

# AERONAUTICAL USE LEASE GUIDELINES GRAND JUNCTION REGIONAL AIRPORT

Adopted February 12, 2013

## BACKGROUND, SUMMARY, RESPONSE TO COMMENTS AND TEXT

The Grand Junction Regional Airport Authority (the "Authority") owns and operates the Grand Junction Regional Airport (the "Airport"). The Authority was created by the City of Grand Junction and County of Mesa to own and operate the Airport pursuant to the Colorado Public Airport Authority Act, C.R.S. §41-3-101, *et seq.* Under that Act the Authority has the power to lease Airport property.

### I. BACKGROUND

Since its creation in 1971 the Authority has entered into numerous ground leases with persons desiring to construct hangars and other general aviation facilities on the "air-side" of the Airport. Consistent with common airport industry practice, most of these leases provide for an initial 20-year term, with a 10-year renewal option, for a total term of 30-years. Most of these ground leases establish an initial rental rate, provide for annual CPI adjustments, and also permit a rent adjustment each 5-years based on local market rent studies and/or other factors. Upon expiration of the lease term, the tenant has the option to remove improvements from the leased premises. Improvements which are not removed become the property of the Authority.

In a few cases between 1995 and 2004, the Authority entered into new leases with leasehold assignees for an additional term of 20 years, plus a 10-year tenant option. This was not required by the terms of the ground leases and was not common in the airport industry. The Authority has found no instances in which such a new lease was granted to a non-commercial tenant. After 2006, lease assignments at the Airport have consistently been approved only for the remaining term of the ground lease to be assigned. This is consistent with generally accepted airport industry practice.

In 2011 certain Airport hangar tenants expressed concerns that no written policy existed for aeronautical use ground leases at the Airport, and the maximum 30-year lease terms were not adequate if title to the improvements was to transfer to the Authority. In response to these concerns the Authority began developing formal Aeronautical Use Leasing Guidelines (the "Guidelines") in January 2012. The Authority worked with the Grand Junction Regional Airport Users and Tenants Association (the "GJAUTA") to prepare draft Guidelines for public comment. It also obtained copies of aeronautical use ground lease forms being used at 40 other public airports in the western United States<sup>1</sup>, and of leasing policies in effect at 14 of such airports.

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<sup>1</sup> The airports from which form leases were obtained were APA – Centennial, Englewood, CO; ASE – Aspen/Pitkin County, Aspen, CO; BDU – Boulder Municipal, Boulder, CO; BIL - Billings Logan International, Billings, MT; BJC – Rocky Mountain Metropolitan, Broomfield, CO; BLI – Bellingham International, Bellingham, WA; BZN – Gallatin Field, Bozeman, MT; CDC – Cedar City Municipal, Cedar City, UT; CEZ – Cortez-Montezuma County, Cortez, CO; COE – Coeur D’Alene, Coeur D’Alene, ID; DRO – Durango/La Plata County, Durango, CO; EAT – Pangborn Municipal, Wenatchee, WA; EGE – Eagle County, Eagle, CO; EUG – Mahlon Sweet Field, Eugene, OR; FNL – Ft. Collins/Loveland Municipal, Loveland, CO; FTG – Front Range, Watkins, CO; FTW – Fort Worth

Like Grand Junction, of the other airports from which leases were reviewed, 26 did not have formal leasing policies in place.

On July 31, 2012, the Authority released a draft of the Guidelines for 30-days of public comment. On August 21, 2012, the Authority Board (the "Board") held a public comment forum to solicit input on the draft Guidelines. At that public forum the GJRAUTA requested and the Board granted a 30-day extension of the comment period, through September 30, 2012. The Board reviewed the airport ground leases and guidelines collected from other airports, considered public comments, and incorporated many such comments into its Guidelines. This document (a) provides background on the Guideline development process, (b) summarizes significant portions of the Guidelines, (c) summarizes and responds to public comments received during the first comment period, and (d) sets forth the text of the Guidelines which were proposed for adoption by the Board as of January 7, 2013.

At its meeting on January 7, 2013, the Board extended the public comment period through January 25, 2013. A summary of comments received and a revised version of the Guidelines were released to the public on February 4, 2013. At its meeting on February 12, 2013, the Authority Board adopted the guidelines.

## II. OUTLINE OF GUIDELINES

The Guidelines clarify that Airport land and/or general aviation facilities will generally be leased on a first come-first served basis. The Authority may also use a public competitive proposal process to grant a lease for a particular parcel or facility where multiple parties are interested. The Authority will develop a standard aeronautical use ground lease, the initial form of which will be developed within 30-days of adoption of these Guidelines. Unless circumstances involve the use of a non-standard form, the Authority will attempt to promptly respond to a complete leasing request within 30-days of receipt. The Director of Aviation will be authorized to enter into standard form leases at rates pre-approved by the Authority Board, but decisions on any lease denial or non-standard lease request will be made by the Authority Board in open meeting.

Under the Guidelines the initial ground lease term will continue to be 20 years with a 10 year lessee option to renew. Longer initial or option terms may be available for extraordinarily large investments in facilities. Aeronautical use ground tenants will also be granted up to four (4) additional five (5) year options to extend the lease term, if (a) the improvements have been maintained and are expected to be serviceable for the additional option term, (b) the Authority

