federal funds for the extension, expansion or development of the Denver Municipal Airport System. In the event any future agreements between Landlord and the United States would prevent or materially alter the continued use of the Property and Tenant Improvements in

accordance with the Permitted Uses, such action shall be treated as a taking pursuant to **Article 7**.

16.5 General Civil Rights. The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required of Title VI of the Civil Rights Act of 1964.

16.6 Interpretation. The captions of the Sections of this Lease are solely for convenience of reference, to assist the Parties in reading this Lease and do not in any way govern the intent or construction of this Lease. Any reference to a Section shall be deemed to include a reference to all subsections thereof. Whenever required by the context of this Lease, the singular shall include the plural and the plural shall include the singular. The masculine, feminine and neuter genders shall each include the other.

16.7 Successors and Assigns. Without limiting the provisions of **Section 8** of this Lease, this Lease shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, and wherever a reference in this Lease is made to either of the Parties hereto such reference shall be deemed to include, wherever applicable, also a reference to the successors and assigns of such Party, as if in every case so expressed.

16.8 Governing Law. This Lease shall be governed by and construed in accordance with the laws of the State of Colorado, without regard to principles regarding choice of law. All actions and proceedings related to this Lease, including but not limited to lawsuits, bankruptcy proceedings, and appeals, shall be filed and held in Denver County, Colorado.

16.9 Entire Agreement. This Lease constitutes the entire integrated agreement between the Parties relative to the subject matter hereof, and shall supersede any prior agreement or understanding, whether written or oral, which Tenant may have had relating to the subject matter hereof with Landlord, and may be amended only by written instrument signed by both Landlord and Tenant. No verbal agreement or conversation between any officer, agent, associate, or employee of Landlord and any officer, agent, employee, or associate of Tenant shall affect or modify any of the terms or obligations contained in this Lease.

16.10 No Oral Modification. This Lease may be changed, waived, or discharged only by an instrument in writing signed by Landlord and Tenant.

16.11 Counterparts. This Lease may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute and be construed as one and the same instrument.

16.12 No Partnership. Nothing contained in this Lease shall be deemed or construed to create the relationship of principal or agent or of partnership or of joint venture or of any association between Landlord and Tenant, and neither the method of computation of Rent nor any other provisions contained in this Lease, nor any acts of the Parties hereto shall be deemed to create any relationship between Landlord and Tenant, other than the relationship of landlord/tenant.

16.13 No Offer. This Lease shall not be enforceable as a contract between Landlord and Tenant until it has been duly executed and delivered by both Landlord and Tenant.

16.14 Recordation of Memorandum of Lease. Landlord and Tenant each hereby agree to execute a memorandum of Lease in the form attached hereto as **Exhibit M** (the "**Memorandum of Lease**") which shall be recorded in the Office of the Recorder of Denver County, Colorado on or at any time following the Rent Commencement Date. Any transfer taxes or conveyance fees or recording fees payable upon recordation of the Memorandum of Lease will be payable by the Tenant.

16.15 Attorneys' Fees. Should either Party hereto institute any action or proceeding in court or other dispute resolution mechanism against the other Party, by reason of or alleging the failure of the other Party to comply with any or all of its obligations hereunder, whether for declaratory or other relief, then the Party that prevails in such action or proceeding shall be entitled, in addition to any other recovery or relief, to its reasonable attorneys' fees and expenses related thereto (whether at the administrative, trial or appellate levels) ("**Legal Costs**"). Any judgment or order entered in such action or proceeding shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing, perfecting and executing such judgment. A Party shall be deemed to have prevailed in any such action or proceeding (without limiting the generality of the foregoing) if such action is dismissed upon the payment by the other Party of the sums allegedly due or the performance of obligations allegedly not complied with, or if such Party obtains substantially the relief sought by it in the action, irrespective of whether such action is prosecuted to judgment. For purposes of this Lease, reasonable fees of any in-house counsel or Assistant City Attorney for Landlord or Tenant shall be based on the fees regularly charged by outside counsel for Landlord or Tenant, as applicable, with an equivalent number of years of professional experience in the subject matter area of the law for which Landlord's or Tenant's in-house counsel or Assistant City Attorney services were rendered. This **Section 16.15** shall survive the expiration or any earlier termination of this Lease, and shall survive any acquisition of the Property by Tenant.

16.16 Estoppel Certificates. Each Party agrees at any time and from time to time, upon not less than ten (10) business days' prior notice by the other Party to execute, acknowledge and deliver to the requesting Party a statement in writing certifying (a) that this Lease is unmodified and in full force and effect (or if there have been

modifications that this Lease is in full force and effect as modified and stating the modifications), (b) the dates to which the Rent has been paid, (c) whether or not, to the actual knowledge of the signer of such statement, either Party is then in Default or may be in default with notice or the passage of time, or both, in keeping, observing or performing any term, covenant, agreement, provision, condition or limitation contained in this Lease, and, if in Default, specifying each such Default, and (d) any other information regarding this Lease reasonably requested by the requesting Party; it being intended that any such statement delivered pursuant to this Section may be relied upon by the receiving Party, the receiving Party's lender or any prospective purchaser of the interest of such Party; provided, however that in no event shall either Party to this Lease be required, in connection with a request for an estoppel certificate, to accept or agree to any modification of any term or provision of this Lease, or of any of such Party's rights hereunder.

16.17 Holding Over. Tenant shall vacate the Property upon the expiration or termination of this Lease. If Tenant does not vacate the Property within 60 days following the expiration or earlier termination of the Lease and remains in possession thereof, Tenant's occupancy of the Property shall be a tenancy at sufferance at a monthly rental rate of 125% of the Base Rent in effect immediately prior to Tenant holding over, and otherwise Tenant shall be bound by all terms and conditions (other than the Lease Term) of this Lease in the absence of a written agreement to the contrary. Nothing herein shall be construed to give Tenant the right to hold over at any time, and Landlord may exercise any and all remedies at law or in equity to recover possession of the Property, as well as any damages incurred by Landlord resulting from Tenant holding over.

16.18 Force Majeure. Neither Landlord nor Tenant shall be held responsible for delays in the performance of its obligations hereunder when caused by war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, epidemics, quarantine, or acts of the other Party in violation of this Lease ("**Force Majeure**"). This Section shall not apply to nor operate to excuse Tenant from the payment of Rent or any other amount due Landlord in accordance with the terms of this Lease. Each Party shall give written notice of any Force Majeure delay to the other Party within ten (10) business days of the Party's knowledge of the occurrence of such event.

16.19 Effective Date. This Lease is expressly subject to, and shall not be or become effective or binding on the Landlord until, approved by Denver City Council and fully executed by all signatories of the City. This Lease shall not be binding on the Tenant until it is binding on the Landlord. The date of the final City signature as reflected in the City's signature page below shall be the "**Effective Date**".