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International, Fort Worth, TX; GJT – Grand Junction Regional, Grand Junction, CO; GPI – Glacier Park International, Kalispell, MT; GTF – Great Falls International, Great Falls, MT; GUC – Gunnison Crested Butte, Gunnison, CO; GXY – Greeley/Weld County, Greeley, CO; HLN – Helena Regional, Helena, MT; IDA – Idaho Falls Regional, Idaho Falls, ID; JAC – Jackson Hole, Jackson Hole, WY; LEW – Lewiston-Nez Perce County, Lewiston, ID; LMO – Vance Brand Municipal, Longmont, CO; MAN – Nampa Municipal, Nampa, ID; MEV – Minden-Tahoe, Minden, NV; MSO – Missoula International, Missoula, MT; MTJ – Montrose Regional, Montrose, CO; PAJN – Juneau, Juneau, AK; PMG – Phoenix Mesa Gateway, Chandler, AZ; PUB – Pueblo Memorial, Pueblo, CO; PVU – Provo Municipal, Provo, UT; RCAC – Rooks County Regional, Rook County, KS; RDM – Roberts Field, Redmond, OR; RNT – Renton Municipal, Renton, WA; SGU – St George, St George, UT; TEX – Telluride Regional, Telluride, CO; and U42 – South Valley, Salt Lake City, UT

does not require the ground for other Airport purposes, (c) the extension would not violate FAA grant assurances then in effect, and (d) the lessee is not in material default under the lease or in other financial obligations to the Authority (a "Disqualifying Factor"). This will extend the opportunity of all lessees to own and occupy their hangars, so long as the above conditions continue to be met, for a combined term of up to 50-years. If the Authority Board determines that a facility has not been maintained or is not serviceable, then the lessee will be given a "punch list" and an opportunity to bring the facility into compliance, and thereby be eligible for an additional 5-year option.

Where the Authority owns the facility to be leased, and the lessee will not be making a significant capital investment, the maximum facilities lease term shall be 5-years. The Authority currently owns no general aviation facilities which would be affected by this provision. Exempted from this 5-year facilities lease limitation are circumstances in which the Authority may choose to construct a facility and lease it back to a tenant for such longer term as may be necessary to recoup the Authority's investment. Any such transaction would be approved by the Authority Board in a public meeting.

Rent will continue to be set at an initial reasonable level, and reset at market rates at the beginning of each additional 5-year option term. Instead of being adjusted annually by any increase in the CPI, under the final Guidelines rent will be adjusted every two-years in the same percentage as any increase or decrease in the CPI. The Authority will not make any other periodic market rate adjustments, which are authorized in many existing leases.

Within the 50-year limitation, the ground lease term will expire only if a lessee chooses not to exercise its option to renew, or if the Authority Board determines that one or more Disqualifying Factors exist. Upon lease expiration, at the Authority's option the improvements will either become the property of the Authority, or the lessee will be required to remove them and restore the ground to its pre-lease condition.

The Guidelines will be applicable to all aeronautical ground and facilities leases entered into by the Authority after the effective date. Within 180-days after the effective date of the Guidelines, any existing tenant may also request a standard form lease to incorporate the provisions of the Guidelines. The term of any such standard form lease would commence to run at the commencement date of the original lease.

### **III. DISCUSSION OF PUBLIC COMMENTS BY ISSUE**

Prior to release of the draft Guidelines the Authority worked with and received comments from the Grand Junction Regional Airport Users and Tenants Association. Many of the GJAUTA's comments were incorporated into the initial draft which was released for public comment on July 31, 2012.

On July 31, 2012, a draft of the lease Guidelines was released and posted on the Authority's website, and a notice of availability and solicitation of comments was sent to all tenants and other persons known to be interested. The original deadline for public comments on the draft

was August 31, 2012, and this deadline was extended until September 30, 2012. On August 21, 2012, the Authority Board held a public comment forum to solicit input on the draft Guidelines.

A summary of comments received, the Authority's response to those comments and the manner in which many of those comments have been incorporated into the final Guidelines are set forth below.

#### **A. Basis of Periodic Rent Escalation.**

Under most existing ground leases at the Airport, and the original draft Guideline, the lease rate would be adjusted annually by the increase in the CPI-U. The Authority could also adjust the lease rate no more frequently than every 5-five years to better match current market rents.

*Comments.* One commenter suggested the CPI-U adjustment alone was adequate, and should not be cumulative or discretionary. A later comment suggested the CPI-U should not be used, and rent should instead be adjusted by another standard such as LIBOR (London Inter Bank Offered Rate), the Federal Discount Rate, or some other unspecified inflation index. A commenter also suggested the adjustment should be every 5-years rather than annually, and should decrease as well as increase with the CPI-U.

*Final Guidelines.* Of the other airport aeronautical ground leases reviewed by the Authority, 65% provided for rent escalation based on CPI-U, 26% provided for either periodic market adjustments or a fixed increase in rent, and only 9% failed to provide for a rent adjustment. Of the reviewed leases which used a CPI-U adjustment, 64% provided for the CPI adjustment to be made annually, with the remainder providing for adjustments to be made at three to five year intervals. None of the leases reviewed provided for use of an inflation factor other than the CPI-U.

Under the final Guidelines, the only adjustment to be made during the first 30 years of the lease term will be the bi-annual CPI-U adjustment. No additional rent adjustment will be utilized. The CPI-U adjustment will be made every two-years (rather than annually) and rent could either increase or decrease based on changes in the CPI-U. After 30 years, if lessee exercises any 5-year option to renew, rent will be reset at market rates then prevailing and thereafter adjusted every two years by the CPI-U. The Authority made changes to the draft's definition of CPI-U to make it consistent with current airport ground leases, so that adjustments based on CPI-U in old and new ground leases would be made at the same time of year.

The Authority decided against using LIBOR or the Federal Discount Rate as the adjusting factor. These are borrowing rates which have little relationship to inflation and there are several such rates to choose from (*e.g.*, one month, one year). If the one year LIBOR or the Federal Discount Rate had been used over the past 6-year period, they would have actually resulted in a larger rental rate increase than actually resulted from use of the CPI-U.

## **B. Potential Length of Lease Term.**

Most existing ground leases at the Airport, and the initial draft Guidelines, provided for a term of 20-years plus one (1) 10-year option, with no distinction in term length based on a commercial or non-commercial classification. The draft Guidelines provided two (2) additional 10-year options for commercial lessees, and four (4) 5-year rights of first refusal for non-commercial ground leases, taking potential terms out to 50 years. The draft Guidelines also provided for a 5-year term for aeronautical facilities leased by the Authority.