16.20 Landlord Line of Authority. The Landlord's Chief Executive Officer (the "**CEO**") exercises the Landlord's authority and discretion under this Lease, and has the authority and discretion to further delegate any authority or discretion granted to

the CEO. The CEO has designated as its representative and delegated its authority and discretion under this Lease to Landlord's Executive Vice President, Chief Commercial Real Estate Officer ("**EVP**"). Only the CEO and/or EVP may exercise Landlord's authority and discretion granted under this Lease, except that the EVP has delegated authority for all day-to-day management responsibilities and decisions to the Landlord's Senior Vice President, Real Estate. The CEO and/or EVP may rescind or amend any designation of representative or delegation of authority and discretion under this Lease upon written notice to Tenant. Tenant shall be entitled to rely upon any written direction received from the Landlord's CEO, EVP or Senior Vice President, Real Estate, without further inquiry.

16.21 Colorado Open Records Act.

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

16.21.2 In the event of a request to the Landlord for disclosure of such information, time and circumstances permitting, the Landlord will make a good faith effort to advise Tenant of such request in order to give Tenant the opportunity to object to the disclosure of any material Tenant may consider confidential, proprietary, or otherwise exempt from disclosure. In the event Tenant objects to disclosure, the Landlord, in its sole and absolute discretion, may file an application to the Denver District Court for a determination of whether disclosure is required or exempted. In the event a lawsuit to compel disclosure is filed, the Landlord may tender all such material to the court for judicial determination of the issue of disclosure. In both situations, Tenant agrees it will either waive any claim of privilege or confidentiality or intervene in such legal process to protect materials Tenant does not wish to be disclosed. Tenant agrees to defend, indemnify, and hold harmless the City, its officers, agents, and employees from any claim, damages, expense, loss, or costs arising out of Tenant's objection to disclosure, including prompt reimbursement to the Landlord of all reasonable attorney's fees, costs, and damages the Landlord may incur directly or may be ordered to pay by such court, including but not limited to time expended by the City Attorney Staff.

17 Contract Documents; Order of Preference.

17.1 Attachments. This Lease consists of Sections 1 through 17 which precede the signature pages and the following attachments which are incorporated herein and made a part hereof by reference:

Appendix No. 1: Standard Federal Assurances and Nondiscrimination
Exhibit A: Legal description of the Property
Exhibit B: ROFR Land
Exhibit C: Design Criteria
Exhibit D: Description of Proposed Project
Exhibit E: Initial Base Rent Schedule
Exhibit F: Infrastructure Development Agreement – To be added per Section 3.3.5
Exhibit G: [Intentionally Deleted]
Exhibit H: Insurance requirements
Exhibit I: Construction indemnification agreement form
Exhibit J: Assignment net present value schedule
Exhibit K: Encumbrances affecting the Property
Exhibit L: MWBE EDI Plan – To be added per Section 15.1.5
Exhibit M: Memorandum of Lease

17.2 Order of Precedence. In the event of an irreconcilable conflict between a provision of Sections 1 through 17 and any of the above-listed attachments or between provisions of any attachments such that is impossible to give effect to both, the order of precedence to determine which provision shall control in order to resolve such conflict is as follows, in descending order:

Appendix No. 1: Standard Federal Assurances and Nondiscrimination
Sections 1 through 17 hereof
Exhibit A: Legal description of the Property
Exhibit F: Infrastructure Development Agreement
Exhibit H: Insurance requirements
Exhibit I: Construction indemnification agreement form
Exhibit L: EDI Plan
Exhibit C: Design Criteria
Exhibit B: ROFR Land
Exhibit D: Description of Proposed Project
Exhibit E: Initial Base Rent Schedule
Exhibit J: Assignment net present value schedule
Exhibit K: Encumbrances affecting the Property
Exhibit M: Memorandum of Lease

IN WITNESS WHEREOF, the Parties have caused this Lease to be executed as a sealed instrument by their respective duly authorized agents, as of the Effective Date.

Contract Control Number: PLANE-202367353-00
Contractor Name: Swire Infrastructure 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:

Attorney for the City and County of Denver

By: _____

REGISTERED AND COUNTERSIGNED:

By: _____

By: _____

Contract Control Number: PLANE-202367353-00
Contractor Name: Swire Infrastructure Inc.

By: _____

Name: _____
(please print)

Title: _____
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

APPENDIX NO. 1

Standard Federal Assurances and Nondiscrimination

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

Appendix No. 1

Standard Federal Assurances and Nondiscrimination Non-Federal Contract Provision

FEDERAL AVIATION ADMINISTRATION REQUIRED CONTRACT PROVISIONS

Federal laws and regulations require that recipients of federal assistance (Sponsors) include specific contract provisions in certain contracts, requests for proposals, or invitations to bid.

Certain provisions must be included in all sponsor contracts, regardless of whether or not the contracts are federally funded. This requirement was established when a sponsor accepted the Airport Improvement Program (AIP) grant assurances.

As used in these contract provisions, "Sponsor" means the City and County of Denver, Department of Aviation, and "Contractor," "Tenant," or "Consultant" means the Party of the Second Part as set forth in the Contract, Lease, or Agreement to which this Appendix is attached.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Issued on June 19, 2018.

GENERAL CIVIL RIGHTS PROVISIONS

The Tenant agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Tenant transfers its obligation to another, the transferee is obligated in the same manner as the Tenant.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.5.3.2, Issued on June 19, 2018

CIVIL RIGHTS – TITLE VI ASSURANCE

Compliance with Nondiscrimination Requirements:

During the performance 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 (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, 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, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, 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 will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will 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 to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

    a) Withholding payments to the Contractor under the contract until the Contractor complies; and/or
    b) Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.6.4.1, Issued on June 19, 2018

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE AIRPORT IMPROVEMENT PROGRAM

The following clauses will be included in (deeds, licenses, leases, permits, or similar instruments) entered into by the Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The Tenant for himself/herself, his/her heirs, personal 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:

    1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Tenant will maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may

be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, Sponsor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Nondiscrimination covenants, the Sponsor will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.6.4.3, Issued on June 19, 2018

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Sponsor pursuant to the provisions of the Airport Improvement Program grant assurances.

A. The Tenant for himself/herself, his/her heirs, personal 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 (1) no person on the ground of race, color, or national origin, will 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 ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the Tenant will use the premises in compliance with all other requirements imposed by or pursuant to the List of discrimination Acts And Authorities.

B. With respect to this Lease, in the event of breach of any of the above nondiscrimination covenants, Sponsor will have the right to terminate the Lease and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said Lease had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above nondiscrimination covenants, Sponsor will there upon revert to and vest in and become the absolute property of Sponsor and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.6.4.4, Issued on June 19, 2018

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 471, Section 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.6.4.5, Issued on June 19, 2018

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The [*Contractor* | *Consultant*] has full responsibility to monitor compliance to the referenced statute or regulation. The [*Contractor* | *Consultant*] must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.17.3, Issued on June 19, 2018

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

Source: Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects, Appendix A – Contract Provisions, Contract Clause A.20.3, Issued on June 19, 2018

EXHIBIT A

Legal Description

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT A

PARCEL DESCRIPTION
PROPOSED LEASE AREA on Northeast Corner of PENA BLVD. AND TOWER ROAD

A parcel of land located in the North ½ of Section 34, Township 2 South, Range 66 West of the 6TH P.M., City and County of Denver, State of Colorado.