*Comments.* One commenter suggested the Guidelines should encourage aviation-related businesses to locate at the Airport, and the categories of leases should be created based on business use. In this way the term of leases could be tailored to achieve different Airport objectives and attract an assortment of lessees. When the draft Guidelines were amended to incorporate this principal, a comment suggested all ground lessees should instead be treated equally, and there should be no distinction between commercial and non-commercial hangar lessees.

Several comments also suggested that all ground lessees should have a priority renewal right so long as the facility constructed on the ground leasehold was serviceable. Under this proposal, so long as the facility remains serviceable the ground lease would be renewed for a period which is at least theoretically unlimited.

The Authority considered not limiting the total of all terms, so they could be extended beyond a total of 50-years, and it sought comments from FAA on such a provision. FAA does not pre-approve airport leases or lease guidelines as being in compliance with all FAA grant assurances. However, it will advise airport operators if it believes proposed airport leases or lease guidelines run a significant risk of violating FAA grant assurances. The Compliance Officer for FAA's Denver Airports District Office advised that FAA has taken the clear position that absent extraordinary circumstances in a particular case (such as a large investment and demonstrated need for a longer amortization period), total lease terms in excess of 50-years would be considered a disposal of airport land in violation of grant assurances. FAA cited its Advisory Circular 5190.6B which on page 12-3 states, "Leases that exceed 50 years may be considered a disposal of property in that the term of the lease will likely exceed the useful life of the structures erected on the property. FAA should not consent to proposed lease terms that exceed 50-years." In addition, airport airside ground is limited, and the perpetual extension of leases may limit competition for access to the airport. It would favor incumbents over new entrants who may desire to use the airport in the future.

If the FAA or any interested party were to challenge a lease having a total lease terms in excess of 50-years, in the absence of extraordinary circumstances it is likely the Authority would be found to be in violation of grant assurances. Such a finding could result in loss of future FAA grant funds and even an order to re-pay funds previously granted to the Authority.

*Final Guidelines.* Of the other airport ground leases reviewed by the Authority, a majority provided potential lease terms (primary term and options) of 30-years or less. The minority of reviewed leases provided for options or rights of first refusal which could take the

terms beyond 30-years. However, only two of the 40 leases reviewed provided for renewals which could potentially go beyond a total duration of 50-years.<sup>2</sup>

Under the final Guidelines, the standard ground lease term remains at 20 years plus one 10-year tenant option to renew. However, all ground Lessees will be offered up to four (4) additional options to extend their ground lease terms for 5 years each. These options will be available if the facilities have been maintained and are expected to be serviceable for the additional term, the Authority does not require the ground for other Airport purposes, an extension would not violate FAA grant assurances then existing, and the tenant is not in default under its lease or in other financial obligations to the Authority. For both commercial and non-commercial lessees the total term, including base term and all options will be up to a total term of 50-years.

### **C. End of Term Options.**

Under most aeronautical use ground leases in effect at the Airport, at the end of the term the tenant has the option to remove the improvements, including its hangar building, and to restore the premises to a flat, level and good condition. If the tenant fails to exercise this option within 30-days, title to the improvements, including the hangar building, will automatically pass to the Authority. Under the draft Guidelines, upon lease expiration the improvements would either become the property of the Authority, or the tenant would be required to remove them and restore the ground to its pre-lease condition, at the Authority's option

*Comments.* Several comments suggested that existing leases should be amended to provide for Authority payment of compensation for hangars and other improvements at the end of the lease term. Several comments stated that they were given oral assurances that ground leases would likely be renewed indefinitely. Other comments stated that existing lease requirements should be disregarded, and the Authority should instead exercise its power of condemnation and thereby pay fair market value to the tenant for any improvements at the end of the lease term.

*Final Guidelines.* Of the other airport aeronautical leases reviewed by the Authority, approximately 45% contained a provision similar to the existing practice at the Airport, giving the lessee the option at the end of the term to remove the improvements or they would become the property of the airport operator. Another 45% of the leases reviewed contained a provision granting the airport operator the option at the end of the term to either take title to the improvements (presumably if they are serviceable) or require the tenant to remove the improvements and restore the premises (presumably if they are not serviceable). The remaining 10% contained variations on these approaches. Under none of the 40 aeronautical use ground leases reviewed, was the airport operator required to pay the lessee for the improvements at the end of the lease term, though in a few cases, the airport operator was given the option to make that purchase.

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<sup>2</sup> All the airports leases reviewed had lease terms of 50 years or less, except for BLI, which did not specify a lease term. The lease term at BLI is driven by investment, with a minimum of 30 years. HLN has a term of 20 years, with unlimited 5 year extensions. U42 also has terms dependent upon investment, with no term limit called out.

➔ Under the final Guidelines, up to the total term of 50-years, ground leases will expire only when a lessee chooses not to exercise its option to renew, or if the Authority Board determines that one or more Disqualifying Factors exists. By offering potential lease extensions of 20-years, the final Guidelines significantly alter the bargain in favor of the lessee. Upon expiration of the lease term, improvements will either become the property of the Authority or the lessee will be required to remove them and restore the grounds to its approximate pre-lease condition at the Authority's option. This provision is similar to lease terms prevailing at most other airports for which leases were reviewed.

Under typical airport ground leases, the lessee is permitted to lease airport land, which has runway access (and is therefore valuable and in short supply), for less than ground lease rates prevailing off-airport. In exchange, the airport operator has the option to take title to the improvements at the end of the lease term.

Some comments suggested that the ground rental rate at the Airport is not in fact below market. However, the standard rental rates currently charged at Grand Junction are below, and in many cases substantially below, the rental rates prevailing at 71% of the other airports for which leases were reviewed, which disclosed their standard rental rates. Current ground lease rates at the Grand Junction Airport are \$0.1349 per square foot in the runway 11/29 area, and \$0.1732 per square foot in the runway 4/22 area. This is equal to between \$5,876 and \$7,545 per year per acre of land leased. This land is adjacent to expensive airport infrastructures such as taxiways, runways and navigational aides.

Another problem arises if existing leases were changed to abandon the Authority's rights at the end of the lease term. With respect to these existing leases the Authority has a reversionary property right to the improvements. Under Colorado Constitution, Article XI, Section 2, the Authority is prohibited from making a "donation or grant" of public funds or property to a private company. If the Authority were to give or donate its right of reversion to individual lessees, at the expense of the public, the Authority believes it would risk violating both the letter and spirit of this constitutional provision.

#### **D. Applicability to Existing Leases.**

Existing ground leases at the Airport contain no right for a lessee to enter into a new and substitute lease if Authority leasing policy subsequently changes in their favor. Most provisions of the draft Guidelines would have been applicable only to future leases entered into by the Authority. As to existing leases, the draft Guidelines would have simply set forth the Authority's intention to grant additional lease options to commercial tenants and additional rights of first refusal to non-commercial tenants, and not to apply additional rent adjustments (in addition to CPI increases) as authorized by most existing leases.

*Comments.* Several comments suggested that the Lease Guidelines should apply to both existing and future aeronautical use ground leases at the Airport. Because the draft Guidelines contained several provisions which were more beneficial to lessees, it was suggested that granting of more liberal lease terms to existing lessees would enhance Airport business and thus

contribute to the public good. A late comment suggested that the Authority should not limit this provision to leases which expire more than three-years from the effective date of the Guidelines, and failure to do so could be discriminatory.

➔ ***Final Guidelines.*** Under the final Guidelines, any current aeronautical use ground lessee may request and be granted a new standard form ground lease to incorporate all material terms of the Guidelines, to replace and supersede their existing ground lease. New ground leases would contain the initial term (duration) and commencement date contained in lessee's old ground lease, but with the additional option terms out to 50-years, rather than the current 30-years. The initial rental rate on any new lease will be the market rate as set forth in the Authority's fee resolution. Any such request for a new lease must be received within 180-days after the effective date of the Guidelines. The new standard form of ground lease, consistent with the Guidelines, will be prepared within 30-days after adoption of the Guidelines. If current lessees do not request a new lease, then with respect to existing leases, these Guidelines set forth the current Authority Board's intention to grant additional lease options out to a total of 50-years, as described above, and not to apply rent adjustments in addition to CPI increases. However, the current Authority Board cannot guarantee that future Boards will maintain this Guideline provision in the future. The draft provided that any current Aeronautical Use Ground Lessee "whose lease including options does not expire within three (3) years of the date of these Guidelines," may request and be granted a new standard form ground lease. The Authority has removed this restriction so the right to obtain a new lease is applicable to all current aeronautical use ground lessees.

#### **E. Time For Removal.**

Most existing aeronautical use ground leases at the Airport, and the draft Guidelines, provide that at the end of the lease term, if the lessee removes the improvements it would have only 30-days in which to do so.

***Comments.*** One commenter suggested that 30-days was not an adequate time in which to remove improvements, and 90-days would be more appropriate.

***Final Guidelines.*** The final Guidelines incorporate this suggestion and provide that if at the end of the lease term the improvements are to be removed, the lessee shall have 90-days in which to take that action.

#### **F. Definitions.**

The draft Guidelines did not contain a section defining various terms used in the document.

***Comments.*** Several persons suggested the Guidelines would be clearer if they contained a definition section.

***Final Guidelines.*** The final Guidelines have been amended to incorporate a definition section. These definitions include Minimum Standards, Lessor, Person, CPI-U, and Aeronautical Use. In response to comments, the Authority further amended the definition of Aeronautical Use



to include the non-commercial construction of aircraft, and to defined "Development and Architectural Covenants."

#### **G. Form Leases.**

Under current practice, and by annual resolution of the Authority Board, the Director of Aviation is authorized to enter into standard form ground leases and consents to lease assignment or financing, with lease rental rates established in the Authority's annual rate resolution. In the past six years, only one request for a new aeronautical ground lease has been received. That lease was awarded by the Board after a public bidding process, and at the direction of the Authority Board was executed by the Director of Aviation.

*Comments.* One commenter suggested the draft Guidelines were not clear as to the Director's authority to enter into only pre-approved forms of ground leases, with negotiated leases to be approved by the Authority Board. The commenter suggested the Guidelines should clearly provide that for non-standard leases, the Authority Board must approve the lease terms in an open meeting.

*Final Guidelines.* The Authority agrees with this comment. A clear explanation of this process has been added to the final Guidelines which incorporates the suggestion of the commenter. If any lease, consent to assignment or financing approval is to be denied, that decision shall be made by the Authority Board in an open meeting. The Authority modified the draft to clarify that standard form lease may contain blanks to describe the premises, dates, rental rates, permitted uses and other reasonable variables and such the filling in of such blanks shall not render the leases non-standard. The draft was also clarified to expressly state that individual Aeronautical Use Leases may define, limit and/or condition the types of Aeronautical Uses which may be conducted in a hangar. Finally, Section 6.5 of the Guidelines was amended to provide that the new form lease will be attached to the Guidelines after approval of the Authority Board, and within 45-days of adoption of the Guidelines (rather than 30) to accommodate approval by the Authority Board.

#### **H. Leases as Public Records.**

The draft Guidelines were silent on whether all aeronautical leases entered into by the Authority were public record. This is because the Authority is subject to the Colorado Public Records Act, and unless an exception is provided in that Act, all documents in the Authority's possession have been and are generally considered to be open for public inspection upon request. The Authority does not believe that any such request has ever been denied.

*Comments:* Though airport leases are already subject to the Colorado Public Records Act, one comment suggested the Guidelines specifically provide that such leases are public records subject to inspection upon request.