Basis of Bearings: Assuming the north line of the northwest quarter of Section 34, Township 2 South, Range 66 West of the 6TH Principal Meridian, as monumented by a 2 1/2" aluminum cap marked "LS 29425" at the Northwest Corner of section 34 and a 3 ¼" aluminum cap marked "LS 30822" at the north ¼ corner of Section 34 bearing N 89° 51' 29" E, 2,652.97 feet with all bearings contained herein relative thereto.

A parcel of land located in the North 1/2 of said section 34, being particularly described as follows:

Commencing at the Northwest Corner of said Section 34,
THENCE South 77°14'30" East. 123.18 feet to a point on the south line of a license agreement for an aviation fuel pipeline recorded at reception no. 9300159561 in the City and County of Denver Clerk and Recorders records and the Point of Beginning;

THENCE North 89°51'29" East, on the south line of said license agreement, being 27.50 feet south of and parallel with the north line of the northwest quarter of said section 34, 2,596.32 feet;

THENCE South 00°14'39" West, 1,671.45 feet;

THENCE South 89°52'25" West, 998.07 feet to a point of curve;

THENCE Westerly along a non-tangent curve to the left through a central angle of 11°49'49" an arc distance of 1,389.59 feet and a radius of 6730.00 feet, having a chord bearing of South 85°14'14" West and a chord length of 1,387.12 feet;

THENCE North 00°16'57" West, 835.50 feet;

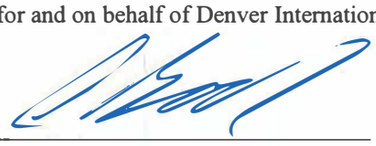
THENCE South 89°45'15" West, 200.00 feet;

THENCE North 00°16'57" West, 947.76 feet, to the Point of Beginning;

Containing 4,225,515 square feet or 97.00 acres more or less

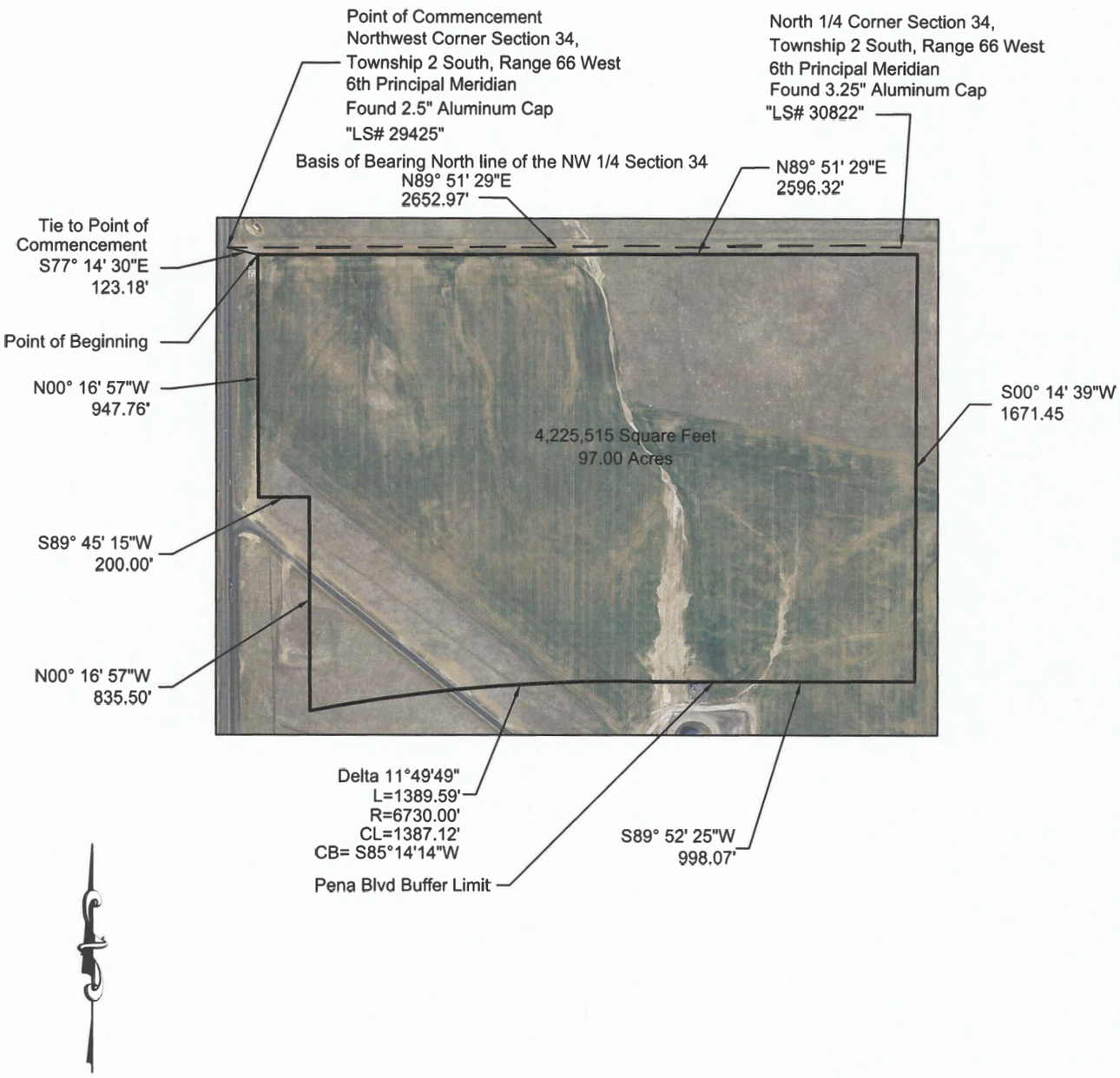
The Basis of Bearing for this description is based on the Denver International Airport Low Distortion Projection (LDP) 2018.

This legal description was prepared by Christopher A. Brooks, LS# 38063, for and on behalf of Denver International Airport Planning Department



Christopher A. Brooks, PLS# 38063
Den Airport Survey Supervisor
March 1, 2023

EXHIBIT "A"



SCALE: 1"=600'

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

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

Christopher A. Brooks
COLO. PLS# 38063

CITY AND COUNTY OF DENVER
DEPARTMENT OF AVIATION
DENVER INTERNATIONAL AIRPORT

REVISED		
NO.	DATE	NAME

Proposed Lease Area on Northeast Corner of Tower Road and Pena Blvd.

Situated in Section 34 Township 2 South, Range 66 West of the 6th Principal Meridian, City and County of Denver, State of Colorado.

REQUESTED BY:	DATE	SCALE	DRAWN BY: JCS FIELD BY: JCS / CB CHECKED BY: CB	SHEET NO. 1 OF 2 SHEETS	DRAWING NO.
Elise Brinninkmeyer	03/1/2023	1"=600'			

EXHIBIT B

ROFR Land

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT B
PARCEL DESCRIPTION
PROPOSED LEASE AREA East of the Northeast Corner of PENA BLVD. AND TOWER ROAD

A parcel of land located in the Northeast quarter of Section 34, Township 2 South, Range 66 West of the 6TH P.M., City and County of Denver, State of Colorado.