*Final Guidelines:* The Final Guidelines add a new Section 14 which states that "(a)ll Aeronautical Use Leases shall be available for public inspection to the maximum extent

permitted by the Colorado Public Records Act, and pursuant to the terms of the Authority's public records policy then in effect."

#### **IV. AERONAUTICAL USE LEASE GUIDELINES (Adopted by the Authority Board on February 12, 2013)**

The following is the text of the Aeronautical Use Lease Guidelines which were adopted by the Board of the Grand Junction Regional Airport Authority on February 12, 2013:

**1. DEFINITIONS.** The following definitions shall apply to these Guidelines:

1.1 "Aeronautical Use" shall mean any aeronautical activity, including, but not limited to, parking, storing, repairing, sale, fueling and maintaining aircraft owned or leased by a Lessee or third parties, and other activities associated with aircraft ownership and/or operation, and non-commercial construction of aircraft, including all activities covered by the Minimum Standards then existing. Individual Aeronautical Use Leases may define, limit and/or condition the types of Aeronautical Uses which may be conducted in a particular hangar. For purposes of these Guidelines, Aeronautical Use shall not include operations conducted by scheduled air carriers.

1.2 "Airport" shall mean the Grand Junction Regional Airport located in Grand Junction, Colorado.

1.3 "Authority" shall mean the Grand Junction Regional Airport Authority, a body corporate and politic, which was created by the City of Grand Junction and County of Mesa to operate the Airport.

1.4 "Commercial Lessee" shall mean a Lessee which (a) regularly engages in fixed base operations, ground handling and servicing of air carrier and commuter airline operations, aircraft charter operations, flight training, aircraft rental, aerial photography, crop dusting, aerial advertising, aerial surveying, aircraft sales and services, sale of aviation petroleum products, aircraft repair and maintenance, sale of aircraft parts, and/or other commercial aeronautical services to the public, (b) has entered into or will enter into a lease with the Authority, and (c) meets, and in the case of an existing Lessee has met for a period of not less than six continuous months, the Authority's Minimum Standards then in effect for the type of aeronautical business operated by the Lessee.

1.5 "CPI" shall mean the Consumer Price Index using the US City Average for all urban consumers ("CPI-U"), all items index, set forth in the October to October report published by the US Department of Labor, Bureau of Labor Statistics, for the twelve-month period ending in the calendar year immediately preceding the calendar year in which the annual cost-of-living adjustment is to be made, 1982-84 base = 100. In the event the base year is changed the CPI shall be converted to the equivalent of the base year 1982-84 = 100. In the event the Bureau of labor Statistics ceases to use the CPI or this index, an equivalent or comparable economic index will be used.

1.6 "Development and Architectural Covenants" shall mean the then-current version of the Walker Field Colorado Public Airport Authority Development and Architectural Covenants. The version of that document in effect as of the date of the Guidelines is that adopted by the Board on November 20, 2001, as renewed by Resolution 2005-2009 on June 21, 2005.

1.7 "Guidelines" shall mean these Aeronautical Use Lease Guidelines.

1.8 "Improvements" means all structures and installations placed or constructed on the leased premises, including, but not limited to, hangars, fuel tanks and associated equipment, foundation and paving.

1.9 "Lessee" means any Commercial Lessee or Storage Lessee.

1.10 "Minimum Standards" shall mean the then current version of the Requirements and Minimum Standards for Commercial Aeronautical Services and Activities for Walker Field Airport, Grand Junction, Colorado. The version of the Minimum Standards in effect on the date of these Guidelines, were those adopted by the Airport Authority Board on December 19, 2000 and last revised on July 19, 2005.

1.11 "Person" shall mean any individual, partnership, corporation, trust or other entity of whatever type or nature.

1.12 "Storage Lessee" shall mean any Aeronautical Use Lessee other than a Commercial Lessee as defined above.

## **2. OVERVIEW AND SCOPE.**

2.1 These Guidelines set forth the parameters for leasing Airport land and/or improvements for Aeronautical Uses at the Airport. They outline the process which will be used by the Authority to enter into ground and facilities leases for non-air carrier aeronautical uses, and establish and adjust the rents, fees or other charges associated with leasing, occupying, and/or using Airport land and/or Improvements for such uses.

2.2 No Person shall occupy Airport land and/or Improvements unless such Person has entered into a lease with the Authority or has a sublease approved by the Authority.

2.3 No Person shall take possession of any structure on the air-side of the Airport unless the Person has first entered into an agreement or lease with the Authority or a sublease with an Airport Lessee, and in the case of a Commercial Lessee, is in full compliance with applicable provisions of the Minimum Standards.

2.4 The Authority reserves the right to designate specific Airport land areas in which airlines, Commercial Lessees and Storage Lessees, respectively, may or may not conduct business or construct Improvements. The Authority also reserves the right to establish classes

of aeronautical activity (including airlines, Storage Lessees and the classes of activity specified in the Minimum Standards), to establish land areas within which such classes may operate, and to treat such different classes differently with respect to the offering of leases or agreements.

2.5 The right to use the Airport and any Airport land and/or Improvements, other than lands or Improvements leased exclusively to any Person, shall be non-exclusive.

2.6 These Guidelines shall not apply to circumstances in which the Authority itself chooses to construct a hangar or other aeronautical use Improvement on its own initiative or at the request of and to the specifications of a Lessee for lease to such Lessee. Such a transaction would be subject to variables such as, but not limited to, the cost of construction, the type and cost of financing, and the lease term necessary to recoup the Authority's investment. It shall therefore be handled on a case-by-case basis pursuant to applicable laws and Authority policies then existing.