Basis of Bearings: Assuming the north line of the northwest quarter of Section 34, Township 2 South, Range 66 West of the 6TH Principal Meridian, as monumented by a 2 1/2" aluminum cap marked "LS 29425" at the Northwest Corner of section 34 and a 3 ¼" aluminum cap marked "LS 30822" at the north ¼ corner of Section 34 bearing N 89° 51' 29" E, 2,652.97 feet with all bearings contained herein relative thereto.

A parcel of land located in the Northeast quarter of said section 34, being particularly described as follows:

Commencing at the North quarter corner of said Section 34,
THENCE South 83°34'18" East, 240.34 feet to a point on the south line of a license agreement for an aviation fuel pipeline recorded at reception no. 9300159561 in the City and County of Denver Clerk and Recorders records and the Point of Beginning;

THENCE North 89°50'44" East, on the south line of said license agreement, being 27.50 feet south of and parallel with the north line of the northeast quarter of said section 34, 1,023.25 feet;

THENCE South 0°09'16" East, 1,666.86 feet;

THENCE North 90°00'00" West, 151.66 feet;

THENCE North 35°47'06" West, 45.76 feet;

THENCE North 56°09'03" West, 144.99 feet;

THENCE North 33°12'49" West, 142.43 feet;

THENCE North 38°00'53" West, 154.38 feet;

THENCE North 49°30'42" West, 160.29 feet;

THENCE North 54°44'47" West, 180.47 feet;

THENCE North 51°34'39" West, 142.21 feet;

THENCE North 26°37'19" West, 149.92 feet;

THENCE North 14°49'43" West, 149.10 feet;

THENCE North 17°05'20" West, 140.41 feet;

THENCE North 13°39'56" West, 115.24 feet;

THENCE North 0°09'16" East, 484.47 feet;

Containing 1,306,804 square feet or 30.00 acres more or less

This legal description was prepared by Christopher A. Brooks, PLS# 38063, for and on behalf of Denver International Airport Planning Department

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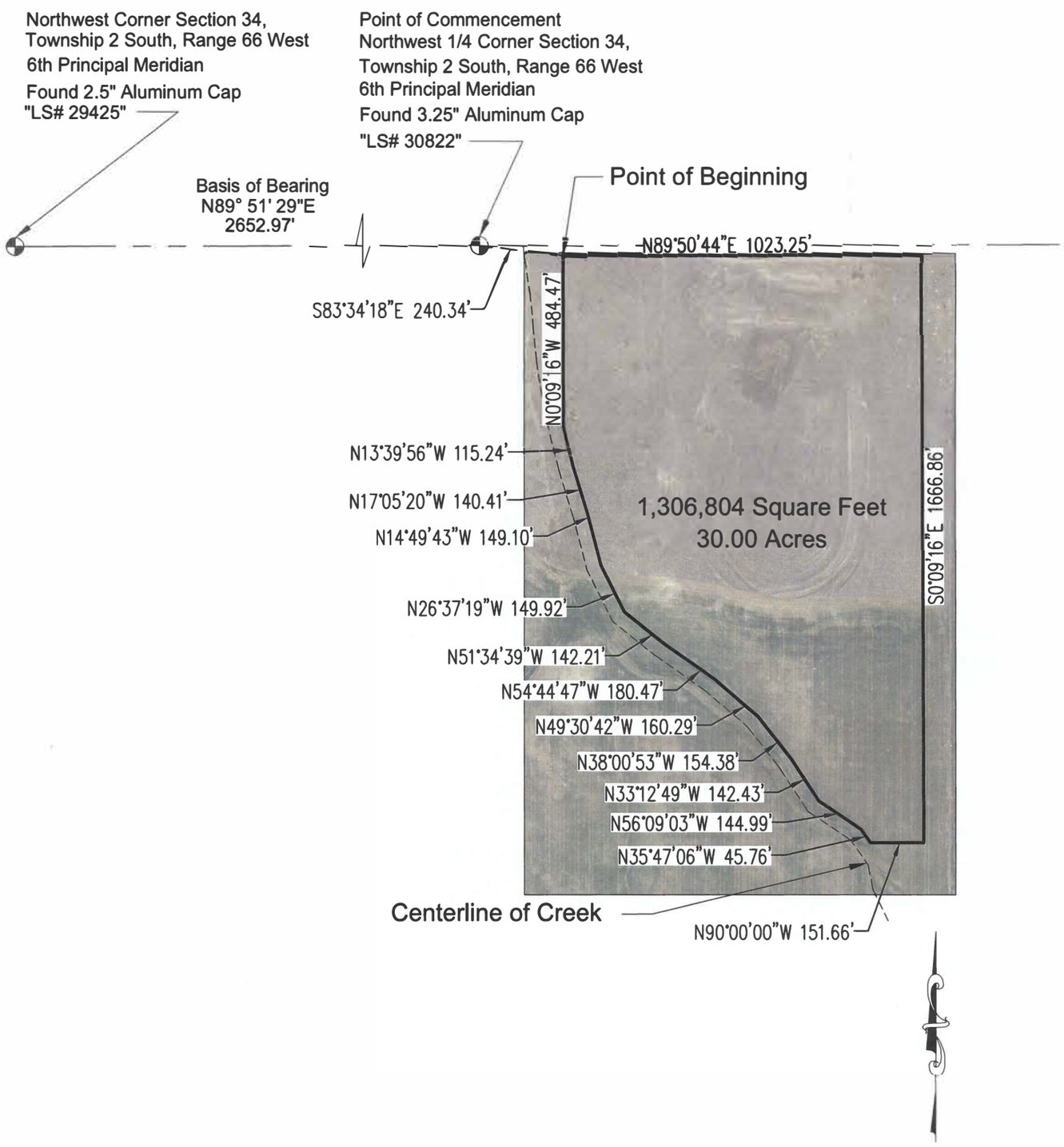
Christopher A. Brooks, PLS#38063
Den Airport Surveyor

03/06/2023

EXHIBIT "B"



SCALE: 1"=400'

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

Christopher A. Brooks
COLO. PLS# 38063

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

CITY AND COUNTY OF DENVER
DEPARTMENT OF AVIATION
DENVER INTERNATIONAL AIRPORT

REVISED		
NO.	DATE	NAME

Proposed Lease Area East of the Northeast Corner of Tower Road and Pena Blvd.
Situated in Section 34 Township 2 South, Range 66 West of the 6th Principal Meridian, City and County of Denver, State of Colorado.