### 3. **PURPOSES.**

3.1 The Federal Aviation Administration (FAA), by way of its Grant Assurances, requires all airports developed with federal grant assistance to operate for the use and benefit of the public, and for such airports to be made available to all types, kinds, and classes of aeronautical activity on fair and reasonable terms and without unjust discrimination. These Grant Assurances also require airport sponsors to maintain a fee and rental structure for the facilities and services at their airports, which will make the airports as self-sustaining as possible under the circumstances existing at the particular airport, and will not dispose of or transfer title to airport property without FAA approval. Airport sponsors must also avoid unjust economic discrimination within classes of users, taking into account such factors as the volume of traffic and economy of collection. The Airport and the Authority are subject to these grant assurances.

3.2 It is therefore the policy of the Authority to:

3.2.1 operate the Airport for the use and benefit of the public, and to make it available for all types, kinds and classes of aeronautical activity;

3.2.2 make the opportunity to engage in commercial Aeronautical Uses available to any Person who meets the Minimum Standards established by the Authority;

3.2.3 limit or prohibit any type, kind or class of Aeronautical Use of the Airport, if such action is necessary for the safe operation of the Airport or is necessary to serve the civil aviation needs of the public;

3.2.4 impose terms and conditions on those offering aeronautical services and commodities to the public to ensure they are offered on fair and reasonable basis and without unjust discrimination;

3.2.5 impose only the same rates, fees, rental and other charges as are uniformly applicable to all other Aeronautical Use Lessees in the same class of aeronautical activity

(see e.g. Section 2.4 above), making the same or similar uses of the Airport, utilizing the same or similar facilities, and entering into leases or agreements at approximately the same time;

3.2.6 make aeronautical facilities at the Airport available to the public on fair and reasonable terms and without unjust discrimination;

3.2.7 make the Airport as financially self-sustaining as possible under the circumstances; and

3.2.8 not enter into leases or lease amendments which would constitute a transfer or disposal of Airport property, without prior FAA approval.

3.3 The leasing of Airport land is also regulated and influenced by local, State, and federal law including, but not limited to, the policies and rules of the Federal Aviation Administration (the "FAA") and Transportation Security Administration ("TSA"), and other policies, guidelines, rules and standards adopted by the Authority.

4. **LAND USES.** The Airport Master Plan and Airport Layout Plan (ALP) have been developed by the Authority and are periodically updated. The ALP is approved by the FAA, and the Master Plan is developed in accordance with FAA standards. These documents provide guidance to the Authority regarding which land areas of the Airport may be made available for leasing to various classes of Lessee (see e.g. Section 2.4 above). No lease shall be entered into by the Authority which, at its inception, is contrary to the Master Plan or the FAA-approved ALP. The Authority reserves the right to amend and revise the Master Plan and/or ALP from time-to-time, with FAA approval as may be necessary. Amendments and updates to the ALP and/or Master Plan may provide for changes in land use and/or reconfiguration of existing land use areas on the Airport, which shall be applicable to leases entered into or extended after the date of such ALP or Master Plan amendment or update.

5. **AUTHORITY TO LEASE.** The Authority filed Articles of Incorporation on March 24, 1971, and is a body corporate and politic, and a political subdivision of the State of Colorado. Power to enter into and administer leases of Airport property is granted to the Authority by Colorado Revised Statutes Section 41-3-106(f).

#### 6. **LEASE FORMS AND REQUESTS.**

6.1 **Manner of Leasing.** Available Airport land and/or general aviation Improvements with runway access will generally be leased on a first come, first served basis, to Lessees wishing to use such land and/or Improvements for the aviation-related purposes described in the currently-approved ALP. Under certain circumstances (i.e. multiple Persons interested in a single piece of property or Improvement or few/no remaining parcels or Improvements available for a specific aviation-related use), the Authority may use a public and competitive proposal process prior to grant a lease for a particular parcel or facility. Interested Persons should contact the Authority to discuss leasing opportunities, lease requirements and information required for review by the Authority.

6.2 Review Standards. Requests to lease Airport land for Aeronautical Uses will be reviewed by the Authority based on parameters contained in these Guidelines including, but not limited to, whether:

6.2.1 The proposed use is appropriate and consistent with the ALP, Master Plan, and other relevant land use planning documents, including Authority's Development and Architectural Covenants, if any;

6.2.2 Approval would not constitute a violation of Grant Assurances; and

6.2.3 If a commercial Aeronautical Use is proposed, Lessee's proposed use of the property would comply with the requirements of the Minimum Standards for the commercial use proposed.

6.3 Leases More Restrictive. The Authority's Aeronautical Use leases shall be designed to protect the public interest and may contain more restrictive clauses than those typically found in private sector leases. They shall transfer to the Lessee the liabilities associated with possession and control of real property including, but not limited to, compliance with all federal, state and local laws and regulations pertaining to the use, storage and disposal of hazardous materials and storm water pollution prevention regulations.

Compliance with Law. Leases will require Lessees to comply with all applicable local, state and federal laws, ordinances, rules and regulations, including those of the TSA and FAA. Leases shall also require Lessees and sub-lessees on the Airport to comply with all applicable Airport regulations, policies and Minimum Standards. Such Authority regulations, policies and Minimum Standards may be updated and/or amended from time to time as appropriate, and Lessees shall be subject to the same as updated and/or amended, provided that no such updated regulations, policies or Minimum Standards shall override any material provision of an existing lease.

6.4 Standard Lease Forms and Procedures. The Authority may require that requests to lease be submitted on a standard form which it may develop and amend from time to time, but which shall conform to these Guidelines. Leasing requests may also be required to contain such additional information and documentation as the Authority deems reasonably necessary to evaluate the proposal. The Authority will also develop standard forms of ground and facilities lease which may be periodically updated to reflect changes in federal, state and local regulations and real estate law as well as necessary to meet a changing economic environment and other risks associated with leasing. The standard form of ground lease will be attached hereto as **Appendix A**, upon approval of the Authority Board and within forty-five (45) days after adoption of these Guidelines. The Director of Aviation will be authorized to execute the standard form lease at the rental rate fixed from time to time by the Authority Board in its rate resolution. Should the terms of a proposed lease differ from the standard form, or should a proposed rental rate differ from that established in the rate resolution, approval of the Authority Board in a public meeting will be required. The standard form lease may contain blanks to describe the lessee, premises, applicable dates, rental rates, permitted aeronautical uses and other

reasonable variables and the filling in of such blanks shall not render leases non-standard. Where a non-standard lease is requested or necessary under the circumstances, the Director of Aviation may negotiate with the Lessee or prospective Lessee and shall submit his/her recommendation to the Authority Board, which shall be considered by the Authority Board in a public meeting.

6.6 Prompt Response. In all cases, the Authority shall attempt to respond to leasing requests in a prompt manner under the circumstances. The Authority shall attempt to respond to requests involving a standard form lease within thirty (30) days of receiving a complete written lease request. Requests which will involve the use of a non-standard lease form, require engineering or other professional review, or otherwise require action by the Authority Board could take considerably longer. Any denial of a request for an Aeronautical Use lease shall be made by the Authority Board in public meeting and shall be accompanied by a written statement as to the basis of the denial.

6.7 Current Leases. Any current Aeronautical Use Ground Lessee may request and be granted a new standard form ground lease to incorporate all material terms of these Guidelines, which shall replace and supersede the Lessee's existing ground lease. Any such new ground lease will contain the initial term (duration) and commencement date contained in Lessee's old ground lease, with the additional option terms described in Section 7.5 below. The rental rate shall be the market rate established in the Authority's then current fee resolution. Any such request must be received within one-hundred eighty (180) days after the effective date of these Guidelines. If Lessees do not request a new lease within such period, then with respect to such existing leases these Guidelines nevertheless set forth the current Authority Board's intention to grant additional lease options to all Lessees as described below, and not to apply rent adjustments in addition to CPI increases. After the new standard form of ground lease is adopted by the Authority Board and attached to these Guidelines, the Authority shall promptly respond to requests for new leases, but shall not be bound by the time limit set forth in Section 6.6 above.

## 7. DURATION OF LEASE TERM.

7.1 Policy. All leases of Airport land shall have a fixed term of limited duration to ensure the Authority's ability to control future development of Airport land should it be needed for a different purpose, while at the same time being fair to Lessees.

7.2 Standard Ground Lease Terms. Except as provided below, the maximum initial Aeronautical Use ground lease term shall be twenty (20) years with one (1) Lessee option to extend for an additional ten (10) years.

7.3 Extended Term for Extraordinary Capital Investment. If a Lessee or prospective Lessee proposes to make an extraordinarily large investment in light of the square footage of land to be leased or which is being leased, the Board may in its discretion consider whether to amend these Guidelines to provide additional provisions under which the length of the extended ground lease primary and/or option terms may be determined.

7.4 Standard Facility Lease Term. Except as provided below, when the Authority owns the ground and the aeronautical Improvements to be leased the maximum facilities lease term shall be five (5) years.

7.5 Additional Option Terms for Ground Leases. In addition to the option term provided in Section 7.2 above, Lessees may be offered up to four (4) additional options to extend the ground lease term for five (5) years each (an "Additional Option"). The total of primary and all option terms of any lease shall not exceed 50-years unless individual and extraordinary circumstances are found to exist under Section 7.3 above. The Authority shall offer an Additional Option to a Lessee if, and only if:

7.5.1 such Lessee requests the same between twelve (12) and eighteen (18) months prior to the expiration of the then-current option or Additional Option term, and

7.5.2 the Authority Board has not found (within sixty (60) days after such request by the Lessee, or by the Authority' Board's next regular meeting, whichever is later in time) that

(a) the Improvements on the leasehold have not been properly maintained or are not in a condition expected to be serviceable in any respect for the additional five (5) year option term,

(b) the Authority intends to redevelop the area in which the leasehold is located and/or use all or a portion of the subject leasehold ground for purposes other than lease to a Commercial Lessee or Storage Lessee, as the case may be,

(c) Lessee is in material default under its ground lease with the Authority,

(d) Lessee is in default in any other financial obligation to the Authority, and/or

(e) the granting of the option would violate any Grant Assurances or other applicable law.

7.5.3 The factors referred to in Section 7.5.2 above shall each be referred to as a "Disqualifying Factor" and collectively as "Disqualifying Factors." The Authority's determination of any Disqualifying Factor shall be made in its reasonable discretion.

7.5.4 Lessees are encouraged to contact the Authority in advance of the option exercise window described in Section 7.5.1 above to discuss the condition of the Improvements on the leasehold, actions which may be necessary to bring the Improvements into the required condition of maintenance and/or serviceability and meet the other requirements of Section 7.5.2 above.



7.5.5 The Authority may condition the exercise of an Additional Option on amendment of the lease to incorporate such other standard, and non-discriminatory terms as are then being offered by the Authority to other Lessees under aeronautical use ground leases, and ground lease rates for each Additional Option term shall be set at reasonable rates existing at the time the Additional Option is exercised as set forth in the Authority's then current rate resolution, which rates shall be subject to the CPI adjustment set forth above.

7.6 Repair and Maintenance Punch-List.

7.6.1 If the Authority has not found that other Disqualifying Factors exist, but has found that the Improvements on the leasehold have not been properly maintained and/or are not in a condition expected to be serviceable for the additional five (5) year option term, pursuant to Section 7.5.2(a) above, and also finds that such Improvements can be made serviceable through reasonable repair or maintenance, it shall provide Lessee with a written "Punch List" of repair and maintenance items to be completed by Lessee, at its sole expense. The repair and maintenance required by the Authority shall be for the purpose of maintaining improvements in their original state, reasonable wear and tear excepted, and not for new construction.