REQUESTED BY:	DATE	SCALE	DRAWN BY: JCS FIELD BY: JCS / CB CHECKED BY: CB	SHEET NO. 1 OF 2 SHEETS	DRAWING NO.
Elise Brinninkmeyer	03/06/23	1"=400'			

EXHIBIT C

Design Criteria

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT C

Design Criteria

Available at:
https://www.flydenver.com/sites/default/files/realestate/211221%20SecondCreek_DesignStds_FINALsmall.pdf

EXHIBIT D

Description of Proposed Project

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

Exhibit D

PROJECT OVERVIEW

- **Construction Scope:**
- Production: 400k sq. ft.
- Warehouse: 670k sq. ft.
- Sales Office: 30k sq. ft.
- Fleet: 20k sq. ft.
- **Total: 1,120k sq. ft.**

- **Investment:**
- Building: $200-300M
- Equipment: $100-150M
- Infrastructure: $50M
- **Total: $350-500M**

- **Employees:**
- 700 – 900 FTE *(Up to 200 new jobs.)*

- **Wages:**
- Production Technician – $21.45-$38.00/hour
- *(All other roles still under evaluation.)*

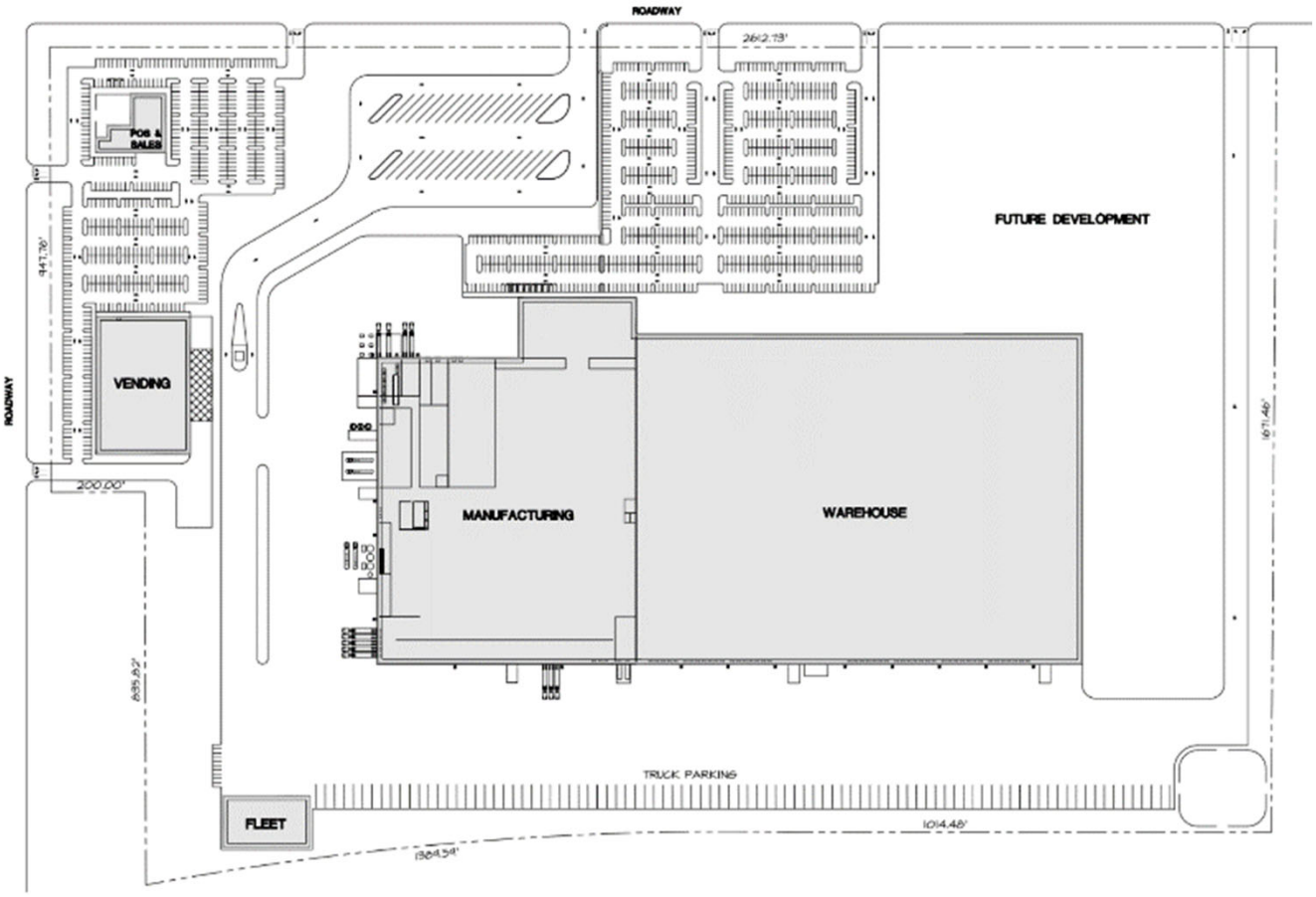


EXHIBIT E

Initial Base Rent Schedule

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

Exhibit E

Lease Year	Base Rent w/ Adjustments	Annual Rent	Monthly Rent
1	$0.210	$887,358.15	$73,946.51
2	$0.214	$904,260.21	$75,355.02
3	$0.218	$921,162.27	$76,763.52
4	$0.222	$938,064.33	$78,172.03
5	$0.226	$954,966.39	$79,580.53
6	$0.231	$976,093.97	$81,341.16
7	$0.236	$997,221.54	$83,101.80
8	$0.241	$1,018,349.12	$84,862.43
9	$0.246	$1,039,476.69	$86,623.06
10	$0.251	$1,060,604.27	$88,383.69
11	$0.256	$1,081,731.84	$90,144.32
12	$0.261	$1,102,859.42	$91,904.95
13	$0.266	$1,123,986.99	$93,665.58
14	$0.271	$1,145,114.57	$95,426.21
15	$0.276	$1,166,242.14	$97,186.85
16	$0.282	$1,191,595.23	$99,299.60
17	$0.288	$1,216,948.32	$101,412.36
18	$0.294	$1,242,301.41	$103,525.12
19	$0.300	$1,267,654.50	$105,637.88
20	$0.306	$1,293,007.59	$107,750.63
21	$0.312	$1,318,360.68	$109,863.39
22	$0.318	$1,343,713.77	$111,976.15
23	$0.324	$1,369,066.86	$114,088.91
24	$0.330	$1,394,419.95	$116,201.66
25	$0.337	$1,423,998.56	$118,666.55
26	$0.344	$1,453,577.16	$121,131.43
27	$0.351	$1,483,155.77	$123,596.31
28	$0.358	$1,512,734.37	$126,061.20
29	$0.365	$1,542,312.98	$128,526.08
30	$0.372	$1,571,891.58	$130,990.97

EXHIBIT F

Infrastructure Development Agreement

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT H

Insurance Requirements

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT H

CITY AND COUNTY OF DENVER
INSURANCE REQUIREMENTS FOR DEPARTMENT OF AVIATION
GROUND LEASE – SECOND CREEK CAMPUS

A. Certificate Holder and Submission Instructions

Contractor must provide a Certificate of Insurance as follows:

Certificate Holder: CITY AND COUNTY OF DENVER
Denver International Airport
8500 Peña Boulevard
Denver CO 80249
Attn/Submit to: DENRealEstate@FlyDenver.com

- ACORD Form (or equivalent) certificate is required.
- Contractor must be evidenced as a Named Insured party.
- Electronic submission only, hard copy documents will not be accepted.
- Reference on the certificate must include the City-assigned Contract Number, if applicable.

The City may at any time modify submission requirements, including the use of third-party software and/or services, which may include an additional fee to the Contractor; this section does not apply to required coverage amounts.

B. Defined Terms

1. "Agreement" as used in this exhibit refers to the contractual agreement to which this exhibit is attached, irrespective of any other title or name it may otherwise have.
2. "Contractor" as used in this exhibit refers to the party contracting with the City and County of Denver pursuant to the Agreement.

C. Coverages and Limits

1. Commercial General Liability
   Contractor shall maintain insurance coverage including bodily injury, property damage, personal injury, advertising injury, independent contractors, and products and completed operations in minimum limits of $10,000,000 each occurrence, $10,000,000 products and completed operations aggregate; if policy contains a general aggregate, a minimum limit of $10,000,000 annual per location aggregate must be maintained.

   a. Coverage shall include Contractual Liability covering liability assumed under this Agreement (including defense costs assumed under contract) within the scope of coverages provided.
   b. Coverage shall include Mobile Equipment Liability, if used to perform services under this Agreement.
   c. If a "per location" policy aggregate is required, "location" shall mean the entire airport premises.

2. Business Automobile Liability
   Contractor shall maintain a minimum limit of $1,000,000 combined single limit each occurrence for bodily injury and property damage for all owned, leased, hired and/or non-owned vehicles used in performing services under this Agreement.

   a. If operating vehicles unescorted airside at DEN, a $10,000,000 combined single limit each occurrence for bodily injury and property damage is required.
   b. If Contractor does not have blanket coverage on all owned and operated vehicles and will require unescorted airside driving privileges, then a schedule of insured vehicles (including year, make, model and VIN number) must be submitted with the Certificate of Insurance.

c. If transporting waste, hazardous material, or regulated substances, Contractor shall carry a Broadened Pollution Endorsement and an MCS 90 endorsement on its policy.
d. If Contractor does not own any fleet vehicles and Contractor's owners, officers, directors, and/or employees use their personal vehicles to perform services under this Agreement, Contractor shall ensure that Personal Automobile Liability including a Business Use Endorsement is maintained by the vehicle owner, and if appropriate, Non-Owned Auto Liability by the Contractor. This provision does not apply to persons solely commuting to and from the airport.
e. If Contractor will be completing all services to DEN under this Agreement remotely and not be driving to locations under direction of the City to perform services this requirement is waived.

3. Workers' Compensation and Employer's Liability Insurance
Contractor shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits no less than $100,000 per occurrence for each bodily injury claim, $100,000 per occurrence for each bodily injury caused by disease claim, and $500,000 aggregate for all bodily injuries caused by disease claims.

   a. Colorado Workers' Compensation Act allows for certain, limited exemptions from Worker's Compensation insurance coverage requirements. It is the sole responsibility of the Contractor to determine their eligibility for providing this coverage, executing all required documentation with the State of Colorado, and obtaining all necessary approvals. Verification document(s) evidencing exemption status must be submitted with the Certificate of Insurance.

4. Pollution Legal Liability
Contractor shall maintain insurance covering work site operations that are conducted on DEN premises including project management and site supervision duties with a limit no less than $10,000,000 each occurrence and $10,000,000 annual aggregate for claims arising out of a pollution condition or site environmental condition.

   a. Coverage shall include claims/losses for bodily injury, property damage including loss of use of damaged property, defense costs including costs and expenses incurred in the investigation, defense or settlement of claims, and cleanup cost for pollution conditions resulting from illicit abandonment, the discharge, dispersal, release, escape, migration or seepage of any sold, liquid, gaseous or thermal irritant, contaminant, or pollutant, including soil, silt, sedimentation, smoke, soot, vapors, fumes, acids, alkalis, chemicals, electromagnetic fields, hazardous substances, hazardous materials, waste materials, low level radioactive waste, mixed wastes, on, in, into, or upon land and structures thereupon, the atmosphere, surface water or groundwater on DEN premises.
   b. Work site means a location where covered operations are being performed, including real property rented or leased from the City for the purpose of conducting covered operations.

5. Builder's Risk Insurance:
During the duration of any construction and buildout activity, Contractor shall provide, coverage on a Completed Value Replacement Cost Basis, including value of subsequent modifications, change orders, and cost of material supplied or installed by others, comprising total value of the entire project at the site. Such insurance shall:

   a. apply from the time any covered property becomes the responsibility of the Contractor, and continue without interruption during construction, renovation, or installation, including any time during which the covered property is being transported to the construction installation site, or awaiting installation, whether on or off site;
   b. be maintained until formal acceptance of the project by DEN or the placement of permanent property insurance coverage, whichever is later;
   c. include interests of the City and if applicable, affiliated, or associate entities, the General Contractor, subcontractors, and sub-tier contractors in the project;

d. be written on a Special Completed Value Covered Cause of Loss form and shall include theft, vandalism, malicious mischief, collapse, false-work, temporary buildings, transit, debris removal, demolition, increased cost of construction, flood (including water damage), earthquake, and if applicable, all below and above ground structures, piping, foundations including underground water and sewer mains, pilings including the ground on which the structure rests and excavation, backfilling, filling and grading;
e. include a Beneficial Occupancy Clause, specifically permitting occupancy of the building during construction. Commercial Operator shall take reasonable steps to obtain consent of the insurer and delete any provisions with regard to restrictions within any Occupancy Clauses within the Builder's Risk Policy;
f. include Equipment Breakdown Coverage (a.k.a. Boiler & Machinery), if appropriate, which shall specifically cover insured equipment during installation and testing (including cold and hot testing).

6. Property Insurance
Contractor is solely responsible for any loss or damage to its real or business personal property located on DEN premises including, but not limited to, materials, tools, equipment, vehicles, furnishings, structures and personal property of its employees and subcontractors unless caused by the sole, gross negligence of the City. If Contractor carries property insurance on its property located on DEN premises, a waiver of subrogation as outlined in Section F will be required from its insurer.

7. Property Insurance – Real Property:
Contractor shall maintain All-Risk Form Property Insurance on a replacement cost basis. If real property is located in a flood or quake zone (including land subsidence), flood or quake insurance shall be provided separately or within the property policy.
   a. City shall be included as Loss Payee, as its interests may appear.
   b. Replacement value shall be validated at intervals of no more than five (5) years, commencing on the date of the Agreement or completion of new structures, by an independent qualified appraiser hired by the Contractor and approved by the City. Cost of such appraisals shall be the sole responsibility of Contractor. Appraisal reports shall be submitted to the City upon issuance.
   c. Schedule of Premises Insured by Contractor:
      The Tenant Improvements identified in the City Lease No. 202367353

8. Property Insurance – Business Interruption Coverage
Business Interruption Coverage in such amounts as will reimburse Contactor for direct or indirect loss of earnings attributable to the perils commonly covered by business interruption insurance, which shall include losses arising from mechanical failures on or interruption of services to DEN premises.

9. Unmanned Aerial Vehicle (UAV) Liability:
If Contractor desires to use drones in any aspect of its work or presence on DEN premises, the following requirements must be met prior to commencing any drone operations:

   a. Express written permission must be granted by DEN.
   b. Express written permission must be granted by the Federal Aviation Administration (FAA).
   c. Drone equipment must be properly registered with the FAA.
   d. Drone operator(s) must be properly licensed by the FAA.
   e. Contractor must maintain UAV Liability including flight coverage, personal and advertising injury liability, and hired/non-owned UAV liability for its commercial drone operations with a limit no less than $1,000,000 combined single limit each occurrence for bodily injury and property damage.