7.6.2 The Punch List shall be provided to Lessee not more than thirty (30) days after the Authority's finding of such Disqualifying Factor, and Lessee shall have a 120-day period of time in which to complete repair and/or maintenance of such Punch List items to the reasonable satisfaction of the Authority. Provided that Lessee is proceeding with necessary diligence to complete the "Punch List" items, Lessee, upon written notice to the Authority given prior to the expiration of said 120-day period, may extend the time for completion for a period of time not to exceed an additional sixty (60) days. If such Punch List items are completed to the reasonable satisfaction of the Authority, the Lessee shall then be permitted to exercise the Additional Option.

8. **LEASE EXPIRATION/TERMINATION.** Within the limits of Section 7.5 above, under these Guidelines, and subject to the limitations of Section 7.5 above, ground leases which are subject to Additional Options will expire only when a Lessee chooses not to exercise its option to renew, or if the Authority Board determines that one or more Disqualifying Factor exists. Ground Leases may also terminate upon material default by the Lessee. Upon the expiration or sooner termination of the ground lease, each ground lease shall provide that:

8.1 Lessee shall peaceably surrender possession of the leasehold to the Authority.

8.2 At the Authority's option, which it may deliver to Lessee at least three months prior to expiration, the Lessee (a) shall immediately abandon the fixtures and Improvements to the Authority and the same will become the property of the Authority under Section 8.3 below, or (b) Lessee shall have ninety (90) days from date of expiration or termination to remove from the Airport and properly dispose of all personal property, fixtures and Improvements and restore the ground to approximately its pre-lease condition reasonably acceptable to the Authority, at Lessee's sole cost and expense.

8.3 In any event, after ninety (90) days from date of expiration or termination of the lease, title to all property, fixtures and Improvements not removed by Lessee in accordance and at the Authority's option under Section 8.2 above, shall be surrendered to the Authority without payment by the Authority to lessee of any compensation whatsoever, and said personal property, fixtures, and Improvements remaining on the premises shall thereafter be owned by the Authority free and clear of any claim of interest by Lessee or of any third party. If the Authority has exercised its option to have the Improvements removed and the premises restored at Lessee's expense but Lessee has failed to do so, such Lessee shall be liable to the Authority for the reasonable costs of removal and restoration.

**9. RATES, FEES AND CHARGES.**

9.1 Market Rates. The Authority recognizes its obligation to charge reasonable and not unjustly discriminatory rent for Aeronautical Use of Airport land and/or Improvements. Under the Grant Assurances the Authority is also required to maintain a rent and fee structure which makes the Airport as self-sustaining as possible under the circumstances.

9.1.1 Reasonable rent for Aeronautical Use land and/or Improvements at the Airport will be determined, at the discretion of the Authority, by rent study, comparison of rents for similar properties at this and other comparable public use airports, appraisal, negotiation, or a competitive process.

9.1.2 Current rates, fees and charges will be outlined in the Authority's approved Fees and Charges. All new, renegotiated, and adjusted lease rates, fees and charges will be set according to the rates found in the approved Fees and Charges, which are reviewed, updated and approved annually by the Authority Board.

9.2 Periodic Adjustments. Every two years, in even years beginning April 1, 2014 (the "Adjustment Date"), the Monthly Ground Lease Rent for the premises will be adjusted by any cumulative increase or decrease in the CPI over the prior two year period or since the effective date of the lease or Additional Option, whichever is closer in time to the Adjustment Date.

**10. PERMITTED USES.** Leases shall provide that Improvements constructed on the Airport Operations Area of the Airport are to be used for Aeronautical Uses only, including but not limited to parking, storing and maintaining aircraft owned or leased by tenant or third parties, other activities associated with aircraft ownership, commercial Aeronautical Uses covered by the Minimum Standards, and self-fueling in strict accordance with the Authority's Fuel Storage and Handling Procedures.

**11. CONSTRUCTION OF LEASEHOLD IMPROVEMENTS.**

11.1 Prior to the construction of any Improvements, alterations or additions to the leasehold, proposed plans must be submitted to the Authority for review and approval. The Authority shall determine if the Improvements are consistent with the Airport's Master Plan and

meet the Authority's Development and Architectural Covenants and, if applicable, the Minimum Standards. Improvements must also meet all federal, State and local codes, rules and regulations. Authority approval of plans shall not be an indication that any Improvement complies with such laws, codes or rules.

11.2 A period of time may be specified in the ground lease for the commencement and completion of any approved Improvements on any leasehold.

**12. ASSIGNMENT, SUB-LEASING AND FINANCING.**

12.1 Written consent from the Authority must be obtained prior to any assignment or subleasing of all or any portion of a lease, which assignment shall not be unreasonably withheld. Leases will provide that assigned and sublet leases will be subject to all the terms and conditions of the original lease, including the lease term.

12.2 The Authority shall make prompt and reasonable efforts to cooperate with Lessees and their lenders regarding the financing or refinancing of Airport businesses and Improvements, provided, however, that in doing so the Authority shall have no obligation to materially change any lease term or take any action which would be materially detrimental to the Authority or the public interest.

12.3 Potential Lessees, assignees and sub-lessees should carefully consider the remainder of the lease term when negotiating the purchase of any Airport business or facility.

**13. SUBORDINATE DOCUMENT.** This document (a) is intended to provide guidance to the Authority when issuing or renewing leases for Aeronautical Uses, (b) does not itself constitute a legally binding agreement or contract with any Person, and (c) does not contain all terms and conditions of leases. Except as expressly provided herein, if any conflict of terms or conditions exist with other legal documents, including but not limited to a ground lease or Facilities Lease, this document shall be subordinate.

**14. PUBLIC RECORDS.** All Aeronautical Use Leases shall be available for public inspection to the maximum extent permitted by the Colorado Public Records Act, and pursuant to the terms of the Authority's public records policy then in effect.

**15. EFFECTIVE DATE.** These Guidelines shall become effective upon adoption by the Authority and shall remain in effect, unless and until repealed or amended by the Authority.