10. Excess/Umbrella Liability
Combination of primary and excess coverage may be used to achieve minimum required coverage limits. Excess/Umbrella policy(ies) must follow form of the primary policies with which they are related to provide the minimum limits and be verified as such on any submitted Certificate of Insurance.

D. Reference to Project and/or Contract

The City Project Name, Title of Agreement and/or Contract Number and description shall be noted on the Certificate of Insurance, if applicable.

E. Additional Insured

For all coverages required under this Agreement (excluding Workers' Compensation, Employer's Liability and Professional Liability, if required), Contractor's insurer(s) shall include the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers as Additional Insureds by policy endorsement.

F. Waiver of Subrogation

For all coverages required under this Agreement (excluding Professional Liability, if required), Contractor's insurer(s) shall waive subrogation rights against the City and County of Denver, its elected and appointed officials, successors, agents, employees, and volunteers by policy endorsement.

If Contractor will be completing all services to the City under this Agreement remotely and not be traveling to locations under direction of the City to perform services, this requirement is waived specific to Workers' Compensation coverage.

G. Notice of Material Change, Cancellation or Nonrenewal

Each certificate and related policy shall contain a valid provision requiring notification to the Certificate Holder in the event any of the required policies be canceled or non-renewed or reduction in required coverage before the expiration date thereof.

1. Such notice shall reference the DEN assigned contract number related to this Agreement.
2. Such notice shall be sent thirty (30) calendar days prior to such cancellation or non-renewal or reduction in required coverage unless due to non-payment of premiums for which notice shall be sent ten (10) calendar days prior.
3. If such written notice is unavailable from the insurer or afforded as outlined above, Contractor shall provide written notice of cancellation, non-renewal and any reduction in required coverage to the Certificate Holder within three (3) business days of receiving such notice by its insurer(s) and include documentation of the formal notice received from its insurer(s) as verification. Contractor shall replace cancelled or nonrenewed policies with no lapse in coverage and provide an updated Certificate of Insurance to DEN.
4. In the event any general aggregate or other aggregate limits are reduced below the required minimum per occurrence limits, Contractor will procure, at its own expense, coverage at the requirement minimum per occurrence limits. If Contractor cannot replenish coverage within ten (10) calendar days, it must notify the City immediately.

H. Cooperation

Contractor agrees to fully cooperate in connection with any investigation or inquiry and accept any formally tendered claim related to this Agreement, whether received from the City or its representative. Contractor's failure to fully cooperate may, as determined in the City's sole discretion, provide cause for default under the Agreement. The City understands acceptance of a tendered claim does not constitute acceptance of liability.

I. Additional Provisions

1. Deductibles or any type of retention are the sole responsibility of the Contractor.
2. Defense costs shall be in addition to the limits of liability. If this provision is unavailable that limitation must be evidenced on the Certificate of Insurance.
3. Coverage required may not contain an exclusion related to operations on airport premises.
4. A severability of interests or separation of insureds provision (no insured vs. insured exclusion) is included under all policies where Additional Insured status is required.
5. A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City under all policies where Additional Insured status is required.

6. If the Contractor procures or maintains insurance policies with coverages or limits beyond those stated herein, such greater policies will apply to their full effect and not be reduced or limited by the minimum requirements stated herein.
7. All policies shall be written on an occurrence form. If an occurrence form is unavailable or not industry norm for a given policy type, claims-made coverage will be accepted by the City provided the retroactive date is on or before the Agreement Effective Date or the first date when any goods or services were provided to the City, whichever is earlier, and continuous coverage will be maintained or an extended reporting period placed for three years (eight years for construction-related agreements) beginning at the time work under this Agreement is completed or the Agreement is terminated, whichever is later.
8. Certificates of Insurance must specify the issuing companies, policy numbers and policy periods for each required form of coverage. The certificates for each insurance policy are to be signed by an authorized representative and must be submitted to the City at the time Contractor signed this Agreement.
9. The insurance shall be underwritten by an insurer licensed or authorized to do business in the State of Colorado and rated by A.M. Best Company as A- VIII or better.
10. Certificate of Insurance and Related Endorsements: The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements shall not act as a waiver of Contractor's breach of this Agreement or of any of the City's rights or remedies under this Agreement. All coverage requirements shall be enforced unless waived or otherwise modified in writing by DEN Risk Management. Contractor is solely responsible for ensuring all formal policy endorsements are issued by their insurers to support the requirements.
11. The City shall have the right to verify, at any time, all coverage, information, or representations, and the insured and its insurance representatives shall promptly and fully cooperate in any such audit the City may elect to undertake including provision of copies of insurance policies upon request. In the case of such audit, the City may be subject to a non-disclosure agreement and/or redactions of policy information unrelated to verification of required coverage.
12. No material changes, modifications, or interlineations to required insurance coverage shall be allowed without the review and written approval of DEN Risk Management.
13. Contractor shall be responsible for ensuring the City is provided updated Certificate(s) of Insurance prior to, or contemporaneous with, each policy renewal.
14. Contractor's failure to maintain required insurance shall be the basis for immediate suspension and cause for termination of this Agreement, at the City's sole discretion and without penalty to the City.
15. The insurance coverages set forth in this Exhibit H with respect to construction activities shall be provided solely by the general contractor and not the Tenant under the Agreement.

J. Part 230 and the DEN Airport Rules and Regulations

If the minimum insurance requirements set forth herein differ from the equivalent types of insurance requirements in Part 230 of the DEN Airport Rules and Regulations, the greater and broader insurance requirements shall supersede those lesser requirements, unless expressly excepted in writing by DEN Risk Management. Part 230 applies to Contractor and its subcontractors of any tier.

EXHIBIT I

Construction Indemnification Agreement Form

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT I

Construction Defense and Indemnification Agreement

For good and valuable consideration, the receipt of which is acknowledged by all parties hereto, this Construction Defense and Indemnification Agreement ("**Agreement**") is executed on _____, 202_, by _____, a [jurisdiction] [corporation/limited liability company/etc.] authorized to do business in Colorado (the "**Contractor**") in connection with the Contractor's work performed at Denver International Airport ("**DEN**") pursuant to its agreement with Swire Infrastructure Inc., a Delaware corporation, having its principal place of business at 12634 S. 265 W. Draper, Utah 84020 ("**Tenant**"). The work contracted for by Tenant with Contactor is being performed pursuant to that certain Ground Lease ("**Lease**") between the City and County of Denver, a municipal corporation of the State of Colorado, acting on behalf of its Department of Aviation ("**Landlord**"), and Tenant.

1. To the fullest extent permitted by law, the Contractor hereby agrees to defend, indemnify, reimburse and hold harmless the City and County of Denver, a municipal corporation of the State of Colorado ("**City**"), its appointed and elected officials, agents and employees for, from and against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or related to the work performed under the Lease that are due to the negligence or fault of the Contractor or the Contractor's agents, representatives, subcontractors, or suppliers ("**Claims**"). This indemnity shall be interpreted in the broadest possible manner consistent with the applicable law to indemnify the City.

2. Contractor's duty to defend and indemnify City shall arise at the time written notice of the Claim is first provided to City regardless of whether suit has been filed and even if Contractor is not named as a Defendant.

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

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

5. This defense and indemnification obligation shall survive the expiration or termination of the Lease or this Agreement.

ACKNOWLEDGED AND AGREED

_____
Name of Authorized Representative

_____
Title

_____
Signature

_____
Date

EXHIBIT J

Assignment Net Present Value Schedule

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT J

Year	Required Net Worth
1	$33,900,000
2	$34,700,000
3	$35,500,000
4	$36,300,000
5	$37,200,000
6	$38,000,000
7	$38,900,000
8	$39,800,000
9	$40,700,000
10	$41,600,000
11	$42,500,000
12	$43,500,000
13	$44,400,000
14	$45,400,000
15	$46,300,000
16	$47,300,000
17	$48,300,000
18	$49,300,000
19	$50,300,000
20	$51,300,000
21	$52,300,000
22	$53,300,000
23	$54,300,000
24	$55,300,000
25	$56,400,000
26	$57,400,000
27	$58,400,000
28	$59,400,000
29	$60,400,000
30	$61,400,000
31	$62,400,000
32	$63,300,000
33	$64,300,000
34	$65,200,000
35	$66,100,000
36	$67,000,000
37	$67,800,000
38	$68,700,000
39	$69,500,000
40	$70,200,000

Year	Required Net Worth
41	$70,900,000
42	$71,500,000
43	$72,100,000
44	$72,700,000
45	$73,100,000
46	$73,500,000
47	$73,900,000
48	$74,100,000
49	$74,300,000
50	$74,300,000
51	$74,200,000
52	$74,100,000
53	$73,800,000
54	$73,300,000
55	$72,700,000
56	$72,000,000
57	$71,100,000
58	$70,000,000
59	$68,700,000
60	$67,200,000
61	$65,500,000
62	$63,500,000
63	$61,300,000
64	$58,900,000
65	$56,100,000
66	$53,000,000
67	$49,600,000
68	$45,800,000
69	$41,700,000
70	$37,200,000
71	$32,200,000
72	$26,800,000
73	$20,900,000
74	$14,500,000
75	$7,500,000

EXHIBIT K

Encumbrances Affecting Property

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT K
ENCUMBRANCES AFFECTING THE PROPERTY

RIGHT OF PROPRIETOR OF A VEIN OR LODE TO EXTRACT AND REMOVE HIS ORE THEREFROM SHOULD THE SAME BE FOUND TO PENETRATE OR INTERSECT THE PREMISES AS RESERVED IN UNITED STATES PATENTS RECORDED FEBRUARY 13, 1892 IN BOOK A24 AT PAGE 163 AND FEBRUARY 13, 1892 IN BOOK A25 AT PAGE 344.

TERMS, CONDITIONS AND PROVISIONS OF EASEMENT AGREEMENT RECORDED MAY 04, 1987 IN BOOK 3311 AT PAGE 506.

TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN FINAL RULE AND ORDER-INCLUDING UNION PACIFIC, ET AL TRIAL RECORDED NOVEMBER 15, 1993 UNDER RECEPTION NO. 9300157930.

TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN ORDINANCE NO. 453, SERIES OF 1988 RECORDED OCTOBER 23, 2002 UNDER RECEPTION NO. 2002199305.

ANY FACTS, RIGHTS, INTERESTS OR CLAIMS WHICH MAY EXIST OR ARISE BY REASON OF THE FOLLOWING FACTS SHOWN ON ALTA/NSPS LAND TITLE SURVEY CERTIFIED MARCH 16, 2023, PREPARED BY WARE MALCOMB, JOB NO. DCS23-4009:

A. UTILITY POLES AND OVERHEAD UTILITY LINES CROSSING THE SOUTHWESTERLY PORTION OF THE LAND, BUT NOT WITHIN A RECORDED EASEMENT FOR THE SAME.
B. TELECOM PULLBOXES LOCATED ON THE SOUTHWESTERLY PORTION OF THE LAND, BUT NOT WITHIN A RECORDED EASEMENT FOR THE SAME.
C. WOODEN SNOW AND WIND FENCING AND LIVING SNOW AND WIND FENCING LOCATED ON THE SOUTHWESTERLY PORTION OF THE LAND.
D. A DIRT PATH MEANDERING ONTO THE NORTHERLY PORTION OF THE LAND.

EXHIBIT L

M/WBE EDI Plan

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

EXHIBIT M

Memorandum of Lease

Second Creek Campus Lease Agreement
Swire Infrastructure, Inc.
202367353

Form of Memorandum of Lease

WHEN RECORDED RETURN TO:

MEMORANDUM OF LEASE

This Memorandum of Lease ("Memorandum"), is made and entered into as of the ____ day of _____, 20__, by and between City and County of Denver, a municipal corporation of the State of Colorado, acting on behalf of its Department of Aviation ("Landlord"), and Swire Infrastructure Inc., a Delaware corporation authorized to do business in Colorado, having its principal place of business at 12634 S. 265 W. Draper, Utah 84020 ("Tenant").

RECITALS

A. Landlord and Tenant entered into a Ground Lease dated _____ (the "Lease"), whereby Landlord leased to Tenant certain land described and shown in Exhibit A attached hereto and made a part hereof (the "Property").

B. This Memorandum is being executed and recorded to evidence the Lease and shall not be construed to limit, amend, or modify the provisions of the Lease in any respect.

MEMORANDUM

1. LANDLORD. The Landlord is the City and County of Denver, a municipal corporation of the State of Colorado, acting on behalf of its Department of Aviation.

2. TENANT. The Tenant is Swire Infrastructure Inc., a Delaware corporation authorized to do business in Colorado, having its principal place of business at 12634 S. 265 W. Draper, Utah 84020.

3. LEGAL DESCRIPTION. The Property subject to the Lease is described and shown in Exhibit A attached hereto and incorporated herein by this reference.

4. INITIAL TERM. The term of the Lease is a period commencing on the Effective Date (as that term is defined in the Lease) and expiring, if not canceled, extended, or terminated pursuant to the provisions of the Lease, seventy-five (75) Lease Years (defined in the Lease) after the Effective Date, together with three (3) eight (8) year options to extend the term pursuant to the terms of the Lease.

5. OTHER TERMS. In addition to the terms referenced herein, the Lease contains

numerous other terms, covenants and conditions, and notice is hereby given that reference should be made to the Lease directly with respect to the details of all terms, covenants and conditions of the Lease.

6. CONFLICT. In the event of a conflict between the provisions of this instrument and the Lease, the provisions of the Lease shall control.

SIGNATURES ARE ON FOLLOWING PAGE

LANDLORD:

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

By: _____
Assistant City Attorney

CITY AND COUNTY OF DENVER
Department of Aviation

By: _____
Executive Vice President,
DEN Real Estate

Date: _____

TENANT:

SWIRE INFRASTRUCTURE INC.

By: _____
Its: _____

Date: _____

[ADD NOTARY BLOCK AND EXHIBITS]